



# Development Assessment Panel

## Business Paper

date of meeting: 01 Mar 2023

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

time: 2:00pm

# DEVELOPMENT ASSESSMENT PANEL SUB COMMITTEE CHARTER

Adopted: Ordinary Council 2022 09 15

## 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 (approve or refuse) 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 being considered by the panel.
- Determine Koala Plans of Management under State Environmental Planning Policy (Biodiversity and Conservation) 2021 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

- 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 Services (alternate - Director Community, Planning 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 media.

### **3.4 Member Tenure**

The independent external members will be appointed for the term of 4 years or until such time as an expression of interest process to source panel members is completed for the proceeding 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 Wednesday each month at 2.00pm at the Port Macquarie offices of Council. Meetings may be conducted on-line or a combination of in person and on-line.
- Special Meetings of the Panel may be convened by the Director Community, Planning and Environment Services with 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 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**

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 Community, Planning 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 3 days prior to each meeting. Minutes shall be appropriately approved and circulated to each member within 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 of the DAP and how each member votes for each item before the Panel. Meetings may be recorded via an on-line platform where practical.

## **6.0 CONVENING OF "OUTCOME SPECIFIC" WORKING GROUPS**

Not applicable.



## **7.0 CONFIDENTIALITY AND CONFLICT OF INTEREST**

- Members of the Panel must comply with 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 i.e. not disrupt the conduct of the meeting, 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	1/06/22	6/7/22	20/7/22	17/8/22	08/9/22	21/9/22	19/10/22	02/11/22	16/11/22	07/12/22	18/01/23	15/02/23
David Crofts (Independent Chair)	✓	✓		✓	✓	✓	✓	✓			✓	✓
Chris Gee (Independent Member)	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓
Michael Mason (Independent Member)		✓	✓	✓	✓	✓			✓			
Dan Croft (Group Manager Development Services)		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Tony McNamara (Independent Member)	✓	✓	✓				✓		✓	✓		✓
<b>Other attendees</b>												
Mayor Peta Pinson				✓	✓					✓		
Grant Burge (Development Engineering Coordinator)	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	
Kerrod Franklin (Acting Development Engineering Coordinator)							✓					
Patrick Galbraith-Robertson (Development Planning Coordinator)	✓	✓	✓	✓			✓	✓		✓	✓	
Steven Ford (Development Assessment Planner)		✓	✓	✓							✓	
Chris Gardiner (Development Assessment Planner)	✓	✓					✓		✓			
Vanessa Penfold (Development Assessment Planner)		✓										
Clinton Tink (Development Assessment Planner)	✓				✓					✓		
Jon Power (Act Development Engineer Coordinator)												
Beau Spry (Development Assessment Planner)												
Ben Roberts (Development Assessment Planner)										✓		✓
Councillor Josh Slade												
Councillor Sharon Griffiths								✓		✓		
Kate Kennedy (Building Surveyor)												
Warren Wisemantel												
Deputy Mayor Adam Roberts												
Bob Slater (Development Assessment Planner)						✓						
Alton Dick (Stormwater Engineer)								✓				

**Key:**      ✓ = Present, **A** = Absent With Apology **X** = Absent Without Apology

## Development Assessment Panel

### Meeting Dates for 2023

18/01/2023	Function Room	2.00pm
01/02/2023	Function Room	2.00pm
15/02/2023	Function Room	2.00pm
01/03/2023	Function Room	2.00pm
15/03/2023	Function Room	2.00pm
05/04/2023	Function Room	2.00pm
19/04/2023	Function Room	2.00pm
03/05/2023	Function Room	2.00pm
17/05/2023	Function Room	2.00pm
07/06/2023	Function Room	2.00pm
21/06/2023	Function Room	2.00pm
05/07/2023	Function Room	2.00pm
19/07/2023	Function Room	2.00pm
02/08/2023	Function Room	2.00pm
16/08/2023	Function Room	2.00pm
06/09/2023	Function Room	2.00pm
20/09/2023	Function Room	2.00pm
04/10/2023	Function Room	2.00pm
18/10/2023	Function Room	2.00pm
01/11/2023	Function Room	2.00pm
15/11/2023	Function Room	2.00pm
06/12/2023	Function Room	2.00pm

# Development Assessment Panel Meeting

01 Mar 2023

## Items of Business

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01	Acknowledgement of Country .....	<u>9</u>
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03	Confirmation of Minutes .....	<u>9</u>
04	Disclosures of Interest.....	<u>12</u>
05	DA2012 - 381.5 - Modification to Design of Previous Approved Subdivision at Lot 12 DP 1226839 Summer Circuit and Whitewater Terrace, Lake Cathie.....	<u>17</u>
06	General Business	

## AGENDA

### DEVELOPMENT ASSESSMENT PANEL 01 Mar 2023

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**Item: 01**

**Subject: ACKNOWLEDGEMENT OF COUNTRY**

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"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."

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**Item: 02**

**Subject: APOLOGIES**

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#### RECOMMENDATION

That the apologies received be accepted.

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**Item: 03**

**Subject: CONFIRMATION OF PREVIOUS MINUTES**

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#### RECOMMENDATION

That the Minutes of the Development Assessment Panel Meeting held on 15 February 2023 be confirmed.

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## **PRESENT**

### **Members:**

David Crofts (Independent Chair)  
Christopher Gee (Independent Member)  
Tony McNamara (Independent Member)  
Dan Croft (Group Manager Development Services)

### **Other Attendees:**

Ben Roberts (Development Assessment Planner)

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The meeting opened at 1:58pm.

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## **01 ACKNOWLEDGEMENT OF COUNTRY**

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The Acknowledgement of Country was delivered.

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## **02 APOLOGIES**

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Nil.

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## **03 CONFIRMATION OF MINUTES**

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### **CONSENSUS:**

That the Minutes of the Development Assessment Panel Meeting held on 18 January 2023 be confirmed.

