



Development Assessment Panel

Business Paper

date of meeting: Thursday 15 April 2021

location: Via Skype

time: 2:00pm

Development Assessment Panel

CHARTER

1.0 OBJECTIVES

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

2.0 KEY FUNCTIONS

- To review development application reports and conditions. The focus of the Panel's review is to be on those issues raised in submissions received following exhibition of development applications;
- To determine development applications where there are 3 or more unique submissions or where an application is outside of staff delegations;
- To refer development applications to Council for determination where necessary;
- To provide a forum for objectors and applicants to make submissions on applications before the Development Assessment Panel (DAP);
- To maintain transparency in the determination of development applications.

Delegated Authority of Panel

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

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

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

3.0 MEMBERSHIP

3.1 Voting Members

- Three (3) independent external members will be selected for each scheduled DAP meeting from an appointed pool of members. One of the independent external members to be the Chairperson. Independent members will be rostered onto meeting on a rotational basis where possible.
- Group Manager Development Assessment (alternate - Director Development and Environment or Development Assessment Planning Coordinator).

The independent external members shall have expertise in one or more of the following areas:

planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, government and public administration.

3.2 Non-Voting Members

Not applicable.

3.3 Obligations of members

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

3.4 Member Tenure

The independent external members will be appointed for the term of Four (4) years or until such time as an expression of interest process to source Panel members is completed for the proceeding four (4) year term.

3.5 Appointment of members

- A pool of independent external members (including the Chair) shall be appointed by the Chief Executive Officer following an external Expression of Interest process. Previous Panel members are eligible to be reappointed on the Panel following this expression of interest process.
- Independent members will be rostered on to Panel meetings on a rotational basis where possible to suit Panel member availability and Panel operational needs.
- Staff members on the Panel shall be appointed by the Chief Executive Officer.

4.0 TIMETABLE OF MEETINGS

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

5.0 MEETING PRACTICES

5.1 Meeting Format

- At all meetings of the Panel the Chairperson shall occupy the Chair and preside. The Chair will be responsible for keeping of order at meetings.
- Meetings shall be open to the public.
- The Panel will hear from an applicant and objectors or their representatives. Speakers are required to register to speak by close of business on the day prior to the Panel meeting.
- The Panel shall have the discretion to ask the applicant and objectors questions relating to the proposal and their submission. There is no 'right of reply' for an objector or applicant.
- Where there are a large number of persons making submissions with common interests, the Panel shall have the discretion to hear a representative of those persons rather than multiple persons with the same interest.
- Council assessment staff will be available at Panel meetings to provide technical assessment advice and assistance to the Panel.
- Where considered necessary, the Panel will conduct site inspections prior to the meeting.

5.2 Decision Making

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

5.3 Quorum

Three (3) members must be present at a meeting to form a quorum.

5.4 Chairperson and Deputy Chairperson

Independent Chair (alternate - independent member).

5.5 Secretariat

- The Director Development and Environment is to be responsible for ensuring that the Panel has adequate secretariat support. The secretariat will ensure that the

business paper and supporting papers are circulated at least three (3) days prior to each meeting. Minutes shall be appropriately approved and circulated to each member within three (3) weeks of a meeting being held.

- The format of and the preparation and publishing of the Business Paper and Minutes shall be similar to the format for Ordinary Council Meetings.

5.6 Recording of decisions

Minutes will be limited to the recording of decisions only and how each member votes for each item before the Panel.

6.0 CONVENING OF “OUTCOME SPECIFIC” WORKING GROUPS

Not applicable.

7.0 CONFIDENTIALITY AND CONFLICT OF INTEREST

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

8.0 LOBBYING

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

9.0 CONDUCT AT MEETINGS

All parties in attendance at a DAP meeting shall conduct themselves respectfully ie. not disrupt the conduct of the meeting, not interject, act courteously and with compassion and

empathy and sensitivity and will not insult, denigrate or make defamatory or personal reflections on or impute improper motives to the DAP, Council staff or other members of the public.

Development Assessment Panel

ATTENDANCE REGISTER

Member	18/03/21					
David Crofts	✓					
Michael Mason	✓					
Chris Gee						
Tony McNamara	✓					
Dan Croft (Group Manager Development Assessment)	✓					

Key: ✓ = Present

A = Absent With Apology

X = Absent Without Apology

Meeting Dates for 2021

21/01/2021	Function Room	2:00pm
11/02/2021	Committee Room	2:00pm
25/02/2021	Committee Room	2:00pm
18/03/2021	Committee Room	2:00pm
1/04/2021	Function Room	2:00pm
15/04/2021	Function Room	2:00pm
6/05/2021	Function Room	2:00pm
20/05/2021	Committee Room	2:00pm
3/06/2021	Function Room	2:00pm
17/06/2021	Function Room	2:00pm
1/07/2021	Function Room	2:00pm
15/07/2021	Function Room	2:00pm
19/08/2021	Function Room	2:00pm
2/09/2021	Function Room	2:00pm
16/09/2021	Function Room	2:00pm
7/10/2021	Function Room	2:00pm
21/10/2021	Function Room	2:00pm
4/11/2021	Committee Room	2:00pm
18/11/2021	Committee Room	2:00pm
2/12/2021	Function Room	2:00pm
16/12/2021	Function Room	2:00pm

Development Assessment Panel Meeting

Thursday 15 April 2021

Items of Business

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

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

Item: 02**Subject: APOLOGIES**

RECOMMENDATION

That the apologies received be accepted.

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

RECOMMENDATION

That the Minutes of the Development Assessment Panel Meeting held on 18 March 2021 be confirmed.

PRESENT

Members:

David Crofts (Independent Chair)
Michael Mason (Independent Member)
Tony McNamara (Independent Member)
Group Manager Development Assessment (Dan Croft)

Other Attendees:

Development Engineering Coordinator (Grant Burge)
Development Assessment Planning Coordinator (Pat Galbraith-Robertson)
Development Assessment Planner (Heather Fardy)
Development Engineer (Jon Power)

The meeting opened at 2:00pm.

01 ACKNOWLEDGEMENT OF COUNTRY

The Acknowledgement of Country was delivered.

02 APOLOGIES

Nil.

03 CONFIRMATION OF MINUTES

CONSENSUS:

That the Minutes of the Development Assessment Panel Meeting held on 11 February 2021 be confirmed.

04 DISCLOSURES OF INTEREST

There were no disclosures of interest presented.

05 DA2020 - 715 - RESIDENTIAL FLAT BUILDING WITH STRATA SUBDIVISION INCLUDING CLAUSE 4.6 VARIATION TO CLAUSE 4.4 (FLOOR SPACE RATIO) UNDER PORT MACQUARIE-HASTINGS LOCAL ENVIRONMENTAL PLAN 2011 LOT 1 AND 2 DP 758852, NO. 26-28 WILLIAM STREET, PORT MACQUARIE

Glen Stewart (Opposing application)
David Geary (Opposing application)
Terrance Stafford (Applicant)
Nigel Swift (Applicant)

CONSENSUS:

That it be a recommendation to Council that DA2020 - 715 for a residential flat building with strata subdivision including clause 4.6 variation to clause 4.4 (floor space ratio) at Lots 1 & 2, DP SEC 65 DP758852, No. 26-28 William Street, Port Macquarie, be determined by granting consent subject to the recommended conditions and as amended below.

- Additional condition in Section D of the consent to read: 'The Applicant must ensure that if any unexpected archaeological deposits or relics not identified and considered in the supporting documents for this approval are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified as required by s146 of the Heritage Act 1977. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.'

06 DA2020 - 1008.1 DWELLING AT LOT 150 DP 1230897, 16 SHORE BREAK CRESCENT LAKE CATHIE

Tony Blue (Applicant)

CONSENSUS:

That DA2020 - 1008.1 for a Dwelling at Lot 150, DP 1230897 No. 16 Shore Break Crescent, Lake Cathie, be determined by granting consent subject to the recommended conditions.

07 DA2018 - 353.3 MODIFICATION TO COMMERCIAL PREMISES AND TOURIST AND VISITOR ACCOMMODATION INCLUDING CLAUSE 4.6 VARIATION TO CLAUSE 4.3 (HEIGHT OF BUILDINGS) AND CLAUSE 4.4 (FLOOR SPACE RATIO) OF PORT MACQUARIE-HASTINGS LOCAL ENVIRONMENTAL PLAN 2011 AT LOT 123 DP 1219042, NO 17 CLARENCE STREET, PORT MACQUARIE

Kelly Lewis (Opposing application)
Chris Drysdale (Opposing application)
David Pensini (Applicant)

CONSENSUS:

That it be a recommendation to Council that modification to DA2018 - 353.3 for a Commercial Premises and Tourist and Visitor Accommodation including clause 4.6 variation to clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of Port Macquarie-Hastings Local Environmental Plan 2011 at Lot 123, DP 1219042, No. 17 Clarence Street, Port Macquarie, be determined by granting consent subject to the recommended conditions, subject to the following:

1. Prior to consideration of the matter by the elected Council, the applicant submit the following information for assessment by Council staff:
 - a) Shadow diagrams demonstrating that the proposal has a nil or minor impact on the swimming pool at the Port Pacific Building to the south of the subject site.
 - b) An amended Clause 4.6 variation report to support the building height variation, noting that the National Construction Code requirements for fire sprinklers were not in force at the time of the original approval and justification that the building height variation achieves a better planning outcome.

08 GENERAL BUSINESS

Nil.

The meeting closed at 3:57pm.

Item: 04
Subject: DISCLOSURES OF INTEREST

RECOMMENDATION

That Disclosures of Interest be presented

DISCLOSURE OF INTEREST DECLARATION

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

(Refer to next page and the Code of Conduct)

Pecuniary Interest

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

Non-Pecuniary

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

Managing non-pecuniary conflicts of interest

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

SPECIAL DISCLOSURE OF PECUNIARY INTEREST DECLARATION

This form must be completed using block letters or typed.

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

By <i>[insert full name of councillor]</i>	
In the matter of <i>[insert name of environmental planning instrument]</i>	
Which is to be considered at a meeting of the <i>[insert name of meeting]</i>	
Held on <i>[insert date of meeting]</i>	
PECUNIARY INTEREST	
Address of the affected principal place of residence of the councillor or an associated person, company or body <i>(the identified land)</i>	
Relationship of identified land to councillor <i>[Tick or cross one box.]</i>	<input type="checkbox"/> The councillor has interest in the land (e.g. is owner or has other interest arising out of a mortgage, lease, trust, option or contract, or otherwise). <input type="checkbox"/> An associated person of the councillor has an interest in the land. <input type="checkbox"/> An associated company or body of the councillor has interest in the land.
MATTER GIVING RISE TO PECUNIARY INTEREST¹	
Nature of land that is subject to a change in zone/planning control by proposed LEP <i>(the subject land²)</i> <i>[Tick or cross one box]</i>	<input type="checkbox"/> The identified land. <input type="checkbox"/> Land that adjoins or is adjacent to or is in proximity to the identified land.
Current zone/planning control <i>[Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]</i>	
Proposed change of zone/planning control <i>[Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]</i>	
Effect of proposed change of zone/planning control on councillor or associated person <i>[Tick or cross one box]</i>	<input type="checkbox"/> Appreciable financial gain. <input type="checkbox"/> Appreciable financial loss.

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

Councillor's Signature: **Date:**

This form is to be retained by the council's Chief Executive Officer and included in full in the minutes of the meeting

Last Updated: 3 June 2019

Important Information

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

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

Clause 4.3 of the Model Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

"Relative" is defined by clause 4.4 of the Model Code of Conduct as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

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

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

¹ Clause 4.1 of the Model Code of Conduct provides that a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct.

² A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in clause 4.3 of the Model Code of Conduct has a proprietary interest

Item: 05

Subject: DA2008 - 225.2 - SECTION 4.55 MODIFICATION TO INDUSTRIAL SUBDIVISION LAYOUT AND STAGING AT LOT 2 DP 712594, LOT 133 DP 754405, LOT 4 DP 720823, LOT 1 DP 1245604, HERONS CREEK ROAD, HERONS CREEK

Report Author: Development Assessment Planner, Clint Tink

Applicant:	GHD
Owner:	Kew Industrial Pty Ltd
Estimated Cost:	N/A
Parcel no:	18743, 16781, 37123 & 69701

Alignment with Delivery Program

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

RECOMMENDATION

That the Section 4.55 modification to DA2008 - 225 being a modification to the layout and staging of the previously approved staged industrial subdivision at Lot 2, DP 712594, Lot 133 DP 754405, Lot 4 DP 720823 and Lot 1 DP 1245604, Herons Creek Road, Herons Creek, be determined by granting consent subject to the recommended modified conditions.

Executive Summary

This report considers a s4.55(1A) modification of consent to amend the layout and staging of an existing approved staged industrial subdivision as well as updating conditions to reflect the more recently completed Pacific Highway upgrade. The report provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979.

Being a s4.55 modification, the amended proposal has been assessed against the relevant legislation in place at the time of the original assessment.

Following exhibition of the application, one (1) petition style submission was received, containing 23 signatures/names.

During the assessment of the modification, the applicant made some minor changes to the staging and layout details.

Overall, the site is considered suitable for the proposed modified development and the proposal adequately addresses relevant planning controls. The development is not considered to be contrary to the public's interest and will not result a significant adverse social, environmental or economic impact.

This report recommends that the modification be approved subject to the attached recommended conditions (**Attachment 1**).

The application is being referred to Council's Development Assessment Panel (DAP) on the basis that the modification was lodged and notification completed, prior to the new DAP charter coming into force. Furthermore, it was considered that the petition with 23 signatures/names represented three (3) or more objections in this case. While under the new DAP charter, a petition is considered to be one (1) submission, Council staff believe that if the objectors/signatories had known about the new DAP charter, they would likely have lodged individual submissions.

A copy of the DAP Charter outlining the delegations and functions of the DAP is available on Council's website.

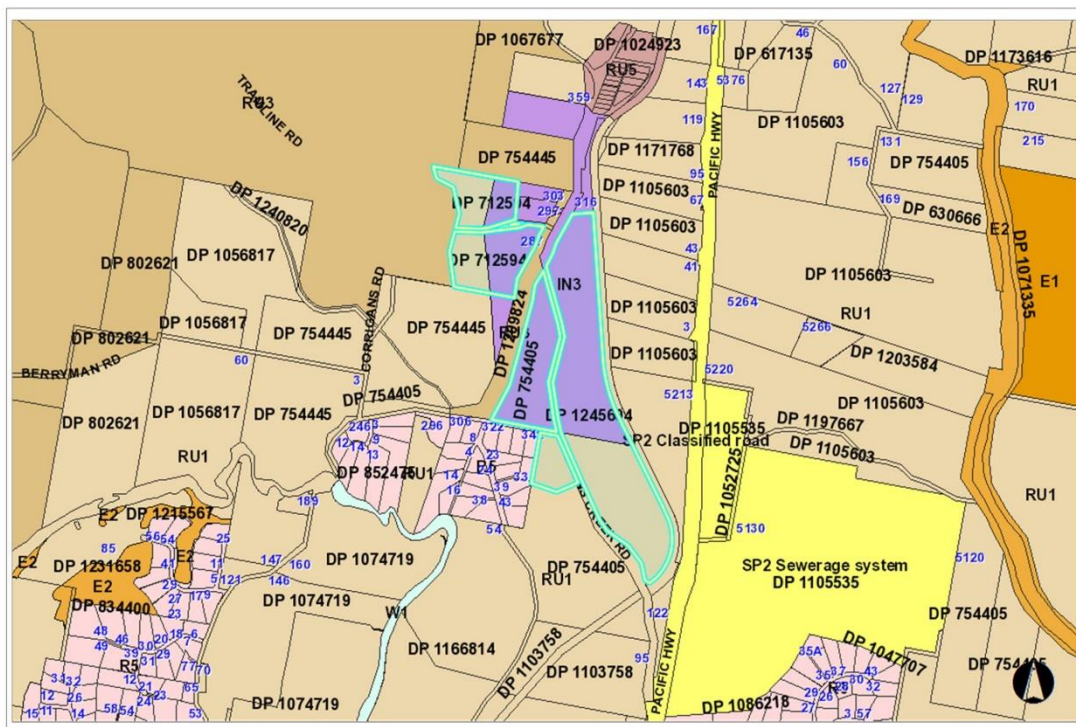
1. BACKGROUND

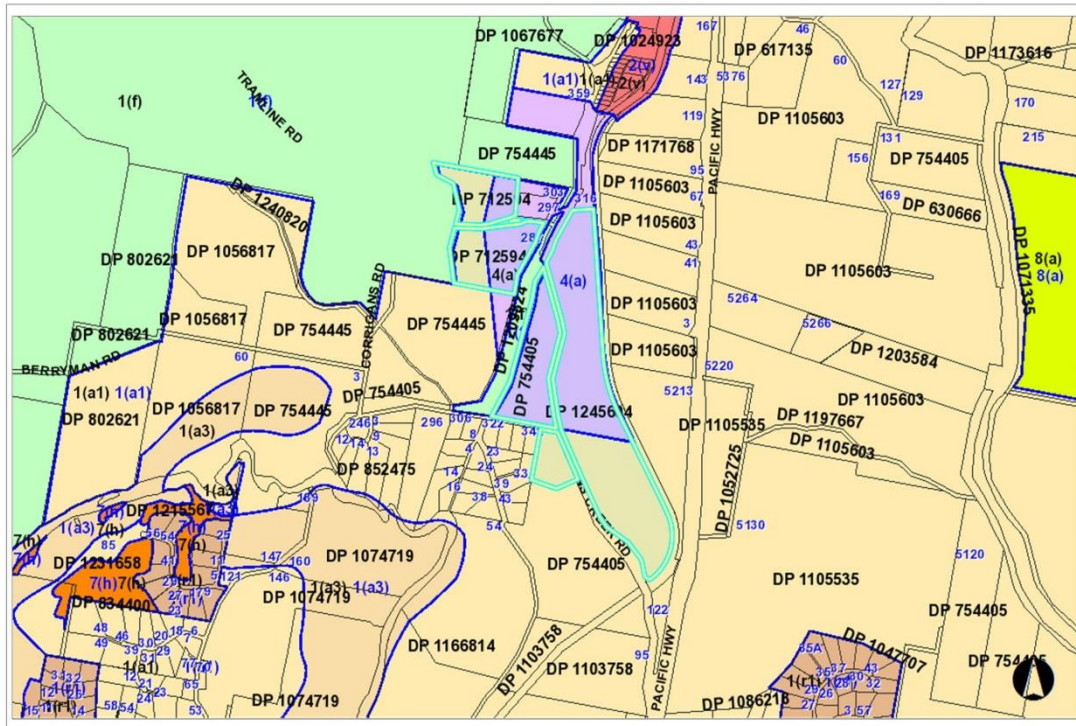
Existing Sites Features and Surrounding Development

The site has an area of approximately 95ha.

The site is currently zoned RU1 Primary Production, RU3 Forestry (small section of Crown Road off Herons Creek Road) and IN3 Heavy Industrial in accordance with the Port Macquarie-Hastings Local Environmental Plan 2011. At the time of the original assessment/approval, the site was zoned 1(a1) Rural, 4(a) General Industrial and 1(f) State Forests in accordance with the Hastings Local Environmental Plan 2001. The current and original zoning are shown in the following zoning plans:

Current Zoning



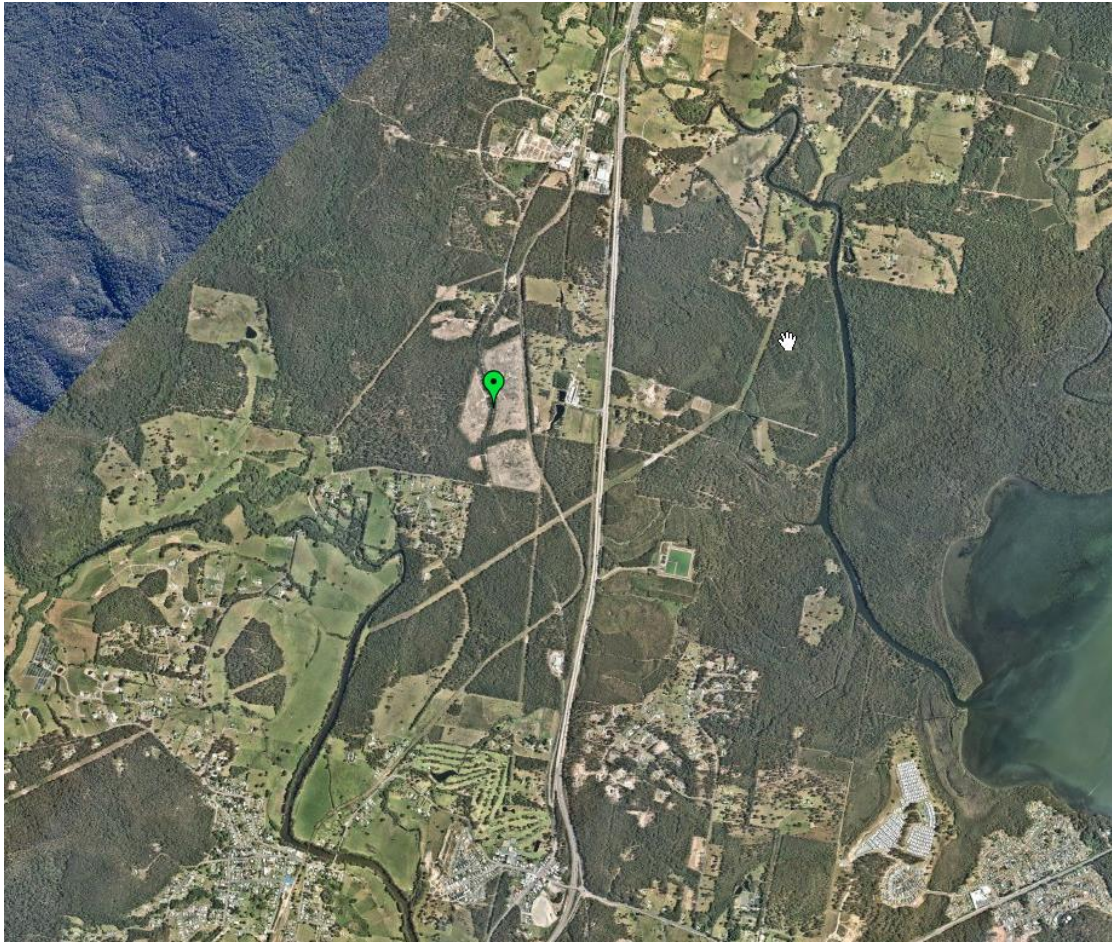
Original Zoning

The proposed site is located approximately 2.5km north of Kew and 1km south of Herons Creek.

Herons Creek Road traverses through and provides the primary access point for the development. The North Coast Railway line runs along the eastern edge of the site.

It should be noted that the area of the site to be utilised for the industrial subdivision has also recently been cleared in accordance with the original consent (DA2008 - 225.1).

Adjoining the site is a mixture of Forestry Land, rural residential lots and small rural holdings. The existing subdivision pattern and location of existing development within the locality is shown in the following Nearmap, November 2020 aerial photograph:



2. DESCRIPTION OF DEVELOPMENT

Key aspects of the modification include the following:

- Staging to be amended as follows:
 - Stage 1 will be for lead in works, services etc.
 - Stage 2 will be for 27 industrial lots, the rail siding and lot and a residue lot to be developed as part of Stage 3.
 - Stage 3 will be for 8 industrial lots plus a residual lot.

The above residue lot will contain the remaining industrial zoned land (which will need to be developed via a separate development application once access is resolved) and also includes the proposed conservation areas/rural zones.

Total lots will now comprise 35 industrial lots, the rail spur lot and a residue/conservation lot.

It should be noted that the original approved staging was essentially for 2 stages. Stage 1 being the creation of 37 industrial lots and a residue lot, while Stage 2 was for the rail siding.

- The footprint, access and overall layout of the modification remains consistent with the original approval and overall essence of the development.
- Other than the changes to staging, the modification seeks to clarify and update a number of conditions, which are no longer relevant (i.e. due to such changes as the Pacific Highway upgrade having been completed since the application was originally determined).

- The modification was referred to the National Resources Access Regulator (NRAR) and Transport for NSW as they previously provided comment on the original application.
- Conditions around a Vegetation Management Plan(s), tree removal etc. will be retained to control clearing of vegetation and the management of retained vegetation areas onsite. It should be noted that the site has already been cleared in accordance with the consent.
- Concurrence to create the residue area was previously provided under State Environmental Planning Policy 1 and is not required to be re-obtained. Furthermore, current legislation now permits the creation of a residue undersized area/lot, provided such land is attached to a compliant industrial zoned lot. The application proposes such a scenario.
- Lots sizes will now range from 2,565m² to 42,764m² for industrial zoned lots. The residue lot will contain 34,654m² industrial zoned land and approximately 34ha of rural zoned land. The original subdivision proposed a lot size range of 5000m² to 64,000m². Given the current LEP 2011 has a minimum lot size of 10,000m² for this particular industrial area, it is likely that some of the larger lots may later be further subdivided as would have been the case for the original DA. The original DA was only required to comply with a Development Control Plan, which stipulated a minimum lot size of 1,000m².
- One (1) petition style submission was received, containing 23 signatures/names.
- Physical commencement of the consent was acknowledged by Council staff on 23 January 2017. Therefore, the consent has not lapsed and is able to be modified.
- The original application was considered and approved by the Development Assessment Panel (DAP) on 12 November 2008. A copy of the original DAP report and minutes are attached to this report (**Attachment 2**).

Refer to (**Attachment 3**) at the end of this report for plans of the proposed modified development.

Refer to (**Attachment 4 and 5**) at the end of this report for the original consent and approved subdivision plan.

Application Chronology

- 12/11/2008 - DA2008 - 225.1 originally determined by DAP.
- 10/8/2020 - Modification lodged with Council.
- 17/8/2020 - Council staff requested clarification on company sign off and Crown road situation.
- 18/8/2020 - Email correspondence with NRAR regarding original approval reference number.
- 19/8/2020 - Inspection of the site discussion with the Applicant.
- 20/8/2020 to 18/9/2020 - Modification notification period.
- 20-21/8/2020 - Further discussion with NRAR regarding the referral.
- 21/8/2020 - Email discussion with the Applicant regarding the NRAR referral.
- 27/8/2020 - Council staff requested additional information on the form, site plan details, proposed works and zone boundaries.
- 28/8/2020 - Clarification sought from the Applicant on required electricity infrastructure design and response provided by Council on 2/9/2020.
- 2/9/2020 - Application referred to Transport NSW (formerly RMS).
- 4/9/2020 - Applicant clarified the Application Form.
- 11/9/2020 - Advice provided back to the applicant on the Draft Vegetation Management Plan (required by the original consent).

- 18/9/2020 - Submission received.
- 23/9/2020 - Email discussion between Council and Transport NSW regarding referral timing.
- 25/9/2020 - Transport NSW responded to modification referral.
- 28/9/2020 - Partial response to additional information provided by the Applicant.
- 1/10/2020 - Council staff requested additional information on the revised layout plan.
- 9/10/2020 - Applicant provided update on Crown Road and Forestry access discussions.
- 15/10/2020 - Advice provided to the Applicant that additional ecological assessment would be required if the revised layout was not amended. In particular, the revised layout included clearing outside the original approval.
- 26-28/10/2020 - Discussion with Crown over consent.
- 28/10/2020 - Meeting between Council staff and the Applicant regarding status of the application and additional information.
- 4/11/2020 - Meeting between Council staff and the Applicant regarding the status of the application and additional information.
- 5/11/2020 - Applicant sought feedback on conditions regarding the need to pay a Bond.
- 18/11/2020 - Council staff and Applicant discussed stormwater treatment options.
- 26/11/2020 - Council staff provided advice on required Bond amount.
- 7-22/12/2020 - Further discussion between Council staff and the Applicant on the Bond.
- 21/12/2020 - Applicant provided response to previous additional information requests.
- 23/12/2020 - Council staff sought clarification on the revised information submitted on 21/12/2020.
- 3/2/2021 - Meeting between the Applicant and Council staff to discuss status of the application and outstanding information.
- 18-19/2/2021 - Follow up discussion with the Applicant and Council staff regarding outstanding information.
- 22/2/2021 - Applicant provided response to remaining outstanding information and submitted an updated subdivision plan.
- 24/2/2021 - NRAR provided response/approval to modification.

3. STATUTORY ASSESSMENT

The application has been lodged as Section 4.55(1A) on the basis that it is substantially the same development to that which was originally lodged and consented and will have minimal environmental impact.

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

In looking at modifications, the Courts consistently see Section 4.55 as “beneficial and facultative” and that there are essentially two separate legal tests that apply to a Section 4.55 application, before the consent authority can ultimately determine the application on merit.

The first is that the modification cannot result in a radical transformation (Sydney City Council v Ilenace Pty Ltd [1984]). The term “radical transformation” is very broad, leaving significant scope to change a development.

In this case, whilst there are changes proposed to the subdivision layout, they are not considered radical in terms of the original approved layout. The key elements of the subdivision (i.e. the footprint, layout, servicing, key road connections, habitat protection, environmental impact etc.) remain relatively unchanged.

The new Stage 3 footprint also clarifies that the area containing proposed Lots 1-8 is included in the application, whereas the industrial zoned area relying on access over Forestry land is not (i.e. forms part of the residue lot to be developed via a separate future DA). This is consistent with the original approval.

Furthermore, the number of proposed lots is not increasing (Note: it is not uncommon for the Courts to approve modifications that numerically change components, such as the number of storeys, height, floor area etc., by more than 10%).

The second test deals with Council being satisfied that the modification is “substantially the same development” as authorised by the original development consent. The Council must compare the modified development/potential modified consent against the original approval (Note: it is the consent that is being modified, not just the plans, so the consent authority must have regard to the conditional changes as well). Once Council is satisfied that the modification is substantially the same, the remainder of the assessment is dealt with on merit.

It should be noted that some environmental impacts and merit issues can link back to the “substantially the same test”, if significant. In particular, for a modification to have a significant environmental impact, one might question whether it is a result of a significant change to the original approval.

In this case, the modification is considered “substantially the same” and there are no significant environmental or merit issues - refer to comments on s4.55(1A)(b) later in this report. The main changes to the application and consent are as a result of the application moving to the more detailed design stage and the need to address/clarify the existing conditions of consent. The modification and changes are also responding to external works completed since the original approval (i.e. Pacific Highway Upgrade).

In summary, Council needs to consider the numerical differences, non-numerical aspects (e.g. visual impact, traffic impacts or changed land uses) and any changes relating to a key/essential feature of the approved development. Having considered the above comments and the more detailed review below, it is considered that the modification can be considered and the changes are acceptable.

The specific provisions of Section 4.55 are discussed in more detail below.

Section 4.55(1A)(a) Satisfied that the proposed modification is of minimal environmental impact?

The modification will result in minimal environmental impact for the following reasons:

- The modified development occupies the same footprint as the subdivision originally granted consent.

- Changes to layout design are sufficiently consistent with the footprint of the original approval. The new Stage 3 footprint clarifies that the area containing proposed Lots 1-8 is included in the application, whereas the industrial zoned area relying on access over Forestry land is not (ie forms part of the residue lot to be developed via a separate future DA). This is consistent with the original approval.
- The development will still present as an industrial subdivision from outside the site.
- Location of roads and connections remain relatively unchanged.
- The impacts of the modified development, including the extent of vegetation clearing (ie no additional clearing proposed), earthworks, and revegetation remain consistent with the original approved development.
- The modified development will not create any adverse demand on public infrastructure or services when compared with the original approved development.
- There will be no material change on amenity as a result of the changes.
- The numerical change in the number of lots (i.e. 37 lots down to 35 lots) represents a minor 5% decrease.
- The layout maintains compliance with Council controls.
- Relevant Government agencies were referred a copy of the modification with no objections having been received. It is noted that the Crown is keen to pass on the ownership of the Crown road to Council (i.e. the Crown road to which the development relies on for access to serve proposed Stage 3, Lots 1-8). Council staff are supportive of the Crown road coming into Council ownership. However, the trigger point will be when the Crown road is actually required to be upgraded to serve the development. Existing conditions around the Crown road will be retained on the consent and do not change.

Section 4.55(1A)(b) Is the proposal substantially the same?

Section 4.55 has been described as "beneficial and facultative" in *Houlton v Woollahra Municipal Council* (1997) 95 LGERA 201 at [213] and *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 97 LGERA 433 at [440]. Accordingly, the provisions of s4.55 should not be artificially constrained by allowing a narrow construction.

In *Vasic Pty Ltd v Penrith City Council* [1992] NSWLEC 8, Stein J held that "substantially" meant "essentially all material or having the same essence."

In *Moto Projects (No 2) Pty Ltd v North Sydney Council* (1999) 106 LGERA 298 at [56] Bignold J held that the task for determining whether a development as proposed to be modified is substantially the same as the consent granted was as follows:

"The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."

In the context of the current application, the proposal can be considered to be substantially the same as the development to which consent was originally granted for the following reasons:

- The modified proposal remains as a subdivision for the purpose of industrial
 - uses and is consistent with the essence of the original development.
- The reasons listed above under s4.55(1A)(a) for demonstrating minimal environmental impact are conducive to the development being substantially the same.

Section 4.55(1A)(c) Does the application require notification/advertising in accordance with the regulations and/or any Development Control Plan?

Neighbour notification has been undertaken in accordance with the regulations and Council's DCP/Community Participation Plan.

Section 4.55(1A)(d) Any submissions made concerning the modification

One (1) petition style submission was received, containing 23 signatures/names. Copies of the petition have been provided separately to members of the DAP.

Key issues raised in the submission and comments from Council staff are provided in the table below:

Submission Issue/Summary	Planning Comment/Response
Staging does not mention upgrade to local infrastructure, which was to be carried out prior to the development of any lots. Council needs to clarify what constitutes the development of a lot. Is it prior to clearing?	<p>The development of a lot comprises a number of components. For example, clearing, earthworks, supply of services, upgrading of access/roads etc. can all be considered aspects of developing a lot. However, the trigger on when services, local infrastructure etc. are to be upgraded is required to be considered in the context of what development works are actually occurring. While clearing of vegetation is considered to be a component of developing a lot, it is not considered the appropriate time/trigger to require services and local infrastructure to be upgraded. In particular, the industrial subdivision or use, generating the need for upgrades has not yet occurred. Therefore, the tree clearing is seen more as preparatory works associated with the future industrial subdivision/use.</p> <p>Amendments to conditions are also proposed to provide further clarification.</p>
Is GHD Flood Modelling still relevant as the report is now 10 years old?	The GHD Flood Modelling was considered as part of the original assessment and deemed acceptable at the time. Revised or updated modelling would only be required if Council staff thought the modification

Submission Issue/Summary	Planning Comment/Response
	<p>was likely to result in a change to such an aspect. This is on the basis that an existing approved development could often occur without a modification and there needs to be a nexus between the changes proposed in the modification and a request for further information. In this case, the footprint and number of lots remain substantially the same and there is no nexus to revisit the flood modelling.</p>
<p>If the Herons Creek/Pacific Highway intersection is deleted, this will require heavy vehicles to travel through Kew.</p>	<p>Prior to and following the Pacific Highway upgrade, heavy vehicles were/are allowed to travel through Kew. Furthermore, the Pacific Highway upgrade always factored in heavy vehicle traffic utilising the current arrangement. The conditions applied to the consent were on the basis of the development proceeding ahead of the Pacific Highway upgrade. As the Pacific Highway upgrade has since occurred, the conditions are no longer relevant and are subsequently requested to be deleted.</p>
<p>The geometry of Herons Creek Intersection and the curves may not be suitable for B doubles and the concern is that the B Doubles will track across the centre lines into oncoming traffic.</p>	<p>The consent will retain conditions around the site and any roads/access being required to be B double compliant.</p>
<p>Council should not relax any financial conditions. The cost to rehabilitating the cleared areas would need to be costed prior to any considerations.</p>	<p>The applicant has requested clarification on how the Security Bond for public works is to be calculated, factoring in the circumstances of the case/staging. While Council does not propose to relax any financial conditions, wording will be added to the Bond condition to allow flexibility on how the Bond is calculated, relative to the staging works/potential impacts.</p> <p>In addition to the above, the rehabilitation/protected land is to be retained in private ownership (not public land). As a result, there is no need for Council to factor the costs of such works into any Security Bond. In particular, the cost of rehabilitating/protecting vegetation within private land is tied up in the consent and approved Vegetation Management Plan(s). These documents, the costs and the onus of</p>

Submission Issue/Summary	Planning Comment/Response
	compliance go with the land/landowner.
Council need to confirm the dedication of Crown Land/Forestry Land is being sort after in other negotiations.	<p>The application does not involve the use of any Forestry Land as the owner has been unable to negotiate owners consent to carry out development on Forestry Land. The same applied in the original assessment/consent.</p> <p>The use/dedication of the Crown Road, required to gain access to the now proposed Stage 3 area, will need to be facilitated via a process involving Council, the Crown and the applicant. In particular, the Crown Road will need to be dedicated to Council, at a time when the need arises for it to be transferred as public road and subject to the road being built to the relevant industrial standard. This is likely to occur around the time Stage 3 is developed. The applicant will need to construct and pay for the Crown Road to be upgraded to industrial standards.</p> <p>The above process does not change from the original assessment or consent.</p>
Condition B16 requirements should transfer to Ron Banks Drive and Herons Creek Road North.	The condition was based on the development proceeding before the Pacific Highway upgrade. The upgrade has since occurred and resulted in the condition no longer being relevant. The upgrade allows for relevant vehicle movements onto the Pacific Highway via the north.
Can B Doubles negotiate the rail viaduct and curved geometry on Herons Creek Road North. If this is not viable, will this increase heavy vehicle movements through Kew?	The original development did not propose B Double access/egress via the rail viaduct/Herons Creek Road North. In particular, B Double access and egress was proposed to occur from the south and via Kew (once the Pacific Highway upgraded was completed). The modification does not change this aspect or the long term envisaged heavy vehicle movements through Kew.
Can Council confirm the orientation of the concrete railway bridge is correct and will the western approach/departure be straightened out?	The detailed design and acceptance of the railway bridge and approaches will be looked at in detail and the Subdivision Works Certificate stage, as was envisaged with the original consent.

Submission Issue/Summary	Planning Comment/Response
Can Council provide information on perceived restrictions as per GHD report?	Any perceived restrictions will be identified at the Subdivision Works Certificate stage, along with any changes to negate the restrictions and/or meet relevant road design/rail requirements. In addition, any changes will need to be carried out by the applicant, as directed by Council and the relevant rail authority.
Cul-de-sac designed for semi-trailers not B Doubles. Reports varied, these could be outdated and should be confirmed.	The development layout and design has been assessed by Council Engineering staff and considered compliant or capable of complying with relevant vehicle types/users. It should be noted, that it is common for minor changes to occur at the Subdivision Works Certificate stage, especially once the more detailed design and information is submitted/considered. However, where the detailed design results in more substantial changes, the applicant may be required to submit a further modification.

Section 4.55(3) Any matters referred to in section 4.15(1) relevant to the modification, and the reasons given by the consent authority for the grant of the consent sought to be modified.

Overall, the modification remains consistent with the original s4.15(1) assessment and a revised summary follows the Section 4.55(4) comment below. Unless specifically discussed, the modification was deemed to remain consistent with the original 4.15(1)/79C assessment comments.

As noted previously in this assessment report, a copy of the original s4.15(1) DAP assessment is also attached to this report for context.

Section 4.55(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

Noted.

Section 4.15(1) Matters for Consideration (as only relevant to the modification)

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

State Environmental Planning Policy 1 - Development Standards (now known as a Clause 4.6 variation)

As part of the original development application, concurrence from the Department of Planning was provided to create an undersized residue rural zoned lot. The modification does not change the situation or outcome. In particular, the industrial subdivision will still result in the residue rural zoned land being contained within a lot. As a result, concurrence is not required to be sought again from Department of Planning.

For context, there is also now a clause within the current Port Macquarie-Hastings Council Local Environmental Plan 2011 that deals with split-zoned properties (ie Clause 4.1B). The subject Clause allows an undersized residue rural zoned lot to be created without concurrence or the need for a Clause 4.6 variation, provided the rural zoned land/lot is attached to a compliant industrial zoned lot. The original application and proposed modification would meet such a requirement if lodged today.

Based on the above, there is no adverse change to this aspect of the original application.

State Environmental Planning Policy No. 44 - Koala Habitat Protection

The application remains consistent with the original SEPP 44 assessment and there is no further clearing proposed/required to that originally considered.

State Environmental Planning Policy (Infrastructure) 2007

Clauses 85 and 86 of the SEPP apply to the development. These subject clauses require works adjacent to rail infrastructure to be referred to the rail authority for comment. As the original development application was referred to the rail authority, so too was the modification. No objections were received from the rail authority in relation to the modification/changes.

(iii) Any Development Control Plan in force**Development Control Plan 17 – Subdivision Code**

Modified lots sizes and dimensions still exceed the DCP requirements of 1000m² and 25m x 40m. The number of battle-axe lots (2) also remains the same.

The modified layout continues to provide a range of sizes, which could be adapted for different uses.

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

The site has frontage to Herons Creek Road, which is a rural standard, local road connecting through to the Pacific Highway at two locations. The original Development Application required a number of upgrades to this road as part of the proposed development.

This modification proposes to amend and/or delete conditions, which are no longer relevant since the upgraded Pacific Highway alignment. Other conditions, which relate to the upgrade of Herons Creek Road as part of the development still remain.

It is also noted that the original road over Forestry land (opposite proposed Road 2) has been removed from the application

Traffic

This modification does not propose any additional lots beyond what has already been assessed and approved as part of the original DA. As such, there will be no additional traffic impacts caused by the modification as proposed.

Access, Parking and Maneuvering

This modification does not propose any substantial changes to the road or subdivision layout, which would change the impacts on the access, parking and maneuvering when compared to the original application.

Flora and Fauna

The modification has been reviewed and accepted by Council's Natural Resources Section. Existing conditions around Vegetation Management Plans and clearing to be retained. It is noted that pre-clearing works have been carried out in accordance with the consent.

In addition to the above, it is considered that the provisions of the more recently adopted Biodiversity Conservation Act 2016 (commenced after DA2008 - 225 was approved) are not triggered in this case. In particular, no additional vegetation removal is proposed or new impact on existing/proposed habitat. Overall, the modification relates to the same footprint and development as the original approval and associated work/impact remains the same.

(c) The suitability of the site for the development

The modified layout and staging will remain satisfactory and fit into the locality. The site attributes are conducive to the proposed development.

Site constraints have been adequately addressed and appropriate conditions of consent remain in place to manage such issues.

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

Yes - refer to comments on Section 4.55(1A)(d) above in this report.

(e) The Public Interest

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

Integrated Development

The original development application was referred to the Department of Water and Energy (DWE) for their General Terms of Approval (GTA) under the Water Management Act, which were subsequently provided back in 2008. It should be noted that DWE is now known as the National Resources Access Regulator (NRAR). As part of the modification, NRAR were notified of the changes and invited to provide comment/feedback. NRAR subsequently raised no objection, siting the original GTAs remained valid.

4. DEVELOPMENT CONTRIBUTIONS APPLICABLE

No change from original assessment. In particular, s7.12 contributions and s64 water and sewer contributions will continue to apply to the rail siding built component and any associated storage area/amenities.

In terms of the actual subdivision component of creating vacant industrial lots, no water or sewer contributions apply. In particular, Council does not charge water and sewer contributions on industrial subdivisions. The relevant water and sewer contributions are levied at the time when industrial developments occur and their use is known.











5. CONCLUSION AND STATEMENT OF REASON

The application has been assessed in accordance with Section 4.55 of the Environmental Planning and Assessment Act 1979.

Issues raised during assessment and public exhibition of the application have been considered in the assessment of the application. Where relevant, modified conditions have been recommended to manage the impacts attributed to these issues.

The site is considered suitable for the proposed modified development and the proposal adequately addresses relevant planning controls. The development is not considered to be contrary to the public's interest and will not result a significant adverse social, environmental or economic impact. It is recommended that the application be approved, subject to the recommended conditions of consent provided in **(Attachment 1)**.

Attachments

- 1   DA2008 - 225.2 - Recommended Conditions
- 2   DA2008 - 225.1 - DAP Report
- 3   DA2008 - 225.2 - Plans
- 4   DA2008 - 225.1 - Original Consent
- 5   DA2008 - 225.1 - Original Subdivision Plan

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

NOTE: THESE ARE DRAFT ONLY

DA NO: 2008/225.2

DATE: 15 April 2021

Note: Where applicable, existing conditions to be amended or deleted are shown as a ~~strikeout~~ condition to assist in showing the changes.

I refer to your application dated 10 August 2020 to modify the layout and staging under DA 2008/225 at LOT: 2 DP: 712594, LOT: 133 DP: 754405, LOT: 4 DP: 720823, LOT: 1 DP: 1245604 287 Herons Creek Road HERONS CREEK.

Please be advised that pursuant to Section 4.55 (1A) of the Act, your application to modify the consent has been granted, subject to:

A. Amend the following conditions as outlined in modified consent:

A1, A23, A24, B17, B18 & E28

B. Delete the following conditions:

A22, B2 & B16

C. Reimposition of all other previously approved conditions of consent as originally determined 12 November 2008 and as modified with this approval dated 15 April 2021.

pmhc.nsw.gov.au

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**SCHEDULE OF CONDITIONS ATTACHED TO THIS CONSENT**

The conditions of consent referred to in the Notice of Determination for DA No 2008/225 are as follows:

No.1	Modification No.1	15 April 2021
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A - GENERAL MATTERS

- (1) ~~(DA001) The development is to be carried out in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.~~

Plan / Supporting Document	Reference	Prepared by	Date
Statement of Environmental Effects	.	Hopkins Consultants Pty Ltd	March 2008 and as amended by letter dated 5 August 2008
Subdivision Plan	S:\Dwgs\6118\001.dwg	Hopkins Consultants Pty Ltd	29 July 2008
Report for Herons Creek Rail Siding	.	GHD	May 2007
Traffic Impact Assessment	.	TPK & Associates Pty Ltd	January 2008
Bushfire hazard assessment	.	Midcoast Environmental	March 2008
Flood & Stormwater Assessment	.	GHD	March 2004 and as amended on 30 May 2008
Noise Impact Statement	.	GHD	January 2008
Cultural Heritage Assessment	.	Navin Officer heritage consultants Pty Ltd	July 2008
Ecological Impact Statement Vol 1 & 2	.	Darkheart Eco-Consultancy	January & March 2008 respectively and as amended on 23 June 2008



~~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.~~

~~The development is to be completed in stages with Council being the determining authority on which conditions apply to each stage. The current staging is Stage 1 – create Lots 1-37 (and residue), Stage 2 – construct rail siding and Stage 3 – creates lots 38-41 (and residue).~~

- (1) (DA001) The development is to be carried out in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan / Supporting Document	Reference	Prepared by	Date
Statement of Environmental Effects		Hopkins Consultants Pty Ltd	March 2008 and as amended by letter dated 5 August 2008
Modification Report		GHD	18 February 2021
Subdivision Plan as amended	S:\Dwgs\6118\001.dwg as amended by Drawing Number 12527869 - SK001-003	Hopkins Consultants Pty Ltd as amended by GHD	29 July 2008 as amended SK001 - 16/2/2021, SK002 - 19/2/2021 & SK003 1/12/2020
Report for Herons Creek Rail Siding		GHD	May 2007
Traffic Impact Assessment		TPK & Associates Pty Ltd	January 2008
Bushfire hazard assessment		Midcoast Environmental	March 2008
Flood & Stormwater Assessment		GHD	March 2004 and as amended on 30 May 2008
Noise Impact Statement		GHD	January 2008
Cultural Heritage Assessment		Navin Officer heritage consultants Pty Ltd	July 2008
Ecological Impact		Darkheart Eco-Consultancy	January & March 2008 respectively



Statement Vol 1 & 2			and as amended on 23 June 2008
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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.

