



PORT MACQUARIE-HASTINGS
COUNCIL



Development Assessment Panel

Business Paper

date of meeting: Thursday 18 November 2021

location: Via Skype

time: 2:00pm

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

Development Assessment Panel

CHARTER

1.0 OBJECTIVES

To assist in managing Council's development assessment function by providing independent, 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	17/06/21	01/07/21	09/08/21	02/09/21	01/10/21	21/10/21
David Crofts	✓	✓	✓	✓	✓	✓
Michael Mason	✓			✓		
Chris Gee		✓	✓	✓	✓	✓
Tony McNamara	✓	✓	✓		✓	✓
Dan Croft (Group Manager Development Assessment)	✓		✓		✓	✓
Grant Burge (acting)		✓				
Patrick Galbraith-Robertson (Development Planning Coordinator)				✓	✓	✓

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 18 November 2021

Items of Business

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05	DA2021 - 315.1 Residential Flat Building including Clause 4.6 Variations to Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of the Port Macquarie-Hastings Local Environmental Plan 2011 and Strata Subdivision at Lot 5 DP 18374, No 27 Pacific Drive, Port Macquarie	<u>17</u>
06	General Business	

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

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

Item: 02**Subject: APOLOGIES**

RECOMMENDATION

That the apologies received be accepted.

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

RECOMMENDATION

That the Minutes of the Development Assessment Panel Meeting held on 21 October 2021 be confirmed.

PRESENT

Members:

David Crofts (Independent Chair)
Chris Gee (Independent Member)
Tony McNamara (Independent Member)
Group Manager Development Assessment (Dan Croft)

Other Attendees:

Cr Sharon Griffiths
Pat Galbraith-Robertson (Development Assessment Planning Coordinator)
Grant Burge (Development Engineering Coordinator)
Mick Jones (Development Engineer)

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 7 October 2021 be confirmed.

04 DISCLOSURES OF INTEREST

Dan Croft declared a non-pecuniary less than significant interest in Item 5 - DA2021 - 600 Demolition Of Existing Dwelling And Construction Of Dual Occupancy At 11 Perks Parade Port Macquarie, as his parents live in the same street as the proposed development. Despite being a less than significant interest he advised the meeting that he would leave the meeting for that item so as to manage any perceptions that the proponent and/or submitters may have.

05 DA2021 - 600 DEMOLITION OF EXISTING DWELLING AND CONSTRUCTION OF DUAL OCCUPANCY AT 11 PERKS PARADE PORT MACQUARIE

Dan Croft declared a non-pecuniary less than significant interest in this item, left the meeting and took no part in the discussion or voting thereon.

Speakers:

James Collins (applicant)
Glenn Caldwell (applicant)
Sue Montgomery (opposing the application)
Mitch Montgomery (opposing the application)
Jason Nichols (opposing the application)
Keith Dunlop (opposing the application)

CONSENSUS:

That DA2021 - 600.1 for a Demolition of Existing Dwelling and Construction of Dual Occupancy at Lot 29, DP 231845, No. 11 Perks Parade, Port Macquarie, be determined by granting consent subject to the recommended conditions and as amended below:

- Add new condition B(14) The plans submitted with the application for Construction Certificate shall include an amended window design for Unit 11B Window BW12 to change the window to a highlight window with a minimum 1.5m sill height.
 - Add new condition B(15) Prior to the issue of a Construction Certificate, a detailed landscaping plan including detailed landscaping and treatment of the land (indicating plant types and their height and maturity) shall be submitted to and approved by Council.
-

Dan Croft returned to the meeting.

**06 DA2021-470.1 MULTI DWELLING HOUSING AND COMMUNITY TITLE
SUBDIVISION AT LOT 47 DP 1230717, 39 ANTIGUA AVENUE, LAKE CATHIE**

Speakers:

Nadine Gogoll (opposing the application)

Mel Jones (opposing the application)

Damien Keep (applicant)

David Eiszele (applicant)

CONSENSUS:

That DA2021 - 470.1 for Multi Dwelling Housing and Community Title Subdivision at Lot 47, DP 1230717, No. 39 Antigua Avenue, Lake Cathie, be determined by granting consent subject to the recommended conditions and as amended below:

- Additional condition in Section B of the consent to read: 'Prior to issue of construction certificate a minimum of three (3) different muted roof colours are to be nominated on the plans.'
- Additional condition in Section B of the consent to read: 'Prior to issue of construction certificate a landscaping plan is to be submitted to Council's satisfaction. This should include consideration of collecting waste bins from individual dwellings to enable removal of the nominated bin collection area and increased landscaping within the front setback area. the landscaping plan is also to include upgrading to the landscaping fronting Seaside Dr in the area in front of the existing fence and wall.'
- Additional condition in Section E of the consent to read: Prior to issue of the subdivision certificate the allotment identified as "Lot 1 Community Title" shall be based on the hatched area on the plan marked "Draft Lot Sizes - A002.1"
- Additional condition in Section F of the consent to read: 'All waste removal vehicles servicing the site shall enter and exit the site in a forward direction.'
- Additional condition in Section F of the consent to read 'All waste collection vehicles shall undertake their operations within the boundaries of the site.'

07 GENERAL BUSINESS

Nil.

The meeting closed at 3:50pm.

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: DA2021 - 315.1 RESIDENTIAL FLAT BUILDING INCLUDING CLAUSE 4.6 VARIATIONS TO CLAUSE 4.3 (HEIGHT OF BUILDINGS) AND CLAUSE 4.4 (FLOOR SPACE RATIO) OF THE PORT MACQUARIE-HASTINGS LOCAL ENVIRONMENTAL PLAN 2011 AND STRATA SUBDIVISION AT LOT 5 DP 18374, NO 27 PACIFIC DRIVE, PORT MACQUARIE

Report Author: Development Assessment Officer (Planner), Benjamin Roberts

Applicant:	Wayne Ellis
Owner:	Greater Insight Pty Ltd & Karen & Damien Holdings Pty Ltd
Estimated Cost:	\$7,410,000
Parcel no:	19449

Alignment with Delivery Program

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

RECOMMENDATION

That DA2021 - 315.1 for a residential flat building including clause 4.6 variations to clause 4.3 (height of buildings) and clause 4.4 (floor space ratio) of the Port Macquarie-Hastings Local Environmental Plan 2011 and strata subdivision at Lot 5, DP 18374, No. 27 Pacific Drive, Port Macquarie, be determined by granting consent subject to the recommended conditions.

Executive Summary

This report considers a development application for a residential flat building including clause 4.6 variations to clause 4.3 (height of buildings) and clause 4.4 (floor space ratio) of the Port Macquarie-Hastings Local Environmental Plan 2011 and strata subdivision at the subject site and provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979.

Following exhibition of the application, six (6) 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

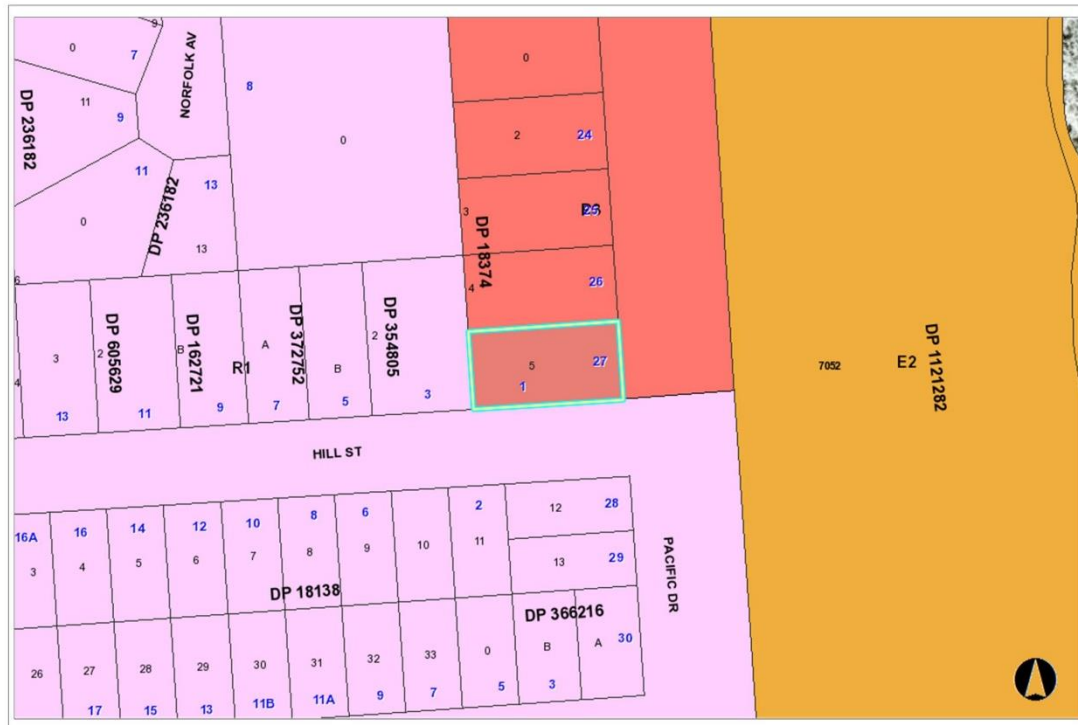
Existing Sites Features and Surrounding Development

The site comprises a single Torrens title lot with an area of 822m². The site is located in the Rocky Beach area of Port Macquarie and is located on the corner of Pacific Drive and Hill Street. Opposite the site and beyond Pacific Drive is a steep coastal escarpment with Rocky Beach and Pacific Ocean below. Rocky Beach reserve/park is located some 70m to the south east of the site.

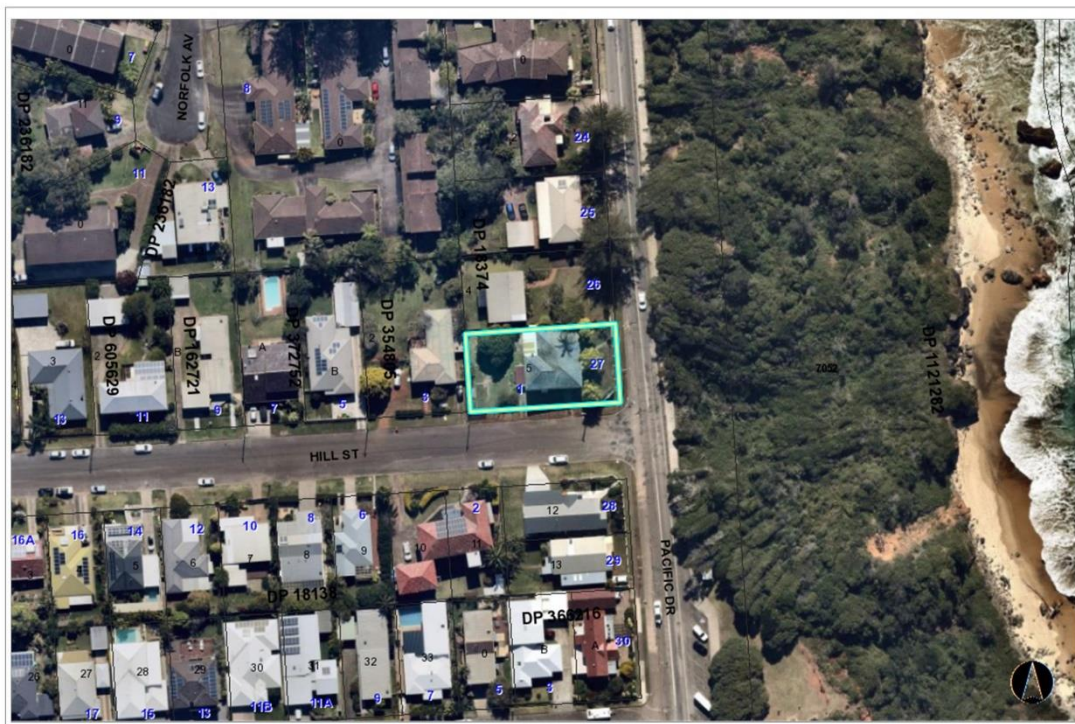
The site is located approximately 1.5 kilometres to the south east of the Port Macquarie Central Business District (CBD) and 500m to the north of the Flynn's beach neighbourhood shopping complex. The immediate adjoining locality is characterised by a mix of residential development comprising predominately single and double storey dwellings. Within the wider locality there a number of multi storey residential and tourist developments.

The site slopes away from east to west with an approximate fall of 5m over the site. The site contained a two storey dwelling with vehicular access provided via two existing driveway crossovers to Hill Street. The application was amended during assessment to remove the proposed demolition of the existing dwelling as it formed part of a previous approval (DA2009/474) issued by Council on 16 June 2010 being for demolition of dwelling & construction of 4 storey residential flat building comprising 10 residential units and basement. This consent has physically commenced and the dwelling was recently demolished. A consent condition has been recommended requiring this consent be formally surrendered.

The site is zoned R3 Medium Density 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:



Photos taken from various locations in Hill Street and Pacific Drive during assessment are provided below for context:





2. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposal include the following:

- Construction of a six storey residential flat building.
- The building will comprise 10 residential units (being a mix of 5 x 3 bedroom and 5 x 2 bedroom units) and 16 parking spaces over the ground and first floors.
- Clause 4.6 requests for variation to maximum building height and floor space ratio controls.
- Strata title subdivision of the building.

Refer to **Attachment 2** at the end of this report for plans of the proposed development. An extract photo montage of the proposal is shown below for context:



Application Chronology

- 26 April 2021 - Application lodged.
- 27 April 2021 - Referred to NSW Rural Fire Service (RFS) and Essential Energy.
- 30 April to 13 May 2021 - Public exhibition via neighbour notification.
- 12 May 2021 - Additional information request to applicant from Council staff.
- 14 May 2021 - Additional information request from Essential Energy.
- 14 May 2021 - Additional information received and referred to Essential Energy.
- 14 May 2021 - Comments received from Essential Energy.
- 5 June 2021 - Part additional information response to Council request.
- 9 June 2021 - Further additional information response to Council request.
- 21 June 2021 - Additional information request received from NSW Rural Fire Service and sent to applicant.
- 24 June 2021 - Further additional information request from Council staff.
- 19 July 2021 - Additional information response received to Council's request.
- 1 September 2021 - Revised bushfire assessment report lodged in response to NSW RFS request and referred to NSW RFS.
- 21 September 2021 - Applicant advised existing dwelling being demolished under historic active development consent and no longer proposed under application.
- 11 October 2021 - NSW RFS bushfire safety authority received.
- 15 October 2021 - Draft strata plan provided by applicant.
- 22 October 2021 - Further additional information request from Council staff.
- 25 October 2021 - Additional information response 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 (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.

State Environmental Planning Policy (Coastal Management) 2018

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

The site is located within the mapped coastal use and coastal environment areas.

Having regard to clauses 13 and 14 of the SEPP the proposed development is not considered likely to result in any of the following:

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

The bulk, scale and size of the proposed development is compatible with the surrounding coastal and built environment and that of the desired future built environment having regard to the adopted maximum building height and floor space ratio controls. The site is predominately clear of any significant vegetation and located within an area zoned for medium density residential purposes.

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

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 - Development in proximity to electricity infrastructure - referral to Essential Energy has been undertaken having regard to proximity of the proposal to electricity infrastructure (i.e. overhead power lines). The following initial comments were provided from Essential Energy:

“Strictly based on the documents submitted, Essential Energy has the following comments to make as to potential safety risks arising from the proposed development:

- No distances have been provided from the overhead powerline to the development. Provided the dwelling maintains a clearance of 5 metres (under blow out and sag conditions) from the closest point of the powerline to the dwelling then Essential Energy has no concerns with the development.*

Essential Energy makes the following general comments:

- If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment;*
- Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with; and*
- In addition, Essential Energy’s records indicate there is electricity infrastructure located within the property. Any activities within this location must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure.*
- Prior to carrying out any works, a “Dial Before You Dig” enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW).*
- Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the Code of Practice – Work near Overhead Power Lines and Code of Practice – Work near Underground Assets.”*

In response, the applicant confirmed the intent to remove the above ground lines on the Hill Street frontage and replace with underground servicing. Essential Energy provided further comment as follows:

“That’s fine. Essential Energy is happy for you to condition the DA on the powerline being undergrounded or meeting with clearances”

Subject to the above Essential Energy have raised no specific safety concerns regarding the development. The initial general advice received from Essential Energy has been forwarded to the applicant for consideration. A consent condition has been

recommended requiring satisfactory arrangements with Essential Energy be in place prior to issuing of a construction certificate.

The proposal does not trigger any of the traffic generating development thresholds of Clause 104. Referral to the Transport for NSW is not required.

State Environmental Planning Policy (Koala Habitat Protection) 2021

Clause 6 - This policy applies to all non-rural zoned land within the Port Macquarie-Hastings Local Government Area.

Clause 11 - The site is not subject to an approved Koala and Plan of Management (KPoM) and it is not more than 1 hectare in area (including adjoining land within the same ownership).

Clause 12 - The vegetation on the site comprises predominantly non-native species and does not contain any preferred Koala browse trees. Having considered the policy, the application and on completion of a site inspection, the site is not considered to be core koala habitat. Council is not prevented from granting consent to the development application.

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 residential use.

State Environmental Planning Policy No. 64 - Advertising and Signage

No advertising or signage is proposed under this application.

State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development

This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

- (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

Based on the above, the proposal is greater than 3 storeys in height and contains more than 4 dwellings therefore the requirements of this SEPP are required to be considered.

Clause 6A - This clause applies in respect of the objectives, design criteria and design guidance set out in Parts 3 and 4 of the Apartment Design Guide for the following:

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage.

If the Council's Development Control Plan (DCP) contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect.

This clause applies regardless of when the DCP was made.

In terms of lodging the application under this policy, it is noted that the proposal has provided the verification and detail required by Clause 50 and Schedule 1, Part 1(2)(5) of the *Environmental Planning and Assessment Regulation 2000*.

Clause 28(2)(b) - The proposal has adequately addressed the Design Quality Principles contained in Schedule 1. The following table provides an assessment against the design quality principles:

Requirement	Proposed	Complies
<p>Principle 1: Context and neighbourhood character</p> <p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p>	<p>The development site is located on the corner of Pacific Drive and Hill Street within the Rocky Beach medium density residential precinct.</p> <p>The immediate adjoining locality is characterised by a mix of residential development comprising predominately single and double storey dwellings. Within the wider locality there a number of multi storey residential and tourist developments.</p> <p>The site and adjoining properties to the north, fronting Pacific Drive, are zoned R3 medium density residential with a maximum height control of 17.5m. The maximum FSR control of 1.5:1 applies to all properties fronting Pacific Drive in this precinct.</p> <p>Having regard to the adopted planning controls, the area has been identified for change. The proposal is sufficiently compatible with the desired character of the precinct.</p>	<p>Yes</p>

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.		
<p>Principle 2: Built form and scale</p> <p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>The proposed development is sufficiently consistent with the medium density zoning objectives and adopted building height and floor space controls.</p> <p>The proposed building enjoys good ocean views over Pacific Drive, and all apartments have been orientated towards North to maximise solar penetration into the external and internal living spaces.</p> <p>The proposal is considered to be a good design in response to the slope and adopted planning controls.</p> <p>The setbacks, built form and building elements provide appropriate articulation which presents an attractive streetscape appearance.</p>	Yes
<p>Principle 3: Density</p> <p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>The proposed density is considered appropriate to the site and will provide a high level of amenity for the future occupants of the building.</p> <p>The density is considered appropriate and consistent with the future character of the Rocky Beach precinct.</p> <p>The proposed density is considered to be sustainable having regard to availability of infrastructure, and public transport, proximity to services and community facilities and the environmental quality of the area.</p>	Yes

<p>Principle 4: Sustainability</p> <p>Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>The proposed building complies with the SEPP (Building Sustainability Index BASIX) 2004.</p> <p>All apartments enjoy good sun penetration due to their northern orientation and cross ventilation is enhanced through side setbacks and the design takes satisfactory advantage of the corner site location.</p> <p>Recycling and waste separation are encouraged by the proposed building occupants with sufficient waste storage facilities in the basement and private garbage collection arrangements.</p> <p>Ground floor landscaping is proposed.</p>	<p>Yes</p>
<p>Principle 5: Landscape</p> <p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises useability, privacy</p>	<p>This site provides for a variable width deep soil zone (approx. 173.12m²) around the perimeter of the subject site that will support landscaping. Landscape concept plans have been submitted.</p> <p>Other opportunities for landscaping on the site are maximized by the use of planters, (approx. 102.36m²) which will support various landscape elements and treatments. This approach assists in softening of the building together with acting as privacy screening.</p> <p>The proposed second floor unit has been provided with appropriate height courtyard walls and planters to provide satisfactory privacy to the street.</p> <p>The communal open space areas around the ground floor areas of the building provide for equitable access and passive social interaction.</p>	<p>Yes</p>

and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.		
<p>Principle 6: Amenity</p> <p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>The design incorporates generous unit layouts which take advantage of the northern orientation where possible and practical. The design of the eastern units provides for access to a variety of orientations, which provides for variability in outlook and vistas.</p> <p>Adequate storage and outdoor space is proposed.</p> <p>The layout of the units has taken advantage of the northern and eastern orientations with an emphasis on natural sunlight and ventilation via north facing glazing and balconies.</p> <p>The design and layout will provide a high level of resident amenity.</p> <p>All units are accessible from the ground floor via a common lift.</p> <p>Building depth is satisfactory.</p> <p>All units include a sufficient amount of private open space. Limited communal spaces are available at ground level of the development site.</p> <p>The proposed apartments contain 2.7m ceiling heights throughout all habitable areas and is therefore, considered consistent with the design criteria.</p>	Yes
<p>Principle 7: Safety</p> <p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of</p>	<p>The building's primary common pedestrian entry is from Hill Street.</p> <p>Public and private open spaces are clearly defined though courtyard walls and landscaping.</p> <p>Access to the onsite carparking and common internal access infrastructure will be controlled via electronic access control systems.</p>	Yes

<p>public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>The proposal adequately addresses the principles of Crime Prevention Through Environmental Design.</p>	
<p>Principle 8: Housing diversity and social interaction</p> <p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>The site and design provide for the maximization of ocean and hinterland views.</p> <p>The proposal includes a mix of 2- and 3-bedroom apartments to suit a variety of budgets and housing needs. The proposal adequately addresses social dimensions and housing affordability.</p> <p>The proposal provides opportunity for social interaction in the communal internal and external areas of the proposed development.</p>	<p>Yes</p>
<p>Principle 9: Aesthetics</p> <p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and</p>	<p>The proposed apartment building has been designed in a contemporary manner.</p> <p>The wrapped curves on the balconies provide a variable form throughout the building's façade.</p> <p>The intent is to provide varying degrees of interest throughout the building or viewing it from the public realm.</p> <p>Materials and colours are appropriate and will be durable and suitable for the beachside environment.</p>	<p>Yes</p>

repetitions of the streetscape.		
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Clause 28(2)(c) - The proposal has adequately addressed the NSW Department of Planning Industry and Environment (DPIE) Apartment Design Guide requiring consideration. The following table provides an assessment against the Apartment Design Guide with assessment comments considering the design criteria and design objectives where applicable:

Apartment Design Guide (ADG) Objective	Design Guidance/Design Criteria (Italics)	Proposed	Complies
3A Site analysis			
3A - 1 Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	Each element in the Site Analysis Checklist should be addressed (Appendix 1 of ADG)	A satisfactory site analysis plan has been submitted in the architectural plans set.	Yes
3B Orientation			
3B - 1 Building types and layouts respond to the streetscape and site while optimising solar access within the development.	Buildings along the street frontage define the street, by facing it and incorporating direct access from the street (see figure 3B.1). Where the street frontage is to the east or west, rear buildings should be orientated to the north. Where the street frontage is to the north or south, overshadowing to the south should be minimised and buildings behind the street frontage should be orientated to the east and west (see figure 3B.2).	The site is located on the corner of Hill Street and Pacific Drive. The design adequately responds to Hill Street while providing northern orientation of apartments. All living rooms, open spaces and balconies are orientated north and provide suitable solar access throughout the year.	Yes
3B - 2 Overshadowing of neighbouring properties is minimised during mid-winter.	Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public	Overshadowing diagrams are included within the architectural plan set. The impact of the proposed buildings on solar access	Yes

	<p>open space and 4A Solar and daylight access.</p> <p>Solar access to living rooms, balconies and private open spaces of neighbours should be considered.</p> <p>Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%.</p> <p>If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums contained in section 3F Visual privacy.</p> <p>Overshadowing should be minimised to the south or downhill by increased upper level setbacks.</p> <p>It is optimal to orientate buildings at 90 degrees to the boundary with neighbouring properties to minimise overshadowing and privacy impacts, particularly where minimum setbacks are used and where buildings are higher than the adjoining development.</p> <p>A minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings.</p>	<p>has been reviewed for the adjoining and adjacent sites to the south and west. The assessment indicates that the proposed development will have no adverse overshadowing impacts due to the nature of the design of buildings on adjoining and adjacent land to the south and west.</p>	
3C Public domain interface			
3C - 1 Transition between private and	Terraces, balconies and courtyard apartments	The entry area is well lit and	Yes



<p>public domain is achieved without compromising safety and security</p>	<p>should have direct street entry, where appropriate.</p> <p>Changes in level between private terraces, front gardens and dwelling entries above the street level provide surveillance and improve visual privacy for ground level dwellings (see figure 3C.1).</p> <p>Upper level balconies and windows should overlook the public domain.</p> <p>Front fences and walls along street frontages should use visually permeable materials and treatments. The height of solid fences or walls should be limited to 1m.</p> <p>Length of solid walls should be limited along street frontages.</p> <p>Opportunities should be provided for casual interaction between residents and the public domain. Design solutions may include seating at building entries, near letter boxes and in private courtyards adjacent to streets.</p> <p>In developments with multiple buildings and/or entries, pedestrian entries and spaces associated with individual buildings/entries should be differentiated to improve legibility for residents, using a number of the following design solutions:</p> <ul style="list-style-type: none"> - architectural detailing - changes in materials 	<p>activated and overlooked.</p> <p>The buildings car parking areas are secured via a controlled roller door at the site boundary.</p> <p>All units will have good casual surveillance of recreation facilities on the site from the internal and external living areas (without sacrificing privacy).</p>	
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	<ul style="list-style-type: none"> - plant species - colours <p>Opportunities for people to be concealed should be minimised</p>		
3C - 2 Amenity of the public domain is retained and enhanced.	<p>Planting softens the edges of any raised terraces to the street, for example above sub-basement car parking.</p> <p>Mail boxes should be located in lobbies, perpendicular to the street alignment or integrated into front fences where individual street entries are provided.</p> <p>The visual prominence of underground car park vents should be minimised and located at a low level where possible.</p> <p>Substations, pump rooms, garbage storage areas and other service requirements should be located in basement car parks or out of view.</p> <p>Ramping for accessibility should be minimised by building entry location and setting ground floor levels in relation to footpath levels.</p> <p>Durable, graffiti resistant and easily cleanable materials should be used.</p> <p>Where development adjoins public parks, open space or bushland, the design positively addresses this interface and uses a number of the following design solutions:</p>	<p>Satisfactory landscaping is proposed on the site including the deep soil area.</p> <p>The design of the development will enhance the amenity of the area whilst retaining privacy and security for the residential occupants of the building.</p> <p>The proposed setbacks of the built form and the presence of the Pacific Drive and Hill Street road reserves to the south and east will ensure that amenity impacts on the public domain will be minimal as the proposal will be clearly and significantly separated from public spaces.</p>	Yes

	<ul style="list-style-type: none"> - street access, pedestrian paths and building entries which are clearly defined - paths, low fences and planting that clearly delineate between communal/private open space and the adjoining public open space - minimal use of blank walls, fences and ground level parking. <p>On sloping sites protrusion of car parking above ground level should be minimised by using split levels to step underground car parking</p>		
3D Communal and public open space			
3D - 1 An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping	<p><u><i>Design Criteria</i></u></p> <p><i>1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)</i></p> <p><i>2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).</i></p> <p>Communal open space should be consolidated into a well-designed, easily identified and usable area.</p> <p>Communal open space should have a minimum dimension of 3m, and larger developments should consider greater dimensions.</p>	<p>Communal open space areas are available in around the perimeter of the proposed development with a 3m x 7.0m area available in the north-western corner of the subject site together with other areas along the eastern and southern perimeters of the subject site.</p> <p>25% of the site area is 207m². 173.12m² of communal open space area is proposed development however given the nature and size of</p>	<p>**No - but acceptable for the reasons outlined.</p>

	<p>Communal open space should be co-located with deep soil areas.</p> <p>Direct, equitable access should be provided to communal open space areas from common circulation areas, entries and lobbies.</p> <p>Where communal open space cannot be provided at ground level, it should be provided on a podium or roof.</p> <p>Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</p> <ul style="list-style-type: none"> - provide communal spaces elsewhere such as a landscaped roof top terrace or a common room - provide larger balconies or increased private open space for apartments - demonstrate good proximity to public open space and facilities and/or provide contributions to public open space 	<p>the proposed development private open space will be the predominately used for recreational purposes.</p> <p>The provision of communal open space on the subject site reflects the availability of significant open space areas which are easily and readily available to the east of the subject site.</p>	
3D - 2 Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting	<p>Facilities are provided within communal open spaces and common spaces for a range of age groups (see also 4F Common circulation and spaces), incorporating some of the following elements:</p>	<p>Given the nature and size of the proposed development private open space will be the predominately used recreation area.</p>	Yes

	<ul style="list-style-type: none"> - seating for individuals or groups - barbecue areas - play equipment or play areas - swimming pools, gyms, tennis courts or common rooms. <p>The location of facilities responds to microclimate and site conditions with access to sun in winter, shade in summer and shelter from strong winds and down drafts.</p> <p>Visual impacts of services should be minimised, including location of ventilation duct outlets from basement car parks, electrical substations and detention tanks</p>	<p>The proposed communal open space will provide for informal use for passive activities, responds to site conditions and will be attractive and inviting.</p> <p>The provision of communal open space on the subject site reflects the availability of significant open space areas which are easily and readily available to the east of the subject site.</p>	
3D - 3 Communal open space is designed to maximise safety	<p>Communal open space and the public domain should be readily visible from habitable rooms and private open space areas while maintaining visual privacy. Design solutions may include:</p> <ul style="list-style-type: none"> - bay windows - corner windows - balconies. <p>Communal open space should be well lit.</p> <p>Where communal open space/facilities are provided for children and young people they are safe and contained</p>	<p>Given the nature and size of the proposed development private open space will be the predominately used recreation area.</p> <p>The location of the communal open space along the northern, southern and western portions of the proposed development provides for safety and security.</p> <p>The public domain space is visible from the easterly orientated units.</p>	Yes
3D - 4 Public open space, where	The public open space should be well connected	No public open space is proposed	N/A

provided, is responsive to the existing pattern and uses of the neighbourhood	<p>with public streets along at least one edge.</p> <p>The public open space should be connected with nearby parks and other landscape elements.</p> <p>Public open space should be linked through view lines, pedestrian desire paths, termination points and the wider street grid.</p> <p>Solar access should be provided year round along with protection from strong winds.</p> <p>Opportunities for a range of recreational activities should be provided for people of all ages.</p> <p>A positive address and active frontages should be provided adjacent to public open space.</p> <p>Boundaries should be clearly defined between public open space and private areas</p>	as a part of the development.	
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3E Deep soil zones

3E - 1 Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality	<p><u><i>Design Criteria</i></u></p> <p><i>1. Deep soil zones are to meet the following minimum requirements:</i></p> <p><i>a) < 650m², no min dimension, 7% site area deep soil zone.</i></p> <p><i>b) 650-1500m², 3m dimension, 7% site area deep soil zone.</i></p> <p><i>c) >1500m², 6m dimension, 7% site area deep soil zone.</i></p> <p>On some sites it may be possible to provide larger deep soil zones,</p>	<p>The proposal does not provide a minimum 3m wide dimensioned deep soil zone along the entire width of the site. 7% of the site area is 58m².</p> <p>An area at rear (north-western corner) is available that is 3m in width for approximate length of 7m, providing a deep soil area of 21m².</p> <p>Additional deep soil areas are available along the western, northern,</p>	**No - but acceptable for the reasons outlined.
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	<p>depending on the site area and context:</p> <ul style="list-style-type: none"> - 10% of the site as deep soil on sites with an area of 650m² - 1,500m² - 15% of the site as deep soil on sites greater than 1,500m². <p>Deep soil zones should be located to retain existing significant trees and to allow for the development of healthy root systems, providing anchorage and stability for mature trees. Design solutions may include:</p> <ul style="list-style-type: none"> - basement and sub-basement car park design that is consolidated beneath building footprints - use of increased front and side setbacks - adequate clearance around trees to ensure long term health - co-location with other deep soil areas on adjacent sites to create larger contiguous areas of deep soil. <p>Achieving the design criteria may not be possible on some sites including where:</p> <ul style="list-style-type: none"> - the location and building typology have limited or no space for deep soil at 	<p>southern and eastern aspects of the proposed development albeit these areas are not 3m in dimension.</p> <p>The total deep soil areas proposed on the site are greater than 7% of site area comprising approximately 173.12m² in area.</p> <p>Notwithstanding the size and area of the deep soil areas their design and location improve residential amenity and promote management of water and air quality in the context of the nature and scale of the proposed development and having regards to the significant open space areas which are available to the east of the subject site.</p> <p>The proposed deep soil zone is considered to provide suitable area for the growth of suitable, healthy, and mature trees.</p>	
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	<p>ground level (e.g. central business district, constrained sites, high density areas, or in centres)</p> <ul style="list-style-type: none"> - there is 100% site coverage or non-residential uses at ground floor level. <p>Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure.</p>		
3F Visual privacy			
3F - 1 Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy	<p><u><i>Design Criteria</i></u></p> <p><i>1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</i></p> <ul style="list-style-type: none"> <i>a) Building height up to 12m (4 storey) need 6m setback to habitable and 3m to non-habitable.</i> <i>b) Buildings up to 25m (5-8 storeys) need 9m to habitable and 4.5m to non-habitable.</i> <i>c) Buildings over 25m (9+ storeys) need 12m to habitable and 6m to non-habitable.</i> 	<p>Minimum 5.9m west side boundary setback to habitable rooms, balconies and roof top terrace.</p> <p>North facing terrace of unit 101 is setback 2.3m from the north side boundary. North facing terraces of units 201, 301, 401 and 501 are setback 4.5m from the north side boundary.</p> <p>North facing terrace of unit 202 is setback 1.8m from the north side boundary.</p> <p>North facing terraces of units 302, 402, 502 and 602 are setback a minimum of 2.8m from the north side boundary.</p>	No - but acceptable for the reasons outlined.

	<p><i>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2).</i></p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties</i></p> <p>Generally, one step in the built form as the height increases due to building separations is desirable. Additional steps should be careful not to cause a 'ziggurat' appearance.</p> <p>For residential buildings next to commercial buildings, separation distances should be measured as follows:</p> <ul style="list-style-type: none"> - for retail, office spaces and commercial balconies use the habitable room distances - for service and plant areas use the non-habitable room distances. <p>New development should be located and oriented to maximise visual privacy between buildings on site and for neighbouring buildings. Design solutions include:</p> <ul style="list-style-type: none"> - site layout and building orientation to 	<p>Visual privacy to the west is considered adequate as the units are orientated north with the main living and terrace areas north facing. The adjoining dwellings primary living and primary open space area is located and orientated on the north western side of the dwelling. The adjoining dwelling to the north contains a covered west facing primary outdoor area which is accessed from the primary living areas located on the northern side of the dwelling. This dwelling was approved as a tourist accommodation cottage.</p> <p>Accordingly, high levels of visual privacy are maintained through the design of the proposed building as follows;</p> <ul style="list-style-type: none"> • Minimizing window areas in the western orientation; and • Elevated window sill heights for windows located in the western elevation of the proposed building; and 	
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	<p>minimise privacy impacts (see also section 3B Orientation)</p> <ul style="list-style-type: none"> - on sloping sites, apartments on different levels have appropriate visual separation distances (see figure 3F.4). <p>Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping (figure 3F.5).</p> <p>Direct lines of sight should be avoided for windows and balconies across corners.</p> <p>No separation is required between blank walls</p>	<ul style="list-style-type: none"> • Maximizing the northern orientation of habitable/living rooms so as to reinforce the northerly and easterly focus of the adjoining residential buildings; • The presence of the Pacific Drive and Hill Street road reserves provides for significant spatial separation to private and public open spaces. <p>Where necessary privacy has been maintained via the use of walls and privacy screens.</p> <p>The internal visual privacy screening proposed between northern terraces is consistent with the design criteria.</p>	
3F - 2 Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space	<p>Communal open space, common areas and access paths should be separated from private open space and windows to apartments, particularly habitable room windows. Design solutions may include:</p> <ul style="list-style-type: none"> - setbacks - solid or partially solid balustrades to balconies at lower levels - fencing and/or trees and vegetation to separate spaces 	<p>To the north and west privacy is retained via topography, distance and external screening.</p> <p>Units 202 – 601 have living area glazing orientated to the northwest and northeast whilst all balconies have a 600mm solid balustrade with glass above 600mm.</p> <p>Direct views are minimized through the orientation of</p>	Yes

	<ul style="list-style-type: none"> - screening devices - bay windows or pop out windows to provide privacy in one direction and outlook in another - raising apartments/private open space above the public domain or communal open space - planter boxes incorporated into walls and balustrades to increase visual separation - pergolas or shading devices to limit overlooking of lower apartments or private open space - on constrained sites where it can be demonstrated that building layout opportunities are limited, fixed louvres or screen panels to windows and/or balconies. <p>Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.</p> <p>Balconies and private terraces should be located in front of living</p>	<p>all units to the north and east of the subject site.</p> <p>Where necessary privacy has been maintained via the use of walls and screens.</p> <p>The unit layouts have emphasis on access to sunlight and ventilation via extensive north, northeast and northwest facing glazing and openings.</p>	
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	<p>rooms to increase internal privacy.</p> <p>Windows should be offset from the windows of adjacent buildings.</p> <p>Recessed balconies and/or vertical fins should be used between adjacent balconies</p>		
3G Pedestrian access and entries			
3G - 1 Building entries and pedestrian access connects to and addresses the public domain	<p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge.</p> <p>Entry locations relate to the street and subdivision pattern and the existing pedestrian network.</p> <p>Building entries should be clearly identifiable and communal entries should be clearly distinguishable from private entries.</p> <p>Where street frontage is limited and multiple buildings are located on the site, a primary street address should be provided with clear sight lines and pathways to secondary building entries.</p>	<p>The building vehicular entries are located on Hill Street. Pedestrian entry is also via Hill Street and will connect to the required pedestrian footpath network across both frontages. The entrances are sufficiently defined and articulated with clear sight lines available to the street.</p>	Yes
3G - 2 Access, entries and pathways are accessible and easy to identify	<p>Building access areas including lift lobbies, stairwells and hallways should be clearly visible from the public domain and communal spaces.</p> <p>The design of ground floors and underground car parks minimise level changes along pathways and entries.</p> <p>Steps and ramps should be integrated into the</p>	<p>The primary building entry area is clearly visible from Hill Street and at grade access is provided in compliance with the relevant disability standards.</p>	Yes

	<p>overall building and landscape design.</p> <p>For large developments, 'way finding' maps should be provided to assist visitors and residents (see figure 4T.3).</p> <p>For large developments electronic access and audio/video intercom should be provided to manage access</p>		
3G - 3 Large sites provide pedestrian links for access to streets and connection to destinations	<p>Pedestrian links through sites facilitate direct connections to open space, main streets, centres and public transport.</p> <p>Pedestrian links should be direct, have clear sight lines, be overlooked by habitable rooms or private open spaces of dwellings, be well lit and contain active uses, where appropriate</p>	Pedestrian connection will be available to the required foot paving along both frontages.	Yes
3H Vehicle access			
3H - 1 Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	<p>Car park access should be integrated with the building's overall facade. Design solutions may include:</p> <ul style="list-style-type: none"> - the materials and colour palette to minimise visibility from the street - security doors or gates at entries that minimise voids in the facade - where doors are not provided, the visible interior reflects the facade design and the building services, pipes 	<p>Car parking and access to is split over two levels (ground and first floors) with two separate driveway crossovers to Hill Street. The site currently contains two driveway crossovers on Hill Street.</p> <p>While pedestrian access to the front entry is shared with the first floor driveway this is considered acceptable having regard to the low speed environment and good sight lines.</p>	Yes

	<p>and ducts are concealed.</p> <p>Car park entries should be located behind the building line.</p> <p>Vehicle entries should be located at the lowest point of the site minimising ramp lengths, excavation and impacts on the building form and layout.</p> <p>Car park entry and access should be located on secondary streets or lanes where available.</p> <p>Vehicle standing areas that increase driveway width and encroach into setbacks should be avoided.</p> <p>Access point locations should avoid headlight glare to habitable rooms.</p> <p>Adequate separation distances should be provided between vehicle entries and street intersections.</p> <p>The width and number of vehicle access points should be limited to the minimum.</p> <p>Visual impact of long driveways should be minimised through changing alignments and screen planting.</p> <p>The need for large vehicles to enter or turn around within the site should be avoided.</p> <p>Garbage collection, loading and servicing areas are screened.</p> <p>Clear sight lines should be provided at pedestrian and vehicle crossings.</p>	<p>The carpark design access point is satisfactory in accordance with the design criteria.</p>	
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	<p>Traffic calming devices such as changes in paving material or textures should be used where appropriate.</p> <p>Pedestrian and vehicle access should be separated and distinguishable. Design solutions may include:</p> <ul style="list-style-type: none"> - changes in surface materials - level changes - the use of landscaping for separation 		
3J Bicycle and car parking			
<p>3J - 1 Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas</p> <p><u>Notes</u></p> <p>Port Macquarie is a nominated regional centre.</p> <p>In terms of using Guide to Traffic Generating Developments, Port Macquarie is a “sub-regional centre” as by definition it does not have access to rail.</p> <p>Medium density is 2 - <20 dwellings.</p> <p>High Density is 20 or more dwellings</p>	<p><u>Design Criteria</u></p> <p>1. <i>For development in the following locations:</i></p> <p>a) <i>on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</i></p> <p>b) <i>on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</i></p> <p><i>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less</i></p>	<p>In accordance with the design criteria the minimum car parking requirement for the site has been calculated in accordance the DCP provisions. These RMS provisions are therefore not reliant upon/considered in any detail.</p>	N/A

	<p><i>The car parking needs for a development must be provided off street.</i></p> <p>Where a car share scheme operates locally, provide car share parking spaces within the development. Car share spaces, when provided, should be on site.</p> <p>Where less car parking is provided in a development, council should not provide on street resident parking permits</p> <p><u>Guide to Traffic Generating Developments</u></p> <p>Medium density residential flat buildings require:</p> <ul style="list-style-type: none"> - 1 space per unit + - 1 space for every 5 x 2-bedroom unit + - 1 space for every 2 x 3-bedroom unit + - 1 space for 5 units (visitor parking). <p>High density residential flat buildings for metropolitan sub-regional centres require:</p> <ul style="list-style-type: none"> - 0.6 spaces per 1-bedroom unit - 0.9 spaces per 2-bedroom unit - 1.40 spaces per 3-bedroom unit + - 1 space per 5 units (visitor parking) 		
3J - 2 Parking and facilities are provided	Conveniently located and sufficient numbers of	Bicycle racks and limited motorcycle	Yes

for other modes of transport	<p>parking spaces should be provided for motorbikes and scooters.</p> <p>Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas.</p> <p>Conveniently located charging stations are provided for electric vehicles, where desirable</p>	parking are capable of being provided within the ground and first floor storage areas.	
3J - 3 Car park design and access is safe and secure	<p>Supporting facilities within car parks, including garbage, plant and switch rooms, storage areas and car wash bays can be accessed without crossing car parking spaces.</p> <p>Direct, clearly visible and well lit access should be provided into common circulation areas.</p> <p>A clearly defined and visible lobby or waiting area should be provided to lifts and stairs.</p> <p>For larger car parks, safe pedestrian access should be clearly defined and circulation areas have good lighting, colour, line marking and/or bollards</p>	<p>The car parking design over two levels provides sufficient space for garbage storage, storage space, lift entry and exit. Access to the front entry and lift does not cross any parking spaces.</p>	Yes
3J - 4 Visual and environmental impacts of underground car parking are minimised	<p>Excavation should be minimised through efficient car park layouts and ramp design.</p> <p>Car parking layout should be well organised, using a logical, efficient structural grid and double loaded aisles.</p> <p>Protrusion of car parks should not exceed 1m above ground level.</p>	<p>The car parking layout is logical and efficient stepped over the two levels as to minimise excavation.</p>	Yes

	<p>Design solutions may include stepping car park levels or using split levels on sloping sites.</p> <p>Natural ventilation should be provided to basement and sub-basement car parking areas.</p> <p>Ventilation grills or screening devices for car parking openings should be integrated into the facade and landscape design</p>		
3J - 5 Visual and environmental impacts of on-grade car parking are minimised	<p>On-grade car parking should be avoided.</p> <p>Where on-grade car parking is unavoidable, the following design solutions are used:</p> <ul style="list-style-type: none"> - parking is located on the side or rear of the lot away from the primary street frontage - cars are screened from view of streets, buildings, communal and private open space areas - safe and direct access to building entry points is provided - parking is incorporated into the landscape design of the site, by extending planting and materials into the car park space - stormwater run-off is managed appropriately from car parking surfaces • bio- 	Parking is contained to within the building.	N/A