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## **04 DISCLOSURES OF INTEREST**

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There were no disclosures of interest presented.

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**05     DA2022 - 821.1 ALTERATIONS AND ADDITIONS TO DWELLING INCLUDING  
         CLAUSE 4.6 VARIATION TO CLAUSE 4.3 (HEIGHT OF BUILDINGS) AND  
         CLAUSE 4.4 (FLOOR SPACE RATIO) OF THE PORT MACQUARIE-HASTINGS  
         LOCAL ENVIRONMENTAL PLAN 2011 AT LOT 30, DP 18159, NO. 977  
         OCEAN DRIVE, BONNY HILLS**

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Speakers:

Michelle Love (applicant)

**CONSENSUS:**

That the Development Assessment Panel recommend to Council that DA2022 - 821.1 for alterations and additions to dwelling including Clause 4.6 variation to Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of the Port Macquarie-Hastings Local Environmental Plan 2011 at Lot 30, DP 18159, No. 977 Ocean Drive, Bonny Hills, be determined by granting consent subject to the recommended conditions.

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**06     GENERAL BUSINESS**

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Nil

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The meeting closed at 2:03pm

**Item: 04**  
**Subject: DISCLOSURES OF INTEREST**

**RECOMMENDATION**

**That Disclosures of Interest be presented**

**DISCLOSURE OF INTEREST DECLARATION**

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

## AGENDA

## DEVELOPMENT ASSESSMENT PANEL 01 Mar 2023

*(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:
- your interest, or
  - the interest of your spouse or de facto partner, your relative, or your partner or employer, or
  - 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:
- Your "relative" is any of the following:
    - your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
    - your spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
    - the spouse or de facto partner of a person referred to in paragraphs (i) and (i)
  - "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)
- if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or
  - 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
  - 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 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
  - 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.
  - 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.
  - 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
  - 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
  - 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:
- 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
  - 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.

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### 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.*

<b>By</b> <i>[insert full name of councillor]</i>	
<b>In the matter of</b> <i>[insert name of environmental planning instrument]</i>	
<b>Which is to be considered at a meeting of the</b> <i>[insert name of meeting]</i>	
<b>Held on</b> <i>[insert date of meeting]</i>	
<b>PECUNIARY INTEREST</b>	
Address of the affected principal place of residence of the councillor or an associated person, company or body <b>(the <i>identified land</i>)</b>	
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.
<b>MATTER GIVING RISE TO PECUNIARY INTEREST<sup>1</sup></b>	
Nature of land that is subject to a change in zone/planning control by proposed LEP <b>(the <i>subject land</i>)</b> <sup>2</sup> <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.

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<sup>1</sup> 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.

<sup>2</sup> 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



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**Item: 05****Subject: DA2012 - 381.5 - MODIFICATION TO DESIGN OF PREVIOUS APPROVED SUBDIVISION AT LOT 12 DP 1226839 SUMMER CIRCUIT AND WHITEWATER TERRACE, LAKE CATHIE****Report Author: Development Assessment Officer (Planning), Patrick Galbraith-Robertson**

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**Applicant: Land Dynamics****Owner: Catarina Village Pty Ltd & Seawide Pty Ltd****Estimated Cost: N/A****Parcel no: 65985 & 70679**

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**Alignment with Delivery Program**

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

**RECOMMENDATION**

That DA2012 - 381.5 for a modification to design of previous approved subdivision at Lot 3, DP 1247192 (now known as Lot 300 DP1278057) & Lot 12 DP1226839, Summer Circuit and Whitewater Terrace, Lake Cathie, be determined by granting consent subject to changes to the following conditions:

1. Amend condition A(1)
2. Amend condition B(3)
3. Add new condition A(30)
4. Amend condition E(22)

**Executive Summary**

This report considers an application to modify a previous approved 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, four (4) submissions were received.

The modification application has been the subject of a lengthy assessment period to address key assessment issues. The proposal has been amended in this regard during assessment with the following key changes made:

1. Maintain the originally approved east-west ocean Blue Boulevard/main street;
2. Delete the previous Bombora Way connection between Ocean Blue Boulevard to Whitewater Terrace;

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3. Delete the east-west mid-block laneways to the north and south of Ocean Blue Boulevard;
4. Provide new pedestrian north-south linkages between Ocean Blue Boulevard and Whitewater Terrace; and
5. Subdivide the land in a staged progression.

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

This report recommends that the modification application be approved subject to the attached amended conditions (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 or the application. A copy of the DAP Charter outlining the delegations and functions of the DAP is available on Council's website.