The development is to be completed in the following stages:

- Stage 1 - Construct road upgrades and infrastructure from Kew to Logans Crossing Road.
- Stage 2 - Construct remaining road upgrades and infrastructure along with Lots 9-36 (and residue).
- Stage 3 - Create Lots 1-8 and the rail siding.

Unless specified, the conditions of this consent will apply to all stages, with any decision on any discrepancy with conditions and associated staging resting with Council. Any decision to allow a change to the staging will rest with Council, along with applicable conditions.¹

- (2) (DA004) Submission of a formal application for a Subdivision Construction Certificate and a Subdivision Certificate together with the payment of all relevant fees in accordance with Council's Management Plan.
- (3) (DA006) Approval pursuant to Section 68 of the Local Government Act, 1993 to carry out water supply, stormwater and sewerage works within the development site required by the development consent is to be obtained from Port Macquarie-Hastings Council. A copy of the approval is to be submitted with the application for Construction Certificate.
- (4) (DA007) Approval pursuant to Section 138 of the Roads Act, 1993 to carry out works required by the Development Consent on or within public road is to be obtained from Port Macquarie-Hastings Council. The application for this engineering approval must be made on the prescribed form with payment of fees pursuant to Section 223 of the Roads Act 1993 in accordance with Council's Schedule of Fees and Charges. The application is to include detailed design plans prepared by a practising Chartered Professional Civil/Structural Engineer. A copy of the approval is to be submitted with the application for Construction Certificate. Under the provisions of the Local Government Act 1993 and/or the Roads Act 1993, if the activity is staged, the activity or the specified part or aspect of the activity, or anything associated with the activity or the carrying out of the activity, may be the subject of a further approval.
 - Such works include, but not be limited to:
 - Civil works
 - Traffic management
 - Work zone areas
 - Hoardings



- (5) (DA010) The developer is responsible for any costs relating to minor alterations and extensions of existing roads, drainage and Council services for the purposes of the development.
- (6) (DA011) The design and construction of all subdivision works shall be in accordance with Council's adopted AUSPEC Specifications and Port Macquarie-Hastings Council DCP 2006 which are prescribed at the time of commencement of engineering works.
- (7) (DA016) The general terms of approval from the following authorities are set out in Section H of this consent and form part of the consent conditions for this approval.
 - Department of Energy & Water
- (8) (DA057) Any interruption to the natural overland flow of stormwater drainage, which could result in the disruption of the amenity, or drainage or deterioration to any other property is not permitted.
- (9) (DA066) All water and sewer services necessary to service the development must be provided in accordance with Council's requirements. All services are to be designed and constructed in accordance with Council's AUSPEC Specifications. Council pursuant to Section 68 of the Local Government Act must approve the design plans for the required services.
- (10) (DA069) All Sewage Pumping Stations are to be contained wholly within a separate lot dedicated to Council inclusive of constructed and sealed access handle to the public road. Construction details are to be submitted to Port Macquarie-Hastings Council with the application for Subdivision Construction Certificate.
- (11) (DA071) Provision to each lot of a separate water connection (un-metered and sealed) to Council's main. All work will need to comply with the requirements of Council's adopted AUSPEC Design and Construction Guidelines and Policies.
- (12) (DA082) Dust nuisance shall not be generated as a result of the undertaking of the development.
- (13) (DA083) Wastes shall not be disposed of by burning.
- (14) (DA097) The demolition of any existing structure shall be carried out in accordance with Australian Standard AS 2601-1991: *The Demolition of Structures*. No demolition materials shall be burnt or buried on site. The person responsible for the demolition works shall ensure that all vehicles leaving the site carrying demolition materials have their loads covered and do not track soil or waste materials onto the road. Should the demolition works obstruct or inconvenience pedestrian or vehicular traffic on an adjoining public road or reserve, separate application shall be made to Council to enclose the public place with a hoarding fence.

Should asbestos be present, its removal shall be carried out in accordance with the National OH&S Committee – Code of Practice for Safe Removal of



Asbestos and its Code of Practice for the Management and Control of Asbestos in the Workplace.

- (15) (DA099) The proponent shall provide electricity and telecommunication services in accordance with the requirements of the relevant authority.
- (16) (DA149) Should any historical relics be unexpectedly discovered in any areas of the site not subject to an excavation permit, then all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW is to be informed in accordance with Section 146 of the *Heritage Act 1977*.
- (17) (DA195) Works must not result in any erosion or degradation of both soils and waterways on-site.
- (18) (DA196) The approval to construct the sewer main crossing over the Pacific Highway is subject to the conditions set out in Section I of this consent and form part of the consent conditions for this approval.
- (19) (DA197) The six (6) European sites (HCSH 1, 3 5, 7, 8 & 10) identified in the Heritage Report by Navin Officer heritage consultants Pty Ltd, dated July 2008, are to be identified on the subdivision plan prior to release of the construction certificate. Pursuant to Section 88B of the Conveyancing Act 1919, restrictions on the use of the land shall be created restricting the removal/destruction of any such item not located within a proposed road, unless with the consent of Council.
- (20) (A198) All roads within the proposed development, including Heron's Creek Road from the northern boundary of the development to Logan's Crossing Road are to be "Industrial Road" standard as per AUSPEC Table D1.5.
- (21) (DA199) Herons Creek Road is to be upgraded as follows: -
 - Upgraded to industrial road standard from northern boundary to Logans Crossing Road.
 - From Logans Crossing Road south to the intersection with the Pacific Highway to be constructed to collector road standard (as per AUSPEC table 1.8) which includes a nine (9) metre sealed carriageway with one (1) metre sealed shoulders, pavement design 1 x 107 ESA and grass table drains either side.
 - Bitumen sealing from end of existing seal at Herons Creek Village to the northern section of the development to "Local Major Rural Road Standard" as per AUSPEC Table D1.8)
 - Contribution to the rehabilitation of Herons Creek Road from Pacific Highway to Village North.
 - Upgrading the intersection of Herons Creek Road with Logans Crossing Road in accordance with AUSTROADS Intersection at grade.
 - Traffic calming measures at entry to Herons Creek Village.



~~(22) The intersection of Herons Creek Road (south) and the Pacific Highway is to be upgraded in accordance the RTA's requirements.~~

~~(22) Deleted. ¹~~

~~(23) The submission with the application for approval pursuant to Section 138 of the Roads Act 1993 for any works that impact on any public roads and public land is to include, but not limited to:~~

- ~~a. Details of all roadworks, kerb & gutter, stormwater and other services across the full frontages of the development. A detail plan is to be submitted showing cross sections, longitudinal sections, intersections, design levels of kerb & gutter, finished surface levels of the lots, levels and details of any footpath, indicating that all pedestrian access areas are in accordance with AS 1428.~~
- ~~b. A Traffic Management Plan and/or Environmental Plan and/or a Work Method Statement for any works or deliveries that impact the normal travel paths of vehicles, pedestrians or cyclists or where any materials are lifted over public areas. The Traffic Control component of the plan is to be designed in accordance with Australian Standard 174 2.3 – 2002 RTA "Traffic Control at Worksite Manuals" detailing the location of proposed Work Zone area (Construction Zone) plan, prior to the erection of any signage, giving dimensions from the nearest cross street kerb, the location of any existing regulatory signposting and indicating the period for which the parking restriction is required. Any persons preparing such Traffic Control layout plans shall be RTA accredited or equivalent.~~
- ~~c. Lodgement with Council (Infrastructure Division) of a security cash deposit or bank guarantee (refundable) in favour of Port Macquarie Hastings Council and payment of a bond administrative fee (non-refundable) in accordance with Council's Schedule of Fees and Charges prior to the issue of the Section 138 approval certificate to the amount of \$50 000 or the estimated cost plus 30% of works within the road reserve and other public land (whichever is the greater) to guarantee the satisfactory completion of major infrastructure works associated with developments (roadworks/drainage) and to guarantee public infrastructure is not damaged as a result of construction activity during the course of development. Council shall determine the need for and extent of any rectification work, considered attributable to the construction activity. Such work is at no cost to Council.~~
- ~~Such bond is to be for limited period of two (2) years and cash securities only will be for bonds less than \$5000. If the works are not completed and accepted by Council within the two-year period, a new bond is to be lodged prior to the expiry of the original. Any cost of repairing damage caused to Council's infrastructure is to be met in full by the applicant/developer. Should Council have to call up the bond and the repair costs exceed the bond amount, a separate invoice will be issued.~~
- ~~d. Detailed estimate of cost of infrastructure works.~~

~~(23) The submission with the application for approval pursuant to Section 138 of the Roads Act 1993 for any works that impact on any public roads and public land is to include, but not limited to:~~



- a. Details of all roadworks, kerb & gutter, stormwater and other services across the full frontages of the development. A detail plan is to be submitted showing cross sections, longitudinal sections, intersections, design levels of kerb & gutter, finished surface levels of the lots, levels and details of any footpath, indicating that all pedestrian access areas are in accordance with AS 1428.
- b. A Traffic Management Plan and/or Environmental Plan and/or a Work Method Statement for any works or deliveries that impact the normal travel paths of vehicles, pedestrians or cyclists or where any materials are lifted over public areas. The Traffic Control component of the plan is to be designed in accordance with Australian Standard 174 2.3 - 2002 RTA "Traffic Control at Worksite Manuals" detailing the location of proposed Work Zone area (Construction Zone) plan, prior to the erection of any signage, giving dimensions from the nearest cross street kerb, the location of any existing regulatory signposting and indicating the period for which the parking restriction is required. Any persons preparing such Traffic Control layout plans shall be RTA accredited or equivalent.
- c. Lodgement with Council (Infrastructure Division) of a security cash deposit or bank guarantee (refundable) in favour of Port Macquarie-Hastings Council and payment of a bond administrative fee (non-refundable) in accordance with Council's Schedule of Fees and Charges prior to the issue of the Section 138 approval certificate to the amount of \$50 000 or the estimated cost plus 30% of works within the road reserve and other public land (whichever is the greater) or an amount as otherwise agreed to by Council, to guarantee the satisfactory completion of major infrastructure works associated with developments (roadworks/drainage) and to guarantee public infrastructure is not damaged as a result of construction activity during the course of development. Council shall determine the need for and extent of any rectification work, considered attributable to the construction activity. Such work is at no cost to Council. Such bond is to be for limited period of two (2) years and cash securities only will be for bonds less than \$5000. If the works are not completed and accepted by Council within the two-year period, a new bond is to be lodged prior to the expiry of the original. Any cost of repairing damage caused to Council's infrastructure is to be met in full by the applicant/developer. Should Council have to call up the bond and the repair costs exceed the bond amount, a separate invoice will be issued.
- d. Detailed estimate of cost of infrastructure works. ¹

~~(24) Herons Creek Road, within the existing Kew State Forest Land, is to be dedicated to Council as a 20-metre wide road reservation over the constructed section.~~

- (24) The Herons Creek Road upgrade works shall be wholly contained within the Council public road reserve with no aspects encroaching onto State Forest Land. Details of compliance to be provided at the Subdivision Construction Certificate Stage

In addition, the Crown Road, required to gain access to the Stage 3 lots, will need to be transferred to Council ownership. The road is to be transferred at the time, when the access and associated works are required to serve the proposed lots in Stage 3 or as otherwise agreed to by Council. ¹



- (25) Footway areas within the development are to be constructed as per AUSPEC Specifications (Clause D1.16) (a minimum four (4) metres wide is required to access drainage reserve).
- (26) Water supply augmentation work is required before the creation of any additional lots in the industrial precinct. This will require the provision of about 1650 metres of 150mm water main along Logans Crossing Road from Lee Place to Loganvale Place.

The section of existing 150mm of water main in Herons Creek Road for approximately 500 metres north from Logans Crossing Road is to be replaced with 200mm. Depending on the subsequent staging of the development, the Manager, Water Supply Services may defer this augmentation in accordance with the details in the water supply strategy required of the proponent and more detailed water supply computer modelling.

B - PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

- (1) (DB002) Submission to the Principal Certifying Authority prior to the issue of a Subdivision Construction Certificate detailed design plans for the following public infrastructure works associated with the developments:
 - 1. Road works along the frontage of the development in accordance with AUSPEC Design Specification D01 & D02, Port Macquarie-Hastings Council current version.
 - 2. New roads within the subdivision in accordance with AUSPEC Design Specifications – Port Macquarie-Hastings Council current version.
 - 3. Earthworks, including filling of the land for flood protection in accordance with AUSPEC Design Specification D06, Port Macquarie-Hastings Council current version.
 - 4. Sewerage reticulation in accordance with AUSPEC Design Specification D12, Port Macquarie-Hastings Council current version.
 - 5. Water supply reticulation in accordance with AUSPEC Design Specification D11, Port Macquarie-Hastings Council current version.
 - 6. Retaining walls in accordance with AUSPEC Design Specifications D03, Port Macquarie-Hastings Council current version.
 - 7. Stormwater systems in accordance with AUSPEC Design Specifications D05 & D07, Port Macquarie-Hastings Council current version.
 - 8. Erosion & Sedimentation controls in accordance with AUSPEC D06 & D07, Port Macquarie-Hastings Council current version.
 - 9. Location of all existing utility services including:
 - Conduits for electricity supply and communication services.
 - Water supply
 - Sewerage
 - Stormwater
 - Conduits for optical fibre
 - 10. Landscaping in accordance with AUSPEC Design Specification D13, Port Macquarie-Hastings Council current version.
 - 11. Detailed intersection layout at the junction of Herons Creek Road and Logans Crossing Road and each internal road with Herons Creek Road in accordance with AUSROAD Part 5 "intersections at grade"



12. Detailed intersection design of Pacific Highway and Herons Creek Road as approved by the RTA.
13. Traffic Calming Facilities at entry to Herons Creek Village.

An application and checking fee in accordance with Council's Management Plan shall be payable upon submission of engineering design plans. The plans are to be certified by a Chartered Professional Engineer or a registered Consultancy.

- ~~(2) (DB005) Full, approved design plans by the RTA of the proposed engineering works detail below shall be submitted to the Principal Certifying Authority for approval prior to the issue of a Construction Certificate.~~
 - ~~• Upgrade of the intersection of Herons Creek Road (South) and the Pacific Highway.~~
- (2) Deleted. ¹
- (3) (DB009) If engineering works are of a value greater than \$25,000, a detailed estimate of cost of the civil engineering works and documentary proof of payment of the levy required by the Building and Construction Industry Long Service Payments Act must be provided to Council prior to any approval of engineering plans.
- (4) (DB012) An Erosion and Sediment Control Management Plan prepared in accordance with the relevant sections of the Department of Housing manual "Soil and Water Management for Urban Development", Port Macquarie-Hastings Council sediment control policies and Council's adopted AUSPEC Design and Construction Guidelines shall be submitted to and approved by the Principal Certifying Authority with the application for construction certificate. The plan shall include measures to:
 - Prevent site vehicles tracking sediment and other pollutants from the development site.
 - Dust control measures.
 - Safety measures for temporary and permanent water bodies including fencing and maximum batter slopes.
 - Contingencies in the event of flooding.
- (5) (DB031) The provision of splay corners in accordance with DCP 17. Details must be submitted to and approved by Council prior to issue of the Subdivision Construction Certificate.
- (6) (DB038) Prior to the issue of any Construction Certificate, satisfactory arrangements are to be made with the Water Authority for the provision of water and sewer services to the land. Evidence of such arrangements will be furnishing relevant documentation from the Water Authority.
- (7) (DB041) The connection of the proposed new lots to the sewerage systems in accordance with Council's AUSPEC Specifications. The design plans must be approved by Council prior to the issue of a Subdivision Construction Certificate.



- (8) (DB195) The proponents are to provide, for the proposed total development, a water supply strategy, detailing subdivision staging and the corresponding water supply work (including augmentation) necessary to support each stage. The strategy is to incorporate the latest changes in water supply design requirements as well as being modelled on software compatible with that used by Council. The water main layout provided with the development application is not necessarily accepted.
- (9) (DB196) A stormwater management plan must be prepared in accordance with councils AUSPEC design document (D5 & D7) before any works commence. In addition the stormwater management plan shall:
- Incorporate measures to enhance stormwater discharge quality from the site and protect downstream waterways.
 - Ensure all stormwater discharging from the site shall comply with councils AUSPEC design document, table D7.5 (Modified ecosystems – Upland streams).
 - Ensure no polluted water of any type shall be allowed to enter the natural waterway.
 - Ensure all natural gullies/creeks/streams shall have a minimum corridor width of 60m.
 - Batters of no less than 1:4 shall be provided and must start outside the minimum corridor width of 60m.
 - No works are to be undertaken within 25m of the top of bank.
 - No retaining walls shall be constructed in or adjacent to natural creek lines.
 - All drainage basins shall be fully fenced with 1.8m chainmesh security fencing.
- (10) (DB197) If the creek corridor is to be dedicated to council as a drainage reserve, this area must form part of a Vegetation Management Plan and be regenerated and maintained by the developer for a minimum of 5 years.
- (11) (DB198) The development shall comply with the Interim Port Macquarie-Hastings Flood Policy and be generally in accordance with the GHD flood assessment report (September 2008).
- (12) (DB199) The 1:100 AEP event shall including a 30% increase in rainfall volume as an allowance for the impacts of Climate Change. A minimum of 300mm shall be provided from the 1:100 flood level to the finished surface level of all allotments.
- (13) A vegetation and fauna management plan shall be prepared by a suitably qualified person (i.e. ecologist) and submitted and approved by Council prior to the release of the subdivision construction certificate application. The plan shall outline, but not be limited to the following:
1. Details of plantings of endemic species to provide compensation for the loss of potential habitat on-site and the replanting of drainage lines.
 2. Vegetation removal associated with construction works, proposed lots and asset protection zones.
 3. Identification and flagging of all senescent/significant trees and areas of vegetation to be preserved on the site.



4. Pursuant to Section 88B of the Conveyancing Act 1919, a positive covenant shall be created to require the proprietors of the land burdened to maintain the revegetated areas and trees to be retained onsite
5. Any proposed vegetation is to be installed onsite prior to the release of the construction certificate.
6. Process for removing and disposing of felled trees and vegetation.
7. Process of protecting trees to be retained during clearing works.
8. Maintenance periods for proposed revegetation works.
9. Contingency plans should vegetation be removed either through natural or manmade causes.
10. Checklists for compliance by operators and users of the plan.
11. The plan is to accommodate stages of the development (i.e. pre-construction checks, during work checks, long term checks)
12. Review periods.

The plan is to be consistent with/incorporate the recommendations of the ecological report prepared by Darkheart Eco-Consultancy, dated March 2008 and as amended on 23 June 2008. In addition, the vegetation management plan (once approved by Council) will form part of this consent and is to be read in conjunction/complied with at all times.

- (14) Prior to work commencing onsite, the access route for heavy vehicle machinery associated with the development, including excavation and clearing works, is to be approved by Council.
- (15) Prior to the release of the construction certificate, the contributions referred to in the Advice section of this consent and specified on the attached Notice of Payment (as adjusted by CPI indexing) will need to be paid to Port Macquarie-Hastings Council.
- ~~(16) Prior to the release of the construction certificate, the applicant is to provide evidence to the RTA that the proposed upgraded southbound right turn lane from the Pacific Highway into the northern end of Herons Creek Road has the capacity to cater for the proposed development. This evidence should be provided before council releases the construction certificate. If it cannot be demonstrated, then the proponent will be required to upgrade the intersection to the satisfaction of the RTA.~~
- (16) Deleted. ¹
- ~~(17) B-Double access to the site from the upgraded Pacific Highway must be provided. Any road works on the Pacific Highway or the State road network will require a Works Authorisation Deed (WAD) with the RTA in order to comply with current legislative, environmental and construction standards. As an alternative to entering a WAD the proponent may engage the Cooperbrook to Herons Creek Alliance to undertake these works as part of the Cooperbrook to Herons Creek Pacific Highway upgrading project. Details of compliance with this condition will need to be provided prior to the release of the Construction Certificate.~~
- (17) B-Double access to and from the site from the upgraded Pacific Highway must be provided. Any upgrades required to achieve access shall be included on the design plans with the application for a Subdivision



Construction Certificate. Any road works on the Pacific Highway or the State road network will require a Works Authorisation Deed (WAD) with the RTA in order to comply with current legislative, environmental and construction standards. Details of compliance with this condition will need to be provided prior to the release of the Subdivision Construction Certificate.¹

- ~~(18) The applicant shall increase the capacity of the southern rail overpass on Herons Creek Road to allow access for all vehicles up to and including B-DOUBLE in accordance with the requirements of ARTC. Certified design details of the upgrade to carry the heavy vehicle loads are to be submitted as documentation as part of the engineering design plans.~~
- (18) As part of the application for a Subdivision Construction Certificate, the newly constructed southern rail overpass bridge on Herons Creek Road shall be confirmed as having the capacity to provide access for all vehicles up to and including B-Doubles. If the overpass/bridge is insufficient, the applicant shall increase the capacity of the bridge as required and in accordance with the requirements of ARTC.¹
- (19) ARTC is to review and agree to all aspects of the proposal to include civil and signalling design in relation to the interface to the main line.
- (20) Connection Agreement with ARTC is to be executed to the main line.
- (21) A Safety Interface Agreement with ARTC is to be executed between the parties.
- (22) The applicant shall provide an accurate survey locating the development with respect to the rail boundary, other boundaries and rail infrastructure. This work is to be undertaken by a registered surveyor, to the satisfaction of ARTC's representative.
- (23) It is noted that stormwater retention basins are located in close proximity to the rail corridor. ARTC will need to review and agree to any plans relating to the retention basins. This is to ensure they will not generate any adverse impacts to the geotechnical structure to land within the corridor.
- (24) Should the applicant intend on undertaking any works to replace bridges on Herons Creek Road, details of the proposal would need to be submitted, reviewed and agreed to by ARTC. Additionally, any infrastructure (such as a sewer line) being attached to the bridge would require the applicant to enter into an Infrastructure Licence. ARTC would need to review and agree to the details relating to the pipe location and details of how it is proposed to be attached. The applicant would need to make formal application to ARTC for any such works.
- (25) The Construction Certificate will not be issued over any part of the site requiring a Controlled Activity Approval until a copy of the Approval has been provided to Council
- (26) Details of compliance with RTA and ARTC prior to construction certificate conditions will need to be provided to Council, prior to issue of the construction certificate.



- (27) Any proposed regulatory changes to existing road speed limits, line-marking or signage within Herons Creek Road is to be submitted to Council for approval prior to the issuing of Construction Certificate.

Any proposed change to existing Regulatory Speeds is to be submitted to the Local Traffic Committee for comment allowing a minimum period of six (6) weeks for reporting to Local Traffic Committee.

C - PRIOR TO ANY WORK COMMENCING ON SITE

- (1) (DC006) Erosion and sediment controls in accordance with the approved management plan shall be in place prior to the commencement of any works or soil disturbance on the site.
- (2) (DC004) Prior to commencement of any works, a pre-construction meeting shall be organised by the applicant. This meeting is to be attended by the applicant or consultant, principle contractor and Council's Development Engineer or his representative.
- (3) (DC003) A copy of the current stamped approved construction plans must be kept on-site for the duration of the site works and made available upon request to either the principle certifying authority or an officer of the Council.
- (4) (DC002) A minimum of one (1) weeks-notice in writing of the intention of commence works on public land is required to be given to Council, together with the name of the principle contractor and any major sub-contractors engaged to carry out works. Works shall only be carried out by a contractor accredited with Council.

D - DURING WORK

- (1) (DD002) Development works on public property or works to be accepted by Council as an infrastructure asset are not to proceed past the following hold points without inspection and approval by Council. Notice of required inspection must be given 24 hours prior to inspection, by contacting Council's Customer Service Centre on (02) 6581 8111. You must quote your construction certificate number and property description to ensure your inspection is confirmed:
 - at completion of installation of erosion control measures
 - when the sub-grade is exposed and prior to placing of pavement materials;
 - when trenches are open, stormwater/water/sewer pipes and conduits jointed and prior to backfilling;
 - at the completion of each pavement (sub base/base) layer;
 - before pouring of kerb and gutter;
 - prior to the pouring of concrete for sewerage works and/or works on public property;
 - on completion of road gravelling or pavement;
 - during construction of water infrastructure;
 - prior to sealing and laying of pavement surface course.



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

Council will undertake random audits of work sites to verify compliance of public works as required.

- (2) (DD005) The slope of the cut/fill batter shall not exceed 1:4. The batter shall be stabilised with plantings and maintained in a neat state. The batter to any stormwater control device shall not exceed 1:8 unless provided with adequate safety fencing in accordance with Council's adopted AUSPEC Design and Construction Guidelines.
- (3) (DD006) The capacity and effectiveness of erosion and sediment control measures shall be maintained at all times in accordance with the approved management plan until such time as the site is made stable by permanent vegetation cover or hard surface.
- (4) (DD024) Work on the project being limited to the following hours, unless otherwise permitted by Council: -
 - Monday to Saturday from 7.00am to 6.00pmThe builder to be responsible to instruct and control his sub-contractors regarding the hours of work.
- (5) (DD028) Building equipment and/or materials shall be contained wholly within the site and shall not be stored or operated on the footpath or roadway, unless specific written approval has been obtained from Council beforehand.
- (6) (DD035) The sewer junction shall be capped off with an approved fitting in conjunction with demolition works and Council notified to carry out an inspection prior to backfilling of this work.
- (7) (DD036) The site shall be left free of wastes and debris following completion of the demolition work.
- (8) (DD037) Dust or airborne particles shall not be allowed to escape from the site. The use of fine mesh dust proof screens, fine water sprays or other approved methods are required.
- (9) (DD038) In buildings constructed prior to 1970, all existing accumulations of dust (eg in ceiling voids, wall cavities, walls, floors etc) shall be removed by the use of an industrial vacuum fitted with a high efficiency particulate air filter.
- (10) (DD039) Demolition works performed on buildings with materials containing asbestos or lead shall be carried out strictly in accordance with the requirements of the Workcover Authority and National OH&S Committee – *Code of Practice for the Safe Removal of Asbestos* and *Code of Practice for the Management and Control of Asbestos in Workplaces*.
- (11) (DD040) All asbestos and lead wastes shall be sealed and disposed of in labelled plastic wrapping or bags at Council's Waste Management Facility in



accordance with the directions of the Facility Manager. Arrangements are to be made with Council's Services Division prior to disposal.

- (12) (DD041) All demolition waste is to be disposed of at the Council Waste Management Facility.

At the completion of demolition activities, Waste Management Centre weighbridge dockets are to be provided to Port Macquarie-Hastings Council to demonstrate compliance with this condition.

- (13) (DD045) Should any Aboriginal objects be discovered in any areas of the site then all excavation or disturbance to the area is to stop immediately and the National Parks and Wildlife Service, Department of Environment and conservation is to be informed in accordance with Section 91 of the *National Parks and Wildlife Act 1974*. Subject to an assessment of the extent, integrity and significance of any exposed objects, applications under either Section 87 or Section 90 of the *National Parks and Wildlife Act 1974* may be required before work resumes.
- (14) (DD047) Stockpiles of topsoil, sand, aggregates, spoil or other material shall be stored clear of any natural drainage path, constructed drainage systems, easement, water bodies, or road surface and located wholly within the site with measures in place to prevent erosion or movement of sediments in accordance with the approved management plan. All spillage of materials, as a result of delivery or handling, must be removed as soon as practicable and placed into suitable receptacles for reclamation or disposal in a manner that does not cause pollution of the environment.
- (15) (DD048) Open and piped drains, gutters, roadways and access ways shall be maintained free of sediment for the duration of the work. When necessary, roadways shall be swept and drains and gutters cleaned of sediment build up.
- (16) (DD050) Noise from construction activities (measure as the L_{AeqT} noise level) shall not exceed the background noise level (measured as the L_{A90} noise level in the absence of the source), for periods of construction between 4 and 26 weeks by 10 dB(A), and for periods of construction exceeding 26 weeks by 5 dB(A), in any Octave Band Centre Frequency, when measured at any affected residence.
- (17) The constructor or site developer is to establish contact (via mail) with local residents and communicate the construction program and progress on a regular basis, particularly when noisy or vibration generating activities are planned. The correspondence to the local residents is to provide contact details, so that any issues can be identified and addressed.
- (18) All engine covers should be kept closed while equipment is operating.
- (19) All engines, plant, equipment etc is to be maintained in good order and muffler silencers applied where possible.
- (20) All engines, plant, equipment etc should be turned off when not in use.



- (21) Should there be any potential to encroach on the rail corridor during the construction phase ARTC is to be contacted immediately. Appropriate works licences will need to be executed between the Applicant and ARTC to ensure safe working.
- (22) Should any unforeseen risks to rail infrastructure become apparent, the Applicant will be required to submit information relating to the attenuation of the risk to ARTC.
- (23) Construction equipment such as scaffolding shall not impinge over the rail corridor.
- (24) No infrastructure or equipment is to be placed or installed on the rail corridor without proper assessment or approval being obtained from ARTC.
- (25) During construction, the use of cranes and other equipment capable of intruding into the airspace above the corridor must be strictly controlled. The developer must demonstrate to the satisfaction of ARTC that all crane and other overhead operations are properly managed, and enter into an agreement with ARTC for such operation should it become apparent that there is any potential to enter the rail corridor air space.
- (26) Should the applicant require access to the corridor at any stage during the construction phase/installation work the proponent will need to make formal application and obtain relevant work licences and approvals from ARTC.
- (27) ARTC advises that run off or stormwater discharge from the development site into the rail corridor is unacceptable both during and after construction and installation. Any run off or waste arising from the development activities needs to be properly disposed of and must not be allowed to enter onto rail land.
- (28) Access to any adjoining properties is not to be restricted.

E - PRIOR TO THE ISSUE OF OCCUPATION OR SUBDIVISION CERTIFICATE

- (1) (DE004) Where any permanent control marks are placed in accordance with the Survey Regulation 2006 in the preparation of the plan, two (2) copies of the locality sketch plans of the marks placed are to be forwarded to Council with the final plan of subdivision. Any permanent control marks destroyed are to be replaced in accordance with the Survey Regulation 2006.
- (2) (DE005) Prior to the release of any bond securities held by Council for infrastructure works associated with developments, a formal written application is to be submitted to Council specifying detail of works and bond amount.
- (3) (DE037) All public roads are to be constructed in accordance with approved construction plans and Council's current AUSPEC Specifications and dedicated up to the boundaries of all adjoining properties where shown on the approved plan.



- (4) (DE043) A Professional Civil Engineer is required to furnish a Compliance Certificate to the Principal Certifying Authority confirming:
- all drainage lines have been located within the respective easements, and
 - any other drainage structures are located in accordance with the Construction Certificate.
 - all stormwater has been directed to a Council approved drainage system
 - all conditions of consent/ construction certificate approval have been complied with.
 - Any on site detention system (if applicable) will function hydraulically in accordance with the approved Construction Certificate.
- (5) (DE048) The applicant will be required to submit prior to the issue of a Subdivision Certificate, certification by a Registered Surveyor that the allotments have been filled to the levels specified by this consent.
- (6) (DE051) A Certificate of Compliance under the provisions of Section 307 of the Water Management Act must be obtained prior to the issue of any Occupation or Subdivision Certificate.
- (7) (DE056) All works shall be certified by a practicing Chartered Civil Engineer or Registered Surveyor as compliant in accordance with the requirements of AUSPEC Quality Initiatives for Provision of Public Infrastructure, prior to;
- Issue of the Subdivision Certificate;
- Council will undertake random audit of work sites to verify compliance of public works as required.
- (8) (DE072) Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to Council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure. Any alterations to or relocation of street lighting to be approved in writing from Port Macquarie-Hastings Council.
- (9) (DE073) Ancillary works shall be undertaken at no cost to Council to make the engineering works required by this Consent effective to the satisfaction of Director of Council's Infrastructure Division. Such works shall include, but are not limited to the following:
- The relocation of underground services where required by civil works being carried out.
 - The relocation of above ground power and telephone services
 - The relocation of street lighting
 - The matching of new infrastructure into existing or future design infrastructure.
- (10) (DE074) Provision for the supply by telecommunication services to the subject land by way of underground cables and the provision of a certificate from the relevant authority acknowledging provision of infrastructure and payment of any necessary contributions.
- (11) (DE075) Compliance with the general terms of approval of Department of Water and Energy as outlined in Section H of this consent is to be submitted to Council.



- (12) (DE076) Prior to the issue of a Subdivision Certificate, written advice is to be submitted from the electricity authority confirming that its requirements for the provision of electricity services (including street lighting where required) have been satisfied and/or from the telecommunications authority confirming that its requirements for the provision of telecommunication services (including fibre optic cabling where required) have been satisfied.
- (13) (DE080) Lodgement of a security deposit with Council upon practical completion of the subdivision works equivalent to 10% of all engineering works required on public property as assessed by the Director of Infrastructure. The security deposit shall be held for a minimum maintenance period of twelve (12) months following issue of subdivision certificate, prior to formal acceptance of the work by Council.
- (14) (DE085) Road names proposed for the subdivision shall be submitted for Council approval prior to lodgement of the Subdivision Certificate. A suitable name for any new road/s shall be in accordance with Council's adopted policy.
- (15) (DE086) The proponent shall submit an application for a Subdivision Certificate for Council certification. Such application shall be accompanied by payment of all relevant fees in accordance with Council's Management Plan, and original plan of subdivision together with 7 copies with associated 88B instruments, where necessary.
- (16) (DE089) The lot identified as proposed drainage land under Council's control is to be dedicated to Council for drainage purposes. Provision for this dedication is to be made in the application for the Subdivision Certificate.
- (17) (DE094) The applicant will be required to submit prior to the issue of the Subdivision Certificate, a geotechnical report confirming construction of all earthworks in accordance with AUSPEC D6 and/or indicating the suitability of all allotments for future home/building sites; such report to provide details of:
- the surface levels of the allotments created and any other area filled or reshaped as part of the development
 - compaction testing carried out to Level 2 of Appendix B AS 3798;
 - standard penetration tests and calculated N values;
 - bore logs
 - site classification of all allotments in accordance with AS 2870.1. 1987 - *Residential Slabs and Footings*.
- (18) (DE095) Submission of a compliance certificate accompanying Works as Executed plans with detail included as required by Council's current AUSPEC Specifications. The information is to be submitted in electronic format in accordance with Council's "CADCHECK" requirements detailing all infrastructure for Council to bring in to account its assets under the provisions of AAS27. This information is to be approved by Council prior to issue of the Subdivision Certificate.
- (19) (DE096) All subdivision works must be in accordance with Development Code DCP 17 and approved by Council prior to the issue of a Subdivision Certificate.



- (20) (DE097) Prior to the issuing of the Subdivision Certificate, provision to the Principal Certifying Authority of documentation from Port Macquarie-Hastings Council being the local roads authority certifying that all matters required by the approval issued pursuant to Section 138 of the Roads Act have been satisfactorily completed.
- (21) (DE098) Prior to the issuing of the Subdivision Certificate, provision to the Principal Certifying Authority of documentation from the Roads and Traffic Authority (RTA) being the roads authority certifying that all matters required by the approval issued by Section 61 and/or Section 138 of the Roads Act 1993 have been satisfactorily completed.
- (22) Pursuant to Section 88B of the Conveyancing Act 1919, a positive covenant shall be created on the residue lot proposed to retain the conservation areas requiring the proprietors of the land burdened to:
- Maintain the property in accordance with the approved vegetation and fauna management plan.
- (23) Pursuant to Section 88B of the Conveyancing Act 1919, restrictions on the use of the land shall be created on the residue lot proposed to retain the conservation areas prohibiting the proprietor of the land burdened from:
- Removing any vegetation onsite, unless in accordance with the approved vegetation and fauna management plan or with the consent of Council.
 - Erecting a dwelling.
- (24) Pursuant to Section 88B of the Conveyancing Act 1919, a positive covenant shall be created on land burdened to:
- Maintain the Asset Protection Zones shown on the lots on the approved plan.
 - Maintain any undeveloped industrial lot as an Inner Protection Area until developed (excluding those nominated as conservation areas).
 - Advise any future purchaser of an industrial lot that development approval may be subject to the submission and acceptance of noise report prepared by a suitably qualified person that shows the subject development can occur without impacting on adjoining areas.
- (25) Prior to the release of the subdivision certificate, details of compliance with the vegetation management plan (where consistent with the timing of the vegetation management plan) is to be submitted to Council for approval.
- (26) Details of compliance with any works on ARTC land is to be submitted to Council prior to release of subdivision certificate.
- (27) Prior to issue of the subdivision certificate, all proposed conservation areas (detailed in the vegetation and fauna management plan) are to be shown as one (1) lot.
- ~~(28) The upgrading of Herons Creek Road is to be completed in accordance with the requirements of this consent prior to the issue of any Stage 1 Subdivision Certificate.~~



- (28) The upgrading of Herons Creek Road is to be completed in accordance with the requirements of this consent prior to the issue of any Subdivision Certificate. ¹
- (29) An on-site security management plan is to be prepared that will inhibit any unlawful entry after issue of the final Subdivision Certificate. It is to continue for the life of the consent or when 75% occupancy of the development is achieved. The security management plan is to be submitted to Council for approval prior to issue of the final Subdivision Certificate and is to be implemented immediately after issue of the final Subdivision Certificate.

F - OCCUPATION OF THE SITE

- (1) (DF006) The basin of the outflow control pit and the debris screen must be cleaned of debris and sediment on a regular basis by the owner.
- (2) (DF018) Offensive odours shall not be generated by the development.
- (3) (DF019) Materials stockpiles and handling areas shall be maintained in a condition that prevents wind-blown or traffic generated dust.
- (4) (DF022) Noise from the development (measured as the L_{AeqT} noise level) shall not exceed the background noise level (measured as the L_{A90} noise level in the absence of the source) by more than 5 dB(A) in any Octave Band Centre Frequency, at the boundary of any residence.
- (5) (DF023) The development is to be conducted in accordance with the noise impact statement prepared by GHD and dated January 2008, where possible.
- (6) (DF026) All solid waste generated by the development which cannot be reused or recycled, shall be disposed of at Council's waste management facilities.
- (7) (DF030) Offensive noise shall not be generated as a result of the operation of the development.
- (8) All loading and unloading in connection with the use must be carried out wholly within the property.
- (9) All garbage areas/waste storage areas associated with the development are to be screened from the street, create no adverse odour impact on adjoining properties and be kept free of pests at all times.

G - ADVICE

- (1) (DG021) Submission to Council of an application for water service connections and compliance with Council's requirements for the provision of such connections. Payments of costs to provide for these connections and/or extensions are to be made prior to the issue of the Construction Certificate. This application is also to include an application for the disconnection of any existing service not required.



- (2) (DG026) As part of Notice of Requirements by Port Macquarie-Hastings Council as the Water Authority under Section 306 of the Water Management Act 2000 the payment of a cash contribution, prior to the issue of a Subdivision Certificate, of the Section 64 contributions, as set out in the "Notice of Payment – Developer Charges" schedule attached to this consent is required. The contributions are levied in accordance with the provisions of the relevant Section 64 Development Servicing Plan towards the following:
 - augmentation of the town water supply head works
 - augmentation of the town sewerage system head works
- (3) (DG027) Extension or modification of the town water supply system where necessary to serve the development, at no cost to Council.
- (4) (DG028) Extension or modification of the town sewerage system where necessary to serve the development, at no cost to Council.
- (5) (DG029) Submission of a compliance certificate accompanying Works as Executed plans with detail included as required by Council's current AUSPEC Specifications. The information is to be submitted in electronic format in accordance with Council's "CADCHECK" requirements detailing all infrastructure for Council to bring in to account its assets under the provisions of AAS27. This information is to be approved by Council prior to issue of the Subdivision Certificate. The copyright for all information supplied, shall be assigned to Council.
- (6) (DG195) This consent does not give approval to use the proposed rail spur as a railway freight terminal nor should the consent be considered giving in principle support for such a development. The consent is for the infrastructure only.
- (7) (DG196) This consent will become null and void if an approval/permit is required under the Native Vegetation Act and is subsequently not granted by the Catchment Management Authority. Therefore, prior to the commencement of any clearing, the Catchment Management Authority should be contacted to ascertain whether or not a separate approval/permit is required under the Native Vegetation Act with any evidence of approval or approval not being required from the Catchment Management Authority being provided to Council for records purposes.
- (8) (DG197) This consent only provides approval to the State Environmental Planning Policy 1 (SEPP 1) objection in terms of Clause 15 of the Hastings Local Environmental Plan 2001. Further SEPP 1 objection would be required pursuant to Clause 18 of the Hastings Local Environmental Plan 2001 for the proposed residue lot and also be subject to separate assessment. However, given the conservation purposes of such lot, it is unlikely that such a SEPP 1 would be supported.
- (9) Some of the 150mm AC water main along Herons Creek Road north of Logans Crossing Road will be outside the road reserve and will require replacement or relocation at the proponent's cost. The Manager, Water Supply Services may permit the provision of easements where replacement or relocation is not practical. Council will eventually replace the 150mm AC



water main in Herons Creek Road south of Logans Crossing Road to the Pacific Highway with 200mm.

- (10) Note that preliminary modelling has indicated an upper limit of RL 32.00 metres AHD for road construction levels. Without the full water main augmentations indicated above, there may be lower road construction level limitations in the interim period. Looping of water mains (elimination of dead ends in cul-de-sacs) is to be addressed.

H – INTEGRATED DEVELOPMENT CONDITIONS OF CONSENT

Department of Water & Energy – General Terms of Approval (Conditional to Issue of Controlled Activity Approval – Water Management Act 2000)

1. A Controlled Activity Approval (CAA) under the Water Management Act 2000 must be obtained from the Department of Water and Energy (DWE) prior to undertaking certain works in, on or under waterfront land.
2. The consent holder must prepare:
 - Site plan, map and/or surveys;
 - Structural design and specifications;
 - A Vegetation Management Plan;
 - Works Schedule;
 - Erosion and Sediment Control Plan;
 - Soil and Water Management Plan;
 - Rehabilitation Plan; and
 - Amendments to Plans
3. These plans must be prepared by a suitably qualified person and submitted for approval by the Department of Water and Energy prior to any controlled activity commencing. The plans must be prepared in accordance with Department of Water and Energy guidelines:
 - Vegetation Management Plans;
 - Laying pipes and cables in watercourses;
 - Riparian Corridors;
 - In-stream works;
 - Outlet structures;
 - Watercourse crossing.
4. The consent holder must:
 - Carry out any controlled activity in accordance with approved plans, and
 - Construct and/or implement any controlled activity by, or under the direct supervision of, a suitably qualified professional, and
 - When required provide a certificate of completion to the Department of Water and Energy.
5. The consent holder must carry out a maintenance period of three (3) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the Department of Water and Energy.



6. The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the Department of Water and Energy.
7. The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the Department of Water and Energy as required.
8. Subject to reasonable notice, the consent holder will allow authorized officers to the Department access to the site and allow those officers to do all things reasonably necessary for the purpose of monitoring and/or auditing the CAA.
9. The consent holder must ensure that any bridge, causeway or crossing does not result in erosion, obstruction of flow or destabilization, damage to the bed or banks of a river or waterfront land other than in accordance with a plan approved by the Department of Water and Energy.
10. The consent holder must design or commission the design of any crossing over waterfront land and riparian corridors in accordance with the Department of Water and Energy Guidelines for Watercourse crossings.
11. The consent holder must prepare design and construction details for any drainage structures/stormwater outlets to discharge into Walkers Creek and the unnamed watercourse and submit to the Department for approval prior to the issuing of a CAA. Culverts shall be designed by a suitably qualified person in accordance with the Department's guidelines.
12. The consent holder must ensure that no materials or cleared vegetation that may obstruct flow or cause damage to river banks are left on waterfront land other than in accordance with a plan approved by the Department of Water and Energy.
13. The consent holder is to ensure that all drainage works capture and convey runoffs, discharges and flood flows to low flow water level in accordance with a plan approved by the Department of Water and Energy.
14. The consent holder must ensure that drain discharge points are stabilized to prevent erosion in accordance with a plan approved by the Department of Water and Energy.
15. The consent holder must ensure that all erosion and sediment control works and water diversion structures are established in accordance with a plan approved by the Department of Water and Energy. All measures shall be inspected and maintained throughout the working period and not removed until the site has been fully stabilized.
16. The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the Department of Water and Energy.
17. The consent holder must ensure that:
 - Riverbank diversion, realignment or alteration does not result from any controlled activity work, and



- Bank control or protection works maintain the existing river hydraulic and geomorphic functions, and
 - Bed control structures do not result in river degradation, Otherwise than in accordance with a plan approved by the Department of Water and Energy.
18. A riparian corridor is to be established along Walkers Creek and the unnamed watercourse in accordance with the Department's Riparian Corridor Guidelines.
 19. Riparian zones are to function as ecological systems and as such, all works, Asset Protection Zones, access routes, roads, recreational areas, service easements and any other non-ecologically functioning work or activity are to be located beyond riparian zones, unless detailed on plans approved by DWE, prior to the issue of a CAA.
 20. A Vegetation Management Plan shall be prepared in accordance with the Department's guidelines for preparing VMPs and submitted to the Department for approval prior to the issuing of a CAA.

I – ROADS AND TRAFFIC AUTHORITY - SEWER RISING MAIN CONDITIONS

In terms of the proposed works, prior to the commencement of any works in the road reserve compliance with the following conditions RTA has imposed on the works is required.

1. Should the proposed works vary in any way you must advise the RTA.
2. Any crossing of the road is to be made by thrust boring.
3. Any crossing should be at 90 degrees to the road centerline.
4. Cover from the top of the Sewer Rising Main (SRM) to any part of the road surface is to be minimum of 1.0 metre.
5. Depth of cover to SRM for any other location I the road reserve is to confirm to RTA Road Design Guide – Table 3.6-2, refer to this table for minimum depth of cover and overhead clearance requirements for various utilities.
6. The SRM should be installed such that no interference is caused to any maintenance activities within the road reserve.
7. No attachment is to be made to any drainage structure or use of structure service conduits without prior consent from the RTA.
8. Any relocation required in connection with future road works to be at no cost to the RTA.
9. Any maintenance to the SRM to be at no cost to the RTA.
10. Any disturbed ground or vegetation is to be suitably reinstated.
11. Any restoration required, as a result of any damage to the SRM by parties other than the RTA, to be at no cost to the RTA.
12. Location of the SRM to be identified by appropriate markers.
13. Works undertaken within the road reserve will require a Traffic Control Plan (TCP). If all work is carried out further than six (6) metres from the edge line only a vehicle management plan is required. The TCP must be designed and approved by a person with certification in 'Design and Audit for Traffic Control Plans' in the RTA's 'Traffic Control at Works Sites' manual and comply with Australian Standard 1742.3. The approved TCP's must be submitted to the RTA District Manager, at Port Macquarie. All site works must comply with this TCP.