	<p>swales, rain gardens or on site detention tanks are provided, where appropriate</p> <ul style="list-style-type: none"> - light coloured paving materials or permeable paving systems are used and shade trees are planted between every 4-5 parking spaces to reduce increased surface temperatures from large areas of paving 		
3J - 6 Visual and environmental impacts of above ground enclosed car parking are minimised	<p>Exposed parking should not be located along primary street frontages</p> <p>Screening, landscaping and other design elements including public art should be used to integrate the above ground car parking with the facade. Design solutions may include:</p> <ul style="list-style-type: none"> - car parking that is concealed behind the facade, with windows integrated into the overall facade design (approach should be limited to developments where a larger floor plate podium is suitable at lower levels) - car parking that is 'wrapped' with other uses, such as retail, commercial or two storey Small 	Parking is contained to within the building.	N/A

	Office/Home Office (SOHO) units along the street frontage (see figure 3J.9). Positive street address and active frontages should be provided at ground level		
4A Solar and daylight access			
4A - 1 To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space	<p><u><i>Design Criteria</i></u></p> <p><i>1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</i></p> <p><i>2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter.</i></p> <p><i>3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</i></p> <p>The design maximises north aspect and the number of single aspect south facing apartments is minimised.</p> <p>Single aspect, single storey apartments should have a northerly or easterly aspect.</p> <p>Living areas are best located to the north and service areas to the</p>	<p>All units are provided with generous terrace areas orientated towards the north to ensure adequate natural light filters through the units.</p> <p>The ground floor single aspect Unit 1 is orientated to the north and >70% of the units achieve the minimum sunlight access between 9am and 3pm mid-winter.</p> <p>All units have dual orientations (north and south).</p>	Yes

	<p>south and west of apartments.</p> <p>To optimise the direct sunlight to habitable rooms and balconies a number of the following design features are used:</p> <ul style="list-style-type: none"> - dual aspect apartments - shallow apartment layouts - two storey and mezzanine level apartments - bay windows <p>To maximise the benefit to residents of direct sunlight within living rooms and private open spaces, a minimum of 1m² of direct sunlight, measured at 1m above floor level, is achieved for at least 15 minutes.</p> <p>Achieving the design criteria may not be possible on some sites. This includes:</p> <ul style="list-style-type: none"> - where greater residential amenity can be achieved along a busy road or rail line by orientating the living rooms away from the noise source - on south facing sloping sites - where significant views are oriented away from the desired aspect for direct sunlight <p>Design drawings need to demonstrate how site</p>		
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	constraints and orientation preclude meeting the design criteria and how the development meets the objective.		
4A - 2 Daylight access is maximised where sunlight is limited	<p>Courtyards, skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms.</p> <p>Where courtyards are used:</p> <ul style="list-style-type: none"> - use is restricted to kitchens, bathrooms and service areas - building services are concealed with appropriate detailing and materials to visible walls - courtyards are fully open to the sky - access is provided to the light well from a communal area for cleaning and maintenance - acoustic privacy, fire safety and minimum privacy separation distances (see section 3F Visual privacy) are achieved. <p>Opportunities for reflected light into apartments are optimised through:</p> <ul style="list-style-type: none"> - reflective exterior surfaces on buildings opposite south facing windows 	It is considered that adequate daylight access is available to each of the proposed units and generous external spaces are provided.	Yes

	<ul style="list-style-type: none"> - positioning windows to face other buildings or surfaces (on neighbouring sites or within the site) that will reflect light - integrating light shelves into the design - light coloured internal finishes 		
4A - 3 Design incorporates shading and glare control, particularly for warmer months	<p>A number of the following design features are used:</p> <ul style="list-style-type: none"> - balconies or sun shading that extend far enough to shade summer sun, but allow winter sun to penetrate living areas - shading devices such as eaves, awnings, balconies, pergolas, external louvres and planting - horizontal shading to north facing windows - vertical shading to east and particularly west facing windows - operable shading to allow adjustment and choice - high performance glass that minimises external glare off windows, with consideration given to reduced tint glass or glass 	Deep balconies and vertical sun control hoods/louvres have been provided where necessary.	Yes

	with a reflectance level below 20% (reflective films are avoided)		
4B Natural ventilation			
4B - 1 All habitable rooms are naturally ventilated	<p>The building's orientation maximises capture and use of prevailing breezes for natural ventilation in habitable rooms.</p> <p>Depths of habitable rooms support natural ventilation.</p> <p>The area of unobstructed window openings should be equal to at least 5% of the floor area served.</p> <p>Light wells are not the primary air source for habitable rooms.</p> <p>Doors and openable windows maximise natural ventilation opportunities by using the following design solutions:</p> <ul style="list-style-type: none"> - adjustable windows with large effective openable areas - a variety of window types that provide safety and flexibility such as awnings and louvres - windows which the occupants can reconfigure to funnel breezes into the apartment such as vertical louvres, casement 	All habitable rooms are naturally ventilated.	Yes

	windows and externally opening doors		
4B - 2 The layout and design of single aspect apartments maximises natural ventilation	<p>Apartment depths are limited to maximise ventilation and airflow (see also figure 4D.3)</p> <p>Natural ventilation to single aspect apartments is achieved with the following design solutions:</p> <ul style="list-style-type: none"> - primary windows are augmented with plenums and light wells (generally not suitable for cross ventilation) - stack effect ventilation / solar chimneys or similar to naturally ventilate internal building areas or rooms such as bathrooms and laundries - courtyards or building indentations have a width to depth ratio of 2:1 or 3:1 to ensure effective air circulation and avoid trapped smells 	All units have dual orientations (north and south).	N/A
4B - 3 The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents	<p><u>Design Criteria</u></p> <p><i>1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural</i></p>	<p>All units have the opportunity for natural cross ventilation.</p> <p>The overall depth of the apartments up to the 5th floor is less than 18m glass to glass. The north south depth of the 6th floor unit is less than 18m</p>	Yes

	<p><i>ventilation and cannot be fully enclosed.</i></p> <p><i>2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</i></p> <p>The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths.</p> <p>In cross-through apartments external window and door opening sizes/areas on one side of an apartment (inlet side) are approximately equal to the external window and door opening sizes/areas on the other side of the apartment (outlet side) (see figure 4B.4).</p> <p>Apartments are designed to minimise the number of corners, doors and rooms that might obstruct airflow.</p> <p>Apartment depths, combined with appropriate ceiling heights, maximise cross ventilation and airflow</p>	<p>however the east west depth is approximately 19m. However, this unit has 360 degree aspect and is provided with satisfactory light and ventilation opportunities.</p>	
4C Ceiling heights			
4C - 1 Ceiling height achieves sufficient natural ventilation and daylight access	<p><u>Design Criteria</u></p> <p><i>1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</i></p> <p><i>Minimum ceiling height for apartment and mixed use buildings</i></p> <p><i>Habitable rooms = 2.7m</i></p> <p><i>Non-habitable = 2.4m</i></p>	<p>All units are proposed to contain 2.7m ceiling heights throughout all habitable areas and is therefore considered consistent with the design criteria.</p>	Yes

	<p><i>For 2 storey apartments = 2.7m for main living area floor and 2.4m for second floor, where its area does not exceed 50% of the apartment area</i></p> <p><i>Attic spaces = 1.8m at edge of room with a 30-degree minimum ceiling slope</i></p> <p><i>If located in mixed use areas = 3.3m for ground and first floor to promote future flexibility of use</i></p> <p><i>These minimums do not preclude higher ceilings if desired.</i></p> <p>Ceiling height can accommodate use of ceiling fans for cooling and heat distribution.</p>		
4C - 2 Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms	<p>A number of the following design solutions can be used:</p> <ul style="list-style-type: none"> - the hierarchy of rooms in an apartment is defined using changes in ceiling heights and alternatives such as raked or curved ceilings, or double height spaces - well-proportioned rooms are provided, for example, smaller rooms feel larger and more spacious with higher ceilings - ceiling heights are maximised in habitable rooms by ensuring that bulkheads do not intrude. The 	All units are proposed to contain 2.7m ceiling heights throughout all habitable areas and is therefore considered consistent with the design criteria.	Yes

	stacking of service rooms from floor to floor and coordination of bulkhead location above non-habitable areas, such as robes or storage, can assist		
4C - 3 Ceiling heights contribute to the flexibility of building use over the life of the building	Ceiling heights of lower level apartments in centres should be greater than the minimum required by the design criteria allowing flexibility and conversion to non-residential uses (see figure 4C.1)	All units including the ground floor units are proposed to contain 2.7m ceiling heights throughout all habitable areas and is therefore considered consistent with the design criteria.	Yes
4D Apartment size and layout			
4D - 1 The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity	<p><u><i>Design Criteria</i></u></p> <p><i>1. Apartments are required to have the following minimum internal areas:</i></p> <p><i>Studio = 35m²</i></p> <p><i>1 bedroom = 50m²</i></p> <p><i>2 bedroom = 70m²</i></p> <p><i>3 bedroom = 90m²</i></p> <p><i>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</i></p> <p><i>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</i></p> <p><i>2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air</i></p>	All proposed units exceed the minimum specified by the design guide and all the habitable rooms contain windows to the external façade.	Yes

	<p><i>may not be borrowed from other rooms.</i></p> <p>Kitchens should not be located as part of the main circulation space in larger apartments (such as hallway or entry space).</p> <p>A window should be visible from any point in a habitable room.</p> <p>Where minimum areas or room dimensions are not met apartments need to demonstrate that they are well designed and demonstrate the usability and functionality of the space with realistically scaled furniture layouts and circulation areas. These circumstances would be assessed on their merits</p>		
4D - 2 Environmental performance of the apartment is maximised	<p><u><i>Design Criteria</i></u></p> <p><i>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</i></p> <p><i>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</i></p> <p>Greater than minimum ceiling heights can allow for proportional increases in room depth up to the permitted maximum depths.</p> <p>All living areas and bedrooms should be located on the external face of the building.</p> <p>Where possible:</p> <ul style="list-style-type: none"> - bathrooms and laundries should have an external 	<p>All living and bedrooms are located on the external face of the building to satisfy the required environmental performance.</p> <p>Living areas are located on the corners of the buildings to adequate sun penetration and cross flow ventilation.</p> <p>Bathrooms have been provided with windows where possible.</p>	Yes

	<p>openable window.</p> <ul style="list-style-type: none"> - main living spaces should be oriented toward the primary outlook and aspect and away from noise sources 		
<p>4D - 3 Apartment layouts are designed to accommodate a variety of household activities and needs</p>	<p><u><i>Design Criteria</i></u></p> <p><i>1. Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</i></p> <p><i>2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</i></p> <p><i>3. Living rooms or combined living/dining rooms have a minimum width of:</i></p> <ul style="list-style-type: none"> • <i>3.6m for studio and 1 bedroom apartments</i> • <i>4m for 2 and 3 bedroom apartments</i> <p><i>4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</i></p> <p>Access to bedrooms, bathrooms and laundries is separated from living areas minimising direct openings between living and service areas.</p> <p>All bedrooms allow a minimum length of 1.5m for robes.</p> <p>The main bedroom of an apartment or a studio apartment should be provided with a wardrobe of a minimum 1.8m long,</p>	<p>All bedrooms contain areas greater than those required by the design guidelines (i.e. master bedrooms are larger than 10m² and all other bedrooms are larger than 9m² and include a minimum dimension of 3m).</p> <p>The open plan and internal arrangements of the proposed units are considered to provide spaces for a range of activities and privacy levels whilst also facilitating a variety of future arrangements. The proposal is therefore considered compliant with this design criteria.</p>	<p>Yes</p>

	<p>0.6m deep and 2.1m high.</p> <p>Apartment layouts allow flexibility over time, design solutions may include:</p> <ul style="list-style-type: none"> - dimensions that facilitate a variety of furniture arrangements and removal - spaces for a range of activities and privacy levels between different spaces within the apartment - dual master apartments - dual key apartments Note: dual key apartments which are separate but on the same title are regarded as two sole occupancy units for the purposes of the Building Code of Australia and for calculating the mix of apartments - room sizes and proportions or open plans (rectangular spaces (2:3) are more easily furnished than square spaces (1:1)) - efficient planning of circulation by stairs, corridors and through rooms to maximise the amount of usable floor space in rooms 		
4E Private open space and balconies			



<p>4E - 1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity</p>	<p><u><i>Design Criteria</i></u></p> <p><i>1. All apartments are required to have primary balconies as follows:</i></p> <ul style="list-style-type: none"> <i>a) Studio apartments = 4m²</i> <i>b) 1 bedroom apartments = 8m² and 2m min depth.</i> <i>c) 2 bedroom apartments = 10m² and 2m min depth.</i> <i>d) 3+ bedroom apartments = 12m² and 2.4m min depth.</i> <p><i>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</i></p> <p><i>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</i></p> <p>Increased communal open space should be provided where the number or size of balconies are reduced.</p> <p>Storage areas on balconies is additional to the minimum balcony size.</p> <p>Balcony use may be limited in some proposals by:</p> <ul style="list-style-type: none"> - consistently high wind speeds at 10 storeys and above 	<p>Each of the proposed apartments contain an area greater than the minimum required by the design guidelines.</p>	<p>Yes</p>
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	<ul style="list-style-type: none"> - close proximity to road, rail or other noise sources - exposure to significant levels of aircraft noise - heritage and adaptive reuse of existing buildings <p>In these situations, Juliet balconies, operable walls, enclosed wintergardens or bay windows may be appropriate, and other amenity benefits for occupants should also be provided in the apartments or in the development or both. Natural ventilation also needs to be demonstrated</p>		
4E - 2 Primary private open space and balconies are appropriately located to enhance liveability for residents	<p>Primary open space and balconies should be located adjacent to the living room, dining room or kitchen to extend the living space.</p> <p>Private open spaces and balconies predominantly face north, east or west.</p> <p>Primary open space and balconies should be orientated with the longer side facing outwards or be open to the sky to optimise daylight access into adjacent rooms.</p>	The external terrace areas for each of the proposed units are located off main living space areas in a manner compliant with the design criteria.	Yes
4E - 3 Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building	Solid, partially solid or transparent fences and balustrades are selected to respond to the location. They are designed to allow views and passive surveillance of the street while maintaining visual privacy and allowing for a range of uses on the balcony. Solid and	The external terrace area designs provide opportunity for views across the site, passive surveillance of the street and maintaining a reasonable level of visual privacy for occupants.	Yes

	<p>partially solid balustrades are preferred.</p> <p>Full width full height glass balustrades alone are generally not desirable.</p> <p>Projecting balconies should be integrated into the building design and the design of soffits considered.</p> <p>Operable screens, shutters, hoods and pergolas are used to control sunlight and wind.</p> <p>Balustrades are set back from the building or balcony edge where overlooking or safety is an issue.</p> <p>Downpipes and balcony drainage are integrated with the overall facade and building design.</p> <p>Air-conditioning units should be located on roofs, in basements, or fully integrated into the building design.</p> <p>Where clothes drying, storage or air conditioning units are located on balconies, they should be screened and integrated in the building design.</p> <p>Ceilings of apartments below terraces should be insulated to avoid heat loss.</p> <p>Water and gas outlets should be provided for primary balconies and private open space</p>	<p>A combination of opaque and solid balustrades is considered to contribute to the provision of privacy whilst also ensuring a positive contribution to architectural form.</p>	
4E - 4 Private open space and balcony design maximises safety.	Changes in ground levels or landscaping are minimised.	Balustrades are considered to provide a design compliance with	Yes

	Design and detailing of balconies avoids opportunities for climbing and falls.	the applicable requirements and are not considered to provide opportunities for climbing or falls.	
4F Common circulation and spaces			
4F - 1 Common circulation spaces achieve good amenity and properly service the number of apartments	<p><u><i>Design Criteria</i></u></p> <p><i>1. The maximum number of apartments off a circulation core on a single level is eight.</i></p> <p><i>2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</i></p> <p>Greater than minimum requirements for corridor widths and/ or ceiling heights allow comfortable movement and access particularly in entry lobbies, outside lifts and at apartment entry doors.</p> <p>Daylight and natural ventilation should be provided to all common circulation spaces that are above ground.</p> <p>Windows should be provided in common circulation spaces and should be adjacent to the stair or lift core or at the ends of corridors.</p> <p>Longer corridors greater than 12m in length from the lift core should be articulated. Design solutions may include:</p> <ul style="list-style-type: none"> - a series of foyer areas with windows and spaces for seating - wider areas at apartment entry 	<p>The proposed building includes a common circulation core with 1 lift which services 1 or 2 units on each level combined.</p> <p>The common entry area has opportunity for natural ventilation.</p> <p>No long corridors are proposed to service the units on each level of the building.</p>	Yes

	<p>doors and varied ceiling heights</p> <p>Design common circulation spaces to maximise opportunities for dual aspect apartments, including multiple core apartment buildings and cross over apartments.</p> <p>Achieving the design criteria for the number of apartments off a circulation core may not be possible. Where a development is unable to achieve the design criteria, a high level of amenity for common lobbies, corridors and apartments should be demonstrated, including:</p> <ul style="list-style-type: none"> - sunlight and natural cross ventilation in apartments - access to ample daylight and natural ventilation in common circulation spaces - common areas for seating and gathering - generous corridors with greater than minimum ceiling heights - other innovative design solutions that provide high levels of amenity <p>Where design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level.</p>		
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	Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled		
4F - 2 Common circulation spaces promote safety and provide for social interaction between residents	<p>Direct and legible access should be provided between vertical circulation points and apartment entries by minimising corridor or gallery length to give short, straight, clear sight lines.</p> <p>Tight corners and spaces are avoided.</p> <p>Circulation spaces should be well lit at night.</p> <p>Legible signage should be provided for apartment numbers, common areas and general wayfinding.</p> <p>Incidental spaces, for example space for seating in a corridor, at a stair landing, or near a window are provided.</p> <p>In larger developments, community rooms for activities such as owner's corporation meetings or resident use should be provided and are ideally co-located with communal open space.</p> <p>Where external galleries are provided, they are more open than closed above the balustrade along their length.</p>	Direct and short entry to the lift from apartments.	Yes
4G Storage			

<p>4G - 1 Adequate, well designed storage is provided in each apartment</p>	<p><u><i>Design Criteria</i></u></p> <p><i>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</i></p> <ul style="list-style-type: none"> <i>a) Studio apartments = 4m³.</i> <i>b) 1 bedroom apartments = 6m³.</i> <i>c) 2 bedroom apartments 8m³.</i> <i>d) 3+ bedroom apartments = 10m³.</i> <p><i>At least 50% of the required storage is to be located within the apartment.</i></p> <p>Storage is accessible from either circulation or living areas.</p> <p>Storage provided on balconies (in addition to the minimum balcony size) is integrated into the balcony design, weather proof and screened from view from the street.</p> <p>Left over space such as under stairs is used for storage</p>	<p>Satisfactory storage spaces are available within each unit via the provision of large robes, linen cupboards, and storage areas.</p>	<p>Yes</p>
<p>4G - 2 Additional storage is conveniently located, accessible and nominated for individual apartments</p>	<p>Storage not located in apartments is secure and clearly allocated to specific apartments.</p> <p>Storage is provided for larger and less frequently accessed items.</p> <p>Storage space in internal or basement car parks is provided at the rear or side of car spaces or in cages so that allocated</p>	<p>Additional storage is nominated in the parking levels and allocated to individual units.</p>	<p>Yes</p>

	<p>car parking remains accessible.</p> <p>If communal storage rooms are provided they should be accessible from common circulation areas of the building.</p> <p>Storage not located in an apartment is integrated into the overall building design and is not visible from the public domain.</p>		
4H Acoustic privacy			
<p>4H - 1 Noise transfer is minimised through the siting of buildings and building layout</p>	<p>Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses (see also section 2F Building separation and section 3F Visual privacy).</p> <p>Window and door openings are generally orientated away from noise sources.</p> <p>Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas.</p> <p>Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources.</p> <p>The number of party walls (walls shared with other apartments) are limited and are appropriately insulated.</p> <p>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open</p>	<p>The internal layout of the units has been designed to maximise acoustic privacy between apartments.</p>	<p>Yes</p>

	spaces and circulation areas should be located at least 3m away from bedrooms.		
4H - 2 Noise impacts are mitigated within apartments through layout and acoustic treatments	<p>Internal apartment layout separates noisy spaces from quiet spaces, using a number of the following design solutions:</p> <ul style="list-style-type: none"> - rooms with similar noise requirements are grouped together - doors separate different use zones - wardrobes in bedrooms are co-located to act as sound buffers <p>Where physical separation cannot be achieved noise conflicts are resolved using the following design solutions:</p> <ul style="list-style-type: none"> - double or acoustic glazing - acoustic seals • use of materials with low noise penetration properties - continuous walls to ground level courtyards where they do not conflict with streetscape or other amenity requirements 	Internal walls between apartments shall be constructed to comply with the applicable noise and acoustic standards of the NCC.	Yes
4J Noise and pollution			
4J - 1 In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings	<p>To minimise impacts the following design solutions may be used:</p> <ul style="list-style-type: none"> - physical separation between buildings and the 	The subject site is not considered to be located within a noisy or hostile environment.	Yes

	<p>noise or pollution source</p> <ul style="list-style-type: none"> - residential uses are located perpendicular to the noise source and where possible buffered by other uses - non-residential buildings are sited to be parallel with the noise source to provide a continuous building that shields residential uses and communal open spaces - non-residential uses are located at lower levels vertically separating the residential component from the noise or pollution source. Setbacks to the underside of residential floor levels should increase relative to traffic volumes and other noise sources - buildings should respond to both solar access and noise. Where solar access is away from the noise source, nonhabitable rooms can provide a buffer - where solar access is in the same direction as the noise source, 		
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	<p>dual aspect apartments with shallow building depths are preferable (see figure 4J.4)</p> <ul style="list-style-type: none"> - landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry. <p>Achieving the design criteria in this Apartment Design Guide may not be possible in some situations due to noise and pollution. Where developments are unable to achieve the design criteria, alternatives may be considered in the following areas:</p> <ul style="list-style-type: none"> - solar and daylight access - private open space and balconies - natural cross ventilation 		
4J - 2 Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission	<p>Design solutions to mitigate noise include:</p> <ul style="list-style-type: none"> - limiting the number and size of openings facing noise sources - providing seals to prevent noise transfer through gaps - using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens) 	The building is not considered to front a noise source that would necessitate the installation of design mitigation solutions.	N/A

	<ul style="list-style-type: none"> - using materials with mass and/or sound insulation or absorption properties e.g. solid balcony balustrades, external screens and soffits 		
4K Apartment mix			
4K - 1 A range of apartment types and sizes is provided to cater for different household types now and into the future	<p>A variety of apartment types is provided The apartment mix is appropriate, taking into consideration:</p> <ul style="list-style-type: none"> - the distance to public transport, employment and education centres - the current market demands and projected future demographic trends - the demand for social and affordable housing - different cultural and socioeconomic groups <p>Flexible apartment configurations are provided to support diverse household types and stages of life including single person households, families, multi-generational families and group households.</p>	The proposed building contains 5 x 2 bedroom units and 5 x 3 bedroom units. This apartment mix is appropriate for the site and its position.	Yes
4K - 2 The apartment mix is distributed to suitable locations within the building	Different apartment types are located to achieve successful facade composition and to	The apartment types are generally consistent throughout the development.	Yes

	<p>optimise solar access (see figure 4K.3).</p> <p>Larger apartment types are located on the ground or roof level where there is potential for more open space and on corners where more building frontage is available.</p>		
4L Ground floor apartments			
<p>4L - 1 Street frontage activity is maximised where ground floor apartments are located</p>	<p>Direct street access should be provided to ground floor apartments.</p> <p>Activity is achieved through front gardens, terraces and the facade of the building. Design solutions may include:</p> <ul style="list-style-type: none"> - both street, foyer and other common internal circulation entrances to ground floor apartments - private open space is next to the street - doors and windows face the street <p>Retail or home office spaces should be located along street frontages.</p> <p>Ground floor apartment layouts support small office home office (SOHO) use to provide future opportunities for conversion into commercial or retail areas. In these cases provide higher floor to ceiling heights and ground floor amenities for easy conversion.</p>	<p>Direct street access is not provided to apartments at ground floor level. However access to them and the remainder of the units is located immediately adjacent to the units and the foyer, which facilitates convenient access to the building in general and specifically to the ground floor units.</p> <p>The provision of significant balcony and terrace areas in conjunction with the residential units at ground level provide for the maximization of street frontage activity particularly along the Pacific Drive frontage whilst maintaining a high level of privacy.</p>	<p>No - but acceptable for the reasons outlined.</p>
<p>4L - 2 Design of ground floor</p>	<p>Privacy and safety should be provided</p>	<p>Ground floor units are provided with</p>	<p>Yes</p>

apartments delivers amenity and safety for residents	<p>without obstructing casual surveillance. Design solutions may include:</p> <ul style="list-style-type: none"> - elevation of private gardens and terraces above the street level by 1-1.5m (see figure 4L.4) - landscaping and private courtyards - window sill heights that minimise sight lines into apartments - integrating balustrades, safety bars or screens with the exterior design <p>Solar access should be maximised through:</p> <ul style="list-style-type: none"> - high ceilings and tall windows - trees and shrubs that allow solar access in winter and shade in summer 	courtyards walls and landscaping providing adequate amenity, privacy, and safety.	
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4M Facades

4M - 1 Building facades provide visual interest along the street while respecting the character of the local area	<p>Design solutions for front building facades may include:</p> <ul style="list-style-type: none"> - a composition of varied building elements - a defined base, middle and top of buildings - revealing and concealing certain elements - changes in texture, material, detail and colour 	The proposed design provides a composition of curved elements to ensure that the building unique from provides visual interest from the street.	Yes
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	<p>to modify the prominence of elements</p> <p>Building services should be integrated within the overall façade.</p> <p>Building facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale. Design solutions may include:</p> <ul style="list-style-type: none"> - well composed horizontal and vertical elements - variation in floor heights to enhance the human scale - elements that are proportional and arranged in patterns - public artwork or treatments to exterior blank walls - grouping of floors or elements such as balconies and windows on taller buildings <p>Building facades relate to key datum lines of adjacent buildings through upper level setbacks, parapets, cornices, awnings or colonnade heights.</p> <p>Shadow is created on the facade throughout the day with building articulation, balconies and deeper window reveals.</p>		
4M - 2 Building functions are expressed by the facade	Building entries should be clearly defined.	The primary common building entry is clearly defined from the	Yes

	<p>Important corners are given visual prominence through a change in articulation, materials or colour, roof expression or changes in height.</p> <p>The apartment layout should be expressed externally through facade features such as party walls and floor slabs</p>	street with glazing treatment to the corner of the building alongside the entry doors.	
4N Roof design			
4N - 1 Roof treatments are integrated into the building design and positively respond to the street	<p>Roof design relates to the street. Design solutions may include:</p> <ul style="list-style-type: none"> - special roof features and strong corners - use of skillion or very low pitch hipped roofs - breaking down the massing of the roof by using smaller elements to avoid bulk - using materials or a pitched form complementary to adjacent buildings <p>Roof treatments should be integrated with the building design. Design solutions may include:</p> <ul style="list-style-type: none"> - roof design proportionate to the overall building size, scale and form - roof materials compliment the building - service elements are integrated 	<p>The proposal includes a metal clad skillion roof with low pitch to ensure that the height of the building is appropriate. Curved elements reflect the design intent of the building's composition.</p>	Yes
4N - 2 Opportunities to use roof space for residential	Habitable roof space should be provided with good levels of amenity.	No roof space is proposed.	N/A

accommodation and open space are maximised	<p>Design solutions may include:</p> <ul style="list-style-type: none"> - penthouse apartments - dormer or clerestory windows - openable skylights <p>Open space is provided on roof tops subject to acceptable visual and acoustic privacy, comfort levels, safety and security considerations.</p>		
4N - 3 Roof design incorporates sustainability features	<p>Roof design maximises solar access to apartments during winter and provides shade during summer. Design solutions may include:</p> <ul style="list-style-type: none"> - the roof lifts to the north - eaves and overhangs shade walls and windows from summer sun. <p>Skylights and ventilation systems should be integrated into the roof design</p>	Roof overhangs and eaves provide shade in summer months for the top level unit.	Yes
4O Landscape design			
4O - 1 Landscape design is viable and sustainable	<p>Landscape design should be environmentally sustainable and can enhance environmental performance by incorporating:</p> <ul style="list-style-type: none"> - diverse and appropriate planting - bio-filtration gardens 	A landscape plan and external works plan is included in the attached Architectural plan set. The proposed landscape design and plantings provide a range of species and sizes which are considered acceptable.	Yes

	<ul style="list-style-type: none"> - appropriately planted shading trees - areas for residents to plant vegetables and herbs - composting - green roofs or walls <p>Ongoing maintenance plans should be prepared.</p> <p>Microclimate is enhanced by:</p> <ul style="list-style-type: none"> - appropriately scaled trees near the eastern and western elevations for shade - a balance of evergreen and deciduous trees to provide shading in summer and sunlight access in winter - shade structures such as pergolas for balconies and courtyards <p>Tree and shrub selection considers size at maturity and the potential for roots to compete (see Table 4)</p> <p>Table 4 requires</p> <ul style="list-style-type: none"> - For site area up to 850m² = 1 medium tree per 50m² of deep soil zone - Between 850 - 1,500m² = 1 large tree or 2 medium 		
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	<p>trees per 90m² of deep soil zone</p> <ul style="list-style-type: none"> - Greater than 1,500m² = 1 large tree or 2 medium trees per 80m² of deep soil zone 		
4O - 2 Landscape design contributes to the streetscape and amenity	<p>Landscape design responds to the existing site conditions including:</p> <ul style="list-style-type: none"> - changes of levels - views - significant landscape features including trees and rock outcrops <p>Significant landscape features should be protected by:</p> <ul style="list-style-type: none"> - tree protection zones (see figure 4O.5) - appropriate signage and fencing during construction <p>Plants selected should be endemic to the region and reflect the local ecology</p>	The landscaping appropriately responds to the site and building elements proposed.	Yes
4P Planting on structures			
4P - 1 Appropriate soil profiles are provided	<p>Structures are reinforced for additional saturated soil weight</p> <p>Soil volume is appropriate for plant growth, considerations include:</p> <ul style="list-style-type: none"> - modifying depths and widths according to the planting mix and irrigation frequency - free draining and long soil life span 	The proposed landscaped area can be provided with appropriate soil profile to meet the design criteria.	Yes

	<ul style="list-style-type: none"> - tree anchorage <p>Minimum soil standards for plant sizes should be provided in accordance with Table 5.</p> <p>Table 5 requires</p> <ul style="list-style-type: none"> - Large trees 12-18m high, up to 16m crown spread at maturity = need 150m³ of soil at a depth of 1,200mm and area of 10m x 10m or equivalent. - Medium trees 8-12m high, up to 8m crown spread at maturity = need 35m³ of soil at a depth of 1,000mm and area of 6m x 6m or equivalent. - Small trees 6-8m high, up to 4m crown spread at maturity = need 9m³ of soil at a depth of 800mm and area of 3.5m x 3.5m or equivalent. - Shrubs need soil depth of 500-600mm - Ground cover needs soil depth of 300-450mm - Turf needs soil depth of 200mm 		
4P - 2 Plant growth is optimised with appropriate selection and maintenance	<p>Plants are suited to site conditions, considerations include:</p> <ul style="list-style-type: none"> - drought and wind tolerance 	The plant species identified within the landscape planting schedule are considered suitable for the local environment	Yes

	<ul style="list-style-type: none"> - seasonal changes in solar access - modified substrate depths for a diverse range of plants - plant longevity <p>A landscape maintenance plan is prepared.</p> <p>Irrigation and drainage systems respond to:</p> <ul style="list-style-type: none"> - changing site conditions - soil profile and the planting regime - whether rainwater, stormwater or recycled grey water is used 	and tolerance to the existing and proposed site conditions. The proposal is considered compliant with the design criteria.	
4P - 3 Planting on structures contributes to the quality and amenity of communal and public open spaces	<p>Building design incorporates opportunities for planting on structures. Design solutions may include:</p> <ul style="list-style-type: none"> - green walls with specialised lighting for indoor green walls - wall design that incorporates planting - green roofs, particularly where roofs are visible from the public domain - planter boxes <p>Note: structures designed to accommodate green walls should be integrated into the building facade and consider the ability of the</p>	<p>Landscaping works are proposed within planters to both road frontages. This will positively contribute to the quality and amenity of the areas streetscape. The proposal is considered compliant with the design criteria.</p>	Yes

	facade to change over time		
4Q Universal design			
4Q - 1 Universal design features are included in apartment design to promote flexible housing for all community members	Developments achieve a benchmark of 20% of the total apartments incorporating the Liveable Housing Guideline's silver level universal design features	<p>The seven core design elements of the silver level include:</p> <p><i>A safe continuous and step free path of travel from the street entrance and/or parking area to a dwelling entrance that is level.</i></p> <p>Comment: Each apartment is provided with lift access and access to the lift via the first floor level is step free from Hill Street.</p> <p><i>At least one, level (step-free) entrance into the dwelling.</i></p> <p>Comment: Each apartment is accessible via lift with no steps.</p> <p><i>Internal doors and corridors that facilitate comfortable and unimpeded movement between spaces.</i></p> <p>Comment: The internal door and corridor widths are considered to provide comfortable movement.</p> <p><i>A toilet on the ground (or entry) level that provides easy access.</i></p> <p>Comment: The bathrooms to the unit (101) on the first floor is</p>	Yes

		<p>available for easy access.</p> <p><i>A bathroom that contains a hobless (step-free) shower recess.</i></p> <p>Comment: The final design of the bathrooms is to be completed. A hobless (step-free) shower recess can be accommodated in the proposed bathroom layouts.</p> <p><i>Reinforced walls around the toilet, shower, and bath to support the safe installation of grab rails later.</i></p> <p>Comment: The final material for the bathroom walls has not yet been determined however, considered that reinforced walls can be provided where required.</p> <p><i>A continuous handrail on one side of any stairway where there is a rise of more than one metre.</i></p> <p>Comment: A continuous handrail is capable of being provided to stairways.</p>	
4Q - 2 A variety of apartments with adaptable designs are provided	<p>Adaptable housing should be provided in accordance with the relevant council policy</p> <p>Design solutions for adaptable apartments include:</p> <ul style="list-style-type: none"> - convenient access to 	<p>The proposed apartments are considered generous in size and provide a layout that can be adaptable. All apartments have a high level of solar access.</p>	Yes

	<p>communal and public areas</p> <ul style="list-style-type: none"> - high level of solar access - minimal structural change and residential amenity loss when adapted - larger car parking spaces for accessibility - parking titled separately from apartments or shared car parking arrangements 		
4Q - 3 Apartment layouts are flexible and accommodate a range of lifestyle needs	<p>Apartment design incorporates flexible design solutions which may include:</p> <ul style="list-style-type: none"> - rooms with multiple functions - dual master bedroom apartments with separate bathrooms - larger apartments with various living space options - open plan 'loft' style apartments with only a fixed kitchen, laundry and bathroom 	The proposed apartments contain open plan living, kitchen and dining areas which are suitable for a variety of adaptable uses.	Yes
4R Adaptive reuse			
4R - 1 New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place	<p>Design solutions may include:</p> <ul style="list-style-type: none"> - new elements to align with the existing building - additions that complement the existing character, siting, scale, proportion, 	The proposed building is new, and no adaptive re-use is currently proposed.	Yes

	<p>pattern, form and detailing</p> <ul style="list-style-type: none"> - use of contemporary and complementary materials, finishes, textures and colours <p>Additions to heritage items should be clearly identifiable from the original building.</p> <p>New additions allow for the interpretation and future evolution of the building.</p>		
4R - 2 Adapted buildings provide residential amenity while not precluding future adaptive reuse	<p>Design features should be incorporated sensitively into adapted buildings to make up for any physical limitations, to ensure residential amenity is achieved. Design solutions may include:</p> <ul style="list-style-type: none"> - generously sized voids in deeper buildings - alternative apartment types when orientation is poor - using additions to expand the existing building envelope <p>Some proposals that adapt existing buildings may not be able to achieve all of the design criteria in this Apartment Design Guide. Where developments are unable to achieve the design criteria, alternatives could be considered in the following areas:</p> <ul style="list-style-type: none"> - where there are existing higher 	<p>The design of the apartments is satisfactory given the physical limitations of the site and noting that the majority of the apartments have triple aspects, generous width frontages of each apartment with a north aspect and 2.7m height floor to ceilings.</p>	Yes

	<p>ceilings, depths of habitable rooms could increase subject to demonstrating access to natural ventilation, cross ventilation (when applicable) and solar and daylight access (see also sections 4A Solar and daylight access and 4B Natural ventilation)</p> <ul style="list-style-type: none"> - alternatives to providing deep soil where less than the minimum requirement is currently available on the site - building and visual separation – subject to demonstrating alternative design approaches to achieving privacy - common circulation - car parking - alternative approaches to private open space and balconies 		
4S Mixed use			
4S - 1 Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement	<p>Mixed use development should be concentrated around public transport and centres.</p> <p>Mixed use developments positively contribute to the public domain. Design solutions may include:</p>	The proposal is for residential only.	Yes

	<ul style="list-style-type: none"> - development addresses the street - active frontages are provided - diverse activities and uses - avoiding blank walls at the ground level - live/work apartments on the ground floor level, rather than commercial 		
4S - 2 Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents	<p>Residential circulation areas should be clearly defined. Design solutions may include:</p> <ul style="list-style-type: none"> - residential entries are separated from commercial entries and directly accessible from the street - commercial service areas are separated from residential components - residential car parking and communal facilities are separated or secured - security at entries and safe pedestrian routes are provided - concealment opportunities are avoided <p>Landscaped communal open space should be provided at podium or roof levels.</p>	The proposal is for residential only.	Yes

4T Awnings and signage			
4T - 1 Awnings are well located and complement and integrate with the building design	<p>Awnings should be located along streets with high pedestrian activity and active frontages.</p> <p>A number of the following design solutions are used:</p> <ul style="list-style-type: none"> - continuous awnings are maintained and provided in areas with an existing pattern - height, depth, material and form complements the existing street character - protection from the sun and rain is provided - awnings are wrapped around the secondary frontages of corner sites - awnings are retractable in areas without an established pattern <p>Awnings should be located over building entries for building address and public domain amenity.</p> <p>Awnings relate to residential windows, balconies, street tree planting, power poles and street infrastructure.</p> <p>Gutters and down pipes should be integrated and concealed.</p> <p>Lighting under awnings should be provided for pedestrian safety.</p>	<p>Hoods/awnings have been designed to provide shade to windows where appropriate.</p> <p>Street awnings are not proposed. The planning controls for the locality do not require awnings on the streets.</p>	Yes

4T - 2 Signage responds to the context and desired streetscape character	<p>Signage should be integrated into the building design and respond to the scale, proportion and detailing of the development.</p> <p>Legible and discrete way finding should be provided for larger developments.</p> <p>Signage is limited to being on and below awnings and a single facade sign on the primary street frontage.</p>	No signage is proposed.	N/A
4U Energy efficiency			
4U - 1 Development incorporates passive environmental design	<p>Adequate natural light is provided to habitable rooms (see 4A Solar and daylight access).</p> <p>Well located, screened outdoor areas should be provided for clothes drying</p>	<p>The proposal is considered to contain a design which achieves adequate natural light and ventilation to the internal areas of each apartment. The proposal is considered compliant with the design criteria. BASIX certificate have been provided as part of the DA application.</p>	Yes
4U - 2 Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer	<p>A number of the following design solutions are used:</p> <ul style="list-style-type: none"> - the use of smart glass or other technologies on north and west elevations - thermal mass in the floors and walls of north facing rooms is maximised - polished concrete floors, tiles or timber rather than carpet 	<p>The proposal is considered to provide adequate passive solar design.</p>	Yes

	<ul style="list-style-type: none"> - insulated roofs, walls and floors and seals on window and door openings - overhangs and shading devices such as awnings, blinds and screens <p>Provision of consolidated heating and cooling infrastructure should be located in a centralised location (e.g. the basement)</p>		
4U - 3 Adequate natural ventilation minimises the need for mechanical ventilation	<p>A number of the following design solutions are used:</p> <ul style="list-style-type: none"> - rooms with similar usage are grouped together - natural cross ventilation for apartments is optimised - natural ventilation is provided to all habitable rooms and as many non-habitable rooms, common areas and circulation spaces as possible 	The proposal is considered to provide adequate natural ventilation.	Yes
4V Water management and conservation			
4V - 1 Potable water use is minimised	<p>Water efficient fittings, appliances and wastewater reuse should be incorporated.</p> <p>Apartments should be individually metered.</p> <p>Rainwater should be collected, stored and reused on site.</p> <p>Drought tolerant, low water use plants should be used within landscaped areas</p>	Satisfactory BASIX Certificate submitted which includes requirements for water efficient fittings and appliances.	Yes

4V - 3 Flood management systems are integrated into site design	<p>Detention tanks should be located under paved areas, driveways or in basement car parks.</p> <p>On large sites, parks or open spaces are designed to provide temporary on site detention basins.</p>	<p>Refer to the stormwater comments later in this report.</p> <p>The proposal is considered compliant with the design criteria. The subject site is not identified as flood prone land.</p>	Yes
4W Waste management			
4W - 1 Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	<p>Adequately sized storage areas for rubbish bins should be located discreetly away from the front of the development or in the basement car park.</p> <p>Waste and recycling storage areas should be well ventilated.</p> <p>Circulation design allows bins to be easily manoeuvred between storage and collection points.</p> <p>Temporary storage should be provided for large bulk items such as mattresses.</p> <p>A waste management plan should be prepared</p>	<p>A common waste storage area is proposed within the ground level parking area in a location suitable for collection via a private contractor.</p>	Yes
4W - 2 Domestic waste is minimised by providing safe and convenient source separation and recycling	<p>All dwellings should have a waste and recycling cupboard or temporary storage area of sufficient size to hold two days' worth of waste and recycling.</p> <p>Communal waste and recycling rooms are in convenient and accessible locations related to each vertical core.</p> <p>For mixed use developments, residential waste and</p>	<p>A specific dedicated area is available within the ground floor parking for storage of waste bins prior to collection.</p> <p>Collection from the proposed building can occur via private collection.</p>	Yes

	<p>recycling storage areas and access should be separate and secure from other uses.</p> <p>Alternative waste disposal methods such as composting should be provided</p>		
4X Building maintenance			
4X - 1 Building design detail provides protection from weathering	<p>A number of the following design solutions are used:</p> <ul style="list-style-type: none"> - roof overhangs to protect walls - hoods over windows and doors to protect openings - detailing horizontal edges with drip lines to avoid staining of surfaces - methods to eliminate or reduce planter box leaching - appropriate design and material selection for hostile locations 	The proposed design is considered to provide design solutions compliant with these weather protection criteria.	Yes
4X - 2 Systems and access enable ease of maintenance	<p>Window design enables cleaning from the inside of the building.</p> <p>Building maintenance systems should be incorporated and integrated into the design of the building form, roof and façade.</p> <p>Design solutions do not require external scaffolding for maintenance access.</p> <p>Manually operated systems such as blinds, sunshades and curtains</p>	Most windows are accessible from external terraces.	Yes

	are used in preference to mechanical systems. Centralised maintenance, services and storage should be provided for communal open space areas within the building.		
4X - 3 Material selection reduces ongoing maintenance costs	<p>A number of the following design solutions are used:</p> <ul style="list-style-type: none"> - sensors to control artificial lighting in common circulation and spaces - natural materials that weather well and improve with time such as face brickwork - easily cleaned surfaces that are graffiti resistant - robust and durable materials and finishes are used in locations which receive heavy wear and tear, such as common circulation areas and lift interiors 	<p>The materials chosen for the proposed building are appropriate for the locality, robust and durable.</p> <p>The applicant has advised that appropriate lighting will be provided to all common circulation areas.</p>	Yes

Further to the above, Clause 30(1) states that consent cannot be refused on the following grounds if the development satisfies the relevant design criteria:

- (a) *if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*
- (b) *if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,*
- (c) *if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

As noted in the above assessment, the proposed development satisfies the relevant design criteria for car parking, internal area and ceiling heights and consent could not be refused on any of these grounds.

Clause 30(2) - Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) *the design quality principles, and*
- (b) *the objectives specified in the Apartment Design Guide for the relevant design criteria.*

Comment: In addition to the above, Clauses 143A and 154A of the *Environmental Planning and Assessment Regulation 2000* require a certifying authority not issue a construction certificate for the development unless the certifying authority has received the statement by the qualified designer verifying that the development achieves compliance with the design quality principles at the construction certificate and occupation certificate. Conditions of consent are recommended to ensure compliance with Clauses 143A and 154A.

State Environmental Planning Policy (Primary Production and Rural Development) 2019

Division 4 - Having considered the provisions of Division 4 (clause 29-31), the proposed development will be unlikely to result/create any adverse impact on any oyster aquaculture development or priority oyster aquaculture area.

State Environmental Planning Policy (State and Regional Development) 2011

This policy defines those developments which are regionally or state significant and require consideration by the relevant NSW Regional Planning Panels. This includes certain types of infrastructure projects and projects with values over a certain amount.