## 1. BACKGROUND

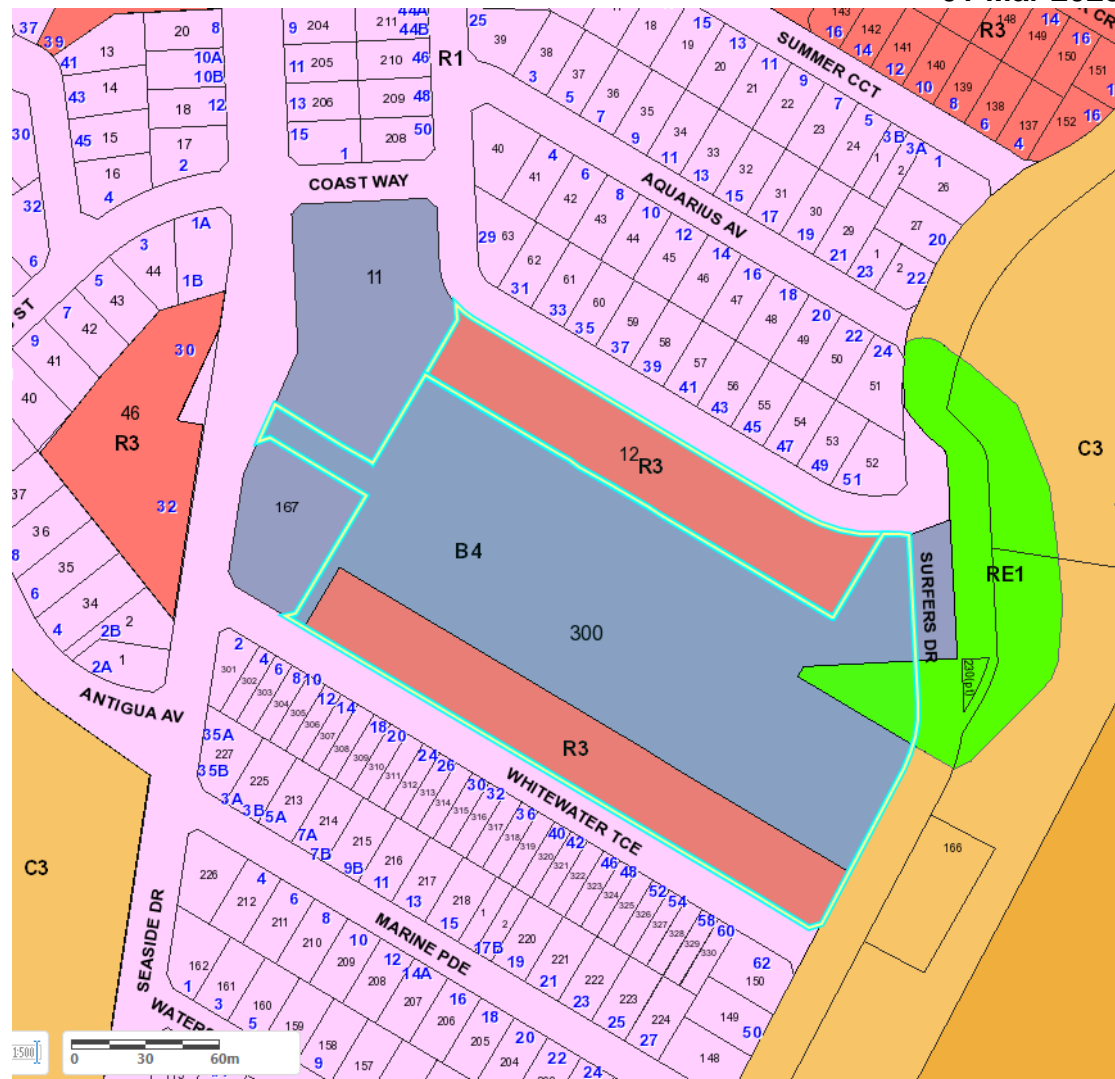
### Existing Sites Features and Surrounding Development

The site (2 lots as highlighted below) is zoned part B4 Mixed Use and part R3 Medium Density Residential in accordance with the Port Macquarie-Hastings Local Environmental Plan 2011, as shown in the following zoning plan:

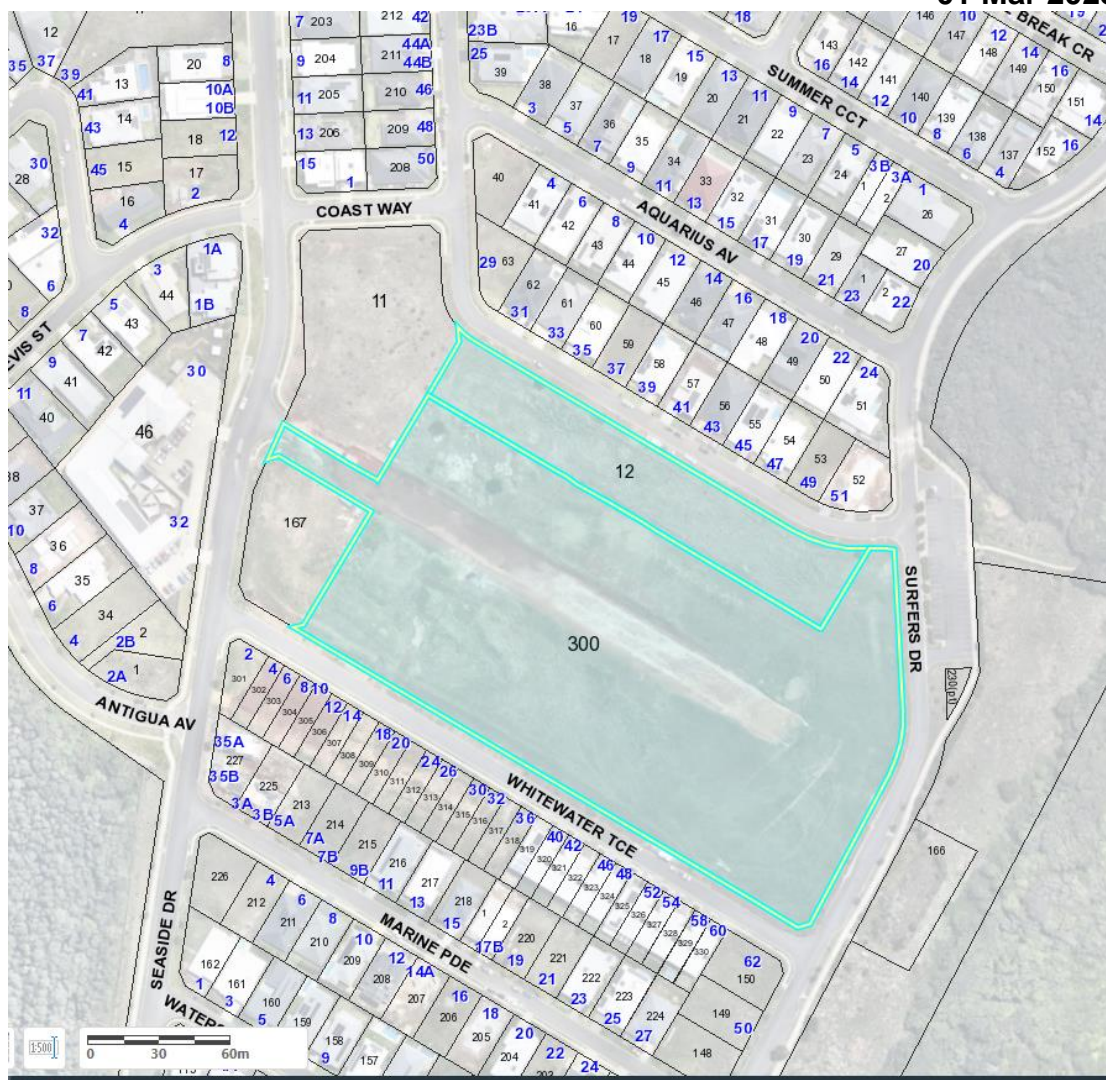
## AGENDA

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The existing subdivision pattern and location of existing development within the locality is shown in the following aerial photograph (as at time of report writing):



## 2. DESCRIPTION OF DEVELOPMENT

Key aspects of the modified proposal (as amended) include the following:

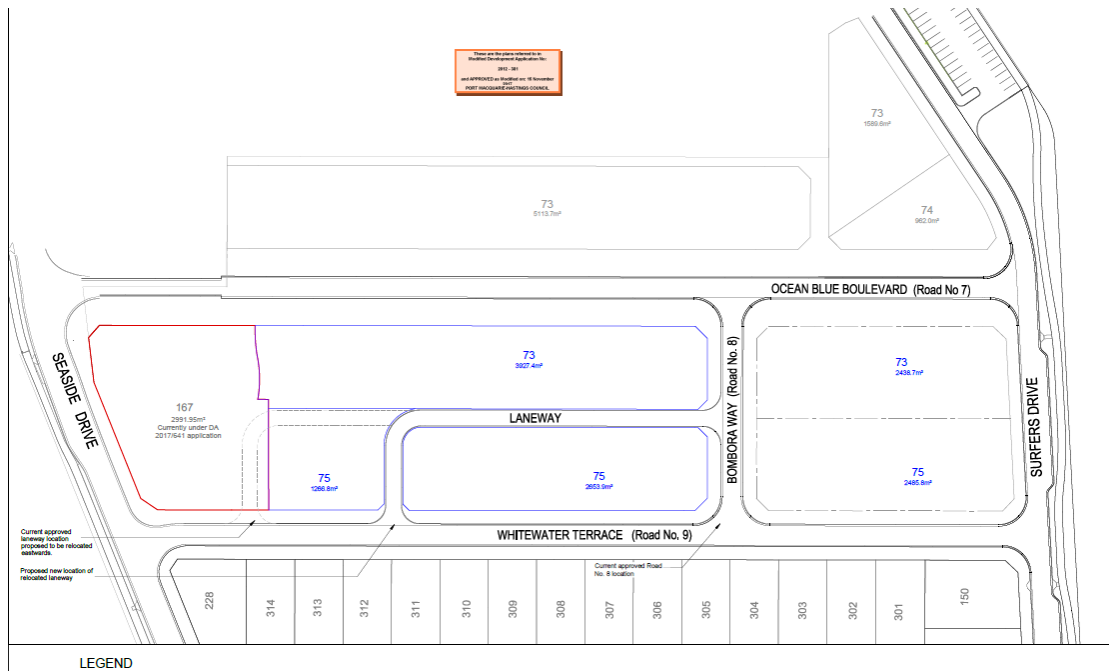
- Maintain the originally approved east-west Ocean Blue Boulevard/main street (originally was proposing to change when application lodged April 2021).
- Delete the previous Bombora Way connection between Ocean Blue Boulevard to Whitewater Terrace.
- Delete/remove the east-west mid-block laneways from the current approved subdivision to the north and south of Ocean Blue Boulevard.
- Provide new pedestrian north-south linkages between Ocean Blue Boulevard and Whitewater Terrace.
- Subdivide the land in a staged progression.
- The subdivision plan shows the proposed revised subdivision layout, includes deletion of Bombora Way and laneways from the plans, connection along Ocean Blue Boulevard between Seaside Drive and Surfers Drive, and identifies the vehicular access points to the future basement parking areas.
- Changes to consent conditions requested.

The current approved subdivision plan is as per below:



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The original proposed plan submitted with the modification application is as below:

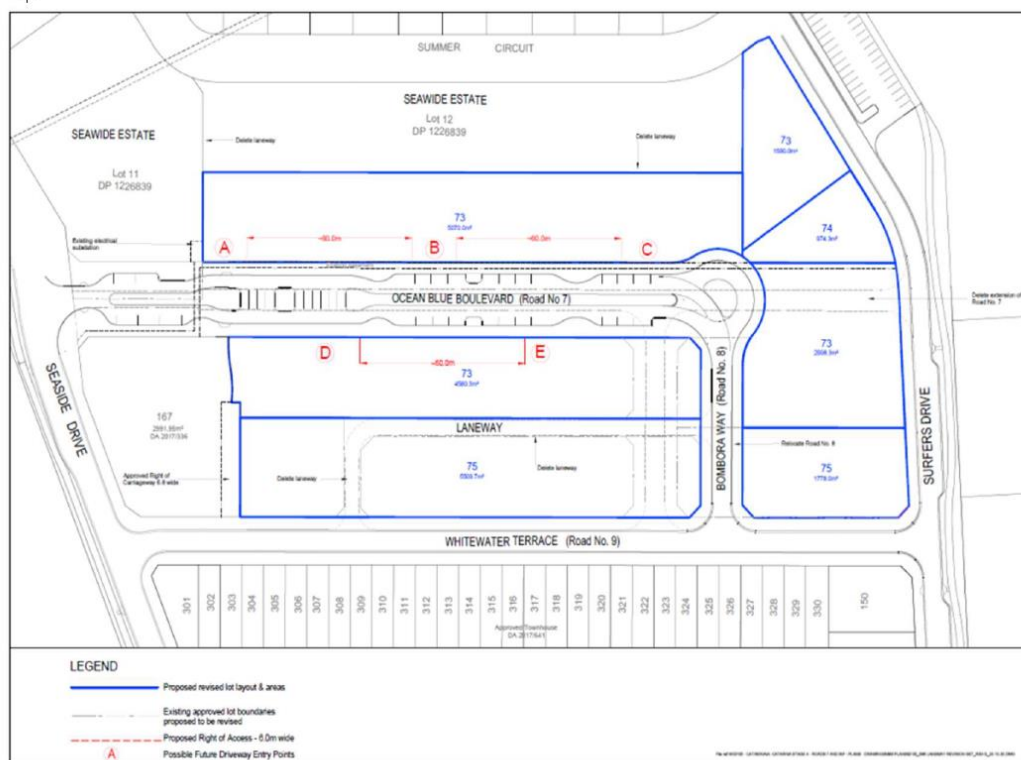


Figure 3: Originally proposed Plan submitted with Modification Application - detailing changes to the laneway

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Through Connection Provided – Ocean Blue Boulevard to/from Surfers Drive and

East-west vehicular access between driveways via basement car park

Bombora Way

Pedestrian Connections

**DA901**

**Catalina Residences Masterplan for Catalina Residences**

**MASTERPLAN**

**DA901**

**PE**

**22101**

[illegible]

PORT MACQUARIE  
HASTINGS  
COUNCIL



### Application Chronology

- 13 April 2021 - Modification application lodged with Council.
- 16 April to 29 April 2021 - Neighbour notification of original modification proposal.
- 27 April 2021 - Advice received from Essential Energy.
- 3 May 2021 - Applicant requested assessment update.
- 4 May 2021 - Assessment update provided to applicant.
- 17 May 2021 - Advice received from the Department of Planning, Industry and Environment of an application received to modify the Cathie Concept Approval (MP 07\_0010 MOD1).
- 28 May 2021 - Advice of initial Council staff assessment concerns provided to DPIE.
- 1 June 2021 - Advice of initial Council staff assessment concerns sent to applicant.
- 9 August 2021 - Follow up on applicant as to status of addressing assessment issues.
- 8 September 2021 - Applicant provided initial advice that application will be amended.
- 12 September 2021 - Prelodgement meeting organising and amended concept submitted.
- 14 September 2021 - Prelodgement meeting to discuss amendments with the applicant.
- 26 November 2021 - Applicant follow up on status of assessment.
- 29 November 2021 - Applicant advised that formal amendments to be submitted for consideration and outcome of DPIE advice to be obtained on Part 3A concept approval.
- 8 December 2021 - Applicant advice that specialist reports and amendments to be submitted in early 2022.
- 19 May 2022 - Applicant followed on status of amendments to modification application noting significant time passed.
- 20 May 2022 - Applicant advised intentions to lodge amendments still.
- 14 June 2022 - Applicant advised of intentions of amendments to the proposal to be submitted and note the DPIE timeframes lengthy to obtain advice on change in subdivision layout.
- 1 September 2022 - Applicant followed up on status of submitting additional information and amended plans.
- 1 September 2022 - Applicant submitted advice from DPIE and update on plan changes to be made.
- 27 September 2022 - Applicant submitted formal amendments to modification proposal including number of specialist reports.
- 1 November 2022 - Applicant followed up assessment status.
- 3 November 2022 - Assessment update provided to applicant.
- 3 November 2022 - Applicant provided update that DPIE still assessing the Part 3A modification application.
- 10 to 23 November 2022 - Re-notification to neighbouring properties of amended modification proposal and specialist reports.
- 22 November 2022 - Applicant followed up assessment status.
- 23 November 2022 - DPIE request for Council staff opinion on amended Part 3A modification with amendments.
- 24 November 2022 - Assessment update provided to applicant including update on DPIE communication and key submission issues raised. Applicant requested to provide details on submission issues raised.

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- 1 December 2022 - Advice provided to DPIE that with current amendments Council staff now of opinion that modification to Part 3A concept approval no longer considered required.
- 5 December 2022 - Applicant advised by DPIE that the Part 3A modification can be withdrawn if required.
- 7 December 2022 - Applicant submitted additional information including comments on submission issues raised, revised traffic report and subdivision plan amendments.
- 13 December 2022 - Assessment update provided to applicant.
- 14 December 2022 - Applicant advised of further amendments intended to be made.
- 16 January 2023 - DPIE advised applicant that they can withdraw the Part 3A modification.
- 25 January 2023 - Assessment update provided to applicant.
- 30 January 2023 - Additional information requested to address engineering/main street design concept matters.
- 1 February 2023 - Applicant advised that Part 3A modification application recommended to be withdrawn is considered not fundamental to the final assessment and determination of the modification to the DA.
- 8 February 2023 - Additional information submitted to address engineering/main street design concept matters.

### 3. STATUTORY ASSESSMENT

The application has been lodged pursuant to Section 4.55(1A) on the basis that it is substantially the same development to that which was originally lodged and consented and will have minimal environmental impact (Attachment 3).

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

In determining the modification 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 modification application relates:

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

The proposal is sufficiently consistent with the original development consent and provides an efficient use of land for subdivision purposes. The modification does not radically transform the approved development as modified and is of minor environmental impact.