14. If the TCP requires flagmen on the Pacific Highway then a Road Occupancy Licence is to be obtained from the RTA Traffic Operations Manager, Grafton (Ph 02 6640 1300) before commencement of work.
15. The RTA does not guarantee the location of existing underground services, if any. You must satisfy yourself as to the existence and location of these services and indemnify the RTA from any claims due to damage arising from your activity.
16. The proponent must undertake Public Liability Insurance to the amount of not less than \$20 million. The insurance must be extended to cover the interests of the RTA (or its agent) and Council by any contractor engaged on the construction and/or maintenance of the work.
17. Local Government Councils have jurisdiction over works affecting local roads and footpaths.
18. Notice of commencement of work on the Pacific Highway to be given seven (7) days prior to commencement Ian Drinkwater on telephone (02) 6580 3462 or fax (02) 6580 3452.
19. Notice of commencement of the subject work on the Pacific Highway should be given to Port Macquarie-Hastings Council seven (7) days prior to commencement.

The reason for this decision is that 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 interest and will not result in significant adverse social, environmental or economic impacts. The conditions referred to in this schedule are imposed in conformity with the relevant provisions of the Environmental Planning and Assessment Act and Regulations, the Local Government Act and Regulations, The Building Code of Australia and with Council's Policies and Development Control Plan or any other ancillary Act or Regulation in force at the time of the date of determination. The conditions are aimed at protecting the natural environment, preserving our heritage and providing a functional, safe and healthy built environment.

Rights of Appeal

If you are dissatisfied with this decision a request for a review of the determination may be made to Council, under the provisions of Section 8.2 of the Environmental Planning and Assessment Act 1979.

If you are dissatisfied with this decision, Section 8.9 of the Environmental Planning and Assessment Act 1979 gives you the right of appeal to the Land and Environment Court.

PORT MACQUARIE-HASTINGS COUNCIL

Development Assessment Panel

Action Created

Meeting Date: 12/11/2008

ITEM NO: 03
PROPERTY: DA 2008/0225 - LOT 2 DP 1117359; LOT 133 DP 754405; LOT 4 DP 720823 & LOT 2 DP 712594, HERON S CREEK ROAD, HERONS CREEK
APPLICANT: LAWLOR SERVICES PTY LTD C/- HOPKINS CONSULTANT PTY LTD
OWNER: LAWLOR SERVICES PTY LTD, PORT HOLDING PTY LTD & FORESTS NSW
PROPOSAL: STAGED INDUSTRIAL SUBDIVISION - FORTY ONE (41) LOTS
APPLICATION DATE: 4 APRIL 2008
DATE FORMAL: 27 OCTOBER 2008
ESTIMATED COST: \$9,969,000
LOCATION: HERONS CREEK
REPORT BY: CLINTON TINK
FILE NO: DA 2008/225
PARCEL NO: 16781, 18743, 53004 and 31723

PRECIS

Council is in receipt of a staged development application for what was originally a sixty nine (69) lot industrial subdivision, including proposed conservation areas on Lot 2 DP 1117359, Lot 133 DP 754405 & Lot 2 DP 712594, Herons Creek Road, Herons Creek. The application has since been amended and is now for a staged forty one (41) lot industrial subdivision, including conservation areas. The application also includes the provision of a rail siding, but no railway freight terminal is proposed at this stage.

In terms of the conservation areas, the application originally included a Conservation Agreement, which needed to be accepted by the Department of Environment and Climate Change (DECC). However, this process has recently been replaced with a Vegetation Management Plan and use of restrictions on the title of the property to conserve habitat areas. In this regard, comments from DECC are no longer required.

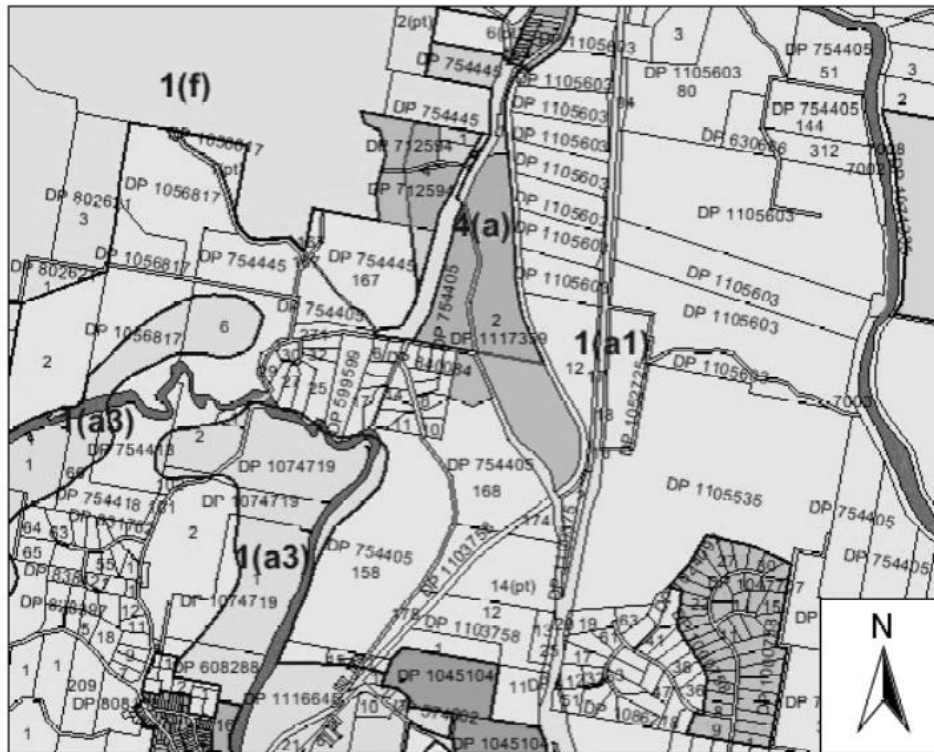
There are also implications in terms of the development on the rail land and the Pacific Highway, which resulted in referrals to Australian Rail Track Corporation (ARTC) and Roads and Traffic Authority (RTA). Comments from the ARTC and RTA have been received.

In addition, stage 3 of the development requires an access road to be constructed across State Forest land. In principle support to the development has been provided by State Forest, but the formal process of obtaining actual owners consent, can take approximately twelve (12) months. In this regard, the determination of Stage 3 will need to be subject to the submission of owners consent for access over State Forest land.

The application was advertised and adjoining property owners notified and provided twenty eight (28) days to comment. During the notification period, Council received eight (8) submissions for the proposal and ten (10) submissions against the proposal. It should be noted that one (1) of the submissions against the proposal also contained a petition containing fifteen (15) signatures.

1. That, with the exception of Stage 3, Development Application 2008/225 for a staged development comprising a forty-one (41) lot industrial subdivision and associated conservation areas on Lot 2 DP 1117359; Lot 133 DP 754405 & Lot 2 DP 712594, Herons Creek Road, Herons Creek, be approved, subject to the conditions of consent listed in the report. Stage 3 of the proposal is supported but does not form part of this consent and is not to be determined until submission of owner's consent with respect to State Forest land.

DISCUSSION



- Forty one (41) industrial lots proposed in three (3) stages. Stage 1 = creation of Lots 1-37 and conservation areas. Stage 2 = creation of the railway spur and Stage 3 = creation of

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lots 38-41 and residue conservation areas.

- The land to be developed is zoned 1(a1) Rural, 4(a) General Industrial and 1(f) State Forests.
- The application was referred to the Department of Water and Energy as “integrated development” requiring general terms of approval (GTA’s) under the Water Management Act 2000. The Department of Water and Energy have provided their GTA’s, which will be incorporated into the consent.
- Council received eight (8) submissions for the proposal and ten (10) submissions against the proposal. It should be noted that one (1) of the submissions against the proposal also contained a petition containing fifteen (15) signatures.
- The application was referred to the Roads and Traffic Authority (RTA) for comment due to the link and impacts on the Pacific Highway. The RTA have provided some conditions and comments on the proposal, which will be incorporated into this report and associated conditions.
- The application was originally referred to the Department of Environment and Climate Change for approval of the Conservation Agreement. However, the applicant has since withdrawn the use of a Conservation Agreement to protect vegetation onsite. The use of a Vegetation Management Plan, conditions of consent and a restriction on the title of the property identifying vegetation management procedures will supplement such an instrument. Such a process has been used in the past by Council.
- The application was referred to the Australian Rail Track Corporation (ARTC) for comment on the proposed rail spur linking into the existing system. The ARTC have provided in principle support to the rail spur, subject to the incorporation of conditions into any consent issued by Council. Such conditions will form part of the consent.
- The proposed development does not constitute a Railway Freight Terminal (ie application is for a railway spur only) – refer to comments on designated development.
- The creation of the residue areas required a State Environmental Planning Policy 1 objection, which was also referred to the Department of Planning for concurrence. Concurrence was subsequently provided.
- Existing structures onsite to be demolished including a dwelling on Lot 2 DP 712594.
- The development covers an area of approximately 95ha with approximately 47ha to be developed.
- Industrial lots sizes range from 5000m² to 6.4ha.
- A Railway Freight Terminal may be submitted at a later date as a separate application.

History

18 March 2008 - The proposal was presented to Council’s Prelodgment Meeting for comment.

4 April 2008 – Application lodged with Council.

11 April 2008 – Council requested additional fees.

23 April 2008 – Ecological reports submitted to Council.

6 May 2008 – A meeting was held with the applicant to discuss how the proposed conservation areas were to be protected.

30 May 2008 – Council requested additional information on fees, stormwater, owners consent, archaeological assessment, noise mitigation, ecology and vegetation management.

1 July 2008 Meeting was held with the applicant regarding possible changes to the development and design.

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5 August 2008 – Applicant responded to Council's letter dated 30 May 2008 and reduced the number of lots from sixty nine (69) to forty one (41).

3 September 2008 – Provided the applicant with an update on the status of the development.

11 September 2008 – Council advised applicant that a request for additional fees (NSW Rural Fire Service) were not applicable.

3 September 2008 to 29 October 2008 – Correspondence occurred between Council staff and the Roads and Traffic Authority (RTA), Australian Rail Track Corporation (ARTC) and Department of Environment and Climate Change (DECC) on a range of issues.

23 October 2008 – Council requested confirmation from the applicant on the use of Conservation Agreement to protect vegetation.

24 October 2008 – Meeting with applicant regarding status of DA and the use of Conservation Agreement.

27 October 2008 – Applicant withdrew proposal to use Conservation Agreement and proposed the use of Vegetation Management Plan with restrictions on the title as an alternative.

Issues Relevant to the Decision - In Point Form

- Submissions received.
- Connection of the development with the Pacific Highway.
- Protection of the proposed conservation areas.
- State Environmental Planning Policy 1 objection to create residue conservation areas.

Council Policies, Procedures and Codes to Which the Matter Relates

- Hastings Local Environmental Plan 2001.
- Port Macquarie-Hastings Development Control Plan 2006, which incorporates Development Control Plan 17 – Subdivision Code, Development Control Plan 40 – Advertising of Development, Development Control Plan 41 – Building & Construction & Site Management.

Contributions Applicable

Contributions to water, sewer and Section 94A are applicable to this development.

Section 79C Matters for Consideration

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

(a) The provisions (where applicable) of:

(i) any Environmental Planning Instrument:

North Coast Regional Environmental Plan

Clause 15 Development control-wetlands or fishery habitats

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Clause 15 requires Council to consider the impacts of the development on drainage areas.

In this case, the applicant has submitted an ecological report, which concluded that the development will have no adverse impact on habitat areas (including drainage areas), subject to the imposition of a number of recommendations. The recommendations will be incorporated into the development and consent. For further information on the ecological report – refer to the “Flora and Fauna” section of this report.

In addition to the above, the development application was referred to the Department of Water and Energy (DWE) for their general terms of approval (GTA) under the Water Management Act (integrated development) for works in and around drainage lines. The DWE has provided their GTA, which provides further evidence that drainage lines will be protected.

Based on the above, it is considered that the development will not result in any adverse impact on drainage or habitat.

Clause 36 Development control – heritage items, generally

Clause 36 stipulates that development consent is needed to damage a heritage items and that any such consent must have consideration for the significance of the item(s).

The applicant submitted a heritage report, which identified no Aboriginal heritage items onsite, but did identify some European sites/items. The items identified consisted of tree stumps containing evidence of the timber getting industry. The heritage report recommended the retention of the identified European heritage items where possible. In the event such items cannot be retained, then the report also states that this is acceptable, based on the recording of the items in the subject report. These recommendations will form part of any consent issued.

Clause 47 Plan preparation and development control principles for commercial and industrial development

Clause 47 requires Council to consider that the development of industrial land is located where it can be adequately serviced by the transport system and urban areas.

The subject development application is well located to link into the Pacific Highway and rail network. The Pacific Highway provides a close link to urban areas of Kew, Kendall, Laurieton etc to the south and would also provide a further link to Port Macquarie, Wauchope etc to the north. In this regard, the site is considered acceptable in terms of meeting the requirements of Clause 47.

State Environmental Planning Policy 1 – Development Standards

The applicant has submitted a State Environmental Planning Policy (SEPP) 1 objection to vary Clause 15(a) of the Hastings Local Environmental Plan 2001, being the minimum lot size standard for the 1(a1) Rural zone. In particular, the proposed development will result in a number of residue 1(a1) Rural zoned areas below the minimum lot size. It should be noted that the residue areas equate to a total of approximately 38ha (ie within 10% of the standard if consolidated). It will be conditioned that all residue/conservation areas be consolidated into one (1) lot. Therefore, the creation of one (1) lot undersized but within 10% of the standard, for which concurrence to the SEPP 1 could have been assumed by Council.

Regardless, the development application and SEPP 1 were referred to the Department of Planning for concurrence, which was subsequently provided on the basis of facilitating industrial development, provide buffers and protection/enhancement of conservation areas. It should be noted that concurrence was only provided to Clause 15 (subdivision) and not Clause 18 (dwelling entitlement).

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In considering a SEPP 1 objection, Council must also be satisfied that the proposed development complies with the objectives of the zoning.

Having considered the applicant's development/SEPP 1 objection and the objectives of the zone, the proposed variation is acceptable in this case from a Council perspective. In particular, the development:

- will not degrade the productive potential of resources located in rural areas;
- will not impact on rural residential subdivisions;
- will not result in the unnecessary, premature or sporadic fragmentation of rural land because the lot has already been created;
- will not result in uneconomical demands on amenities or services;
- will not result in inappropriate development; and
- will not degrade steep or constrained land.

The reasons provided by Department of Planning are supported by Council.

State Environmental Planning Policy 44 - Koala Habitat Protection

The property is over 1ha in size and therefore triggers the provisions of SEPP 44. The applicant has submitted an ecological report from a suitably qualified person addressing SEPP 44. The ecologists report identified that the site contained over 15% of Scheduled koala feed trees in the tree component. However, surveys, call back, spotlighting etc failed to find any significant evidence of koala activity. In this regard, the ecologist confirmed that the site did not constitute core koala habitat and a koala plan of management is not required. The provisions of the SEPP have thus been addressed.

State Environmental Planning Policy (Major Projects) 2005

The proposed development is not of a scale that would trigger consideration as a major project, especially in relation to Schedule 1 Clause 23 – Rail and related transport facilities.

State Environmental Planning Policy (Infrastructure) 2007

The development is permissible with consent under the subject SEPP pursuant to Clause 81, being a railway freight siding.

Clauses 85 & 86 of the SEPP also apply to the development. These subject clauses require works adjacent to a rail infrastructure to be referred to ARTC for comment. The proposed siding triggers such a referral and was subsequently done. The ARTC have provided advice and conditions to cover this work. The conditions have been incorporated into the consent.

Clause 104 (traffic generating development) does not apply. In particular, development does not exceed 50 lots and is more than 90m to a classified road. It should be noted that the application was still sent to the RTA for comment due to possible impacts on their infrastructure. The RTA subsequently responded identifying potential impacts on the local road system and the Pacific Highway. In relation to the potential impacts on the local road network, these were considered by Council's Engineer and deemed acceptable or able to be covered by conditions. In relation to the impacts on the Pacific Highway, the RTA has provided subsequent conditions to cover such work/impacts.

State Environmental Planning Policy (Rural Lands) 2008

The area to be developed is industrial, but is also surrounded by rural zoned land.

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The aims of this Policy are as follows:

- (a) to facilitate the orderly and economic use and development of rural lands for rural and related purposes,
- (b) to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,
- (c) to implement measures designed to reduce land use conflicts,
- (d) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,
- (e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.

While not all the aims are applicable to this development, the key issues are protecting agricultural land and minimising land use conflicts. The proposed development is for an industrial subdivision. Therefore, any conflicting agricultural uses are unlikely to apply (ie the area to be developed is not for residential purposes). The development also proposes conservation areas that will act as buffers to surrounding areas. The development will also not result in a loss of agricultural land as it is zoned industrial.

Based on the above, the proposed development is consistent with the zoning, is unlikely to impact on any adjoining rural land (or visa versa) and is consistent with the aims of the SEPP.

Hastings Local Environmental Plan 2001

The proposed development is consistent with the objectives of the associated zonings and relevant clauses contained within the LEP.

Clause 13 – Availability of Services

Council's Water and Sewer Sections have reviewed the application and confirmed that the site is able to be adequately serviced.

Clause 15 – Subdivision

Refer to comments on SEPP 1 above.

Clause 33 – Heritage items

Clause 33 stipulates that development consent is needed to damage a heritage items and that any such consent must have consideration for the significance of the item(s). Assessment of this has been dealt with earlier in this report under North Coast Regional Environmental Plan.

Clause 39 Demolition

Clause 39 stipulates that development consent is needed to carry out certain demolition work. The proposal involves the demolition of an existing dwelling and ancillary structures. The report acknowledges this component and recommends conditions to cover the work.

Environmental Planning and Assessment Act 1979 and Regulation

Pursuant to Clause 91 of the EP&A Act, the development application is "integrated development" and required referral to the Department of Water and Energy (DWE) for their general terms of approval (GTA) under the Water Management Act. The DWE has provided their GTA's, which support the proposal subject to the imposition of conditions. The subject conditions will be incorporated into the consent.

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The development is not considered "designated development" pursuant to Schedule 3, Clause 28 of the EP&A Regulations. In particular, an individual rail spur does not constitute a railway freight terminal, just as an individual road does not constitute a road transport terminal. A copy of Clause 28 is included below.

28 Railway freight terminals

Railway freight terminals (including any associated spur lines, freight handling facilities, truck or container loading or unloading facilities, container storage, packaging or repackaging facilities):

- (a) that involve more than 250 truck movements per day, or*
- (b) that involve the clearing of more than 20 hectares of native vegetation, or*
- (c) that are located:*
 - (i) within 40 metres of a natural water body, wetland or environmentally sensitive area, or*
 - (ii) within 500 metres of a residential zone or dwelling not associated with the development and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, lights, traffic or waste.*

(ii) any Draft Environmental Planning Instrument that is or has been placed on exhibition pursuant to Section 47(b) or 66(1)(b):

Application is generally consistent with Draft SEPP 1, 2004. In particular, the creation of the residue rural zoned land will not change dwelling entitlement status, even though it is creating a lot within 10% of the standard.

(iii) any Development Control Plan in force under Section 72:

Port Macquarie-Hastings Development Control Plan 2006 incorporates the following:

Development Control Plan 17 – Subdivision Code

Proposed lots sizes and dimensions exceed the DCP requirements of 1000m² and 25m x 40m. Furthermore, the subdivision provides a range of sizes, which could be adapted for different uses.

Development Control Plan 40 – Advertising of Development

The application was advertised and adjoining property owners notified and provided twenty eight (28) days to comment. This is in accordance with the DCP requirements. During the notification period, Council received eight (8) submissions for the proposal and ten (10) submissions against the proposal. It should be noted that one (1) of the submissions against the proposal also contained a petition containing fifteen (15) signatures. The submissions are discussed later in this report.

Development Control Plan 41 – Building & Construction & Site Management

The application is consistent with the subject DCP with certain matters on erosion control etc to be conditioned.

(iiia) any planning agreement that has been entered into under Section 93f or any draft planning agreement that a developer has offered to enter into under Section 93f:

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None relevant.

iv) any matters prescribed by the Regulations:

Demolition is required to comply with Australian Standard (AS 2601).

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

Context & Setting

The subject site covers four (4) lots at Herons Creek, approximately 3 kms north of Kew, and covering an overall area of approximately 95ha. The site is either side of Herons Creek Road, and the eastern boundary is adjacent to the North Coast Railway.

The site slopes generally downwards from west to east, with ridges along the southern and western boundaries, and a depression/watercourse exists onsite running through to the north-eastern corner.

The site is largely covered with native forests.

This application proposes 41 industrial lots of varying sizes, an internal road network, upgrade of Herons Creek Road, railway spur, stormwater/vegetation corridors and services. The works are to be staged

North of the site is the village of Herons Creek and the Boral timbers industry. To the west is State Forest. To the south is the village of Kew with some rural residential lots in between. To the east is the North Coast Railway Line and Pacific Highway.

Access, Transport & Traffic

Roads

Herons Creek Road is a rural standard, local road, approx 7m wide, connecting with the Pacific Highway at two locations, both north and south of the subject site. Herons Creek Road is sealed, with 1m gravel shoulders north to the township of Herons Creek, but unsealed south of the subject site. The application states that Herons Creek Road will be upgraded through the development.

Herons Creek Road currently has a 3.8m vehicle height limit for vehicles heading north from the subject site, where the road passes under the North Coast Railway.

Hopkins Consultants have also met with the Department of Lands in regard to formalising a road reserve over the existing Herons Creek Road through the former Travelling Stock Route (TSR 104), now known as State Forest land. It should be noted that permission from the owner of such land is to be sought, in regard to access, prior to approval of Stage 3.

In terms of access onto the Pacific Highway, the application was forwarded to the RTA for comment. The RTA has since provided comment and conditions to cover such work. In particular, the RTA will require the applicant to enter into a Works Authorisation Deed (WAD) for any works on the highway to allow B-double access to the southern end of Herons Creek or alternatively engage the current contractor (doing the Pacific Highway upgrade) to carry out the works.

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In addition, the applicant will need to show to the RTA that the existing highway entry point into the northern section of Herons Creek Road is suitable for proposed light traffic movements. Any upgrade will need to comply with RTA requirements.

Traffic

A traffic assessment by Terry Keating & Associates has been submitted with this application. The assessment states that the development will generate approx 5520 vehicle movements per day, with a peak hour of 960 vehicles.

The applicant proposes to:

- upgrade Herons Creek Road to provide a sealed connection south to the Pacific Highway
- increase the clearance of the existing rail overpass to allow access for all vehicle types
- upgrade the existing southern intersection with the Pacific Drive
- construct 13m wide roads within the development, within a 23m wide reserve

Access

Access to the development will generally be from short roads off Herons Creek Road or lots will have direct access off Herons Creek Road.

Parking

Parking will be available within the road reserves. Parking on each lot will be assessed individually when Development Applications are submitted for future uses.

Manoeuvring

Roads within the development will be required to be 13m wide (as per AusSpec) with min 9m radii cul-de-sac – adequate for large vehicles to turn. Manoeuvring space for individual lots will be considered at a later date.

In terms of roads, traffic, access, parking and manoeuvring on the local scale, Council's Engineering Section have accepted the proposed design, subject to conditions.

Services**Water**

Water supply augmentation work is required before the creation of any additional lots in the industrial precinct. This will require the provision of about 1650 metres of 150mm water main along Logans Crossing Road from Lee Place to Loganvale Place.

The section of existing 150mm of water main in Herons Creek Road for approximately 500 metres north from Logans Crossing Road is to be replaced with 200mm. Depending on the subsequent staging of the development, the Manager, Water Supply Services may defer this augmentation in accordance with the details in the water supply strategy required of the proponent and more detailed water supply computer modelling.

The proponents are to provide, for the proposed total development, a water supply strategy, detailing subdivision staging and the corresponding water supply work (including augmentation) necessary to support each stage. The strategy is to incorporate the latest changes in water supply design requirements as well as being modelled on software compatible with that used by Council. The water main layout provided is not necessarily accepted.

Some of the 150mm AC water main along Herons Creek Road north of Logans Crossing Road will be outside the road reserve and will require replacement or relocation. The Manager, Water Supply Services may permit the provision of easements where replacement or relocation is not practical.

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Council will eventually replace the 150mm AC water main in Herons Creek Road south of Logans Crossing Road to the Pacific Highway with 200mm.

Note that preliminary modelling has indicated an upper limit of RL 32.00 metres AHD for road construction levels. Without the full water main augmentations indicated above, there may be lower road construction level limitations in the interim period

Looping of water mains (elimination of dead ends in cul-de-sacs) is to be addressed.

Sewer

Sewerage facilities are not available.

The applicant proposes to construct a reticulation network draining to a sewage pumping station and associated rising main to convey sewage to Kew/Kendall Treatment Plant (STP). Upon completion the reticulation mains, pumping station and rising main will be handed over to Council.

Approval in principle has been provided from the RTA to 'thrust bore' the rising main beneath the Pacific Highway to the STP.

It will be necessary to provide each proposed lot with a separate independent point of connection to Council's system. Due to the requirement to maximise available land, reticulation mains are to be located adjacent to front boundaries.

Utilities

Electricity and telecommunications are currently available from Herons Creek Road.

Heritage

Refer to comments on heritage under Hastings Local Environmental Plan 2001 and North Coast Regional Environmental Plan above.

Flora & Fauna

The applicant has submitted an ecological assessment for the subject site and proposal. The ecological consultant has provided an in depth study and has addressed the necessary sections of the Environmental Planning and Assessment Act 1979. In summary, the ecological report identified that the site has value for a number of threatened species, with confirmation of six (6) occurring on the site and/or in the study area: Koala, Grey-Headed Flying Fox, Yellow bellied Glider, Glossy Black Cockatoo, Little bent Wing Bat and eastern Freetail Bat. The Eastern Cave Bat was considered a tentative "possible" occurrence based on precautionary call identification. A substantial number of other species were considered potential occurrences (mainly as foraging vagrants as part of their nomadic movements and/or large range). The drainage lines on site also support part of the local occurrence of the EEC – Swamp Sclerophyll Forest on Coastal Floodplains of the North Coast Bioregion.

Overall, the proposal will make a substantial incremental and cumulative contribution to known threatening processes responsible for the decline of the subject threatened species and EEC, but given the extent of habitat retained on the property with linkages with adjoining habitat, and provided ameliorative measures are implemented effectively, the order of magnitude of these impacts are considered unlikely to be sufficient to result in the loss of viability of a local population or the local occurrence to the EEC as a direct result of the proposal.

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Based on the above, it is considered that the development will not have a limited impact on flora and fauna, subject to the imposition of the recommendations made by the ecological consultant. Such recommendations will form part of the conditions of consent.

Noise & Vibration

The applicant has submitted a noise report dealing with operational and construction noise. At this stage, the application is for subdivision only with no uses proposed. Therefore, it is difficult to assess noise impact when future uses are unknown. Council can implement (through the conditions of consent) that the applicant place restrictions on the titles of the proposed lots, warning future purchasers of the need to submit a noise report that demonstrates how any future use does not increase noise impact on adjoining properties.

Council can also assess the subdivision design in terms of buffers. Having considered the proposed design, the proposal incorporates substantial buffers to surrounding non industrial zoned areas.

Based on the design and implementation of a restriction on the titles of proposed lots warning of the need for a noise report, it is considered that the development will create no adverse noise impact on surrounding areas.

The noise report recommendations will also be implemented where possible.

Natural Hazards

The site is subject to both localised flooding (from the drainage line) and bushfire. Council's Environmental Engineer has accepted the proposal in terms of the subdivisions design being able to deal with localised flooding/drainage issues.

In terms of bushfire, the applicant has submitted a bushfire report. The report shows that the subdivision design and individual lots have the ability to provide suitable protection. The recommendations of the bushfire report will form conditions of consent where possible.

Contamination Hazards

The site is not identified as being a contaminated or containing any existing or past use that would warrant investigation for contamination.

Safety, Security & Crime Prevention

The proposed subdivision will not result in a loss of safety and security in the area or rise in criminal activity.

Future individual uses will be assessed on their merits.

Social Impact in the Locality

The proposed development has the ability to create both positive and negative impacts. On the negative side, the use of the area for industrial purposes will increase traffic. This has the ability to impact on surrounding residences. However, it is considered that the positives of such a development outweigh the negatives. In particular, the subdivision will make use of existing industrial zoned land, provide further industrial zoned land to the southern section of the Port Macquarie-Hastings area, provide industrial zoned land with a short link to the Pacific Highway, improve the standard of roads in the area etc. These positives lead to less sporadic, unplanned

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and illegal industrial uses being developed. Less transport and driving times, which can lead to more time for workers/increased production. Increased jobs during construction and the flow on effects that occur.

Based on the above, the development is seen to have a positive social impact on the area.

Economic Impact in the Locality

The proposed development will have a positive economic impact. In particular, the subdivision will make use of existing industrial zoned land, provide further industrial zoned land to the southern section of the Port Macquarie-Hastings area, provide industrial zoned land with a short link to the Pacific Highway, improve the standard of roads in the area etc. These positives lead to less sporadic, unplanned and illegal industrial uses being developed, which can be costly to the operator and public. Less transport and driving times, which can lead to more time for workers/increased production. Increased jobs during construction and the flow on effects that occur.

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

Based on the predominately positive comments provided throughout this Section 79(c) report, the site is considered suitable for an industrial subdivision.

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

Council has received eight (8) submissions for the proposal and ten (10) submissions against the proposal. It should be noted that one (1) of the submissions against the proposal also contained a petition containing fifteen (15) signatures. A summary of the issues raised in the objections and associated comments from Council's planning staff are included below:

- How much vegetation will be retained in the roads nominated as acting as a buffer zone and how wide will the vegetated buffer zone be?

Comment: Road reserves throughout the subdivision will be approximately 23m wide with a 13m wide road construction. This will leave approximately 5m either side of the constructed road to be retained as vegetation/buffer.

- No specific buffer zone has been provided for Lot 3, 19, 20 or 21. Buffer is requested by objector.

Comment: Buffer zones around the subject lots (now known as Lots 1 & 36 due to redesign reducing the number lots) is not considered necessary. These subject lots either adjoin industrial zoned land or heavily timbered State Forest land.

- Noise and visual impacts on adjoining lots has not been fully considered.

Comment: The subdivision contains substantial buffers on all boundaries, except those used as State Forest or adjoining the existing North Coast Railway Line. Refer to comments on "Noise" in this report. In terms of visual impact, no development is proposed at this stage and as stated above, substantial buffers are provided on the majority of boundaries.

The area is zoned industrial and has been for some time now. Adjoining residents would have been aware that the site was going to go through a transition stage at some point.

- Impact of lighting from vehicular traffic and businesses on adjoining property has not been

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considered.

Comment: Refer to comments above on visual and noise buffers. Vegetation of road reserves will further reduce impact of lights on adjoining properties.

- Details on how the developer proposes to minimise noise during construction.

Comment: Construction noise is required to comply with certain hours of operation and within certain noise levels. These will be applied as conditions of consent. Generally, construction noise only occurs over a short period of time, limiting any long term exposure.

- How can a noise report be effectively done when the future industrial uses are not known?

Comment: The above concern is acknowledged. However, the noise report deals with both construction and operational noise. The operational assessment is a guide only, but still retains relevance. For example, the recommendation to locate heavier industries in the centre of an industrial estate is common practice in terms of minimising noise.

- How will noise from future industrial uses be considered? Will noise reports just consider adjoining residences?

Comment: Noise from future industrial uses will need to be assessed on the individual merits and scale of each application and surrounding uses. In some cases, a proposed industrial use with limited noise generating activities (ie a warehouse), that is surrounded by existing industrial uses that contain no residential component, will not require a noise report. A development on the opposite end of the scale, will more than likely need a noise assessment to show what noise will be generated and how it will be controlled.

- What are the hours of operation for construction and future industrial uses?

Comment: Hours of operation for construction will be 7am to 6pm Monday to Saturday, which is a standard requirement by Council on all applications. Hours of operation for future uses will vary – refer to comment above.

- How will dust from vehicles, construction and future industrial uses be controlled?

Comment: Dust suppression will form a condition of this consent and in most cases, future uses as well. However, it should be noted that dust will be significantly reduced as roads are developed as part of this application. A common example of dust suppression is the retention of vegetation to act as buffers and use of water tanker trucks to wet dry areas.

- What measures will be used to minimise speeding in the area?

Comment: Council's Engineering Section have reviewed the application in terms of traffic, roads etc and approved the development subject to conditions. Speed limits can be reviewed by Council and the Local Traffic Committee with enforcement carried out by the NSW Police.

- What impacts will traffic coming from the north along Herons Creek Road have?

Comment: Council's Engineering Section have reviewed the application in terms of traffic, roads etc and accepted the proposal subject to conditions. In this regard, traffic from the north is unlikely to create any adverse impact. It should be noted that traffic from the North will be restricted to small vehicles due to the railway underpass.

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- The increased traffic and associated issues will impact on residents.

Comment: Council's Engineering Section have reviewed the application in terms of traffic, roads etc and accepted the proposal subject to conditions. In this regard, traffic from the north is unlikely to create any adverse impact. It should be noted that traffic from the North will be restricted to small vehicles due to the railway underpass.

- There appears to be limited restrictions on the types of industrial uses that can occur.

Comment: Industrial uses will be restricted to those allowed by the zoning and any conditions of this consent that transfer to the proposed lots (ie via 88B instruments).

- What security measures are proposed for future uses and adjoining residents (ie thieves coming to the area)?

Comment: Safety and security measures for future uses will be assessed when such uses are submitted. Any such requirements will be subject to a merit assessment.

- The rail spur is not commercially viable and contradicts Council's Rail Freight Study.

Comment: Such a comment is acknowledged. However, the decision to include the spur is a private decision. The viability of an application is not a consideration of Council.

- When will the low wooden bridge to the west be replaced (ie what stage)?

Comment: The assessing officer is unsure as to the context of this issue. In terms of the wooden bridge over the railway line, such a bridge will be conditioned to be replaced as part of this application.

- Construction work and road upgrading will eliminate and restrict access to the area for residents, especially during flooding. What has been done to address this issue (ie maintain access for the residents)?

Comment: As part of the any consent issued, the developer will need to ensure that suitable access to all properties is retained.

- Existing Herons Creek Road cannot cope with the extra traffic.

Comment: Council staff agree with this comment. As a result, Herons Creek Road will need to be upgraded.

- The overland railway bridge on Herons Creek Road would need to be replaced before the subdivision/work commencing on the subdivision.

Comment: Council staff agree to an extent with this submission. In particular, no major construction work would be able to commence, but work that only requires the use of small vehicles may be able to commence.

- Will all industrial lots have access to the rail spur and if so how?

Comment: Council will leave access to the spur up to the owner of the subject property. It should be noted that this application is only looking to construct a spur and not the use of the infrastructure.

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- Replanting of trees (ie Casuarinas) can take 20 years to mature, which will impact on cockatoos.

Comment: Council is proposing to cover replanting as part of a vegetation management plan, which is to be developed in association with the submitted ecological report/recommendations.

- A vegetation management plan should be developed that looks beyond five (5) years.

Comment: Council staff agree. The vegetation management plan that would be adopted for the site would need to be complied with at all times.

- Any fencing to direct fauna should also address/restrict dust and noise.

Comment: Refer to comments above on objections to noise buffers etc and the section on "Noise" in the report.

- Lots 53 & 54 should be removed to enhance GHD's recommendation of providing buffers.

Comment: Refer to comments above on objections to noise buffers etc and the section on "Noise" in the report.

- What solutions to noise are proposed for residents at 297 Herons Creek Road (Lot 2 DP 788886)?

Comment: Refer to comments above on objections to noise buffers etc and the section on "Noise" in the report.

- Who will monitor construction workers in relation to complying with noise controls?

Comment: Initial contact should be made with the developer/operator or alternatively Council. Council can then follow up on any non compliance.

- The report states the constructor/developer should establish contact with residents. How will this occur?

Comment: It is suggested that this be done via a mail out prior to work commencing, containing the necessary details of the developer. Such a requirement will form a condition of consent.

- The development will generate noise from traffic.

Comment: The development will generate noise from traffic. However, the site has been zoned industrial for some time and is located in the vicinity of existing traffic generating noise sources such as the Pacific Highway and North Coast Railway line. Any traffic noise generated from this development will not be dissimilar from such existing uses.

- Will roads in the area be improved?

Comment: Herons Creek Road will be conditioned to be upgraded.

- Will residents be notified of future industrial DA's for the lots, even if the residents do not share a common boundary?

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Comment: Future industrial uses will need to be assessed on the individual merits and scale of each application and surrounding uses. In this regard, notification of all future uses may not be necessary.

- Buffers should be considered under current DA and not future individual industrial DA's for the proposed lots.

Comment: A combination of both has occurred in this case. The applicant has identified the initial key buffer areas to surrounding non industrial uses. However, internal buffers will be more applicable to future DA's.

- Some objectors have requested to be notified of all future individual industrial DA's for the proposed lots.

Comment: Future industrial uses will need to be assessed on the individual merits and scale of each application and surrounding uses. In this regard, notification of all future uses may not be necessary.

- What stops the developer rezoning further 1(a1) Rural zoned land to industrial?

Comment: To rezone land requires a rezoning application, which is subject to a separate process not applicable to this application.

- There appears to be nothing stopping businesses operating 24/7.

Comment: The permitted hours of operation for future businesses will be subject to individual merit based assessments. In particular, such assessments may show that operating 24/7 is not appropriate.

- How will the developer ensure that heavy industry is located in the centre away from residents?

Comment: This is to be controlled to a degree by restrictions on the title. However, there may be cases where a heavy industry can operate on the edge of the subdivision if noise control measures are implemented.

- What is the purpose of the road going through Lot 2 DP 788886?

Comment: There is no road proposed to go through Lot 2 DP 788886.

- At what stage is the rail spur proposed?

Comment: The rail spur is nominated to be done at Stage 2.

- Proposed lot sizes are small. How were sizes determined?

Comment: The proposal contains a range of lot sizes, which all exceed the minimum lot size of 1000m² nominated in Council's DCP 17. In particular, the sizes range from 5000m² to 6.4ha and therefore not considered to be small.

- The development will generate conflict with traffic impacting on children that use the local area/roads.

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Comment: Council's Engineering Section has reviewed the application in terms of traffic, roads etc and accepted the proposal subject to conditions.

- How will industrial traffic be restricted/not occur through Herons Creek Village as stated in the SoEE?

Comment: Heavy vehicle industrial traffic will be restricted to the south entry via the overhead railway bridge that occurs to the north. This will limit such vehicles passing through Herons Creek. However, vehicles that can pass under the bridge will be able to enter from the north and subsequently pass through part of Herons Creek.

- Proposal should be sent to the RTA.

Comment: The proposed development was referred to the RTA, who provided comments for Council consideration and the implementation of conditions.

- DA should have been advertised as per DCP 40 being major transport infrastructure - interchange.

Comment: No transport terminal is proposed as part of this application.

- When will the bridge over Herons Creek Road be replaced. Has an alternate access for residents been considered when the bridge is being replaced? The bridge should be done before the subdivision, as it is not suitable for construction traffic.

Comment: The bridge over Herons Creek Road to the north is not proposed to be replaced and the bridge over the North Coast Railway line to the south will be replaced as part of this application. No major subdivision work would be able to commence on the application until the southern bridge was replaced.

- DPI approval needed for roads and stormwater works on their property/TSR.

Comment: Council staff agree. The determination to the creation of lots requiring access over State Forest land will not occur until consent has been provided. However, it should be noted that this report proposes to delegate the determination of this component to the Manager of Building and Development Assessment upon receipt of such information.

- How will the TSR be improved ecologically when it will be fragmented by roads and stormwater ponds?

Comment: Other than the access issue discussed in the above comment, no further works are proposed within the TSR. Conservation/vegetation works will be limited to predominately private property and in accordance with the ecological report recommendations.

- Noise must be managed from the source not the receiver as implied in the SoEE (ie glazing of the resident's windows).

Comment: Council staff agree with such a comment.

- Concern raised on the use of the term "potential conservation" for wildlife corridor. Does this mean it will later be developed?

Comment: Council will require the submission of a vegetation management plan to

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conserve the areas on private property, not nominated under this DA to be developed for industrial lots. This will allow protection of such land. This is not to say that a later development application could be applied to develop such areas. However, the vegetation management plan will act as a trigger for any future developer that further work is required in order to justify the use of the land. In particular, any future development would need to show that it preserves the intention of this vegetation management plan and submitted ecological report.

- Proposal will impact on fauna.

Comment: Refer to comments on "flora and fauna" above in this report.

- Impact on the electricity grid. The current system cannot cope.

Comment: The development will be conditioned to make necessary arrangements with the electricity supplier to provide such services to the land. Any upgrade will be at the developer's expense.

- Will the proposed method of sewage disposal be sustainable?

Comment: Council's Sewer section has accepted the proposal.

- The traffic report states that the RTA considers the Herons Creek Road (south) intersection with the Pacific Highway (ie to be made operationally safe for use prior to highway upgrade) is impractical. It also states that the RTA documentation relating to the highway upgrade has not factored in the future industrial traffic. The RTA requested turn path reviews of highway plans, which are not evident in the documentation nor does the development show how the RTA intends to accommodate the proposed industrial subdivision and access to the existing and proposed highway.

Comment: The application was referred to the RTA for comment as part of the development application. The RTA has provided comments on local roads for Council's consideration and also conditions to cover how the development is to link into the Pacific Highway. In terms of the link into the Pacific Highway, the applicant will need to upgrade any existing facilities at their own expense and subject to RTA approval.

- The SoEE makes note of northbound truck movements, but not southbound.

Comment: Council staff agree with this comment. However, the RTA has nominated conditions for the consent to cover the upgrade of both the northern and southern intersections.

(e) The Public Interest:

Based on the predominately positive comments provided throughout this Section 79(c) report, the site is considered suitable for an industrial subdivision and is unlikely to create any substantial impacts to the environment or locality. In addition, the development will create positive flow on effects to the local economy. In this regard, the proposed development will not compromise the interests of the public.

A - GENERAL MATTERS

- (1) (DA001) The development is to be carried out in accordance with the plans and

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supporting documents set out in the following table except where modified by any conditions of this consent.

Plan / Supporting Document	Reference	Prepared by	Date
Statement of Environmental Effects		Hopkins Consultants Pty Ltd	March 2008 and as amended by letter dated 5 August 2008
Subdivision Plan	S:\Dwgs\6118\001.dwg	Hopkins Consultants Pty Ltd	29 July 2008
Report for Herons Creek Rail Siding		GHD	May 2007
Traffic Impact Assessment		TPK & Associates Pty Ltd	January 2008
Bushfire hazard assessment		Midcoast Environmental	March 2008
Flood & Stormwater Assessment		GHD	March 2004 and as amended on 30 May 2008
Noise Impact Statement		GHD	January 2008
Cultural Heritage Assessment		Navin Officer heritage consultants Pty Ltd	July 2008
Ecological Impact Statement Vol 1 & 2		Darkheart Eco-Consultancy	January & March 2008 respectively and as amended on 23 June 2008

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.

The development is to be completed in stages with Council being the determining authority on which conditions apply to each stage. The current staging is Stage 1 – create Lots 1-37 (and residue), Stage 2 – construct rail siding and Stage 3 – creates lots 38-41 (and residue)

- (2) (DA004) Submission of a formal application for a Subdivision Construction Certificate and a Subdivision Certificate together with the payment of all relevant fees in accordance with Council's Management Plan.
- (3) (DA006) Approval pursuant to Section 68 of the Local Government Act, 1993 to carry out water supply, stormwater and sewerage works within the development site required by the development consent is to be obtained from Port Macquarie-Hastings Council. A copy of the approval is to be submitted with the application for Construction Certificate.

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- (4) (DA007) Approval pursuant to Section 138 of the Roads Act, 1993 to carry out works required by the Development Consent on or within public road is to be obtained from Port Macquarie-Hastings Council. The application for this engineering approval must be made on the prescribed form with payment of fees pursuant to Section 223 of the Roads Act 1993 in accordance with Council's Schedule of Fees and Charges. The application is to include detailed design plans prepared by a practising Chartered Professional Civil/Structural Engineer. A copy of the approval is to be submitted with the application for Construction Certificate. Under the provisions of the Local Government Act 1993 and/or the Roads Act 1993, if the activity is staged, the activity or the specified part or aspect of the activity, or any thing associated with the activity or the carrying out of the activity, may be the subject of a further approval.

Such works include, but not be limited to:

- Civil works
 - Traffic management
 - Work zone areas
 - Hoardings
- (5) (DA010) The developer is responsible for any costs relating to minor alterations and extensions of existing roads, drainage and Council services for the purposes of the development.
- (6) (DA011) The design and construction of all subdivision works shall be in accordance with Council's adopted AUSPEC Specifications and Port Macquarie-Hastings Council DCP 2006 which are prescribed at the time of commencement of engineering works.
- (7) (DA016) The general terms of approval from the following authorities are set out in Section H of this consent and form part of the consent conditions for this approval.
- Department of Energy & Water
- (8) (DA036) The submission with the application for approval pursuant to Section 138 of the Roads Act of a Plan of Management for any works for the development that impact on any public roads and public land for the construction phase of the development. The plan is to include a Traffic Management Plan and/or Environmental Plan and/or a Work Method Statement for any works or deliveries that impact the normal travel paths of vehicles, pedestrians or cyclists or where any materials are lifted over public areas. The Traffic Control component of the plan is to be designed in accordance with Australian Standard 1742.3 – 2002 RTA "Traffic Control at Worksite Manuals" detailing the location of proposed Work Zone area (Construction Zone) plan, prior to the erection of any signage, giving dimensions from the nearest cross street kerb, the location of any existing regulatory signposting and indicating the period for which the parking restriction is required. Any persons preparing such Traffic Control layout plans shall be RTA accredited or equivalent.
- (9) (DA057) Any interruption to the natural overland flow of stormwater drainage, which could result in the disruption of the amenity, or drainage or deterioration to any other property is not permitted.
- (10) (DA066) All water and sewer services necessary to service the development must be provided in accordance with Council's requirements. All services are to be designed and constructed in accordance with Council's AUSPEC Specifications. Council pursuant to Section 68 of the Local Government Act must approve the design plans for the required services.
- (11) (DA069) All Sewage Pumping Stations are to be contained wholly within a separate lot

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dedicated to Council inclusive of constructed and sealed access handle to the public road. Construction details are to be submitted to Port Macquarie-Hastings Council with the application for Subdivision construction Certificate.

- (12) (DA071) Provision to each lot of a separate water connection (un-metered and sealed) to Council's main. All work will need to comply with the requirements of Council's adopted AUSPEC Design and Construction Guidelines and Policies.
- (13) (DA082) Dust nuisance shall not be generated as a result of the undertaking of the development.
- (14) (DA083) Wastes shall not be disposed of by burning.
- (15) (DA097) The demolition of any existing structure shall be carried out in accordance with Australian Standard AS 2601-1991: *The Demolition of Structures*. No demolition materials shall be burnt or buried on site. The person responsible for the demolition works shall ensure that all vehicles leaving the site carrying demolition materials have their loads covered and do not track soil or waste materials onto the road. Should the demolition works obstruct or inconvenience pedestrian or vehicular traffic on an adjoining public road or reserve, separate application shall be made to Council to enclose the public place with a hoarding fence.