Residential Flat Buildings are not a type of development listed within Schedule 1 State Significant Development (General) and the site is not listed within Schedule 2 State Significant Development (Identified Sites).

Schedule 7 sets out the provisions for development which is to be declared regionally significant. Clause 2 states that regionally significant development includes development that has a capital investment value of more than \$30 million. The proposed building has an estimated capital investment value of \$7.41 million and therefore does not trigger the regionally significant provisions.

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 R3 medium density residential.
- Clause 2.3(1) and the R3 zone landuse table, the proposed development for a residential flat building and strata subdivision is a permissible landuse with consent.

The objectives of the R3 zone are as follows:

- • *To provide for the housing needs of the community within a medium density residential environment.*
- • *To provide a variety of housing types within a medium density residential environment.*
- • *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

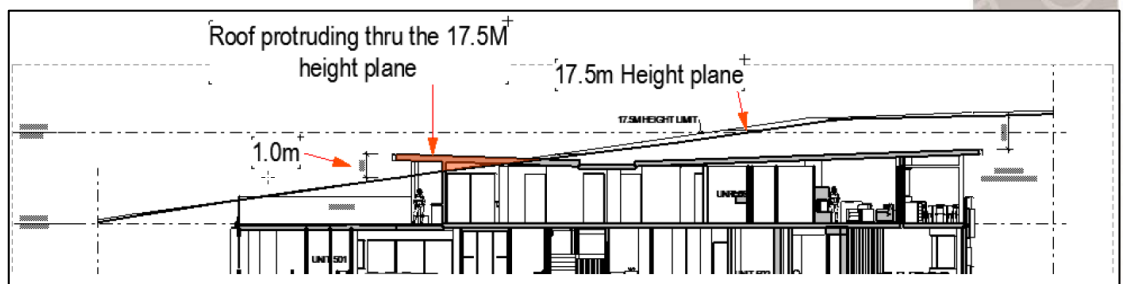
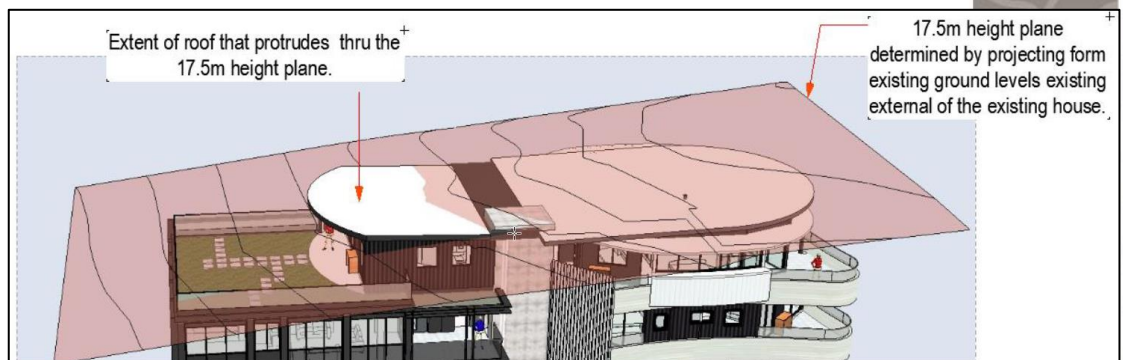
- Clause 2.3(2) - The proposal is consistent with the zone objectives having regard to the following:
 - The proposal is a permissible landuse;
 - The proposal will provide for the housing needs of the community and provide a suitable variety in housing type within a planned medium density residential area;
 - The proposal is compatible with the desired character for the locality and provides a high quality design.
- Clause 2.6 - The land may subdivided with consent and strata subdivision is proposed.
- Clause 4.1 - The minimum lot sizes standard does not apply to the proposed strata subdivision.
- Clause 4.3 - The maximum overall height of the building above ground level (existing) is 18.5m. The maximum building height standard applicable to the site is 17.5m as illustrated on the height of buildings map. An extract of the height of buildings map and legend is provided below for context with the immediate area.



<input checked="" type="checkbox"/> HOB Height of Buildings
<input type="checkbox"/> C 5.4
<input type="checkbox"/> I 8.5
<input type="checkbox"/> K 10.0
<input type="checkbox"/> L 11.5
<input type="checkbox"/> N1 13.0
<input type="checkbox"/> N2 14.5
<input type="checkbox"/> O 16.0
<input type="checkbox"/> P 17.5
<input type="checkbox"/> Q 19.0
<input type="checkbox"/> R 22.0
<input type="checkbox"/> T 26.5

-
-
- As a result, the applicant has submitted a Clause 4.6 variation to the standard. The variation represents a 5.7% departure from standard.

- The extent of the variation is represented below:
-



- Clause 4.4 - The floor space ratio of the proposal has been calculated to be 1.61:1. The maximum floor space ratio standard applicable to the site is 1.5:1 as illustrated on the floor space ratio map. An extract of the map and legend is provided below for context with the immediate area.



<input checked="" type="checkbox"/> FSR Floor Spatio Ratio
 G 0.65
 N 1.00
 S1 1.50
 S2 1.80
 T 2.00
 U 2.50
 V 3.00
 W 3.50

As a result, the applicant has submitted a Clause 4.6 variation to the standard. The variation represents a 7.3% departure from the standard and equates to an additional floor area of 92.3m² above the standard for the site.

- Clause 4.6(3) - Consent must not be granted for a proposal that contravenes a development standard unless the consent authority has considered a written request from the applicant that justifies the variation by showing that the subject standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify the contravening of the standard.

As a result of the above, the applicant submitted Clause 4.6 variations to both the height of building and floor space ratio standards (refer to attachments to this report).

Floor space ratio

The applicant submits the following primary reasons (as summarised) with regard to the floor space ratio variation:

- The proposal remains consistent with the floor space ratio objectives.
- The proposal renders compliance with the development standard as unreasonable or unnecessary in the circumstances.
- The proposal does not raise any matter of significance for State and regional planning, and the public benefit.
- The development is consistent with the planning controls adopted and envisaged for the site and surrounding area.
- The variation is minor (7.3%) in nature and the density of the proposal remains consistent with that envisaged for the locality particularly given the transitional nature of development density in the area.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- The following additional matters are noted in addition to the applicant's justification to the floor space ratio variation:
 - The development is consistent with the zoning and floor space ratio objectives of the LEP 2011 as justified and is unlikely to have any implications on State related issues or the broader public interest.
 - The public benefit of the standard is not compromised or eroded, as this is one individual case.
 - The variation is justified having regard to case law both from the NSW Land and Environment Court and the NSW Court of Appeal - Reference is made to the Department of Planning Industry and Environment's Guideline for Varying Development Standards.
 - The streets will become activated by a compatible urban form envisaged for the area in the precinct controls.

Height of buildings

The applicant submits the following primary reasons (as summarised) with regard to the height of building variation:

- The proposal remains consistent with the height of building objectives.
- Compliance with the development standard is unreasonable or unnecessary as the proposed design remains consistent with intent of the standard and that envisaged for the area.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- The proposal does not raise any matter of significance for State and regional planning, and the public benefit.
- The following additional matters are noted in addition to the applicant's justification to the height of buildings variation:
 - The development is consistent with the zone and height of buildings objectives of the LEP 2011 as justified and is unlikely to have any implications on State related issues or the broader public interest.
 - The top most apartment is set back and in from the majority of the other units below. When viewed from the street the bulk and scale will be consistent with the adopted maximum building height.

- The variation is minor (5.7%) in nature and confined to small areas of the top floors roof and lift overrun. No additional floor space results from the departure.
- The proposal remains consistent with that envisaged for the locality particularly given the transitional nature and planned density in the area.
- The development is consistent with the zoning objectives of the LEP 2011 as justified and is unlikely to have any implications on State related

Having consideration to the above, the applicant has satisfactorily demonstrated that the proposal is consistent with the performance objectives of the floor space ratio and height of building clauses. It is agreed in particular that the applicant has demonstrated that compliance with the standard is unreasonable/unnecessary in the circumstances and there are sufficient environmental planning grounds to support the variations.

As per Planning Circular PS 20-002, Council can assume the Director-General's Concurrence for variations to floor space ratio and height of buildings. As the variations are less than 10%, the application can be determined by a delegate of Council. The decision must be reported to Council for their information, a public register of variations maintained, and details of the proposal included in quarterly reporting to the Department of Planning, Industry and Environment.

Having regard to the above it is recommended that the height of building and floor space ratio variations using Clause 4.6 be supported.

- Clause 7.7 - Airspace operations. A standard condition is recommended to require a controlled activity approval be obtained from the airport operator for any crane that may be used during the construction phase that would penetrate the Obstacle Limitation Surface (OLS). To avoid any doubt as to whether an approval is required, applicants should check with the airport operator at the earliest possible stage.
-
- Clause 7.13 - Satisfactory arrangements are in place for provision of essential services including water supply, electricity supply, sewer infrastructure, stormwater drainage and suitable road access to service the development.

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

No draft instruments apply to the site.

(iii) Any Development Control Plan in force

Port Macquarie-Hastings Development Control Plan 2013

DCP 2013: Part B - General Provisions - B1: Advertising and Signage			
DCP Objective	Development Provisions	Proposed	Complies

1	a) Signs primarily identifying products or services are not acceptable, even where relating to products or services available on that site.	No signage is proposed. Standard consent condition recommended for any signage to require consent if otherwise not exempt development.	N/A
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DCP 2013: Part B - General Provisions - B2: Environmental Management

DCP Objective	Development Provisions	Proposed	Complies
3	a) Development must comply with Council's Developments, Public Place & Events - Waste Minimisation and Management Policy.	The proposed building includes a waste collection room within the ground floor car parking area to maximise source separation of general waste, recycling and food and garden organics. Private garbage collection arrangements are proposed and suitable conditions recommended to reinforce this and that strata management arrangements are in place.	Yes
Cut and Fill Regrading			
4	a) Development shall not exceed a maximum cut of 1.0m and fill of 1.0m measured vertically above the ground level (existing) at a distance of 1.0m outside the perimeter of the external walls of the building (This does not apply to buildings where such cut and fill is fully retained within or by the external walls of the building).	The proposal seeks to provide various levels of cut and fill contained within the building envelope.	Yes

5	a) A certified practicing structural engineer must certify any retaining wall greater than 1.0m.	Noted. Any retaining walls greater than 1 metre in height, including the basement, will be certified by a practicing structural engineer during the detailed design phase of the proposal. A standard consent condition is recommended in this regard.	Yes
	b) Where a combination of a fence and a wall is proposed to be greater than 1.2m high: <ul style="list-style-type: none"> – be a maximum combined height of 1.8m above existing property boundary level; – be constructed up to the front boundary for a maximum length of 6.0m or 30% of the street frontage, whichever is less; – the fence component has openings which make it not less than 25% transparent; and – provide a 3m x 3m splay for corner sites, and – provide a 900mm x 900mm splay for vehicle driveway entrances. 	The proposed courtyard/planter walls as detailed in the landscape plan are considered to positively contribute to the buildings design and its presence to the street.	Yes
6	a) Significant land reforming proposals where >10% gross site area or >1.0ha is to have surface levels changed by more than 5m or where earthworks exceed an average of 10,000m ³ per ha shall: <ul style="list-style-type: none"> – identify the impact of the proposed land reforming on the environment, landscape, – visual character and amenity, natural watercourses, riparian vegetation, topographical features of the environment and public infrastructure; 	The proposal is not considered to result in 10,000m ³ or more per hectare of surface change.	N/A

	<ul style="list-style-type: none"> – demonstrate compliance with the provisions of Council's AUS-SPEC design specification; – assess the impacts and benefits of the proposal to all impacted persons and the general public; – provide measures to compensate for and minimise any net adverse impacts. 		
	b) The use of high earthworks batters should be avoided.	No earthworks batters are proposed.	N/A
	c) Preliminary plans indicating the final landform are required to be submitted with any master plan or subdivision application.	The plans submitted indicate the final landform.	Yes
	d) The subdivision should be designed to fit the topography rather than altering the topography to fit the subdivision.	Strata subdivision only.	N/A
Tree Management – Private Land			
11	a) Pruning must be undertaken in accordance with Australian Standard AS 4373 - Pruning of Amenity Trees.	No pruning proposed. All trees on site are proposed to be removed as a part of the works.	N/A
	b) An application for the removal of a tree listed in Table 1 must be accompanied by an Arborist's report stating that the tree: <ul style="list-style-type: none"> – is dangerous; or – is dying and remedial pruning would not improve the deteriorated condition of the tree; or – has a history of branch fall (documented or photographic evidence to be provided); or – is structurally unsound or; diseased. – Advice on the requirement of an arborist report associated with a tree removal permit can be obtained from Council's Tree Assessment staff. 	The site is isolated from and is not identified as being part of a vegetation corridor. All existing trees and vegetation within the site are proposed to be removed as a part of this application. No Arborist assessment considered necessary.	Yes

	<ul style="list-style-type: none"> – The requirement for an arborist report for tree removal associated with a development application will be determined on merit by Council's Development Assessment. 		
	<p>c) Where a tree listed in Table 1 is approved for removal it must be compensated with 2 x koala habitat trees. Significant large-scale development will require an advanced size koala food tree or habitat tree (primary Koala browse species) that meets AS2303:2015 Tree Stock for Landscape Use. The compensation tree is to be planted in a suitable location as determined by the Director of Development and Environment or their delegate.</p>	The existing trees proposed to be removed do not include any of the trees listed in Table 1.	Yes
	<p>d) Removal of dead branches including palm fronds and the selective removal of branches up to and including a diameter of 50mm may be undertaken without a permit or development consent where the removal:</p> <ul style="list-style-type: none"> – Does not alter the canopy of the tree, and – Does not destroy the aesthetic appearance of the tree canopy; and – Does not alter the growth structure of the tree, and – Is carried out in accordance with Australian Standard AS 4373 - Pruning of Amenity Trees. 	N/A	N/A
	<p>e) The pruning of large garden shrubs in excess of 3 metres in height for the purpose of ornamental shaping is permitted without a permit or development consent.</p>	N/A	N/A
	<p>f) Where a development is proposed adjoining Council controlled land, the plans</p>	No trees identified on adjoining Council	Yes

	must identify all trees that fall within 6.0m of the property boundary and any trees proposed to be removed, identified on that plan.	controlled land impacted by the proposal.	
	g) Any pruning or removal of any tree on private land must be undertaken in accordance with Council's tree management specifications.	Tree removal capable of compliance with tree management specifications.	Yes
	h) A tree removal permit can be sought for tree removal associated with a Complying Development Certificate (CDC), subject to the tree removal meeting the following criteria: <ul style="list-style-type: none"> – Must be associated with CDC and removal must not occur until CDC issued. – Application must identify and locate all trees within proximity to the development. – No more than 3 trees over 6m in height to be removed. Trees taken to be impacted on by the development are to be determined in accordance with AS 4970 - Protection of trees on development sites (i.e 12 x DBH tree protection zone required for those trees to be retained). – Must not involve removal of hollow bearing trees. – The removal of any koala browse tree species are to be replaced at a ratio of 2:1 on site or at a secure off site location agreed to by Council. Any on site replanting is to have regard for services and buildings and is to be agreed to by Council. 	N/A	N/A
Tree Management – Public Land			
12	a) Trees on public land shall not be pruned or removed unless:	No tree removal proposed or required on public land.	N/A

	<ul style="list-style-type: none"> - Written consent is provided by Council; and - They are dead, dying, diseased or dangerous, or - They are causing damage to infrastructure on public land, or - They are impacting on pedestrian or traffic conditions; or - They are interfering with services on private property; or - They impact on the outlook from historic sites or significant public viewing areas, or - The growth habit or mature size of the tree is undesirable in a particular situation, as determined by the General Manager or his delegates; or 		
Tree Management - Hollow Bearing Trees			
13	a) All hollow bearing trees within the development area are to be accurately located by survey and assessed by an appropriately qualified ecologist in accordance with Council's Hollow-bearing tree assessment (HBT) protocol	No hollow bearing trees proposed to be removed.	N/A

DCP 2013: Part B - General Provision - B3: Hazards Management

DCP Objective	Development Provisions	Proposed	Complies
Airspace Protection			
15	a) Development shall not result in land use or activities that attract flying vertebrates such as birds and bats within proximity of flight paths associated with airport operations.	N/A	N/A
16	a) Development shall not result in emission of airborne particulate or produce a gaseous plume with a velocity exceeding 4.3m per second that penetrates operational airspace.	N/A	N/A

	Refer Manual of Standards Part 139 – Aerodromes, Civil Aviation Safety Authority.		
17	a) Lighting to comply with Section 9.21 of the Manual of Standards Part 139 – Aerodromes, Civil Aviation Safety Authority.	The site is not located within proximity of the airport. No adverse impacts identified.	Yes
Bushfire Hazard Management			
18	a) APZs are to be located outside of environmental protection zones and wholly provided within private land. Note perimeter roads provided as part of a residential subdivision are classified as being part of the subdivision and not a separate permissible land use within environment protection zones.	APZs confined to the site.	Yes
	b) Perimeter roads are to be provided to all urban areas adjoining environmental management areas and their buffers. Refer to Figure 2.	N/A	N/A
Flooding			
19	a) Development must comply with Council's Floodplain Management Plan and Flood Policies.	The site is not mapped as flood prone land.	N/A

DCP 2013: Part B- General Provisions- B4: Transport, Traffic Management, Access and Car Parking

DCP Objective	Development Provisions	Proposed	Complies
Road Hierarchy			
22	a) In new areas (as distinct from established areas with a pre-existing road pattern) each class of route should reflect its role in the road hierarchy by its visual appearance and related physical design standards, including varying levels of vehicle and pedestrian access.	No new roads.	N/A
	b) Routes should differ in alignment and design standard according to the volume and type of traffic they are intended	No new roads.	N/A

	to carry, the desirable traffic speed, and other factors.		
	c) All new roads are designed in accordance with Council's AUS-SPEC design specification documents.	No new roads.	N/A
23	a) New direct accesses from a development to arterial and distributor roads is not permitted. Routes should differ in alignment and design standard according to the volume and type of traffic they are intended to carry, the desirable traffic speed, and other factors.	No access proposed to arterial or distributor road. Access via local street only (i.e. Hill Street).	N/A
	b) Existing direct accesses from a development to arterial and distributor roads are rationalised or removed where practical.	No access proposed to arterial or distributor road. Access via local street only (i.e. Hill Street).	N/A
	c) Vehicle driveway crossings are minimal in number and width (while being adequate for the nature of the development), and positioned: <ul style="list-style-type: none"> – to avoid driveways near intersections and road bends, and – to minimise streetscapes dominated by driveways and garage doors, and – to maximise on-street parking. 	Access to the site is proposed through two access driveways located off the Hill Street frontage, being the lower order road. The two access are considered appropriate considering the proposal and the steepness of the site, and will also have sufficient space to facilitate 2 informal on-street car parking spaces between the access driveways.	Yes
Parking Provision			
24	a) Off-street Parking is provided in accordance with Table 3. 1 parking space per each 1 or 2 bedroom unit + 1 visitor's space per 4 units. 1.5 spaces per each 3 or 4 bedroom unit + 1 visitor's space per 4 units. The proposal includes the following unit mix:	The proposal incorporates 16 parking spaces which is consistent with the numerical parking demand.	Yes

	<ul style="list-style-type: none"> - 5 x 3 bedroom units = 7.5 spaces. - 5 x 2 bedroom units = 5 spaces. - 2.5 visitor spaces. - Total required = 15 spaces 		
	b) Where a proposed development does not fall within any of the listed definitions, the provision of on-site parking shall be supported by a parking demand study.	A parking demand study is not required. Refer to comments above.	N/A
	c) Where a proposed development falls within more than one category Council will require the total parking provision for each category.	The proposal is considered to fall within the Residential Flat Building category.	Yes
25	a) A development proposal to alter, enlarge, convert or redevelop an existing building, whether or not demolition is involved, shall provide the total number of parking spaces calculated from the schedule for the proposed use, subject to a credit for any existing deficiency, including any contributions previously accepted in lieu of parking provision.	The proposal does not seek consent for the redevelopment of an existing building. The application seeks to demolish all existing structures on-site.	N/A
26	<p>a) On street parking, for the purposes of car parking calculations will not be included unless it can be demonstrated that:</p> <ul style="list-style-type: none"> - there is adequate on street space to accommodate peak and acute parking demands of the area; - parking can be provided without compromising road safety or garbage collection accessibility; - parking can be provided without jeopardising road function; and - that streetscape improvement works, such as landscaped bays and street trees are provided to contribute to the streetscape. 	The proposal does not rely on any on street to serve the development.	N/A

	b) On street parking is provided in accordance with AS2890.5.	The proposal does not rely on any on street to serve the development.	N/A
27	a) On street parking will not be permitted unless it can be demonstrated that: <ul style="list-style-type: none"> - parking does not detract from the streetscape; and - that streetscape improvement works, such as landscaped bays and street trees are provided. 	The proposal does not rely on any on street to serve the development.	N/A
Parking Layout			
28	a) Visitor and customer parking shall be located so that it is easily accessible from the street.	The parking areas are split over two levels and easily accessible from Hill Street.	Yes
	b) Internal signage (including pavement markings) should assist customers and visitors to find parking and circulate efficiently and safely through a car park.	The parking spaces are sought to be allocated to the proposed units and will therefore include appropriate signage and markings.	Yes
	c) Parking spaces shall generally be behind the building line but may be located between the building line and the street when: <ul style="list-style-type: none"> - it is stacked parking in the driveway; or - it can be demonstrated that improvements to the open space provided will result; and - the spaces are screened (densely landscaped or similar) from the street by a landscaping with a minimum width of 3.0m for the entire length of the parking area. 	All parking is proposed within two levels below the building.	Yes
	d) Parking design and layout is provided in accordance with AS/NZS 2890.1 - Parking facilities - Off-street car parking and AS 2890.6 - Off-street parking for individuals with a disability and AS/NZS 2890.2 - Parking facilities - Off-street commercial vehicle facilities.	The parking design and layout is capable of compliance with AS2890.1. An appropriate standard condition is recommended to address compliance during construction.	Yes
	e) Stack or tandem parking spaces will not be included in	No stacked or tandem spaces proposed.	N/A

	<p>assessment of parking provision except where:</p> <ul style="list-style-type: none"> – the spaces are surplus to that required; – in motor showrooms; – for home business; – for exhibition homes; – in car repair stations; – staff parking spaces are separately identified and delineated; – it is visitor parking associated with a dual occupancy multi dwelling and/or terrace housing, directly in front of the garage with a minimum depth of 5.5m. 		
29	a) Parking is provided in accordance with AS/NZS 2890.1 - Parking facilities - Off-street car parking, AS/NZS 2890.2 - Parking facilities - Off-street commercial vehicle facilities, AS 1428 - Design for access and mobility and AS 2890.6 - Off-street parking for individuals with a disability.	The parking design and layout is capable of compliance with AS2890.1. An appropriate standard condition is recommended to address compliance during construction.	Yes
30	a) Bicycle and motorcycle parking shall be considered for all developments.	The proposed design includes storage on the parking levels which are considered capable of accommodating bicycle parking or storage.	Yes
	b) Bicycle parking areas shall be designed generally in accordance with the principles of AS2890.3 - Parking facilities - Bicycle parking facilities.	No specific bicycle parking spaces are proposed however can be provided within the storage areas nominated.	Yes
	c) Motorcycle parking areas shall be 1.2m (wide) x 2.5m (long).	No specific bicycle parking spaces are proposed however can be provided within the storage areas nominated.	Yes
Redevelopment of Heritage Items - Conservation Incentives			
31	a) Council will consider discounting (i.e. exclude from calculations) the floor space of the heritage building/item when	The site is not identified as containing any heritage items or buildings.	N/A

	determining the total number of parking spaces to be provided on site. This will be considered in line with clause 5.10 of PMH LEP 2011, which requires the variation to be considered in the context of a heritage conservation management plan. This will only apply if Council is satisfied that the conservation of the heritage item is dependent upon Council making that exclusion. If applicants intend to seek such consideration, a detailed parking analysis of the site is to be submitted with the development application.		
Section 7.11 Development Contributions			
32	a) Section 7.11 of the <i>Environmental Planning and Assessment Act 1979</i> permits Council, at its discretion, to accept a monetary contribution in lieu of on-site parking where it is considered impractical or undesirable to provide parking facilities on the site of the proposed development. Generally, contributions will not be accepted for the total amount of parking to be provided and will only be accepted in the commercial areas of Port Macquarie, Gordon Street, Laurieton, North Haven and Wauchope, as identified in Council's Contribution Plan 1993, as amended. Contribution rates are indexed (CPI) each quarter with variations in the contribution rate for each area. Applicants are advised to consult Council's staff at the time of preparing the DA application should a contribution for parking be proposed.	The proposal provides car parking in accordance with the numerical requirements of the DCP. The proposal therefore does not impose an additional liability on the community with respect to parking.	N/A
Landscaping of Parking Areas			
33	a) Landscaping areas shall be provided in the form of large	All parking is located below and behind the	Yes

	tree planting, understorey plantings, mulch areas, mounding, lawns and the like	built form of the building and will be obscured from view.	
	b) Landscaping areas shall be used throughout the car park and on the perimeters of the property where it addresses the public domain.	N/A	N/A
	c) Garden beds shall be a minimum of 3m in width between car parking areas and street boundaries.	N/A	N/A
34	a) All plantings on public lands are to be selected from Council's Indigenous Street and Open Space Planting List from the relevant vegetation community adjacent to the Development.	N/A	N/A
	b) Trees are to be grown and installed in accordance with AS 2303:2015 <i>Tree Stock for Landscape Use</i> and Council's AUS-SPEC design specifications.	N/A	N/A
	Surface Finishes		
35	a) All parking and manoeuvring areas shall be constructed with a coarse base of sufficient depth to suit the amount of traffic generated by the development, as determined by Council. It shall be sealed with either bitumen, asphaltic concrete, concrete or interlocking pavers. Preliminary details of construction materials for access and car parking areas shall be submitted with the development application. Detailed plans shall be prepared for the construction certificate by a practising qualified Civil Engineer.	The proposed Parking levels and vehicular access to will be a concrete surface.	Yes
	b) In special cases (e.g. where traffic volumes are very low) Council may consider the use of consolidated unsealed gravel pavement for car parks. However, this should not be	N/A	N/A

	assumed and will need to be justified by the applicant at the Development Application stage.		
	Drainage		
36	a) All parking and manoeuvring spaces must be designed to avoid concentrations of water runoff on the surface.	The proposal was supported by concept stormwater management plans which is considered acceptable. The proposal includes a two parking levels and has been designed to avoid concentrations of water runoff from the surface.	Yes
	b) Council will not permit the discharge of stormwater directly into kerbing and guttering or table drains for any development other than that of a minor nature.	The legal point of discharge for the proposed development is defined as a direct connection to Council's stormwater pipeline downstream of the site in Hill Street. Stormwater from the proposed development is planned to be disposed via a 63m pipeline extension to the existing downstream piped stormwater network, which is consistent with the above requirements.	Yes
37	a) Car parking areas should be drained to swales, bio retention, rain gardens and infiltration areas.	As above.	Yes
	Loading Bays		
38	a) Off street commercial vehicle facilities are provided in accordance with AS/NZS 2890.2 - Parking facilities - Off-street commercial vehicle facilities.	The application does not include any commercial components and loading zones are not considered necessary.	N/A
Traffic Generating Development			

41	a) Traffic Generating Development as defined under SEPP (Infrastructure) 2007 is referred to Roads and Maritime Services. (Refer to Clause 104 and Schedule 3 of the SEPP).	The proposal is not a traffic generating development with reference to traffic generation triggers in the SEPP.	N/A
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DCP 2013: Part B - General Provisions - B5: Social Impact Assessment and Crime Prevention

DCP Objective	Development Provisions	Proposed	Complies
Social Impact Assessment			
42	a) A social impact assessment shall be submitted in accordance with the Council's Social Impact Assessment Policy.	The proposal is not listed within the Council's Social Impact Assessment Policy as being of a type requiring a social impact assessment.	N/A
Crime Prevention			
43	<p>a) The development addresses the generic principles of crime prevention:</p> <ul style="list-style-type: none"> – Casual surveillance and sightlines; – Land use mix and activity generators; – Definition of use and ownership; – Basic exterior building design; – Lighting; – Way-finding; and – Predictable routes and entrapment locations; – as described in the Crime Prevention Through Environmental Design (CPTED) principles. 	<p>The proposed design is considered consistent with the general principles of the crime prevention and the following comments are provided in support:</p> <ul style="list-style-type: none"> - The proposal provides casual surveillance opportunities of the surrounding area. - The proposed landscaping has been designed so as to maximise the potential for visual surveillance and limit hiding opportunities. - Pedestrian and vehicular entrances will be well lit, secure and visibility to and from the entrances is maintained. The car parking areas are secured via controlled roller/access doors. 	Yes

DCP 2013: PART C - Development Specific Provisions - C2: Residential Flat Development, Tourist and Visitor Accommodation, and Mixed Use Development

DCP Objective	Development Provisions	Proposed	Complies
Site Design and Analysis			
57	<p>a) A site analysis plan is required for all development and should illustrate:</p> <ul style="list-style-type: none"> – microclimate including the movement of the sun and prevailing winds – lot dimensions – north point – existing contours and levels to AHD – flood affected areas – overland flow patterns, drainage and services – any contaminated soils or filled areas, or areas of unstable land – easements and/or connections for drainage and utility services – any existing trees and other significant vegetation, including major and significant trees on adjacent properties, particularly those within 9 m of the site – the location, height and use of buildings surrounding the site, and those across any road adjacent to the site, including their setback distances – heritage and archaeological features – the built form, scale and character of surrounding and nearby development, including fencing, boundaries and landscaping – pedestrian and vehicle access – views and solar access to surrounding residents – private open space and windows of habitable rooms of nearby properties which have an outlook to the site – difference in levels between the site and adjacent properties at their boundaries – street frontage features including poles, trees, kerb crossovers, bus stops and other services 	A satisfactory site analysis plan is included in the architectural plans within illustrating the notable features of the site and surrounding lands.	Yes

	<ul style="list-style-type: none"> – heritage features and buildings of the surrounding locality and landscape – direction and distance to local facilities including local shops, schools, public transport and recreation and community facilities – characteristics of, and distance to any nearby public open space – any nearby bushland or environmentally sensitive land – any significant local noise, odour or pollution sources – any other notable features or characteristics of the site 		
Site Layout			
58	<p>a) All applications are to include a site plan, which annotates the manner in which site attributes and constraints have been considered, as follows:</p> <ul style="list-style-type: none"> – appropriateness of built form and landscape in relation to the site context, topography and urban character – building arrangement and relationship to streets and open space – access ways within and beyond the site – location, function and opportunities for casual surveillance of open space – ongoing site management considerations (i.e. garbage, mail collection, stormwater etc) – location of existing and proposed stormwater and sewer pipes – private open space and security – parking arrangements and reduced dominance of driveways – heritage and conservation opportunities and constraints (where relevant) – energy efficiency in building design and siting – solar access to subject development and adjoining residences 	The proposal is considered to achieve layouts that provide a pleasant, manageable and functional living environment that is energy and solar efficient and consistent with the existing development pattern within the locality.	Yes
Streetscape and Front Setback			

59	a) In an established street, the primary setback should be within 20% of the average setback of the adjoining buildings in a R1 General Residential zone.	Site zoned R3 medium density.	N/A
	b) A minimum setback of 3.0m is required from all street frontages in a R3 Medium Density Residential and R4 High-Density Residential zone.	3.55m setback to Pacific Drive boundary. 3m setback to Hill Street boundary.	Yes
	c) Where tourist accommodation is proposed a maximum setback of 9 metres is permitted to allow for a swimming pool within the front setback.	Residential only proposed.	N/A
60	a) Balconies and other building extrusions may encroach up to 600mm into the required front setback.	The setback to the curved balconies on does not exceed 2.4 metres to the Pacific Drive and Hill Street boundaries.	Yes
	b) Buildings should generally be aligned to the street boundary.	The proposed building has been designed to align with the street boundaries.	Yes
	c) Primary openings on all developments are aligned to the street boundary or to the rear of the site.	The primary pedestrian and vehicular entries are aligned to the street boundaries.	Yes
Side and Rear Setbacks			
61	a) The following setbacks (Refer to figure 7) apply to all sites, except where the side boundary is a secondary street frontage: <ul style="list-style-type: none"> Buildings should be set back a minimum of 1.5m from side boundaries, for a maximum of 75% of the building depth. Windows in side walls should be set back 3m from side boundaries. 	The primary building component is setback a minimum of 2.8m or more from both side boundaries. The ground floor parking area does extend closer	Yes

	<p>– Where the site is adjacent to an existing strata-titled building, buildings should be set back a minimum of 3m from side boundaries.</p>	<p>to the northern side boundary. However, this presents no privacy concerns. Refer to comment sin SEPP 65 table.</p> <p>Windows in side walls are >3m from side boundaries.</p> <p>The subject site is not adjacent to an existing strata title building/s.</p>	
	<p>b) Side walls adjacent to existing strata-titled buildings should be articulated and modulated to respond to the existing buildings.</p>	<p>The subject site is not adjacent to an existing strata title building.</p>	N/A
	<p>c) A minimum rear setback of 6.0m from the building and sub basements is required.</p>	<p>The site technically has no rear boundary. A minimum 5.9m setback is proposed from the building and the western boundary although the north-western portion of the basement carparking area has a 3m setback to the western boundary. It is however noted that the majority of the carparking area maintains a 6.3m setback to the western boundary.</p>	N/A

62	a) A party wall development may be required if site amalgamation is not possible and higher density development is envisaged by these controls.	Not proposed or required.	N/A
63	a) Party wall development can occur only with the agreement and consent of the adjoining property owner. Exposed party walls should be finished in a quality comparable to front facade finishes	Not proposed or required.	N/A
64	a) Corner sites should be consolidated with adjacent sites, so that the building turns the corner.	Being a corner allotment, the development concept provides for the proposed building to turn the corner as provided for by the DCP. No further consolidation identified or required.	Yes
	b) If this is not possible, a minimum setback of 6.0m should extend to the secondary street. Refer figure 8 and figure 9.		
65	- a) Where sites adjacent to open space are to be developed, the edge of the open space should be defined with a public road and buildings should address the open space.	Pacific Drive provides edge to open space beyond.	Yes
Fences and Walls			
77	a) Solid front fences built on or near boundaries should be: <ul style="list-style-type: none"> – setback 1.0m from the front boundary; – suitably landscaped to reduce visual impact, and. – provide a 3m x 3m splay for corner sites. 	Courtyard fencing and planters adequately setback and landscaped. No elements proposed within the corner splay.	Yes
	b) Front fences proposed to be more than 1.2m high should: <ul style="list-style-type: none"> – be a maximum of 1.8m in height, above existing front property boundary level and either: <ul style="list-style-type: none"> ○ include landscaped recesses having minimum dimensions 	Courtyard fencing of minimal length, adequately setback and landscaped.	Yes

	<p>of 1.8m long x 900mm deep which occupy no less than 50% of the total length of the fence, or</p> <ul style="list-style-type: none"> ○ be erected up to the front boundary for maximum lengths of 6.0m or 50% of the street frontage, whichever is less; and ○ have openings which make it not less than 25% transparent; ○ provide a 3m x 3m splay for corner sites, and ○ provide a 900mm x 900mm splay for vehicle driveway entrances. 		
78	a) Fences constructed of chain wire, solid timber or masonry and solid steel are not permitted along the primary road frontage even if it is consistent with the existing streetscape.	The proposed courtyard fence shall be constructed of masonry. The design of the front courtyard fence and landscaping is satisfactory particularly having regard to the scale of the development and permitted design under SEPP 65 ADG guidelines.	No but considered acceptable for the reasons outlined.
	b) For tennis courts or other similar areas, chain wire fences should be black or dark green plastic coated mesh.	None proposed.	N/A
	c) Solid fences enclosing these facilities should not be permitted over 1.8m.	None proposed.	N/A
Acoustic Privacy			
79	<p>a) Buildings are designed so that:</p> <ul style="list-style-type: none"> – busy noisy areas within the apartment face the street; and – quiet areas face the rear or side of the lot 	The proposed development is considered to be designed such that the	Yes

	– bedrooms have line of sight separation of minimum 3m from parking areas, streets and shared driveways.	acoustic privacy of each individual unit and adjacent residences are reasonably protected.	
	b) Openings of adjacent dwellings should be separated by a distance of at least 6m.	Adequate building separation proposed to be openings of adjoining dwellings. Refer to detailed privacy comments in SEPP 65 table.	Yes
80	a) Uses are to be coupled internally and between apartments i.e. noisy internal and noisy external spaces should be placed together. Refer to Error! Reference source not found. figure 11.	The proposed design couples uses internally and noisy internal spaces together centrally within the units.	Yes
Accessibility			
82	a) Developments should be designed in accordance with Australian Standard AS1428.	The proposal has been designed to be capable of compliance with AS1428.	Yes
83	a) Barrier free access to at least 20% of dwellings in the development is provided.	Access to all of the proposed units are accessible via the proposed lift.	Yes
Social Dimensions and Housing Affordability			
84	a) Developments should be located close to areas of open space, recreation and entertainment facilities and employment areas.	The proposal is in close proximity to areas of open space, recreation and entertainment facilities and	Yes

		employment areas. The generous size of the units provides for flexibility in use and occupancy.	
	b) Where the Local Environmental Plan permits a floor space ratio greater than 1:1 a ratio of not less than 1:1 should be achieved.	The application seeks consent for a FSR greater than 1:1.	Yes
85	a) A variety of apartment types including studio, 1, 2, 3 and 3+ bedroom apartments are provided within the development.	The proposal seeks to provide 2 and 3 bedroom units.	Yes
	b) Studios and 1-bedroom apartments are not to exceed 20% of the total number of apartments within the development.	No studio or 1 bedroom apartments are proposed.	N/A
	c) A mix of 1 and 3 bedroom apartments are provided on the ground level to cater for improved accessibility for disabled, elderly people or families with children.	The proposal seeks to provide a 2 bedroom unit at 1 st floor level given the slope on the block. A mix of 2 and 3 bed units are proposed on floors above.	No but considered acceptable having regard to the site constraint.
86	a) Developments should consider the principles of the Council's Affordable Housing Strategy in any application for a residential flat building.	The proposed unit/bedroom choices provided within the residential flat building is considered appropriate for the site.	Yes
Roof Form			
87	a) Lift over-runs and service plants should be integrated within roof structures.	The lift over-run has been incorporated centrally into the proposed skillion roof design.	Yes
	b) Outdoor recreation areas on flat roofs should be landscaped and	No communal outdoor roof	N/A

	incorporate shade structures and wind screens to encourage use.	recreation area is proposed.	
	c) Outdoor roof areas should be oriented to the street.	No communal outdoor roof recreation area is proposed.	N/A
	d) Roof design should generate an interesting skyline and be visually interesting when viewed from adjoining developments.	The proposed skillion roof design is considered to generate an interesting skyline.	Yes
Facade Composition and Articulation			
88	a) Facade composition should: <ul style="list-style-type: none"> – be designed with a balance of horizontal and vertical elements; – respond to environmental and energy needs, such as sun shading, light shelves and bay windows; – incorporate wind mitigation; – reflect the uses within the buildings. – include a combination of the following design elements: <ul style="list-style-type: none"> ○ defined base, middle and top levels; ○ a mixture of window types; ○ variation in floor height (particularly at lower levels); ○ balustrade detail that reflects the type and location of the balcony; ○ setting back the top levels of the building; ○ street level features that reinforce the human scale; and ○ balconies, awnings and recesses that create shadowing. 	The design of the proposed buildings utilizes a mix of articulation in conjunction with high quality materials, textures and colours to provide for a contemporary well-proportioned building displaying a balanced composition of elements.	Yes
Laundries and Clothes Drying Facilities			
92	a) Secure open air clothes drying facilities that: <ul style="list-style-type: none"> – are easily accessible; – are screened from the public domain and communal open spaces; and 	The size of the proposed balconies are considered to provide secure open	Yes

	– have a high degree of solar access.	air clothes drying opportunities if required.	
Mailboxes			
93	a) Mailboxes should be integrated into building design and sighted to ensure accessibility and security.	The design is considered to afford opportunities for the integration of mailboxes.	Yes
Safety and Security			
94	a) Developments should establish a hierarchy of space and clearly define the transition from public through to private space.	Pedestrian entrances will be well lit, secure and visibility to and from the entrances is maintained. The proposed development will be a secure compound with keypad/remote control access via the main ground floor pedestrian access door. Communication devices will be provided at the ground level lift entry area.	Yes
	b) Entrances should: <ul style="list-style-type: none"> – be orientated towards the public street and encourage visibility between entrances, foyers and the street. – provide direct and well-lit access between car parks and dwellings, between car parks and lift lobbies, and to all unit entrances. – optimise security by grouping clusters to a maximum of eight, around a common lobby. 	The entry to the building whilst not being on the Pacific Drive street frontage will be well defined via paving and lighting.	Yes
	c) Surveillance is to be facilitated by: <ul style="list-style-type: none"> – views over public open spaces from living areas where possible. 	All units will have good casual	Yes

	<ul style="list-style-type: none"> casual views of common internal areas, such as lobbies and foyers, hallways, recreation areas, and car parks. the provisions of windows and balconies. separate entries to ground level apartments 	surveillance from the internal and external living areas.	
	<p>d) Concealment should be avoided by:</p> <ul style="list-style-type: none"> preventing blind or dark alcoves which might conceal intruders particularly near lifts and stairwells, at the entrance and within indoor car parks, along corridors and walkways. providing appropriate levels of illumination for all common areas. providing graded car park illumination, with the lighting of entrances higher than the minimum acceptable standard. 	The design is considered to satisfy the crime prevention through environmental design criteria. The entry lobby is open/glazed and doesn't provide any blind or dark alcoves.	Yes
	e) Access to all parts of the building (including, apartments, different floors, balconies, common areas) is to be controlled.	Access to the separate floors is controlled externally via the lobby and car parking level entrances. Internally access between floors is controlled via the lifts and stairwells. The car parking areas are secured via controlled roller/access doors.	Yes
Utilities			
96	a) Compatible public utility services are to be co-ordinated in common trenching in order to minimise excavations for underground services.	The proposal provides facilities for the coordinated provision of services.	Yes
	b) Above ground utility infrastructure such as substations, inspection cabinets are to be integrated into the	The proposed design allows	Yes

	design of the building or complementary to the building design in terms of colour, materials and design.	for the provision of above ground utilities along the sites Hill Street frontage.	
	c) The site and the individual dwellings are to be numbered for easy identification by visitors and emergency personnel.	The units are capable of being individually numbered.	Yes
	d) Common aerials and satellite dishes, with signal amplifiers are provided as appropriate.	Capable of being provided as appropriate.	Yes

DCP 2013: Part D - Locality Specific Provisions - D2 Port Macquarie East: D2-1 East Port Neighbourhood

DCP Objective	Development Provisions	Proposed	Complies
Precinct Structure Plans - Windmill Hill			
211	<p>a) Development is generally in accordance with the precinct structure plans.</p> <p>The Windmill Hill Precinct will continue to evolve as a medium density residential precinct with a diverse range of housing types. Building forms along the northern and eastern edges of the precinct will reflect the higher landform in this area and form a distinct edge to the open space, stepping down in height towards the west.</p>	The proposed higher building form is reflective of that envisaged in the structure plan. It will create a distinct edge to the adjoining open space.	Yes
Lot Size and Frontage			
212	<p>a) The minimum lot width for residential apartment buildings is: 18 metres where:</p> <ul style="list-style-type: none"> the proposed building height is not greater than 14.5 metres and minimum side setbacks are satisfied, or the site has multiple street frontages, or requirements for on-site parking, setbacks, separation and deep soil can be achieved, <p>- OR</p> <p>22 metres</p>	<p>20.7m lot width to Pacific Drive. Therefore, the lot is 1.3m short from the 22m minimum. However the building design and setbacks achieve the desired outcome that is consistent with the desired bulk and scale objectives and provisions of the LEP and DCP.</p>	No. But considered acceptable.
Building Height			

213	General		
	a) Buildings do not exceed the maximum height of buildings shown in the local environmental plan maps.	Refer to detailed comments under building heights in the LEP heading of this report.	No. But considered acceptable.
	b) Development from 2 to 10 Burrawan Street and from 5 to 9 Pacific Drive	N/A	N/A
	c) Where buildings exceed three storeys, the upper storey is set back from the front facade of the building by three metres.	Upper storey is adequately setback from the front façade.	Yes
Streetscape and Front Setbacks			
214	a) Northern side of Clarence Street, east of Munster Street – Setback to Clarence Street is 3 metres.	N/A	N/A
	b) Southern side of Clarence Street, between Munster and School Streets – A zero street setback is provided	N/A	N/A
	c) Southern side of William Street, between Murray and Grant Streets – Setback to William Street is 2 metres.	N/A	N/A
	d) Development from 2 to 10 Burrawan Street – For lots with dual frontage to Burrawan and Windmill Streets, buildings are to address Burrawan Street as their primary frontage.	N/A	N/A
	e) Development from 5 to 9 Pacific Drive – Setback to Pacific Drive is a minimum of 6 metres.	N/A	N/A
Side and Rear Setbacks			
215	a) Party wall development is to be used along the south side of Clarence Street where within the Town Beach Precinct.	N/A	N/A
	b) Party wall development is not appropriate in other areas within the East Port Neighbourhood.	No party wall proposed.	Yes
	c) Where there is a zone change at the rear of the site to the R1 General Residential Zone, any storey above 11.5 metres in height is set back a further 3 metres from the rear boundary.	The site is a corner lot and has no rear boundary.	N/A
Waste Management			

216	a) Communal bulk waste facilities are required for residential apartment development where collection is proposed from Windmill Street regardless of number of dwellings.	N/A	N/A
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DCP 2013: Part D - Locality Specific Provisions - D2 Port Macquarie East: D2-2 Flynn's Beach Precinct

DCP Objective	Development Provisions	Proposed	Complies
Application of Bonuses - Through Block Connections and Park-edge Streets			
217	a) Relaxation of one or a number of controls may be considered depending on the merits of the proposal so as to achieve a new public through-block connection and/or park-edge street. Preferred location for site links/roads are identified in figure 68.	No through block connection identified for the site. Appropriate defined reinforced building edge to adjoining open space opposite Pacific Drive.	Yes
	b) Other sites may be considered where it can be demonstrated that higher quality development can be achieved, and where there are clearly demonstrable benefits to the access within, and the quality of the public domain.	The relaxation of the floor space and building height controls will lead to a high quality development.	Yes

Pacific Drive

Existing Character

Pacific Drive is presently characterised by a mix of housing and tourist accommodation types. The predominant building type is detached houses. Recently, a number of large detached houses have been developed just north of Flynn's Beach. To the south of Flynn's Beach there are some residential/tourist apartment buildings.