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

The applicant has submitted details during assessment of the application that the modified proposal is substantially the same development for the following primary reasons:

- The overall development remains for subdivision purposes;

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- The development is still for the same use with no material element of change with no additional land use or varying component added;
- The modification does not radically transform the approved development and the key issues relating to the lot layout, acoustic and aesthetic impacts, ecological impacts, and bushfire remain satisfactory and manageable;
- The changes to the road and removal of the laneway layouts in the Hilltop Village will not significantly increase or intensify the use of the development;
- The removal of the laneways is based upon the integrated basement design still provides landscaping and development opportunities as envisaged for the village precinct and maintains vehicular and pedestrian connectivity through the development.

Having regard to guidance principles set out in NSW Land and Environment Court caselaw *Moto Projects (No 2) Pty Ltd v North Sydney Council 1999*, the above general justification details submitted are considered acceptable to be satisfied that the proposal is substantially the same development. A comparison of the qualitative and quantitative elements of the original approved proposal to the modified proposal (as amended) reveals the proposal will present materially and essentially as a subdivision in the same general building footprint and associated works.

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

Neighbour notification has been undertaken in accordance with the regulations and Council's Development Control Plan 2013. The proposal has been exhibited on two (2) occasions due to the amendments made to the proposal during assessment.

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

Four (4) 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
Owners of No.31 Summer Circuit of understanding that there would be a laneway between Summer Circuit and Whitewater Terrace to service the houses that would be built on the southern side of Whitewater Terrace.	The current approved planned laneway access is proposed to be removed and propose an alternative integrated vehicle access arrangement for the developments to have frontage to the planned main street/Ocean Blue Boulevard.
Traffic impacts to Summer Circuit solely with removal of laneway and houses to be built on Summer Circuit.	Any new development of R3 zoned land known as Lot 12 DP 1226839 (with a 11m building height limit) on the immediate southern side of Summer Circuit would need to have regard to driveway access and parking requirements contained in Council's Development Control Plan 2013. Visitor parking and driveway widths and positioning would require
Removing the laneway between Summer Circuit and Ocean Blue Boulevard and adding traffic calming devices to Ocean Blue Boulevard would direct road traffic towards Coast Way and Summer Circuit.	

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Submission Issue/Summary	Planning Comment/Response
	<p>detailed assessment consideration with development of this site.</p> <p>As the access arrangements can be satisfied for the Main Street higher density developments it is considered that removal of the laneway which was conceptually shown as a desired access arrangement in the part 3A concept approval would be unable to be refused. Lot 12 has ample street frontage to Summer Circuit.</p>
Difficult for vehicles to pass each other on Summer Circuit particularly with vehicles parked on each side of the road.	<p>The 7m width of Summer Circuit in particular has been considered in the assessment of the application.</p> <p>It is noted that all dwellings constructed and approved along Summer Circuit have double garage and driveway lengths which should accommodate for satisfactory visitor parking without interfering with the traffic being able to pass along the road.</p>
Garbage collection vehicles unable to drive through Summer Circuit due to vehicles parked on both sides of road.	
Emergency and service vehicles will not be able to access Summer Circuit with cars parking on both sides of road.	
The 150mm (SA) kerbing on the southern side of Summer Circuit is not suitable for a normal vehicle to park up on the kerb which in turn leads to the vehicles parking on both sides of Summer Circuit.	<p>It is noted that the northern side of Summer Circuit has roll over kerb Type SE.</p> <p>There is opportunity for the kerb type to be revisited on the southern side of Summer Circuit with future development to be considered and assessed on Lot 12 DP1226839 (R3 zoned land northern part of Hilltop Village).</p>
The proposal will make Summer Circuit one of the main thoroughfares, which is not anticipated by existing residents.	<p>The proposed modification does not involve works within Coast Way or Summer Circuit.</p> <p>The 7m width of Summer Circuit in particular has been considered in the assessment of the application.</p>
Coast Way and Summer Circuit at 7m pavement width have not been designed as collector roads particularly for beach road traffic.	
The current Development Control Plan and the Concept/Project Approval for this land has Ocean Blue Boulevard acting as a primary Collector Road between Seaside Drive and Surfers Drive.	<p>The proposed modification (as amended) now maintains the current approved planned main street/Ocean Blue Boulevard having east-west connectivity between Seaside Drive and Surfers Drive. No additional traffic would be directed to Coast</p>

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Submission Issue/Summary	Planning Comment/Response
	<p>Way and Summer Circuit with the new road providing opportunity for visiting road traffic to travel along the new planned main street.</p> <p>The application (as amended) is generally consistent with the Concept Approval for this land, including Ocean Blue Boulevard acting as the intended primary Collector Road between Seaside Drive and Surfers Drive.</p>
Safety and well-being concerns for residents, visitors, cyclists and pedestrians with additional traffic on Summer Circuit.	<p>The existing Summer Circuit road pavement and design is not proposed to change and has been constructed to applicable AUSPEC standards.</p> <p>No additional traffic would be directed to Coast Way and Summer Circuit with the new road providing opportunity for visiting road traffic to travel along the new planned main street.</p> <p>A public footpath maybe warranted (generally greater &gt; than 3 dwellings under 1 DA) for the full frontage of the R3 zoned land on the southern side of Summer Circuit with future development of this site.</p>
There is no roundabout or similar intersection treatment at Coast Way and Seaside Drive.	No roundabout or other intersection treatment is considered warranted for the intersection of Coast Way and Seaside Drive.
If the proposed modification is to be approved it would be expected Council would require the proponent to re-kerb the entire southern side of Summer Circuit to roll-over kerb to facilitate footpath parking of vehicles.	<p>The 7m width of Summer Circuit in particular has been considered in the assessment of the application.</p> <p>There is opportunity for the kerb type to be revisited on the southern side of Summer Circuit with future development to be considered and assessed on Lot 12 DP1226839 (R3 zoned land northern part of Hilltop Village).</p>