Should asbestos be present, its removal shall be carried out in accordance with the National OH&S Committee – Code of Practice for Safe Removal of Asbestos and its Code of Practice for the Management and Control of Asbestos in the Workplace.
- (16) (DA099) The proponent shall provide electricity and telecommunication services in accordance with the requirements of the relevant authority.
- (17) (DA149) Should any historical relics be unexpectedly discovered in any areas of the site not subject to an excavation permit, then all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW is to be informed in accordance with Section 146 of the *Heritage Act 1977*.
- (18) (DA195) Works must not result in any erosion or degradation of both soils and waterways on-site.
- (19) (DA196) The approval to construct the sewer main crossing over the Pacific Highway is subject to the conditions set out in Section I of this consent and form part of the consent conditions for this approval.
- (20) (DA197) The six (6) European sites (HCSH 1, 3 5, 7, 8 & 10) identified in the Heritage Report by Navin Officer heritage consultants Pty Ltd, dated July 2008, are to be identified on the subdivision plan prior to release of the construction certificate. Pursuant to Section 88B of the Conveyancing Act 1919, restrictions on the use of the land shall be created restricting the removal/destruction of any such item not located within a proposed road, unless with the consent of Council.
- (21) (DA198) All roads within the proposed development, including Herons Creek Road, are to be to 'Industrial Road' standard (as per AUSPEC Table D1.5). All cul-de-sacs shall have a radius of 15m, or shown to be suitable for turning of semi trailers.
- (22) (DA199) The existing section of Herons Creek Road, from Logans Crossing Road south to the intersection with the Pacific Highway, is to be upgraded to 'Local Major Rural Road' standard (as per AUSPEC Table D1.8), which includes a 6m sealed carriageway, 1m wide gravel shoulders and grassed table drains either side.
- (23) The intersection of Herons Creek Road (south) and the Pacific Highway is to be upgraded in accordance the RTA's requirements.
- (24) The submission with the application for approval pursuant to Section 138 of the Roads

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Act 1993 for any works that impact on any public roads and public land is to include, but not limited to:

Details of all roadworks, kerb & gutter, stormwater and other services across the full frontages of the development. A detail plan is to be submitted showing cross sections, longitudinal sections, intersections, design levels of kerb & gutter, finished surface levels of the lots, levels and details of any footpath, indicating that all pedestrian access areas are in accordance with AS 1428.

b. A Traffic Management Plan and/or Environmental Plan and/or a Work Method Statement for any works or deliveries that impact the normal travel paths of vehicles, pedestrians or cyclists or where any materials are lifted over public areas. The Traffic Control component of the plan is to be designed in accordance with Australian Standard 174 2.3 - 2002 RTA "Traffic Control at Worksite Manuals" detailing the location of proposed Work Zone area (Construction Zone) plan, prior to the erection of any signage, giving dimensions from the nearest cross street kerb, the location of any existing regulatory signposting and indicating the period for which the parking restriction is required. Any persons preparing such Traffic Control layout plans shall be RTA accredited or equivalent.

c. Lodgement with Council (Infrastructure Division) of a security cash deposit or bank guarantee (refundable) in favour of Port Macquarie-Hastings Council and payment of a bond administrative fee (non refundable) in accordance with Council's Schedule of Fees and Charges prior to the issue of the Section 138 approval certificate to the amount of \$50 000 or the estimated cost plus 30% of works within the road reserve and other public land (whichever is the greater) to guarantee the satisfactory completion of major infrastructure works associated with developments (roadworks/drainage) and to guarantee public infrastructure is not damaged as a result of construction activity during the course of development. Council shall determine the need for and extent of any rectification work, considered attributable to the construction activity. Such work is at no cost to Council.

Such bond is to be for limited period of two (2) years and cash securities only will be for bonds less than \$5000. If the works are not completed and accepted by Council within the two year period, a new bond is to be lodged prior to the expiry of the original. Any cost of repairing damage caused to Council's infrastructure is to be met in full by the applicant/developer. Should Council have to call up the bond and the repair costs exceed the bond amount, a separate invoice will be issued.

d. Detailed estimate of cost of infrastructure works

- (25) Herons Creek Road is to be covered by a 20m wide road reserve and dedicated to council, across the full frontage of the development, including the existing northern section within Travelling Stock Route.
- (26) Any footpaths within the development are to be constructed as per ASD 103 (AUSPEC) and located on public property a minimum of 3m wide (or 4m if access to drainage reserves is proposed).
- (27) Water supply augmentation work is required before the creation of any additional lots in the industrial precinct. This will require the provision of about 1650 metres of 150mm water main along Logans Crossing Road from Lee Place to Loganvale Place.

The section of existing 150mm of water main in Herons Creek Road for approximately 500 metres north from Logans Crossing Road is to be replaced with 200mm. Depending on the subsequent staging of the development, the Manager, Water Supply Services may defer this augmentation in accordance with the details in the water supply strategy required of the proponent and more detailed water supply computer modelling.

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B - PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

- (1) (DB002) Submission to the Principal Certifying Authority prior to the issue of a Subdivision Construction Certificate detailed design plans for the following public infrastructure works associated with the developments:

1. Road works along the frontage of the development in accordance with AUSPEC Design Specification D01 & D02, Port Macquarie-Hastings Council current version.
2. New roads within the subdivision in accordance with AUSPEC Design Specifications – Port Macquarie-Hastings Council current version.
3. Earthworks, including filling of the land for flood protection in accordance with AUSPEC Design Specification D06, Port Macquarie-Hastings Council current version.
4. Sewerage reticulation in accordance with AUSPEC Design Specification D12, Port Macquarie-Hastings Council current version.
5. Water supply reticulation in accordance with AUSPEC Design Specification D11, Port Macquarie-Hastings Council current version.
6. Retaining walls in accordance with AUSPEC Design Specifications D03, Port Macquarie-Hastings Council current version.
7. Stormwater systems in accordance with AUSPEC Design Specifications D05 & D07, Port Macquarie-Hastings Council current version.
8. Erosion & Sedimentation controls in accordance with AUSPEC D06 & D07, Port Macquarie-Hastings Council current version.
9. Location of all existing utility services including:
 - Conduits for electricity supply and communication services.
 - Water supply
 - Sewerage
 - Stormwater
10. Landscaping in accordance with AUSPEC Design Specification D13, Port Macquarie-Hastings Council current version.
11. Detailed intersection layout at the junction of each internal road and Herons Creek Road in accordance with AUSTROADS Pt 5 "Intersections at Grade" giving particular attention to sight distance.

An application and checking fee in accordance with Council's Management Plan shall be payable upon submission of engineering design plans.

The plans are to be certified by a Chartered Professional Engineer or a registered Consultancy.

- (2) (DB005) Full, approved design plans by the RTA of the proposed engineering works detail below shall be submitted to the Principal Certifying Authority for approval prior to the issue of a Construction Certificate.

Upgrade of the intersection of Herons Creek Road (South) and the Pacific Highway.

- (3) (DB009) If engineering works are of a value greater than \$25,000, a detailed estimate of cost of the civil engineering works and documentary proof of payment of the levy required by the Building and Construction Industry Long Service Payments Act must be provided to Council prior to any approval of engineering plans.

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- (4) (DB012) An Erosion and Sediment Control Management Plan prepared in accordance with the relevant sections of the Department of Housing manual "Soil and Water Management for Urban Development", Port Macquarie-Hastings Council sediment control policies and Council's adopted AUSPEC Design and Construction Guidelines shall be submitted to and approved by the Principal Certifying Authority with the application for construction certificate.

The plan shall include measures to:

- Prevent site vehicles tracking sediment and other pollutants from the development site.
 - Dust control measures.
 - Safety measures for temporary and permanent water bodies including fencing and maximum batter slopes.
 - Contingencies in the event of flooding.
- (5) (DB031) The provision of splay corners in accordance with DCP 17. Details must be submitted to and approved by Council prior to issue of the Subdivision Construction Certificate.
- (6) (DB038) Prior to the issue of any Construction Certificate, satisfactory arrangements are to be made with the Water Authority for the provision of water and sewer services to the land. Evidence of such arrangements will be furnishing relevant documentation from the Water Authority.
- (7) (DB041) The connection of the proposed new lots to the sewerage systems in accordance with Council's AUSPEC Specifications. The design plans must be approved by Council prior to the issue of a Subdivision Construction Certificate.
- (8) (DB195) The proponents are to provide, for the proposed total development, a water supply strategy, detailing subdivision staging and the corresponding water supply work (including augmentation) necessary to support each stage. The strategy is to incorporate the latest changes in water supply design requirements as well as being modelled on software compatible with that used by Council. The water main layout provided with the development application is not necessarily accepted.
- (9) (DB196) A stormwater management plan must be prepared in accordance with councils AUSPEC design document (D5 & D7) before any works commence. In addition the stormwater management plan shall:
1. Incorporate measures to enhance stormwater discharge quality from the site and protect downstream waterways.
 2. Ensure all stormwater discharging from the site shall comply with councils AUSPEC design document, table D7.5 (Modified ecosystems – Upland streams).
 3. Ensure no polluted water of any type shall be allowed to enter the natural waterway.
 4. Ensure all natural gullies/creeks/streams shall have a minimum corridor width of 60m.
 5. Batters of no less than 1:4 shall be provided and must start outside the minimum corridor width of 60m.
 6. No works are to be undertaken within 25m of the top of bank.
 7. No retaining walls shall be constructed in or adjacent to natural creek lines.
 8. All drainage basins shall be fully fenced with 1.8m chainmesh security fencing.
- (10) (DB197) If the creek corridor is to be dedicated to council as a drainage reserve, this area

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must form part of a Vegetation Management Plan and be regenerated and maintained by the developer for a minimum of 5 years.

- (11) (DB198) The development shall comply with the Interim Port Macquarie-Hastings Flood Policy and be generally in accordance with the GHD flood assessment report (September 2008).
- (12) (DB199) The 1:100 AEP event shall including a 30% increase in rainfall volume as an allowance for the impacts of Climate Change. A minimum of 300mm shall be provided from the 1:100 flood level to the finished surface level of all allotments.
- (13) A vegetation and fauna management plan shall be prepared by a suitably qualified person (ie ecologist) and submitted and approved by Council prior to the release of the subdivision construction certificate application. The plan shall outline, but not be limited to the following:
 - 1. Details of plantings of endemic species to provide compensation for the loss of potential habitat on-site and the replanting of drainage lines.
 - 2. Vegetation removal associated with construction works, proposed lots and asset protection zones.
 - 3. Identification and flagging of all senescent/significant trees and areas of vegetation to be preserved on the site.
 - 4. Pursuant to Section 88B of the Conveyancing Act 1919, a positive covenant shall be created to require the proprietors of the land burdened to maintain the revegetated areas and trees to be retained onsite
 - 5. Any proposed vegetation is to be installed onsite prior to the release of the construction certificate.
 - 6. Process for removing and disposing of felled trees and vegetation.
 - 7. Process of protecting trees to be retained during clearing works.
 - 8. Maintenance periods for proposed revegetation works.
 - 9. Contingency plans should vegetation be removed either through natural or man made causes.
 - 10. Checklists for compliance by operators and users of the plan.
 - 11. The plan is to accommodate stages of the development (ie pre construction checks, during work checks, long term checks)
 - 12. Review periods.

The plan is to be consistent with/incorporate the recommendations of the ecological report prepared by Darkheart Eco-Consultancy, dated March 2008 and as amended on 23 June 2008. In addition, the vegetation management plan (once approved by Council) will form part of this consent and is to be read in conjunction/complied with at all times.

- (14) Prior to work commencing onsite, the access route for heavy vehicle machinery associated with the development, including excavation and clearing works, is to be approved by Council.
- (15) Prior to the release of the construction certificate, the contributions referred to in the Advice section of this consent and specified on the attached Notice of Payment (as adjusted by CPI indexing) will need to be paid to Port Macquarie-Hastings Council.
- (16) Prior to the release of the construction certificate, the applicant is to provide evidence to the RTA that the proposed upgraded southbound right turn lane from the Pacific Highway into the northern end of Herons Creek Road has the capacity to cater for the proposed

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development. This evidence should be provided before council releases the construction certificate. If it cannot be demonstrated then the proponent will be required to upgrade the intersection to the satisfaction of the RTA.

- (17) B-Double access to the site from the upgraded Pacific Highway must be provided. Any road works on the Pacific Highway or the State road network will require a Works Authorisation Deed (WAD) with the RTA in order to comply with current legislative, environmental and construction standards. As an alternative to entering a WAD the proponent may engage the Coopernook To Herons Creek Alliance to undertake these works as part of the Coopernook To Herons Creek Pacific Highway upgrading project. Details of compliance with this condition will need to be provided prior to the release of the Construction Certificate.
- (18) ARTC is to review and agree to all aspects of the proposal to include civil and signalling design in relation to the interface to the main line.
- (19) Connection Agreement with ARTL is to be executed to the main line.
- (20) A Safety Interface Agreement with ARTL is to be executed between the parties.
- (21) The applicant shall provide an accurate survey locating the development with respect to the rail boundary, other boundaries and rail infrastructure. This work is to be undertaken by a registered surveyor, to the satisfaction of ARTC's representative.
- (22) It is noted that stormwater retention basins are located in close proximity to the rail corridor. ARTC will need to review and agree to any plans relating to the retention basins. This is to ensure they will not generate any adverse impacts to the geotechnical structure to land within the corridor.
- (23) Should the applicant intend on undertaking any works to replace bridges on Herons Creek Road, details of the proposal would need to be submitted, reviewed and agreed to by ARTC. Additionally, any infrastructure (such as a sewer line) being attached to the bridge would require the applicant to enter into an Infrastructure Licence. ARTC would need to review and agree to the details relating to the pipe location and details of how it is proposed to be attached. The applicant would need to make formal application to ARTC for any such works.
- (24) The Construction Certificate will not be issued over any part of the site requiring a Controlled Activity Approval until a copy of the Approval has been provided to Council
- (25) Details of compliance with RTA and ARTC prior to construction certificate conditions will need to be provided to Council, prior to issue of the construction certificate.

C - PRIOR TO ANY WORK COMMENCING ON SITE

- (1) (DC006) Erosion and sediment controls in accordance with the approved management plan shall be in place prior to the commencement of any works or soil disturbance on the site.

D - DURING WORK

- (1) (DD002) Development works on public property or works to be accepted by Council as an infrastructure asset are not to proceed past the following hold points without inspection and approval by Council. Notice of required inspection must be given 24 hours prior to inspection, by contacting Council's Customer Service Centre on (02) 6581 8111. You must quote your construction certificate number and property description to ensure your inspection is confirmed:
 - at completion of installation of erosion control measures
 - when the sub-grade is exposed and prior to placing of pavement materials;

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- when trenches are open, stormwater/water/sewer pipes and conduits jointed and prior to backfilling;
- at the completion of each pavement (sub base/base) layer;
- before pouring of kerb and gutter;
- prior to the pouring of concrete for sewerage works and/or works on public property;
- on completion of road gravelling or pavement;
- during construction of water infrastructure;
- prior to sealing and laying of pavement surface course.

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

Council will undertake random audits of work sites to verify compliance of public works as required.

- (2) (DD005) The slope of the cut/fill batter shall not exceed 1:4. The batter shall be stabilised with plantings and maintained in a neat state. The batter to any stormwater control device shall not exceed 1:8 unless provided with adequate safety fencing in accordance with Council's adopted AUSPEC Design and Construction Guidelines.
- (3) (DD006) The capacity and effectiveness of erosion and sediment control measures shall be maintained at all times in accordance with the approved management plan until such time as the site is made stable by permanent vegetation cover or hard surface.
- (4) (DD024) Work on the project being limited to the following hours, unless otherwise permitted by Council:-
 - Monday to Saturday from 7.00am to 6.00pm

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

- (5) (DD028) Building equipment and/or materials shall be contained wholly within the site and shall not be stored or operated on the footpath or roadway, unless specific written approval has been obtained from Council beforehand.
- (6) (DD035) The sewer junction shall be capped off with an approved fitting in conjunction with demolition works and Council notified to carry out an inspection prior to backfilling of this work.
- (7) (DD036) The site shall be left free of wastes and debris following completion of the demolition work.
- (8) (DD037) Dust or airborne particles shall not be allowed to escape from the site. The use of fine mesh dust proof screens, fine water sprays or other approved methods are required.
- (9) (DD038) In buildings constructed prior to 1970, all existing accumulations of dust (eg in ceiling voids, wall cavities, walls, floors etc) shall be removed by the use of an industrial vacuum fitted with a high efficiency particulate air filter.
- (10) (DD039) Demolition works performed on buildings with materials containing asbestos or lead shall be carried out strictly in accordance with the requirements of the Workcover Authority and National OH&S Committee – *Code of Practice for the Safe Removal of Asbestos* and *Code of Practice for the Management and Control of Asbestos in Workplaces*.

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- (11) (DD040) All asbestos and lead wastes shall be sealed and disposed of in labelled plastic wrapping or bags at Council's Waste Management Facility in accordance with the directions of the Facility Manager. Arrangements are to be made with Council's Services Division prior to disposal.

- (12) (DD041) All demolition waste is to be disposed of at the Council Waste Management Facility.

At the completion of demolition activities, Waste Management Centre weighbridge dockets are to be provided to Port Macquarie-Hastings Council to demonstrate compliance with this condition.

- (13) (DD045) Should any Aboriginal objects be discovered in any areas of the site then all excavation or disturbance to the area is to stop immediately and the National Parks and Wildlife Service, Department of Environment and conservation is to be informed in accordance with Section 91 of the *National Parks and Wildlife Act 1974*. Subject to an assessment of the extent, integrity and significance of any exposed objects, applications under either Section 87 or Section 90 of the *National Parks and Wildlife Act 1974* may be required before work resumes.

- (14) (DD047) Stockpiles of topsoil, sand, aggregates, spoil or other material shall be stored clear of any natural drainage path, constructed drainage systems, easement, water bodies, or road surface and located wholly within the site with measures in place to prevent erosion or movement of sediments in accordance with the approved management plan. All spillage of materials, as a result of delivery or handling, must be removed as soon as practicable and placed into suitable receptacles for reclamation or disposal in a manner that does not cause pollution of the environment.

- (15) (DD048) Open and piped drains, gutters, roadways and access ways shall be maintained free of sediment for the duration of the work. When necessary, roadways shall be swept and drains and gutters cleaned of sediment build up.

- (16) (DD050) Noise from construction activities (measure as the L_{AeqT} noise level) shall not exceed the background noise level (measured as the L_{A90} noise level in the absence of the source), for periods of construction between 4 and 26 weeks by 10 dB(A), and for periods of construction exceeding 26 weeks by 5 dB(A), in any Octave Band Centre Frequency, when measured at any affected residence.

- (17) The constructor or site developer is to establish contact (via mail) with local residents and communicate the construction program and progress on a regular basis, particularly when noisy or vibration generating activities are planned. The correspondence to the local residents is to provide contact details, so that any issues can be identified and addressed.

- (18) All engine covers should be kept closed while equipment is operating.

- (19) All engines, plant, equipment etc is to be maintained in good order and muffler silencers applied where possible.

- (20) All engines, plant, equipment etc should be turned off when not in use.

- (21) Should there be any potential to encroach on the rail corridor during the construction phase ARTC is to be contacted immediately. Appropriate works licences will need to be executed between the Applicant and ARTC to ensure safe working.

- (22) Should any unforeseen risks to rail infrastructure become apparent, the Applicant will be required to submit information relating to the attenuation of the risk to ARTC.

- (23) Construction equipment such as scaffolding shall not impinge over the rail corridor.

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- (24) No infrastructure or equipment is to be placed or installed on the rail corridor without proper assessment or approval being obtained from ARTC.
- (25) During construction, the use of cranes and other equipment capable of intruding into the airspace above the corridor must be strictly controlled. The developer must demonstrate to the satisfaction of ARTC that all crane and other overhead operations are properly managed, and enter into an agreement with ARTC for such operation should it become apparent that there is any potential to enter the rail corridor air space.
- (26) Should the applicant require access to the corridor at any stage during the construction phase/installation work the proponent will need to make formal application and obtain relevant work licences and approvals from ARTC.
- (27) ARTC advises that run off or stormwater discharge from the development site into the rail corridor is unacceptable both during and after construction and installation. Any run off or waste arising from the development activities needs to be properly disposed of and must not be allowed to enter onto rail land.
- (28) Access to any adjoining properties is not to be restricted.

**E - PRIOR TO THE ISSUE OF OCCUPATION OR SUBDIVISION
CERTIFICATE**

- (1) (DE004) Where any permanent control marks are placed in accordance with the Survey Regulation 2006 in the preparation of the plan, two (2) copies of the locality sketch plans of the marks placed are to be forwarded to Council with the final plan of subdivision. Any permanent control marks destroyed are to be replaced in accordance with the Survey Regulation 2006.
- (2) (DE005) Prior to the release of any bond securities held by Council for infrastructure works associated with developments, a formal written application is to be submitted to Council specifying detail of works and bond amount.
- (3) (DE037) All public roads are to be constructed in accordance with approved construction plans and Council's current AUSPEC Specifications and dedicated up to the boundaries of all adjoining properties where shown on the approved plan.
- (4) (DE043) A Professional Civil Engineer is required to furnish a Compliance Certificate to the Principal Certifying Authority confirming:
 - all drainage lines have been located within the respective easements, and
 - any other drainage structures are located in accordance with the Construction Certificate.
 - all stormwater has been directed to a Council approved drainage system
 - all conditions of consent/ construction certificate approval have been complied with.Any on site detention system (if applicable) will function hydraulically in accordance with the approved Construction Certificate.
- (5) (DE048) The applicant will be required to submit prior to the issue of a Subdivision Certificate, certification by a Registered Surveyor that the allotments have been filled to the levels specified by this consent.
- (6) (DE051) A Certificate of Compliance under the provisions of Section 307 of the Water Management Act must be obtained prior to the issue of any Occupation or Subdivision Certificate.
- (7) (DE056) All works shall be certified by a practicing Chartered Civil Engineer or Registered Surveyor as compliant in accordance with the requirements of AUSPEC

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Quality Initiatives for Provision of Public Infrastructure, prior to;

- Issue of the Subdivision Certificate;

Council will undertake random audit of work sites to verify compliance of public works as required.

- (8) (DE072) Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to Council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure. Any alterations to or relocation of street lighting to be approved in writing from Port Macquarie-Hastings Council.
- (9) (DE073) Ancillary works shall be undertaken at no cost to Council to make the engineering works required by this Consent effective to the satisfaction of Director of Council's Infrastructure Division. Such works shall include, but are not limited to the following:
 - The relocation of underground services where required by civil works being carried out.
 - The relocation of above ground power and telephone services
 - The relocation of street lighting
 - The matching of new infrastructure into existing or future design infrastructure
- (10) (DE074) Provision for the supply by telecommunication services to the subject land by way of underground cables and the provision of a certificate from the relevant authority acknowledging provision of infrastructure and payment of any necessary contributions.
- (11) (DE075) Compliance with the general terms of approval of Department of Water and energy as outlined in Section H of this consent is to be submitted to Council.
- (12) (DE076) Prior to the issue of a Subdivision Certificate, written advice is to be submitted from the electricity authority confirming that its requirements for the provision of electricity services (including street lighting where required) have been satisfied and/or from the telecommunications authority confirming that its requirements for the provision of telecommunication services (including fibre optic cabling where required) have been satisfied.
- (13) (DE080) Lodgement of a security deposit with Council upon practical completion of the subdivision works equivalent to 10% of all engineering works required on public property as assessed by the Director of Infrastructure. The security deposit shall be held for a minimum maintenance period of twelve (12) months following issue of subdivision certificate, prior to formal acceptance of the work by Council.
- (14) (DE085) Road names proposed for the subdivision shall be submitted for Council approval prior to lodgement of the Subdivision Certificate. A suitable name for any new road/s shall be in accordance with Council's adopted policy.
- (15) (DE086) The proponent shall submit an application for a Subdivision Certificate for Council certification. Such application shall be accompanied by payment of all relevant fees in accordance with Council's Management Plan, and original plan of subdivision together with 7 copies with associated 88B instruments, where necessary.
- (16) (DE089) The lot identified as proposed drainage land under Council's control is to be dedicated to Council for drainage purposes. Provision for this dedication is to be made in the application for the Subdivision Certificate.
- (17) (DE094) The applicant will be required to submit prior to the issue of the Subdivision Certificate, a geotechnical report confirming construction of all earthworks in accordance

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with AUSPEC D6 and/or indicating the suitability of all allotments for future home/building sites; such report to provide details of:

- the surface levels of the allotments created and any other area filled or reshaped as part of the development
 - compaction testing carried out to Level 2 of Appendix B AS 3798;
 - standard penetration tests and calculated N values;
 - bore logs
 - site classification of all allotments in accordance with AS 2870.1. 1987 - *Residential Slabs and Footings*.
- (18) (DE095) Submission of a compliance certificate accompanying Works as Executed plans with detail included as required by Council's current AUSPEC Specifications. The information is to be submitted in electronic format in accordance with Council's "CADCHECK" requirements detailing all infrastructure for Council to bring in to account its assets under the provisions of AAS27. This information is to be approved by Council prior to issue of the Subdivision Certificate.
- (19) (DE096) All subdivision works must be in accordance with Development Code DCP 17 and approved by Council prior to the issue of a Subdivision Certificate.
- (20) (DE097) Prior to the issuing of the Subdivision Certificate, provision to the Principal Certifying Authority of documentation from Port Macquarie-Hastings Council being the local roads authority certifying that all matters required by the approval issued pursuant to Section 138 of the Roads Act have been satisfactorily completed.
- (21) (DE098) Prior to the issuing of the Subdivision Certificate, provision to the Principal Certifying Authority of documentation from the Roads and Traffic Authority (RTA) being the roads authority certifying that all matters required by the approval issued by Section 61 and/or Section 138 of the Roads Act 1993 have been satisfactorily completed.
- (22) Pursuant to Section 88B of the Conveyancing Act 1919, a positive covenant shall be created on the residue lot proposed to retain the conservation areas requiring the proprietors of the land burdened to:
- Maintain the property in accordance with the approved vegetation and fauna management plan.
- (23) Pursuant to Section 88B of the Conveyancing Act 1919, restrictions on the use of the land shall be created on the residue lot proposed to retain the conservation areas prohibiting the proprietor of the land burdened from.
- Removing any vegetation onsite, unless in accordance with the approved vegetation and fauna management plan or with the consent of Council.
 - Erecting a dwelling.
- (24) Pursuant to Section 88B of the Conveyancing Act 1919, a positive covenant shall be created on land burdened to:
- Maintain the Asset Protection Zones shown on the lots on the approved plan.
 - Maintain any undeveloped industrial lot as an Inner Protection Area until developed (excluding those nominated as conservation areas).
 - Advise any future purchaser of an industrial lot that development approval may be subject to the submission and acceptance of noise report prepared by a suitably qualified person that shows the subject development can occur without impacting on adjoining areas.

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- (25) Prior to the release of the subdivision certificate, details of compliance with the vegetation management plan (where consistent with the timing of the vegetation management plan) is to be submitted to Council for approval.
- (26) Details of compliance with any works on ARTL land is to be submitted to Council prior to release of subdivision certificate.
- (25) Prior to issue of the subdivision certificate, all proposed conservation areas (detailed in the vegetation and fauna management plan) are to be shown as one(1) lot.

F - OCCUPATION OF THE SITE

- (1) (DF006) The basin of the outflow control pit and the debris screen must be cleaned of debris and sediment on a regular basis by the owner.
- (2) (DF018) Offensive odours shall not be generated by the development.
- (3) (DF019) Materials stockpiles and handling areas shall be maintained in a condition that prevents wind blown or traffic generated dust.
- (4) (DF022) Noise from the development (measured as the L_{AeqT} noise level) shall not exceed the background noise level (measured as the L_{A90} noise level in the absence of the source) by more than 5 dB(A) in any Octave Band Centre Frequency, at the boundary of any residence.
- (5) (DF023) The development is to be conducted in accordance with the noise impact statement prepared by GHD and dated January 2008, where possible
- (6) (DF026) All solid waste generated by the development which cannot be reused or recycled, shall be disposed of at Council's waste management facilities.
- (7) (DF030) Offensive noise shall not be generated as a result of the operation of the development.
- (8) All loading and unloading in connection with the use must be carried out wholly within the property.
- (9) All garbage areas/waste storage areas associated with the development are to be screened from the street, create no adverse odour impact on adjoining properties and be kept free of pests at all times.

G - ADVICE

- (1) (DG021) Submission to Council of an application for water service connections and compliance with Council's requirements for the provision of such connections. Payments of costs to provide for these connections and/or extensions are to be made prior to the issue of the Construction Certificate. This application is also to include an application for the disconnection of any existing service not required.
- (2) (DG026) As part of Notice of Requirements by Port Macquarie-Hastings Council as the Water Authority under Section 306 of the Water Management Act 2000 the payment of a cash contribution, prior to the issue of a Subdivision Certificate, of the Section 64 contributions, as set out in the "Notice of Payment – Developer Charges" schedule attached to this consent is required. The contributions are levied in accordance with the provisions of the relevant Section 64 Development Servicing Plan towards the following:
 - augmentation of the town water supply headworks
 - augmentation of the town sewerage system headworks
- (3) (DG027) Extension or modification of the town water supply system where necessary to

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serve the development, at no cost to Council.

- (4) (DG028) Extension or modification of the town sewerage system where necessary to serve the development, at no cost to Council.
- (5) (DG029) Submission of a compliance certificate accompanying Works as Executed plans with detail included as required by Council's current AUSPEC Specifications. The information is to be submitted in electronic format in accordance with Council's "CADCHECK" requirements detailing all infrastructure for Council to bring in to account its assets under the provisions of AAS27. This information is to be approved by Council prior to issue of the Subdivision Certificate. The copyright for all information supplied, shall be assigned to Council.
- (6) (DG195) This consent does not give approval to use the proposed rail spur as a railway freight terminal nor should the consent be considered giving in principle support for such a development. The consent is for the infrastructure only.
- (7) (DG196) This consent will become null and void if an approval/permit is required under the Native Vegetation Act and is subsequently not granted by the Catchment Management Authority. Therefore, prior to the commencement of any clearing, the Catchment Management Authority should be contacted to ascertain whether or not a separate approval/permit is required under the Native Vegetation Act with any evidence of approval or approval not being required from the Catchment Management Authority being provided to Council for records purposes.
- (8) (DG197) This consent only provides approval to the State Environmental Planning Policy 1 (SEPP 1) objection in terms of Clause 15 of the Hastings Local Environmental Plan 2001. Further SEPP 1 objection would be required pursuant to Clause 18 of the Hastings Local Environmental Plan 2001 for the proposed residue lot and also be subject to separate assessment. However, given the conservation purposes of such lot, it is unlikely that such a SEPP 1 would be supported
- (9) Some of the 150mm AC water main along Herons Creek Road north of Logans Crossing Road will be outside the road reserve and will require replacement or relocation at the proponent's cost. The Manager, Water Supply Services may permit the provision of easements where replacement or relocation is not practical. Council will eventually replace the 150mm AC water main in Herons Creek Road south of Logans Crossing Road to the Pacific Highway with 200mm.
- (10) Note that preliminary modelling has indicated an upper limit of RL 32.00 metres AHD for road construction levels. Without the full water main augmentations indicated above, there may be lower road construction level limitations in the interim period. Looping of water mains (elimination of dead ends in cul-de-sacs) is to be addressed.
- (11) Any proposed changes to existing road speed limits, linemarking or signage within Herons Creek Road is to be submitted to Council for approval, prior to issuing of the Construction Certificate. Any proposed change to existing road speeds is to be submitted to the Local Traffic Committee for approval.

H – INTEGRATED DEVELOPMENT CONDITIONS OF CONSENT**Department of Water & Energy – General Terms of Approval (Conditional to Issue of Controlled Activity Approval – Water Management Act 2000)**

- 1. A Controlled Activity Approval (CAA) under the Water Management Act 2000 must be obtained from the Department of Water and Energy (DWE) prior to undertaking certain works in, on or under waterfront land.
- 2. The consent holder must prepare:

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3. Site plan, map and/or surveys;
4. Structural design and specifications;
5. A Vegetation Management Plan;
6. Works Schedule;
7. Erosion and Sediment Control Plan;
8. Soil and Water Management Plan;
9. Rehabilitation Plan; and
10. Amendments to Plans
11. These plans must be prepared by a suitably qualified person and submitted for approval by the Department of Water and Energy prior to any controlled activity commencing. The plans must be prepared in accordance with Department of Water and Energy guidelines:
12. Vegetation Management Plans;
13. Laying pipes and cables in watercourses;
14. Riparian Corridors;
15. In-stream works;
16. Outlet structures;
17. Watercourse crossing.
18. The consent holder must:
19. carry out any controlled activity in accordance with approved plans, and
20. construct and/or implement any controlled activity by, or under the direct supervision of, a suitably qualified professional, and
21. when required provide a certificate of completion to the Department of Water and Energy.
22. The consent holder must carry out a maintenance period of three (3) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the Department of Water and Energy.
23. The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the Department of Water and Energy.
24. The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the Department of Water and Energy as required.
25. Subject to reasonable notice, the consent holder will allow authorized officers to the Department access to the site and allow those officers to do all things reasonably necessary for the purpose of monitoring and/or auditing the CAA.
26. The consent holder must ensure that any bridge, causeway or crossing does not result in erosion, obstruction of flow or destabilization, damage to the bed or banks of a river or waterfront land other than in accordance with a plan approved by the Department of Water and Energy.
27. The consent holder must design or commission the design of any crossing over waterfront land and riparian corridors in accordance with the Department of Water and Energy Guidelines for Watercourse crossings.

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28. The consent holder must prepare design and construction details for any drainage structures/stormwater outlets to discharge into Walkers Creek and the unnamed watercourse and submit to the Department for approval prior to the issuing of a CAA. Culverts shall be designed by a suitably qualified person in accordance with the Department's guidelines.
29. The consent holder must ensure that no materials or cleared vegetation that may obstruct flow or cause damage to river banks are left on waterfront land other than in accordance with a plan approved by the Department of Water and Energy.
30. The consent holder is to ensure that all drainage works capture and convey runoffs, discharges and flood flows to low flow water level in accordance with a plan approved by the Department of Water and Energy.
31. The consent holder must ensure that drain discharge points are stabilized to prevent erosion in accordance with a plan approved by the Department of Water and Energy.
32. The consent holder must ensure that all erosion and sediment control works and water diversion structures are established in accordance with a plan approved by the Department of Water and Energy. All measures shall be inspected and maintained throughout the working period and not removed until the site has been fully stabilized.
33. The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the Department of Water and Energy.
34. The consent holder must ensure that:
35. riverbank diversion, realignment or alteration does not result from any controlled activity work, and
36. bank control or protection works maintain the existing river hydraulic and geomorphic functions, and
37. bed control structures do not result in river degradation,
38. otherwise than in accordance with a plan approved by the Department of Water and Energy.
39. A riparian corridor is to be established along Walkers Creek and the unnamed watercourse in accordance with the Department's Riparian Corridor Guidelines.
40. Riparian zones are to function as ecological systems and as such, all works, Asset Protection Zones, access routes, roads, recreational areas, service easements and any other non-ecologically functioning work or activity are to be located beyond riparian zones, unless detailed on plans approved by DWE, prior to the issue of a CAA.
41. A Vegetation Management Plan shall be prepared in accordance with the Department's guidelines for preparing VMPs and submitted to the Department for approval prior to the issuing of a CAA.

I – ROADS AND TRAFFIC AUTHORITY - SEWER RISING MAIN CONDITIONS

1. In terms of the proposed works, prior to the commencement of any works in the road reserve compliance with the following conditions RTA has imposed on the works is required.
2. Should the proposed works vary in any way you must advise the RTA.
3. Any crossing of the road is to be made by thrust boring.
4. Any crossing should be at 90 degrees to the road centerline.

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5. Cover from the top of the Sewer Rising Main (SRM) to any part of the road surface is to be minimum of 1.0 metres.
6. Depth of cover to SRM for any other location in the road reserve is to conform to RTA Road Design Guide – Table 3.6-2, refer to this table for minimum depth of cover and overhead clearance requirements for various utilities.
7. The SRM should be installed such that no interference is caused to any maintenance activities within the road reserve.
8. No attachment is to be made to any drainage structure or use of structure service conduits without prior consent from the RTA.
9. Any relocation required in connection with future road works to be at no cost to the RTA.
10. Any maintenance to the SRM to be at no cost to the RTA.
11. Any disturbed ground or vegetation is to be suitably reinstated.
12. Any restoration required, as a result of any damage to the SRM by parties other than the RTA, to be at no cost to the RTA.
13. Location of the SRM to be identified by appropriate markers.
14. Works undertaken within the road reserve will require a Traffic Control Plan (TCP). If all work is carried out further than six (6) metres from the edge line only a vehicle management plan is required. The TCP must be designed and approved by a person with certification in 'Design and Audit for Traffic Control Plans' in the RTA's 'Traffic Control at Works Sites' manual and comply with Australian Standard 1742.3. The approved TCP's must be submitted to the RTA District Manager, at Port Macquarie. All site works must comply with this TCP.
15. If the TCP requires flagmen on the Pacific Highway then a Road Occupancy Licence is to be obtained from the RTA Traffic Operations Manager, Grafton (Ph 02 6640 1300) before commencement of work.
16. The RTA does not guarantee the location of existing underground services, if any. You must satisfy yourself as to the existence and location of these services and indemnify the RTA from any claims due to damage arising from your activity.
17. The proponent must undertake Public Liability Insurance to the amount of not less than \$20 million. The insurance must be extended to cover the interests of the RTA (or its agent) and Council by any contractor engaged on the construction and/or maintenance of the work.
18. Local Government Councils have jurisdiction over works affecting local roads and footpaths.
19. Notice of commencement of work on the Pacific Highway to be given seven (7) days prior to commencement Ian Drinkwater on telephone (02) 6580 3462 or fax (02) 6580 3452.
20. Notice of commencement of the subject work on the Pacific Highway should be given to Port Macquarie-Hastings Council seven (7) days prior to commencement.

COUNCIL RESOLUTION:**Consensus:**

- 1. That, with the exception of Stage 3, Development Application 2008/225 for a staged development comprising a forty-one (41) lot industrial subdivision and**

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associated conservation areas on Lot 2 DP 1117359; Lot 133 DP 754405 & Lot 2 DP 712594, Herons Creek Road, Herons Creek, be approved, subject to the conditions of consent listed in the report **AND SUBJECT TO THE FOLLOWING AMENDMENTS TO THE CONDITIONS OF COSNET**. Stage 3 of the proposal is supported but does not form part of this consent and is not to be determined until submission of owner's consent with respect to State Forest land.

2. That, upon submission of owner's consent with respect to Stage 3 of Development Application 2008/225, authority is delegated is to the Manager of Building and Development Assessment to determine Stage 3.

AMENDMENTS TO CONDITIONS OF CONSENT**A. GENERAL MATTERS**

* Delete Condition A8 (DA036 – duplication)

* Condition A21 (DA198) – to be amended to read as follows:

"All roads within the proposed development, including Heron's Creek Road from the northern boundary of the development to Logan's Crossing Road are to be "Industrial Road" standard as per AUSPEC Table D1.5."

* Condition No. 22 (DA199) – to be amended to read as follows:

"Herons Creek Road is to be upgraded as follows:-

- Upgraded to industrial road standard from northern boundary to Logans Crossing Road.

- rom Logans Crossing Road south to the intersection with the Pacific Highway to be constructed to collector road standard (as per AUSPEC table 1.8) which includes a nine (9) metre sealed carriageway with one (1) metre sealed shoulders, pavement design 1 x 107 ESA and grass table drains either side.

- Bitumen sealing from end of existing seal at Herons Creek Village to the northern section of the development to "Local Major Rural Road Standard" as per AUSPEC Table D1.8)

- Contribution to the rehabilitation of Herons Creek Road from Pacific Highway to Village North.

- Upgrading the intersection of Herons Creek Road with Logans Crossing Road in accordance with AUSTROADS Intersection at grade.

- Traffic calming measures at entry to Herons Creek Village

* Condition A24 is to include "a" before the first paragraph on Page 23. Paragraph starts "Details of all roadworks, kerb and gutter"

PORT MACQUARIE-HASTINGS COUNCIL

*** Condition A25 - to be amended to read:**

"Herons Creek Road, within the existing Kew State Forest Land, is to be dedicated to Council as a 20 metre wide road reservation over the constructed section."

*** Condition A26 - to be amended to read:**

"Footway areas within the development are to be constructed as per AUSPEC Specifications (Clause D1.16) (a minimum four (4) metres wide is required to access drainage reserve)."

B. PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

*** Condition B1(9) is to be amended to include after the following dash point:**
- Conduits for optical fibre.

*** Condition 1(11) is to be amended to read:**

"Detailed intersection layout at the junction of Herons Creek Road and Logans Crossing Road and each internal road with Herons Creek Road in accordance with AUSROAD Part 5 "intersections at grade"."

*** Include as Condition B1(12):**

"Detailed intersection design of Pacific Highway and Herons Creek Road as approved by the RTA."

*** Include as Condition B1(13):**

"Traffic Calming Facilities at entry to Herons Creek Village."

*** Insert a new condition after B17 to read"**

"The applicant shall increase the capacity of the southern rail overpass on Herons Creek Road to allow access for all vehicles up to and including B-DOUBLE in accordance with the requirements of ARTC. Certified design details of the upgrade to carry the heavy vehicle loads are to be submitted as documentation as part of the engineering design plans."

*** Insert new condition at end of Section B to read:**

"Any proposed regulatory changes to existing road speed limits, linemarking or signage within Herons Creek Road is to be submitted to Council for approval prior to the issuing of Construction Certificate."

Any proposed change to existing Regulatory Speeds is to be submitted to the Local Traffic Committee for comment allowing a minimum period of six (6) weeks for reporting to Local Traffic Committee."

*** Reconfigure condition numbering as required.**

PRIOR TO ANY WORK COMMENCING ON SITE*** Insert new condition at end of section B to read:**

"(2) (DC004) - Prior to commencement of any works, a pre-construction

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meeting shall be organised by the applicant. This meeting is to be attended by the applicant or consultant, principle contractor and Council's Development Engineer or his representative."

* (DC003) - A copy of the current stamped approved construction plans must be kept on-site for the duration of the site works and made available upon request to either the principle certifying authority or an officer of the Council.

* (DC002) - A minimum of one (1) weeks notice in writing of the intention of commence works on public land is required to be given to Council, together with the name of the principle contractor and any major sub-contractors engaged to carry out works. Works shall only be carried out by a contractor accredited with Council.

PRIOR TO THE ISSUE OF OCCUPATION OR SUBDIVISION CERTIFICATE

* Insert new Condition (29) to read:

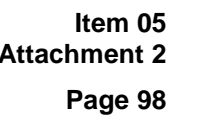
"The upgrading of Herons Creek Road is to be completed in accordance with the requirements of this consent prior to the issue of any Stage 1 Subdivision Certificate."

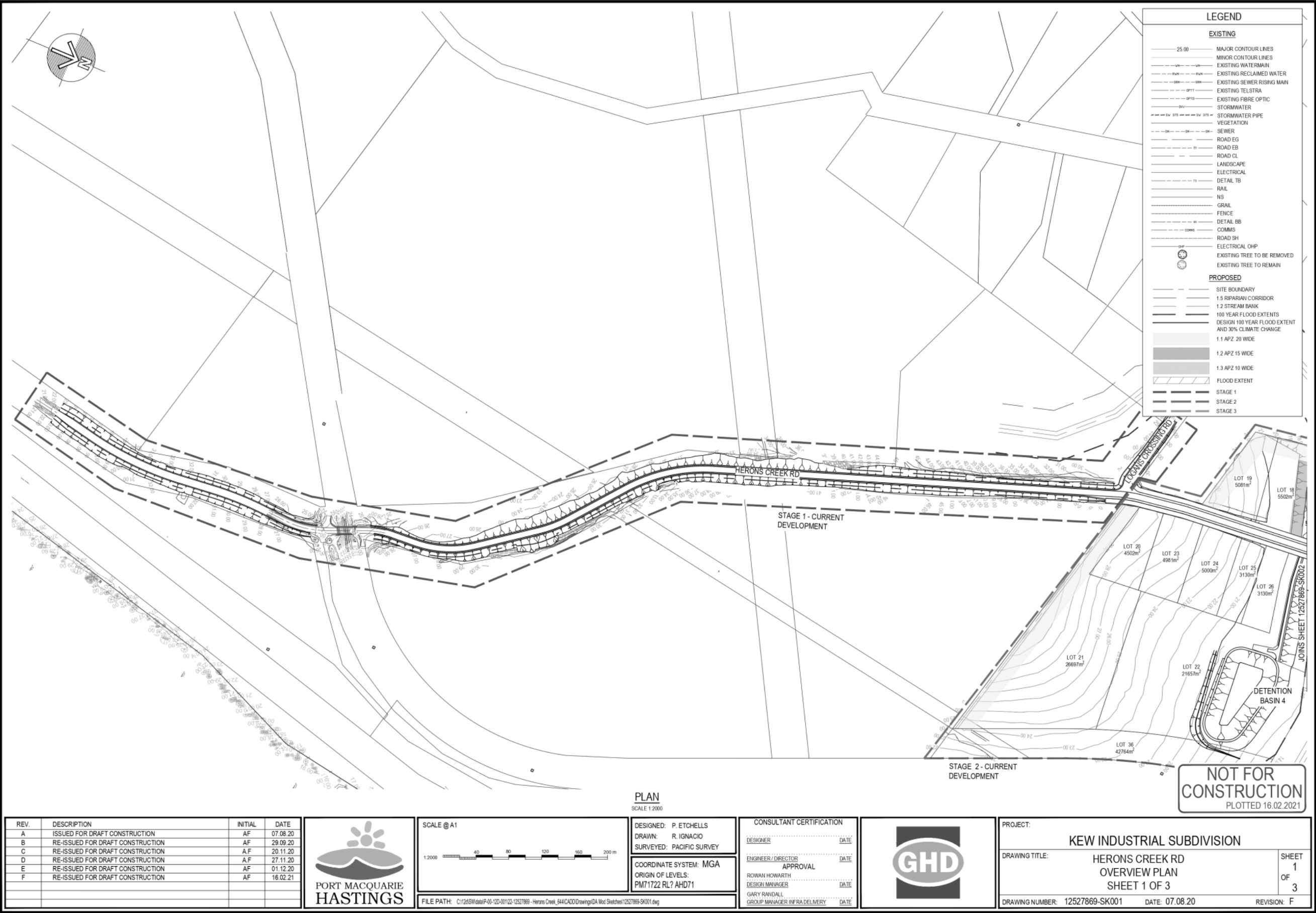
* Insert new Condition (30) to read:

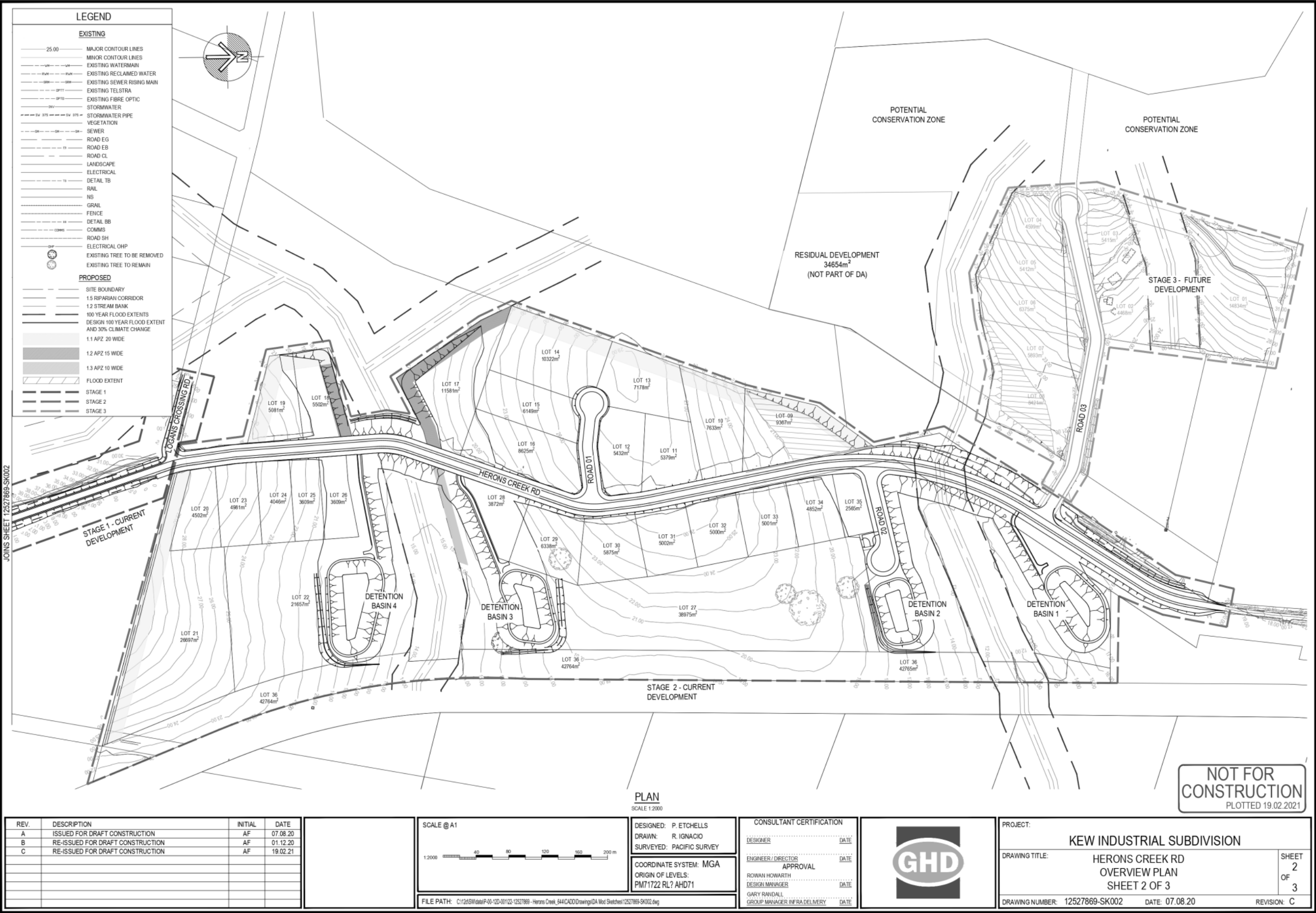
"An on-site security management plan is to be prepared that will inhibit any unlawful entry after issue of the final Subdivision Certificate. It is to continue for the life of the consent or when 75% occupancy of the development is achieved. The security management plan is to be submitted to Council for approval prior to issue of the final Subdivision Certificate and is to be implemented immediately after issue of the final Subdivision Certificate."