Desired Future Character

Pacific Drive shall be developed, clearly defining the eastern extent of Port Macquarie. Slightly increased heights shall be permitted in relation to adjacent blocks to help define this edge, and define the ridgeline.

It is desirable that pedestrian amenity is improved to compliment the likely high quality of design in this precinct.



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

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

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

(iv) Any matters prescribed by the Regulations

No matters prescribed by the regulations apply.

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

Context and Setting

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

The proposal is considered to be sufficiently compatible with other residential and non-residential development in the locality and adequately addresses planning controls for the area.

The proposal does not have any identifiable adverse lighting impacts.

There are no significant adverse privacy impacts. Adequate building separation and

privacy measures are proposed.

The application was supported by shadow diagrams which illustrate the shadow impact upon the adjoining properties of 3 Hill Street and 28 Pacific Drive. The diagrams demonstrate that the proposal does not prevent adjoining residential properties from receiving 3 hours of sunlight to private open space and primary living areas on 21 June between the hours of 9am and 3pm. There are no significant adverse overshadowing impacts.

Access, Traffic and Transport

The site has frontages to both Pacific Drive and Hill Street. Pacific Drive is a Sub Arterial road that is categorised in AUSPEC as an urban distributor. Pacific Drive is sealed public road under the care and control of Council. Near the vicinity of the site, Pacific Drive has an approximate 8m wide carriageway within a 30m Road Reserve, BB centreline marking, signposted no parking throughout, upright SA kerb and gutter across the frontage, whilst on the opposite side there is a 2.5m wide share path below carriageway level with barrier protection in place. Hill Street is a Collector road that is categorised in AUSPEC as an urban collector. Hill Street is a sealed public road under the care and control of Council. Near the vicinity of the site, Hill Street has an approximate 11.5m wide carriageway within a 20m Road Reserve, with upright SA kerb and gutter across both sides.

Access to the site is proposed through two access driveways located off the Hill Street frontage, being the lower order road. The two access are considered appropriate considering the proposal and the steepness of the site, and will also have sufficient space to facilitate 2 informal on-street car parking spaces between the access driveways. The internal car parking spaces and access driveways can comply with AS2890 for off street car parking facilities, and suitable conditions are recommended to confirm this at CC stage.

Concrete footpath paving will be required to the full street frontages of the development, and suitable conditions have been recommended in this regard.

Referring to the Guide to Traffic Generating Developments, Updated Traffic Surveys, TDT 2013/04a from RMS, on average in regional areas the weekday trip generation rate is 4.58 daily trips per unit. Given the 10 units proposed as part of this development, it can be assumed that this development will generate approximately 46 additional daily vehicle trips. The existing road network will satisfactorily cater for this increase in traffic as a result of this development. The additional traffic associated with this development will not have any significant or adverse impacts in terms access, transport and traffic near the locality of the site.

Water

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 AS3500.

Each unit will be required to be individually metered for water.

Appropriate conditions are recommended in this regard.

Sewer

Council records indicate that the development site is connected to Sewer via junction to the existing sewer main which runs outside of the western boundary of the development site.

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.

Footings and/or concrete slabs of buildings adjacent to sewer lines are to be designed so that no loads are imposed on the infrastructure.

Due to the scale of the development and the increased load on sewer infrastructure, it is necessary to discharge all sewage to a new or existing manhole.

Appropriate conditions are recommended in this regard.

Stormwater

The site naturally grades towards the Hill Street frontage and is currently serviced via a kerb outlet.

The legal point of discharge for the proposed development is defined as a direct connection to Council's stormwater pipeline downstream of the site in Hill Street.

Stormwater from the proposed development is planned to be disposed via a 63m pipeline extension to the existing downstream piped stormwater network, which is consistent with the above requirements.

A detailed site stormwater management plan has been submitted in support of the application and demonstrates how the development achieves compliance with Council's stormwater quantity and quality controls via the provision of suitably sized/specified detention and water quality controls. Detailed plans and calculations will be required in support of a future s68 application.

Appropriate conditions are recommended in this regard.

Other Utilities

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

Heritage

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

Ground water conditions are unlikely to be experienced as a consequence of the proposed development due to the elevated nature of the subject site.

Whilst the proposed development contemplates excavation below the existing ground levels of the subject site ground water conditions will not be experienced as a consequence of the construction and ongoing occupation of the proposed development.

Accordingly, the proposed development will not require an aquifer interference approval issued pursuant to Clause 91 of the *Water Management Act, 2000*.

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 significant 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

A common bin storage area has been identified in the ground floor car park. In relation to bin collection, a condition is recommended requiring satisfactory arrangements for a private waste collection service to be set up as a restriction on the strata title subdivision.

A standard precautionary site management condition is also recommended for the construction phase of the development. No adverse impacts are anticipated.

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. There are no communal areas proposed in the development, which could result in noise generation. 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, 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 unit overlook public 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 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.

The development includes excavation adjacent existing adjoining buildings. Prescribed condition in accordance with clause 98E of the Environmental Planning and Assessment Regulation requires that the developer protect and support adjoining structures if excavation extends below the footings of the structure, building or work.

A condition is also recommended requiring dilapidation reports to be prepared for adjoining properties, to allow for monitoring and rectification works (if necessary) of any damage caused by construction activities.

Cumulative impacts

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

(c) The suitability of the site for the development

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

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

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

Six (6) 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
Objection to the maximum building height adopted for the site and immediate area.	The adopted maximum building height controls for the area are already established under the Port Macquarie-Hastings Local Environmental Plan 2011.
Objection to proposed building height variation.	Refer to detailed comments under clause 4.6 of LEP 2011 heading of this report.
Objection to proposed floor space ratio variation.	Refer to detailed comments under clause 4.6 of LEP 2011 heading of this report.
Objection to the buildings design, appearance, bulk and scale. The building will be out of character and context with the surrounding environment.	The building design and appearance is consistent with SEPP 65 design guide and a design verification statement provided by an Architect. The bulk and scale of the building is consistent with the future character envisaged for the area by the adopted planning controls.
Increased traffic and safety impacts to the immediate area upon completion and during construction.	Refer to comments under traffic, transport and access heading of this report.
Privacy impacts to the residence at 11B Arncliffe Avenue.	The residence of 11B Arncliffe Avenue is approximately 80m from the site. Adequate building separation exists. No adverse privacy impacts are identified to this property.
Privacy impacts to the adjoining residence at 26 Pacific Drive.	<p>The adjoining dwelling to the north contains a covered west facing primary outdoor area, which is accessed from the primary living areas located on the northern side of the dwelling. This dwelling was approved as a tourist accommodation cottage.</p> <p>At ground level, screening in the form of landscape plantings will maintain privacy between unit 101 terrace and the covered outdoor area of the adjoining dwelling. Units above the first floor will be sufficiently elevated in that direct views to the covered area will be obscured. The units along the Pacific Drive frontage are well forward of the cottage and contain no direct view to the primary living or outdoor areas of the adjoining dwelling.</p> <p>No adverse privacy impacts are identified to this property.</p>
Objection to overshadowing impacts upon 3 and 5 Hill Street and 28 Pacific Drive.	Refer to comments under context and setting heading of this report.
Stormwater impacts.	Refer to comments under stormwater heading of this report.

Submission Issue/Summary	Planning Comment/Response
Noise impacts from residents utilising balconies.	The proposed use of the building is permanent residential occupation. Appropriate setbacks and building separation is proposed. No adverse noise impacts are identified.
The proposal would set a precedent for further high rise development in the area.	The building heights have been established in the LEP to encourage medium density high rise development on this site.

(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.
-
- A copy of the contributions estimate is included 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. 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 [!\[\]\(7a8011739ec4e250e2f89a547d75fb0a_img.jpg\) !\[\]\(07dce76283bf618e2364d95ae0021e26_img.jpg\) DA2021 - 315.1 Draft conditions for DAP report](#)
- 2 [!\[\]\(44ee86b940d3a0ca166486da8985875e_img.jpg\) !\[\]\(2262b99b3a4953f9b3dfd64b89c00d2e_img.jpg\) DA2021 - 315.1 Bushfire Safety Authority conditions NSW RFS](#)
- 3 [!\[\]\(72fd141c2b650e3974b4ac376f402874_img.jpg\) !\[\]\(2477f3a1e0e03bb543b1e7662e8cfcee_img.jpg\) DA2021 - 315.1 Plans - Combined](#)
- 4 [!\[\]\(b3585519a49e38e8d8527211b2b955fa_img.jpg\) !\[\]\(adbcc76182846c2ac4eb313487e4a2bb_img.jpg\) DA2021 - 315.1 Development Contributions Estimate](#)
- 5 [!\[\]\(e44030763054d056f0c2076bb43543da_img.jpg\) !\[\]\(69fd8fc035f6423999c8bc336ddaacf7_img.jpg\) DA2021 - 315.1 Clause 4.6 Objection for Building Height](#)
- 6 [!\[\]\(6a9cf1e556842e523644649bd85d3d25_img.jpg\) !\[\]\(4083627e3f79a04c0c7f38ba137b4c9d_img.jpg\) DA2021 - 315.1 Clause 4.6 Objection for FSR](#)

**FOR USE BY PLANNERS/SURVEYORS TO PREPARE LIST OF
PROPOSED CONDITIONS - 2011****NOTE: THESE ARE DRAFT ONLY****DA NO: 2021/315****DATE: 2 November 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	27 Pacific Drive, Port Macquarie	No author	April 2021
Cover Page	Project No. #Pln Dwg No. D00	Wayne Ellis Architect	16 April 2021
Ground and First Floor Plan	Project No. #Pln Dwg No. D01	Wayne Ellis Architect	5 June 2021
2 nd and 3 rd Floor Plan	Project No. #Pln Dwg No. D02	Wayne Ellis Architect	16 April 2021
4 th and 5 th Floor Plan	Project No. #Pln Dwg No. D03	Wayne Ellis Architect	16 April 2021
6 th Floor and Roof Plan	Project No. #Pln Dwg No. D04	Wayne Ellis Architect	16 April 2021
Elevations	Project No. #Pln Dwg No. D05	Wayne Ellis Architect	16 April 2021
Sections	Project No. #Pln Dwg No. D06	Wayne Ellis Architect	16 April 2021
Survey Plan	Project No. #Pln Dwg No. D07	Wayne Ellis Architect	16 April 2021
Photo Montage	Project No. 2016 Dwg No. D09	Wayne Ellis Architect	9 June 2021
Shadows	Project No. 2016 Dwg No. D10	Wayne Ellis Architect	4 June 2021
Finishes Plan	Project No. 2016 Dwg No. D11	Wayne Ellis Architect	22 April 2021

Finishes Plan	Project No. 2016 Dwg No. D12	Wayne Ellis Architect	22 April 2021
Landscape Plan	Project No. 2016 Dwg No. D13	Wayne Ellis Architect	22 April 2021
Floor Space Ratio Diagram	Project No. #Pln Dwg No. D13	Wayne Ellis Architect	22 October 2021
Landscape Details	Project No. 2016 Dwg No. D14	Wayne Ellis Architect	22 April 2021
Clause 4.6 Objection - Height of Buildings	27 Pacific Drive, Port Macquarie	No author	April 2021
Clause 4.6 Objection - Floor Space Ratio	27 Pacific Drive, Port Macquarie	No author	April 2021
Waste Management Strategy/Plan	27 Pacific Drive, Port Macquarie	Wayne Ellis Architect	Undated
Updated Bushfire Protection Assessment	B213656 - 2 27 Pacific Drive, Port Macquarie	Australian Bushfire Protection Planners Pty Ltd	31 August 2021
BASIX Certificate	1190579M	Concept Designs Australia	20 April 2021
Preliminary Stormwater Management Plan	Job No. 201225 Drawing No. D02 Revision A	SYJ Consulting Engineers	12 March 2021
Draft Strata Plan	7694 Sheets 1 to 8	No author	Undated

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

- (2) (A002) No building or subdivision work shall commence until a Construction Certificate or Subdivision Works Certificate has been issued and the applicant has notified Council of:
 - a. 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 DA20210507001823-Original-1 and dated 11 October 2021, are attached and form part of this consent.
- (8) (A017) A separate development application for any proposed advertising signs (other than signs which are exempt development or approved under this consent) must be submitted to and approved by council prior to the erection or display of any such signs.
- (9) (A029) The provision, at no cost to Council, of concrete foot paving for the full street frontages of the development. A 1.2metre wide footpath (unless varied in writing by Council) is required with design details in accordance with AUSPEC and Council Standard drawing ASD103. The design plans must be approved by Council pursuant to Section 138 of the Roads Act.
- (10) (A030) The restoration of any vehicle access rendered redundant by the development, to standard kerb and footpath formation at no cost to Council, in accordance with Council's current AUSPEC Specifications and Standards. All works must be approved by Council pursuant to Section 138 of the Roads Act.
- (11) (A032) The developer is responsible for any costs relating to minor alterations and extensions to ensure satisfactory transitions of existing roads, drainage and Council services for the purposes of the development.
- (12) (A033) The applicant shall provide security to the Council for the payment of the cost of the following:
- a. making good any damage caused to any property of the Council as a consequence of doing anything to which the consent relates,
 - b. completing any public work (such as road work, kerbing and guttering, footway construction, utility services, stormwater drainage and environmental controls) required in connection with the consent,

- c. remedying any defects in any such public work that arise within twelve (12) months after the work is completed.

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

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

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

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

- (13) (A049) The existing footpath/verge area along Pacific Drive is to be raised to contain stormwater to the street. Design plans must be approved by Port Macquarie-Hastings Council pursuant to Section 138 of the Roads Act 1993.

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) (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. Earthworks.
 3. Parking areas including; driveways and access aisles, parking bays & turning areas in accordance with AS2890.
 4. Sewerage reticulation. Due to the scale of the development and the increased load on sewer infrastructure, it is necessary to discharge all sewage to a new or existing manhole. 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.

5. Water supply. Each individual unit shall be individually metered with the meters either located at an easily accessible location unless the water supply to the whole site is metered with a single larger meter with private meters at each unit. Final water service sizing will need to be determined by a hydraulic consultant to suit the development, as well as fire service and backflow protection requirements in accordance with AS3500. Plans shall include hydraulic plans for internal water supply services and associated works in accordance with AS 3500, Plumbing Code of Australia and Port Macquarie-Hastings Council Policies.
 6. Retaining walls.
 7. Stormwater systems.
 8. Erosion & Sedimentation controls
 9. Location of all existing and proposed utility services including: conduits for electricity supply and communication services (including fibre optic cable), water supply, sewerage, stormwater
 10. Traffic management control plan.
 11. Erection of any hoardings and buildings in and/or over the public road space
 12. Detailed driveway profile (including long section) in accordance with Australian Standard 2890, AUSPEC D1, and ASD207 Port Macquarie-Hastings Council current version.
 13. Provision of a 1.2m (unless varied in writing by Council), concrete footpath paving across the full road frontage of the property.
- (3) (B006) An application pursuant to Section 138 of the Roads Act, 1993 to carry out works required by the Development Consent on or within public road is to be submitted to and obtained from Port Macquarie-Hastings Council prior to release of the Construction Certificate.

Such works include, but not be limited to:

- Civil works
 - Traffic management
 - Work zone areas
 - Hoardings
 - Concrete foot paving
 - Footway and gutter crossing
 - Functional vehicular access
- (4) (B010) Payment to Council, prior to the issue of the Construction Certificate 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

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) (B011) Prior to the issue of the Construction Certificate, 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) (B024) Submission to Council of an application for water meter hire, which is to be referred to the Water Supply section so that a quotation for the installation can be prepared and paid for prior to the issue of a Construction Certificate. This application is also to include an application for the disconnection of any existing service not required.
- (7) (B034) Prior to release of the Subdivision Works Certificate or Construction Certificate the submission of details to Council for the disposal of any spoil gained from the site and/or details of the source of fill, heavy construction materials and proposed routes to and from the site, including, but not limited to:
- The pavement condition of the route/s proposed (excluding collector, sub-arterial and arterial roads) for the haulage of fill material to the site and/or haulage of excess material from the site. The condition report shall include photographs of the existing pavement and pavement deflection test results taken in the travel lanes;
 - Recommended load limits for haulage vehicles and;
 - A procedure for monitoring the condition of the pavement during the haulage;

- Bond to guarantee public infrastructure is not damaged as a result of construction activity,

and;

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

- (8) (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) (B041) Prior to the issue of the Construction Certificate a dilapidation report shall be prepared by a suitably qualified person for buildings on adjoining properties. Such report shall be furnished to the Principal Certifying Authority.
- (11) (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.
- (12) (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.
- (13) (B072) A stormwater drainage design is to be submitted and approved by Council prior to the issue of a Construction Certificate. The design must be prepared in accordance with Council's AUSPEC Specifications and the requirements of Relevant Australian Standards and make provision for the following:
 - a) The legal point of discharge for the proposed development is defined as the a direct connection to Council's downstream piped drainage system in Hill Street.

In this regard, Council's piped drainage system must be extended by an appropriately sized pipeline (minimum 375mm diameter) to the frontage of the site, where a kerb inlet pit (minimum 2.4m lintel) must be installed, to allow direct piped connection from the development site into the public drainage system.

The pipeline must be designed to have the capacity to convey flows that would be collected at that section of street as generated by a 5% AEP storm event
 - b) The design is to be generally in accordance with the stormwater drainage concept plan on Drawing No 201225 D01 - 05/A prepared by SYJ Consulting and dated 12 03 2021.
 - c) The design shall incorporate on-site stormwater detention facilities to limit site stormwater discharge to pre development flow rates for all storm events up to and including the 100 year ARI event. Note that pre

development discharge shall be calculated assuming that the site is a 'greenfield' development site as per AUSPEC requirements.

- d) The design shall include water quality controls designed to achieve the targets specified within AUSPEC D7.
 - e) 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.
 - f) An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
- (14) The building shall be designed and constructed so as to comply with the Bushfire Attack Levels (BAL) prescribed in the bushfire safety authority issued by NSW RFS dated 11 October 2021. Details shall be submitted to the Principal Certifying Authority with the application for Construction Certificate demonstrating compliance with these requirements.
- (15) (B070) Where augmentation is required on adjoining property, owner's consent shall be provided to Council with any Section 68 application and/or Subdivision Works Certificate where augmentation is required on adjoining property including: (Delete when not applicable)
- Council's sewer infrastructure (i.e. sewer junction, sideline or manhole)
- (16) A certifying authority must not issue a Construction Certificate for the residential flat development unless the certifying authority has received a statement by the qualified designer verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles specified in State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development.
- (17) Prior to issue of the Construction Certificate, development consent (DA2009/474) for demolition of dwelling & construction of 4 storey residential flat building comprising 10 residential units and basement at Lot 5 DP 18374, No 27 Pacific Drive, Port Macquarie shall be formally surrendered by submitting a notice of surrender to Council in accordance with the Environmental Planning and Assessment Regulation 2000.
- (18) Prior to issue of the Construction Certificate a copy of satisfactory arrangements with Essential Energy shall be provided to the certifying authority.
- (19) (B039) Detailed drawings and specifications prepared by a professional engineer for all retaining walls supporting:
- i. earthworks that are more than 600mm above or below ground level (existing); or
 - ii. located within 1m of the property boundaries; or
 - iii. earthworks that are more than 1m above or below ground level (existing) in any other location;
- are to be submitted to the Principal Certifying Authority with the application for Construction Certificate.

C – PRIOR TO ANY WORK COMMENCING ON SITE

- (1) (C001) A minimum of one (1) week's notice in writing of the intention to commence works on public land is required to be given to Council together with the name of the principal contractor and any major sub-contractors engaged to carry out works. Works shall only be carried out by a contractor accredited with Council.
- (2) (C003) A controlled activity approval shall be obtained from the airport operator for any crane that may be used during the construction phase that would penetrate the Obstacle Limitation Surface (OLS). To avoid any doubt as to whether an approval is required, applicants should check with the airport operator at the earliest possible stage.
- (3) (C004) Prior to works commencing an application being made to the electricity and telecommunications service providers. Services are required to be underground.
- (4) (C007) Provision of a hoarding, fence or other measures to restrict public access to the site during the course of works. Where the hoarding will encroach upon public land an application for approval under section 138 of the Roads Act, 1993 is to be lodged with Council.
- (5) (C013) Where a sewer manhole and/or Vertical Inspection Shaft (VIS) exists within a property, access to the manhole/VIS shall be made available at all times. Before during and after construction, the sewer manhole/VIS must not be buried, damaged or act as a stormwater collection pit. No structures, including retaining walls, shall be erected within 1.0 metre of the sewer manhole or located so as to prevent access to the manhole.

D – DURING WORK

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

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

- (2) (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.

- (3) (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.
- (4) (D011) Provision being made for support of adjoining properties and roadways during construction.
- (5) 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.

E – PRIOR TO OCCUPATION OR THE ISSUE OF OCCUPATION CERTIFICATE / STRATA CERTIFICATE

- (1) (E001) The premises shall not be occupied or used in whole or in part until an Occupation Certificate has been issued by the Principal Certifying Authority.
- (2) (E005) Prior to the release of any bond securities held by Council for infrastructure works associated with developments, a formal written application is to be submitted to Council specifying detail of works and bond amount
- (3) (E030) Vehicle ramps, driveways, turning circles and parking spaces being paved, sealed and line marked prior to occupation or the issue of the Occupation Certificate or commencement of the approved land use.
- (4) (E034) Prior to occupation or the issuing of the Occupation Certificate provision to the Principal Certifying Authority of documentation from Port Macquarie-Hastings Council being the local roads authority certifying that all matters required by the approval issued pursuant to Section 138 of the Roads Act have been satisfactorily completed.
- (5) (E039) An appropriately qualified and practising consultant is required to certify the following:
 - a. all drainage lines have been located within the respective easements, and
 - b. any other drainage structures are located in accordance with the Construction Certificate.
 - c. all stormwater has been directed to a Council approved drainage system
 - d. all conditions of consent/ construction certificate approval have been complied with.
 - e. Any on site detention system (if applicable) will function hydraulically in accordance with the approved Construction Certificate.
- (6) (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.

- (7) (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.

- (8) (E049) A final Dilapidation Report including a photographic survey must be submitted after the completion of works. A copy of this Dilapidation Report together with the accompanying photographs must be given to the property owners. A copy must be submitted to Council and the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Any damage identified in the Dilapidation Report must be fully rectified by the applicant or owner at no cost to the Council prior to the issue of an Occupation Certificate.

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

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

- (10) (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.

- (11) (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.

- (12) (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.
- (13) (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.
- (14) (E061) Landscaped areas being completed prior to occupation or issue of the Certificate.
- (15) (E066) Ancillary works shall be undertaken at no cost to Council to make the engineering works required by this Consent effective to the satisfaction of Director of Council's Infrastructure Division. Such works shall include, but are not limited to the following:
 - a. The relocation of underground services where required by civil works being carried out.
 - b. The relocation of above ground power and telephone services
 - c. The relocation of street lighting
 - d. The matching of new infrastructure into existing or future design infrastructure
- (16) (E068) Prior to the issue of an occupation 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).
- (17) (E072) Lodgement of a security deposit with Council upon practical completion of public infrastructure works.
- (18) (E076) The plan of subdivision and Section 88B instrument shall establish the following restrictive covenants restrictions, easements and/or covenants; with the Council having the benefit of these covenants and having the sole authority to release, vary or modify these covenants each restriction, easement and/or covenant.
 - a. Restriction as to user for private garbage service to be in place requiring the collection of all domestic waste comprising general waste (rubbish), recycling and food and garden organics by a private contractors. All wastes are to be collected as separate waste streams. Garbage collection by private contractors shall occur from within the property and not obstruct the use of the public roads.
- (19) (E082) Submission of a compliance certificate accompanying Works as Executed plans with detail included as required by Council's current AUSPEC Specifications. The information is to be submitted in electronic format in accordance with Council's "CADCHECK" requirements detailing all infrastructure for Council to bring in to account its assets under the provisions of AAS27. This information is to be approved by Council prior to issue of the Strata or Occupation Certificate. The copyright for all information supplied, shall be assigned to Council.
- (20) The strata certificate shall not be issued until such time that the building associated with this development is substantially commenced (as determined by Council).

- (21) A certifying authority must not issue an Occupation Certificate to authorise a person to commence occupation or use of the development unless the certifying authority has received a statement by the qualified designer verifying that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the Construction Certificate was issued.

F – OCCUPATION OF THE SITE

- (1) (F001) On site car parking in accordance with the approved plans to be provided in an unrestricted manner at all times during the operations of development for use by both residents and visitors.

DRAFT



NSW RURAL FIRE SERVICE

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

Your reference: (CNR-21329) DA2021 - 315.1
Our reference: DA20210507001823-Original-1

ATTENTION: Ben Roberts

Date: Monday 11 October 2021

Dear Sir/Madam,

Integrated Development Application
s100B – Subdivision – Strata Title Subdivision
27 Pacific Drive PORT MACQUARIE NSW 2444, 5//DP18374

I refer to your correspondence dated 05/05/2021 seeking general terms of approval for the above Integrated Development Application.

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

Asset Protection Zones

The intent of measures: to provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels at the buildings are below critical limits and prevent direct flame contact.

1. At the issue of a subdivision certificate and in perpetuity, the entire site must be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019.

When establishing and maintaining an inner protection area, the following requirements apply:

- a. tree canopy cover should be less than 15% at maturity,
- b. trees at maturity should not touch or overhang the building,
- c. lower limbs should be removed up to a height of 2m above the ground,
- d. tree canopies should be separated by 2 to 5m,
- e. preference should be given to smooth-barked and evergreen trees,
- f. large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings,
- g. shrubs should not be located under trees,
- h. shrubs should not form more than 10% ground cover,
- i. clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation,
- j. grass should be kept mowed (as a guide, grass should be kept to no more than 100mm in height), and

1

Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address

NSW Rural Fire Service
4 Murray Rose Ave
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555
F (02) 8741 5550
www.rfs.nsw.gov.au

- k. leaves and vegetation debris should be removed.

Construction Standards

The intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

2. New construction on the northern, eastern and southern elevations must comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2018 'Construction of buildings in bushfire-prone areas' or the relevant requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of 'Planning for Bush Fire Protection 2019'.

3. New construction western elevation must comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2018 'Construction of buildings in bushfire-prone areas' or the relevant requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of 'Planning for Bush Fire Protection 2019'.

General Advice – Consent Authority to Note

The recommendations are based on the documents supplied via Councils referral to the NSW RFS including:

- The plan titled 'Plan Showing Levels, Contours & Detail over Lot 5, D.P. 18374, Situated in Pacific Drive & Hill Street Port Macquarie' prepared by Wayne Ellis Architect, drawing number D07/, reference 7522 dated January 2004.
- The bush fire assessment prepared by Australian Bushfire Protection Planners reference B213656-2 dated 31 August 2021.

Council is advised that where a minor amendment to the above-noted documents is proposed, Council may use its discretion to determine whether the minor amendment warrants further assessment by the NSW RFS.

For any queries regarding this correspondence, please contact Wayne Sketchley on 1300 NSW RFS.

Yours sincerely,

Alan Bawden

**Supervisor Development Assessment & Plan
Built & Natural Environment**



NSW RURAL FIRE SERVICE

BUSH FIRE SAFETY AUTHORITY

Subdivision – Strata Title Subdivision

27 Pacific Drive PORT MACQUARIE NSW 2444, 5//DP18374

RFS Reference: DA20210507001823-Original-1

Your Reference: (CNR-21329) DA2021 - 315.1

This Bush Fire Safety Authority is issued on behalf of the Commissioner of the NSW Rural Fire Service under s100b of the Rural Fires Act (1997) subject to the attached General Terms of Approval.

This authority confirms that, subject to the General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under *s100b of the Rural Fires Act 1997*.

Alan Bawden

Supervisor Development Assessment & Plan
Built & Natural Environment

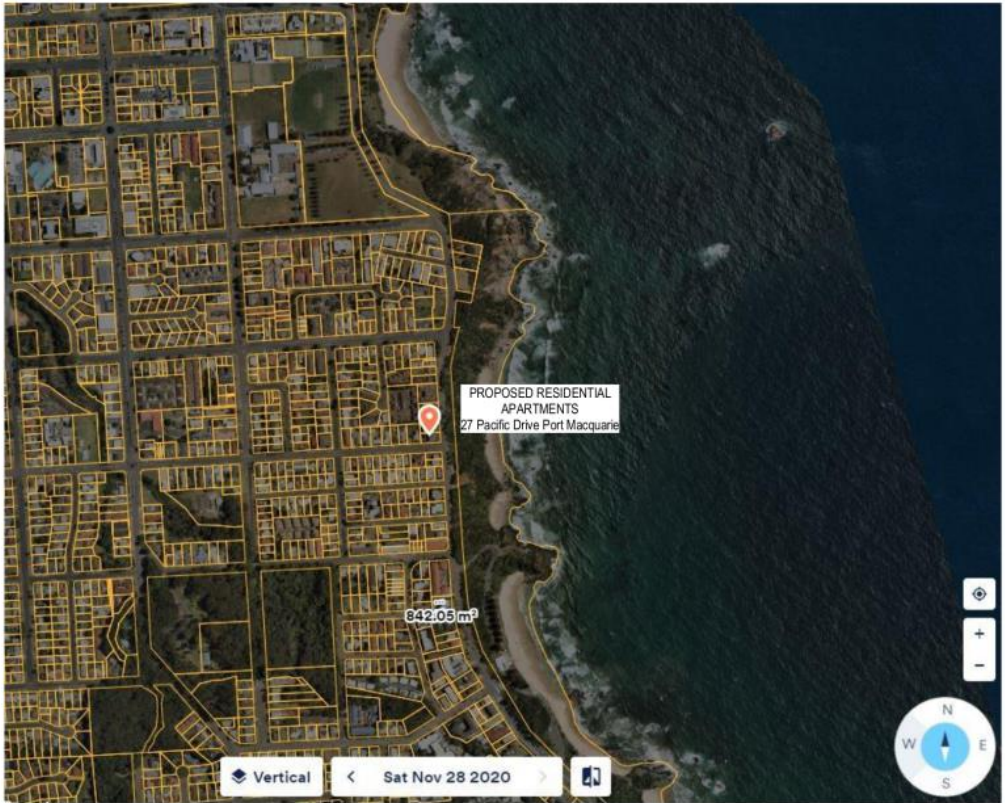
Monday 11 October 2021

D00 COVER PAGE	16/04/2021
D01 GR & 1ST FLOOR PLAN	16/04/2021
D02 2ND & 3RD FLOOR PLAN	16/04/2021
D03 4TH & 5TH FLOOR PLAN	16/04/2021
D04 6TH FL & ROOF PLAN	16/04/2021
D05 ELEVATIONS	16/04/2021
D06 SECTIONS	16/04/2021
D07 SURVEY	16/04/2021
D09 SHADOW DIAGRAM	16/04/2021
D10 SHADOW DIAGRAM	16/04/2021
D11 FINISHES	16/04/2021
D12 FINISHES	16/04/2021

STATISTICS:	
R3 ZONE	
HEIGHT LIMIT: 17.5m	PROPOSED: refer to Section dwg. slightly over for the west portion of roof Unit 601 - 500mm and LIFT 1.0m 96% of proposal under the height Limit
FSR 1.5: 1 Site area 828m2	PROPOSED: 1.6: 1 6.5% over the permissible.
Proposed 5 x 2 bed Units & 5 x 3 bed Units.	
GROSS FLOOR AREAS:	
Unit 101 : 118.29m2	Unit 202 : 142.07m2
Unit 201 : 118.29m2	Unit 302 : 142.07m2
Unit 301 : 118.29m2	Unit 402 : 142.07m2
Unit 401 : 112.06m2	Unit 502 : 142.07m2
Unit 501 : 117.16m2	Unit 601 : 174.0m2
Total Floor Area : 1326.37m2	
Car Parking Required: 12.5 residents, 2.5 Visitor = 15.	
PROPOSED: 16	
LANDSCAPED AREA:	
On Ground & unpaved: 173.12m2	
Elevated Planting Beds:	
Planter 1:	14.72m2
Planter 2:	2.47m2
Planter 3:	7.67m2
Planter 4:	5.90m2
Planter 5, Level 6:	71.60m2



RENDERED 3D
Scale 1:1.58
VIEW FROM THE SOUTH EAST ALONG PACIFIC DRIVE

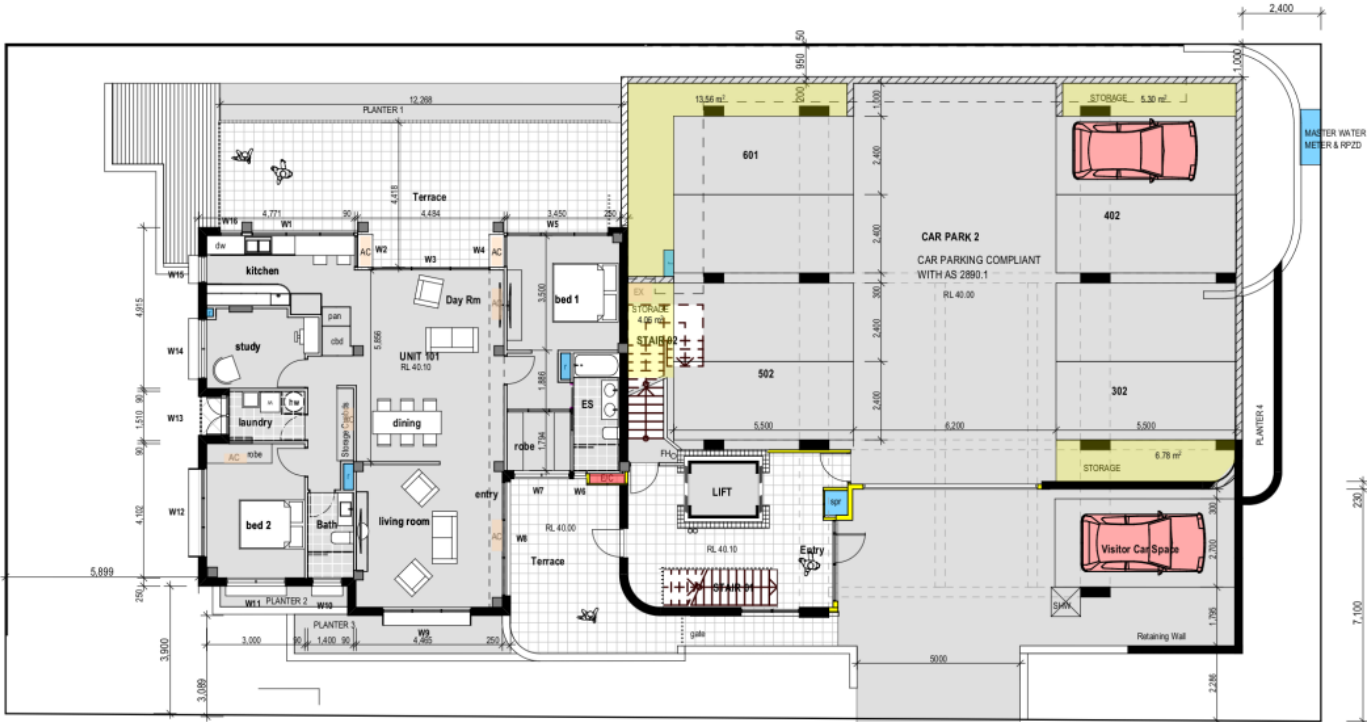


LOCATION PLAN

ALTITUDE55 Residential Apartments

development applicat
16/04/2021

No	Date	Description	By
Amendments			
Notes 1. Check all dimensions on site before commencing any part of the works. 2. Report all discrepancies to architect for decision before proceeding. 3. Works to be signed dimensions. Do not scale drawings. 4. This drawing is to be used in conjunction with all other relevant specifications and drawings. 5. This drawing is copyright and must not be released, reproduced or used wholly or in part without authority from the architect. 6. The scale of this drawing may be affected by enlargement or reduction during transmission.			
wayne ellis architect B.Arch. R.A.I.A. NSW Reg No 4415 P.O. Box 1802 Port Macquarie NSW 2444 Shop 40 Rodlyn St Port Macquarie NSW 2444 w. ellis@wayneellisarchitect.com.au 1 8477 664 751			
Client: The Abdallah Family			
Project: RESIDENTIAL APARTMENTS			
Drawing: 27 Pacific Dr. Port Macquarie, NSW 2444			
Drawing: COVER PAGE			
Proj. No #PIn			
Dwg No. D00/			
Drawn WE			
Scale 1:1.58 @ A1			
Comp. Ref. 2016 DA.jpg			



WINDOW SCHEDULE

WINDOW INSTALLER IS TO INCLUDE IN THE SCOPE OF WORK ALL NECESSARY COVER PLATES INCLUDING CAVITY CLOSING AL ANGLES BRIDGING THE WINDOW FRAME AND WALL CLADDING.
GENERALLY ALL INTERNAL REVEALS ARE SET PLASTERBOARD WITH THE SPECIFIED SKIRTING RETURNING INTO THE REVEALS.

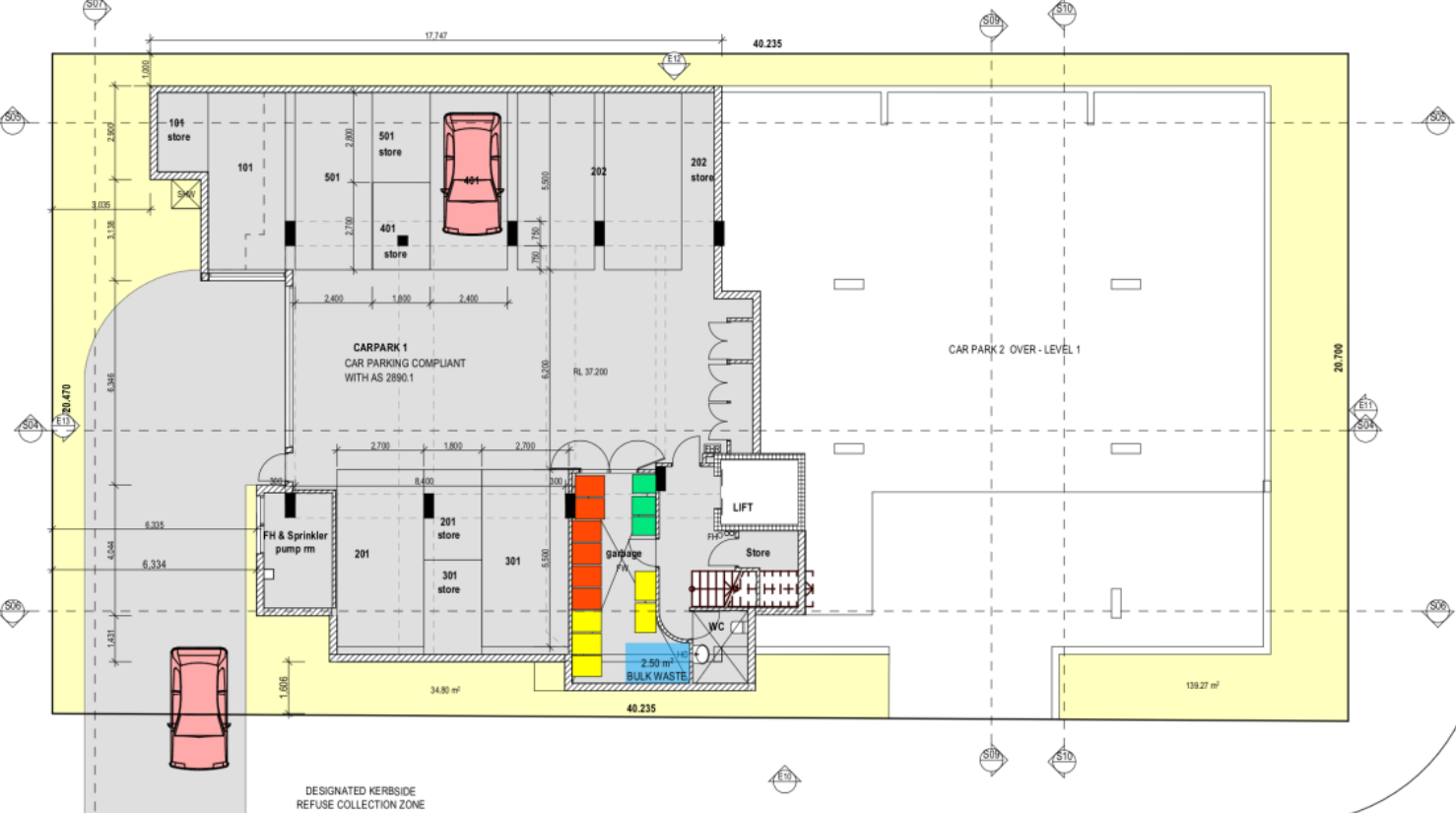
All windows shall be the appropriate G.James Series compliant with AS2047,
glazed in accordance with AS1288 and installed to the manufacturers recommendations and details.
All surface finishing shall be in accordance with AS1231 (Anodising) and/or AS3715 (Powder Coating).

WINDOW SURROUNDS

Shown thus in Window schedule

Specification
Scarborough Series. 150mm Increments. Code Scarborough 450
by LOUVRECLAD PL
Email sales@louvredad.com Ph 1300 165 678
Installation and mounting details will be designed in accordance with
proprietary systems and recommendations as designed and manufactured
by Louvredad Pty Ltd
Powder coated finish

1st Floor
Scale 1:100



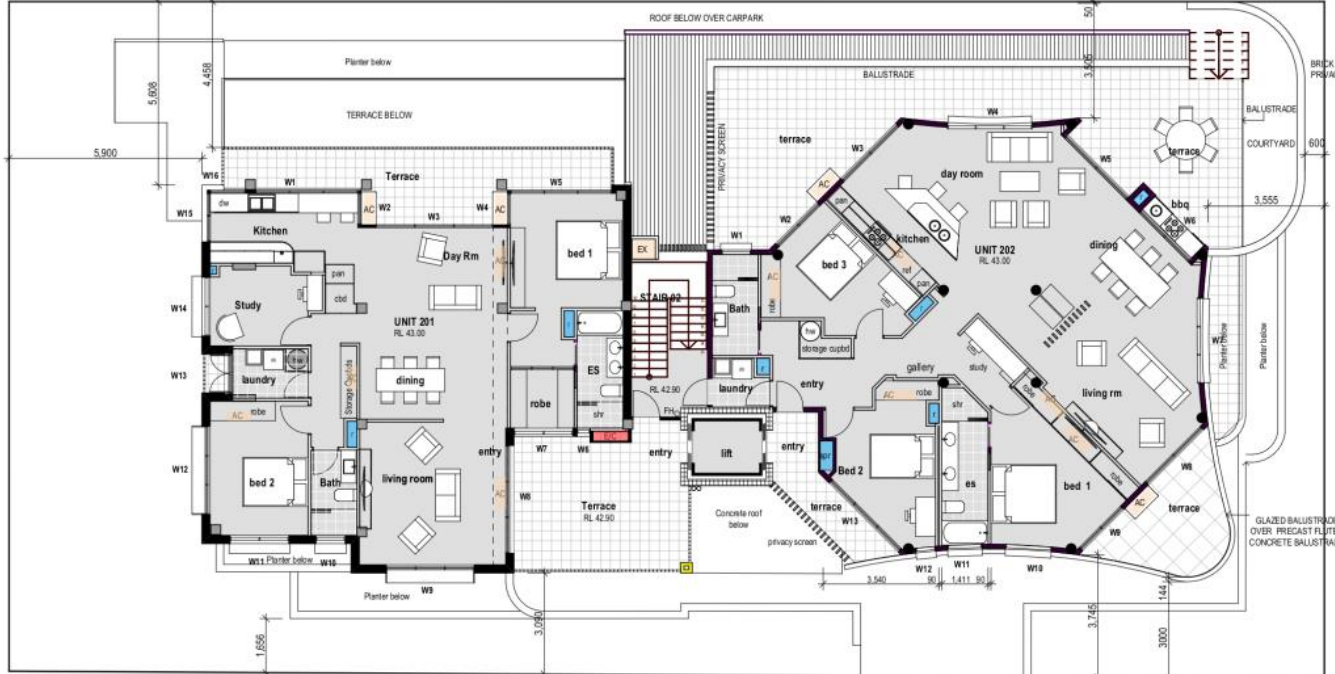
Gr Floor
Scale 1:100

development application
5/06/2021

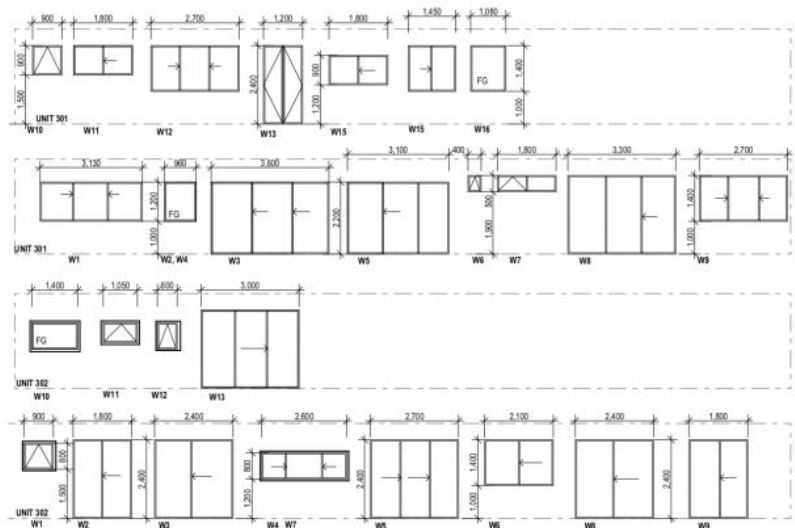
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B.Arch. R.A.I.A. NSW Reg No 4415 P.O. Box 1862 Potts Point NSW 1585 Shop 40 Roslyn St Potts Point 2011 Shop 11/14 Clarence St Port Macquarie NSW 2444 e. wayne@wayneellisarchitect.com.au t. 0417 664 751			
Client: The Abdallah Family			
Project: RESIDENTIAL APARTMENTS			
27 Pacific Dr. Port Macquarie, NSW 2444			
Drawing: GR & 1ST FLOOR PLAN			
Proj No #PIn			
Dwg No D01/			
Drawn WE			
Scale 1:100 @ A1			
Comp. Ref. 2018 DA.jn			



3rd Floor
Scale 1:100



2nd Floor
Scale 1:100



WINDOW SCHEDULE

DIMENSIONS ARE NOMINAL. CONFIRM ON SITE.