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

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



### 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 part B4 Mixed Use and part R3 Medium Density Residential.
- The objectives of the B4 and R3 zones 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.*
  - *To provide a mixture of compatible land uses.*
  - *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
  - *To ensure that new developments make a positive contribution to the public domain and streetscape.*
- In accordance with Clause 2.3(2), the proposal is consistent with the zone objectives having regard to the following:
  - The proposal is a permissible landuse;
  - The subdivision will enable future development of the site as anticipated by the zoning.
- Clause 4.1 - The modified lot sizes (only ones that are changing to that already approved in the R3 zone) within the proposed subdivision range from 1589m<sup>2</sup> to 5822m<sup>2</sup>. All proposed lots comply with the minimum 1000m<sup>2</sup> lot size identified in the Lot Size Map relating to the site.
- Clause 7.13 - Satisfactory arrangements are noted to have been in place for provision of essential services including water supply, electricity supply, sewer infrastructure, stormwater drainage and suitable road access to service the original approved development. Provision of appropriate satisfactory arrangements certification prior to the issue of a Subdivision Certificate will remain to apply with the modified subdivision proposed.

### **(iii) Any Development Control Plan in force**

#### **Port Macquarie-Hastings Development Control Plan 2013 (DCP)**

This DCP has Locality based specific provisions relating to a planned development precinct known as Precinct B within the Rainbow Beach locality of Lake Cathie-Bonny Hills.

The DCP recommends that the any development proposed be sufficiently consistent with the Stage Significant Part 3A 07\_0010 Residential, Commercial and Tourist Development (Concept Plan) being an approval for:

- Residential uses for about 217 low density dwellings and about 82 medium density dwellings;
- A 'Hill-Top Village' neighbourhood centre, including tourist and residential uses of about 160 apartments;



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- Environmental works associated with the Littoral Rainforest and Duchess Creek;
- Provision of perimeter road, pedestrian, cycle paths and opens space and access to Rainbow Beach;
- Provision of associated infrastructure including stormwater, drainage and utilities.

The general road layout is recommended to be in accordance with this Part 3A concept approval.

During assessment of the application the applicant proposed to change the original alignment of the main street approved and sought to also modify the Part 3A application approval. Subsequent to this the applicant amended the proposal to reintroduce the key Main Street alignment however has retained a proposed removal of the indicative laneways shown in the Part 3A concept approval. These laneways have been considered in the assessment of the application to be desirable access points for future planning of the precinct and are considered to now not warrant modification to the Part 3A.

It is noted that the DCP prescribes the following for Precinct B:

- Road layout is consistent with Figure 220 (extract shown below) and provides:
  - an east west main street road as part of the Hilltop Village,
  - a public perimeter road, incorporating walking and cycle park for the full frontage of the rainforest,
  - a public car park and local park adjoining the beach access path,
  - a shared pathway link to the existing formed pathway along Ocean Drive, and
  - a road connection to Precinct C.