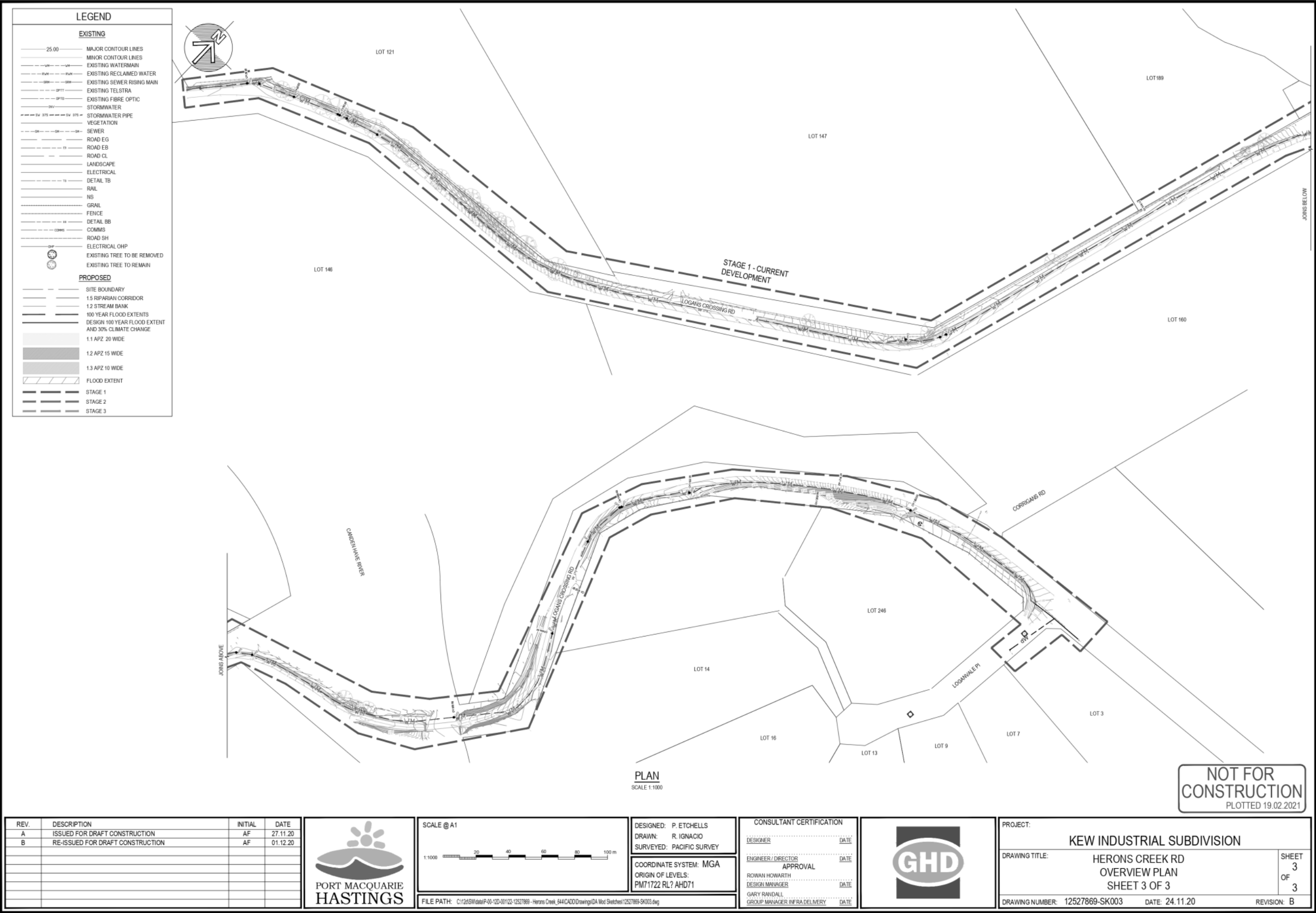
G. ADVICE

* Delete Condition G(11).









20 November 2008

Our ref: 2008/225
PN: 16781, 53004, 18743, 37123

Lawlor Services Pty Ltd
CARE Hopkins Consultants Pty Ltd
PO Box 1556
PORT MACQUARIE NSW 2444

Dear Sir/Madam

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

Subject Development	State Environmental Planning Policy 1 (SEPP 1) to Vary Clause 15(a) of Hastings Local Environmental Plan 2001 - 41 Lot Industrial Subdivision - 3 Stages, Rail Spur and Residual Conservation Lots (NB: Stage 3 – Lots 38 to 41 Do Not Form Part of This Consent)
Property Description	LOT: 2 DP: 1117359, LOT: 2 DP: 712594, LOT: 133 DP: 754405, LOT: 4 DP: 720823, Herons Creek Road HERONS CREEK
Applicant	Lawlor Services Pty Ltd CARE Hopkins Consultants Pty Ltd
Owner	Port Holdings Pty Ltd, Lawlor Services Pty Ltd, Forests NSW

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

Approvals under the Local Government Act, 1993

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

Notes to this consent

1. The date of determination is 12 November 2008.
2. The date from which this consent operates is 20 November 2008 and will lapse unless building, engineering or construction work or a use related to this consent is physically commenced within five (5) years of this date.
3. The period for which this consent can operate may be limited by conditions of this consent.

Yours sincerely



Clinton Tink
Development Assessment Planner

SCHEDULE OF CONDITIONS ATTACHED TO THIS CONSENT

The conditions of consent referred to in the Notice of Determination for DA No 2008/225 are as follows:

A - GENERAL MATTERS

- (1) (DA001) The development is to be carried out in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan / Supporting Document	Reference	Prepared by	Date
Statement of Environmental Effects		Hopkins Consultants Pty Ltd	March 2008 and as amended by letter dated 5 August 2008
Subdivision Plan	S:\Dwgs\6118\001.dwg	Hopkins Consultants Pty Ltd	29 July 2008
Report for Herons Creek Rail Siding		GHD	May 2007
Traffic Impact Assessment		TPK & Associates Pty Ltd	January 2008
Bushfire hazard assessment		Midcoast Environmental	March 2008
Flood & Stormwater Assessment		GHD	March 2004 and as amended on 30 May 2008
Noise Impact Statement		GHD	January 2008
Cultural Heritage Assessment		Navin Officer heritage consultants Pty Ltd	July 2008
Ecological Impact Statement Vol 1 & 2		Darkheart Eco-Consultancy	January & March 2008 respectively and as amended on 23 June 2008

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.

The development is to be completed in stages with Council being the determining authority on which conditions apply to each stage. The current staging is Stage 1

– create Lots 1-37 (and residue), Stage 2 – construct rail siding and Stage 3 – creates lots 38-41 (and residue)

- (2) (DA004) Submission of a formal application for a Subdivision Construction Certificate and a Subdivision Certificate together with the payment of all relevant fees in accordance with Council's Management Plan.
- (3) (DA006) Approval pursuant to Section 68 of the Local Government Act, 1993 to carry out water supply, stormwater and sewerage works within the development site required by the development consent is to be obtained from Port Macquarie-Hastings Council. A copy of the approval is to be submitted with the application for Construction Certificate.
- (4) (DA007) Approval pursuant to Section 138 of the Roads Act, 1993 to carry out works required by the Development Consent on or within public road is to be obtained from Port Macquarie-Hastings Council. The application for this engineering approval must be made on the prescribed form with payment of fees pursuant to Section 223 of the Roads Act 1993 in accordance with Council's Schedule of Fees and Charges. The application is to include detailed design plans prepared by a practising Chartered Professional Civil/Structural Engineer. A copy of the approval is to be submitted with the application for Construction Certificate. Under the provisions of the Local Government Act 1993 and/or the Roads Act 1993, if the activity is staged, the activity or the specified part or aspect of the activity, or any thing associated with the activity or the carrying out of the activity, may be the subject of a further approval.
 - Such works include, but not be limited to:
 - Civil works
 - Traffic management
 - Work zone areas
 - Hoardings
- (5) (DA010) The developer is responsible for any costs relating to minor alterations and extensions of existing roads, drainage and Council services for the purposes of the development.
- (6) (DA011) The design and construction of all subdivision works shall be in accordance with Council's adopted AUSPEC Specifications and Port Macquarie-Hastings Council DCP 2006 which are prescribed at the time of commencement of engineering works.
- (7) (DA016) The general terms of approval from the following authorities are set out in Section H of this consent and form part of the consent conditions for this approval.
 - Department of Energy & Water
- (8) (DA057) Any interruption to the natural overland flow of stormwater drainage, which could result in the disruption of the amenity, or drainage or deterioration to any other property is not permitted.

- (9) (DA066) All water and sewer services necessary to service the development must be provided in accordance with Council's requirements. All services are to be designed and constructed in accordance with Council's AUSPEC Specifications. Council pursuant to Section 68 of the Local Government Act must approve the design plans for the required services.
- (10) (DA069) All Sewage Pumping Stations are to be contained wholly within a separate lot dedicated to Council inclusive of constructed and sealed access handle to the public road. Construction details are to be submitted to Port Macquarie-Hastings Council with the application for Subdivision construction Certificate.
- (11) (DA071) Provision to each lot of a separate water connection (un-metered and sealed) to Council's main. All work will need to comply with the requirements of Council's adopted AUSPEC Design and Construction Guidelines and Policies.
- (12) (DA082) Dust nuisance shall not be generated as a result of the undertaking of the development.
- (13) (DA083) Wastes shall not be disposed of by burning.
- (14) (DA097) The demolition of any existing structure shall be carried out in accordance with Australian Standard AS 2601-1991: *The Demolition of Structures*. No demolition materials shall be burnt or buried on site. The person responsible for the demolition works shall ensure that all vehicles leaving the site carrying demolition materials have their loads covered and do not track soil or waste materials onto the road. Should the demolition works obstruct or inconvenience pedestrian or vehicular traffic on an adjoining public road or reserve, separate application shall be made to Council to enclose the public place with a hoarding fence.
- Should asbestos be present, its removal shall be carried out in accordance with the National OH&S Committee – Code of Practice for Safe Removal of Asbestos and its Code of Practice for the Management and Control of Asbestos in the Workplace.
- (15) (DA099) The proponent shall provide electricity and telecommunication services in accordance with the requirements of the relevant authority.
- (16) (DA149) Should any historical relics be unexpectedly discovered in any areas of the site not subject to an excavation permit, then all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW is to be informed in accordance with Section 146 of the *Heritage Act 1977*.
- (17) (DA195) Works must not result in any erosion or degradation of both soils and waterways on-site.
- (18) (DA196) The approval to construct the sewer main crossing over the Pacific Highway is subject to the conditions set out in Section I of this consent and form part of the consent conditions for this approval.

- (19) (DA197) The six (6) European sites (HCSH 1, 3, 5, 7, 8 & 10) identified in the Heritage Report by Navin Officer heritage consultants Pty Ltd, dated July 2008, are to be identified on the subdivision plan prior to release of the construction certificate. Pursuant to Section 88B of the Conveyancing Act 1919, restrictions on the use of the land shall be created restricting the removal/destruction of any such item not located within a proposed road, unless with the consent of Council.
- (20) (DA198) All roads within the proposed development, including Heron's Creek Road from the northern boundary of the development to Logan's Crossing Road are to be "Industrial Road" standard as per AUSPEC Table D1.5.
- (21) (DA199) Herons Creek Road is to be upgraded as follows: -
- Upgraded to industrial road standard from northern boundary to Logans Crossing Road.
 - From Logans Crossing Road south to the intersection with the Pacific Highway to be constructed to collector road standard (as per AUSPEC table 1.8) which includes a nine (9) metre sealed carriageway with one (1) metre sealed shoulders, pavement design 1 x 107 ESA and grass table drains either side.
 - Bitumen sealing from end of existing seal at Herons Creek Village to the northern section of the development to "Local Major Rural Road Standard" as per AUSPEC Table D1.8)
 - Contribution to the rehabilitation of Herons Creek Road from Pacific Highway to Village North.
 - Upgrading the intersection of Herons Creek Road with Logans Crossing Road in accordance with AUSTROADS Intersection at grade.
 - Traffic calming measures at entry to Herons Creek Village
- (22) The intersection of Herons Creek Road (south) and the Pacific Highway is to be upgraded in accordance the RTA's requirements.
- (23) The submission with the application for approval pursuant to Section 138 of the Roads Act 1993 for any works that impact on any public roads and public land is to include, but not limited to:
- a. Details of all roadworks, kerb & gutter, stormwater and other services across the full frontages of the development. A detail plan is to be submitted showing cross sections, longitudinal sections, intersections, design levels of kerb & gutter, finished surface levels of the lots, levels and details of any footpath, indicating that all pedestrian access areas are in accordance with AS 1428.
 - b. A Traffic Management Plan and/or Environmental Plan and/or a Work Method Statement for any works or deliveries that impact the normal

travel paths of vehicles, pedestrians or cyclists or where any materials are lifted over public areas. The Traffic Control component of the plan is to be designed in accordance with Australian Standard 174 2.3 - 2002 RTA "Traffic Control at Worksite Manuals" detailing the location of proposed Work Zone area (Construction Zone) plan, prior to the erection of any signage, giving dimensions from the nearest cross street kerb, the location of any existing regulatory signposting and indicating the period for which the parking restriction is required. Any persons preparing such Traffic Control layout plans shall be RTA accredited or equivalent.

- c. Lodgement with Council (Infrastructure Division) of a security cash deposit or bank guarantee (refundable) in favour of Port Macquarie-Hastings Council and payment of a bond administrative fee (non refundable) in accordance with Council's Schedule of Fees and Charges prior to the issue of the Section 138 approval certificate to the amount of \$50 000 or the estimated cost plus 30% of works within the road reserve and other public land (whichever is the greater) to guarantee the satisfactory completion of major infrastructure works associated with developments (roadworks/drainage) and to guarantee public infrastructure is not damaged as a result of construction activity during the course of development. Council shall determine the need for and extent of any rectification work, considered attributable to the construction activity. Such work is at no cost to Council.

Such bond is to be for limited period of two (2) years and cash securities only will be for bonds less than \$5000. If the works are not completed and accepted by Council within the two year period, a new bond is to be lodged prior to the expiry of the original. Any cost of repairing damage caused to Council's infrastructure is to be met in full by the applicant/developer. Should Council have to call up the bond and the repair costs exceed the bond amount, a separate invoice will be issued.

d. Detailed estimate of cost of infrastructure works

- (24) Herons Creek Road, within the existing Kew State Forest Land, is to be dedicated to Council as a 20-metre wide road reservation over the constructed section.
- (25) Footway areas within the development are to be constructed as per AUSPEC Specifications (Clause D1.16) (a minimum four (4) metres wide is required to access drainage reserve)
- (26) Water supply augmentation work is required before the creation of any additional lots in the industrial precinct. This will require the provision of about 1650 metres of 150mm water main along Logans Crossing Road from Lee Place to Loganvale Place.

The section of existing 150mm of water main in Herons Creek Road for approximately 500 metres north from Logans Crossing Road is to be replaced

with 200mm. Depending on the subsequent staging of the development, the Manager, Water Supply Services may defer this augmentation in accordance with the details in the water supply strategy required of the proponent and more detailed water supply computer modelling.

B - PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

- (1) (DB002) Submission to the Principal Certifying Authority prior to the issue of a Subdivision Construction Certificate detailed design plans for the following public infrastructure works associated with the developments:

1. Road works along the frontage of the development in accordance with AUSPEC Design Specification D01 & D02, Port Macquarie-Hastings Council current version.
2. New roads within the subdivision in accordance with AUSPEC Design Specifications – Port Macquarie-Hastings Council current version.
3. Earthworks, including filling of the land for flood protection in accordance with AUSPEC Design Specification D06, Port Macquarie-Hastings Council current version.
4. Sewerage reticulation in accordance with AUSPEC Design Specification D12, Port Macquarie-Hastings Council current version.
5. Water supply reticulation in accordance with AUSPEC Design Specification D11, Port Macquarie-Hastings Council current version.
6. Retaining walls in accordance with AUSPEC Design Specifications D03, Port Macquarie-Hastings Council current version.
7. Stormwater systems in accordance with AUSPEC Design Specifications D05 & D07, Port Macquarie-Hastings Council current version.
8. Erosion & Sedimentation controls in accordance with AUSPEC D06 & D07, Port Macquarie-Hastings Council current version.
9. Location of all existing utility services including:
 - Conduits for electricity supply and communication services.
 - Water supply
 - Sewerage
 - Stormwater
 - Conduits for optical fibre
10. Landscaping in accordance with AUSPEC Design Specification D13, Port Macquarie-Hastings Council current version.
11. Detailed intersection layout at the junction of Herons Creek Road and Logans Crossing Road and each internal road with Herons Creek Road in accordance with AUSROAD Part 5 "intersections at grade"
12. Detailed intersection design of Pacific Highway and Herons Creek Road as approved by the RTA.
13. Traffic Calming Facilities at entry to Herons Creek Village.

An application and checking fee in accordance with Council's Management Plan shall be payable upon submission of engineering design plans.

The plans are to be certified by a Chartered Professional Engineer or a registered Consultancy.

- (2) (DB005) Full, approved design plans by the RTA of the proposed engineering works detail below shall be submitted to the Principal Certifying Authority for approval prior to the issue of a Construction Certificate.
 - Upgrade of the intersection of Herons Creek Road (South) and the Pacific Highway.
- (3) (DB009) If engineering works are of a value greater than \$25,000, a detailed estimate of cost of the civil engineering works and documentary proof of payment of the levy required by the Building and Construction Industry Long Service Payments Act must be provided to Council prior to any approval of engineering plans.
- (4) (DB012) An Erosion and Sediment Control Management Plan prepared in accordance with the relevant sections of the Department of Housing manual "Soil and Water Management for Urban Development", Port Macquarie-Hastings Council sediment control policies and Council's adopted AUSPEC Design and Construction Guidelines shall be submitted to and approved by the Principal Certifying Authority with the application for construction certificate.

The plan shall include measures to:

- Prevent site vehicles tracking sediment and other pollutants from the development site.
 - Dust control measures.
 - Safety measures for temporary and permanent water bodies including fencing and maximum batter slopes.
 - Contingencies in the event of flooding.
- (5) (DB031) The provision of splay corners in accordance with DCP 17. Details must be submitted to and approved by Council prior to issue of the Subdivision Construction Certificate.
 - (6) (DB038) Prior to the issue of any Construction Certificate, satisfactory arrangements are to be made with the Water Authority for the provision of water and sewer services to the land. Evidence of such arrangements will be furnishing relevant documentation from the Water Authority.
 - (7) (DB041) The connection of the proposed new lots to the sewerage systems in accordance with Council's AUSPEC Specifications. The design plans must be approved by Council prior to the issue of a Subdivision Construction Certificate.

- (8) (DB195) The proponents are to provide, for the proposed total development, a water supply strategy, detailing subdivision staging and the corresponding water supply work (including augmentation) necessary to support each stage. The strategy is to incorporate the latest changes in water supply design requirements as well as being modelled on software compatible with that used by Council. The water main layout provided with the development application is not necessarily accepted.
- (9) (DB196) A stormwater management plan must be prepared in accordance with councils AUSPEC design document (D5 & D7) before any works commence. In addition the stormwater management plan shall:
- Incorporate measures to enhance stormwater discharge quality from the site and protect downstream waterways.
 - Ensure all stormwater discharging from the site shall comply with councils AUSPEC design document, table D7.5 (Modified ecosystems – Upland streams).
 - Ensure no polluted water of any type shall be allowed to enter the natural waterway.
 - Ensure all natural gullies/creeks/streams shall have a minimum corridor width of 60m.
 - Batters of no less than 1:4 shall be provided and must start outside the minimum corridor width of 60m.
 - No works are to be undertaken within 25m of the top of bank.
 - No retaining walls shall be constructed in or adjacent to natural creek lines.
 - All drainage basins shall be fully fenced with 1.8m chainmesh security fencing.
- (10) (DB197) If the creek corridor is to be dedicated to council as a drainage reserve, this area must form part of a Vegetation Management Plan and be regenerated and maintained by the developer for a minimum of 5 years.
- (11) (DB198) The development shall comply with the Interim Port Macquarie-Hastings Flood Policy and be generally in accordance with the GHD flood assessment report (September 2008).
- (12) (DB199) The 1:100 AEP event shall including a 30% increase in rainfall volume as an allowance for the impacts of Climate Change. A minimum of 300mm shall be provided from the 1:100 flood level to the finished surface level of all allotments.
- (13) A vegetation and fauna management plan shall be prepared by a suitably qualified person (i.e. ecologist) and submitted and approved by Council prior to the release of the subdivision construction certificate application. The plan shall outline, but not be limited to the following:
1. Details of plantings of endemic species to provide compensation for the loss of potential habitat on-site and the replanting of drainage lines.

2. Vegetation removal associated with construction works, proposed lots and asset protection zones.
3. Identification and flagging of all senescent/significant trees and areas of vegetation to be preserved on the site.
4. Pursuant to Section 88B of the Conveyancing Act 1919, a positive covenant shall be created to require the proprietors of the land burdened to maintain the revegetated areas and trees to be retained onsite
5. Any proposed vegetation is to be installed onsite prior to the release of the construction certificate.
6. Process for removing and disposing of felled trees and vegetation.
7. Process of protecting trees to be retained during clearing works.
8. Maintenance periods for proposed revegetation works.
9. Contingency plans should vegetation be removed either through natural or man made causes.
10. Checklists for compliance by operators and users of the plan.
11. The plan is to accommodate stages of the development (i.e. pre construction checks, during work checks, long term checks)
12. Review periods.

The plan is to be consistent with/incorporate the recommendations of the ecological report prepared by Darkheart Eco-Consultancy, dated March 2008 and as amended on 23 June 2008. In addition, the vegetation management plan (once approved by Council) will form part of this consent and is to be read in conjunction/complied with at all times.

- (14) Prior to work commencing onsite, the access route for heavy vehicle machinery associated with the development, including excavation and clearing works, is to be approved by Council.
- (15) Prior to the release of the construction certificate, the contributions referred to in the Advice section of this consent and specified on the attached Notice of Payment (as adjusted by CPI indexing) will need to be paid to Port Macquarie-Hastings Council.
- (16) Prior to the release of the construction certificate, the applicant is to provide evidence to the RTA that the proposed upgraded southbound right turn lane from the Pacific Highway into the northern end of Herons Creek Road has the capacity to cater for the proposed development. This evidence should be provided before council releases the construction certificate. If it cannot be demonstrated then the proponent will be required to upgrade the intersection to the satisfaction of the RTA.
- (17) B-Double access to the site from the upgraded Pacific Highway must be provided. Any road works on the Pacific Highway or the State road network will require a Works Authorisation Deed (WAD) with the RTA in order to comply with current legislative, environmental and construction standards. As an alternative to entering a WAD the proponent may engage the Coopernook To Herons Creek Alliance to undertake these works as part of the Coopernook To Herons Creek

Pacific Highway upgrading project. Details of compliance with this condition will need to be provided prior to the release of the Construction Certificate.

- (18) The applicant shall increase the capacity of the southern rail overpass on Herons Creek Road to allow access for all vehicles up to and including B-DOUBLE in accordance with the requirements of ARTC. Certified design details of the upgrade to carry the heavy vehicle loads are to be submitted as documentation as part of the engineering design plans.
- (19) ARTC is to review and agree to all aspects of the proposal to include civil and signalling design in relation to the interface to the main line.
- (20) Connection Agreement with ARTC is to be executed to the main line.
- (21) A Safety Interface Agreement with ARTC is to be executed between the parties.
- (22) The applicant shall provide an accurate survey locating the development with respect to the rail boundary, other boundaries and rail infrastructure. This work is to be undertaken by a registered surveyor, to the satisfaction of ARTC's representative.
- (23) It is noted that stormwater retention basins are located in close proximity to the rail corridor. ARTC will need to review and agree to any plans relating to the retention basins. This is to ensure they will not generate any adverse impacts to the geotechnical structure to land within the corridor.
- (24) Should the applicant intend on undertaking any works to replace bridges on Herons Creek Road, details of the proposal would need to be submitted, reviewed and agreed to by ARTC. Additionally, any infrastructure (such as a sewer line) being attached to the bridge would require the applicant to enter into an Infrastructure Licence. ARTC would need to review and agree to the details relating to the pipe location and details of how it is proposed to be attached. The applicant would need to make formal application to ARTC for any such works.
- (25) The Construction Certificate will not be issued over any part of the site requiring a Controlled Activity Approval until a copy of the Approval has been provided to Council
- (26) Details of compliance with RTA and ARTC prior to construction certificate conditions will need to be provided to Council, prior to issue of the construction certificate.
- (26) Any proposed regulatory changes to existing road speed limits, linemarking or signage within Herons Creek Road is to be submitted to Council for approval prior to the issuing of Construction Certificate.

Any proposed change to existing Regulatory Speeds is to be submitted to the Local Traffic Committee for comment allowing a minimum period of six (6) weeks for reporting to Local Traffic Committee.

C - PRIOR TO ANY WORK COMMENCING ON SITE

- (1) (DC006) Erosion and sediment controls in accordance with the approved management plan shall be in place prior to the commencement of any works or soil disturbance on the site.
- (2) (DC004) - Prior to commencement of any works, a pre-construction meeting shall be organised by the applicant. This meeting is to be attended by the applicant or consultant, principle contractor and Council's Development Engineer or his representative.
- (3) (DC003) - A copy of the current stamped approved construction plans must be kept on-site for the duration of the site works and made available upon request to either the principle certifying authority or an officer of the Council.
- (4) (DC002) - A minimum of one (1) weeks notice in writing of the intention of commence works on public land is required to be given to Council, together with the name of the principle contractor and any major sub-contractors engaged to carry out works. Works shall only be carried out by a contractor accredited with Council.

D - DURING WORK

- (1) (DD002) Development works on public property or works to be accepted by Council as an infrastructure asset are not to proceed past the following hold points without inspection and approval by Council. Notice of required inspection must be given 24 hours prior to inspection, by contacting Council's Customer Service Centre on (02) 6581 8111. You must quote your construction certificate number and property description to ensure your inspection is confirmed:
 - at completion of installation of erosion control measures
 - when the sub-grade is exposed and prior to placing of pavement materials;
 - when trenches are open, stormwater/water/sewer pipes and conduits jointed and prior to backfilling;
 - at the completion of each pavement (sub base/base) layer;
 - before pouring of kerb and gutter;
 - prior to the pouring of concrete for sewerage works and/or works on public property;
 - on completion of road gravelling or pavement;
 - during construction of water infrastructure;
 - prior to sealing and laying of pavement surface course.

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

Council will undertake random audits of work sites to verify compliance of public works as required.

- (2) (DD005) The slope of the cut/fill batter shall not exceed 1:4. The batter shall be stabilised with plantings and maintained in a neat state. The batter to any stormwater control device shall not exceed 1:8 unless provided with adequate safety fencing in accordance with Council's adopted AUSPEC Design and Construction Guidelines.
- (3) (DD006) The capacity and effectiveness of erosion and sediment control measures shall be maintained at all times in accordance with the approved management plan until such time as the site is made stable by permanent vegetation cover or hard surface.
- (4) (DD024) Work on the project being limited to the following hours, unless otherwise permitted by Council: -

- Monday to Saturday from 7.00am to 6.00pm

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

- (5) (DD028) Building equipment and/or materials shall be contained wholly within the site and shall not be stored or operated on the footpath or roadway, unless specific written approval has been obtained from Council beforehand.
- (6) (DD035) The sewer junction shall be capped off with an approved fitting in conjunction with demolition works and Council notified to carry out an inspection prior to backfilling of this work.
- (7) (DD036) The site shall be left free of wastes and debris following completion of the demolition work.
- (8) (DD037) Dust or airborne particles shall not be allowed to escape from the site. The use of fine mesh dust proof screens, fine water sprays or other approved methods are required.
- (9) (DD038) In buildings constructed prior to 1970, all existing accumulations of dust (eg in ceiling voids, wall cavities, walls, floors etc) shall be removed by the use of an industrial vacuum fitted with a high efficiency particulate air filter.
- (10) (DD039) Demolition works performed on buildings with materials containing asbestos or lead shall be carried out strictly in accordance with the requirements of the Workcover Authority and National OH&S Committee – *Code of Practice for the Safe Removal of Asbestos* and *Code of Practice for the Management and Control of Asbestos in Workplaces*.
- (11) (DD040) All asbestos and lead wastes shall be sealed and disposed of in labelled plastic wrapping or bags at Council's Waste Management Facility in accordance with the directions of the Facility Manager. Arrangements are to be made with Council's Services Division prior to disposal.

- (12) (DD041) All demolition waste is to be disposed of at the Council Waste Management Facility.

At the completion of demolition activities, Waste Management Centre weighbridge dockets are to be provided to Port Macquarie-Hastings Council to demonstrate compliance with this condition.

- (13) (DD045) Should any Aboriginal objects be discovered in any areas of the site then all excavation or disturbance to the area is to stop immediately and the National Parks and Wildlife Service, Department of Environment and conservation is to be informed in accordance with Section 91 of the *National Parks and Wildlife Act 1974*. Subject to an assessment of the extent, integrity and significance of any exposed objects, applications under either Section 87 or Section 90 of the *National Parks and Wildlife Act 1974* may be required before work resumes.
- (14) (DD047) Stockpiles of topsoil, sand, aggregates, spoil or other material shall be stored clear of any natural drainage path, constructed drainage systems, easement, water bodies, or road surface and located wholly within the site with measures in place to prevent erosion or movement of sediments in accordance with the approved management plan. All spillage of materials, as a result of delivery or handling, must be removed as soon as practicable and placed into suitable receptacles for reclamation or disposal in a manner that does not cause pollution of the environment.
- (15) (DD048) Open and piped drains, gutters, roadways and access ways shall be maintained free of sediment for the duration of the work. When necessary, roadways shall be swept and drains and gutters cleaned of sediment build up.
- (16) (DD050) Noise from construction activities (measure as the L_{AeqT} noise level) shall not exceed the background noise level (measured as the L_{A90} noise level in the absence of the source), for periods of construction between 4 and 26 weeks by 10 dB(A), and for periods of construction exceeding 26 weeks by 5 dB(A), in any Octave Band Centre Frequency, when measured at any affected residence.
- (17) The constructor or site developer is to establish contact (via mail) with local residents and communicate the construction program and progress on a regular basis, particularly when noisy or vibration generating activities are planned. The correspondence to the local residents is to provide contact details, so that any issues can be identified and addressed.
- (18) All engine covers should be kept closed while equipment is operating.
- (19) All engines, plant, equipment etc is to be maintained in good order and muffler silencers applied where possible.
- (20) All engines, plant, equipment etc should be turned off when not in use.
- (21) Should there be any potential to encroach on the rail corridor during the construction phase ARTC is to be contacted immediately. Appropriate works

licences will need to be executed between the Applicant and ARTC to ensure safe working.

- (22) Should any unforeseen risks to rail infrastructure become apparent, the Applicant will be required to submit information relating to the attenuation of the risk to ARTC.
- (23) Construction equipment such as scaffolding shall not impinge over the rail corridor.
- (24) No infrastructure or equipment is to be placed or installed on the rail corridor without proper assessment or approval being obtained from ARTC.
- (25) During construction, the use of cranes and other equipment capable of intruding into the airspace above the corridor must be strictly controlled. The developer must demonstrate to the satisfaction of ARTC that all crane and other overhead operations are properly managed, and enter into an agreement with ARTC for such operation should it become apparent that there is any potential to enter the rail corridor air space.
- (26) Should the applicant require access to the corridor at any stage during the construction phase/installation work the proponent will need to make formal application and obtain relevant work licences and approvals from ARTC.
- (27) ARTC advises that run off or stormwater discharge from the development site into the rail corridor is unacceptable both during and after construction and installation. Any run off or waste arising from the development activities needs to be properly disposed of and must not be allowed to enter onto rail land.
- (28) Access to any adjoining properties is not to be restricted.

E - PRIOR TO THE ISSUE OF OCCUPATION OR SUBDIVISION CERTIFICATE

- (1) (DE004) Where any permanent control marks are placed in accordance with the Survey Regulation 2006 in the preparation of the plan, two (2) copies of the locality sketch plans of the marks placed are to be forwarded to Council with the final plan of subdivision. Any permanent control marks destroyed are to be replaced in accordance with the Survey Regulation 2006.
- (2) (DE005) Prior to the release of any bond securities held by Council for infrastructure works associated with developments, a formal written application is to be submitted to Council specifying detail of works and bond amount.
- (3) (DE037) All public roads are to be constructed in accordance with approved construction plans and Council's current AUSPEC Specifications and dedicated up to the boundaries of all adjoining properties where shown on the approved plan.

- (4) (DE043) A Professional Civil Engineer is required to furnish a Compliance Certificate to the Principal Certifying Authority confirming:
- all drainage lines have been located within the respective easements, and
 - any other drainage structures are located in accordance with the Construction Certificate.
 - all stormwater has been directed to a Council approved drainage system
 - all conditions of consent/ construction certificate approval have been complied with.
 - Any on site detention system (if applicable) will function hydraulically in accordance with the approved Construction Certificate.
- (5) (DE048) The applicant will be required to submit prior to the issue of a Subdivision Certificate, certification by a Registered Surveyor that the allotments have been filled to the levels specified by this consent.
- (6) (DE051) A Certificate of Compliance under the provisions of Section 307 of the Water Management Act must be obtained prior to the issue of any Occupation or Subdivision Certificate.
- (7) (DE056) All works shall be certified by a practicing Chartered Civil Engineer or Registered Surveyor as compliant in accordance with the requirements of AUSPEC Quality Initiatives for Provision of Public Infrastructure, prior to;
- Issue of the Subdivision Certificate;

Council will undertake random audit of work sites to verify compliance of public works as required.

- (8) (DE072) Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to Council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure. Any alterations to or relocation of street lighting to be approved in writing from Port Macquarie-Hastings Council.
- (9) (DE073) Ancillary works shall be undertaken at no cost to Council to make the engineering works required by this Consent effective to the satisfaction of Director of Council's Infrastructure Division. Such works shall include, but are not limited to the following:
- The relocation of underground services where required by civil works being carried out.
 - The relocation of above ground power and telephone services
 - The relocation of street lighting
 - The matching of new infrastructure into existing or future design infrastructure

- (10) (DE074) Provision for the supply by telecommunication services to the subject land by way of underground cables and the provision of a certificate from the relevant authority acknowledging provision of infrastructure and payment of any necessary contributions.
- (11) (DE075) Compliance with the general terms of approval of Department of Water and energy as outlined in Section H of this consent is to be submitted to Council.
- (12) (DE076) Prior to the issue of a Subdivision Certificate, written advice is to be submitted from the electricity authority confirming that its requirements for the provision of electricity services (including street lighting where required) have been satisfied and/or from the telecommunications authority confirming that its requirements for the provision of telecommunication services (including fibre optic cabling where required) have been satisfied.
- (13) (DE080) Lodgement of a security deposit with Council upon practical completion of the subdivision works equivalent to 10% of all engineering works required on public property as assessed by the Director of Infrastructure. The security deposit shall be held for a minimum maintenance period of twelve (12) months following issue of subdivision certificate, prior to formal acceptance of the work by Council.
- (14) (DE085) Road names proposed for the subdivision shall be submitted for Council approval prior to lodgement of the Subdivision Certificate. A suitable name for any new road/s shall be in accordance with Council's adopted policy.
- (15) (DE086) The proponent shall submit an application for a Subdivision Certificate for Council certification. Such application shall be accompanied by payment of all relevant fees in accordance with Council's Management Plan, and original plan of subdivision together with 7 copies with associated 88B instruments, where necessary.
- (16) (DE089) The lot identified as proposed drainage land under Council's control is to be dedicated to Council for drainage purposes. Provision for this dedication is to be made in the application for the Subdivision Certificate.
- (17) (DE094) The applicant will be required to submit prior to the issue of the Subdivision Certificate, a geotechnical report confirming construction of all earthworks in accordance with AUSPEC D6 and/or indicating the suitability of all allotments for future home/building sites; such report to provide details of:
- the surface levels of the allotments created and any other area filled or reshaped as part of the development
 - compaction testing carried out to Level 2 of Appendix B AS 3798;
 - standard penetration tests and calculated N values;
 - bore logs
 - site classification of all allotments in accordance with AS 2870.1. 1987 - *Residential Slabs and Footings*.
- (18) (DE095) Submission of a compliance certificate accompanying Works as Executed plans with detail included as required by Council's current AUSPEC

Specifications. The information is to be submitted in electronic format in accordance with Council's "CADCHECK" requirements detailing all infrastructure for Council to bring in to account its assets under the provisions of AAS27. This information is to be approved by Council prior to issue of the Subdivision Certificate.

- (19) (DE096) All subdivision works must be in accordance with Development Code DCP 17 and approved by Council prior to the issue of a Subdivision Certificate.
- (20) (DE097) Prior to the issuing of the Subdivision Certificate, provision to the Principal Certifying Authority of documentation from Port Macquarie-Hastings Council being the local roads authority certifying that all matters required by the approval issued pursuant to Section 138 of the Roads Act have been satisfactorily completed.
- (21) (DE098) Prior to the issuing of the Subdivision Certificate, provision to the Principal Certifying Authority of documentation from the Roads and Traffic Authority (RTA) being the roads authority certifying that all matters required by the approval issued by Section 61 and/or Section 138 of the Roads Act 1993 have been satisfactorily completed.
- (22) Pursuant to Section 88B of the Conveyancing Act 1919, a positive covenant shall be created on the residue lot proposed to retain the conservation areas requiring the proprietors of the land burdened to:
 - Maintain the property in accordance with the approved vegetation and fauna management plan.
- (23) Pursuant to Section 88B of the Conveyancing Act 1919, restrictions on the use of the land shall be created on the residue lot proposed to retain the conservation areas prohibiting the proprietor of the land burdened from:
 - Removing any vegetation onsite, unless in accordance with the approved vegetation and fauna management plan or with the consent of Council.
 - Erecting a dwelling.
- (24) Pursuant to Section 88B of the Conveyancing Act 1919, a positive covenant shall be created on land burdened to:
 - Maintain the Asset Protection Zones shown on the lots on the approved plan.
 - Maintain any undeveloped industrial lot as an Inner Protection Area until developed (excluding those nominated as conservation areas).
 - Advise any future purchaser of an industrial lot that development approval may be subject to the submission and acceptance of noise report prepared by a suitably qualified person that shows the subject development can occur without impacting on adjoining areas.

- (25) Prior to the release of the subdivision certificate, details of compliance with the vegetation management plan (where consistent with the timing of the vegetation management plan) is to be submitted to Council for approval.
- (26) Details of compliance with any works on ARTC land is to be submitted to Council prior to release of subdivision certificate.
- (27) Prior to issue of the subdivision certificate, all proposed conservation areas (detailed in the vegetation and fauna management plan) are to be shown as one (1) lot.
- (28) The upgrading of Herons Creek Road is to be completed in accordance with the requirements of this consent prior to the issue of any Stage 1 Subdivision Certificate.
- (29) An on-site security management plan is to be prepared that will inhibit any unlawful entry after issue of the final Subdivision Certificate. It is to continue for the life of the consent or when 75% occupancy of the development is achieved. The security management plan is to be submitted to Council for approval prior to issue of the final Subdivision Certificate and is to be implemented immediately after issue of the final Subdivision Certificate.

F - OCCUPATION OF THE SITE

- (1) (DF006) The basin of the outflow control pit and the debris screen must be cleaned of debris and sediment on a regular basis by the owner.
- (2) (DF018) Offensive odours shall not be generated by the development.
- (3) (DF019) Materials stockpiles and handling areas shall be maintained in a condition that prevents wind blown or traffic generated dust.
- (4) (DF022) Noise from the development (measured as the L_{AeqT} noise level) shall not exceed the background noise level (measured as the L_{A90} noise level in the absence of the source) by more than 5 dB(A) in any Octave Band Centre Frequency, at the boundary of any residence.
- (5) (DF023) The development is to be conducted in accordance with the noise impact statement prepared by GHD and dated January 2008, where possible
- (6) (DF026) All solid waste generated by the development which cannot be reused or recycled, shall be disposed of at Council's waste management facilities.
- (7) (DF030) Offensive noise shall not be generated as a result of the operation of the development.
- (8) All loading and unloading in connection with the use must be carried out wholly within the property.

- (9) All garbage areas/waste storage areas associated with the development are to be screened from the street, create no adverse odour impact on adjoining properties and be kept free of pests at all times.

G - ADVICE

- (1) (DG021) Submission to Council of an application for water service connections and compliance with Council's requirements for the provision of such connections. Payments of costs to provide for these connections and/or extensions are to be made prior to the issue of the Construction Certificate. This application is also to include an application for the disconnection of any existing service not required.
- (2) (DG026) As part of Notice of Requirements by Port Macquarie-Hastings Council as the Water Authority under Section 306 of the Water Management Act 2000 the payment of a cash contribution, prior to the issue of a Subdivision Certificate, of the Section 64 contributions, as set out in the "Notice of Payment – Developer Charges" schedule attached to this consent is required. The contributions are levied in accordance with the provisions of the relevant Section 64 Development Servicing Plan towards the following:
- augmentation of the town water supply headworks
 - augmentation of the town sewerage system headworks
- (3) (DG027) Extension or modification of the town water supply system where necessary to serve the development, at no cost to Council.
- (4) (DG028) Extension or modification of the town sewerage system where necessary to serve the development, at no cost to Council.
- (5) (DG029) Submission of a compliance certificate accompanying Works as Executed plans with detail included as required by Council's current AUSPEC Specifications. The information is to be submitted in electronic format in accordance with Council's "CADCHECK" requirements detailing all infrastructure for Council to bring in to account its assets under the provisions of AAS27. This information is to be approved by Council prior to issue of the Subdivision Certificate. The copyright for all information supplied, shall be assigned to Council.
- (6) (DG195) This consent does not give approval to use the proposed rail spur as a railway freight terminal nor should the consent be considered giving in principle support for such a development. The consent is for the infrastructure only.
- (7) (DG196) This consent will become null and void if an approval/permit is required under the Native Vegetation Act and is subsequently not granted by the Catchment Management Authority. Therefore, prior to the commencement of any clearing, the Catchment Management Authority should be contacted to ascertain whether or not a separate approval/permit is required under the Native Vegetation Act with any evidence of approval or approval not being required from

the Catchment Management Authority being provided to Council for records purposes.

- (8) (DG197) This consent only provides approval to the State Environmental Planning Policy 1 (SEPP 1) objection in terms of Clause 15 of the Hastings Local Environmental Plan 2001. Further SEPP 1 objection would be required pursuant to Clause 18 of the Hastings Local Environmental Plan 2001 for the proposed residue lot and also be subject to separate assessment. However, given the conservation purposes of such lot, it is unlikely that such a SEPP 1 would be supported
- (9) Some of the 150mm AC water main along Herons Creek Road north of Logans Crossing Road will be outside the road reserve and will require replacement or relocation at the proponent's cost. The Manager, Water Supply Services may permit the provision of easements where replacement or relocation is not practical. Council will eventually replace the 150mm AC water main in Herons Creek Road south of Logans Crossing Road to the Pacific Highway with 200mm.
- (10) Note that preliminary modelling has indicated an upper limit of RL 32.00 metres AHD for road construction levels. Without the full water main augmentations indicated above, there may be lower road construction level limitations in the interim period. Looping of water mains (elimination of dead ends in cul-de-sacs) is to be addressed.