WINDOW INSTALLER IS TO INCLUDE IN THE SCOPE OF WORK ALL NECESSARY COVER PLATES INCLUDING CAVITY CLOSING AL ANGLES BRIDGING THE WINDOW FRAME AND WALL CLADDING.
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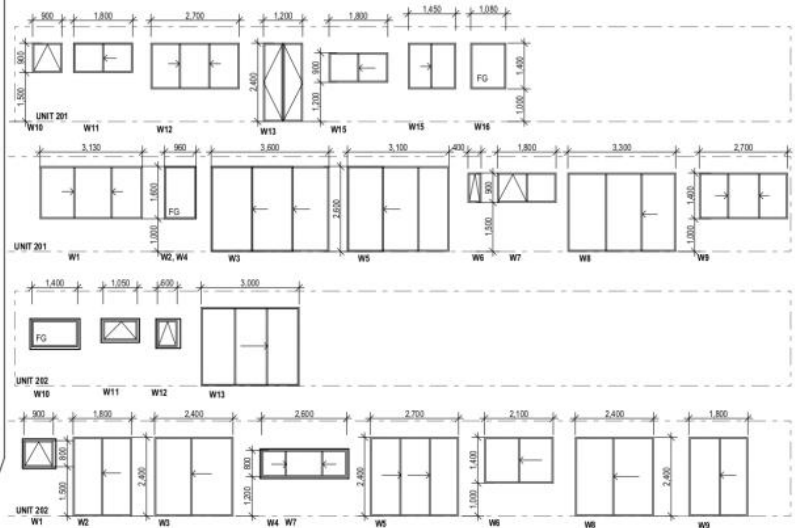
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Shown thus in Window schedule

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Scarborough Series, 150mm increments. Code Scarborough 450
by LOUVRECLAD PL.
Email sales@louvredad.com Ph 1300 165 678

Installation and mounting details will be designed in accordance with
proprietary systems and recommendations as designed and manufactured
by Louvredad Pty Ltd.
Powder coated finish



development application
16/04/2021

No	Date	Description	By
Amendments			

Notes

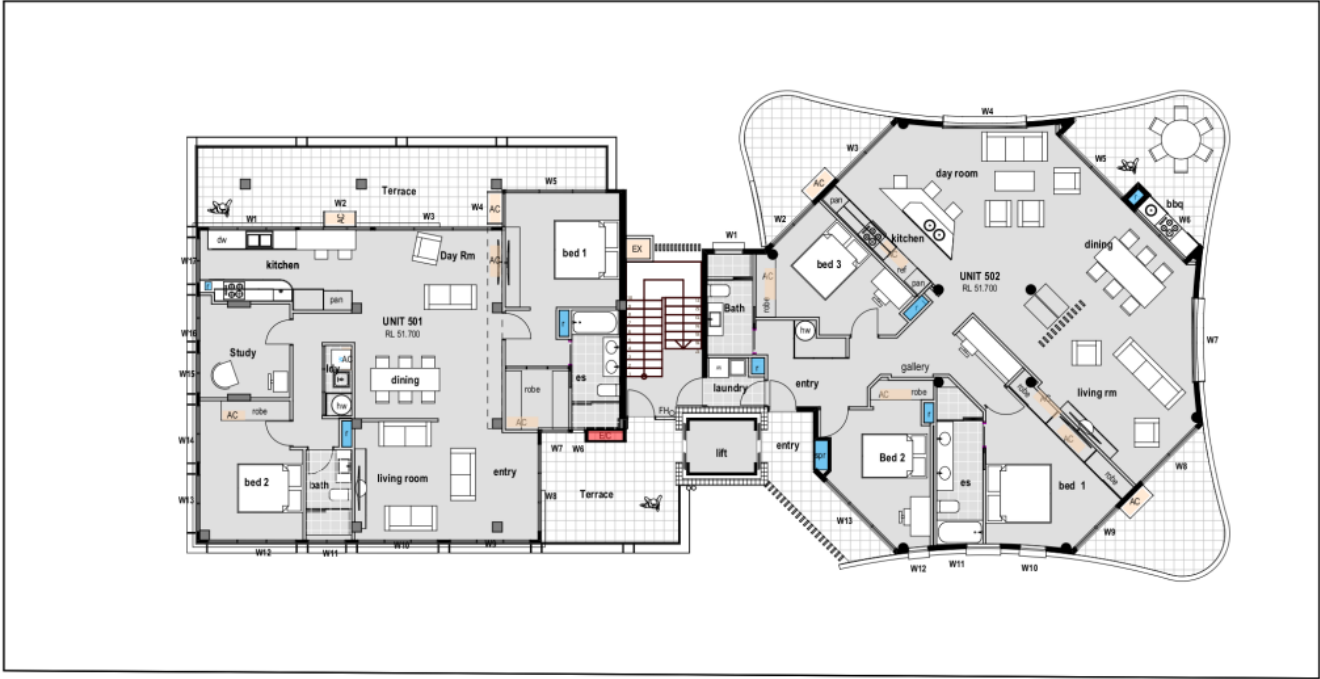
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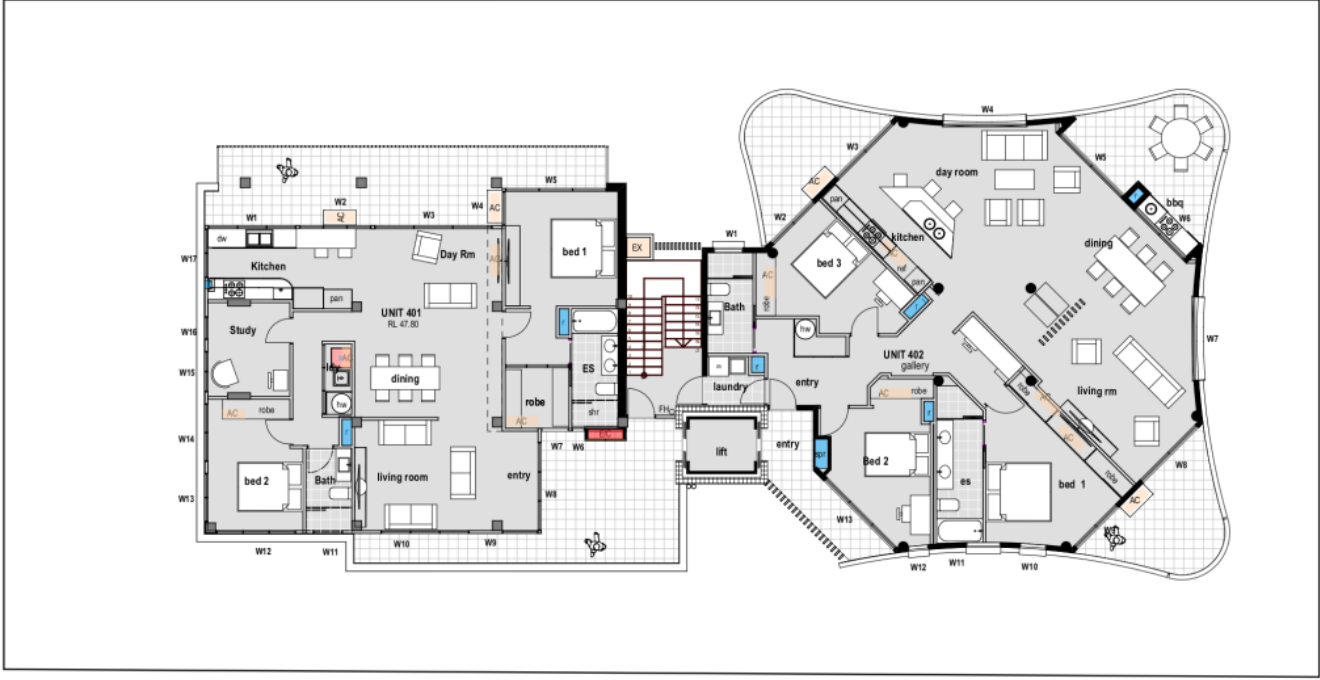
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Shop 11/14 Clarence St Port Macquarie NSW 2444
e. wayne@wayneellis.com.au
t. 0417 664 751

Client: The Abdallah Family
Project: RESIDENTIAL APARTMENTS
27 Pacific Dr. Port Macquarie, NSW 2444
Drawing: 2ND & 3RD FLOOR PLAN

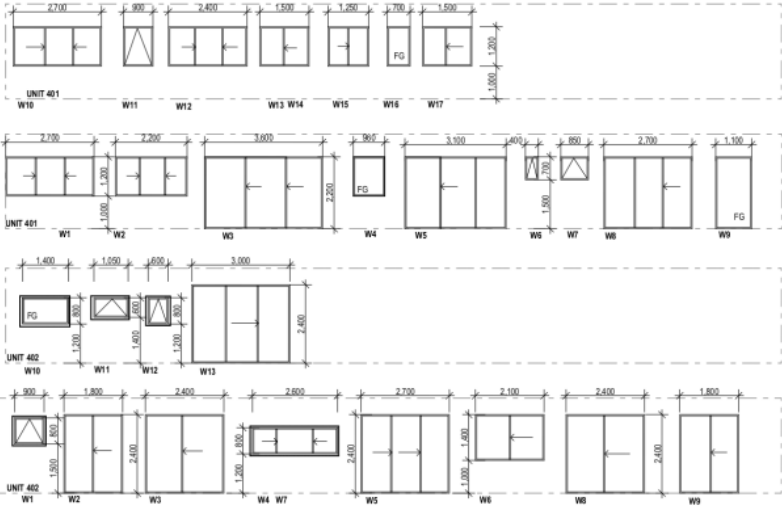
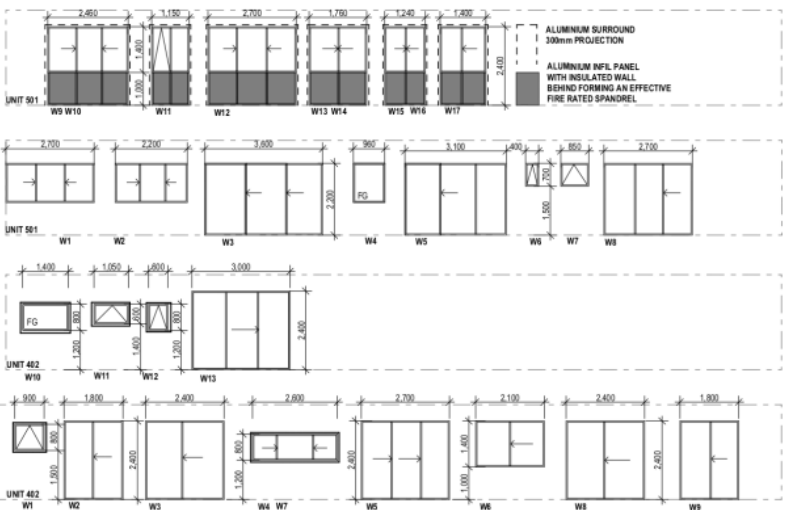
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5th Floor
Scale 1:100

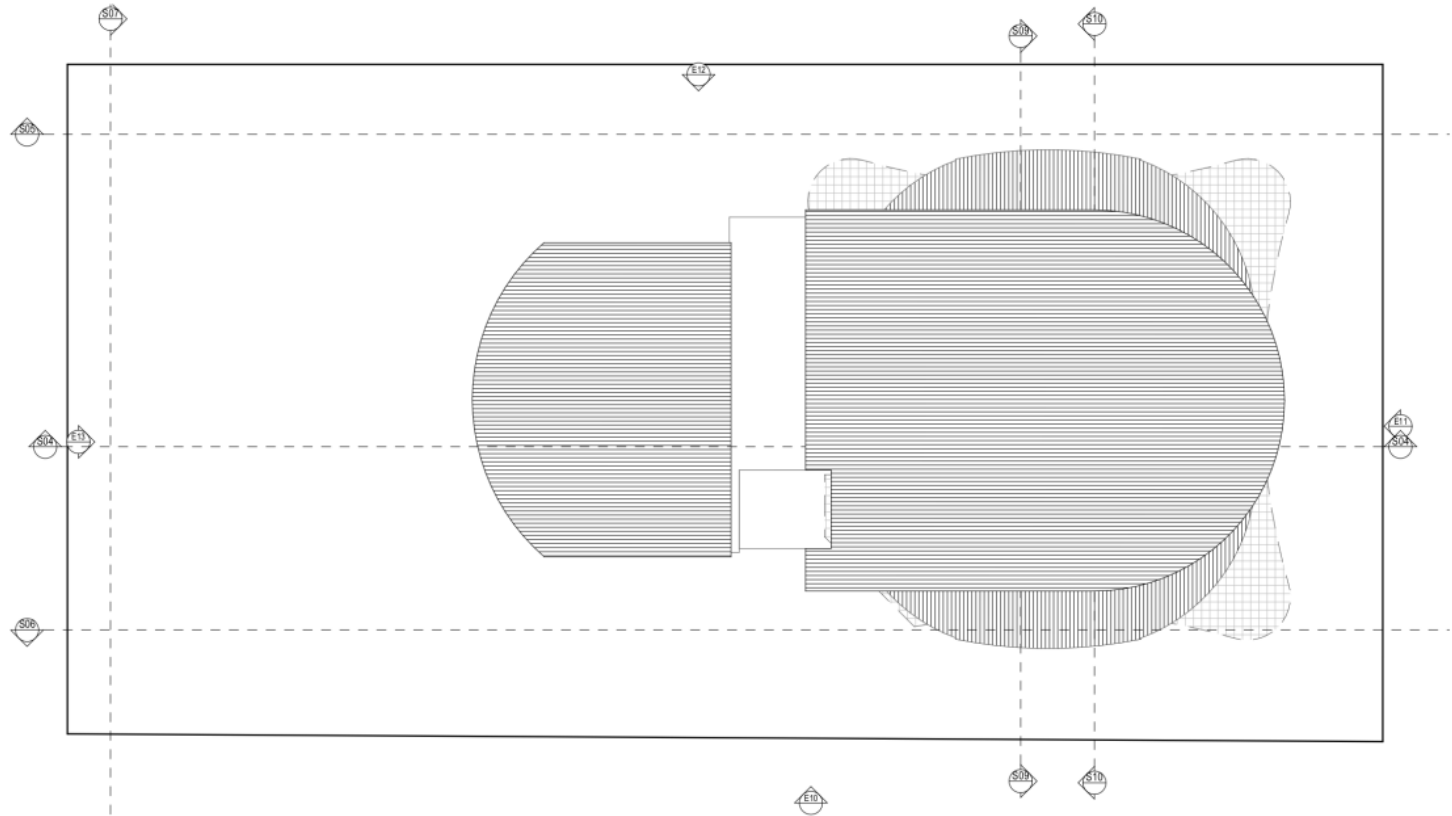


4th Floor
Scale 1:100

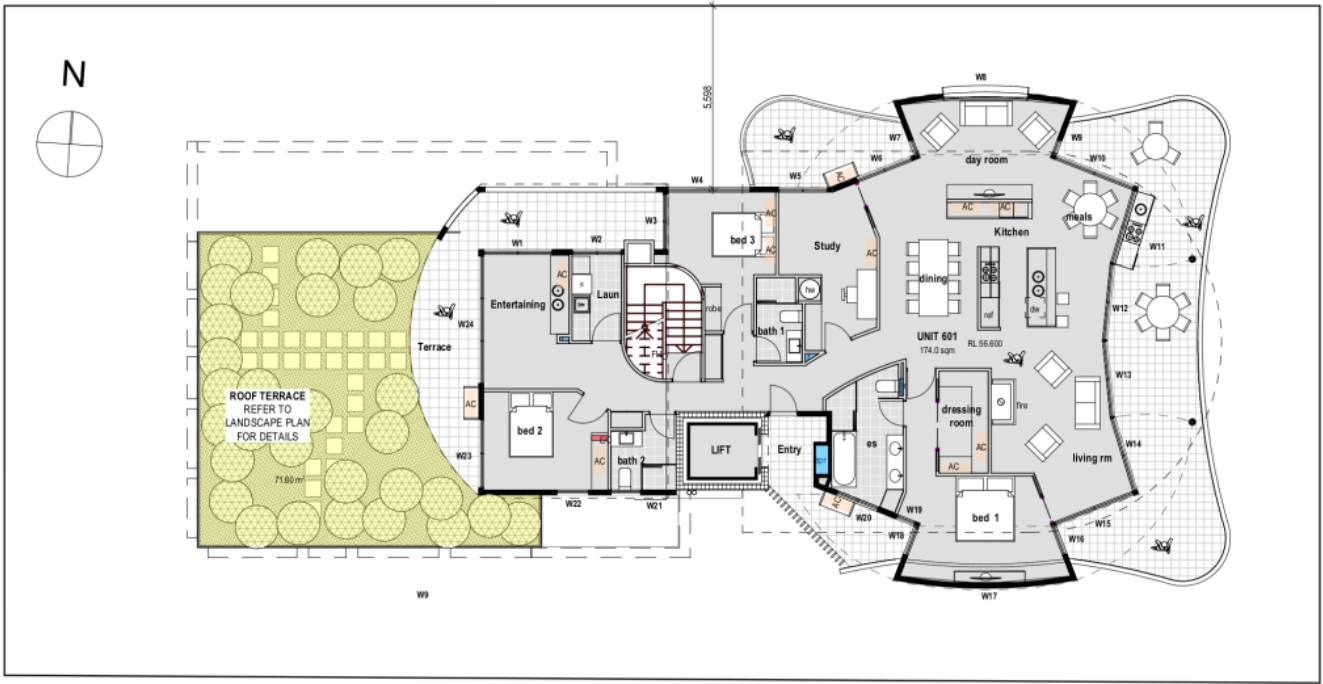


development application
16/04/2021

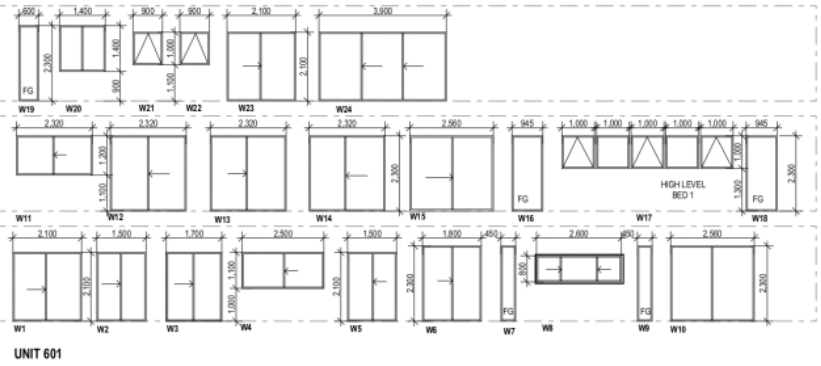
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Client: The Abdallah Family			
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27 Pacific Dr. Port Macquarie, NSW 2444			
Drawing: 4TH & 5TH FLOOR PLAN			
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ROOF
Scale 1:100



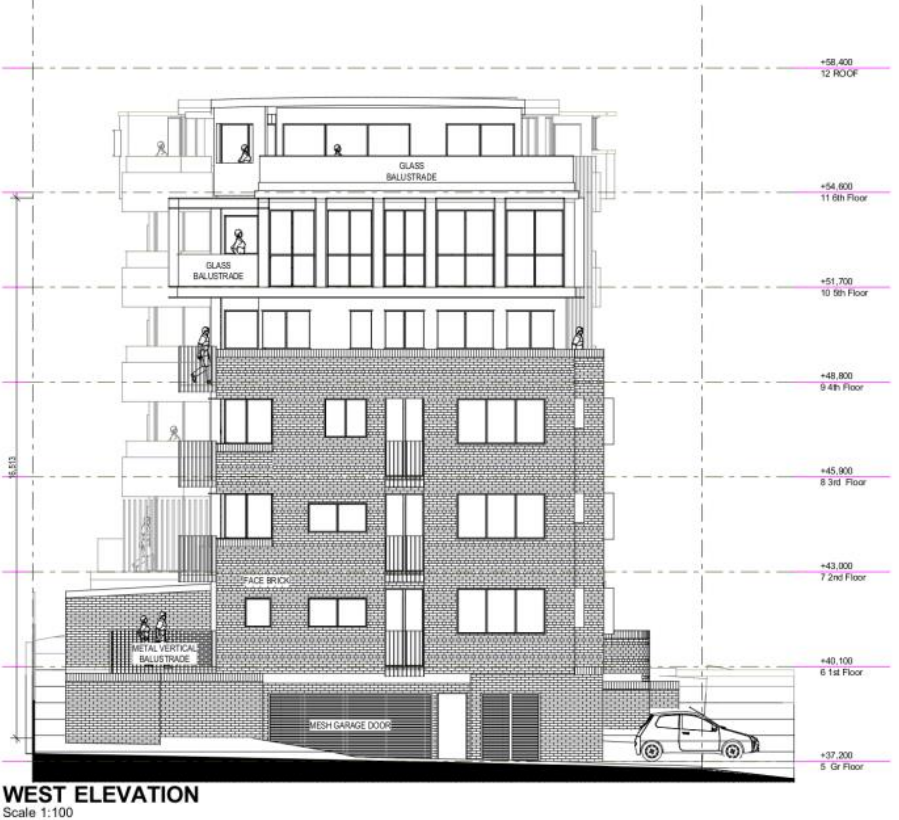
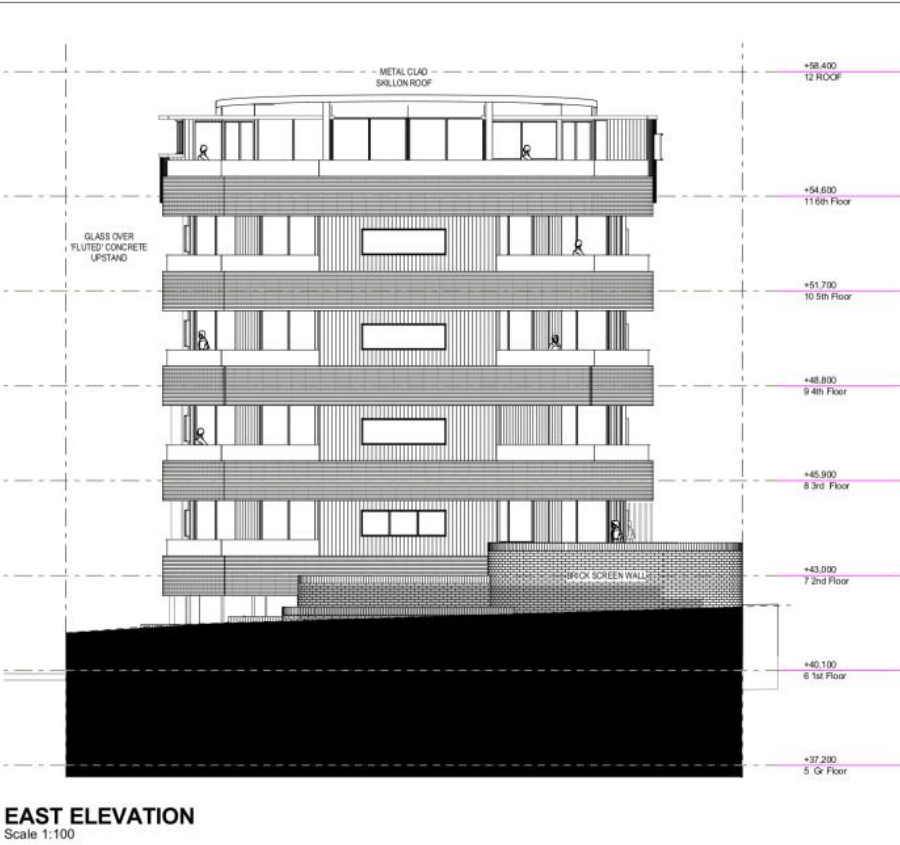
6th Floor
Scale 1:100



UNIT 601

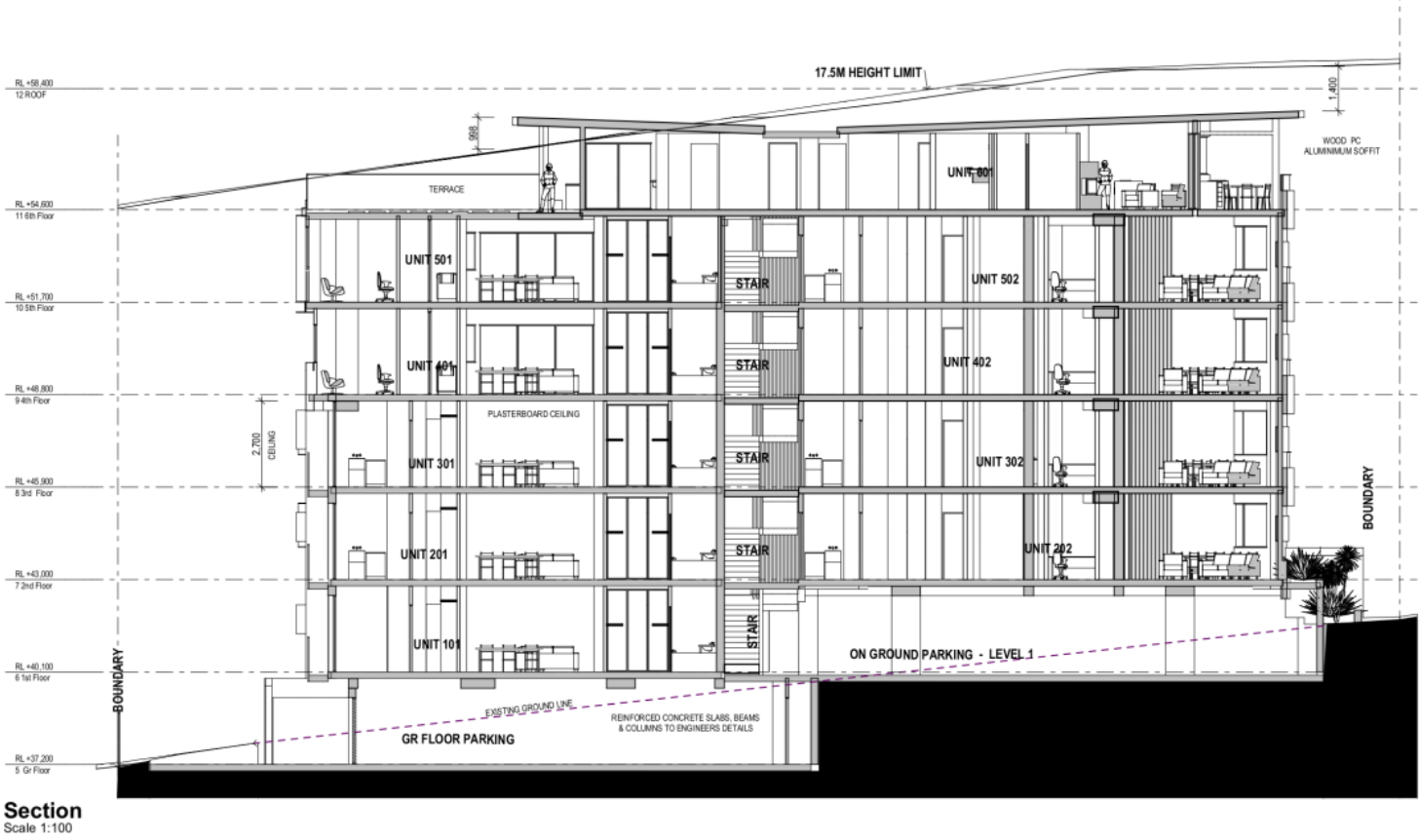
development application
16/04/2021

No	Date	Description	By
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B.Arch. R.A.I.A. NSW Reg No 4415 P.O. Box 1802 Port Macquarie NSW 2444 Shop 40 Rodlyn St Port Macquarie NSW 2444 e. wayne@wayneellisarchitect.com.au t. 0417 664 751			
Client: The Abdallah Family			
Project: RESIDENTIAL APARTMENTS			
27 Pacific Dr. Port Macquarie, NSW 2444			
Drawing: 6TH FL & ROOF PLAN			
Proj. No #PIn			
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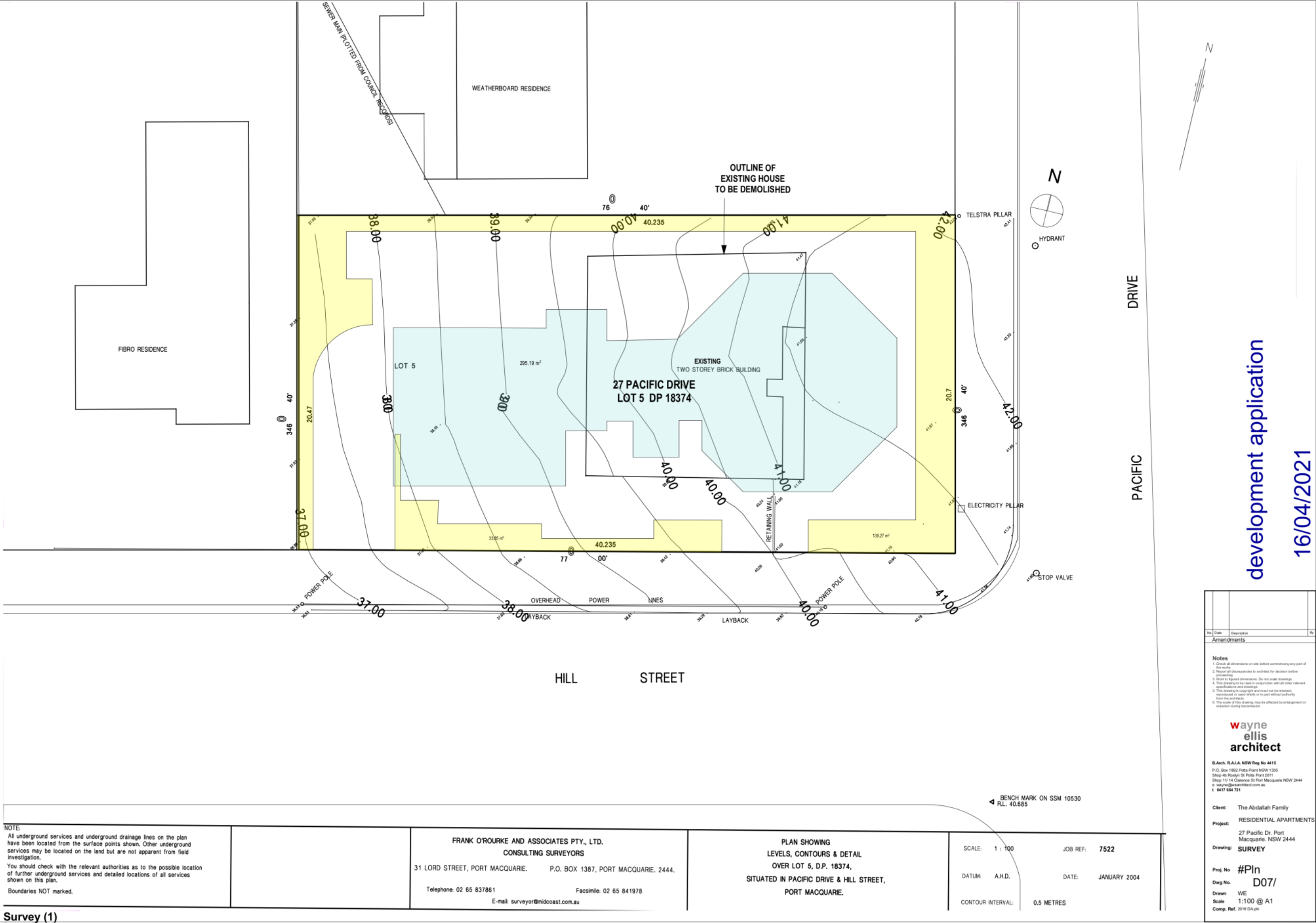
development application
16/04/2021

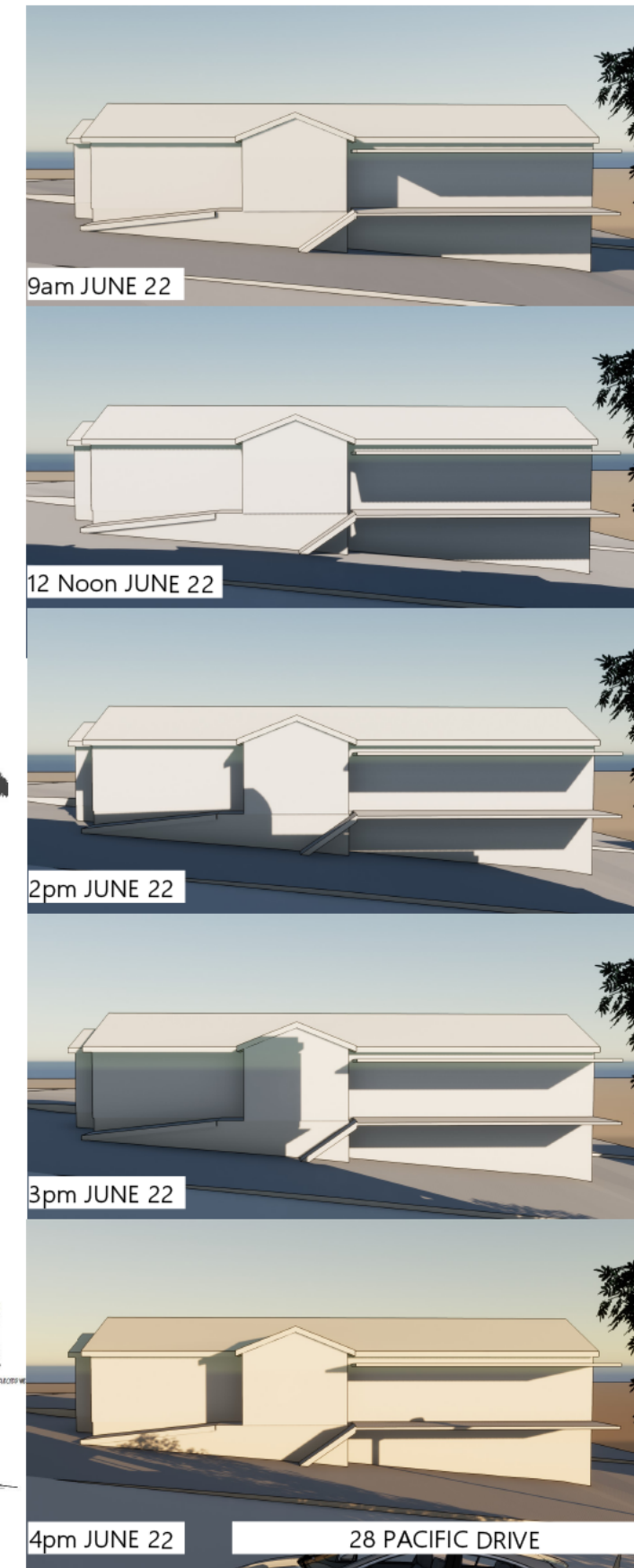
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3. Works to follow dimensions. Do not scale drawings.			
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B.Arch. R.A.I.A. NSW Reg No 4415 P.O. Box 1802 Potts Point NSW 1585 Shop 40 Rodden St Potts Point 2011 Shop 11/14 Clarence St Port Macquarie NSW 2444 e. wayne@wayneellis.com.au t. 0417 664 751			
Client: The Abdallah Family			
Project: RESIDENTIAL APARTMENTS			
27 Pacific Dr. Port Macquarie NSW 2444			
Drawing: ELEVATIONS			
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Comp. Ref. 2016 DA.jn			



development application
16/04/2021

No	Date	Description	By
Amendments			
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1. Check all dimensions on site before commencing any part of the works.			
2. Report all discrepancies to architect for decision before proceeding.			
3. Works to signed dimensions. Do not scale drawings.			
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B.Arch. R.A.I.A. NSW Reg No 4415 P.O. Box 1862 Pitts Point NSW 1305 Shop 40 Roslyn St Pitts Point 2011 Shop 11/14 Clarence St Port Macquarie NSW 2444 e. wayne@wayneellis.com.au t. 0417 664 751			
Client: The Abdallah Family			
Project: RESIDENTIAL APARTMENTS			
27 Pacific Dr. Port Macquarie, NSW 2444			
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4/06/2021

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development application
22/04/2021

No.	Date	Description	By
Revisions			
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wayne ellis architect

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Client: THE ABDULLAH FAMILY
Project: RESIDENTIAL APARTMENTS
27 PACIFIC DRIVE
PORT MACQUARIE 2444

Drawing: FINISHES
Ref. No: 2016
Date: D11/
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Comp: Ref. 2016 DR-revision.pdf

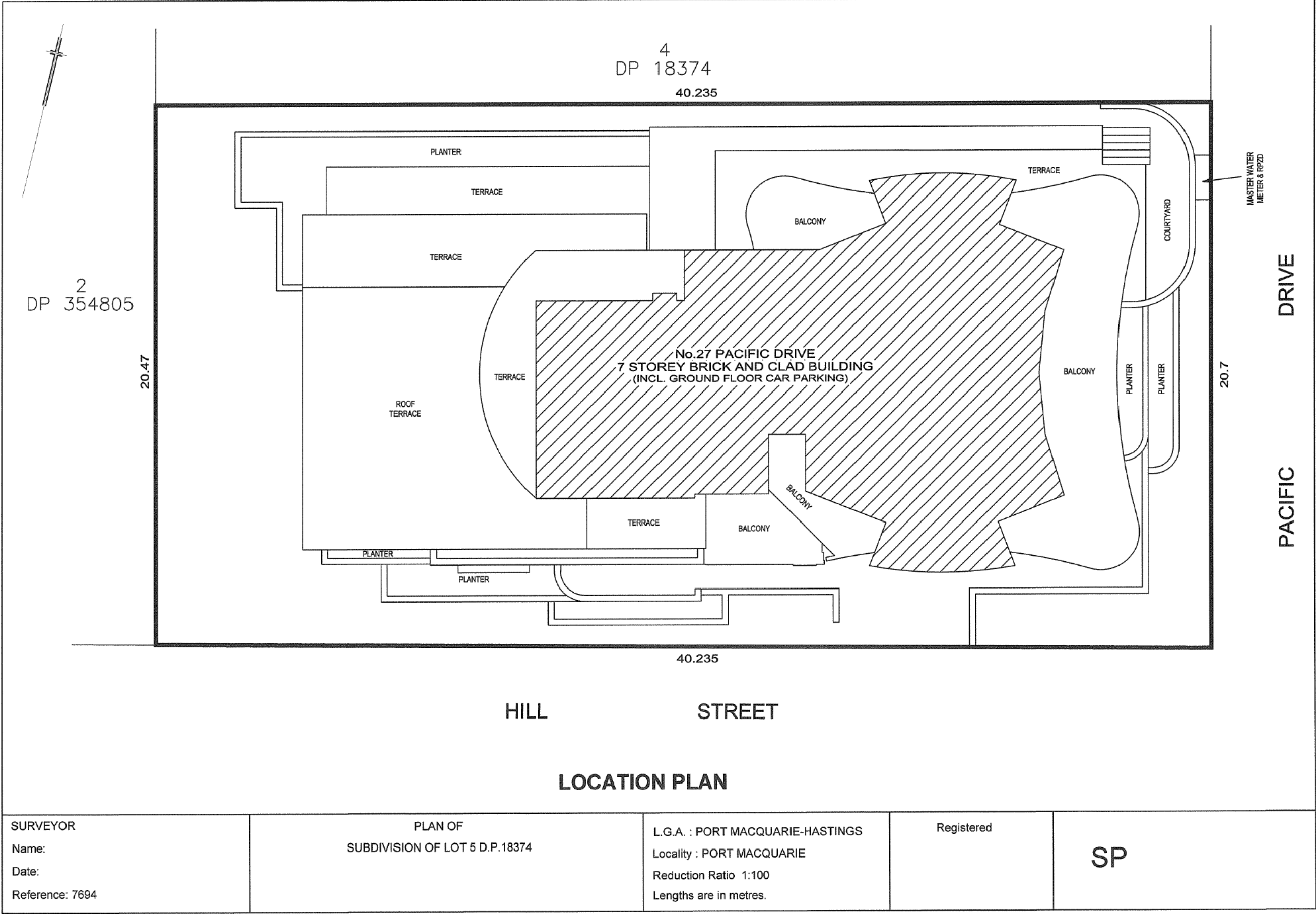


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Amount Due			
<p>Notes</p> <p>1. Received \$1000.00 on 10/10/2014 for the balance of the account.</p> <p>2. Received \$1000.00 on 10/10/2014 for the balance of the account.</p> <p>3. Received \$1000.00 on 10/10/2014 for the balance of the account.</p> <p>4. Received \$1000.00 on 10/10/2014 for the balance of the account.</p> <p>5. Received \$1000.00 on 10/10/2014 for the balance of the account.</p> <p>6. Received \$1000.00 on 10/10/2014 for the balance of the account.</p>			
<p>Wayne Ellis Architect</p> <p>10101 101st Ave. N.E. #100 Seattle, WA 98148 Phone: (206) 461-1001 Fax: (206) 461-1002 Email: info@wayneellis.com Website: www.wayneellis.com</p>			

PLAN FORM 1 (A3)