H – INTEGRATED DEVELOPMENT CONDITIONS OF CONSENT

Department of Water & Energy – General Terms of Approval (Conditional to Issue of Controlled Activity Approval – Water Management Act 2000)

1. A Controlled Activity Approval (CAA) under the Water Management Act 2000 must be obtained from the Department of Water and Energy (DWE) prior to undertaking certain works in, on or under waterfront land.
2. The consent holder must prepare:
 - Site plan, map and/or surveys;
 - Structural design and specifications;
 - A Vegetation Management Plan;
 - Works Schedule;
 - Erosion and Sediment Control Plan;
 - Soil and Water Management Plan;
 - Rehabilitation Plan; and
 - Amendments to Plans
3. These plans must be prepared by a suitably qualified person and submitted for approval by the Department of Water and Energy prior to any controlled activity commencing. The plans must be prepared in accordance with Department of Water and Energy guidelines:
 - Vegetation Management Plans;
 - Laying pipes and cables in watercourses;
 - Riparian Corridors;

- In-stream works;
 - Outlet structures;
 - Watercourse crossing.
4. The consent holder must:
 - Carry out any controlled activity in accordance with approved plans, and
 - Construct and/or implement any controlled activity by, or under the direct supervision of, a suitably qualified professional, and
 - When required provide a certificate of completion to the Department of Water and Energy.
 5. The consent holder must carry out a maintenance period of three (3) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the Department of Water and Energy.
 6. The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the Department of Water and Energy.
 7. The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the Department of Water and Energy as required.
 8. Subject to reasonable notice, the consent holder will allow authorized officers to the Department access to the site and allow those officers to do all things reasonably necessary for the purpose of monitoring and/or auditing the CAA.
 9. The consent holder must ensure that any bridge, causeway or crossing does not result in erosion, obstruction of flow or destabilization, damage to the bed or banks of a river or waterfront land other than in accordance with a plan approved by the Department of Water and Energy.
 10. The consent holder must design or commission the design of any crossing over waterfront land and riparian corridors in accordance with the Department of Water and Energy Guidelines for Watercourse crossings.
 11. The consent holder must prepare design and construction details for any drainage structures/stormwater outlets to discharge into Walkers Creek and the unnamed watercourse and submit to the Department for approval prior to the issuing of a CAA. Culverts shall be designed by a suitably qualified person in accordance with the Department's guidelines.
 12. The consent holder must ensure that no materials or cleared vegetation that may obstruct flow or cause damage to river banks are left on waterfront land other than in accordance with a plan approved by the Department of Water and Energy.
 13. The consent holder is to ensure that all drainage works capture and convey runoffs, discharges and flood flows to low flow water level in accordance with a plan approved by the Department of Water and Energy.
 14. The consent holder must ensure that drain discharge points are stabilized to prevent erosion in accordance with a plan approved by the Department of Water and Energy.
 15. The consent holder must ensure that all erosion and sediment control works and water diversion structures are established in accordance with a plan approved by the Department of Water and Energy. All measures shall be inspected and maintained throughout the working period and not removed until the site has been fully stabilized.

16. The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the Department of Water and Energy.
17. The consent holder must ensure that:
 - Riverbank diversion, realignment or alteration does not result from any controlled activity work, and
 - Bank control or protection works maintain the existing river hydraulic and geomorphic functions, and
 - Bed control structures do not result in river degradation,Otherwise than in accordance with a plan approved by the Department of Water and Energy.
18. A riparian corridor is to be established along Walkers Creek and the unnamed watercourse in accordance with the Department's Riparian Corridor Guidelines.
19. Riparian zones are to function as ecological systems and as such, all works, Asset Protection Zones, access routes, roads, recreational areas, service easements and any other non-ecologically functioning work or activity are to be located beyond riparian zones, unless detailed on plans approved by DWE, prior to the issue of a CAA.
20. A Vegetation Management Plan shall be prepared in accordance with the Department's guidelines for preparing VMPs and submitted to the Department for approval prior to the issuing of a CAA.

I – ROADS AND TRAFFIC AUTHORITY - SEWER RISING MAIN CONDITIONS

In terms of the proposed works, prior to the commencement of any works in the road reserve compliance with the following conditions RTA has imposed on the works is required.

1. Should the proposed works vary in any way you must advise the RTA.
2. Any crossing of the road is to be made by thrust boring.
3. Any crossing should be at 90 degrees to the road centerline.
4. Cover from the top of the Sewer Rising Main (SRM) to any part of the road surface is to be minimum of 1.0 metre.
5. Depth of cover to SRM for any other location in the road reserve is to confirm to RTA Road Design Guide – Table 3.6-2, refer to this table for minimum depth of cover and overhead clearance requirements for various utilities.
6. The SRM should be installed such that no interference is caused to any maintenance activities within the road reserve.
7. No attachment is to be made to any drainage structure or use of structure service conduits without prior consent from the RTA.
8. Any relocation required in connection with future road works to be at no cost to the RTA.
9. Any maintenance to the SRM to be at no cost to the RTA.
10. Any disturbed ground or vegetation is to be suitably reinstated.
11. Any restoration required, as a result of any damage to the SRM by parties other than the RTA, to be at no cost to the RTA.
12. Location of the SRM to be identified by appropriate markers.

13. Works undertaken within the road reserve will require a Traffic Control Plan (TCP). If all work is carried out further than six (6) metres from the edge line only a vehicle management plan is required. The TCP must be designed and approved by a person with certification in 'Design and Audit for Traffic Control Plans' in the RTA's 'Traffic Control at Works Sites' manual and comply with Australian Standard 1742.3. The approved TCP's must be submitted to the RTA District Manager, at Port Macquarie. All site works must comply with this TCP.
14. If the TCP requires flagmen on the Pacific Highway then a Road Occupancy Licence is to be obtained from the RTA Traffic Operations Manager, Grafton (Ph 02 6640 1300) before commencement of work.
15. The RTA does not guarantee the location of existing underground services, if any. You must satisfy yourself as to the existence and location of these services and indemnify the RTA from any claims due to damage arising from your activity.
16. The proponent must undertake Public Liability Insurance to the amount of not less than \$20 million. The insurance must be extended to cover the interests of the RTA (or its agent) and Council by any contractor engaged on the construction and/or maintenance of the work.
17. Local Government Councils have jurisdiction over works affecting local roads and footpaths.
18. Notice of commencement of work on the Pacific Highway to be given seven (7) days prior to commencement Ian Drinkwater on telephone (02) 6580 3462 or fax (02) 6580 3452.
19. Notice of commencement of the subject work on the Pacific Highway should be given to Port Macquarie-Hastings Council seven (7) days prior to commencement.

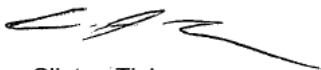
The conditions referred to in this schedule are imposed in conformity with the relevant provisions of the Environmental Planning and Assessment Act and Regulations, the Local Government Act and Regulations, The Building Code of Australia and with Council's Codes and Policies, LEP's, DCP's or any other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

Rights of Appeal

If you are dissatisfied with this decision a request for a review of the determination may be made to Council, under the provisions of Section 82A of the Environmental Planning and Assessment Act 1979.

If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act 1979 gives you the right of appeal to the Land and Environment Court.

Yours sincerely



Clinton Tink
Development Assessment Planner



Item: 06

Subject: DA2020 - 1064.1 ALTERATIONS AND ADDITIONS TO SERVICE STATION - FUEL TANK AT LOT 1 DP 831145, 140 PACIFIC DRIVE, PORT MACQUARIE

Report Author: Development Assessment Planner, Benjamin Roberts

Applicant:	North Coast Petroleum
Owner:	Wei Chen Superannuation Pty Ltd
Estimated Cost:	\$25,000
Parcel no:	19758

Alignment with Delivery Program

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

RECOMMENDATION

That DA2020 - 1064.1 for alterations and additions to service station - fuel tank at Lot 1, DP 831145, No. 140 Pacific Drive, 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 service station in the form of a new aboveground fuel storage tank 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, five (5) submissions were received.

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.

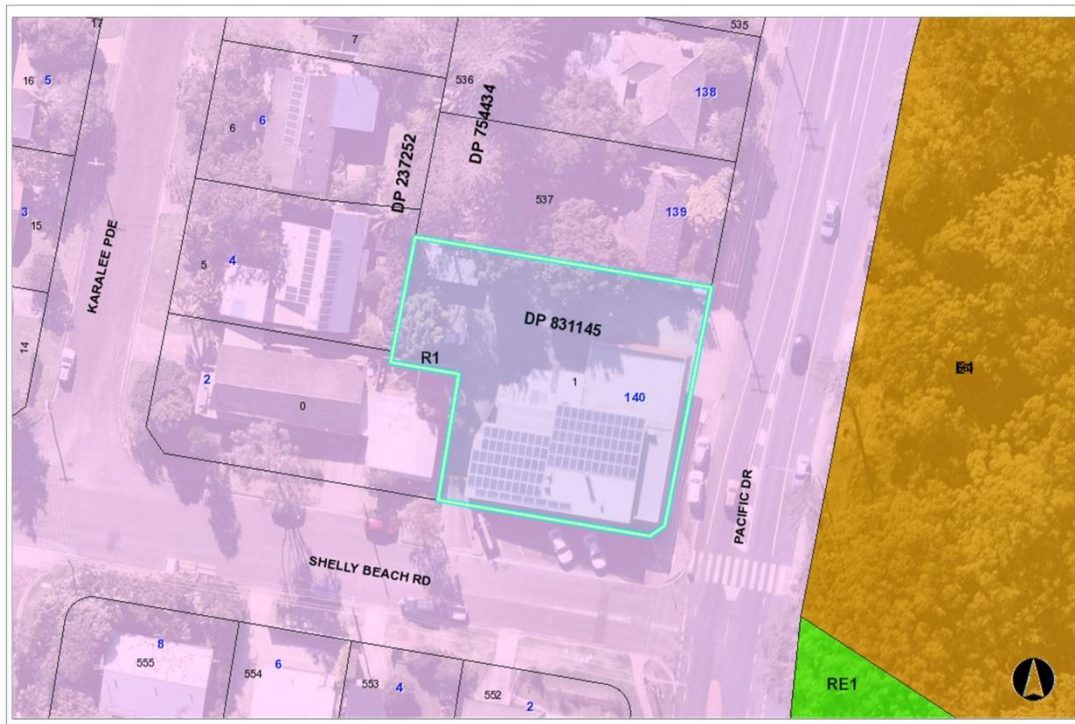
This report recommends that the development application be approved subject to the recommended conditions in **Attachment 1**.

The reason for the application being referred to Council's Development Assessment Panel (DAP) is because three (3) or more objections to the proposal have been received. A copy of the DAP Charter outlining the delegations and functions of the DAP is available on Council's website.

1. BACKGROUND**Existing Sites Features and Surrounding Development**

The site has an area of 1188.86m².

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



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



2. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposal include the following:

- Installation of an above ground 11,700 litre diesel fuel storage tank. The tank is 2.9m in height, 3m in length and 2.44m in width.

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

Application Chronology

- 2 December 2020 - Application lodged.
- 10 December 2020 - Additional information request to applicant.
- 14 December 2020 to 20 January 2021 - Public exhibition via neighbour notification.
- 18 December 2020 - Part additional information response with revised plans received by applicant.
- 6 January 2021 - Additional information request to applicant.
- 14 January 2021 - Additional information request to applicant.
- 9 February 2021 - Additional information request to applicant.
- 22 February 2021 - Part additional information response received from applicant.
- 23 March 2021 - Remaining additional information received from applicant.

3. STATUTORY ASSESSMENT

Section 4.15(1) Matters for Consideration

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

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

State Environmental Planning Policy (Koala Habitat Protection) 2020

Clause 5 - This SEPP applies to the Port Macquarie-Hastings Local Government Area.

Clause 7 - The property is less than 1ha in size and there is no Koala Plan of Management in place. No further consideration of the SEPP is required.

State Environmental Planning Policy - Hazardous and Offensive Development

This policy was introduced to clarify the definitions for hazardous and offensive industries and to apply guidelines for the assessment of industries that have the potential to create hazards or an offence.

Clause 12 of the policy requires that a development application for the purposes of a potentially hazardous industry must include a preliminary hazard analysis (PHA) in accordance with the current circulars or guidelines published by the Department of Planning, Industry and Environment.

The Department has published Hazardous and Offensive Development Application Guidelines – Applying to SEPP 33 (January 2011). Appendix 3 of The Guideline identifies Petrol Stations as industries, which may be potentially hazardous. The primary sources of hazard are identified as liquid fuel leaks/spills resulting in possible impacts such as fire and explosions.

Appendix 2 of The Guideline includes a list of information required in relation to the SEPP 33 risk screening method as follows:

- Hazardous Materials involved in the Proposed Development;
- Dangerous Goods classifications for all Dangerous Goods held on site;
- Quantities of dangerous goods and otherwise hazardous materials involved in the proposed development;
- Distance from the boundary for each hazardous substance;
- Weekly and annual number of deliveries (and the quantities) of dangerous goods and otherwise hazardous materials to and from the facility;
- Site Layout plan showing proposed development and any existing development on site; and
- Locality Plan showing immediate neighbours and their activities and also showing the nearest residential property.

In this case, the development has the potential to be hazardous given the proposal is to store additional diesel on the site and the provisions of the SEPP apply.

The above information has been satisfactorily addressed in the Preliminary Hazards Analysis included in submitted information with the application. Having considered the SEPP, the Preliminary Hazard Analysis, and with the imposition of conditions, the consideration of the SEPP is satisfied.

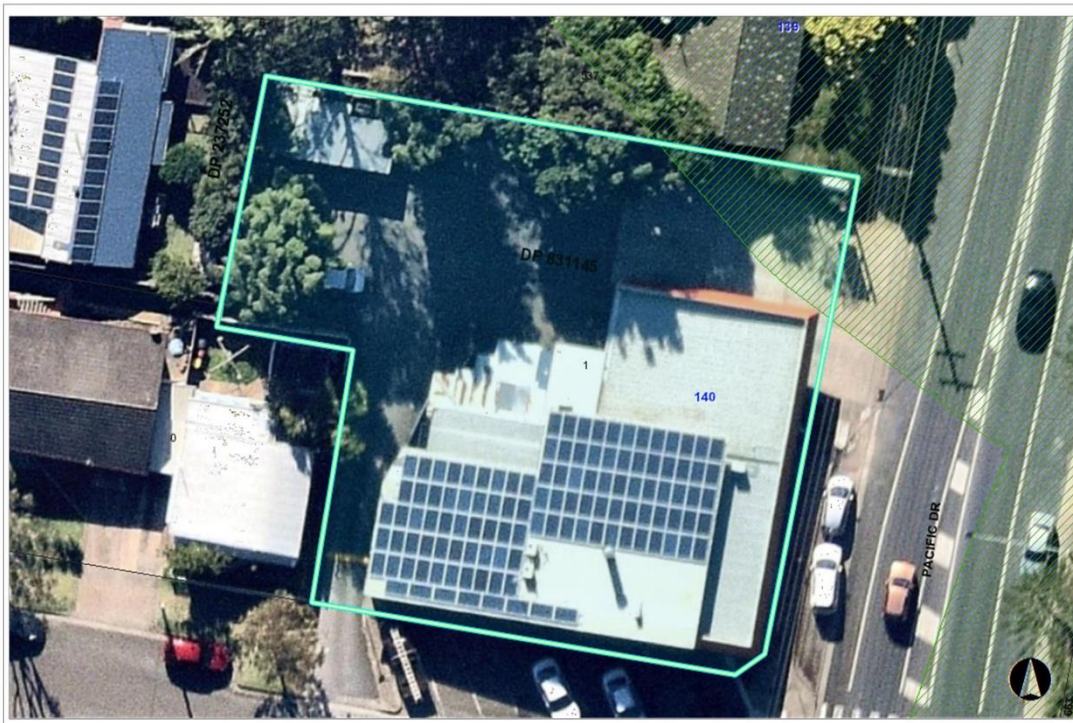
State Environmental Planning Policy No. 55 - Remediation of Land

The site is mapped as a potentially contaminated site based on current and historic use as a service station.

In accordance with clause 7 of this policy, the site in its current state is considered suitable for the additional use. Specifically, the application is for the installation of an above ground fuel storage tank only and the use of the site as a service station remains unchanged. The proposal does not involve any residential or sensitive land use that would warrant preliminary investigation or remediation.

State Environmental Planning Policy (Coastal Management) 2018

The site is located within a coastal use area and partly with the proximity area to littoral rainforest. For context, see map image below with green hatching showing the mapping extent of proximity area to littoral rainforest.



Clause 7 - This SEPP prevails over the Port Macquarie-Hastings LEP 2011 in the event of any inconsistency.

Having regard to clause 11 (proximity to littoral rainforest), the proposed development is not considered likely to result in any of the following:

- (a) identifiable adverse impacts on the biophysical, hydrological and ecological integrity of the nearby littoral rainforest; and
- (b) identifiable impacts to water flows to the nearby littoral rainforest.

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 funneling and the loss of views from public places to foreshores; and
- 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.

Clause 15 - The proposal is not likely to cause increased risk of coastal hazards on the land or other land.

The bulk, scale and size of the proposed development is compatible with the surrounding coastal and built environment. The site is predominately cleared and located within an established residential area.

State Environmental Planning Policy No 64 - Advertising and Signage

The proposed development does not include any new signage.

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 land use table - The proposal is for an addition to the existing service station. Service stations are a prohibited land use in the R1 zone. Refer to comments below surrounding existing use rights.
- The following land use in the LEP is relevant to determine and characterise the proposed use:
 - a) *“service station means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following—*
 - b)
 - c) *(a) the ancillary sale by retail of spare parts and accessories for motor vehicles,*
 - d) *(b) the cleaning of motor vehicles,*
 - e) *(c) installation of accessories,*
 - f) *(d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration),*
 - g) *(e) the ancillary retail selling or hiring of general merchandise or services or both.”*

The proposal is reliant upon existing use rights. Part 5 of the Environmental Planning and Assessment Regulation 2000 applies. Clause 41 of the Regulation provides that an existing use may be enlarged, expanded or intensified.

Clause 42 of the Regulation also provides that development consent is required for enlargement, expansion and intensification of an existing use and that the enlargement, expansion and intensification must be carried out only on the land on which the existing use was carried out immediately before the relevant date. The above ground fuel tank is to be located on the land to which the existing use applies.

- 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.

The proposal is reliant upon existing use rights and does not contain any residential housing component. The proposal will provide for enlargement, expansion and intensification of the existing service station which provides a facility for residents in the immediate area. Having regard to the existing use, the proposal is not inconsistent with the zone objectives.

- Clause 5.10 - The site does not contain or adjoin any known heritage items or sites of significance.
- Clause 7.13 - Satisfactory arrangements are in place for provision of essential services including water supply, electricity supply, sewer infrastructure, storm water 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

The above ground storage tank is relocatable and adequately setback from boundaries (i.e. >3.5m from nearest western boundary).

The installation of the above ground fuel storage tank will not generate any additional off-street parking demand. The location of the tank has been amended through the assessment process as to allow existing approved off-street parking arrangements to remain available and accessible.

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

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

(iv) Any matters prescribed by the Regulations

No matters prescribed by the regulations apply.

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

Context and Setting

The site is a corner block with street frontages to Pacific Drive and Shelley Beach Road. The site is located within an established area and adjoins residential land to the north, south and west, which primarily comprises a mixture of single and two storey dwellings. Adjoining the site to the east is rainforest vegetation.

- The proposal will be unlikely to have any adverse impacts to existing adjoining properties or the public domain.
- The proposal does not have a significant adverse impact on existing view sharing.
- The proposal does not have significant adverse lighting impacts. Specifically, no exterior lighting is proposed under this application.
- There are no significant adverse privacy impacts.

Roads, Traffic and Transport

The site has road frontage to both Pacific Drive and Shelley Beach Road. Both roads are under the care and control of Council.

Access to the site is via the existing crossover from Pacific Drive. Egress is via the existing crossover in Shelley Beach Road. No change to existing access arrangements are proposed or required. Sufficient details have been provided during assessment which demonstrate a 12.5m length heavy rigid vehicle (HRV) fuel tanker can manoeuvre into and out of the site without conflicting with the above ground fuel storage tank and off-street parking spaces.

Parking and Manoeuvring

The above ground fuel storage tank is proposed in the location of a previously approved off-street parking spaces. The parking space is proposed to be moved eastward and in front of the proposed aboveground fuel tank.

Water Supply

No change to existing supply or connections proposed.

Sewer Supply

No change to existing supply or connections proposed.

Stormwater

The proposed above ground fuel storage tank is to be 'self bunded'. Stormwater is capable of being managed as to ensure no contamination of the stormwater network.

Other Utilities

No change to existing telecommunication and electricity services proposed.

Heritage

No known items of Aboriginal or European heritage significance exist on the property. No adverse impacts anticipated.

Other land resources

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

Water cycle

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

Soils

The proposed development will not have any significant adverse impacts on soils in terms of quality, erosion, stability and/or productivity.

Air and microclimate

The proposed fill point of the tank is located adjacent the existing underground fuel storage tank fill points in the service station forecourt. It is not expected that fuel odours would be greater than that currently experienced during the filling of the existing underground fuel tanks. The tank will also have a vapour vent installed consistent with Australian Standards to encourage the attenuation of odour.

The proposed new fuel storage tank will result in additional fuel vapour release during filling operations and given the proximity to residential receivers it is considered appropriate that stage 1 vapour recovery be installed to the new tank and be utilised during filling.

Subject to the implementation of the recommended conditions, the construction and/or operation of the proposal will not result in any significant adverse impacts on the existing air quality or result in any pollution.

Flora and fauna

Construction of the proposed development will not require any removal/clearing of any 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

No waste will be generated from the development proposal. No adverse impacts anticipated.

Energy

No adverse impacts anticipated.

Noise and vibration

The proposal is for the installation of the above ground fuel storage tank only. The fill point for the tank is located alongside existing fill points in the forecourt of the service station. No change to the operational aspects or hours (including fuel deliveries) is proposed. A condition has been recommended to reinforce that fuel deliveries occur during the approved operational hours of 7am to 8pm daily.

Standard precautionary site management condition recommended stipulating appropriate installation hours. No adverse noise impacts would result from the proposed development.

Bushfire

The site is identified as being bushfire prone. The proposal is for an above ground fuel storage tank only. Having regard to the bushfire resistant material/construction (i.e. metal) of the tank and distance from the nearest hazard there is no increased risk from bushfire and no further assessment is necessary.

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

The proposal is not considered to have any significant adverse social impacts.

Economic impacts in the locality

The proposal is not considered to have any significant adverse economic impacts on the locality.

Site design and internal design

The proposed development design satisfactorily responds to the site attributes and will fit into the locality.

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.

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

Five (5) written submissions were received following public exhibition of the application. Copies of the written submissions have been provided separately to members of the DAP.

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

Submission Issue/Summary	Planning Comment/Response
The soil test results lodged with the application exceed relevant safe criteria. Fuel leakage could be seeping and contaminating adjoining land. No additional fuel storage should be permitted on the site.	It is unclear why soil test results for the existing underground fuel storage tanks accompanied this application. However, the results were provided to Council's Environmental Health section whom have advised that the results are within the relevant industry standards. A separate response to the customer has been provided by the Environmental Health section.
There will be health impacts from increased fuel storage and vapours being located so close to adjoining residential houses. Vapour recovery should be installed to reduce vapour impact during filling.	The tank is being positioned onsite and will be installed on site to industry standards. The new fill point is proposed adjacent the existing underground tank fill points. A condition has been recommended requiring stage 1 vapour recovery be installed and implemented during fuel delivery. No adverse health impacts are anticipated that would warrant refusal of this application.
Current regulations aim to reduce/remove fuel and service stations from residential areas.	The service station is operating under existing use rights. Refer to comments under LEP heading of this report.
The tank will prevent fuel trucks from manoeuvring into and out of the site.	Sufficient details (swept paths) have been provided during assessment and post exhibition which demonstrate fuel trucks can manoeuvre into and out of the site.
The tank will result in loss of required off-street parking.	Sufficient details have been provided which demonstrate no net loss of off-street parking.
No details have been provided as to the location of the fill point.	The fill point is indicated on revised plans, which is located alongside the existing fill points in the forecourt.
The current method of fuel delivery via a large tanker reversing off Pacific Drive is unsafe and blocks Pacific Drive. This will exacerbate the problem.	No change to the historically approved fuel delivery arrangement on the site is proposed under this application. A review of the historic approval (DA 1988/67) indicated that fuel delivery was entry via Pacific Drive and exit via Shelley Beach Road in a forward direction. The swept path plan provided is consistent with this. Fuel delivery by any other means would be a regulatory matter.
Spillage from the tank and fill point will lead to adverse environmental impacts.	The tank is 'self bunded' and fill point located alongside the existing fill points in the forecourt. Conditions have been recommended to reinforce spill containment requirements. Subject to implementation, no adverse environmental impacts would result.

Submission Issue/Summary	Planning Comment/Response
The tank will be visually unappealing and not reflective of the surrounding residential character.	The tank will be approximately 3m in height, positioned behind the main building on the site and setback a minimum of 3.5m from the western boundary. The tank will not be visually prominent from any public vantage points.
Why would Council encourage the sale of more diesel when governments around the world are banning its production?	This is not a relevant planning consideration. Sale of diesel is not prohibited under Federal and State legislation.
There is the potential for theft and vandalism of pipes/fittings and diesel from the tank.	Casual surveillance of the tank is available during operation and video surveillance available outside these hours.

(e) The Public Interest

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

Ecologically Sustainable Development and Precautionary Principle

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

The four principles of ecologically sustainable development are:

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

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

Climate change

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

4. DEVELOPMENT CONTRIBUTIONS APPLICABLE

- Section 64 charges will not be required as there is no extra demand on the water or sewer supply network.
- Development contributions will not be required under Section 7.11 because no residential components are proposed.
- Development contributions will not be required under section 7.12 as the cost of work is less than \$100,000.



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.  DA2020 - 1064.1 Recommended Conditions
2.  DA2020 - 1064.1 Plans

**FOR USE BY PLANNERS/SURVEYORS TO PREPARE LIST OF
PROPOSED CONDITIONS - 2011****NOTE: THESE ARE DRAFT ONLY****DA NO: 2020/1064****DATE: 26/03/2021****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
Statement of Environmental Effects	Self bunded double walled combustible liquid tanks	John Chapple - North Coast Petroleum	23 November 2020
Site plan	Sheet 1 of 1	North Coast Petroleum	16 December 2020
Tank assembly plan	Drawing No: LSB-12-00 Job No: T-12KL Revision 03 Sheet 1	Third angle protection	4 December 2010
Tank hardstand details	Drawing No: TT-SD00-19004 Revision D	Transtank	22 November 2010
Truck turning path plan	Project No: 210226 Drawing No: VT1 Revision A	Lucena Civil and Structural Engineers	17 February 2021

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

- (2) (A009) The development site is to be managed for the entirety of work in the following manner:
1. Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 2. Appropriate dust control measures;

3. Building equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained. Where work adjoins the public domain, fencing is to be in place so as to prevent public access to the site;
4. Building waste is to be managed via 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 holidaysThe builder to be responsible to instruct and control his sub-contractors regarding the hours of work.

B – PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

nil

C – PRIOR TO ANY WORK COMMENCING ON SITE

nil

D – DURING WORK

- (1) (E030) The relocated off-street parking space shall be sealed and line marked upon installation of the tank.

E – PRIOR TO OCCUPATION OR THE ISSUE OF OCCUPATION CERTIFICATE

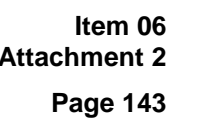
- (1) (E007) The owner/applicant is responsible for ensuring that any imported fill for the tank mound/foundation is either Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM).
- (2) Stage 1 vapour recovery equipment shall be installed and commissioned prior to use/filling of the new tank consistent with *Standards and Best Practice Guidelines for Vapour Recovery at Petrol Service Stations* prepared by NSW Environmental Protection Authority and dated March 2017. A copy of the commissioning report shall be provided to Port Macquarie-Hastings Council within one month of commissioning.

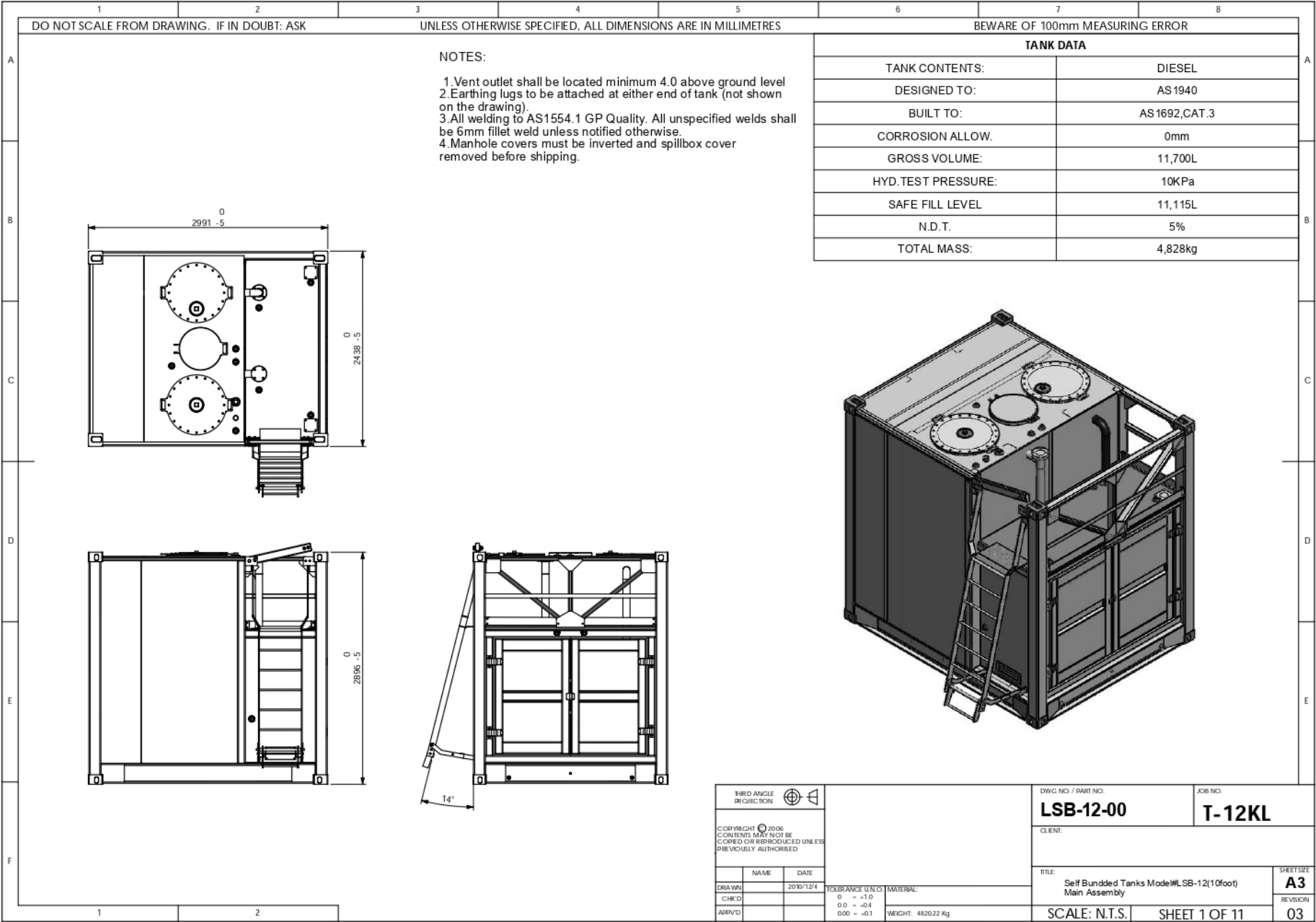
F – OCCUPATION OF THE SITE

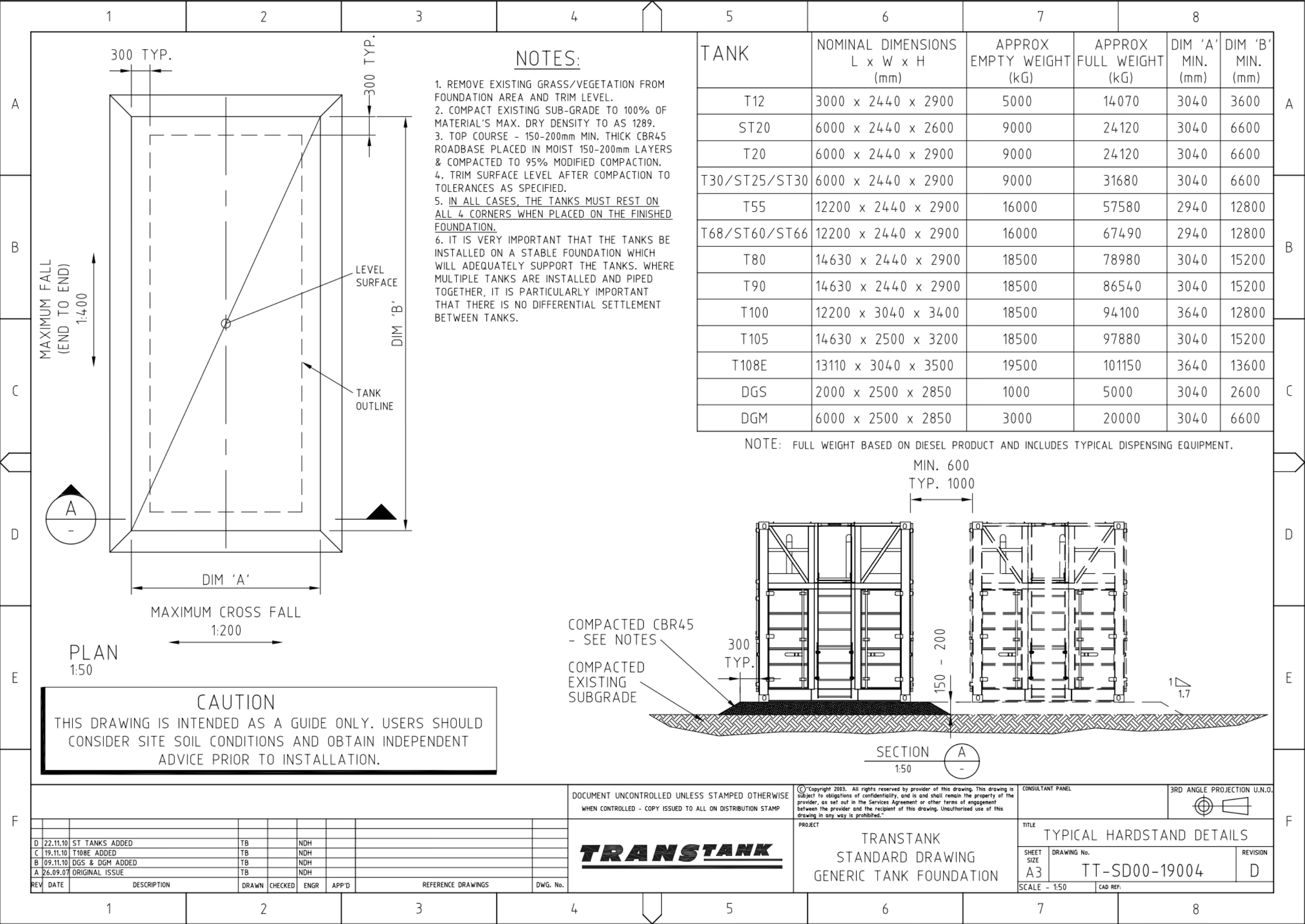
- (1) (F003) All loading and unloading operations associated with servicing the fuel tank must be carried out within the confines of the site, at all times and must not obstruct other properties/units or the public way. The fuel delivery truck serving the new tank shall be no bigger than a 12.5m long heavy rigid vehicle.
- (2) (F016) Offensive odours shall not be generated by the development, including the process of filling the fuel tank during which stage 1 vapour recovery shall be implemented.
- (3) (F023) Spills and contaminated runoff shall be prevented from entering the stormwater system. In this regard, adequate spill containment equipment should be maintained on site at all times.

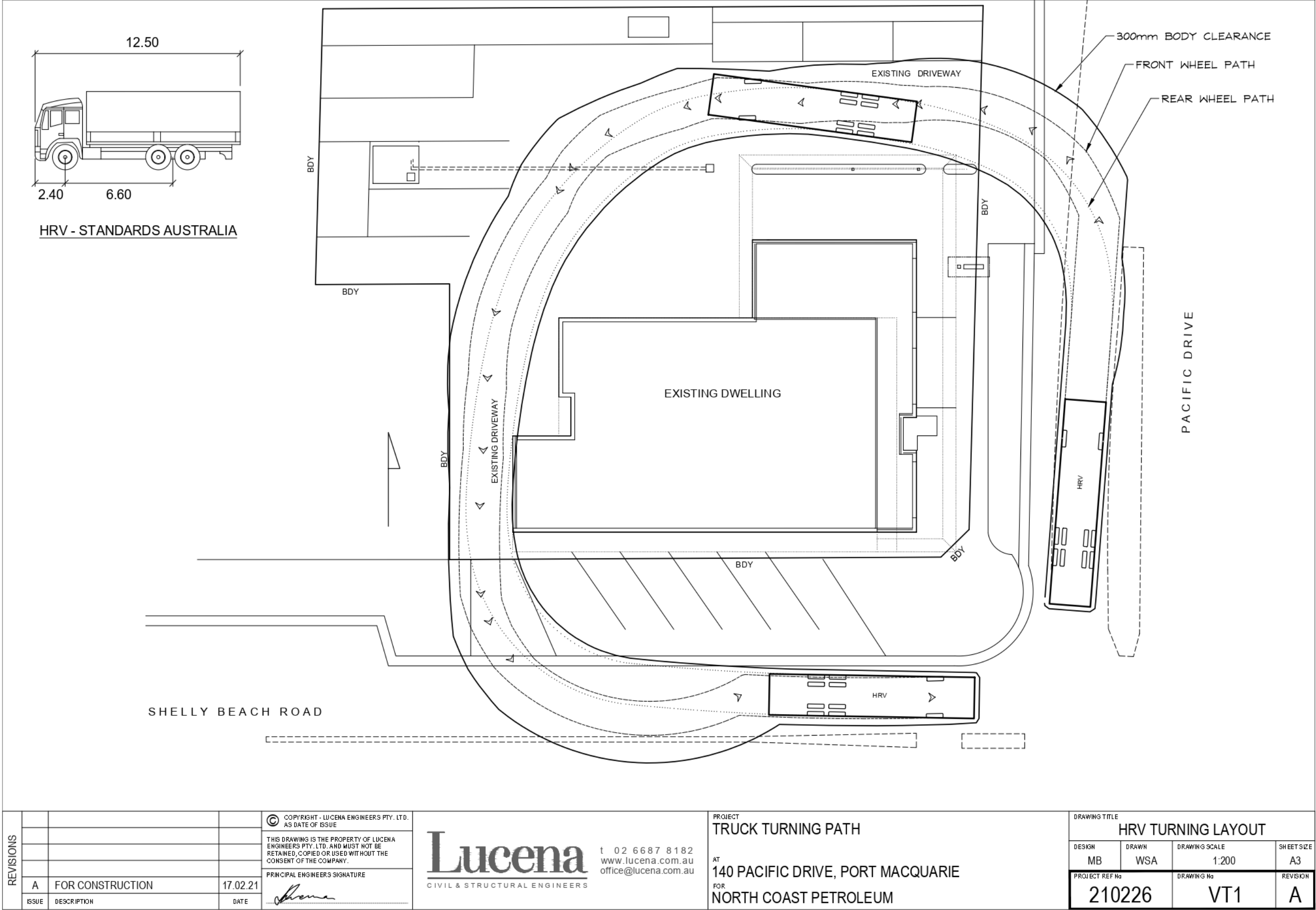
- (4) (F024) Offensive noise as defined under the Protection of the Environment Operations Act 1997, shall not be generated as a result of the operation of the development.
- (5) (F195) The hardstand area below and around the tank shall be maintained in good condition, free from cracks, potholes or any other potential pathways that would permit any spilt fuel to enter the soil and/or groundwater.
- (6) (F196) Fuel deliveries to the tank shall only occur during the approved trading hours from 7am to 8pm daily.

DRAFT









Item: 07

Subject: DA2020 - 457.1 MULTI-DWELLING HOUSING AND STRATA
SUBDIVISION AT LOT 14 DP 1219811, NO 91 THE RUINS WAY,
PORT MACQUARIE

Report Author: Development Assessment Planner, Fiona Tierney

Applicant:	B R Development Consulting
Owner:	Hibbards Pty Ltd
Estimated Cost:	\$4,200,000
Parcel no:	65359

Alignment with Delivery Program

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

RECOMMENDATION

That the Development Assessment Panel recommend to Council that DA 2020 - 457 for a Multi Dwelling Housing and Strata Subdivision at Lot 14, DP 1219811, No. 91 The Ruins Way, Port Macquarie, be determined by granting consent subject to the recommended conditions.

Executive Summary

This report considers a development application for a multi-dwelling housing and strata subdivision at the subject site and provides an updated assessment of the application in accordance with the Environmental Planning and Assessment Act 1979.

The application was previously reported to the Development Assessment Panel on 25 November 2020 where a consensus could not be reached. The application was further reported to Council on 9 December 2020 with the following recommendation:

'That the recommendation not be adopted because the proposal is for an infill development comprising a cluster of 16 two - storey dwellings within an environmentally sensitive low density residential area. The adjacent area comprises predominantly single storey dwellings in a garden setting with landscaped private rear yards, all substantially complying with the current DCP minimum 4m rear setback controls. Particular concerns are:

- 1. The majority of the proposed 2 storey dwellings do not comply with the DCP 4m rear setback control, as detailed in the assessment report. Bldgs 10 and 11 are particularly deficient having rear setbacks of approximately 1.57m along which they have alfresco areas and living rooms. Similarly, non-complying setbacks are for Bldg 13 = 1.925m, Bldg 14=1.70m and Bldg 15 = 1.67m. The majority of the new buildings have maximum setbacks of 3m. This*

has generated submissions regarding loss of amenity, loss of privacy and concerns about the incompatibility of this proposal with the existing neighbourhood, which have merit.

- 2. The non-complying setbacks results in the inability to incorporate satisfactory rear yard areas with complimentary landscaping that is consistent with the existing neighbourhood character. As such it does not reasonably satisfy the DCP Cl 3.2.2.4 Objectives in regard to the provision of usable areas and open space.*
- 3. Notwithstanding the compliance with the numerical density controls, nevertheless the retention of the designated koala trees T1 and T2 are at increased risk due to the close proximity of the main access way between these trees and over their root system.*
- 4. Considering the environmental sensitivity of this site, this proposal is considered an overdevelopment within this neighbourhood, which will not lead to a good planning outcome and is therefore not suitable for approval in its current presentation.*
- 5. If council wishes to allow substantially reduced setbacks and effectively abandon the DCP provisions, then this is a policy decision for Council bearing in mind that the public interest is well served by the consistent application of properly adopted DCP provisions.*

At the 9 December 2020 Council meeting Council subsequently resolved as follows:

- 1. That DA 2020 - 457.1 for a Multi Dwelling Housing and Strata Subdivision at Lot 14, DP 1219811, No. 91 The Ruins Way, Port Macquarie, be deferred to enable the applicant to amend the proposal and respond to all the issues raised by the members of the Development Assessment Panel on 25 November 2020, and the issues raised by members of the community.*
- 2. That Council request the General Manager to facilitate an on-site inspection and briefing for Councillors on the issues once the additional information has been received from the applicant and assessed by staff.*

In accordance with the above resolution, the applicant has submitted a response to the items raised (**Attachment 4**), revised plans providing for increased setbacks (**Attachment 2**), and further justification for tree retention, and removal of dead tree supported (on adjoining lot) by an amended arborist report (**Attachment 5**).

Following re-exhibition of the amended application and information, six (6) submissions were received. The issues raised are addressed later in the report.

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.

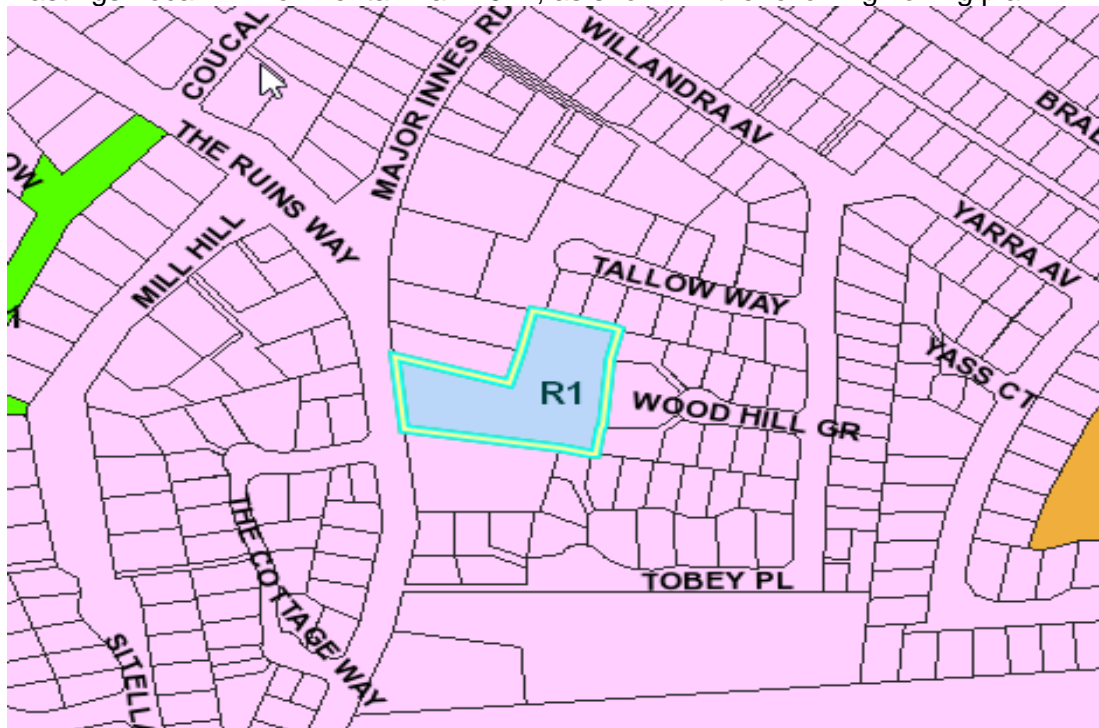
This report recommends that based on the amended details and additional information provided, that the development application can be approved subject to the attached conditions in (**Attachment 1**).

1. BACKGROUND

Existing Sites Features and Surrounding Development

The site has an area of 7489m².

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



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



2. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposal include the following:

- Construction of 16 x 3 bedroom dwellings and associated earthworks, driveways and parking.
- Strata Subdivision.
- Retention of Tallowwoods on site under the Koala Plan of Management.

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

Application Chronology

- 11 June 2020 - Application lodged.
- 19 June 2020 to 2 July 2020 - Neighbour notification.
- 16 June 2020 - Additional information requested from Applicant in relation to stormwater.
- 12 August 2020 - Additional information requested increased setbacks
- 19 October 2020 - amended plans with increased setbacks to units 14,15 & 16
- 2 November 2020 - Additional information amended plans submitted stormwater.
- 25 November 2020 - Development Assessment Panel-consensus not reached
- 9 December 2020 - Ordinary council- applicant to revisit, amend, report back to DAP.
- 23 December 2020 - Revised plans received- Increased setbacks, retention of Lillipilli Hedge, further consideration of dead tree on adjoining property and root zones of retained trees
- 3 February 2021 to 16 February 2021- Neighbour re-notification
- 3 March 2021- Amended plans received- minor increase in setback U6

3. STATUTORY ASSESSMENT**Section 4.15(1) Matters for Consideration**

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

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

State Environmental Planning Policy (Koala Habitat Protection) 2019

Clause 5 - This SEPP applies to the Port Macquarie-Hastings Local Government Area.

Clause 8 - The site is subject to an existing Koala Plan of Management (KPoM) and is less than 1 hectare in area. The subject KPoM is Koala Plan of Management DA1999 - 1155 Willandra Ave, Tallow Way and Wood Hill Gr, Port Macquarie - 40 Lot Subdivision and Cluster Housing 33 Willandra Avenue PORT MACQUARIE.

The Applicant has submitted an Arborist report (and a further revision to address the concerns raised through DAP in relation to the dead tree on the adjoining lot and to

revisit the suitability of the driveway placement (**Attachment 5**), to support the application for development of the site and the proposal has been assessed by Council's Arborist and Ecologist.

Conditions are included to ensure compliance with the approved KPoM including restrictions as to the user, site signage and fencing to be applied to support the long term retention and protection of the existing Tallowwoods on site. It is considered that the trees are a valuable part of the linkages throughout the precinct. Trees on the site are to be assessed regularly for maintenance by a qualified Arborist to ensure safety of occupants of the dwellings and so the trees are maintained in good condition. Footing/slab design shall support maintenance and protection of trees.

Appropriate consent conditions are recommended to ensure compliance with these requirements.

The proposal does not contravene applicable requirements of the KPoM. No further investigations are required under this SEPP.

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 (Infrastructure) 2007

Clause 45 – Development in proximity to electricity infrastructure – referral to Essential Energy is not required having regard to any of the following triggers for referral:

- (a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,
- (b) development carried out:
 - (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or
 - (ii) immediately adjacent to an electricity substation, or
 - (iii) within 5m of an exposed overhead electricity power line,
- (c) installation of a swimming pool any part of which is:
 - (i) within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or
 - (ii) within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool

The development does not trigger any of the traffic generating development thresholds of Clause 104. Referral to the NSW Roads and Maritime Services (RMS) is not required.

Based on the above, the proposed development is consistent with the relevant clauses in the SEPP.

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

A BASIX certificate has been submitted demonstrating that the proposal will comply with the requirements of the SEPP. It is recommended that a condition be imposed

to ensure that the commitments are incorporated into the development and certified at Occupation Certificate stage.

Port Macquarie-Hastings Local Environmental Plan 2011

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

- Clause 2.2 - The subject site is zoned R1 General Residential.
- Clause 2.3(1) and the R1 zone landuse table - The proposed development for multi dwelling housing is a permissible landuse with consent.
- Clause 2.3(2) - 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.*

1. The proposal is consistent with the zone objectives having regard to the development providing for a variety of housing types and densities in the locality and contribute to meeting the housing needs of the community.

- Clause 4.1(4) - The minimum subdivision lot size does not apply to the registration of a strata plan of subdivision.
- Clause 4.3 - The maximum overall height of the buildings above ground level (existing) is 7m which complies with the standard height limit of 8.5m applying to the site.
- Clause 4.4 - The site has a land area of 7481.15m². There are 16 dwellings proposed with a total gross floor area (GFA) of approximately 3,248m². The floor space ratio of the proposal is 0.43:1.0 which complies with the maximum 0.65:1 floor space ratio applying to the site.
- Clause 5.10 - The site does not contain or adjoin any known heritage items or sites of significance.
- Clause 7.13 - Satisfactory arrangements are in place for provision of essential services including water supply, electricity supply, sewer infrastructure, stormwater drainage and suitable road access to service the development. Provision of electricity will be subject to obtaining satisfactory arrangements certification prior to the issue of a Strata Certificate as recommended by a condition of consent.

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

No draft instruments apply to the site.

(iii) Any Development Control Plan in force

Port Macquarie-Hastings Development Control Plan 2013:

DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development			
	Requirements	Proposed	Complies
3.2.2.1	Ancillary development: <ul style="list-style-type: none"> • 4.8m max. height • Single storey • 60m² max. area • 100m² for lots >900m² • 24-degree max. roof pitch 	Water tanks have been suitability located on-site for each dwelling.	Yes

DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development			
	Requirements	Proposed	Complies
	<ul style="list-style-type: none"> Not located in front setback 		
3.2.2.2	Articulation zone	No elements within the articulation zone.	N/A
	Front setback (Residential not R5 zone): <ul style="list-style-type: none"> Min. 4.5m local road 	Front building line setback requirements are complied with. Minimum 4.5m setback to The Ruins Way for Units 1. Minor variation to Unit 16 to 4.05m to south western corner increasing to .All other units face the internal driveway.	No- minor variation that meets the objectives given the angled setback.
3.2.2.3	Garage 5.5m min. and 1m behind front façade. Garage door recessed behind building line or eaves/overhangs provided	Garage door setback requirements are complied with. Garages face internal driveways and are located behind the front facade.	Yes
	6m max. width of garage door/s and 50% max. width of building	N/A garages face internal	N/A
	Driveway crossover 1/3 max. of site frontage and max. 5.0m width	Main common driveway crossing width requirements are complied with.	Yes
3.2.2.4	4m min. rear setback. Variation subject to site analysis and provision of private open space	<p>The site is irregular in shape so side and rear boundaries are atypical. However, it is considered that the rear setback is assumed to be on the eastern rear of the lot. This setback relates to Units 6 to 10 proposed along the rear eastern boundary.</p> <p>The minimum setbacks are as follows: Unit 6 = 3.5 Min. (increased from 2.6m) setback Unit 7 = 4 Min. (Increased from 3m) setback Unit 8 = 4m Min. (Increased from 3m)</p>	Generally, yes. Except units 6 and 10 No* see further discussion below this table

DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development			
	Requirements	Proposed	Complies
		Unit 9 = 4m Min. (Increase from 3m) Unit 10 = 2m Min and increased to 4m North. Unit 11 = 4m Min.	
3.2.2.5	Side setbacks: <ul style="list-style-type: none"> • Ground floor = min. 0.9m • First floors & above = min. 3m setback or where it can be demonstrated that overshadowing not adverse = 0.9m min. • Building wall set in and out every 12m by 0.5m 	<p>The side boundaries which are considered to side boundaries are all boundaries other than the east rear and west front boundary.</p> <p>The ground floor side setbacks are as follows:</p> <p>Units 1, 2 and 3 = 3m south side setback. Unit 4 = 9.43m south side setback. Units 5 & 6 = 4m south side setback. Unit 10 = 2.0m east side setback. Unit 11 = 4m north side setback. Unit 13 = 1.05m west side setback. Unit 14 = 2.725m north side setback. Unit 15 = 3.67m Min setback (Increased from 1.67m) north side setback. Unit 16 = 4.995m Min Setback (Increased from 2.9m) north side setback.</p> <p>The first floor side setbacks are as follows:</p> <p>Units 1, 2 and 3 = 4.39m south side setback. Unit 4 = 10m south side setback. Units 5 & 6 = 5m south side setback. Unit 10 = 5.39m (increased from 3.36m) north side setback.</p>	Yes

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

	Requirements	Proposed	Complies
		<p>Unit 11 = 5.395m (increased from 3.36m north side setback. Unit 13 = 1.05m west side setback. Unit 14 = 4.5m (Increased from 3.0m) north side setback. Unit 15 = 5.44m (increased from 3.0m) north side setback. Unit 16 = 6.765m (Increased 5.1m) north side setback.</p> <p>The first floor setbacks referred to above for Unit 13 has a setback less than 3m however it will not result in any adverse overshadowing impacts to the neighbouring properties and therefore comply with the minimum reduction down to 1.05m setback which is permitted by DCP. Note: Rear setback to the east are addressed separately.</p> <p>The wall articulation of all dwellings is compliant and satisfies the objectives of the development provision.</p>	
3.2.2.6	35m ² min. private open space area including a useable 4x4m min. area which has 5% max. grade	Each occupancy contains various configurations of 35m ² open space in one area including a useable 4m x 4m area in combination with alfresco. Significant additional common area/open space areas exist throughout the site.	Yes
3.2.2.7	Front fences:		No*

DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses & Ancillary development			
	Requirements	Proposed	Complies
	<ul style="list-style-type: none"> If solid 1.2m max height and front setback 1.0m with landscaping 3x3m min. splay for corner sites Fences >1.2m to be 1.8m max. height for 50% or 6.0m max. length of street frontage with 25% openings 0.9x0.9m splays adjoining driveway entrances 	<p>1.8m height colourbond fence proposed along front of Units 1 and 16 which is contrary to the DCP provisions and KPoM. Landscaping proposed however in the front of the Unit 1 front fence.</p> <p>Internal courtyard fencing proposed also.</p>	Condition recommended to require Units 1 and 16 front fences to be compliant with the DCP and be lapped and capped timber construction.
3.2.2.8	<p>Front fences and walls to have complimentary materials to context</p> <p>No chain wire, solid timber, masonry or solid steel front fences</p>		
3.2.2.10	<p>Privacy:</p> <ul style="list-style-type: none"> Direct views between living areas of adjacent dwellings screened when within 9m radius of any part of window of adjacent dwelling and within 12m of private open space areas of adjacent dwellings. ie. 1.8m fence or privacy screening which has 25% max. openings and is permanently fixed Privacy screen required if floor level > 1m height, window side/rear setback (other than bedroom) is less than 3m and sill height less than 1.5m Privacy screens provided to balconies/verandahs etc which have <3m side/rear setback and floor level height >1m 	<p>The development will not compromise privacy in the area due to a combination of building design, setbacks and fencing. In particular primary living spaces are located at ground floor level.</p> <p>Sill heights are 1.4m for the upper rooms consisting of bedrooms and multipurpose rooms which meets the objectives. The MPRs in particular are not considered to be a main living area, or the principal area of private open space for the purpose of considering the DCP privacy provisions.</p> <p>The applicant has also agreed to retain the majority of the existing Lilipilli hedge on site to provide a landscape buffer between the existing and proposed residential development. A 300mm</p>	Yes

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

	Requirements	Proposed	Complies
		privacy screen on top of the existing fence for units 5 & 6 is now proposed.	

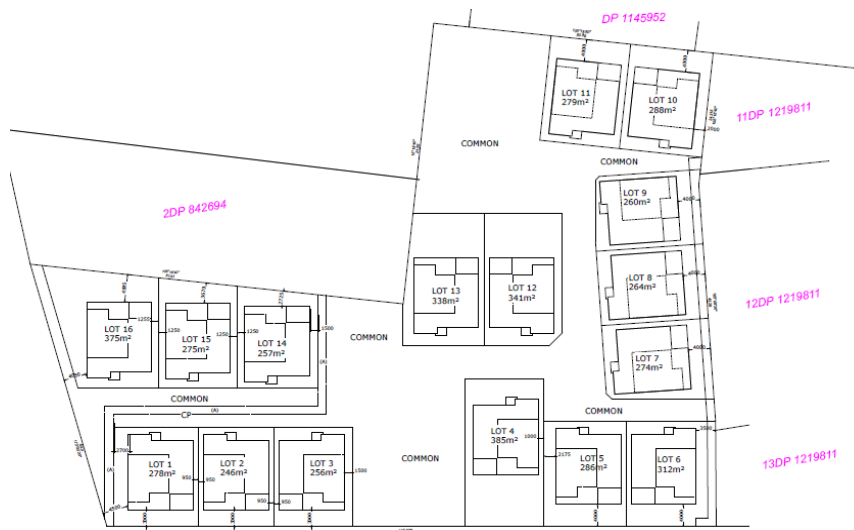
DCP 2013: General Provisions

	Requirements	Proposed	Complies
2.7.2.2	Design addresses generic principles of Crime Prevention Through Environmental Design guideline	No concealment or entrapment areas proposed. Adequate casual surveillance available.	Yes
2.3.3.1	Cut and fill 1.0m max. 1m outside the perimeter of the external building walls	Cut and fill <1.0m change 1m outside the perimeter of the external building walls	Yes
2.3.3.2	1m max. height retaining walls along road frontage	None proposed	N/A
	Any retaining wall >1.0 in height to be certified by structure engineer	No retaining wall likely >1m.	Yes
	Combination of retaining wall and front fence height max 1.8m, max length 6.0m or 30% of frontage, fence component 25% transparent, and splay at corners and adjacent to driveway		N/A
2.3.3.8	Removal of hollow bearing trees	No trees proposed to be removed. Note: dead tree on adjoining property to be removed.	N/A
2.6.3.1	Tree removal (3m or higher with 100mm diameter trunk at 1m above ground level and 3m from external wall of existing dwelling)	No trees proposed to be removed	N/A
2.4.3	Bushfire risk, Acid sulphate soils, Flooding, Contamination, Airspace protection, Noise and Stormwater	Refer to main body of report.	
2.5.3.2	New accesses not permitted from arterial or distributor roads	No new access proposed to arterial or distributor road.	N/A
	Driveway crossing/s minimal in number and width including maximising street parking	New common driveway crossing is minimal in width.	Yes
2.5.3.3	Parking in accordance with Table 2.5.1. <u>Multi dwelling</u> 1 space per 1 & 2 bedroom occupancies	Proposal involves 16 x4 bedroom units (The MPRs are considered to be bedrooms). Therefore, 16 x 1.5	Yes

DCP 2013: General Provisions			
	Requirements	Proposed	Complies
	1.5 spaces per 3+ bedroom occupancies 0.25 spaces per occupancy for visitor parking.	space = 24 + 16 x 0.25 = 4 visitor spaces = 28 spaces in total required. The development proposes a double garage for each unit (32 spaces). 7 visitor parking spaces are available throughout the site on common property.	
2.5.3.11	Developer contributions	Contributions apply - refer to ET calc and NOP.	Yes
2.5.3.12 and 2.5.3.13	Landscaping of parking areas	Suitable landscaping proposed around driveway/parking locations.	Yes
2.5.3.14	Sealed driveway surfaces unless justified	Sealed driveway areas proposed.	Yes
2.5.3.15 and 2.5.3.16	Driveway grades first 6m or 'parking area' shall be 5% grade with transitions of 2m length	Driveway grade crossing the road reserve to access the common driveway proposed is capable of satisfying Council standard driveway crossover requirements. Condition recommended for section 138 Roads Act permit.	Yes
2.5.3.17	Parking areas to be designed to avoid concentrations of water runoff on the surface.	Stormwater drainage is capable of being managed as part of plumbing construction.	Yes

***DCP Variation to 4m rear setback provision**

The proposal includes Units 6 and 10 proposed at the rear setback distances specified in the above table. The rear setbacks proposed are proposed within the 4m setback Development Provision. A screenshot of the amended proposed site layout is identified below.



The relevant objectives are:

3.2.2.4 Objective

To allow adequate natural light and ventilation between dwellings/buildings and to private open space areas. To provide usable yard areas and open space.

Comments: Having regard for the development provisions and relevant objectives, the variation to the rear setback provision is considered acceptable for the following reasons:

- The applicant has proposed a total of 16 units at a density consistent with accepted density within a low Density Residential Development area at a rate of 1 dwelling per 468m². (note minimum lot size is 450m²).
- The site is an atypical in configuration (being a large L shaped site with generally rear yard setbacks to adjoining properties) and therefore it is considered that there is scope for consideration of rear and side setbacks on merit if there is not adverse privacy or overshadowing impacts to neighbouring properties.
- The site is somewhat constrained by the presence of significant and large Tallowwoods that are the subject of a Koala Plan of Management. The applicant has placed the dwellings to allow for buffer areas around these trees to allow the retention of these trees. In facilitating this retention this has resulted in dwellings being clustered in closer proximity to the other dwellings on the site and adjoining dwellings.
- Unit 6 has been increased to a minimum 3.5m rear setback to the eastern boundary and 4m setback to the dwelling's effective rear yard. The upper floor level has limited windows facing towards the east. The existing rear setbacks of the neighbouring dwellings to the east and south-east are setback greater than 4m from the common boundary.
- Units 7, 8 and 9 have been amended from the original proposal to be a compliant minimum 4m rear setback to the eastern boundary. The upper floor level is set in further than the ground floor level at approximately 5m setback and has limited windows facing towards the east. Dwellings adjoin properties in Wood Hill Grove which were part of the first stage of subdivision of a larger block that contained the subject property. The adjoining dwellings are set back from the rear fence. The pool area is located at the front of the site.

- Unit 10 is a corner site and has a minimum 4m rear setback to the Northern boundary and 2m to the east. The upper floor level has limited windows facing towards the east. The existing neighbouring dwelling to the east has its primary private open space located adjacent to the vehicle turnaround area near Unit 10.
- All dwellings have compliant areas of private open space provision.
- Discussions have also been held with the Applicant to consider any possible increase in setbacks or reduction in unit numbers given the concerns raised by adjoining owners. Increases of 0.5m were provided to unit 6 and amended plans submitted. Given the minor nature of these increases, the application was not further notified.
- The applicant has also agreed to retain the existing Lillipilli hedge where possible and placing a covenant on the strata management plan to retain the hedges in perpetuity.

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

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

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

(iv) Any matters prescribed by the Regulations

Nil

(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 site has a general westerly street frontage orientation to The Ruins Way.
- Adjoining the site to the east and west are single dwellings of various densities.
- The proposal will not have any significant adverse impacts to existing adjoining properties and satisfactorily addresses the public domain.
- The proposal will result in a change of character with a different clustering of dwellings balanced with large open space areas to accommodate the significant trees on site. There is however a variety of housing densities and styles that include densities not dissimilar to this proposal in the immediate locality. This is considered to be an acceptable physical and visual impact change given the proposal satisfactorily addresses the planning controls applying to the site. The proposal has acceptable setback requirements, is within the building height limit and is below the maximum floor space ratio. There are also no precinct specific local character controls applying to the subject locality.
- The proposal is considered to be compatible with other residential development in the locality and adequately addresses planning controls for the area.
- There are no adverse impacts on existing view sharing.
- There are no adverse overshadowing impacts. The proposal does not prevent adjoining properties from receiving 3 hours of sunlight to private open space and

primary living areas on 21 June. The applicant has provided shadow diagrams to support their application that demonstrates the orientation and placement of the dwellings will allow satisfactory solar access to adjoin dwellings and north facing areas for solar access to the subject dwellings.

Roads

The site has road frontage to The Ruins Way, Port Macquarie. Adjacent to the site, The Ruins Way is a sealed public road under the care and control of Council. The Ruins Way is a Collector road with a carriageway width of 7m within a 20m road reserve. Immediately adjacent to the site, there is a swale drain with no kerb and gutter or footpath. SE profile kerb and gutter is present along western side of The Ruins Way, however, the kerb and gutter on the eastern side of the road ceases outside the neighbouring property to the north of the site (89 The Ruins Way).

There currently plans within Council to upgrade this section of The Ruins Way to a Collector Road standard (including the construction of kerb and gutter). However, the development consent has been conditioned so that the developer is responsible for the upgrade of their immediate frontage (in accordance with Council's future plans) should this development proceed prior to Council's planned works.

Traffic and Transport

The site is currently approved for residential use permitted to generate 9 daily trips. This development proposes to generate approximately 144 daily trips. However, once the upgrade works of The Ruins Way to Collector Road standard are complete, the addition in traffic associated with the development is unlikely to have any adverse impacts to the existing road network within the immediate locality.

Site Frontage and Access

Vehicle access to the site is proposed through an individual driveway with direct frontage to The Ruins Way, being a Council-owned public road. Access shall comply with Council AUSPEC and Australian Standards, and conditions have been imposed to reflect these requirements.

Due to the type and size of development, additional works are required to include:

- kerb and gutter along the full road frontage; and
- concrete footpath paving (minimum 1.2m wide) along the full frontage

Parking and Manoeuvring

A total of 32 parking spaces have been provided on-site within garages with an additional 7 visitor parking spaces provided within the driveway. Parking and driveway widths on site can comply with relevant Australian Standards (AS 2890) and conditions have been imposed to reflect these requirements.

Due to the type of development, car park circulation is required to enable vehicles to enter and exit the site in a forward manner. Site plans show adequate area is available and conditions have been imposed to reflect these requirements. Appropriate consent conditions are recommended to address these requirements.

Water Supply

Council records indicate that the site is fronted by a 200mm PVC water main on the same side of The Ruins Way.

Final water service sizing will need to be determined by a hydraulic consultant to suit the domestic and commercial components of the development, as well as fire service and backflow protection requirements in accordance with AS 2419.

Each proposed dwelling will need to be separately metered for water, meters may be either located at the road frontage or internally with a master meter at the boundary. All design & works shall be in accordance with Council's adopted AUSPEC Specifications.

Detailed plans will be required to be submitted for assessment with the Section 68 application.

Sewer

Council records indicate that the site is serviced for sewer by a main which runs outside the eastern boundary of the development lot. Due to the scale of the development and the increased load on sewer infrastructure, it is necessary to discharge all sewage to an existing manhole.

Any works-in-kind (WIK) agreement will need to be negotiated with Council's contributions section and will only be considered on the basis of material public benefit (i.e. cost difference between private sewer infrastructure required to service development and cost to install pipe work to Aus-Spec sewer main standard). The DA may be conditioned and approved regardless of whether a WIK has been executed.

Detailed plans will be required to be submitted for assessment with the Section 68 application.

Stormwater

The site naturally grades towards both its southwest and southeast corners, with a ridge down the middle. Stormwater discharge from the natural site and development shall be managed in accordance with this natural topography and is required to be discharged to the existing points of discharge in those locations:

- Discharge to the southwest corner of the site shall be connected to the existing piped stormwater drainage system at the site's frontage to The Ruins Way.
- Discharge to the southeast corner of the site shall be directed to the existing interallotment drainage system at this location.

The stormwater drainage plan submitted in support of the proposed development indicates that stormwater is planned to be disposed via the above means. Furthermore, the stormwater plan submitted includes the provision of on-site stormwater detention facilities designed generally in accordance with Council's AUSPEC Requirements. These facilities will function to ensure that the development results in no detrimental impacts on downstream development and drainage systems by limiting the rate of discharge of stormwater to the lesser of; pre development flow rates (i.e. no increase as a result of the development), OR the available capacity of the existing points of discharge from the site (to ensure that any existing downstream capacity issues are improved and not worsened as a result of the development). The stormwater drainage plan submitted in support of the DA proposal conceptually demonstrates compliance with the above.

A detailed site stormwater management plan will be required to be submitted for assessment with the Section 68 application and prior to the issue of a Construction Certificate.

In accordance with Councils AUSPEC requirements, the following must be incorporated into the stormwater drainage plan:

- On site stormwater detention facilities
- Water quality controls.

Appropriate consent conditions are recommended to address these requirements.

Other Utilities

Telecommunication and electricity services are available to the site. Evidence of satisfactory arrangements with the relevant utility authorities for provision to each proposed lot will be required prior to Strata Certificate approval.

Heritage

No known items of Aboriginal or European heritage significance exist on the property. No adverse impacts anticipated. The site is in a residential context and 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 significant 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. The trees on site have been assessed for their suitability for retention within an urban environment and appropriate setbacks and recommended conditions have been imposed to suitably manage and maintain the trees. It is considered a whole of site tree management plan will provide a more suitable outcome than a site under a Torrens subdivision.

The existing dead tree on 97 The Ruins Way has been identified for removal. A condition is recommended to require its removal prior to construction commencing.

Waste

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

available on street and strata subdivision is proposed. 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 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.

Bushfire

The site is identified as being bushfire prone.

In accordance with Section 100B - *Rural Fires Act 1997* - The application proposes subdivision of bush fire prone land that could lawfully be used for residential purposes. As a result, the applicant has submitted a bushfire report prepared by a Certified Consultant. The report was forwarded to the NSW Rural Fire Service who have since issued a Bushfire Safety Authority subject to condition, which will be incorporated into the consent.

Safety, Security and Crime Prevention

The proposed development will be unlikely to create any concealment/entrapment areas or crime spots that would result in any identifiable loss of safety or reduction of security in the immediate area. The increase in housing density will improve natural surveillance within the locality and openings from each dwelling overlook common and private areas.

Social Impacts in the Locality

Given the nature of the proposed development and its location the proposal is 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 (as amended) 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.

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

6 additional (further to the original 33 submissions) written submissions were received following re-exhibition of the amended application. Copies of the written submissions have been provided separately to members of the DAP.

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

Submission Issue/Summary	Planning Comment/Response
Development is out of character with predominantly single storey precinct	The development is located within an R1 General residential area which permits building heights up to 8.5m. The dwellings are proposed at a height of approximately 7 metres to the topmost roof heights with the upper level footprint setback from the ground floor level footprint. There are also a number of 2 storey dwellings within the immediate locality and the proposal is considered to be sufficiently compatible with the permissible desired future character of the area. The planning controls envisage housing choice as a mix of one to two storey and a few dual occupancies and townhouses. The proposal is considered to provide a variety of housing choice is desired to meet the needs of the community and provide a variety of affordable housing options in a growth area experiencing supply pressures for both rental and sale markets.
Reduced light and sunlight to neighbouring properties	The site is oriented north-south with second storey elements being generally less than 50% of the ground floor building footprint. This has resulted in a design that has been sensitive to potential for any overshadowing of dwellings on adjoining lots. The minimum standards for overshadowing at midwinter are satisfied to not warrant refusal of the application.
Loss of privacy to neighbouring properties	No upper decks are proposed for any of the dwellings and rear facing windows are proposed at 1.4m floor to sill height that restricts casual overlooking in normal use of the room as either a bedroom or MPR. The primary living areas are all located on the ground floor level.
Houses located too close to fence lines	Houses have been designed to provide larger areas within the central areas of the site to retain the existing significant trees. The Applicant has increased the side/rear setbacks

Submission Issue/Summary	Planning Comment/Response
	in the amended plans for units 4, 5, 6, 7, 8, 9, 10, 11, 14, 15 & 16. Setbacks are addressed earlier in this report.
Impacts on wildlife	The site is located in a general residential zone that has been the subject of a number of reports from the initial rezoning of the original subdivision. The development proposes to retain the significant trees on the site which will in turn retain significant open space areas for wildlife not dissimilar to surrounding residential development and densities.
Traffic congestion	Council's Traffic Engineer has reviewed the proposal and advised that following the upgrade works being completed to The Ruins Way that the immediate local road network will be suitable to cater for the increased demand. Broader scale traffic concerns raised are not the subject of this application and would need to be addressed in larger view traffic planning for the region. Refusal of the application on these grounds is not justified.
Noise pollution	The proposed site is zoned for use as a residential development. Whilst it is expected that there will be increased noise and activity associated with normal use of the site, the use is a reasonable utilisation of the site. The consent authority can only consider the use of the buildings and has no control over who occupies them. A standard condition has been recommended preventing the use of the dwellings for short-term holiday accommodation without subsequent development consent.
Development not permitted in R1 zone - density too high	<p>Some perception has existed in the community that the use is not permissible. The site is zoned R1 General Residential and multi-dwelling housing is a permissible landuse within the zoning. The objectives of this zone are particularly noted to encourage and allow for a variety of housing types and densities.</p> <p>It has also been identified during assessment of the application that the permissible vacant subdivision lot size for standalone subdivision within an R1 is 450m² which in comparison to the density proposed for this development is 1 dwelling per 468m². The floor space ratio of the proposal is 0.43:1.0 which complies with the maximum 0.65:1 floor space ratio applying to the site. The proposal is not considered an overdevelopment of the site.</p>

Submission Issue/Summary	Planning Comment/Response
Light pollution to neighbouring properties	Normal residential lighting is anticipated to be installed. No undue or unreasonable impacts are expected.
Developers had originally designated area as golf course	The site has been zoned for General residential use for a considerable amount of time. A golf course may have been conceptual in nature but no consent has been sought for such a development. Given the size of the allotment it is not reasonable to anticipate a continued concept or use as a golf course.
Damage to trees - Arborist report inadequate	<p>The Arborist report has been reviewed by Council's Arborist and ecologist who have considered the content and provided additional conditions that will be required to be satisfied, including a tree management plan and restrictions as to user within the 88B restrictions attached to the properties.</p> <p>Additional review has been conducted by Council's arborist and additional condition modification has occurred. There is an existing compacted access road that runs between the trees on the same alignment as the proposed internal road. Pervious materials are to be used for the internal road to enable water penetration to the root systems. Root mapping should occur to identify location and footing/ slab design shall be designed in consultation with the arborist to minimise impact on trees on and adjoining the site.</p>
<p>4m setback not complied unit 14 and 15, Unit 13 only 1005mm.</p> <p>Unit 6 should have 4m setback to southern fence line.</p>	<p>The 4m setback is the required setback to rear boundaries designed to allow light and ventilation. Side setbacks are permitted at 900mm. The subject dwellings technically have side setbacks only. The applicant has increased setbacks to provide additional setbacks that better address the balance between a side and rear boundary and with consideration of the angled boundary and open spaces areas meets the objectives to enable adequate light and ventilation between buildings. The 1005mm for Lot 13 setback is a side setback adjoining neighbouring outbuildings along the rear adjoining boundary. Considerable open space areas exist which limits impacts and enable preservation of the leafy outlook and significant trees.</p> <p>Unit 6 has been amended to have its rear year side setback of 4m to the Southern boundary.</p>
Fence height 2.1m Fence	The fence can be limited to 1.8m if that is

Submission Issue/Summary	Planning Comment/Response
should be timber.	desired. Fence will be required to be lapped and capped timber fencing as per KPOM
Lilli Pilli Hedge to be retained	Applicant has now agreed to retain hedge where possible.

(e) The Public Interest

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

Ecologically Sustainable Development and Precautionary Principle

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

The four principles of ecologically sustainable development are:

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

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

Climate change

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

4. DEVELOPMENT CONTRIBUTIONS APPLICABLE

- Development contributions will be required towards augmentation of town water supply and sewerage system head works under Section 64 of the Local Government Act 1993.
- Development contributions will be required in accordance with Section 7.11 of the Environmental Planning and Assessment Act 1979 towards roads, open space, community cultural services, emergency services and administration buildings.
- 2.
- A copy of the contributions estimate is provided as (**Attachment 3**).











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 and amendments made to the proposal. Where relevant, conditions have also 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   DA2020 - 457.1 - Recommended Conditions
- 2   DA2020 - 457.1 DA Plans
- 3   DA2020 - 457.1 Contributions Estimate
- 4   DA2020 - 457.1 Applicant Response
- 5   DA2020 - 457.1 Revised Arborist Report

**FOR USE BY PLANNERS/SURVEYORS TO PREPARE LIST OF
PROPOSED CONDITIONS****NOTE: THESE ARE DRAFT ONLY****DA NO: 2020/457****DATE: 18 March 2021****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
SOEE		B R Development	1/6/2020
Architectural Plans and Specifications	Job No 10469 Townhouse 217 LHG Lots 1-13 Rev I	Think Hibbards	22/2/2021
BASIX	10969552M_02	Concept Designs Australia	10 June 2020
Bushfire Assessment		Krisann Johnson	27 April 2020
Arborist Report		Accomplished Tree Management	19 April 2020 as amended 14 December 2020
Koala Plan of Management Major Innes Drive and the Ruins Way Port Macquarie	Tree retention and replacement, signs and restrictions on users.	King and Campbell Pty Ltd	May 2000

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 building or subdivision work shall commence until a Construction Certificate or Subdivision Works Certificate has been issued and the applicant has notified Council of:
- the appointment of a Principal Certifying Authority; and

b. the date on which work will commence.

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

- (3) (A005) This consent allows the strata-subdivision of the units, subject to the submission of an application for a Strata Certificate.
- (4) (A008) Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure.
- (5) (A009) The development site is to be managed for the entirety of work in the following manner:
 1. Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 2. Appropriate dust control measures;
 3. Building equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained. Where work adjoins the public domain, fencing is to be in place so as to prevent public access to the site;
 4. Building waste is to be managed via an appropriate receptacle;
 5. Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
 6. Building work being limited to the following hours, unless otherwise permitted by Council;
 - Monday to Saturday from 7.00am to 6.00pm
 - No work to be carried out on Sunday or public holidaysThe builder to be responsible to instruct and control his sub-contractors regarding the hours of work.
- (6) (A011) The design and construction of all public infrastructure works shall be in accordance with Council's adopted AUSPEC Specifications.
- (7) (A013) The general terms of approval from the following authorities, as referred to in section 4.50 of the Environmental Planning and Assessment Act 1979, and referenced below, are attached and form part of the consent conditions for this approval.
 - **NSW Rural Fire Service** - The General Terms of Approval, Reference DA20200629002294 and dated 8 March 2021, are attached and form part of this consent.
- (8) (A033) The applicant shall provide security to the Council for the payment of the cost of the following:
 - a. making good any damage caused to any property of the Council as a consequence of doing anything to which the consent relates,
 - b. completing any public work (such as road work, kerbing and guttering, footway construction, utility services, stormwater drainage and environmental controls) required in connection with the consent,
 - c. remedying any defects in any such public work that arise within twelve (12) months after the work is completed.

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

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

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

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

- (9) (A069) Trees on the subject land, numbered T1, T2, T3, T4, T5 and T6 in the Aborigicultural Impact Assessment Report (19 April 2020 & December 2020) by Accomplished Tree Management Pty Ltd, shall be retained and recommendations throughout the report adopted.
- (10) (A015) All fencing to be lapped and capped paling with posts interspersed on either side of the fences to ensure that fencing does not become a barrier to koala movement throughout the property.

B – PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE OR SUBDIVISION WORKS CERTIFICATE

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

Such works include, but not be limited to:

Civil works
Traffic management
Work zone areas
Hoardings
Concrete foot paving
Footway and gutter crossing
Functional vehicular access

Where works are proposed on an RMS classified facility, the Road Authority shall obtain RMS concurrence prior to any approval.

- (3) (B003) Submission to the Principal Certifying Authority prior to the issue of a Construction Certificate or Subdivision Works Certificate detailed design plans for the following works associated with the developments. Public infrastructure works shall be constructed in accordance with Port Macquarie-Hastings Council's current AUSPEC specifications and design plans are to be accompanied by AUSPEC DQS:
1. Road works along the frontage of the development.
 2. Public parking areas including;
 - a. Driveways and access aisles;
 - b. Parking bays;
 - c. Turning areas; in accordance with AS2890.
 3. Sewerage reticulation.
 4. Water supply reticulation.
 5. Retaining walls.
 6. Stormwater systems.
 7. Erosion & Sedimentation controls.
 8. Landscaping/waste management facilities.
- (4) Payment to Council, prior to the issue of a Construction or Subdivision Certificate (whichever occurs first) of the Section 7.11 contributions set out in the "Notice of Payment – Developer Charges" schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied, pursuant to the Environmental Planning and Assessment Act 1979 as amended, and in accordance with either the provisions of the following plans (as amended) or a Planning Agreement:
- Port Macquarie-Hastings Administration Building Contributions Plan 2007
 - Hastings S94 Administration Levy Contributions Plan 2003
 - Port Macquarie-Hastings Open Space Contributions Plan 2018
 - Hastings S94 Major Roads Contributions Plan 2004
 - Port Macquarie-Hastings Community Cultural and Emergency Services Contributions Plan 2005
 - Port Macquarie-Hastings Section 94 Local Roads Contributions Plan Areas 13, 14 and 15 2014

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

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

- (5) Prior to the issue of Construction or Subdivision Certificate (whichever occurs first), a Compliance Certificate under Section 307 of the Water Management Act 2000 must be obtained from the Water Authority.

Note1: Port Macquarie-Hastings Council is defined as a Water Supply Authority under section 64 of the Local Government Act 1993. As part of the Notice of Requirements of the Water Authority under Section 306 of the Water Management Act 2000, the payment of a cash contribution is required, prior to the issue of a Construction or Subdivision Certificate (whichever occurs first), of the Section 64 contributions, as set out in the "Notice of Payment – Developer Charges" schedule attached to and included as part of this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied in accordance with either the provisions of the relevant Section 64 Development Servicing Plan or a Planning Agreement.

Note 2: A Section 307 Compliance Certificate issued by the Water Authority at the construction certificate stage only relates to the payment of contributions in accordance with the Development Servicing Plan or a Planning Agreement. A further Compliance Certificate may be required for other water management works prior to occupation or the issue of an Occupation or Subdivision Certificate relating to the development.

Note 3: The Water Authority will accept payment of the equivalent amount of contributions under Section 608 of the Local Government Act 1993.

- (6) (B016) Provision to each lot of a separate sewer line to Council's main. All work will need to comply with the requirements of Council's adopted AUSPEC Design and Construction Guidelines and Policies. Any abandoned sewer junctions are to be capped off at Council's sewer main and Council notified to carry out an inspection prior to backfilling of this work.

Construction details are to be submitted to Port Macquarie-Hastings Council with the application for Subdivision Works Certificate.

- (7) (B024) Submission to Council of an application for water meter hire, which is to be referred to the Water Supply section so that a quotation for the installation can be prepared and paid for prior to the issue of a Construction Certificate. This application is also to include an application for the disconnection of any existing service not required.
- (8) (B037) The finished floor level of the building shall be at least 1050mm above the soffit of Council's sewer main. Details indicating compliance with this are to be submitted to the Principal Certifying Authority with the application for Construction Certificate.
- (9) (B038) Footings and/or concrete slabs of buildings adjacent to sewer lines or stormwater easements are to be designed so that no loads are imposed on the infrastructure. Detailed drawings and specifications prepared by a practising chartered professional civil and/or structural engineer are to be submitted to the Principal Certifying Authority with the application for the Construction Certificate.
- (10) (B053) The design of the carpark and accesses is to be in accordance with Australian Standard 2890 (including AS 2890.1, AS 2890.2 and AS 2890.6). Certification of the design by a suitably qualified consultant is to be provided to the Principal Certifying Authority prior to release of the Construction Certificate. The design shall reference, and be in compliance with, the Arborist report recommendations and design notes for Tree 01 and Tree 02.

- (11) (B071) Prior to the issue of any Construction Certificate, the provision of water and sewer services to the land are to be approved by the relevant Water Authority and relevant payments received.
- (12) (B072) An stormwater drainage design is to be submitted and approved by Council prior to the issue of a Construction Certificate. The design must be prepared in accordance with Council's AUSPEC Specifications and the requirements of the relevant Australian Standards and make provision for the recommendations of the Arborists report.
- (13) (B046) The building shall be designed and constructed so as to comply with the Bushfire Attack Level (BAL) requirements of Australian Standard 3959 and the specifications and requirements of Planning for Bush Fire Protection as stipulated in the RFS Bushfire Authority. 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.

- (14) The proposed development shall drain all sewage a new or existing sewer manhole. All design & works shall be in accordance with Council's adopted AUSPEC Specifications.
- (15) Each proposed dwelling will need to be separately metered for water, meters may be either located at the road frontage or internally with a master meter at the boundary. All design & works shall be in accordance with Council's adopted AUSPEC Specifications.
- (16) A stormwater drainage design is to be submitted and approved by Council prior to the issue of a Subdivision Works Certificate or Construction Certificate. The design must be prepared in accordance with Council's AUSPEC Specifications, Australian Rainfall and Runoff 2019, the requirements of Relevant Australian Standards and shall make provision for the following:
 - a) The legal point of discharge for the proposed development is defined as:
 - i. The existing stormwater junction at The Ruins Way frontage of the site, AND
 - ii. The existing interallotment drainage system at the south-eastern corner of the site
 - b) The design and fractions of land being discharged to each of the above outlets shall be generally in accordance with the stormwater drainage concept plan on Drawing No 11564 Sheet 4 of 10 "Stormwater Plan - DA issue" Revision F, prepared by BR Development Consulting and dated 15 September 2020.
 - c) All allotments must be provided with a direct point of connection to the public piped drainage system. Kerb outlets are not permitted.
 - d) The design shall incorporate on-site stormwater detention facilities to limit site stormwater discharge to a rate equal to the following:
 - i. Discharge to The Ruins Way shall be limited to a rate that is both less than pre-development discharge, AND less than or equal to the design allowance made for stormwater discharge from the subject site in the recently completed stormwater drainage upgrade along The Ruins Way by Port Macquarie - Hastings Council.

- ii. Discharge to the interallotment drainage system at the southeast corner of the site shall be limited to the lesser of pre-development flow rates OR the available capacity of the downstream interallotment drainage system (having regard for existing development utilising that system).
 - e) The design shall include water quality controls designed to achieve the targets specified within AUSPEC D7.
 - f) Where works are staged, a plan is to be provided which demonstrates which treatment measure/s is/are to be constructed with which civil works stage. Separate plans are required for any temporary treatment (where applicable e.g. for building phase when a staged construction methodology is adopted) and ultimate design.
 - g) The design is to make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.
 - h) An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
 - i) The design shall provide details of any components of the existing stormwater drainage system servicing the site that are to be retained.
- (17) The footing/slab/piering details are to be designed in reference to the arborist report. Where footings may impact on critical root systems (including trees on adjoining lots), root mapping is to verify locations. Where critical roots are shown to be impacted the arborist is to be consulted and works designed in accordance with their recommendations.

C – PRIOR TO ANY WORK COMMENCING ON SITE

- (1) (C001) A minimum of one (1) weeks' notice in writing of the intention to commence works on public land is required to be given to Council together with the name of the principal contractor and any major sub-contractors engaged to carry out works. Works shall only be carried out by a contractor accredited with Council.
- (2) (C004) Prior to works commencing an application being made to the electricity and telecommunications service providers. Services are required to be underground.
- (3) (C013) Where a sewer manhole and/or Vertical Inspection Shaft (VIS) exists within a property, access to the manhole/VIS shall be made available at all times. Before during and after construction, the sewer manhole/VIS must not be buried, damaged or act as a stormwater collection pit. No structures, including retaining walls, shall be erected within 1.0 metre of the sewer manhole or located so as to prevent access to the manhole.
- (4) (C015) Tree protection fencing, compliant with AS 4970/2009 Protection of trees on development sites must be provided. The fencing shall be in place prior to the commencement of any works or soil disturbance and maintained for the entirety of the works. Refer Arborist Report.
- (5) The existing dead tree on the neighbouring property No.97 The Ruins Way beside the southern boundary shall be removed prior to construction commencing.

D – DURING WORK

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

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

- (2) (D006) A copy of the current stamped approved construction plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.
- (3) (D003) The site is in an area known to contain rock that may contain naturally occurring asbestos (NOA). Should potential NOA be located on site notification shall be provided to Council and Workcover prior to works proceeding. No work shall recommence until a NOA management plan has been approved by Council or Workcover.
- (4) (D023) During all phases of demolition, excavation and construction, it is the responsibility of the applicant and their contractors to:
- Ascertain the exact location of the interallotment stormwater drainage pipeline and associated pits traversing the site in the vicinity of the works.
 - Take measures to protect the in-ground stormwater drainage pipeline and associated pits.
 - Ensure dedicated overland flow paths are satisfactorily maintained through the site.

Stormwater drainage pipes can be damaged through applying excessive loading (such as construction machinery, material storage and the like). All proposed structures and construction activities must be sited fully clear of Council's stormwater drainage pipes, pits, easements, watercourses and overland flow paths on the site.

If the Council pipeline is uncovered during construction, all work must cease and the Certifying Authority and Council must be contacted immediately for advice.

Any damage caused to Council's stormwater drainage system must be immediately repaired in full and at no cost to Council.

- (5) All works are to be carried out with reference to the arborist report. The arborist shall be called for advice if any tree roots are exposed or damaged during any excavation works.

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

- (1) (E001) The premises shall not be occupied or used in whole or in part until an Occupation Certificate has been issued by the Principal Certifying Authority.
- (2) (E010) Driveways, access aisles and parking areas shall be provided with an approved surface. Such a surface shall be on a suitable pavement, constructed and maintained in accordance with Council's Development, Design and Construction Manuals (as amended).
- (3) (E030) Vehicle ramps, driveways, turning circles and parking spaces being paved, sealed and line marked prior to occupation or the issue of the Occupation Certificate or commencement of the approved land use.
- (4) (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.
- (5) (E034) Prior to occupation or the issuing of the Occupation Certificate provision to the Principal Certifying Authority of documentation from Port Macquarie-Hastings Council being the local roads authority certifying that all matters required by the approval issued pursuant to Section 138 of the Roads Act have been satisfactorily completed.
- (6) (E038) Interallotment drainage shall be piped and centrally located within an inter-allotment drainage easement, installed in accordance with Council's current AUSPEC standards (minimum 225mm pipe diameter within a minimum 1.5m easement). Details shall be provided:
 - As part of a Local Government Act (s68) application with evidence of registration of the easement with the Land Titles Office provided to Council prior to issue of the s68 Certificate of Completion; or
 - As part of a Subdivision Works Certificate with dedication of the easement as part of any Subdivision Certificate associated with interallotment drainage.
- (7) (E053) All works relating to public infrastructure shall be certified by a practicing Civil Engineer or Registered Surveyor as compliant with the requirements of AUSPEC prior to issue of Occupation/Subdivision Certificate or release of the security bond, whichever is to occur first.
- (8) (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.
- (9) (E061) Landscaped areas being completed prior to occupation or issue of the Certificate.
- (10) (E056) A Certificate of Compliance under the provisions of Section 307 of the Water Management Act must be obtained prior to the issue of any occupation or subdivision certificate. The application for the certificate is to include an acceptable Work-As-Executed plan for water and sewer mains and services from a Professional Engineer or Registered Surveyor.
- (11) (E068) Prior to the issue of a Subdivision Certificate, evidence to the satisfaction of the Certifying Authority from the electricity and telecommunications providers that satisfactory services arrangements have been made to the dwellings (including street lighting and fibre optic cabling where required).

- (12) (E072) Lodgement of a security deposit with Council upon practical completion of the subdivision works.
- (13) (E195) The subdivision certificate shall not be issued until such time that the dwellings associated with this development are substantially commenced (as determined by Council) or where a strata management statement, or restriction as to user, prohibits any dwelling on each lot other than the dwelling approved as part of this consent.
- (14) (E040) Each onsite detention system is to be marked by a plate in a prominent position which states:

"This is an onsite detention system. It is an offence to reduce the volume of the tank or basin or interfere with any part of the structure that controls the outflow".

This plate is to be fixed into position prior to occupation or the issue of the Occupation or Subdivision Certificate.

- (15) (E041) At the completion of works on private property certification is to be provided to Port Macquarie-Hastings Council from a practising civil or structural engineer that all stormwater works have been undertaken in accordance with the approved plans and Australian Standard 3500.
- (16) (E048) Prior to the issue of an Occupation Certificate, a positive covenant is to be created under Section 88E of the Conveyancing Act 1919, burdening the owner(s) with the requirement to maintain the water quality control facilities within the site.

In addition, a maintenance schedule for the water quality controls must be submitted to Council for approval with the stormwater work-as executed plans. This maintenance schedule and work as executed plan shall be registered and referred to as part of the positive covenant.

The terms of the 88E instrument with positive covenant shall include, but not be limited to, the following:

- a. The Proprietor of the property shall be responsible for inspecting, maintaining and keeping clear all components of and structures associated with the stormwater quality improvement device (SQID) in accordance with the maintenance plan in order to achieve the design system performance targets.
- b. The Proprietor shall have the SQID inspected annually by a competent person.
- c. The Council shall have the right to enter upon the land referred to above, at all reasonable times to inspect, construct, install, clean, repair and maintain in good working order all components or structures in or upon the said land which comprise the SQID and recover the costs of any such works from the proprietor.
- d. The registered proprietor shall indemnify the Council and any adjoining land owners against damage to their land arising from the failure of any component of the SQID, or failure to clean, maintain and repair the SQID.

The instrument shall be created and registered on the title of the relevant lot(s) with the Lands and Property Information (LPI) NSW. The plan and terms of the easement must be endorsed by Council through formal application prior to lodgement at the Lands and Property Information NSW. Evidence of registration shall be submitted to and approved by the Principal Certifying Authority prior to the issue of an Occupation Certificate.