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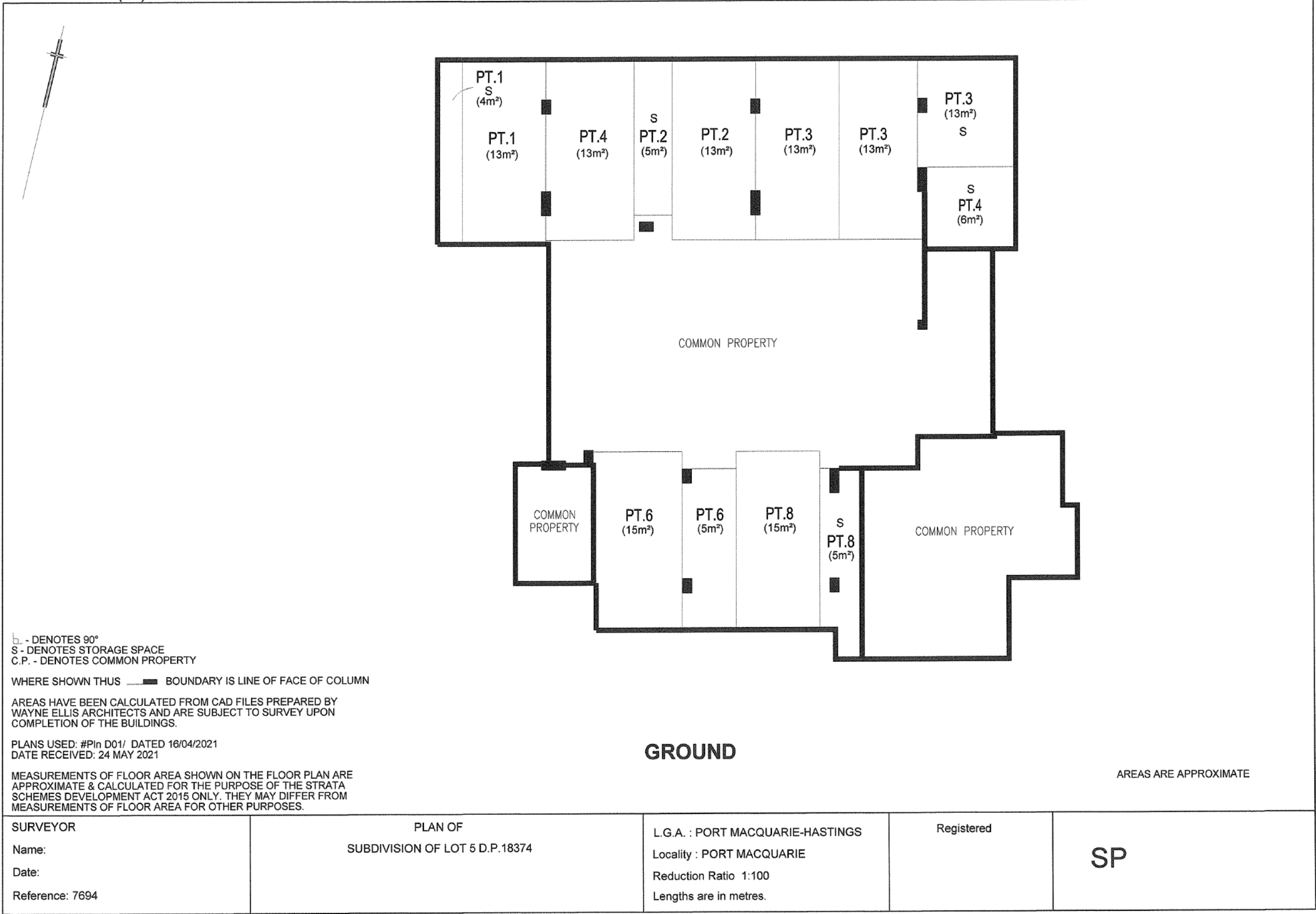
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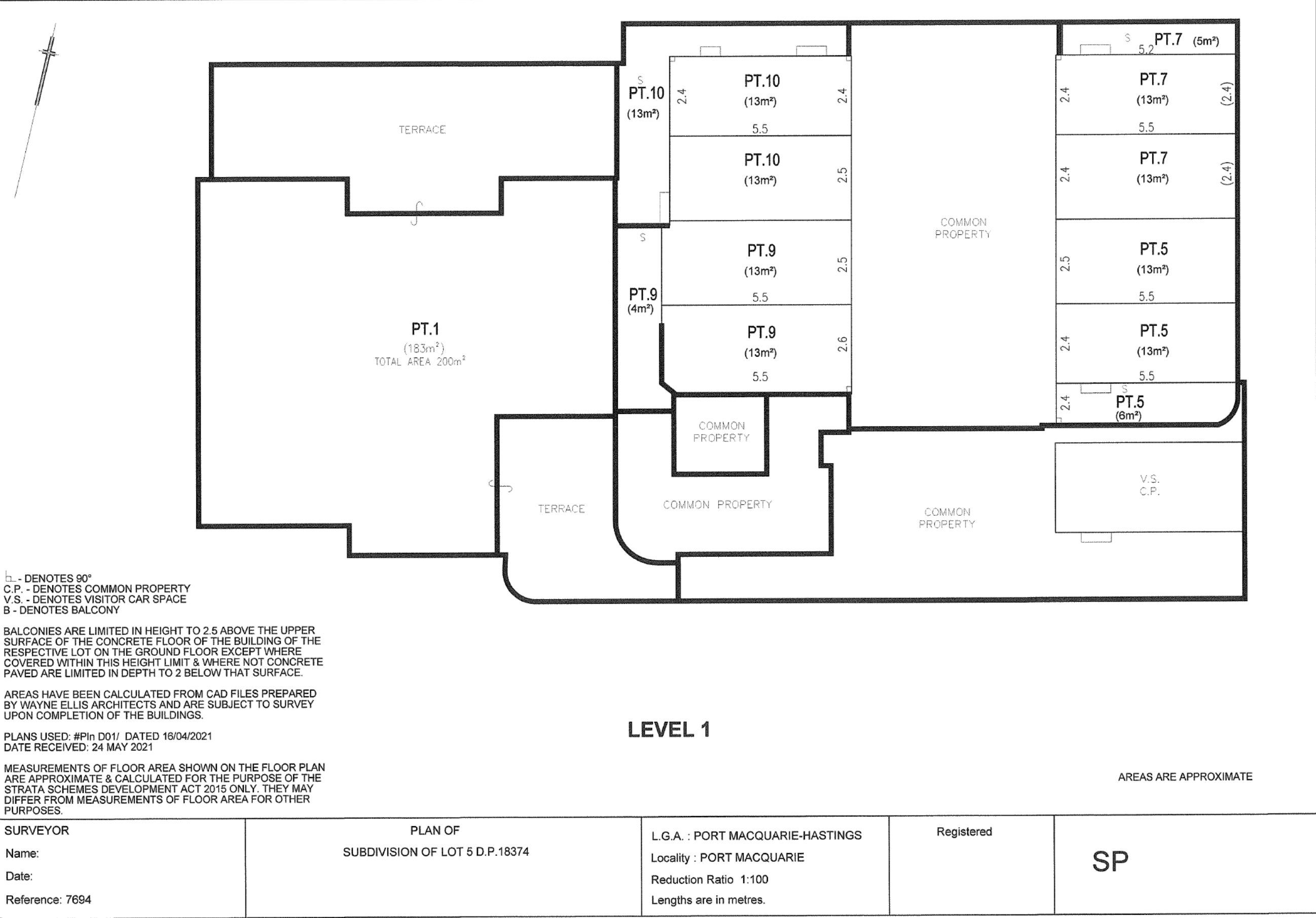
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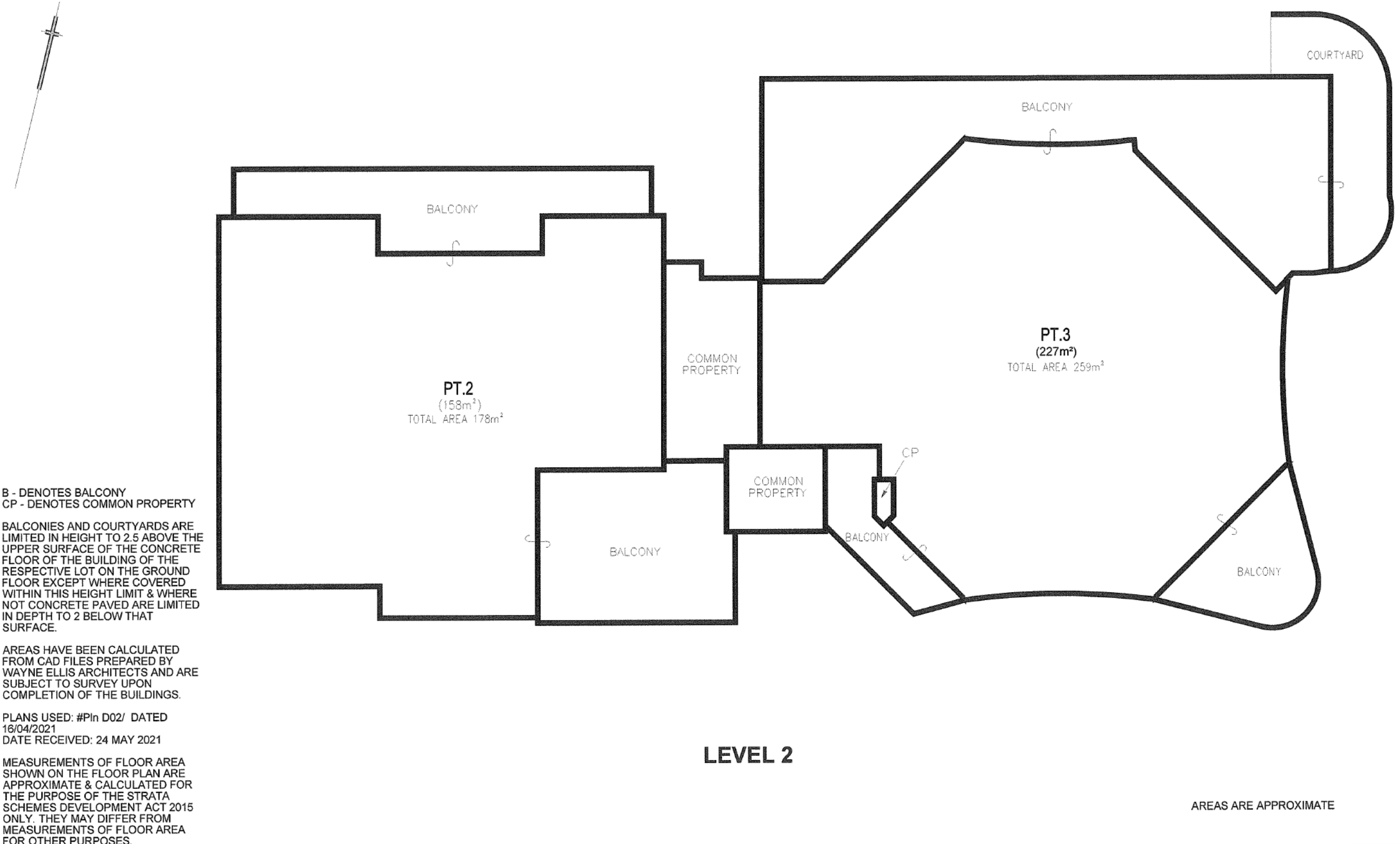
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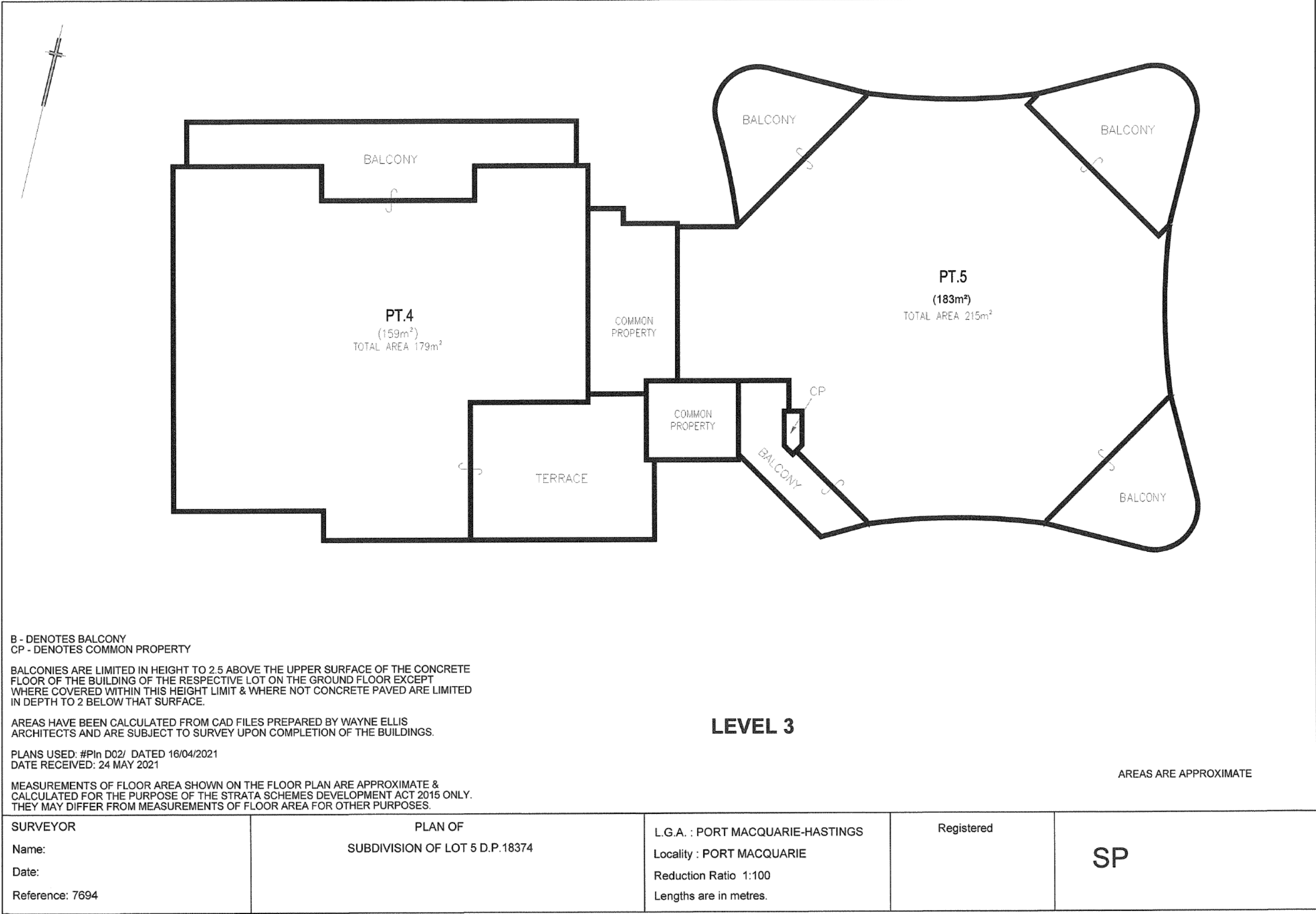


SURVEYOR Name: Date: Reference: 7694	PLAN OF SUBDIVISION OF LOT 5 D.P.18374	L.G.A. : PORT MACQUARIE-HASTINGS Locality : PORT MACQUARIE Reduction Ratio 1:100 Lengths are in metres.	Registered	SP
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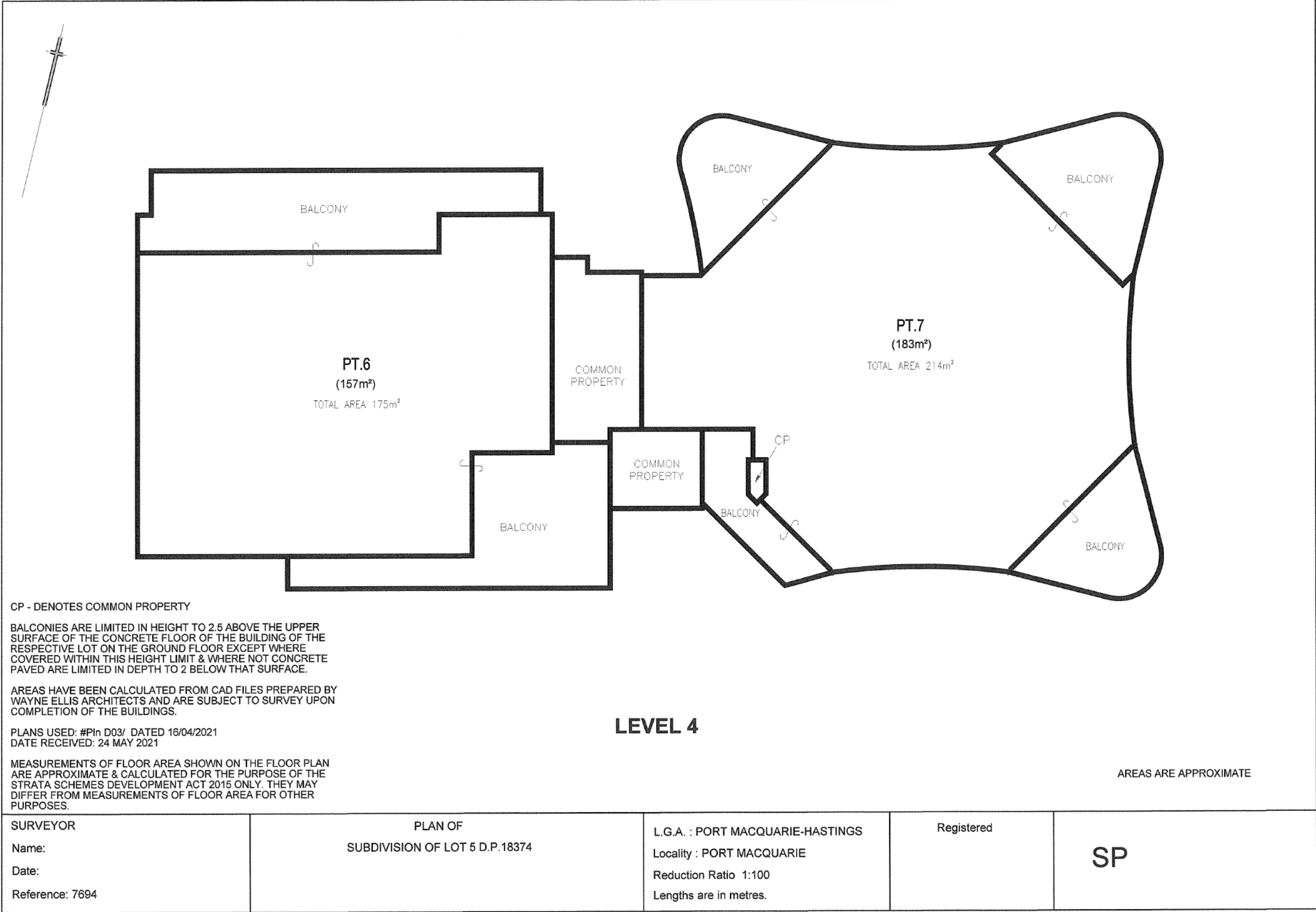
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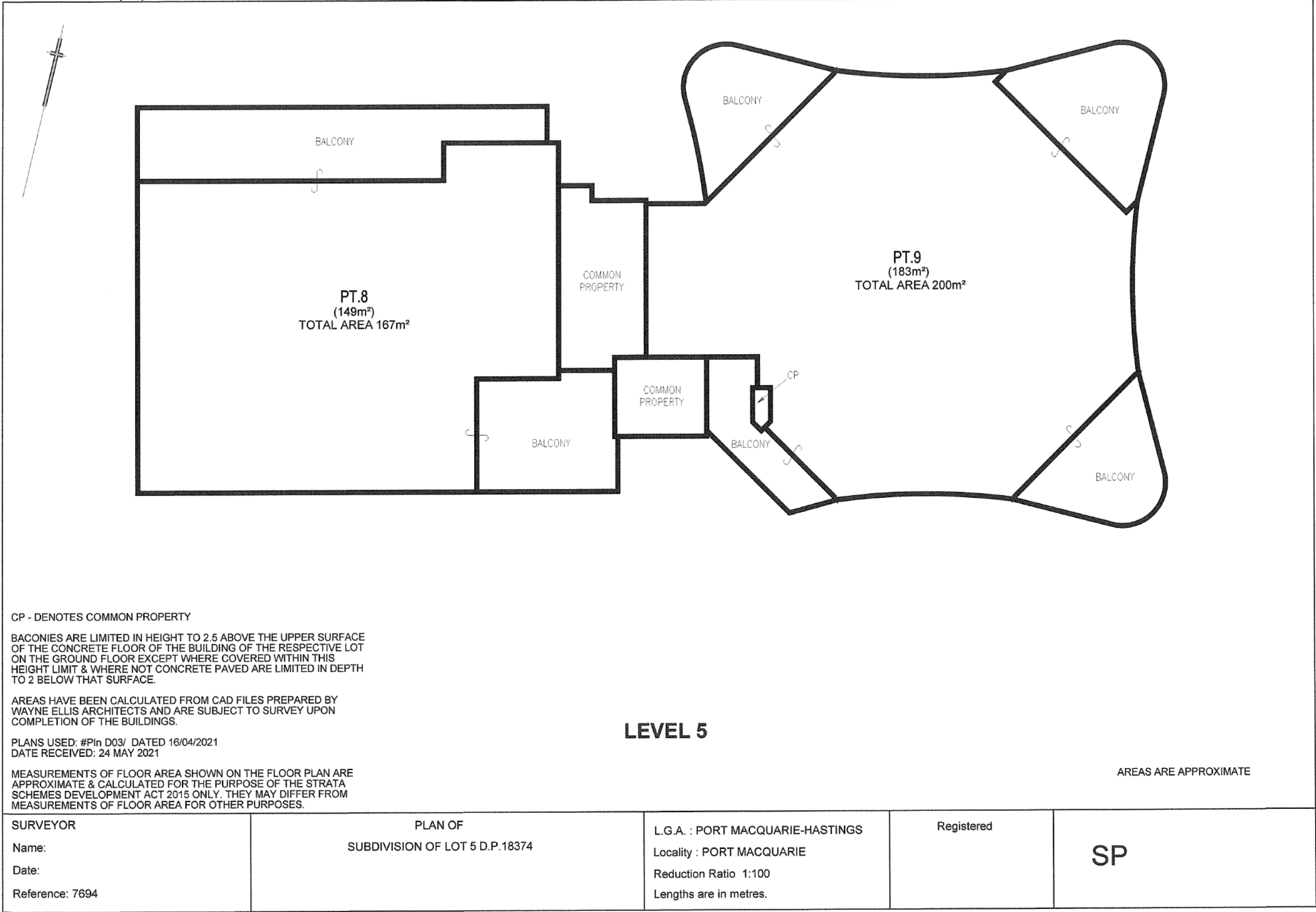
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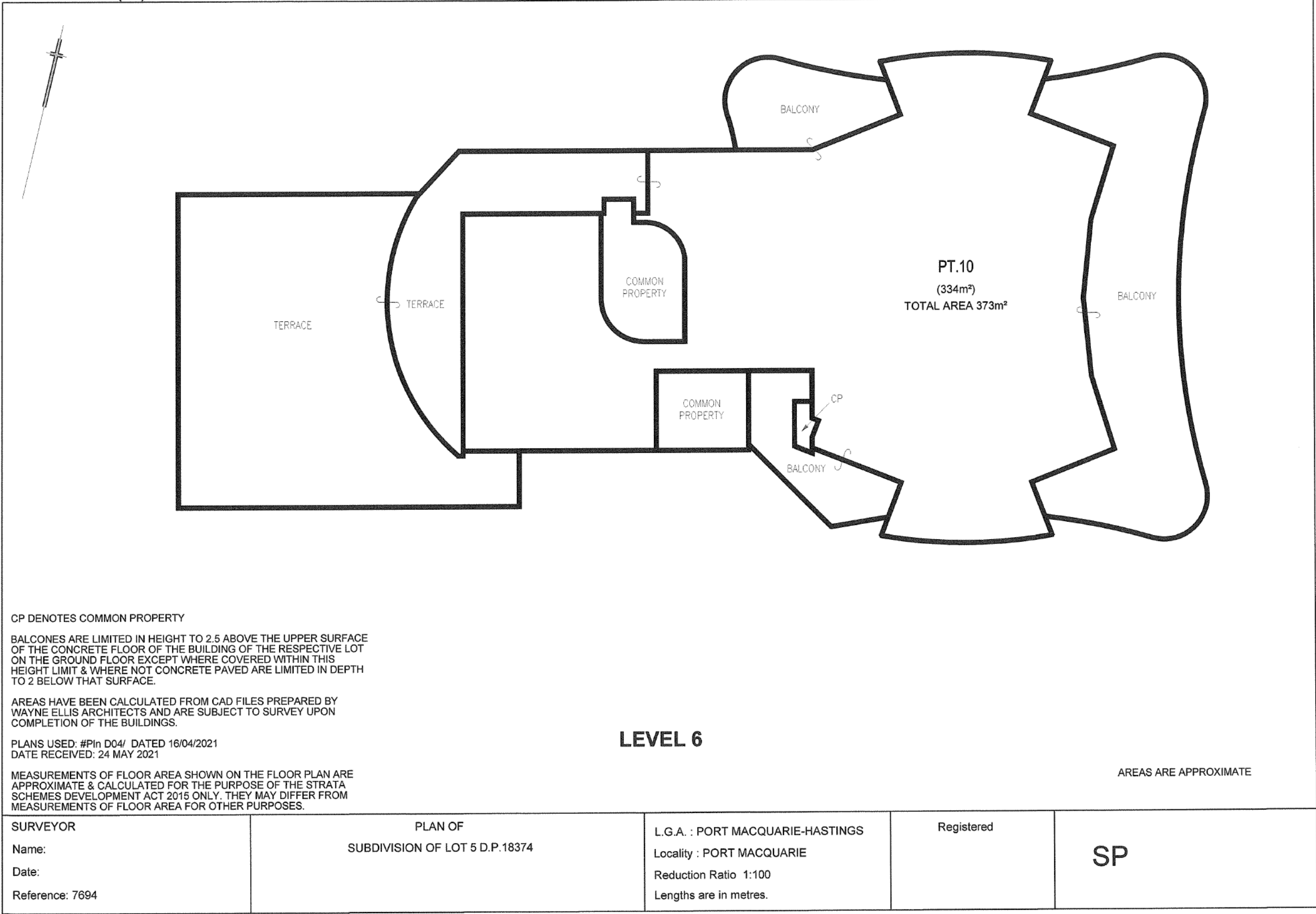
Sheet 7 of 8 sheets



PLAN FORM 1 (A3)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

Sheet 8 of 8 sheets



PLANT SCHEDULE PLANTING		
TREES		
Cupaniopsis anacardioides / Tuckeroo	CONT	
Elaeocarpus reticulatus 'Prima Donna' / Blueberry Ash	100L	
Howea forsteriana / Kentia Palm Multi-Trunk	45L	
SHRUBS		
Alpinia nutans / Ginger	200mm Pot	
Alpinia zenumbet 'Variegata Dwarf' / Dwarf Variegated Ginger	200mm Pot	
Asplenium nidus / Bird's Nest Fern	200mm Pot	
Banksia spinulosa / Birthday Candles	200mm Pot	
Chamaedorea erumpens / Bamboo Palm	300mm Pot	
Cordyline x Rubra	300mm Pot	
Cordyline x 'Baby Doll' / Baby Doll Ti	200mm Pot	
Cordyline x 'Pink Passion' / Cordyline	200mm Pot	
Ficus microcarpa / Green Island	300mm Pot	
Gardenia augusta 'Magnifica' / Common Gardenia	200mm Pot	
Hymenocallis littoralis / Spider Lily	200mm Pot	
Lomandra confertifolia 'Little Con' / Small Mat Rush	100mm pot	
Lomandra longifolia 'Tanika' / Dwarf Mat Rush	200mm Pot	
Philodendron x 'Xanadu' / Philodendron	200mm Pot	
Rhaphiolepis 'Cosmic Pink'	300mm Pot	
Syzygium australe 'Pinnacle' / Lilly Pilly	300mm Pot	
Westringia fruticosa 'Zena' / Zena Coast Rosemary	200mm Pot	
GROUND COVERS		
Carpodrotus glaucescens / Pigface	140mm pot	500mm
Liriope muscari 'Evergreen Giant' / Evergreen Giant Border Grass	100mm pot	300mm
Myoporum parvifolium 'Fine leaf form' / Trailing Myoporum	100mm pot	500mm
Pennisetum alopecuroides 'Nafra' / Fountain Grass	140mm pot	500mm
Phormium tenax 'Bronze Baby' / Bronze Baby New Zealand Flax	100mm pot	300mm
Trachelospermum asiaticum 'Tricolor' / Dwarf Tricolor Asiatic Jasmine	100mm pot	500mm
Viola hederacea / Australian Violet	100mm pot	300mm

ROOF TOP GARDEN COURTYARD TERRACE.
MIX OF HARDSTAND PAVING, LARGE FORMAT PAVING, LOW GROUND COVER
PLANTING WITHIN PLANTING CASSETTES AND RAISED PLANTERS FOR LARGER SPECIES.
WATER PROOFING AND DRAINAGE AS PER DETAIL, GRAVEL MULCH.
PLANTING OF LOW MAINTENANCE, COASTAL HARDY SPECIES SUITABLE OF ASPECT AND
CONDITIONS.

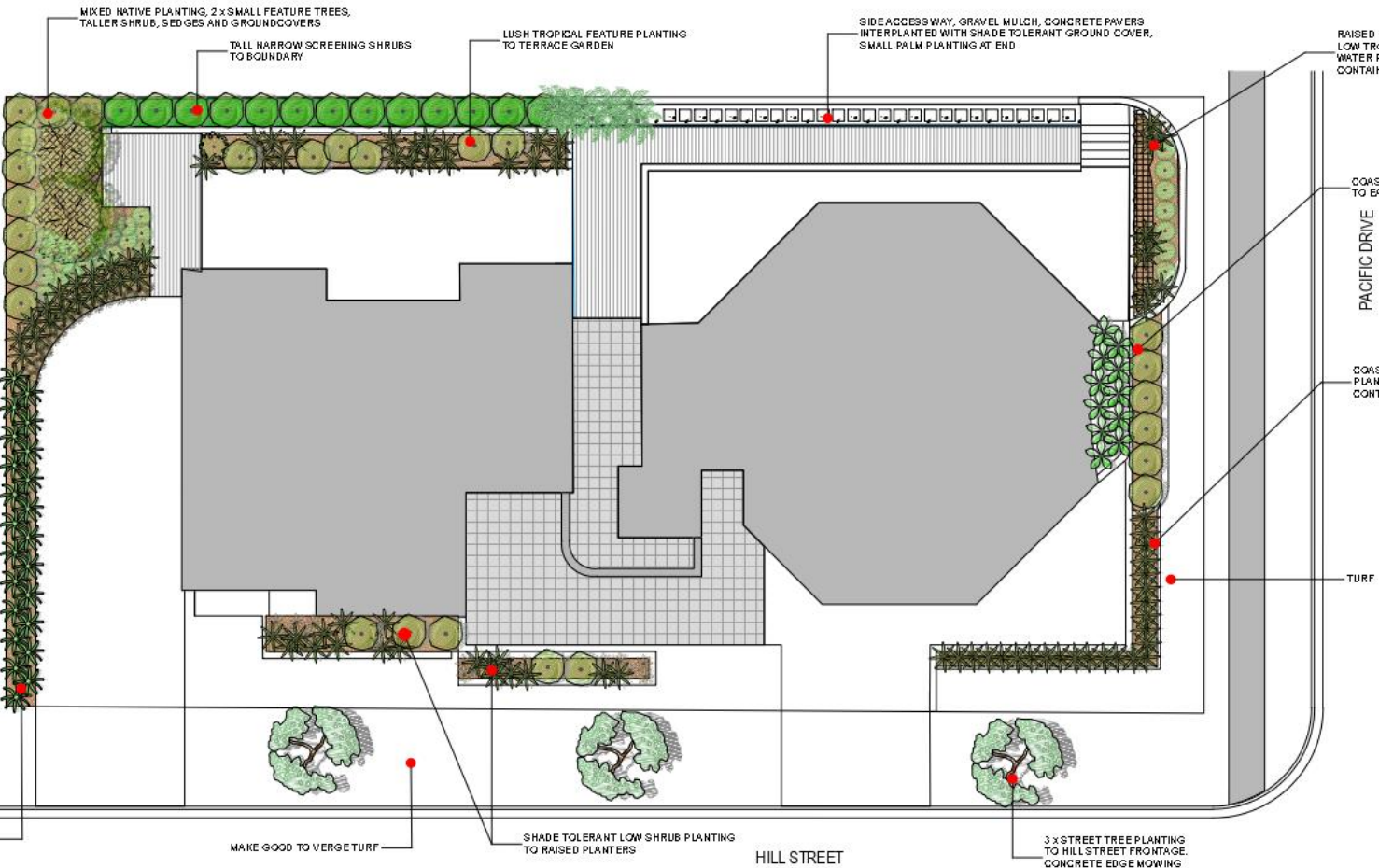
CARPODROTUS GLAUCESCENS



MYOPORUM PARVIFOLIUM



LOMANDRA TANIKA



COASTAL TOLERANT SHRUB PLANTING TO EASTERN BOUNDARY



COASTAL TOLERANT STRAP FOLGE PLANTING TO LOWER CARPARK WALL. CONTINUOUS CONCRETE EDGING TO PLANTING



CORDYLINE RUBY



ALPINIA NUTANS



ASPENIUM NIDUS

No.

Date

Description

By

Amendments

Notes

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wayne ellis architect

15 Arch. 14, A/1, NSW Hwy 400, 400
PO Box 1000, Port Macquarie NSW 2444
Shop 10, 14 Clarence St Port Macquarie NSW 2444
www.wayneellisarchitect.com.au
t 02 7 94 3727

Client:

THE ABDULLAH FAMILY

Project:

RESIDENTIAL APARTMENTS

Address:

27 PACIFIC DRIVE
PORT MACQUARIE 2444

Drawing:

LANDSCAPE

Ref. No.

2016

Drawn By:

D13/

Drawn By:

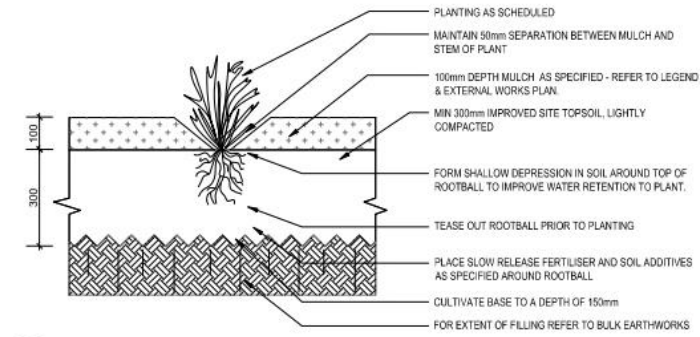
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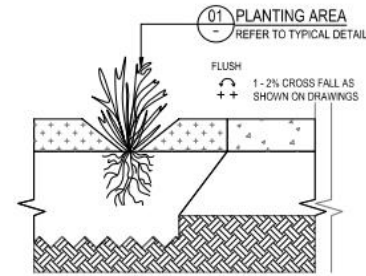
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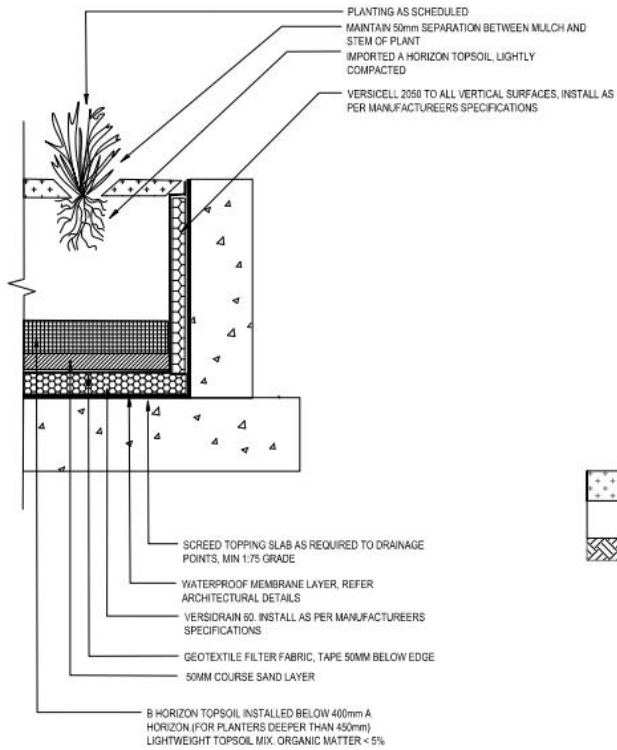
2016 DR-landscape.pdf



01 TYPICAL DETAIL: PLANTING AREA
SECTION 1:10



02 TYPICAL DETAIL: PLANTING TO PAVEMENT GROUND LEVEL
SECTION 1:10



03 TYPICAL DETAIL: PLANTER BED
SECTION 1:10



ELAEOCARPUS RETICULATUS



CUPANIOPSIS ANACARDIOIDES



GARDENIA AUGUSTA



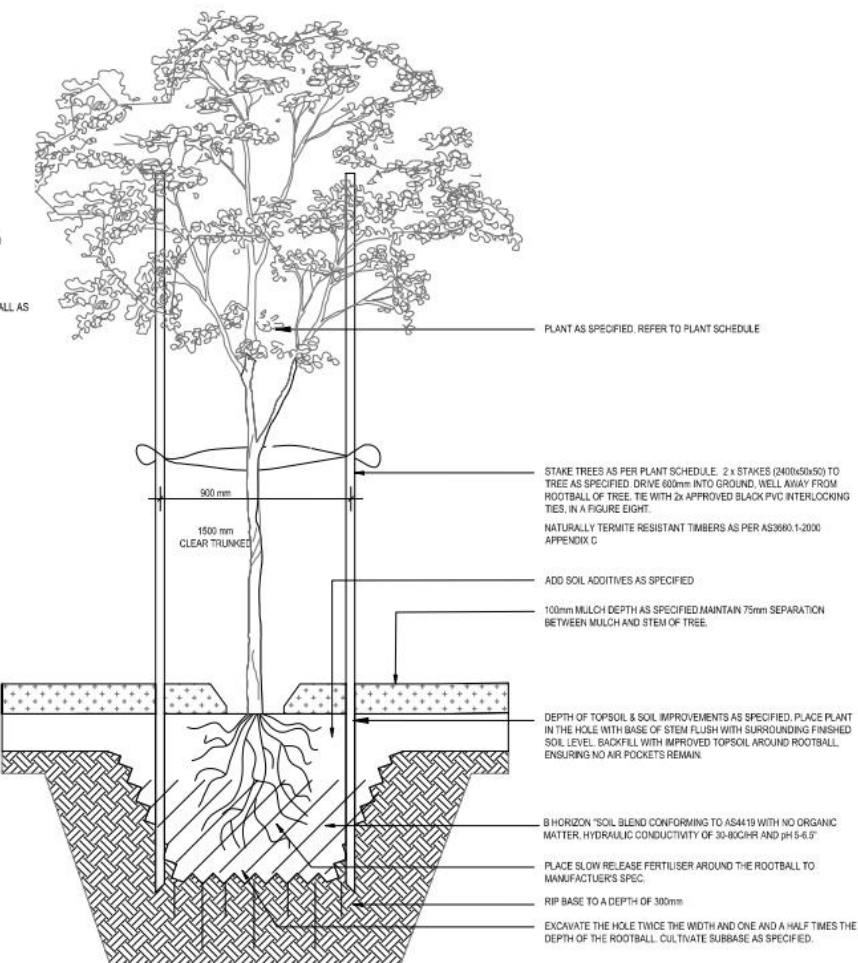
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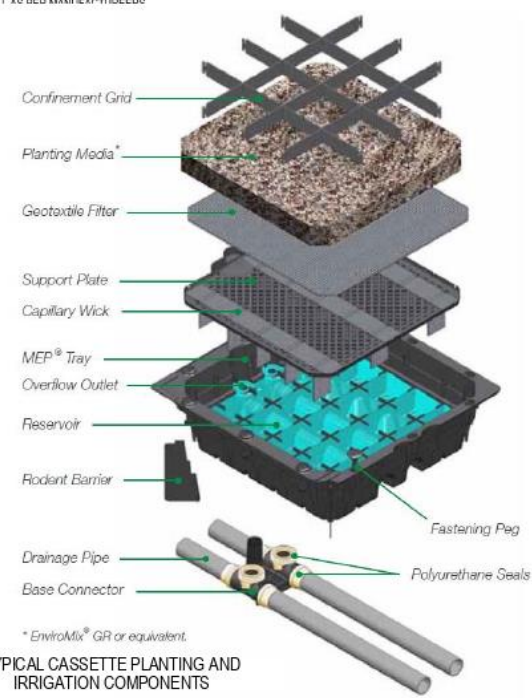
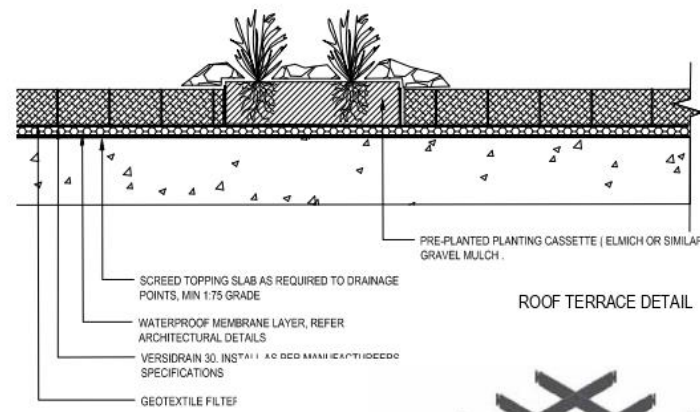
LOMANDRA CONFERTIFOLIA 'LITTLE CON'



LIRIOPE EVERGREEN GIANT



04 TYPICAL TREE PLANTING - 45 - 100 ltr
SECTION 1:10



No.	Date	Description
1	22/04/2021	Initial Design
2	22/04/2021	Final Design
3	22/04/2021	Final Design
4	22/04/2021	Final Design
5	22/04/2021	Final Design
6	22/04/2021	Final Design
7	22/04/2021	Final Design
8	22/04/2021	Final Design
9	22/04/2021	Final Design
10	22/04/2021	Final Design

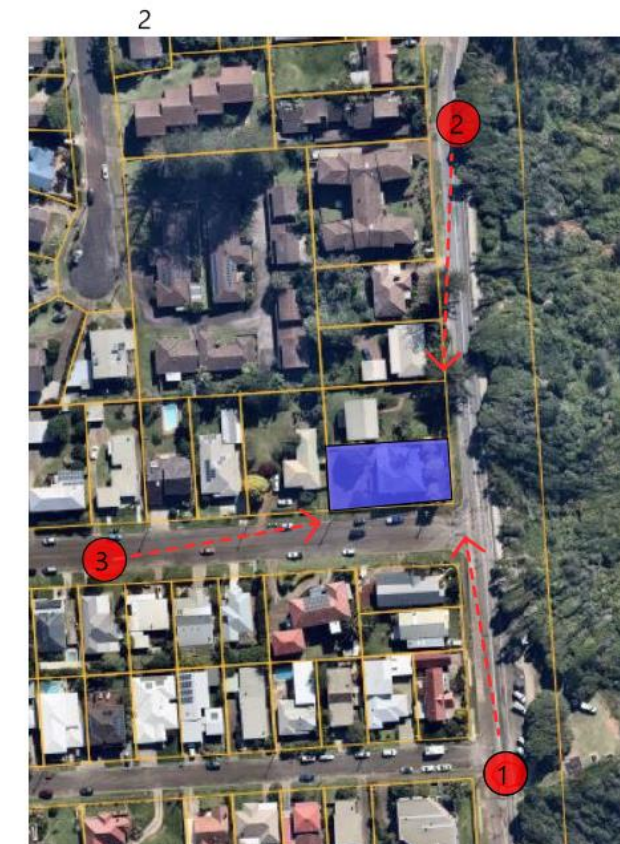
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wayne ellis architect

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Client: THE ABDULLAH FAMILY
Project: RESIDENTIAL APARTMENTS
27 PACIFIC DRIVE
PORT MACQUARIE 2444
Drawing: LANDSCAPE DETAILS
Rev: 2016
Date: 14/07/2021
Scale: 1:105.26, 2:1 @ A1
Comp: 18/11/2021 DR: 18/11/2021

development application
22/04/2021



development application

9/06/2021

[illegible]

Developer Charges - Estimate

Applicants Name: Wayne Ellis Architect
 Property Address: 27 Pacific Drive, Port Macquarie
 Lot & Dp: Lot(s):5,DP(s):18374
 Development: DA 2021/315 - Residential Flat Building 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	5.7	\$10,569.00 Per ET	\$60,243.30
2 Sewerage Scheme Port Macquarie	9	\$4,010.00 Per ET	\$36,090.00
3 Since 1.7.04 - Major Roads - Port Macquarie - Per ET	8.1	\$7,922.00 Per ET	\$64,168.20
4 Since 31.7.18 - Open Space - Port Macquarie - Per ET	8.1	\$5,836.00 Per ET	\$47,271.60
5 Commenced 3 April 2006 - Com, Cul and Em Services CP - Port Macquarie	8.1	\$4,792.00 Per ET	\$38,815.20
6 Com 1.3.07 - Administration Building - All areas	8.1	\$943.00 Per ET	\$7,638.30
7 N/A			
8 N/A			
9 N/A			
10 N/A			
11 N/A			
12 N/A			
13 N/A			
14 N/A			
15 Admin General Levy - Applicable to Consents approved after 11/2/03	2.2% S94 Contribution		\$3,473.60
16			
17			
18			
Total Amount of Estimate (Not for Payment Purposes)			\$257,700.20

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

DATE OF ESTIMATE:

5-Nov-2021

Estimate Prepared By Ben Roberts

This is an ESTIMATE ONLY - NOT for Payment Purposes

ie Ellis Architect, 27 Pacific Drive, Port Macquarie, 5-Nov-2021.xls

PORT MACQUARIE-HASTINGS COUNCIL

**Justification of Variation to
Development Standard
Building Height –
Report Pursuant to Clause 4.6 of
Port Macquarie–Hastings Local
Environmental Plan (2011)**

**PROPOSED RESIDENTIAL FLAT
BUILDING DEVELOPMENT AT
27 PACIFIC DRIVE,
PORT MACQUARIE NSW**

APRIL 2021

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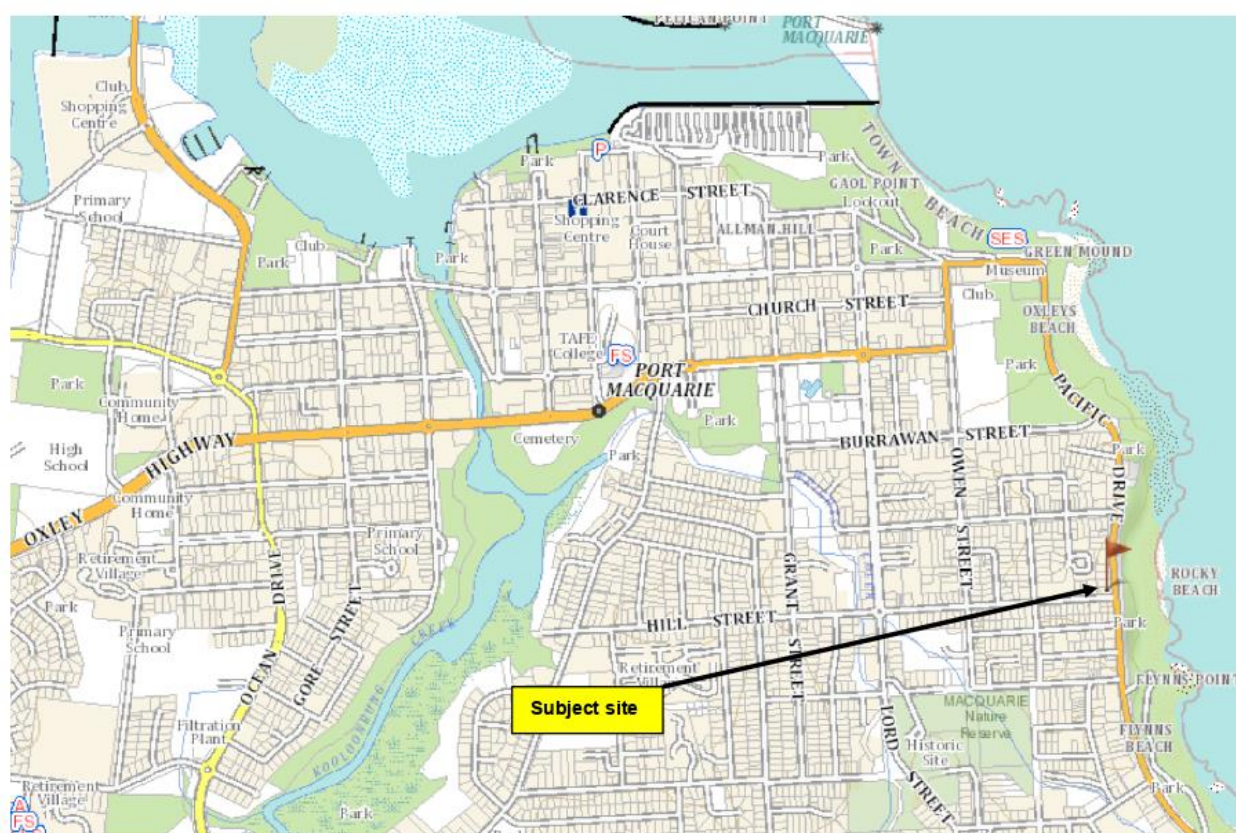
1. INTRODUCTION

1.1 Purpose of Report

It is proposed to seek development approval from Port Macquarie Hastings Council for a residential flat building development on land which is known as Lot 5 DP 18374, 27 Pacific Drive, Port Macquarie.

The subject site is located approximately 1.3km to the southeast of Port Macquarie Central Business District (CBD) within the Rocky Beach residential area which has a coastal context and setting. It is within walking distance to the services and facilities located within the CBD as well as Flynn's and Town Beaches and the Hastings River, refer to **Figure 1**.

Figure 1 – Site Location



The proposed development provides for ten (10) residential units comprising five (5) x 2-bedroom units and five (5) x 3-bedroom units with dedicated carparking by way of part basement carparking areas within the proposed development.

It is noted that the maximum worst case height of the roof of the proposed building is approximately 18m above finished ground level which is approximately 0.5m above the maximum 17.5m building height

standard provided for by Port Macquarie Hasting Local Environmental Plan (LEP). It is however noted that due to the east to west topography of the subject site the exceedance of the height standard is confined to the central portion of the proposed development with the eastern and western areas of the proposed development being within the 17.5m building height envelope which is relevant to the subject site.

It is further noted that the top of the over run of the lift which is proposed to service the proposed building extends to approximately 18.5m above ground level and as such exceeds the building height development standard by approximately 1m. It is however noted that the lift overrun is small in area and as such the exceedance of the height standard is confined to a small area of the proposed built form.

The purpose of this report is to provide justification for a variation to the building height provisions of Port Macquarie-Hastings Councils Local Environmental Plan, (LEP) 2011 for the residential flat building development which is proposed to be undertaken on the subject site.

1.2 Background

The subject site comprises one (1) Torrens Title lot which is currently supports a two (2) storey residential flat building which is located in the eastern portion of the subject site with the western portion of the subject site being used for recreational purposes associated with the residential occupation of the existing building.



Existing development on the subject site – looking from the east towards the west



Existing development on the subject site – looking from the southwest towards the east

The area of the subject site is characterized by predominately residential development although the presence of the coastal escarpment to the east of the subject site provides for open space areas to dominate the eastern aspect.

The locality contains a range of residential development including older multistorey and medium-density residential flat and unit developments together with single residential dwellings. The immediate locality, particularly to the north, south and west is dominated by a mix of residential developments which are generally up to two (2) storey in bulk and scale although some 3 and 4 storey developments are scattered throughout the locality. The eastern aspect of the subject site is dominated by the passive and active public open spaces which comprise the coastal escarpment zone to the east of the Pacific Drive road reserve. It is however noted that a small number of tourist accommodation developments are scattered throughout the general locality.

The proposed development includes the construction of a six (6) storey residential flat building with the split-level ground floor design providing for a part basement approach to the provision of onsite carparking. In this regard the split ground floor level design concept for the building provides for two separate onsite carparking areas which are located within the built form of the building with the carparking areas being in a part basement configuration which reflects the east to west slope conditions over the subject site.

The design of the proposed building provides for single units on the ground and top storeys of the building with two units per intermediate floor within the proposed development.

Access to the proposed units is via a central access core which is located centrally in the building's footprint.

Pedestrian and vehicle access to the proposed development will be gained off Pacific Drive and Hill Street which adjoin the subject site along the eastern and southern boundaries respectively of the subject site.

Onsite car parking and manoeuvring will be provided via two separate driveways which will connect directly with Hill Street.

Being located on the western side slopes of a ridgeline the crest of which is located immediately adjacent to the east of the subject site provides for moderate east to west downslope conditions over the subject site with approximately 5m of fall from east to the west over the subject site.

The topography of adjoining and adjacent land contains gentle to moderate east to west down slopes however to the east slop conditions flatten in the area of the Pacific Drive road reserve before a transition to the very steep west to east slopes of the coastal escarpment which is present along the coastal zone in this location.

The topographical conditions on the subject site and adjoining and adjacent land is shown in **Figure 2** below;

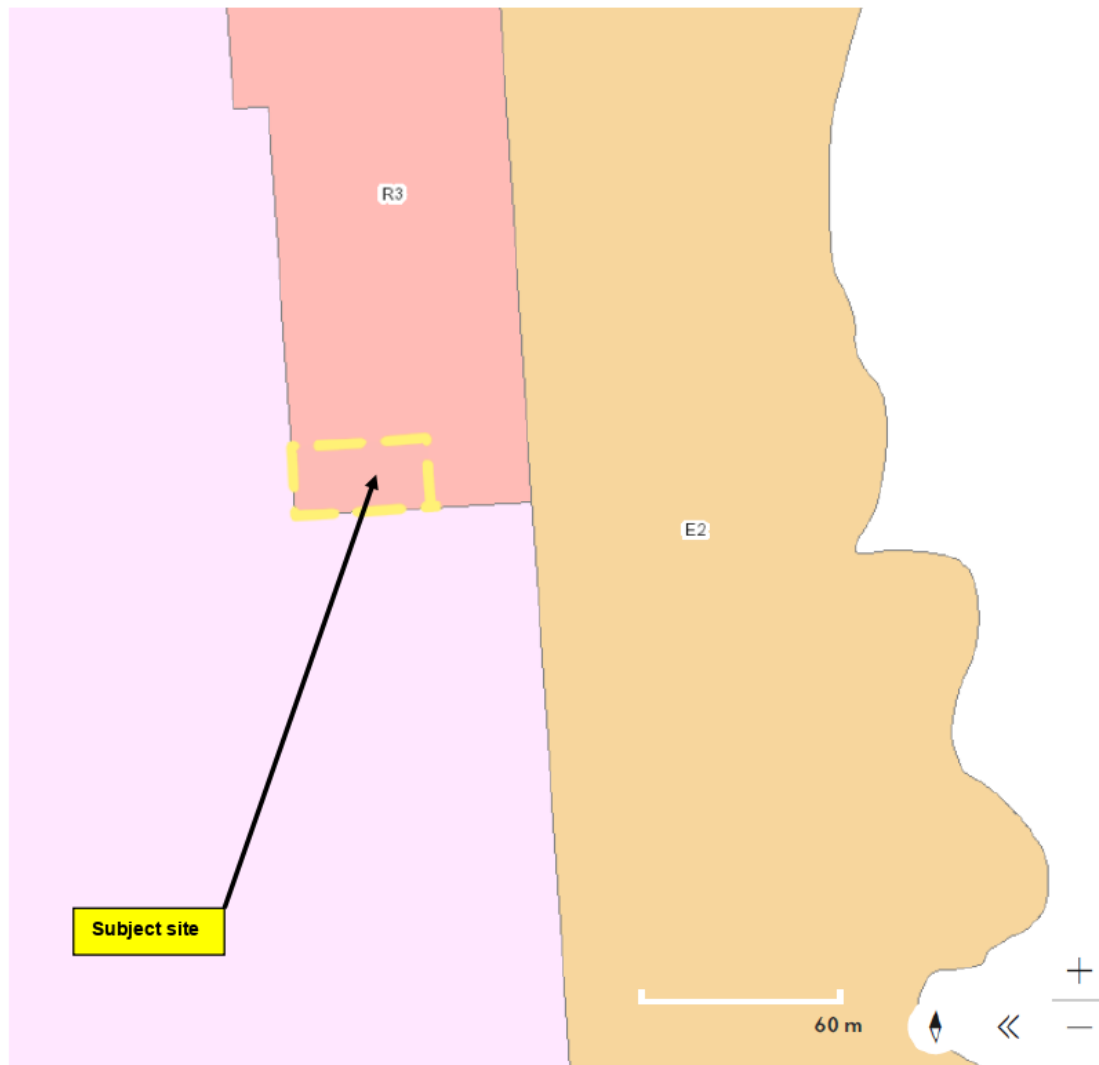
Figure 2 – Topography of Location



It is however noted that the topography of the subject site has been altered as a result of the historic development of the subject site.

The area of land within the subject site has a Medium Density Residential (R3) land use zoning whilst land with an Environmental Management (E2) land use zoning is present to the east of the subject site beyond the Pacific Drive road reserve. Land to the north has a Medium Density Residential (R3) zoning with Residential (R1) land use zonings extending to the south and east of the subject site; refer to **Figure 3** below.

Figure 3 – Land Use Zoning



This report therefore provides justification as to why Port Macquarie-Hastings Council should support the variation to the building height standard as proposed which is up to 1m higher than the development standard.

2. LEP 2011 REQUIREMENTS

2.1 Introduction

Port Macquarie – Hastings LEP 2011 specifies a number of principle development standards that are applicable for the erection of buildings in the Port Macquarie-Hastings Local Government Area. In this regard Part 4 of the LEP provides for development standards related to;

- Lot size;
- Rural Subdivision;
- Building Height;
- Floor Space Ratio;

Being a “performance based” document the LEP provides for a series of objective together with specific design provisions that are ‘Deemed to Satisfy’ the performance objectives. Adoption of the specified design provisions would therefore provide for a building solution to be approved by Council as this specified solution is ‘deemed’ to meet the relevant performance objectives.

However, Clause 4.6 of the LEP recognizes the need to allow for exceptions to the specified design provisions. In this regard Clause 4.6 (2) of the LEP provides that;

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

It is noted that issues pertaining to the height of buildings is not expressly excluded from the operation of Clause 4.6.

In addition to establishing a framework for the consideration of variations to the LEP development standards, Clause 4.6 (3) – (5) of the LEP establishes the process by which variations to development standards are to be lodged, assessed and determined. The LEP provisions which are applicable are as follows;

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

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

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

(a) the consent authority is satisfied that:

(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by sub clause (3), and

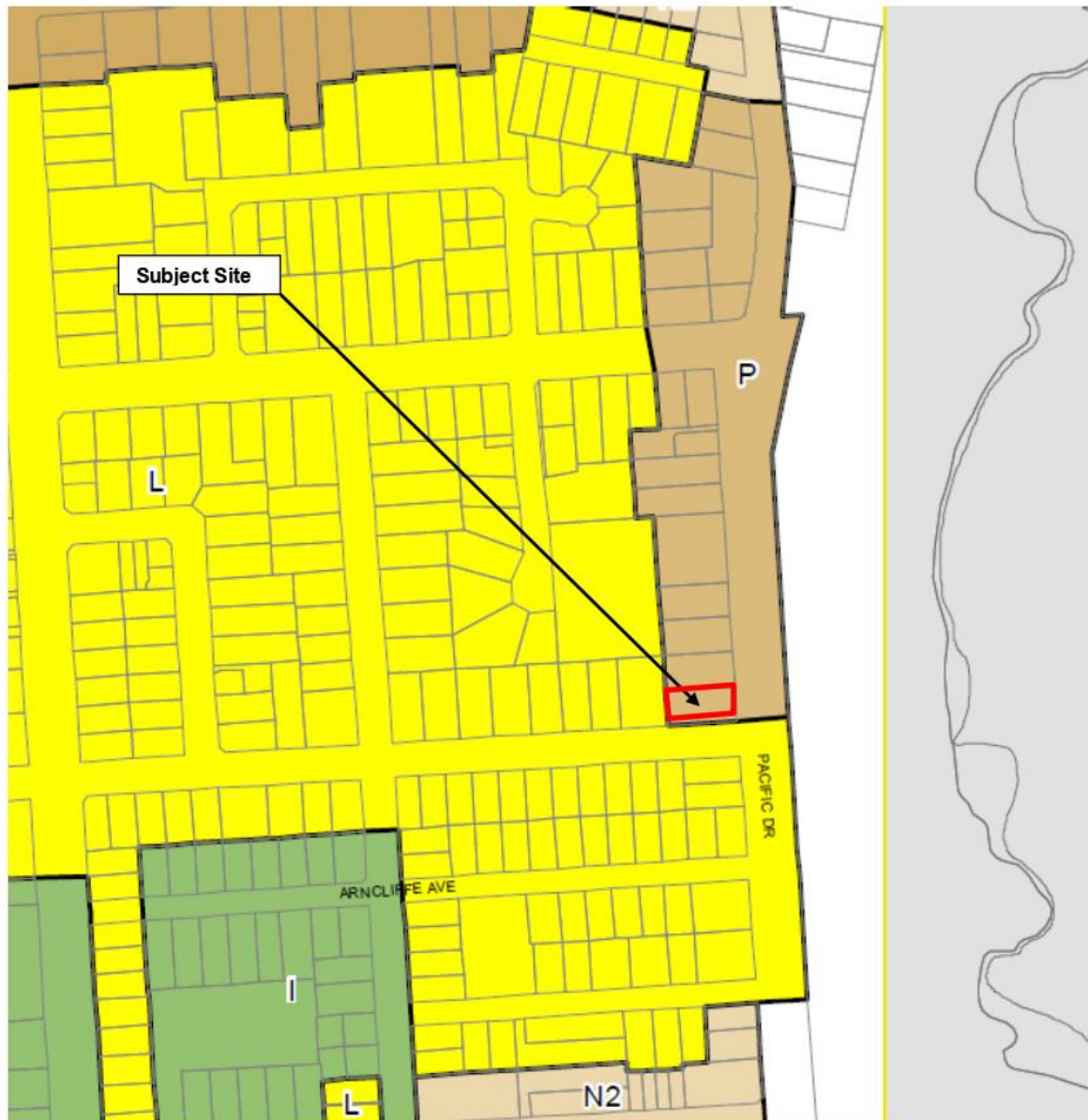
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Director-General has been obtained.*
- (5) In deciding whether to grant concurrence, the Director-General must consider:*
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

This report will provide justification for the variation of the acceptable design solution for the height of the proposed building having regard to the relevant provisions of the LEP.

2.2 Building Height Development Standard

Clause 4.3 of the LEP provides that the height of a building erected on the subject site is not to exceed 17.5m, refer to **Figure 4** below;

Figure 4 - Building Height Development Standard for Subject site.



It is noted that the following definition applies to the determination of the actual height of building;

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

2.3 Proposed Development Standard Variation

Along the Pacific Drive, (eastern), frontage of the subject site the roof of the proposed development is located approximately 15.9 meters above ground level. It is noted that the proposed building is setback a minimum of 3 metres from the eastern property boundary.

Along the western elevation of the proposed building, (which is setback approximately 5.9m from the western property boundary), the building height above ground level is 17.5m.

It is noted that the differences in building height reflect the changes in the topography of the subject site with the building design solution stepping from east to west in response to the westerly slope conditions over the subject site.

It is however noted that in the central portion of the subject site the western portion of the roof over proposed Unit 601 extends to a height of 18m above ground level. Accordingly, this portion of the building exceeds the LEP height standard by 0.5m.

Additionally, the top of the over run of the lift which is proposed to service the subject building extends to approximately 18.5m above ground level and as such exceeds the building height development standard by approximately 1m. It is however noted that the lift overrun is small in area and is located centrally to the built form.

The following table summarizes the development standard together with the proposed height of the building and the quantum of the variation which is being sought. The following table has been prepared having regard to the building height definition provided for in Section 2.2 of this report;

Table 2 – Worst Case Building Height Summary (worst case existing site ground levels)

BUILDING HEIGHT DEVELOPMENT STANDARD	BUILDING HEIGHT (Western Portion of Roof Over Unit 601)	BUILDING HEIGHT (Lift Over Run)	QUANTUM OF VARIATION TO DEEMED TO SATISFY BUILDING HEIGHT STANDARD	PERCENTAGE EXCEEDANCE OF DEVELOPMENT STANDARD
17.5m	18m	18.5m	500mm – 1m	2.85% - 5.7%

The height of the proposed building and its relationship to the 17.5m height standard is illustrated in the plans which accompany the development application.

3. MERIT ASSESSMENT

3.1 Background

As has already been identified, the structure of Port Macquarie Hastings LEP 2011 provides for merit assessment of variations to development standards. This structure is reflected in;

- The inclusion of Clause 4.6 into the LEP which recognizes the need to allow for exceptions to the specified design provisions.
- The inclusion of performance objectives in relation to development standards. The inclusion of specific performance objectives provides for a design solution to be approved on the basis that its outcomes will be consistent with the nominated performance objectives.

It is however noted that the LEP does not indicate the manner by which a merit assessment is to be carried out. It is however noted that, NSW Planning via its Guide to Varying Development Standards, 2011 provides that;

In deciding whether to approve a development application and associated application to vary a standard, council must consider whether non-compliance with the development standard raises any matter of significance for State and regional planning, and the public benefit of maintaining the planning controls adopted by the environmental planning instrument. As part of the consideration, council should examine whether the proposed development is consistent with the State, regional or local planning objectives for the locality, and, in particular, the underlying objective of the standard.

Additionally, the Guide provides that Clause 8 of SEPP 1 requires council to assess whether non-compliance with the development standard raises any matter of significance for State and Regional planning, and the public benefit of maintaining the planning controls adopted by the environmental planning instrument. Councils must furnish written evidence that they had considered the matters referred to in Clause 8 of SEPP 1 in their assessment of an application.

Additional guidance regarding the assessment of variations to development standards can also be taken from the 'five-part test' established by the NSW Land and Environment Court which are outlined as follows;

- 1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;*
- 2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

Having regard to the above, it is proposed to demonstrate that the proposed variation to the LEP development standard as it pertains to the proposed height of the subject building is acceptable in the circumstances as the design solution;

- Maintains compliance with the relevant objectives of the LEP development standard.
- Renders compliance with the development standard unnecessary and unreasonable in the circumstances.
- Does not raise any matter of significance for State and regional planning, and the public benefit.

3.2 Development Standard Objectives

NSW Planning's Guide to Varying Development Standards (August 2011) provides that when assessing applications involving variations to development standards under Clause 4.6 of the Standard Instrument, council should take into account both the mandatory zone objectives as well as any additional objectives.

The zone objectives that are relevant to the requested variation are contained within Clause 4.3(1) of LEP (2011) as follows;

'(1) The objectives of this clause are as follows:

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

It is therefore considered that where a building design solution is consistent with the above objectives it can be assessed as being consistent with the requirements of PMHC LEP (2011) and as such development consent can be issued on the basis that the proposed development is in accordance with the relevant development standards.

The following justification is provided in respect of each of the performance objectives provided for in the LEP and listed above;

Table 4 – Performance Assessment

PERFORMANCE OBJECTIVE	PERFORMANCE ASSESSMENT
<i>(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality.</i>	<p>The existing and future character of the locality is and will be predominately residential with a mix of low and medium density residential development dominating the immediate area. It is however noted that the redevelopment of historical lots particularly to the north and south of the subject site is likely, due to its coastal location, include built forms which support tourist accommodation.</p> <p>The northern, southern and western boundaries of the subject site adjoin or are adjacent to residential land uses with low and medium density 'older' residential developments present in these aspects. Built forms are predominately 1 - 2 storey however some 3 and 4 storey developments are also present within the locality.</p> <p>It is also noted that the coastal foreshore location of the subject site provides for passive and active open spaces to dominate to the east of the subject site.</p> <p>The subject site is located within the Windmill Hill Precinct of Port Macquarie Hastings Development Control Plan, 2013. The strategic context of the precinct is described in the DCP as follows;</p> <p><i>The Windmill Hill Precinct will continue to evolve as a medium density residential precinct with a diverse range of housing types. Building forms along the northern and eastern edges of the precinct will reflect the higher landform in this area and form a distinct edge to the open space, stepping down in height towards the west.</i></p> <p>The above strategic context is considered important when considering the existing and future character of the locality and how the proposed development is consistent with the relevant strategic land use planning provisions which are applicable to the subject site.</p> <p>For the purposes of this report, it is important to consider the significance of the exceedance of the height standard in the context of the impacts which would result where compliance with the height standard was proposed.</p> <p>It is also noted that the assessment of the impacts of the exceedance of the building height development standard needs to reflect the transitional nature of built forms in the locality as the proposed development is the first development in the locality which seeks to respond to the development controls which apply to the subject site and the area in general.</p> <p>The relevance of the proposed building height design solution to the existing and</p>

future character of the locality is therefore assessed as follows;

Existing Character

It is noted that the subject site itself is currently occupied by a two (2) storey residential building which occupies the eastern portion of the subject site with the western portion of the subject site used for recreational activities associated with the existing building. It is noted that development on the subject site is historical with the small scale of development on the lot not reflective of the scale of development which is now contemplated via development control standards for the subject site and locality particularly to the north of the subject site.



Existing development on subject site



Existing single dwelling to the north of the subject site



Existing medium density multi storey development to the north of the subject site



Existing development to the south and west of the subject site



Existing medium density multi storey development to the south of the subject site



Existing medium density multi storey development to the south of the subject site

The existing character of the area also reflects the coastal location with active and passive open space areas extending to the east of the subject site with the orientation of existing buildings to the north and south of the subject site maximizing the easterly outlook over the coastal foreshore areas of Rocky Beach towards the Pacific Ocean. It is noted that Pacific Drive, which adjoins the subject site to the east, provides for a minimum 18m wide road reserve with the carriageway having a similar elevation to the eastern boundary of the subject site.



Pacific Drive and public open space areas to the east of the subject site

In the main existing development to the north and south of the subject site is oriented towards the east in order to take advantage of the coastal location and associated vistas. It is however noted that the elevated nature of the topography in the area provides for adjoining and adjacent properties to the west of the subject site being orientated towards the north towards Town Beach and the coastal vistas which are present in this aspect.



Northerly orientation of development to the west of the subject site

The design of the eastern elevation of the proposed building provides that when viewed from the eastern aspect the bulk and scale of the proposed building will be entirely consistent with the 17.5m building height development standard with the overall height of the building along the eastern elevation being approximately 16m. It is noted that the small area of the proposed building which exceeds the LEP height standard, (approximately 35m²), is obscured when viewed from the eastern aspect. It is further noted that the design of the eastern elevation of the proposed building provides for bulk and scale outcomes which are less than that provided for by the development standard, (approximately 16m), and as such the building design solution provides for impacts which would be less than that which could potentially result.

The existing character of the area to the west of the subject site and the location in general comprises a mix of low and medium density residential developments which reflects the historical development standards which applied to the area. In terms of the western aspect, it is noted that the 16m height of the eastern elevation of the proposed building provides for the bulk and scale context of the proposed building when viewed from the west. In this regard that portion of the proposed development which exceeds the building height development standard would not be distinguishable from those areas of the building which are below the 17.5m building height development standard.

The proposed exceedance of the LEP height standard is more relevant to the northern and southern elevations of the proposed building in terms of visibility and potential impact. In this regard the modulation and articulation of these

facades of the building and the increased setback of the top storey of the building from the northern and southern boundaries of the subject site significantly reduces the impact of the relatively small area of the building which exceeds the development standard. The stepped nature of the top storey of the building reinforces the response of the building design to the landform conditions on the subject site and in the area which in turn assists in minimizing the bulk and scale outcomes of the building.

The bulk and scale impacts of the small area of the lift overrun, (approximately 6.8m²), which extends above the 17.5m building height standard would be minimal whilst the impacts of the 0.5m exceedance of the development standard by the far western portion of the top storey of the proposed building would likewise be minimal when considered in the context of the impacts which would result for a building solution which complied fully with the development standard.

It is also noted that the existing vegetation within the Pacific Drive road reserve and the adjoining foreshore reserve to the east provides for significant screening of the development when viewed from the east albeit that the building will not be readily visible from the east unless at distance due to the topography and accessibility of the coastal escarpment which extends to the east of Pacific Drive. The bulk and scale impacts of the proposed development when viewed at distance from the east will be mitigated due to distance and the screening and visual contrast provided for by the vegetation along the coastal zone to the east of the subject site.



Vegetation along eastern edge of Pacific Drive

	<p>The building design outcome which is proposed remains entirely consistent with the form of development contemplated by the LEP development standard. When viewed from adjoining and adjacent buildings to the north, south and west of the subject site the portion of the subject building which is in excess of the 17.5m development standard will have negligible visual, privacy and amenity impacts as;</p> <ul style="list-style-type: none"> • Existing buildings to the north and south are predominantly oriented towards the east with limited vistas available to the north and south. • Existing buildings to the west are predominantly oriented towards the north and west with limited/no vistas available to the east. • A compliant 17.5m design solution for the proposed building would still provide for an outcome whereby the height of the proposed building would be above the habitable areas of the topmost storey of adjoining and adjacent buildings. • The significant spatial separation which is available between the proposed building and the existing buildings to the south and the public open spaces to the east. In this regard the presence of Hill Street, (20m road reserve width), and Pacific Drive, (16m wide active use area of the road reserve), provides for significant spatial separation between adjacent dwellings and public spaces. The spatial separation which will be available will assist in reducing the visual dominance of the proposed building and provides for an informed transition in built form from higher density to lower density development. <p>Having regard to the above the outcomes provided for by the proposed building height design solution remains entirely consistent with the existing character of the locality in relation to height, bulk and scale in the context of the transitional nature of built forms in the locality as the proposed development is the first development in the locality which seeks to respond to the development controls which apply to the subject site and the area in general.</p> <p><u>Future Character</u></p> <p>The building height development standards provided for by LEP 2011 for the subject site and surrounds provide for a development standard of 17.5m which would typically provide for a 5 – 6 storey building. In this regard it is noted that the proposed development is entirely consistent with the development standard particularly along the Pacific Drive frontage with the roof of the building being approximately 16m above ground level which taking into account the topography of the area provides for a six (6) storey building.</p> <p>Importantly when viewed from public spaces along and adjacent to Pacific Drive</p>
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	<p>the bulk and scale of the proposed building will be entirely consistent with a 6 storey building.</p> <p>Given the nature and scale of adjoining and adjacent development to the north of the subject site it is unlikely that the future character of the area will vary greatly. It is however noted that future development would provide for buildings up to six (6) storeys in height which is consistent with the outcomes envisaged via a 17.5m height development standard for the locality.</p> <p>Further based upon the topography of the land in the locality it is likely that similar design outcomes to that which is proposed for the subject site would be pursued as a consequence of the development standards which have been adopted for the area in particular to the north. In this regard the subject site is located within the Windmill Hill Precinct of Port Macquarie Hastings Development Control Plan, 2013. The strategic context, (future desired character), of the precinct is described in the DCP as follows;</p> <p><i>The Windmill Hill Precinct will continue to evolve as a medium density residential precinct with a diverse range of housing types. Building forms along the northern and eastern edges of the precinct will reflect the higher landform in this area and form a distinct edge to the open space, stepping down in height towards the west.</i></p> <p>It is considered that the proposed development is entirely consistent with the future character of the locality and the relevant strategic land use planning provisions which are applicable to the subject site.</p> <p>It is important to note that the adoption of a 17.5m height standard together with a floor space ratio of 1.5:1 reflects council's clear intention for the area to transition from lower density residential development to a higher density of development. With this in mind the nature of the development standards needs to have regard to impacts associated with transitioning the development form of a locality, i.e. the impacts of the proposed development needs to be assessed having regard to the future character of the area. In this regard the minor nature of the height exceedance, in the context of the location and nature of the height standard exceedance, is such that the height of the proposed development is entirely consistent with the desired future character of the locality.</p> <p>Given the relatively minor nature of the height standard exceedance it is considered that the impact on the future character of the locality of the proposed building design solution as it relates to building height will be minimal.</p> <p>It is also noted that notwithstanding the height development standards provided for in LEP 2011 the future character of the locality has as yet to transition with the proposed development representing the first development which responds to Council's vision for the immediate area. In the context of the life cycle of building infrastructure the most recent decisions of Council (LEP 2011 and DCP</p>
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	<p>2013) have not as yet had a significant impact upon the achievement of the desired future character envisaged by the LEP and associated development controls and standards.</p> <p>Having regard to the above it is considered that the impact on the future character of the locality of the proposed building design solution as it relates to building height will be minimal and will be consistent with the future character of the area.</p>
<p><i>(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development</i></p>	<p>Solar access studies show acceptable results for June 22 as a result of the proposed development in relation to adjoining and adjacent existing development and the exceedance of the LEP building height standard as proposed does not alter the outcomes of the solar access studies due to the orientation of the subject site, the positioning of the proposed building and the scale and spatial separation of existing development particularly to the south of the subject site.</p> <p>Accordingly, the proposed building height design solution will have no significant impact on solar access beyond that contemplated by the development standard. It is further noted that the proposed exceedance of the 17.5m height standard has no greater impacts in terms of solar access than that which would result through strict compliance with the development standard.</p> <p>It is noted that when viewed from Pacific Drive the proposed building will present as a six (6) storey building which is consistent with the outcomes envisaged by the LEP development standard. Accordingly, the visual impact of the proposed building height solution will be minimal in the context of the future character envisaged for the area.</p> <p>Views will not be significantly impacted upon by the proposed development as view paths to the north and south are constrained by the existing buildings which form the backdrop in these aspects and the orientation of adjoining and adjacent buildings is to the east towards the significant open space and view vistas in this aspect. In this regard the proposed development does not significantly impact upon view paths towards the east with easterly view corridors not negatively impacted upon.</p> <p>Likewise view corridors to the north from the south are already constrained in the immediate area of the subject site by topographical and existing built form factors. In this regard the proposed development does not significantly impact upon view paths towards the north.</p> <p>View impacts to and from the west will be largely unaffected by the proposed development due to the location of the subject site adjacent to the eastern coastal escarpment and the westerly down slope conditions from Pacific Drive.</p> <p>Impacts on occupant privacy are minimized through the orientation of all</p>

proposed residential flats to the north and east of the subject site. Where necessary privacy has been maintained via the use of walls and privacy screens and the increased setback of the proposed building from the northern and western property boundaries. In this regard it is noted that the orientation of existing buildings to the north and south of the subject site provide for major living/habitable rooms facing the eastern orientation whilst buildings to the west of the subject site maintain a predominant northern orientation.

It is also noted that the presence of Hill Street immediately to the south of the subject site provides for significant spatial separation between the proposed development and adjacent residential dwellings with this separation greatly reducing occupant privacy issues.



Hill Street immediately adjacent to the south of the subject site

Accordingly, high levels of visual privacy are maintained through the design of the proposed buildings in that;

- window areas in the western orientation are minimized; and
- elevated window sill heights have been used along the western elevation of the proposed building; and
- the northern and eastern orientation of habitable/living rooms has been maximized so as to reinforce the northerly and easterly focus of the residential buildings on adjoining land to the north and west of the subject site.

It is further noted that the proposed exceedance of the height standard has no

	<p>greater impact on the issue of views and privacy impacts than a design solution which provided for compliance with the 17.5m design standard as the same outcomes are relevant to a compliant design and the proposed design solution.</p> <p>Having regard to the above it is clear that quality urban and building design outcomes will be achieved as a result of the proposed development and that the proposed building height design solution will have negligible impact in relation to visual impact, views, loss of privacy and loss of solar access issues.</p>
<i>(c) to minimise the adverse impact of development on heritage conservation areas and heritage items,</i>	<p>The subject site does not form part of an area which the LEP identifies as being of potential heritage importance and as such the proposed development has no impact on the heritage values of the subject site.</p> <p>In a broader context identified items/issues of heritage significance are not located in the immediate area to the subject site and as such the height of the proposed development is appropriate in the context of existing and future height, bulk and scale of the locality.</p>
<i>(d) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan'.</i>	<p>The proposed building height design solution will continue to provide for a transition in built form and land use intensity within the area covered by the LEP.</p> <p>Being a coastal location, the proposed development provides for a density of development which is entirely consistent with that expected by the local community.</p> <p>The proposal is considered acceptable for the following reasons:</p> <ul style="list-style-type: none"> • The building design has had regard for views from adjoining properties and has negligible impacts upon the sharing of views. • The bulk and scale of the development is consistent with the development densities and bulk and scale provisions which are relevant to the future development of land within the locality. • The site has a sloping landform and strict compliance with the development standard is considered unreasonable in the circumstances. • The building contains articulation and modulation to break up the bulk of the building. • Overshadowing impacts are minimal. • Windows and outlook from the development are focused towards the north and east with windows on the western side of the development minimized and associated with low activity areas or are well separated from adjoining properties. Elevated window sill heights have also been used along the western elevation of the proposed building. • The height of the proposed building transitions well as the building responds to the landform of the subject site. In this regard the exceedance of the 17.5m height requirement is confined to the central portion of the proposed development and as such has minimal impact in terms of view loss, overshadowing and the loss of privacy in relation to

	<p>existing development to the north, south and west of the subject site.</p> <ul style="list-style-type: none"> The building design provides a suitable height that has regard for and responds to the current legislative height controls which are relevant to the subject site and other properties in the locality.
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Having regard to the above it is considered that the design solution of the proposed building as it relates to the issue of building height is consistent to the relevant performance objectives of Port Macquarie – Hastings Council LEP 2011.

3.3 Reasonableness of Proposed Variation

As noted in **Table 2** of this report the existing character of the area, from the perspective of height, bulk and scale, is dominated by a range of multistorey buildings to the north, south and west.

Whilst lower density development is present on adjoining and adjacent land it is noted that the development standards which are applicable to the subject site and adjoining and adjacent land to the north contemplate a higher density of development for the subject site and the locality. In this regard the adoption of a 17.5m height standard together with a floor space ratio of 1.5:1 reflects council's clear intention for the area to transition from lower density residential development to a higher density of development. With this in mind the nature of the exceedance of the development standard needs to have regard to impacts associated with transitioning the development form of a locality, i.e. the impacts of the proposed development need to be assessed having regard to the future character of the area.

In this regard the minor nature of the height exceedance, in the context of the location and nature of the height standard exceedance, is such that the height of the proposed development is entirely consistent with the desired future character of the locality.

Notwithstanding the relatively minor variation to the building height development standard, the bulk and scale of the proposed building will be entirely consistent with a 6 storey building which is an outcome contemplated by the 17.5m LEP development standard.

Having regard to the above the outcomes provided for by the proposed building height design solution are entirely consistent with the desired future character of the locality in relation to height, bulk and scale with the proposed development responding to the transitional nature of bulk and scale for the locality as provided for by the various development standards which are relevant to the locality. Accordingly, compliance with the development standard is unnecessary and unreasonable in the circumstances as the outcomes and impacts of the proposed building design solution are the same as, if not better, than the outcomes and impacts which would result via a design which provided for strict compliance with the development standard.

This position is further supported in that the proposed variation to the development standard provides for;

- negligible visual and amenity impacts in relation to the proposed buildings height, bulk and scale having regards to the topography of the subject site, and the nature and scale of existing development within the locality;

- minimal visual and amenity impacts when considered in the context of the height, bulk and scale backdrop which is envisaged to result for new multi storey buildings in the locality.
- minimal visual and amenity impacts when considered in the context of streetscape and public vantage points.
- negligible impacts on near or far views to the north, south and east when considered in the context of the impacts of a compliant building height outcome and the nature, scale and spatial relationship of existing development to the subject site particularly to the south and west of the subject site.
- the maintenance of acceptable levels of privacy for residents and occupants of adjoining and adjacent developments as well as the general public.
- consistency with the height of buildings which could result through the redevelopment of adjoining land to the north of the subject site.
- the maintenance of acceptable solar access standards for adjoining and adjacent sites.
- the transition in built form and land use intensity within the area covered by the LEP.
- consistency with the existing and future character of the locality in relation to height, bulk and scale.
- achievement of high-quality urban design outcomes.

3.4 Significance of Proposed Variation

The very nature of place-based merit decision making is to have specific regard to the characteristics, features and constraints of a site and development proposal and to assess the specific impacts of same.

Having regards to the specific characteristics of the subject site and its local context and the nature and impacts of the proposed development it is considered that non-compliance with the development standard does not raise any matter of significance for State and Regional planning.

Additionally, given the information provided in support of the proposed variation to the development standard, there is minimal public benefit in maintaining the building height planning control which is relevant to the locality. On the contrary, there is considerable public benefit in approving the variation to the nominated height standard as the development will;

- provide for a positive development of high-quality design that will improve surveillance and safety of the adjoining and adjacent streets.
- assist in making the locality more of a lively area with an increased demand for localized services.
- have minimal impact on views, amenity, privacy and solar access.

- reinforce and promote the trend for variety in medium density residential development in the locality complying with communities' strategic objectives and expectations for the area.
- have a positive economic impact through the development which will represent a major injection into the local economy and generate significant employment opportunities and flow on benefits to other local businesses.
- provide benefits to the local construction industry and related services through the construction phase of the project.
- result in negligible cumulative impacts on or for the locality

3.5 Consistency with LEP Exception Requirements

Given that the proposed building height design solution is consistent with the relevant building height development standard performance objectives of the LEP it is considered that the issuing of development approval for the subject development by Port Macquarie-Hastings Council is consistent with the requirements of Clause 4.3 of the LEP in that;

(i) *Clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

The case of *Whebe v Pittwater Council* (2007) outlined five mechanisms or reasons by which a variation to a development standard may be considered unreasonable or unnecessary. These reasons and their applicability to the proposed development are assessed as follows;

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard* – as demonstrated in **Table 2** of this report the height of the proposed building continues to provide for compliance with the relevant objectives of the building height standard. Accordingly, compliance with the prescribed development height standard is unreasonable or unnecessary in the circumstances.
- *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unreasonable* – this is not relevant to the proposed development.
- *The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable* – this is not relevant to the proposed development.
- *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting departures from the standard and hence compliance with the standard is unnecessary and unreasonable* – as demonstrated above compliance with the standard in the context of the proposed development is unnecessary and unreasonable in the circumstances.

- *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary - this is not relevant to the proposed development.*

Having regards to the above as the height of the proposed development meets the objectives of the LEP Building Height standard compliance with the LEP 2011 Height Standard for the subject site is considered to be unreasonable or unnecessary as the design solution as proposed is entirely consistent with the outcomes envisaged by the development standard.

(ii) *Clause 4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Environmental planning grounds which may be relevant when considering a design outcome that contravention of the development standard facilitates include:

- *Internal privacy, amenity & solar access* – the proposed development provides for outcomes which are entirely consistent with the development standards which are relevant to internal privacy, amenity and solar access.

Impacts associated with the proposed building's height standard exceedance upon the internal or external privacy and amenity of the proposed units and/or neighbouring properties is minimal in the context of the form of development envisaged for the location as is the impact upon solar access to adjoining and adjacent buildings to the subject site.

- *External privacy & amenity* - the proposed development provides for outcomes which are entirely consistent with the development standards which are relevant to external privacy and amenity.

In this regard separation distances between window openings are generally consistent with the relevant development standards and where necessary privacy screens have been incorporated into habitable area windows, balconies and terraces.

Where necessary the size of windows have been limited with elevated window sill heights also utilized in order to protect privacy and amenity.

Adequate natural light and ventilation have been retained between the buildings.

- *Overshadowing & solar access at nearby residential properties* - shadow diagrams for the proposed development demonstrate that the overall roof height has a negligible impact on overshadowing and solar access in relation to neighbouring properties in the context of the nominated development standards and expectations which are relevant to the area.
- *Increased accommodation options* – the proposed development supports and reinforces an increase in accommodation options for the area. It is noted that the proposed height variation has no impact upon the number of units proposed or permitted for the subject site.

- *View sharing* – the proposed development provides for view sharing. The impacts of the proposed development on views have been assessed and found to be acceptable having regards to the characteristics of the subject site, the nature and extent of development on adjoining and adjacent land and the development standards which seek to guide the future character of the area.

In this regard the area of the proposed building which exceeds the height standard is in the central portion of the building and as such the impacts on views from the north, south and west will be largely indiscernible as it is the height of the building at the Pacific Drive frontage which defines the view paths to the north, south and east. It is noted that impacts on views associated with the height standard exceedance from adjoining and adjacent properties to the north, south and west is negligible.

- *Pedestrian amenity & access* – pedestrian amenity and access will not be impacted by the proposed height standard exceedance.
- *Visual impact of height exceedance* - the height of the proposed building at the Pacific Drive frontage largely defines the impacts of the proposed building upon view paths from the west to the east.

In this regard the worst-case height of the building at the Pacific Drive frontage is approximately 16m which is significantly less than the 17.5m height standard. Accordingly, as the area of the building which exceeds the height standard is in the central portion of the building the impacts on views from the north, south and west will be largely indiscernible as it is the height of the building at the Pacific Drive frontage which defines the view paths to the north, south and east.

- *Urban design context* - the proposal is considered a good contextual fit on the basis that it is an infill development which supports and reinforces the desire for high density residential development in the locality. The proposed development is consistent with the streetscape and bulk and scale outcomes envisaged for the area.
- *Colours & material* - as indicated on the Colour Materials/ Finishes Sample Sheet prepared by Wayne Ellis Architects, (included in the development proposal plans), the proposed development will be finished in contemporary tone colours.
- *Character of the area* - the outcomes provided for by the proposed building height design solution are entirely consistent with the existing and future character of the locality in relation to height, bulk and scale.

- (iii) ***Clause 4.6(3)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as the proposed alternative design solution satisfies the specific performance objectives which are relevant to the height of buildings; and***

As demonstrated in **Table 2** of this report the height of the proposed building continues to provide for compliance with the relevant objectives of the building height standard. Accordingly, the proposed development is consistent with the public interest.

It is also noted that the Statement of Environmental Effects clearly demonstrates that the proposed development is consistent with the zone objectives which are relevant to the subject site.

- (iv) ***Clause 4.6(4)(b) & (5) the Concurrence of the Secretary***

Concurrence of the Secretary has already been obtained by delegation to Council.

Accordingly, it is recommended that Port Macquarie-Hastings Council approve the variation to the LEP height standard as provided for by the proposed building design solution.

4. CONCLUSION

Having regard to the above it is considered that the proposed building design solution is consistent with the relevant building height performance standards as provided for by Clause 4.3 of the LEP and as such the requested exemption to the development standard is appropriate in the specific circumstances.

Accordingly, the proposed building design solution is able to be supported by Port Macquarie-Hastings Council pursuant to Clause 4.6 of the LEP.