- (17) Appropriate signage is to be erected and maintained in perpetuity at the entrance to the property advising residents and visitors that they are entering an area of important koala habitat. The sign will contain information such as:
- a. Advice on the duration of breeding season and the most active times of day/night
 - b. Advice to motorists to drive slowly
 - c. Advice to dog owners, warning them of the threat their pets pose to koalas and
 - d. Reminding them of their obligation to keep their dogs under control at all times.
 - e. Contact details for the Koala Hospital / FAWNA to facilitate prompt reporting of sick or injured koalas
- (18) (E063) A Tree Management Plan is to be provided to Council to ensure ongoing management and retention of the Tallowwood (*Eucalyptus microcorys*) trees post construction. Plan to be developed by an AQF Level 5 Arborist and include an ongoing inspection schedule determined by the Arborist to ensure longevity of tree population and resident safety. The costs to implement and maintain this management plan shall be part of the strata management fees for the property. A copy of the results from the scheduled reinspections report shall be made available to Council upon completion.
- (19) (E076) The plan and Section 88B instrument shall establish the following restrictions, covenants; with Council having the benefit and having the sole authority to release, vary or modify each restriction, and/or covenant. Wherever possible the extent of the land affected by these covenants shall be defined by bearings and distances shown on the plan.
- a. All Tallowwood (*Eucalyptus microcorys*) trees are to be retained and protected in perpetuity on the property. No tree shall be removed without written consent from Port Macquarie-Hastings Council and this will only be considered if the tree is assessed as dangerous by a level 5 Consulting Arborist and the risk cannot be managed. Where consent to remove a tree is granted it must be replaced on site with the same species using advanced size that meets AS2303:2015 Tree Stock for Landscape Use within 3 months of removal.
 - b. Restrictions as to user are to be placed on allotments requiring fencing to be lapped and capped paling with posts interspersed on either side of the fence. The purpose of this restriction is to ensure that fencing does not become a barrier to koala movement throughout the property.
 - c. Restrictions as to user will also require that pool designs-incorporate appropriate pool rescue ropes to minimise the potential for koala drownings.
 - d. Annual inspection and management of Tallowwood (*Eucalyptus microcorys*) trees to be undertaken by level 5 arborist in accordance with the approved tree management plan.
- (20) Prior to the issue of an Occupation Certificate, a positive covenant is to be created under Section 88E of the Conveyancing Act 1919, burdening the owner(s) with the requirement to maintain the Lilli Pilli Hedge within the site. This shall include a replacement requirement for dead or dying plants.

F – OCCUPATION OF THE SITE

- (1) (F004) The dwellings are approved for permanent residential use and not for short term tourist and visitor accommodation.

DRAFT

PROPOSED 16 UNIT STRATA DEVELOPMENT
91 THE RUINS WAY, PORT MACQUARIE

FOR: HIBBARDS P/L

ENGINEERING DETAILS

DRAWING No 11564

REVISION I 22/2/2020

DRAWING SCHEDULE

SH	TITLE
1	COVER
2	SITE PLAN
3	GENERAL PLAN
4	STORM WATER
5	SEWER RETICULATION
6	WATER RETICULATION
7	DRIVEWAY PLAN
8	LANDSCAPE PRINCIPAL PLAN
9	DRAFT STRATA
10	STAGING PLAN



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Sh 1 of 10



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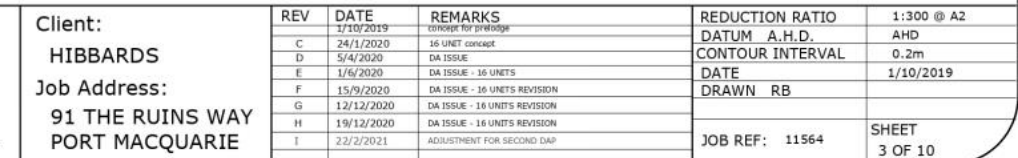
16 UNIT STRATA DEVELOPMENT
SITE PLAN - DA ISSUE

SCALE 1:200 @A1

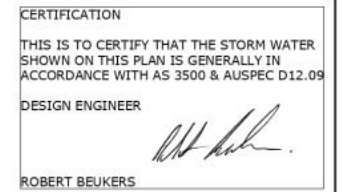
Client:
HIBBARDS
Job Address:
**91 THE RUINS WAY
PORT MACQUARIE**

REV	DATE	REMARKS
1	1/10/2019	concept for prelodgement
C	24/1/2020	16 UNIT concept
D	5/4/2020	DA ISSUE
E	1/6/2020	DA ISSUE - 16 UNITS
F	15/9/2020	DA ISSUE - 16 UNITS REVISION
G	12/12/2020	DA ISSUE - 16 UNITS REVISION
H	19/12/2020	DA ISSUE - 16 UNITS REVISION
I	22/2/2021	ADJUSTMENT FOR SECOND DAP

REDUCTION RATIO	1:200 @ A1
DATUM	A.H.D.
CONTOUR INTERVAL	0.2m
DATE	1/10/2019
DRAWN	RB
JOB REF:	11564
SHEET	2 OF 10







ALL PITS IN DRIVEWAY
600x600 GRATED - CLASS 'C'

PIT
66
76

ALL STORMWATER TO AS 3500
ALL COURTYARDS TO BE FORMED
TO DRAIN TO SUMP PITS
ALL PIPE GRADES 1.0% min

— 100Ø UPVPC
= 150-300Ø UPVPC
▣ YS SUMP PIT 450x450 or AS SHOWN

16 UNIT STRATA DEVELOPMENT
SEWER RETICULATION PLAN - DA ISSUE

Client:
HIBBARDS
Job Address:
91 THE RUINS WAY
PORT MACQUARIE

REV	DATE	REMARKS	REDUCTION RATIO	1:300 @ A2
C	1/10/2019	correct for prebid	DATUM A.H.D.	AHD
D	24/12/2020	16 UNIT concept	CONTOUR INTERVAL	0.2m
E	5/4/2020	DA ISSUE	DATE	1/10/2019
F	1/6/2020	24 ISSUE - 16 UNITS	DRAWN	RB
G	15/9/2020	DA ISSUE - 16 UNITS REVISION		
H	12/12/2020	DA ISSUE - 16 UNITS REVISION		
I	19/12/2020	DA ISSUE - 16 UNITS REVISION		
J	22/2/2021	ADJUSTMENT FOR SECOND DAP		
			JOB REF: 11564	SHEET 5 OF 10





REDUCTION RATIO	1:300 @ A2
DATUM A.H.D.	AHD
CONTOUR INTERVAL	0.2m
DATE	1/10/2019
DRAWN RB	
JOB REF: 11564	SHEET 7 OF 10

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Attachment 2
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16 UNIT STRATA DEVELOPMENT
LANDSCAPE PRINCIPAL PLAN - DA ISSUE

Client:
HIBBARDS
Job Address:
**91 THE RUINS WAY
PORT MACQUARIE**

REV	DATE	REMARKS
1	1/10/2019	concept for prelodgement
2	24/1/2020	16 UNIT concept
3	5/4/2020	DA ISSUE
4	1/6/2020	DA ISSUE - 16 UNITS
5	15/9/2020	DA ISSUE - 16 UNITS REVISION
6	12/12/2020	DA ISSUE - 16 UNITS REVISION
7	19/12/2020	DA ISSUE - 16 UNITS REVISION
8	22/2/2021	ADJUSTMENT FOR SECOND DAP

REDUCTION RATIO	1:200 @ A1
DATUM A.H.D.	AHD
CONTOUR INTERVAL	0.2m
DATE	1/10/2019
DRAWN	RB
JOB REF:	11564
SHEET	8 OF 10

SCALE 1:200 @A1



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16 UNIT STRATA DEVELOPMENT
PROPOSED STRATA PLAN - DA ISSUE

SCALE 1:200 @A1

Client:
HIBBARDS
Job Address:
**91 THE RUINS WAY
PORT MACQUARIE**

REV	DATE	REMARKS
1	1/10/2019	concept for prelodged
C	24/1/2020	16 UNIT concept
D	5/4/2020	DA ISSUE
E	1/6/2020	DA ISSUE - 16 UNITS
F	15/9/2020	DA ISSUE - 16 UNITS REVISION
G	12/12/2020	DA ISSUE - 16 UNITS REVISION
H	19/12/2020	DA ISSUE - 16 UNITS REVISION
I	22/2/2021	ADJUSTMENT FOR SECOND DAP

REDUCTION RATIO	1:200 @ A1
DATUM A.H.D.	AHD
CONTOUR INTERVAL	0.2m
DATE	1/10/2019
DRAWN	RB
JOB REF:	11564
SHEET	9 OF 10



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16 UNIT STRATA DEVELOPMENT
STAGED STRATA PLAN - DA ISSUE

SCALE 1:200 @A1

Client:
HIBBARDS
Job Address:
**91 THE RUINS WAY
PORT MACQUARIE**

REV	DATE	REMARKS
C	1/10/2019	concept for prelude
D	24/1/2020	16 UNIT concept
E	5/4/2020	DA ISSUE - 16 UNITS
F	15/9/2020	DA ISSUE - 16 UNITS REVISION
G	12/12/2020	DA ISSUE - 16 UNITS REVISION
H	19/12/2020	DA ISSUE - 16 UNITS REVISION
I	22/2/2021	ADJUSTMENT FOR SECOND DAP

REDUCTION RATIO	1:200 @ A1
DATUM A.H.D.	AHD
CONTOUR INTERVAL	0.2m
DATE	1/10/2019
DRAWN RB	
JOB REF: 11564	SHEET 10 OF 10

Developer Charges - Estimate

Applicants Name: B R Development
 Property Address: 91 The Ruins Way, Port Macquarie
 Lot & Dp: Lot(s):14, DP(s):1219811
 Development: DA 2020/457 - Multi-Dwelling Housing and Strata Subdivision



Water and Sewerage Headworks Levies are levied under S64 of the LGA Act & S306 of the Water Management Act 2000.
 Other contributions are levied under Section 7.11 of the Environmental Planning and Assessment Act and Council's Contribution Plans.

Levy Area	Units	Cost	Estimate
1 Water Supply	11.6	\$10,270.00 Per ET	\$119,132.00
2 Sewerage Scheme Port Macquarie	15	\$3,896.00 Per ET	\$58,440.00
3 Since 1.7.04 - Major Roads - Innes Peninsula - Per ET	15	\$9,483.00 Per ET	\$142,245.00
4 Since 31.7.18 - Open Space - Innes Peninsula - Per ET	15	\$6,344.00 Per ET	\$95,160.00
5 Commenced 3 April 2006 - Com, Cul and Em Services CP - Innes Peninsula	15	\$4,657.00 Per ET	\$69,855.00
6 Com 1.3.07 - Administration Building - All areas	15	\$917.00 Per ET	\$13,755.00
7 N/A			
8 N/A			
9 N/A			
10 N/A			
11 N/A			
12 N/A			
13 N/A			
14 N/A			
15 Admin General Levy - Applicable to Consents approved after 1/1/03	2.2%	S94 Contribution	\$7,062.30
16			
17			
18			
Total Amount of Estimate (Not for Payment Purposes)			\$505,649.30

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

DATE OF ESTIMATE: 11-Nov-2020

Estimate Prepared By Fiona Tierney

This is an ESTIMATE ONLY - NOT for Payment Purposes

development, 91 The Ruins Way, Port Macquarie, 11-Nov-2020.xls

PORT MACQUARIE-HASTINGS COUNCIL

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Hastings Council
P.O. Box 84,
Port Macquarie, NSW 2444

Date: 18 Jan, 2021
Our Ref : hc11564-1
Your Ref: 2020/457

Dear Sir,

**RE : DA 2020-457.1 for a Multi-dwelling housing and strata Subdivision
Lot 14 DP 1219811, No 91 The Ruins Way, Port Macquarie**

Pursuant to the concerns raised at the DAP meeting, in which the Panel was unable to reach a consensus, the following is provided to modify the proposed development to conform with advice provided by the Panel.

Motion Moved by Mr Hussey, stating that the development is located in a Low density area with predominantly single level dwelling, has not made concession that the Proposed development is considered quite low density given that the ratio of habitable area is less than 35% of the total land area.

Mr Hussey may not have considered that there are numerous 2 storey dwellings within close proximity, to the development site and in the greater Innes Lake peninsular. However, the following points raised By Mr Hussey, the Panel and the neighbours, have been taken into consideration, and the development altered to follow as best it can to the recommendations.

Each item Raised by Mr Hussey and the Panel are replied in red....

- 1 The majority of the proposed 2 storey dwellings do not comply with the DCP 4m rear setback control, as detailed in the assessment report. Bldgs 10 and 11 are particularly deficient having rear setbacks of approximately 1.57m along which they have alfresco areas and living rooms. Similarly, non- complying setbacks are for Bldgs 13 =1.925, Bldg 14= 1.7m and Bldg 15=1.67m. The majority of the new buildings have maximum setbacks of 3m. This has generated submissions regarding loss of amenity, loss of privacy and concerns about the incompatibility of this proposal with the existing neighbourhood, which have merit.

All buildings, have been relocated to increase rear yard setback to meet DCP 2013 requirements with the exception of Units 1,2,3, remaining at 3.0m, which have rear yards facing a driveway on a large allotment Lot 8-DP255991 - No loss of privacy or amenity for either property, and Units 14,15 -which are slightly under 4.0m
Units 5,6,7,8,9,10,11 area all increased to 4.0m – setback complies with DCP 2013 objectives
Unit 14 increased to 2.725 closest point and 3.52 furthest point -3.13m av adjoining large rear yard
Unit 15 increased to 3.67 closest point and 4.49 furthest point - 4.0m av adjoining neighbour dwelling
Unit 16 increased to 4.99 closest point and 5.74 furthest point – 5.2m av adjoining neighbour dwelling

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Units 14,15, although slightly less than 3.0m setback have also proposed additional screening to top of lapped and capped 1.8m high timber paling fencing – equating to 2.1m total height of fencing on boundary. This together with these units being benched lower than the neighbouring ground will provide adequate privacy and separation between neighbouring occupants .

Units 14,15,16 have been altered to provide increase privacy with MPR and bedroom windows to be 1.6m from floor level.

- 2 The non-complying setbacks result in the inability to incorporate satisfactory rear yard areas with complimentary landscaping that is consistent with the existing neighbourhood character. As such it does not reasonably satisfy DCP 3.2.2.4 Objectives in regard to the provision of usable areas and opens space

The increase setbacks and additional attention to boundary fencing will provide adequate landscaping and usable open space, meeting the objectives of DCP 2013 3.2.2.4

- 3 Notwithstanding the compliance with the numerical density controls, nevertheless the retention of the designated koala trees T1 & T2 and at increased risk due to the close proximity of the main access way between these trees and over their root system.

The application has submitted a report from a qualified Arborist, having assessed the site and trees of concern, and provided detailed measures required to enable dwellings, access and trees to co-exist. The proposal is designed based in these recommendations.

It is not considered that unqualified persons can make unsupported comment on the areas of treatment of trees, when presented with a detail report, and proposal that has followed strictly to the recommendations of the Arborist.

- 4 Considering the environmental sensitivity of this site, this proposal is considered an over development within this neighbourhood, which will not lead to a good planning outcome and is therefore not suitable for approval in its current presentation.

It is our opinion that this development is not an over development, but on the contrary, it is a well suited development for the site, which is zoned specifically for residential development, having Habitable Floor space Ratio of less than 35%, being almost half of that which is permissible for land zoned R1.

- 5 If the Council wishes to allow substantially reduced setbacks and effectively abandon the DCP provisions, then this is a policy decision for Council bearing in mind that the public interest is well served by the consistent application of properly adopted DCP provisions.

With the changes to building offsets, it is considered that the revised proposal is now generally compliant with the concerns raised by the panel and neighbourhood and DCP 2013 objectives.

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The Dissenting Recommendation from Dan Croft was:

That DA 2020-457.1 for a Multi-dwelling housing and strata Subdivision at Lot 14 DP 1219811, No 91 The Ruins Way, Port Macquarie, be deferred to enable the application opportunity to submit an amended proposal addressing the following:

- 1 Plans providing for increased building setbacks and having better regard for the development provisions in the Port Macquarie - Hastings Council Development Control Plans 2013

Revised plans provided to council with increase setback to all units of concern, and made generally compliant with objectives of DCP 2013

- 2 An Arborist assessment on the trees on neighbouring properties that may impact on the development or be impacted by the development.

Revised arborist report, stating that it is best to remove the dead tree in the adjoining neighbouring property Lot 8 DP 255991. This is acceptable by the developer, provided the owner of Lot 8 give consent for removal. It is Also agreed by the developer to pay for the removal of this dead tree.

This may be noted as a condition of consent, with provision to complete if no permission is granted by neighbour.

Yours Faithfully

B.R. Development Consulting

Per Robert Beukers

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ABN 67 130 986 935



Arboricultural Impact Assessment Report

(Revision A – 15th December 2020)

**Site location: 97 The Ruins Way Port
Macquarie 2444**

**Prepared for: Hibbards Pty Ltd
c/- Greg Anderson**

**Prepared by: Rhys Mackney
Accomplished Tree Management Pty Ltd
14th December 2020**

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**USE OF THIS REPORT IS RESTRICTED FOR THOSE TREES MENTIONED WITHIN FOR WHICH THE
REPORT WAS ISSUED**

Site location: 97 The Ruins Way Port Macquarie 2444.

Prepared for: Hibbards Pty Ltd c/- Greg Anderson.

Prepared by: Rhys Mackney, Accomplished Tree Management Pty Ltd, info@atreem.com.au, (02) 6583 7631.

Date: 14th December 2020.

EXECUTIVE SUMMARY

This arborist impact assessment is further to one issued 19th April 2020 and addresses concerns relating to trees located in adjoining properties, particularly that of #97 The Ruins Way.

No current aerial photography has been utilised in this report.

Subsequent to the removal of most of the original vegetation (some years earlier) the health of retained trees has been affected due to exposure of previously shaded areas to increased light which would have raised soil temperatures in conjunction with reduction of organic matter that would have been occurring whilst the original tree population stood.

Reduced green canopy volume of respective trees was to be expected and in at least one instance terminal with the demise of one significant tree in the adjoining lot to the south of the development (#97 The Ruins Way).

Coincidentally some exotic trees present in this respective property are displaying canopy thinning which I suspect is consistent with the original tree removals and the drought of the previous years.

Variation of original building positions has been done to increase the distance from the respective external boundary lines by approximately one metre. This was done to improve privacy the privacy of the adjacent properties however it this also serves dual purpose by increasing the tolerances from trees that may be additionally affected by the proposal.

No further design changes required.

Tree protection measures are recommended to be installed in accordance with AS 4970-2009, however as the trees discussed are located outside of site it is acceptable that site fencing will suffice as adequate tree protection fencing.

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1. INTRODUCTION

- 1.1 This impact assessment has been commissioned by Hibbards Pty Ltd c/- Greg Anderson in relation to the proposed development of 91 The Ruins Way Port Macquarie, specifically relating to trees located in adjacent properties nearest the proposal.
- 1.2 I have based this report on my site visit, observations, and the information provided by the client. My conclusions and recommendations are based on my knowledge and experience, details of which are provided in appendix 1.
- 1.3 I inspected site on the 3rd December 2020 and again 11th December 2020 where I was onsite for approximately 60 minutes accumulatively to collect data. All of my observations were carried out from ground level; I did not carry out any excavations.
- 1.4 A Tree Protection Plan and Tree Protection Plan (drawing) have been prepared and are included in this report.

2. SCOPE OF THE REPORT

- 2.1 This report has been undertaken to meet the following objectives;
- a) compile an arboricultural impact assessment report for trees adjacent #91 The Ruins Way;
 - b) discuss deceased tree located adjacent site.

3. INFORMATION UTILISED WITHIN REPORT

Report Name	Author	Company	Date
Arboricultural Impact Assessment Report	Rhys Mackney	Accomplished Tree Management	19 th April 2020

Plan Name	Author	Company	Date
Engineering Details Drawing No 11564 Revision G	Rob Beukers	B.R. Development Consulting	12 th December 2020

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4. LIMITATIONS

- 4.1 My observations and recommendations are based on my site inspection. The findings of this report are based on the observations and site conditions at the time of inspection.
- 4.2 The report reflects the subject tree(s) as found on the day of inspection. Any changes to the growing environment of the subject tree(s), or tree management works beyond those recommended in this report may alter the findings of the report. There is no warranty, expressed or implied, that problems or deficiencies relating to the subject tree(s), or subject site may not arise in the future.
- 4.3 Tree identification is based on accessible visual characteristics at the time of inspection. As key identifying features are not always available the accuracy of identification is not guaranteed. Where tree species is unknown, it is indicated with a spp.
- 4.4 All diagrams, plans and photographs included in this report are visual aids only, and are not to scale unless otherwise indicated.
- 4.5 Alteration of this report invalidates the entire report.
- 4.6 The ultimate safety of any tree cannot be categorically guaranteed. Even trees apparently free of defects can collapse or partially collapse in extreme weather conditions. Trees are dynamic, biological entities subject to changes in their environment, the presence of pathogens and the effects of ageing. These factors reinforce the need for regular inspections. It is generally accepted that hazards can only be identified from distinct defects or from other failure-prone characteristics of a tree or its locality.
- 4.7 Only the plans referred to above have been used in assessing the impact of the proposed works on the tree(s). Where recommendations are made in this report including those recommendations contained in the Tree Protection Guidelines it is essential that these recommendations be able to be implemented. Any additional drawings, details or redesign that impact on the ability to do so may negate the conclusions made in this report.

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5. METHODOLOGY

- 5.1 The following information was collected during the assessment of the subject tree(s).
- 5.1.1 Tree common name.
 - 5.1.2 Tree botanical name.
 - 5.1.3 Tree age class.
 - 5.1.4 DBH (Trunk/Stem diameter at breast height/1.4m) - millimetres.
 - 5.1.5 DAB (Trunk/stem diameter directly above root buttress) - millimetres.
 - 5.1.6 Estimated overall height - metres.
 - 5.1.7 Health (see appendix for definition).
 - 5.1.1 Amenity value (see appendix for definition).
 - 5.1.2 Estimated remaining contribution years (SULE)¹
- 5.2 An assessment of the trees condition was made using the visual tree assessment (VTA) model (Mattheck & Breloer, 1994).²
- 5.3 All of my observations were carried out from ground level. I did not carry out any tests on the subject tree(s). I did not carry out any soil tests.
- 5.4 Trunk diameters were measured, Tree height and tree canopy spread was estimated. All other measurements were estimations unless otherwise stated.

6. TREE PROTECTION ZONE METHODOLOGY

- 6.1 The Tree Protection Zone (TPZ) was determined in accordance with Section 3 of the AS4970-2009 Protection of trees on development sites.³
- 6.2 Determining the TPZ involved multiplying each trees DBH x 12. **TPZ = DBH x 12**
- 6.3 Radius of TPZ is measured from centre of stem at ground level. In the case of Multi Stemmed trees the following calculation was performed to attain the TPZ. **Total DBH = $\sqrt{(DBH_1)^2 + (DBH_2)^2 + (DBH_3)^2}$**

¹ Barrell Tree Consultancy, *SULE: Its use and status into the New Millennium*, TreeAZ/03/2001, <http://www.treeaz.com/>

² Mattheck, C. & Breloer, H., *The body language of trees - A handbook for failure analysis*, The Stationary Office, London, England (1994).

³ Australia, C. O. S., n.d. *AS 4970-2009 Protection of Trees on Development Sites*. s.l.:Standards Australia.

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7. STRUCTURAL ROOT ZONE METHODOLOGY

- 7.1 The Structural Root Zone (SRZ) was determined in accordance with Amendment No. 1 to AS4970—2009 Protection of trees on development sites.

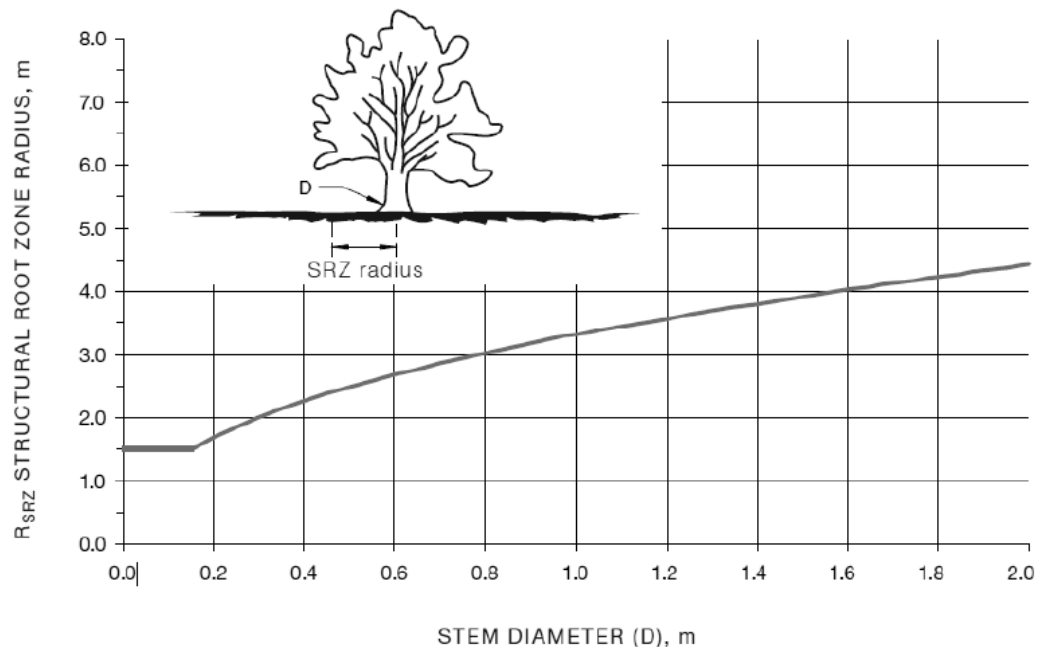


Table 1-Structural Root Zone Calculation

NOTES:

R_{SRZ} is the calculated structural root zone radius (SRZ radius).

D is the stem diameter measured immediately above root buttress.

The R_{SRZ} for trees less than 0.15 m diameter is 1.5 m.

The R_{SRZ} formula and graph do not apply to palms, other monocots, cycads and tree ferns.

This does not apply to trees with an asymmetrical root plate.

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8. SITE LOCATION AND BRIEF SITE DESCRIPTION

- 8.1 The site is located in the Port Macquarie Hastings Council (PMHC) Local Government Area (LGA) and the subject trees are protected under the PMHC Local Environmental Plan (LEP) 2011 and Development Control Plan (DCP) 2013. It is my understanding that the site and adjoining properties are not located inside a heritage conservation area and do not form part of a heritage item. All tree pruning, removal or significant root pruning is subject to approval by PMHC.

9. HOLLOW BEARING TREES

- 9.1 No hollows noted in any tree assessed.

10. OBSERVATIONS

- 10.1 **See Tree Schedule attached as appendix 5.**
- 10.1.1 Trees are believed to be ≤ 90 years old and predominantly native.
- 10.1.2 Exotic trees appear to have reduced vigour however the only significant tree to have died is believed to be a Blackbutt.

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11. DISCUSSION

11.1 Asset Protection Zone

- 11.1.1 There is no requirement for an APZ to best of my knowledge.
- 11.1.2 The site is contained within a current RFS 10/50 zone; however no tree will reside within this tree removal exemption area.
- 11.1.3 Additionally there is a covenant placed on all retained trees as the site is located within a Koala Plan of Management (KPoM) area.

11.2 Koala feed tree replacement

- 11.2.1 No compensatory replacement planting is required.

11.3 Ramifications of original tree removal on retained tree population

- 11.3.1 The original removal of vegetation in the years preceding the current subdivision has cause many changes to site conditions including that of the adjacent properties.
 - 11.3.2 Dramatic reductions of previously shaded areas to provide adequate space for development resulted in tops soil layers becoming exposed.
 - 11.3.3 Exposed substrate would be at least 3x the temperature when compared to soil shaded by canopy and covered/insulated by even a thin layer of organic material.
 - 11.3.4 Interruption of the soil nutrient cycle from the removal of many trees that otherwise drop leaf litter and deadwood have further flow on affects to percolation rates of rainwater as tunnelling macro organisms previously reliant on the forage no longer have an adequate food source.
 - 11.3.5 Soil compaction as a consequence of maximum droplet velocity at point of contact with the ground is another factor considering the removal of canopy now allows previously intercepted rainwater to strike the sparsely grassed area before being sheeted away and lost offsite.
 - 11.3.6 The accumulative effects of tree removal appear to be the reason the tree located in the adjoining lot to the south has died.
- ### 11.4 Deceased tree located at rear of #97 The Ruins Way
- 11.4.1 One dominant tree has died approximately 5 years ago, probably as a consequence of the original clearing and should be removed ASAP due to safety concerns compounding over time.

11.5 Removal of deceased tree

- 11.5.1 Removal of the tree is time critical considering the opportunity for arborists to access the tree via the development site will be lost once building commences, becoming the sole financial burden and liability of the respective title holder(s).

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11.7 Root systems

- 11.7.1 The critical issue when developing adjacent to trees is the impact of that excavation on the root system. To understand this impact, it is important that we understand how the root system functions.
- 11.7.2 All roots start as '**pioneer roots**', pushing their way through the soil in order to take advantage of newly available soil moisture and solutes that are in the zone that they have entered (hence the term pioneer). This push by the roots is created by cell division at the tip of the root and cell elongation behind this tip. This '**zone of elongation**' is typically a few millimetres to less than 100 mm in length.
- 11.7.3 Cell elongation uses water, and the presence or readily available water, solutes (soluble nutrients), and soil temperature (generally around 16°C for most temperate trees) stimulates root growth. Whilst cells absorb some water in the zone of elongation, at best they seldom meet their own needs.
- 11.7.4 Once the roots have fully elongated single celled hairs develop on the surface of the root and these roots with '**root hairs**' to form '**absorbing roots**'.
- 11.7.5 The absorbing roots are responsible for the uptake of nearly all the water and the majority of solutes used by the tree. They are highly ephemeral, often lasting only a few weeks. However, in association with beneficial fungi, they can last a year or more.
- 11.7.6 Where trees are already growing well, we can generally assume that soluble nutrients are present at satisfactory levels. Likewise, we can assume that the soil surface temperature often exceeds 16 degrees Celsius most of the year and that at depth, the soil temperature does not vary significantly throughout the year. The biggest limiting factor, therefore, is normally the ready availability of water.
- 11.7.7 A percentage of these pioneer/absorbing root structures survive the various environmental stresses and within a few weeks to a few months become woody.
- 11.7.8 '**Woody roots**' are essentially underground branches. These roots can be a little under a millimetre in diameter and can grow to be hundreds of millimetres in diameter over time. Their thick bark prevents them from drying out, but as a result, they are not able to absorb water and nutrients from the soil to any great extent.
- 11.8 Whilst many young woody roots die as a result of disease, environmental damage or competition, they have the potential to be long lived, sometimes lasting for hundreds of years. Woody roots act as the connection between the absorbing roots and the rest of the tree.
- 11.8.1 A small portion of the woody roots, closest to the stem, provide physical support for the tree. These '**structural roots**' grow directly from the trunk (first order lateral roots) or are roots that branch close to the trunk. These roots provide support in compression and tension. They have a greater wood content and, as a result, tend to be much thicker to allow for strength, as well as transport.
- 11.8.2 In response to the forces of compression and/or tension, these structural roots develop an asymmetric shape rather than the normal circular shape. As the roots grow further

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from the trunk, they get rapidly thinner (zone of rapid taper) and more circular in shape.

11.9 Damage to roots

- 11.9.1 Damage to larger roots inside the zone of rapid taper is extremely undesirable and, in most circumstances, should be avoided. These are woody roots and therefore excavation is more significant in its impact than careful constructing over the top of these roots.
- 11.9.2 Depending on the amount of root division, the cutting of a woody root with a diameter of 25mm could conceivably result in the death of many millions of root hairs. This loss of absorbing roots has a direct impact on a trees ability to absorb water and solutes. In addition, it can impact on hormone production, resulting in reduced growth above ground until the root/foliage ratio is restored to its ideal levels.
- 11.9.3 The loss of roots can result in wilting or thinning of the foliage, the loss of foliage and death of smaller branch-lets and sometimes the death of specific larger branches. The ready availability of soil moisture is important in minimising this impact.
- 11.9.4 Not only do higher soil moisture levels, reduce the energy expended to absorb water, it also stimulates new root development. The faster that sufficient new roots are developed, the less the impact on normal function
- 11.9.5 Roots are often close to the surface and therefore construction activity can indirectly impact on the health of roots through direct damage or soil compaction. Even regular pedestrian activity has an effect on the roots close to the surface. In addition altering of levels by adding fill has the potential to alter the movement of water into the soil and in some circumstances can cause the soil to become anoxic, in turn causing the death of the roots and potentially the death of the tree.
- 11.9.6 By far the easiest and most efficient way of limiting construction damage to trees is to establish and enclose a Tree Protection Zone using a ridged fence. The function of this fence is to eliminate all construction activity in this area.

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12. DESIGN ISSUES**12.1 Modification of building positions**

12.1.1 Concerns from neighbouring properties have resulted in the adjustment of building positions to approximately one metre nearer the centre of site to address privacy.

12.1.2 Variation of design in this instance has little bearing on the trees within or adjacent site as modification of design (as per ATM impact assessment report) has minimised root disturbance.

13. TREE PROTECTION PLAN/RECOMMENDATIONS**13.1 Amenity Pruning/Tree Removal – see Tree Schedule**

#	Recommendation	Reason
1.	Remove deceased tree.	Unacceptable hazard increasing over time.
2.	Install/maintain site fencing around boundary.	Site fencing acts as a modified TPZ for trees adjacent site.

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14. BIBLIOGRAPHY

Australia, C. O. S., n.d. *AS 4970-2009 Protection of Trees on Development Sites*. s.l.:Standards Australia.

Barrell Tree Consultancy, April 2001. *SULE: Its use and status into the New Millennium*, TreeAZ/03/2001, <http://www.treeaz.com/>.. Sydney, NAAA Conference.

Matheny, N. & C. J. R., 1998. *A technical guide to preservation of trees during land development*. Champaign, IL: International Society of Arboriculture.

Mattheck, C. & B. H., 1994. *The Body Language of Trees - A handbook for failure analysis*. Sixth impression (2001) ed. London, U.K.: The Stationery Office.

Port Macquarie Hastings Council - *Tree Preservation Order* (2009).

15. LIST OF APPENDICES

The following are included in the appendices:

Appendix 1 - Brief description of author's qualifications and experience

Appendix 2 - Tree Health categories

Appendix 3 - Structural Condition categories

Appendix 4 - ULE categories

Appendix 5 - Tree Schedule and Explanatory Notes

Appendix 6 - Tree Locations

Rhys Mackney

Consulting Arborist

Accomplished Tree Management Pty Ltd

Diploma of Arboriculture (AQF5)

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APPENDIX 1 - BRIEF DESCRIPTION OF AUTHORS QUALIFICATIONS AND EXPERIENCE**Arboricultural Qualifications:**

- Certificate II in Horticulture (Arboriculture (AQF2))
- Certificate III in Horticulture (Arboriculture (AQF3))
- Diploma in Horticulture (Arboriculture (AQF5))

Industry Experience 15+ years.**2008 to Present - Director of Accomplished Tree Management Pty Ltd:**

- Qualified as a consulting arborist in 2015, covering all aspects of written and verbal arboricultural consultancy for commercial and residential clients, including tree condition/hazard assessment, development related arborist reports and providing professional advice.
- 2011 to present - Contract climbing for several companies in addition to private work within the Sydney metro area and more recently (January 2016 onwards) the Port Macquarie Hastings and surrounding areas. Professional tree work has focused on residential/commercial aspects of arboriculture, predominantly removals and pruning.
- 2008 to 2011 - Maintaining Energy Australia's (Ausgrid's) assets in the Hunter Valley, Gosford and Hornsby and later on the Northern Beaches and Upper/Lower North Shore of Sydney. Tree climbing and EWP work involved pruning and removal of trees in either live or de-energised environments. Voltages ranged from Low Voltage – 132KV.

APPENDIX 2 - PHYSIOLOGICAL CONDITION AND HEALTH

Category	Example Condition	Summary
Good	<ul style="list-style-type: none"> • Crown has good foliage density for species. • Tree shows no or minimal signs of pathogens that are unlikely to have an effect on the health of the tree. • Tree is displaying good vigour and reactive growth development 	<ul style="list-style-type: none"> • The tree is in above average health and condition and no remedial works are required.
Fair	<ul style="list-style-type: none"> • The tree may be starting to dieback or have over 25% deadwood. • Tree may have slightly reduced crown density or thinning. • There may be some discolouration of foliage. • Average reactive growth development. • There may be early signs of pathogens which may further deteriorate the health of the tree. • There may be epicormic growth indicating increased levels of stress within the tree. 	<ul style="list-style-type: none"> • The tree is in below average health and condition and may require remedial works to improve the trees health
Poor	<ul style="list-style-type: none"> • The may be in decline, have extensive dieback or have over 30% deadwood. • The canopy may be sparse or the leaves may be unusually small for species. • Pathogens or pests are having a significant detrimental effect on the tree health. 	<ul style="list-style-type: none"> • The tree is displaying low levels of health and removal or remedial works may be required.
Dead	<ul style="list-style-type: none"> • The tree is dead or almost dead. 	<ul style="list-style-type: none"> • The tree should generally be removed.

APPENDIX 3 - STRUCTURAL CONDITION

Category	Example Condition	Summary
Good	<ul style="list-style-type: none"> • Branch unions appear to be strong with no sign of defects. • There are no significant cavities. • The tree is unlikely to fail in usual conditions. • The tree has a balanced crown shape and form. 	<ul style="list-style-type: none"> • The tree is considered structurally good with well developed form.
Fair	<ul style="list-style-type: none"> • The tree may have minor structural defects within the structure of the crown that could potentially develop into more significant defects. • The tree may a cavity that is currently unlikely to fail but may deteriorate in the future. • The tree is an unbalanced shape or leans significantly. • The tree may have minor damage to its roots. • The root plate may have moved in the past but the tree has now compensated for this. • Branches may be rubbing or crossing. 	<ul style="list-style-type: none"> • The identified defects are unlikely to cause major failure. • Some branch failure may occur in usual conditions. • Remedial works can be undertaken to alleviate potential defects.
Poor	<ul style="list-style-type: none"> • The tree has significant structural defects. • Branch unions may be poor or weak. • The tree may have a cavity or cavities with excessive levels of decay that could cause catastrophic failure. • The tree may have root damage or is displaying signs of recent movement. • The tree crown may have poor weight distribution which could cause failure. 	<ul style="list-style-type: none"> • The identified defects are likely to cause either partial or whole failure of the tree.

APPENDIX 4 - USEFUL LIFE EXPECTANCY (SULE) (BARRELL TREE CONSULTANCY, APRIL 2001)

A tree's safe useful life expectancy is determined by assessing a number of different factors including the health and vitality, estimated age in relation to expected life expectancy for the species, structural defects, and remedial works that could allow retention in the existing situation.

Category	Description
1. Long - Over 40 years	<ul style="list-style-type: none"> (a) Structurally sound trees located in positions that can accommodate future growth. (b) Trees that could be made suitable for retention in the long term by remedial tree care. (c) Trees of special significance for historical, commemorative or rarity reasons that would warrant extraordinary efforts to secure their long term retention.
2 Medium - 15 to 40 years	<ul style="list-style-type: none"> (a) Trees that may only live between 15 and 40 more years. (b) Trees that could live for more than 40 years but may be removed for safety or nuisance reasons. (c) Trees that could live for more than 40 years but may be removed to prevent interference with more suitable individuals or to provide space for new planting. (d) Trees that could be made suitable for retention in the medium term by remedial tree care.
3. Short - 5 to 15 years	<ul style="list-style-type: none"> (a) Trees that may only live between 5 and 15 more years. (b) Trees that could live for more than 15 years but may be removed for safety or nuisance reasons. (c) Trees that could live for more than 15 years but may be removed to prevent interference with more suitable individuals or to provide space for new planting. (d) Trees that require substantial remedial tree care and are only suitable for retention in the short term.
4 Remove - Under 5 years	<ul style="list-style-type: none"> (a) Dead, dying, suppressed or declining trees because of disease or inhospitable conditions. (b) Dangerous trees because of instability or recent loss of adjacent trees. (c) Dangerous trees because of structural defects including cavities, decay, included bark, wounds or poor form. (d) Damaged trees that are clearly not safe to retain. (e) Trees that could live for more than 5 years but may be removed to prevent interference with more suitable individuals or to provide space for new planting. (f) Trees that are damaging or may cause damage to existing structures within 5 years. (g) Trees that will become dangerous after removal of other trees for the reasons given in (a) to (f). (h) Trees in categories (a) to (g) that have a high wildlife habitat value and, with appropriate treatment, could be retained subject to regular review.
5 Small/Young	<ul style="list-style-type: none"> (a) Small trees less than 5m in height. (b) Young trees less than 15 years old but over 5m in height. (c) Formal hedges and trees intended for regular pruning to artificially control growth.

APPENDIX 5:

Tree Schedule and Explanatory Notes

Tree numbers consecutive with Impact assessment report
Accomplished Tree Management – April 2020

TREE #	AGE	SPECIES	COMMON NAME	Overall Height (m)	CANOPY SPREAD	DBH (m)	TPZ (m-R)	DAB (m)	SRZ (m-R)	HEALTH	Structural Condition	ULE	Retention Value	RECOMENDATION
07	Mature	<i>Melaleuca quinquinervia</i>	Broad Leaved Paperbark	8	8	.2	2.4			Good	Good	1b	E	PROTECT Install tree protection measures as per recommendations.
DESIGN COMMENTS		Group of three trees. No Incursion into TPZ Install site fencing to act as modified TPZ fencing												
08	Mature	<i>Eucalyptus pilularis</i>	Blackbutt	15	10	.3	3.6			Good	Good	1b	E	PROTECT Install tree protection measures as per recommendations.
DESIGN COMMENTS		No Incursion into TPZ Install site fencing to act as modified TPZ fencing												
09	Mature	<i>Eucalyptus microcorys</i>	Tallow Wood	19	12	.35	4.2			Good	Good	1b	E	PROTECT Install tree protection measures as per recommendations.
DESIGN COMMENTS		Canopy bias north west. No Incursion into TPZ Install site fencing to act as modified TPZ fencing												

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TREE #	AGE	SPECIES	COMMON NAME	Overall Height (m)	CANOPY SPREAD	DBH (m)	TPZ (m-R)	DAB (m)	SRZ (m-R)	HEALTH	Structural Condition	ULE	Retention Value	RECOMENDATION
10	Mature	<i>Eucalyptus pilularis</i>	Blackbutt	25	15	.80	9.6			Dead	Good	4a	N	REMOVE
DESIGN COMMENTS		No hollows observed. Canopy bias north. Deceased tree will threaten proposal and its inhabitants												
11	Mature	<i>Corymbia intermedia</i>	Pink Blood Wood	25	11	.85	10.3	1.06	3.4	Good	Good	1b	E	PROTECT Install tree protection measures as per recommendations.
DESIGN COMMENTS		Canopy bias west. No Incursion into TPZ Install site fencing to act as modified TPZ fencing												
12	Mature	<i>Eucalyptus pilularis</i>	Blackbutt	22	10	.6	7.2			Good	Good	1b	E	PROTECT Install tree protection measures as per recommendations.
DESIGN COMMENTS		Group of two trees. Canopy bias south west No Incursion into TPZ Install site fencing to act as modified TPZ fencing												

Site location: 97 The Ruins Way Port Macquarie 2444.

Prepared for: Hibbards Pty Ltd c/- Greg Anderson.

Prepared by: Rhys Mackney, Accomplished Tree Management Pty Ltd, info@atreem.com.au, (02) 6583 7631.

Date: 14th December 2020.

TREE #	AGE	SPECIES	COMMON NAME	Height (m)	CANOPY SPREAD	DBH (m)	TPZ (m-R)	DAB (m)	SRZ (m-R)	HEALTH	Structural Condition	ULE	Retention Value	RECOMENDATION
13	Mature	<i>Eucalyptus microcorys</i>	Tallow Wood	24	11	.6	7.2			Good	Good	1b	E	PROTECT Install tree protection measures as per recommendations
DESIGN COMMENTS		Canopy bias north. No Incursion into TPZ Install site fencing to act as modified TPZ fencing												
14	Mature	<i>Eucalyptus pilularis</i>	Blackbutt	18	8	.6	7.2			Good	Good	1b	E	PROTECT Install tree protection measures as per recommendations
DESIGN COMMENTS		Canopy bias east. No Incursion into TPZ Install site fencing to act as modified TPZ fencing												
15	Mature	<i>Eucalyptus microcorys</i>	Tallow Wood	18	8	.6	7.2			Good	Good	1b	E	PROTECT Install tree protection measures as per recommendations
DESIGN COMMENTS		Canopy bias east. No Incursion into TPZ Install site fencing to act as modified TPZ fencing												

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TREE #	AGE	SPECIES	COMMON NAME	Height (m)	CANOPY SPREAD	DBH (m)	TPZ (m-R)	DAB (m)	SRZ (m-R)	HEALTH	Structural Condition	ULE	Retention Value	RECOMENDATION
16	Mature	<i>Eucalyptus microcorys</i>	Tallow Wood	24	24	.9	10.8			Good	Good	1b	E	PROTECT Install tree protection measures as per recommendations
DESIGN COMMENTS		Canopy bias northwest No Incursion into TPZ Install site fencing to act as modified TPZ fencing												
17	Mature	<i>Eucalyptus microcorys</i>	Tallow Wood	20	12	.7	8.4			Good	Good	1b	E	PROTECT Install tree protection measures as per recommendations
DESIGN COMMENTS		Canopy bias north No Incursion into TPZ Install site fencing to act as modified TPZ fencing												

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EXPLANATORY NOTES

Age	Age class according to overall size/canopy volume/live canopy ratio/presence of hollows or lack thereof
Scientific Name/Common Name	Identification is made on the basis of visual features visible from ground level at the time of inspection
Height (m)	Estimated - however, generally comparative to other trees
Spread (m)	Estimated - paced out
DBH (cm)	Trunk diameter - measured or approximated at 1.4m above ground
	Est - Estimated equivalent trunk diameter where multiple trunks and branching exist
Retention Value	E = Essential - Site suitability 40 plus years, good condition, able to be retained without design changes
	H = High - Site suitability 40 plus years fair condition or better able to be retained with minor design changes
	M = Moderate - Site suitability 20 - 40 years, or only retainable with moderate impact on the development of the site
	L = Low - Site suitability less than 20 years, or retention impacts significantly on development of the site
	N = Nil - Site suitability less than 5 years, or retention sterilises development of site
	Note: Site suitability considers health, life expectancy, risk of harm, desirability of species and impacts on current and proposed land use. Impact on development needs to be considered throughout the planning stage
Health	See appendix 3
Structural Condition	See appendix 4
ULE	See appendix 5
Recommendations	Unless otherwise stated trees are to be retained

APPENDIX 6:

Tree Locations

Image taken from six maps:

<https://maps.six.nsw.gov.au/>

Accessed 11th December 2020

Images not to scale

(Please note most vegetation has been removed since images were taken)