Appendix 1 – Height Plane Plans

DEVELOPMENT STANDARD VARIATION JUSTIFICATION

APRIL 2021

Appendix 2 – Axonometry Projection Plan

**Justification of Variation to
Development Standard
Floor Space Ratio –
Report Pursuant to Clause 4.6 of
Port Macquarie–Hastings Local
Environmental Plan (2011)**

**PROPOSED RESIDENTIAL
APARTMENT DEVELOPMENT AT
27 PACIFIC DRIVE,
PORT MACQUARIE NSW**

APRIL 2021

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1. INTRODUCTION

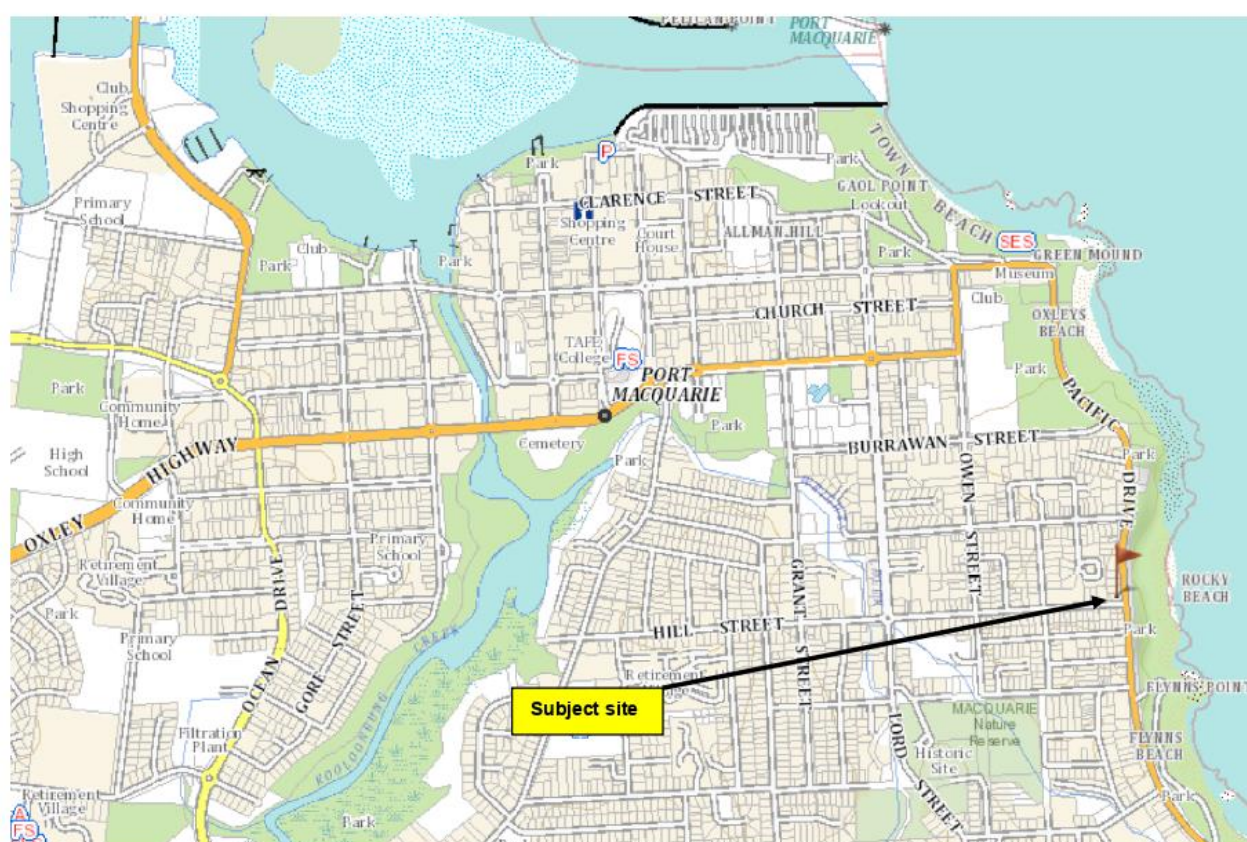
1.1 Purpose of Report

It is proposed to seek development approval from Port Macquarie Hastings Council for a residential flat building development on land which is known as Lot 5 DP 18374, 27 Pacific Drive, Port Macquarie.

The subject site is located approximately 1.3km to the southeast of Port Macquarie Central Business District (CBD) within the Rocky Beach residential area which has a coastal context and setting.

The subject site is within walking distance to the services and facilities located within the CBD as well as Flynns and Town Beaches and the Hastings River, refer to **Figure 1**.

Figure 1 – Site Location



The proposed development provides for ten (10) residential units comprising five (5) x 2-bedroom units and five (5) x 3-bedroom units with dedicated carparking by way of part basement carparking areas within the proposed development.

It is noted that the floor space ratio which is applicable to the subject site is 1.5:1 whilst the proposed floor space ratio of the development will be 1.61:1.

The purpose of this report is to provide justification for a variation to the Floor Space Ratio provisions of Port Macquarie-Hastings Councils Local Environmental Plan, (LEP) 2011 for the proposed residential flat building development on the subject site.

1.2 Background

The subject site comprises one (1) Torrens Title lot which is currently supports a two (2) storey residential flat building which is located in the eastern portion of the subject site with the western portion of the subject site being used for recreational purposes associated with the residential occupation of the existing building.



Existing development on the subject site – looking from the east towards the west



Existing development on the subject site – looking from the southwest towards the east

The area of the subject site is characterized by predominately residential development although the presence of the coastal escarpment to the east of the subject site provides for open space areas to dominate the eastern aspect.

The locality contains a range of residential development including older multistorey and medium-density residential flat and unit developments together with single residential dwellings. The immediate locality, particularly to the north, south and west is dominated by a mix of residential developments which are generally up to two (2) storey in bulk and scale although some 3 and 4 storey developments are scattered throughout the locality. The eastern aspect of the subject site is dominated by the passive and active public open spaces which comprise the coastal escarpment zone to the east of the Pacific Drive road reserve. It is however noted that a small number of tourist accommodation developments are scattered throughout the general locality.

The proposed development includes the construction of a six (6) storey residential flat building with the split-level ground floor design providing for a part basement approach to the provision of onsite carparking.

The design of the proposed building provides for single units on the ground and top storeys of the proposed building with two units per intermediate floor within the proposed development.

Access to the proposed units is via a central access core which is located centrally in the building's footprint.

Pedestrian and vehicle access to the proposed development will be gained off Pacific Drive and Hill Street which adjoin the subject site along the eastern and southern boundaries respectively. Onsite car parking and manoeuvring will be provided via two separate driveways which will connect directly with Hill Street. In this regard the design concept for the building provides for two separate onsite carparking areas which are

located within the built form of the building with the carparking areas being in a part basement configuration which reflects the east to west slope conditions over the subject site.

Being located on the western side slopes of a ridgeline the crest of which is located immediately adjacent to the east of the subject site provides for moderate east to west downslope conditions over the subject site with approximately 5m of fall from east to the west over the subject site. The topography of adjoining and adjacent land contains gentle to moderate east to west down slopes however to the east slop conditions flatten in the area of the Pacific Drive road reserve before a transition to the very steep west to east slopes of the coastal escarpment which is present along the coastal zone in this location.

The topographical conditions on the subject site and adjoining and adjacent land is shown in **Figure 2** below;

Figure 2 – Topography of Location

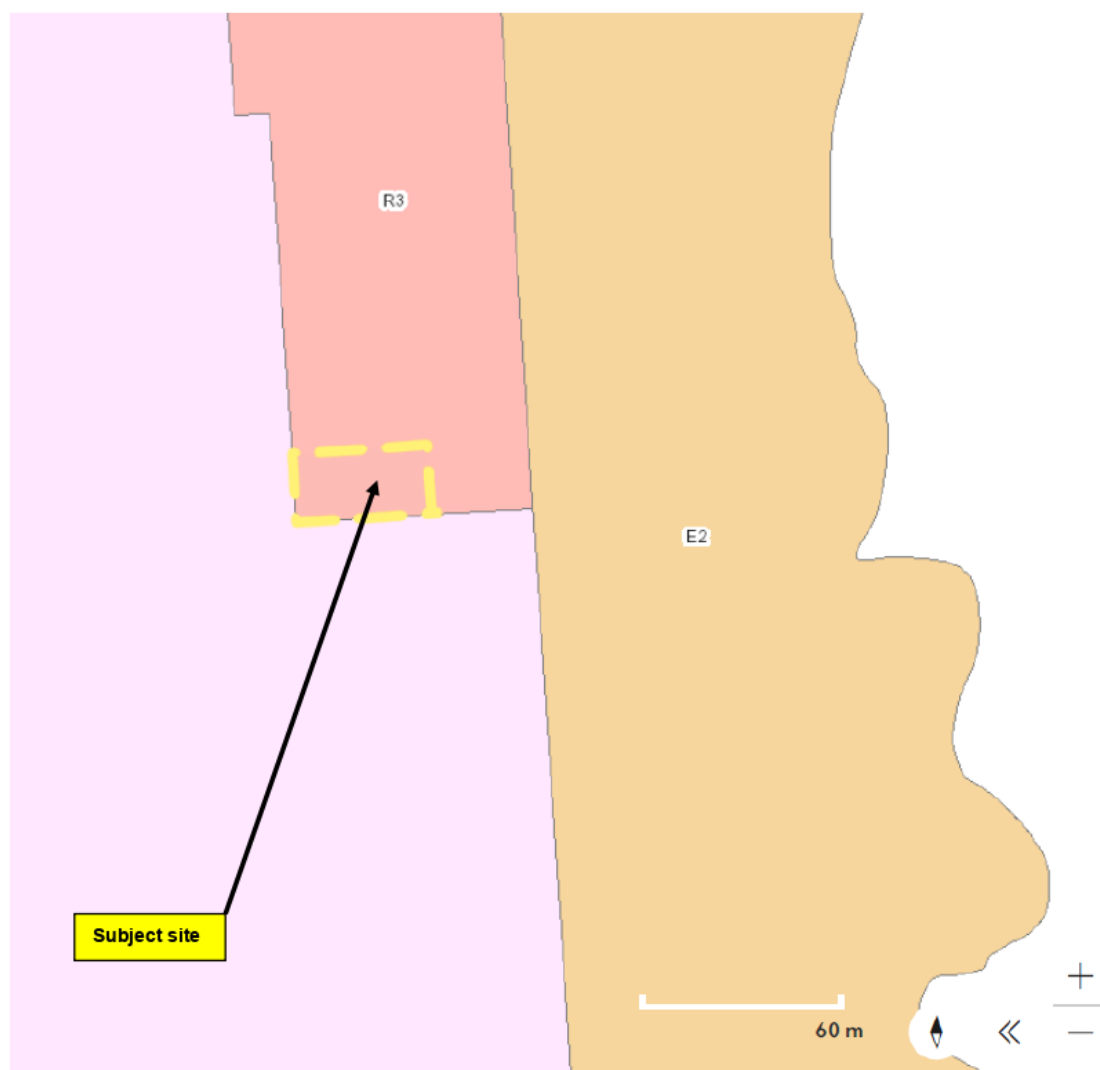


It is however noted that the topography of the subject site has been altered as a result of the historic development of the subject site.

It is noted that the building design solution incorporates a step in the buildings-built form in response to the east to west topography of the subject site. This approach provides for the creation of two separate part basement parking areas at ground level and a single residential unit on the top floor.

The area of land within the subject site has a Medium Density Residential (R3) land use zoning whilst land with an Environmental Management (E2) land use zoning is present to the east of the subject site, beyond the Pacific Drive road reserve. Land to the north of the subject site is zoned Medium Density Residential (R3) with Residential (R1) land use zonings extending to the south and east of the subject site; refer to **Figure 3** below.

Figure 3 – Land Use Zoning



This report provides justification as to why Port Macquarie-Hastings Council should support the variation to the Floor Space Ratio development standard as proposed which is 7.4% (92.29m²) above the development standard.

2. LEP 2011 REQUIREMENTS

2.1 Introduction

Port Macquarie – Hastings LEP 2011 specifies a number of principle development standards that are applicable for the erection of buildings in the Port Macquarie-Hastings Local Government Area.

In this regard Part 4 of the LEP provides for development standards related to;

- Lot size;
- Rural Subdivision;
- Building Height;
- Floor Space Ratio;

Being a “performance based” document the LEP provides for a series of objective together with specific design provisions that are ‘Deemed to Satisfy’ the performance objectives. Adoption of the specified design provisions would therefore provide for a building solution to be approved by Council as this specified solution is deemed to meet the relevant performance objectives.

However, Clause 4.6 of the LEP recognizes the need to allow for exceptions to the specified design provisions. In this regard Clause 4.6 (2) of the LEP provides that;

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

It is noted that issues pertaining to the floor space ratio of buildings is not expressly excluded from the operation of Clause 4.6.

In addition to establishing a framework for the consideration of exceptions to LEP development standards Clause 4.6 (3) – (5) of the LEP establishes the process by which exceptions to development standards are to be lodged, assessed and determined. The LEP which are applicable are as follows;

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

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

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

(a) the consent authority is satisfied that:

(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by sub clause (3), and

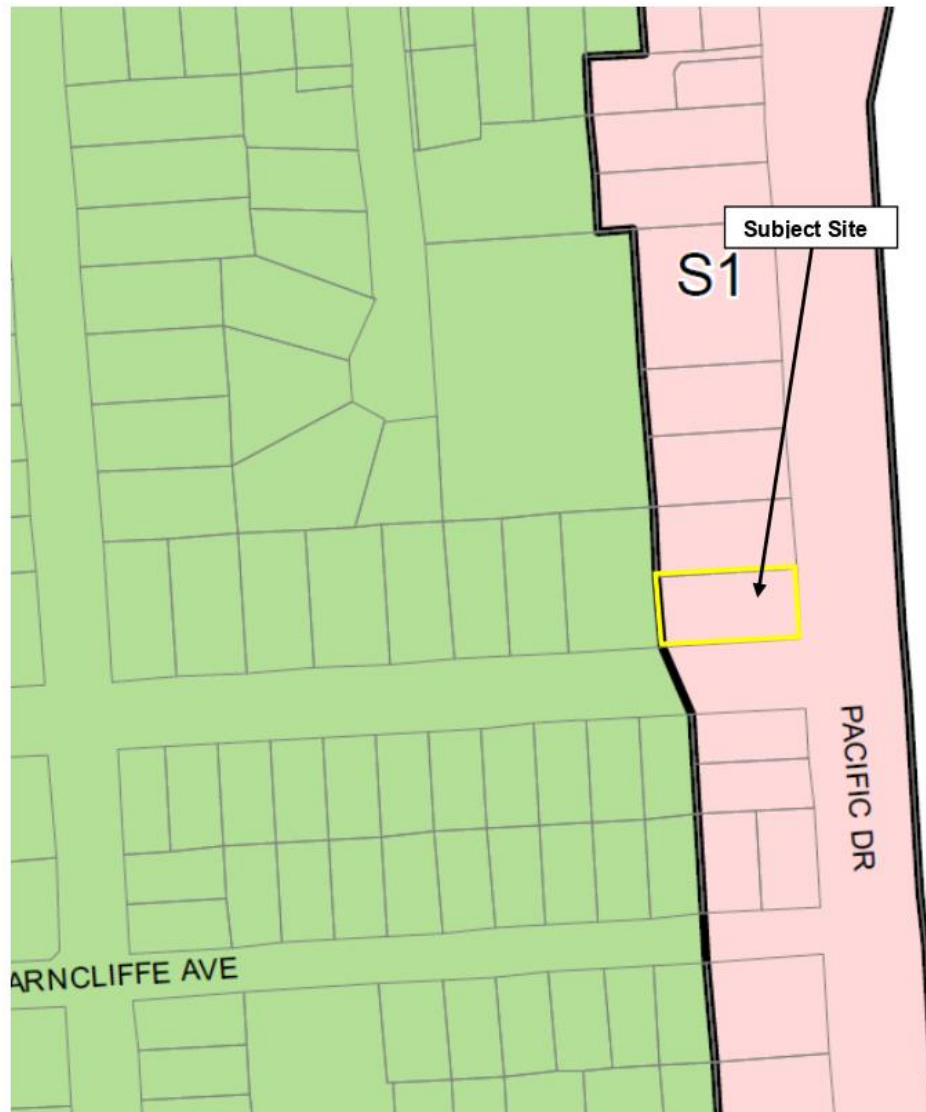
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Director-General has been obtained.*
- (5) In deciding whether to grant concurrence, the Director-General must consider:*
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

This report will provide justification for the variation of the acceptable design solution for the Floor Space Ratio of the proposed building having regard to the relevant provisions of the LEP.

2.2 Floor Space Ratio Development Standard

Clause 4.4 of the LEP provides that the floor space ratio of a building erected on the subject site is not to exceed 1.5:1, refer to **Figure 1** below;

Figure 2 – Floor Space Ratio Development Standard for Subject site.



It is noted that Clause 4.5 of the LEP provides guidance on the calculation of the floor space ratio of a building as follows;

4.5 Calculation of floor space ratio and site area

(1) Objectives

The objectives of this clause are as follows:

- (a) to define **floor space ratio**,

(b) to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to:

- (i) prevent the inclusion in the site area of an area that has no significant development being carried out on it, and
- (ii) prevent the inclusion in the site area of an area that has already been included as part of a site area to maximise floor space area in another building, and
- (iii) require community land and public places to be dealt with separately.

(2) Definition of “floor space ratio”

The **floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

(3) Site area

In determining the site area of proposed development for the purpose of applying a floor space ratio, the **site area** is taken to be:

- (a) if the proposed development is to be carried out on only one lot, the area of that lot, or
- (b) if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.

In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.

(4) Exclusions from site area

The following land must be excluded from the site area:

- (a) land on which the proposed development is prohibited, whether under this Plan or any other law,
- (b) community land or a public place (except as provided by subclause (7)).

(5) Strata subdivisions

The area of a lot that is wholly or partly on top of another or others in a strata subdivision is to be included in the calculation of the site area only to the extent that it does not overlap with another lot already included in the site area calculation.

(6) Only significant development to be included

The site area for proposed development must not include a lot additional to a lot or lots on which the development is being carried out unless the proposed development includes significant development on that additional lot.

(7) Certain public land to be separately considered

For the purpose of applying a floor space ratio to any proposed development on, above or below community land or a public place, the site area must only include an area that is on, above or below that

community land or public place, and is occupied or physically affected by the proposed development, and may not include any other area on which the proposed development is to be carried out.

(8) Existing buildings

The gross floor area of any existing or proposed buildings within the vertical projection (above or below ground) of the boundaries of a site is to be included in the calculation of the total floor space for the purposes of applying a floor space ratio, whether or not the proposed development relates to all of the buildings.

(9) Covenants to prevent “double dipping”

When development consent is granted to development on a site comprised of 2 or more lots, a condition of the consent may require a covenant to be registered that prevents the creation of floor area on a lot (the restricted lot) if the consent authority is satisfied that an equivalent quantity of floor area will be created on another lot only because the site included the restricted lot.

(10) Covenants affect consolidated sites

If:

- (a) a covenant of the kind referred to in subclause (9) applies to any land (affected land), and*
- (b) proposed development relates to the affected land and other land that together comprise the site of the proposed development, the maximum amount of floor area allowed on the other land by the floor space ratio fixed for the site by this Plan is reduced by the quantity of floor space area the covenant prevents being created on the affected land.*

2.3 Development Standard Exemption Sought

It is noted that the size of the subject site is 828m² which provides that the floor space of a building on the subject site would need to be 1242m² in order to be consistent with the acceptable development standard provided for by Clause 4.4 of the LEP (1.5:1 FSR).

It is noted that the floor area of the building for the purposes of determining the proposed floor space ratio is 1334.29m². The floor space of the proposed building has therefore been calculated to be 1.61:1.

The following table summarizes the development standard together with the proposed floor space ratio of the building together with the quantum of the variation to the development standard which is sought.

The following table has been prepared having regard to the building floor space definition provided for in Section 2.2 of this report and the floor space calculations provided with the development application;

Table 1 – Floor Space Ratio Summary

FLOOR SPACE RATIO DEVELOPMENT STANDARD	PROPOSED FLOOR SPACE RATIO	QUANTUM OF VARIATION TO ACCEPTABLE DESIGN SOLUTION FLOOR SPACE RATIO STANDARD	FLOOR AREA ABOVE FSR DEVELOPMENT STANDARD
1.5:1	1.61:1	0.11:1 (7.4%)	92.29m ²

3. PERFORMANCE ASSESSMENT

As has already been identified the structure of Port Macquarie Hastings LEP 2011 provides for merit assessment of variations to development standards.

This structure is reflected in;

- The inclusion of Clause 4.6 into the LEP which recognizes the need to allow for exceptions to the specified design provisions.
- The inclusion of performance objectives in relation to development standards. The inclusion of specific performance objectives provides for a design solution to be approved on the basis that its outcomes will be consistent with the nominated performance objectives.

It is however noted that the LEP does not indicate the manner by which a performance assessment is to be carried out.

3.1 Performance Objectives

The performance objectives that are relevant to the requested variation are contained within Clause 4.4(1) of LEP (2011) as follows;

The objectives of this clause are as follows:

- (a) to regulate density of development and generation of vehicular and pedestrian traffic,*
- (b) to encourage increased building height and site amalgamation at key locations,*
- (c) to provide sufficient floor space for high quality development for the foreseeable future,*
- (d) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality.*

It is therefore considered that where a building design solution is consistent with the above objectives it can be assessed as being consistent with the requirements of PMHC LEP (2011) and as such development consent can be issued on the basis that the proposed development is in accordance with the relevant development standards.

3.2 Performance Assessment Method

As has already been identified, the structure of Port Macquarie Hastings LEP 2011 provides for merit assessment of variations to development standards. This structure is reflected in;

- The inclusion of Clause 4.6 into the LEP which recognizes the need to allow for exceptions to the specified design provisions.
- The inclusion of performance objectives in relation to development standards. The inclusion of specific performance objectives provides for a design solution to be approved

on the basis that its outcomes will be consistent with the nominated performance objectives.

It is however noted that the LEP does not indicate the manner by which a merit assessment is to be carried out. It is however noted that, NSW Planning via its Guide to Varying Development Standards, 2011 provides that;

In deciding whether to approve a development application and associated application to vary a standard, council must consider whether non-compliance with the development standard raises any matter of significance for State and regional planning, and the public benefit of maintaining the planning controls adopted by the environmental planning instrument. As part of the consideration, council should examine whether the proposed development is consistent with the State, regional or local planning objectives for the locality, and, in particular, the underlying objective of the standard.

Additionally, the Guide provides that Clause 8 of SEPP 1 requires council to assess whether non-compliance with the development standard raises any matter of significance for State and Regional planning, and the public benefit of maintaining the planning controls adopted by the environmental planning instrument. Councils must furnish written evidence that they had considered the matters referred to in Clause 8 of SEPP 1 in their assessment of an application.

Additional guidance regarding the assessment of variations to development standards can also be taken from the 'five-part test' established by the NSW Land and Environment Court which are outlined as follows;

- 1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;*
- 2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

Having regard to the above, it is proposed to demonstrate that the proposed variation to the LEP development standard as it pertains to the proposed FSR of the subject building is acceptable in the circumstances as the design solution;

- Maintains compliance with the relevant objectives of the LEP development standard.
- Renders compliance with the development standard unnecessary and unreasonable in the circumstances.

- Does not raise any matter of significance for State and regional planning, and the public benefit.

3.3 Performance Assessment

The following justification is provided in respect of each of the performance objectives listed in Section 3.1 of this report;

Table 2 – Performance Assessment

PERFORMANCE OBJECTIVE	PERFORMANCE ASSESSMENT
<i>(a) to regulate density of development and generation of vehicular and pedestrian traffic,</i>	<p>The existing and future character of the locality is and will be predominately residential with a mix of low and medium density residential development dominating the immediate area. It is however noted that the redevelopment of historical lots particularly to the north and south of the subject site is likely, due to its coastal location, include built forms which support tourist accommodation.</p> <p>The northern, southern and western boundaries of the subject site adjoin or are adjacent to residential land uses with low and medium density 'older' residential developments present in these aspects. Built forms are predominately 1 - 2 storey however some 3 and 4 storey developments are also present within the locality.</p> <p>It is also noted that the coastal foreshore location of the subject site provides for passive and active open spaces to dominate to the east of the subject site.</p> <p>The subject site is located within the Windmill Hill Precinct of Port Macquarie Hastings Development Control Plan, 2013. The strategic context of the precinct is described in the DCP as follows;</p> <p><i>The Windmill Hill Precinct will continue to evolve as a medium density residential precinct with a diverse range of housing types. Building forms along the northern and eastern edges of the precinct will reflect the higher landform in this area and form a distinct edge to the open space, stepping down in height towards the west.</i></p> <p>The above strategic context is considered important when considering the existing and future character of the locality and how the proposed development is consistent with the relevant strategic land use planning provisions which are applicable to the subject site.</p> <p>Given the minor (7.4%) nature of the FSR development standard variation, the density of the proposed development remains consistent with the density of development which is envisaged for the locality particularly given the transitional nature of development density in the area.</p>

	<p>The existing road network in the immediate locality will satisfactorily cater for any increase in traffic generation as a result of the proposed development.</p> <p>The proposed development allows for satisfactory onsite parking provision in accordance with the Development Control Plan.</p> <p>The widths of Pacific Drive and Hill Street are typical of streets within the historic residential areas of Port Mqacquarie with significant road side onstreet parking arrangements available within Hill Street which will not present any traffic and/or pedestrian hazards beyond that which currently exists. Adequate provisions are in place to allow for the legal parking of motor vehicles within the Hill Street road reserve.</p> <p>Pedestrian traffic in the locality will remain largely unchanged as a result of the proposed development with the form and nature of occupation of the subject site and proposed development being entirely consistent with the standards which are relevant to the area.</p> <p>It is considered that the exceedance of the floor space ratio by approximately 7.4% is acceptable in the circumstances as the design solution which is proposed continues to provide for a bulk and scale outcome which is entirely consistent with the existing and future residential character of the area particularly when considered in the context of the transitional nature of built forms in the locality as the proposed development is the first development in the locality which seeks to respond to the development controls which now apply to the subject site.</p> <p>Councils development standards for the area envisage an increase in the bulk and scale of future development in the area with the proposed residential flat building development providing for a FSR which is entirely consistent with the character which is envisaged for the area particularly given the minor 7.4% variation to the FSR development standard.</p>
<p><i>(b) to encourage increased building height and site amalgamation at key locations,</i></p>	<p>It is noted that subject site is a single lot, and it is not proposed nor required to consider site amalgamation.</p> <p>It is noted that building FSR outcomes are consistent with the relevant development control standards with only a minor variation to the LEP FSR standard proposed.</p> <p>Solar access studies show acceptable results for the June 22 as a result of the proposed development in relation to adjoining and adjacent existing development. Accordingly, the proposed building's bulk and scale will have no significant impact on solar access beyond that contemplated by the development standard.</p> <p>Views will not be impacted upon by the proposed development as view paths to</p>

	<p>the north, south and east are constrained by the existing buildings/structures which form the backdrop in these aspects and the topography of the locality.</p> <p>Notwithstanding the variation to the floor space ratio development standard acceptable standards of solar access and visual amenity will continue to be provided to adjoining and adjacent buildings.</p> <p>Quality urban and building design outcomes will be achieved as a result of the proposed development and that the proposed building design solution will have negligible impact in relation to visual impact, views, loss of privacy and loss of solar access issues.</p>
<i>(c) to provide sufficient floor space for high quality development for the foreseeable future,</i>	<p>It is noted that the quantum of the variation from the floor space ratio which is provided for in relation to the development of the subject site is considered to be minimal in the context of the size and development characteristics of the subject site.</p> <p>The 7.4% variation from the prescribed development standard is considered to be minimal with the design outcome consistent with the outcomes envisaged by the floor space ratio development standard.</p> <p>The design approach to the building provides for significant areas of open space to be available around the perimeter of the subject site with the hexagonal approach taken to the eastern portion of the proposed building reinforcing a reduced dominance of building appearance when viewed from public and private spaces.</p> <p>The provision of floor space as proposed provides for the integration of bulk and scale over the subject site in a manner which does not negatively impact upon the visual appearance of the building and its impacts on adjoining and adjacent public and private spaces.</p> <p>Additionally, the design of the proposed development in conjunction with the topographical features of the subject site ensures that the bulk and scale impacts of the proposed development on adjoining and adjacent land is minimized in the context of the 7.4% exceedance of the LEP floor space ratio standard.</p> <p>It is considered that the significance of the FSR development standard exceedance will be largely imperceptible when considered against a compliant building design solution and as such the variation to the FSR development standard is acceptable in the circumstances.</p> <p>The design approach and the materials which are proposed to be used will provide for a high-quality development for the foreseeable future.</p>
<i>(d) to ensure that buildings are</i>	<p>The existing and future character of the locality is and will be predominately residential with a mix of low and medium density residential development</p>

<p><i>compatible with the bulk and scale of the existing and desired future character of the locality.</i></p>	<p>dominating the immediate area. It is however noted that the redevelopment of historical lots particularly to the north and south of the subject site is likely, due to its coastal location, include built forms which support tourist accommodation.</p> <p>The northern, southern and western boundaries of the subject site adjoin or are adjacent to residential land uses with low and medium density 'older' residential developments present in these aspects. Built forms are predominately 1 - 2 storey however some 3 and 4 storey developments are also present within the locality.</p> <p>It is also noted that the coastal foreshore location of the subject site provides for passive and active open spaces to dominate to the east of the subject site.</p> <p>The subject site is located within the Windmill Hill Precinct of Port Macquarie Hastings Development Control Plan, 2013. The strategic context of the precinct is described in the DCP as follows;</p> <p><i>The Windmill Hill Precinct will continue to evolve as a medium density residential precinct with a diverse range of housing types. Building forms along the northern and eastern edges of the precinct will reflect the higher landform in this area and form a distinct edge to the open space, stepping down in height towards the west.</i></p> <p>The above strategic context is considered important when considering the existing and future character of the locality and how the proposed development is consistent with the relevant strategic land use planning provisions which are applicable to the subject site.</p> <p>For the purposes of this report, it is important to consider the significance of the exceedance of the FSR development standard in the context of the impacts which would result where compliance with the FSR standard was proposed.</p> <p>It is also noted that the assessment of the impacts of the exceedance of the FSR development standard needs to reflect the transitional nature of built forms in the locality as the proposed development is the first development in the locality which seeks to respond to the development controls which now apply to the subject site and the area in general.</p> <p>The relevance of the proposed building FSR design solution to the existing and future character of the locality is therefore assessed as follows;</p> <p><u>Existing Character</u></p> <p>It is noted that the subject site itself is currently occupied by a two (2) storey residential building which occupies the eastern portion of the subject site with the western portion of the subject site used for recreational activities associated with the existing building.</p>
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It is also noted that development on the subject site is historical with the small scale of development on the lot not reflective of the scale of development which is now contemplated via development control standards for the locality particularly to the north of the subject site.



Existing development on subject site



Existing single dwelling to the north of the subject site



Existing medium density multi storey development to the north of the subject site



Existing development to the south and west of the subject site



Existing medium density multi storey development to the south of the subject site



Existing medium density multi storey development to the south of the subject site

The existing character of the area also reflects the coastal location with active and passive open space areas extending to the east of the subject site with the orientation of existing buildings to the north and south of the subject site

maximizing the easterly outlook over the coastal foreshore areas of Rocky Beach towards the Pacific Ocean. It is noted that Pacific Drive, which adjoins the subject site to the east, provides for a minimum 18m wide road reserve with the carriageway having a similar elevation to the eastern boundary of the subject site.



Pacific Drive and public open space areas to the east of the subject site

In the main, existing development to the north and south of the subject site is oriented towards the east in order to take advantage of the coastal location and associated vistas. It is however noted that the elevated nature of the topography in the area provides for adjoining and adjacent properties to the west of the subject site being orientated towards the north towards Town Beach and the coastal vistas which are present in this aspect.



Northerly orientation of development to the west of the subject site

The design of the eastern elevation of the proposed building provides that when viewed from the eastern aspect the bulk and scale of the proposed building will be entirely consistent with the relevant building bulk and scale development standards with the overall scale of the proposed building along the eastern elevation being compliant with the relevant development standards.

The existing character of the area to the west of the subject site and the location in general comprises a mix of low and medium density residential developments which reflects the historical development standards which applied to the area. In terms of the western aspect, it is noted that the significant rear boundary setback which is proposed (5.9m) provides for significantly reduced bulk and scale dominance and impacts when viewed from the west. The increased setback of the top storey of the building and the integration of a terrace area in the western portion of the top storey of the proposed development reinforces the notion of spatial separation when considered from the western aspect.

The modulation and articulation of the northern and southern facades of the proposed building and the increased setback of the top storey of the building from the northern and southern boundaries of the subject site significantly reduces the bulk and scale impact of the building. The stepped nature of the top storey of the building reinforces the response of the building design to the landform conditions in the area which in turn assists in minimizing the bulk and scale outcomes of the proposed building.

The design approach to the proposed building provides for areas of open space

to be available around the perimeter of the subject site with the hexagonal approach taken to the eastern portion of the building reinforcing a reduced dominance of building appearance when viewed from public and private spaces.

It is also noted that the existing vegetation within the Pacific Drive road reserve and the adjoining foreshore reserve to the east provide for significant screening of the development when viewed from the east albeit that the building will not be readily visible from the east unless at distance due to the topography and accessibility of the coastal escarpment which extends to the east of Pacific Drive.

The bulk and scale impacts of the proposed development when viewed at distance from the east will be mitigated due to distance and the screening and visual contrast provided for by vegetation along the coastal zone to the east of the subject site.



Vegetation along eastern edge of Pacific Drive

When viewed from adjoining and adjacent buildings to the north, south and west of the subject site the proposed bulk and scale of the proposed building will have minimal visual, privacy and amenity impacts as;

- Existing buildings to the north and south are predominantly oriented towards the east with limited vistas available to the north and south.
- Existing buildings to the west are predominantly oriented towards the north and west with limited/no vistas available to the east.

	<ul style="list-style-type: none"> • A compliant design solution for the proposed building would, due to the minor nature of the FSR development standard exceedance, provide for the same outcomes and impacts as the proposed design solution for the subject site. • The significant spatial separation which is available between the proposed buildings and the existing buildings to the south and the public open spaces to the east. In this regard the presence of Hill Street, (20m road reserve width), and Pacific Drive, (16m wide active use area of the road reserve), provides for significant spatial separation between adjacent dwellings and public spaces. The spatial separation which will be available will assist in reducing the visual dominance of the proposed building and provides for an informed transition in built form from higher density to lower density development. <p>Having regard to the above the outcomes provided for by the proposed building design solution remains entirely consistent with the existing character of the locality in relation to bulk and scale in the context of the transitional nature of built forms in the locality as the proposed development is the first development in the locality which seeks to respond to the development controls which apply to the subject site and the area in general.</p> <p><u>Future Character</u></p> <p>The subject site is located within the Windmill Hill Precinct of Port Macquarie Hastings Development Control Plan, 2013. The strategic context, (future desired character), of the precinct is described in the DCP as follows;</p> <p><i>The Windmill Hill Precinct will continue to evolve as a medium density residential precinct with a diverse range of housing types. Building forms along the northern and eastern edges of the precinct will reflect the higher landform in this area and form a distinct edge to the open space, stepping down in height towards the west.</i></p> <p>It is considered that the proposed development is entirely consistent with the future character of the locality and the relevant strategic land use planning provisions which are applicable to the subject site.</p> <p>It is important to note that the adoption of a 17.5m height standard together with a floor space ratio of 1.5:1 reflects council's clear intention for the area to transition from lower density residential development to a higher density of development. With this in mind the nature of the development standards needs to have regard to impacts associated with transitioning the development form of a locality, i.e. the impacts of the proposed development need to be assessed having regard to the future character of the area. In this regard the minor nature of the FSR exceedance, in the context of the location is such that the FSR of the</p>
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	<p>proposed development is entirely consistent with the desired future character of the locality.</p> <p>Given the relatively minor nature of the FSR development standard exceedance it is considered that the impact on the future character of the locality of the proposed building design solution as it relates to building bulk and scale will be minimal.</p> <p>It is also noted that notwithstanding the height and FSR development standards provided for in LEP 2011 the future character of the locality has as yet to transition with the proposed development representing the first development which responds to Council's vision for the immediate area. In the context of the life cycle of building infrastructure the most recent decisions of Council, (LEP 2011 and DCP 2013), have not as yet had a significant impact upon the achievement of the desired future character envisaged by the LEP and associated development controls and standards.</p> <p>Having regard to the above it is considered that the impact on the future character of the locality of the proposed building design solution as it relates to FSR will be minimal and will be consistent with the future character of the area.</p>
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Having regard to the above it is considered that the design solution of the subject building as it relates to the issue of building floor space is consistent to the relevant performance objectives of Port Macquarie – Hastings Council LEP 2011.

3.4 Reasonableness of Proposed Variation

As noted in **Table 2** of this report the existing character of the area, from the perspective of bulk and scale, is dominated by a range of multistorey buildings to the north, south and west.

Whilst lower density development is present on adjoining and adjacent land it is noted that the development standards which are applicable to the subject site and adjoining and adjacent land to the north contemplate a higher density of development for the subject site and the locality. In this regard the adoption of a 17.5m height standard together with a floor space ratio of 1.5:1 reflects council's clear intention for the area to transition from lower density residential development to a higher density of development. With this in mind the nature of the development standards needs to have regard to impacts associated with transitioning the development form of a locality, i.e. the impacts of the proposed development need to be assessed having regard to the future character of the area.

In this regard the minor nature of the FSR exceedance (7.4%), is such that the bulk and scale of the proposed development is entirely consistent with the desired future character of the locality.

Notwithstanding the relatively minor variation to the FSR development standard, the bulk and scale of the proposed building will be entirely consistent with a 6 storey building which is an outcome contemplated by the various development standards which are relevant to the subject site.

Having regard to the above the outcomes provided for by the proposed building design solution are entirely consistent with the desired future character of the locality in relation to bulk and scale, with the proposed development responding to the transitional nature of bulk and scale for the locality as provided for by the various development standards which are relevant to the locality.

Accordingly, compliance with the FSR development standard is unnecessary and unreasonable in the circumstances as the outcomes and impacts of the proposed building design solution are the same as, if not better, than the outcomes and impacts which would result via a design which provided for strict compliance with the development standard. This position is further supported in that the proposed variation to the development standard provides for;

- minimal visual and amenity impacts in relation to the proposed buildings bulk and scale having regards to the topography of the subject site, and the nature and scale of existing development within the locality;
- minimal visual and amenity impacts when considered in the context of the height, bulk and scale backdrop which is envisaged to result for new multi storey buildings in the locality.
- minimal visual and amenity impacts when considered in the context of streetscape and public vantage points.
- minimal impacts on near or far views to the north, south and east when considered in the context of the impacts of a compliant building design solution and the nature, scale and spatial relationship of existing development to the subject site particularly to the south and west of the subject site.
- the maintenance of acceptable levels of privacy for residents and occupants of adjoining and adjacent developments as well as the general public.
- consistency with the FSR of buildings which could result through the redevelopment of adjoining land to the north of the subject site.
- the maintenance of acceptable solar access standards for adjoining and adjacent sites.
- the transition in built form and land use intensity within the area covered by the LEP.
- consistency with the existing and future character of the locality in relation to height, bulk and scale.
- achievement of high-quality urban design outcomes.

3.5 Significance of Proposed Variation

The very nature of place-based merit decision making is to have specific regard to the characteristics, features and constraints of a site and development proposal and to assess the specific impacts of same. Having regards to the specific characteristics of the subject site and its local context and the nature and impacts of the proposed development it is considered that non-compliance with the development standard does not raise any matter of significance for State and Regional planning.

Additionally, given the information provided in support of the proposed variation to the development standard, there is minimal public benefit in maintaining the building FSR planning control which is relevant to the locality. On the contrary, there is considerable public benefit in approving the variation to the FSR development standard as the development will;

- provide for a positive development of high-quality design that will improve surveillance and safety of the adjoining and adjacent streets.
- assist in making the locality more of a lively area with an increased demand for localized services.
- have minimal impact on views, amenity, privacy and solar access.
- reinforce and promote the trend for variety in medium density residential development in the locality complying with communities' strategic objectives and expectations for the area.
- have a positive economic impact through the development which will represent a major injection into the local economy and generate significant employment opportunities and flow on benefits to other local businesses.
- provide benefits to the local construction industry and related services through the construction phase of the project.
- result in negligible cumulative impacts on or for the locality

3.6 Consistency with LEP Exception Requirements

Given that the proposed building design solution is consistent with the relevant FSR development standard performance objectives of the LEP it is considered that the issuing of development approval for the subject development, (as proposed), by Port Macquarie-Hastings Council is consistent with the requirements of Clause 4.3 of the LEP in that;

- (i) ***Clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.***

The case of *Whebe v Pittwater Council* (2007) outlined five mechanisms or reasons by which a variation to a development standard may be considered unreasonable or unnecessary. These reasons and their applicability to the proposed development are assessed as follows;

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard* – as demonstrated in **Table 2** of this report the FSR of the proposed building continues to provide for compliance with the relevant objectives of the FSR development standard. Accordingly, compliance with the prescribed development FSR standard is unreasonable or unnecessary in the circumstances.
- *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unreasonable* – this is not relevant to the proposed development.
- *The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable* – this is not relevant to the proposed development.
- *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting departures from the standard and hence compliance with the standard is unnecessary and unreasonable* – the assessment of the impacts of the exceedance of the FSR development standard needs to reflect the transitional nature of built forms in the locality as the proposed development is the first development in the locality which seeks to respond to the development controls which apply to the subject site and the area in general.

Notwithstanding the above, the 7.4% variation from the prescribed development standard is considered to be minimal with the design outcome consistent with the outcomes envisaged by the floor space ratio development objectives.

- *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary* - this is not relevant to the proposed development.

Having regards to the above, as the FSR of the proposed development meets the objectives of the LEP FSR development standard, compliance with the LEP 2011 FSR development standard for the subject site is considered to be unreasonable or unnecessary as the design solution as proposed is entirely consistent with the outcomes envisaged by the development standard.

(ii) Clause 4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Environmental planning grounds which may be relevant when considering a design outcome that contravention of the development standard facilitates include:

- *Internal privacy, amenity & solar access* – the proposed development provides for outcomes which are entirely consistent with the development standards which are relevant to internal privacy, amenity and solar access.

Impacts associated with the proposed building's FSR development standard exceedance upon the internal or external privacy and amenity of the proposed units and/or

neighbouring properties is minimal in the context of the form of development envisaged for the location as is the impact upon solar access to adjoining and adjacent buildings to the subject site.

- *External privacy & amenity* - the proposed development provides for outcomes which are entirely consistent with the development standards which are relevant to external privacy and amenity.

In this regard separation distances between window openings are generally consistent with the relevant development standards and where necessary privacy screens have been incorporated into habitable area windows, balconies and terraces. Adequate natural light and ventilation have been retained between the buildings.

Elevated windowsills have also been incorporated into the design of the building in order to reduce overlooking and associated privacy impacts.

- *Overshadowing & solar access at nearby residential properties* - shadow diagrams for the proposed development demonstrate that the overall bulk and scale of the building has a negligible impact on overshadowing and solar access in relation to neighbouring properties in the context of the nominated development standards and expectations which are relevant to the area.
- *Increased accommodation options* – the proposed development supports and reinforces an increase in accommodation options for the area.

It is noted that the proposed FSR development standard variation has no impact upon the number of units proposed or permitted for the subject site;

- *View sharing* – the proposed development provides for view sharing.

The impacts of the proposed development on views has been assessed and found to be acceptable having regards to the characteristics of the subject site, the nature and extent of development on adjoining and adjacent land and the development standards which seek to guide the future character of the area.

In this regard, the impacts of the FSR development standard exceedance will be largely indiscernible and the impacts on views associated with the proposed development from adjoining and adjacent properties to the north, south and west is negligible regardless of the proposed buildings FSR.

- *Pedestrian amenity & access* – pedestrian amenity and access will not be impacted by the proposed FSR standard exceedance.
- *Visual impact of FSR exceedance* - the impacts of the FSR development standard exceedance will be largely indiscernible given the minor nature of the variation (7.4%).

It is noted that the visual impact of the proposed building solution will be similar to if not the same as a compliant building solution.

- *Urban design context* - the proposal is considered a good contextual fit on the basis that it is an infill development which supports and reinforces the desire for high density residential development in the locality.

The proposed development is consistent with the streetscape and bulk and scale outcomes envisaged for the area.

- *Colours & material* - as indicated on the Colour Materials/ Finishes Sample Sheet prepared by Wayne Ellis Architects, (included in the development proposal plans), the proposed development will be finished in contemporary tone colours.
- *Character of the area* - the outcomes provided for by the proposed building design solution are entirely consistent with the existing and future character of the locality in relation to height, bulk and scale.

- (iii) ***Clause 4.6(3)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as the proposed alternative design solution satisfies the specific performance objectives which are relevant to the height of buildings; and***

As demonstrated in **Table 2** of this report the FSR of the proposed building continues to provide for compliance with the relevant objectives of the FSR development standard. Accordingly, the proposed development is consistent with the public interest.

It is also noted that the Statement of Environmental Effects clearly demonstrates that the proposed development is consistent with the zone objectives which are relevant to the subject site.

- (iv) ***Clause 4.6(4)(b) & (5) the Concurrence of the Secretary***

Concurrence of the Secretary has already been obtained by delegation to Council.

Accordingly, it is recommended that Port Macquarie-Hastings Council approve the variation to the LEP Floor Space Ratio development standard as provided for by the proposed building design solution.

4. CONCLUSION

Having regard to the above it is considered that the proposed building design solution is consistent with the relevant building Floor Space Ratio performance standards as provided for by Clause 4.4 of the LEP and as such the exemption to the development standard is appropriate in the specific circumstances.

Accordingly, the proposed building design solution is able to be supported by Port Macquarie-Hastings Council pursuant to Clause 4.6 of the LEP.