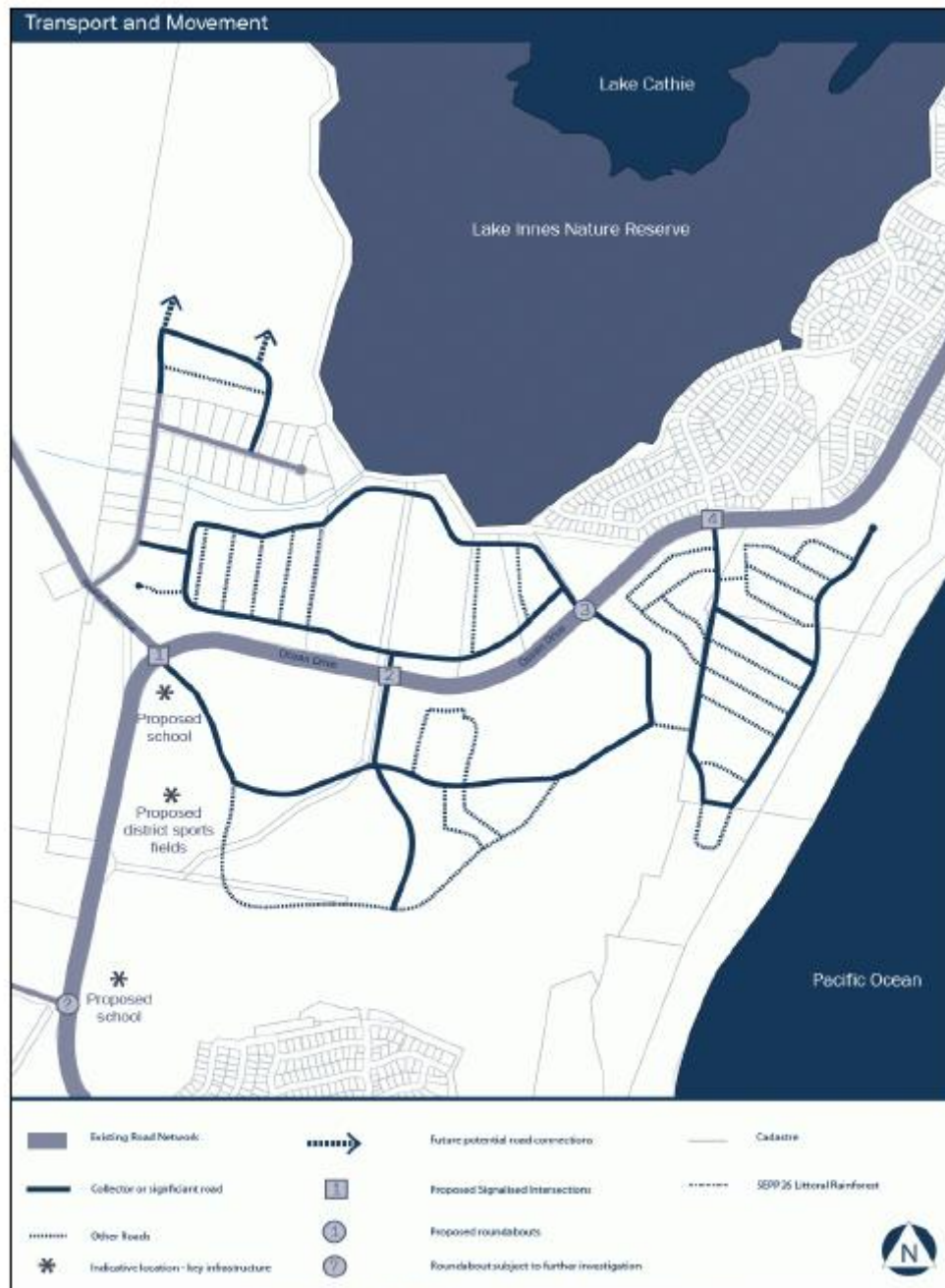


Figure 220: Rainbow Beach transport and movement

Assessment issues relating to the suitability of the laneways being removed and associated traffic and pedestrian matters are addressed elsewhere in this report.

- (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 site design impacts

The following assessment comments are provided in regards to the modified proposal:

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- The amended proposal is to provide access to the future built form on the northern and southern side of Ocean Blue Boulevard via integrated or connected basements.
- The applicant intends to propose a southern basement (stages 1 and 2) across proposed Lots 101 and 102 which will be accessed from two (2) vehicular access points off Whitewater Terrace.
- The applicant intends to propose a northern basement (Stage 3) across proposed Lot 301 will be accessed from two (2) vehicular access points off Ocean Blue Boulevard located at the eastern and western end of the proposed apartment buildings/basement.
- The integrated basement arrangement would allow for waste collection from the basement entry turnarounds. It is likely that an on-street loading bay would be the most practical means of servicing the ground floor commercial premises on Ocean Blue Boulevard, and on-street loading bays have been incorporated along Ocean Blue Boulevard.
- In relation to the laneways, there is considered to be scope to provide a similar function through an integrated basement design and service point(s) as proposed. It is acknowledged that this approach will likely assist with managing the ground level interface with adjoining land holdings.
- Any potential issues relating to potential crossover / pedestrian conflict and servicing arrangements along Ocean Blue Boulevard are capable of being managed as shown in the amended conceptual design plans.
- The function of the laneways to provide vehicular access between buildings will now be accommodated by the integrated basement on either side of Ocean Blue Boulevard. Two (2) vehicular access points to the basements to the north of Ocean Blue Boulevard and Whitewater Terrace will provide access to the developments located above the basements, whilst reducing conflict between users.
- The applicant intends to provide pedestrian connectivity and circulation space between the buildings at ground level, and a public access pedestrian pathway between Whitewater Terrace and Ocean Blue Boulevard which will link residents and visitors to the commercial uses, residential accommodation, and public open spaces within the Hilltop Village precinct.
- This basement approach proposed provides satisfactory intention to manage through traffic flow between buildings and proposed Lots 101 and 201, instead of requiring the previously identified laneway.
- Similarly, as previously identified only two (2) direct vehicular access points are proposed on the northern side into proposed Lot 301 off Ocean Blue Boulevard. Vehicular access is located at each end of a single, below ground basement, which provides satisfactory intention to manage through traffic flow between buildings instead of requiring the previously identified laneway.
- Any development within Lot 12 DP 1226839 will have access from Summer Circuit consistent with the adjoining and surrounding development pattern within Seaside Estate and is unable to be refused on this matter alone.
- The removal of Bombora Way and the laneway connections on the north and south onto Ocean Blue Boulevard and adoption of the integrated basement design will result in reduced potential conflict points along Ocean Blue Boulevard. The outcome provides a higher level of urban design, increased amenity in the locality, and less points of potential conflict between residents, visitors, and commercial supply trucks, as there are limited vehicular accesses crossing pedestrian pathways.
- Additional on-street visitor parking, disabled access carpark spaces, bus bay, and loading bays are also incorporated into the design of Ocean Blue

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Boulevard. Details of the construction of these elements will be subject to a subdivision works certificate.

### Access, roads and traffic

The following assessment comments are provided in regards to the modified proposal:

- The applicant has submitted a traffic report prepared by Streetwise Road Safety and Traffic Services and dated 7 December 2022. This report included details of intended development capacities for the planned village and changes to roads and removal of the laneways as detailed earlier in this report.
- An example of a similar operating development was used as a base case for the traffic modifications being assessed, being The Piazza, Wentworth Point (Old Sydney Olympic Village).
- The Austroads Guide to Traffic Management, Part 7 – Activity Centre Transport Management refers to this type of arrangement as being a “Neighbourhood Activity Centre” where they have limited mix of uses servicing the local needs dominated mainly by small business and retail shops. They can offer some local convenience services and some public transport.
- The Austroads guide goes on to state this type of activity centre can contain circulatory street systems minimising through traffic, where through traffic can be managed so it can be directed to other routes outside the centre (ie. Bennelong Way and Hill Drive). The potential conflicts for the various road users for this type of operation, are the activities of the centre and how these are managed.
- This report has assessed that the proposed road alignment modifications will provide an improved amenity with regard to:-
  - Road Safety,
  - Removal of unwanted traffic (Rat Runs),
  - Improved access for pedestrians and cyclists, and
  - Possible internalisation creating shared spaces.
- It is important to note that this development is still in the planning phase and will require further detailed assessment and design as part of any ongoing Development Application submissions for individual buildings.
- This modification is proposing to remove the original service lanes to be provided. Site servicing would have been via the service lane with minimal impacts on the public traffic using the proposed local road network.
- Garbage refuse removal for the residential and retail components fronting both Whitewater Terrace and Ocean Blue Boulevard will via driveway / servicing accesses to be provided as part of the development utilising sub-basement levels.
- Site deliveries for the retail components fronting Ocean Blue Boulevard will be via on street set down / pickup. Loading bays are to be provided on each side of the road formation to address the servicing requirements for the retail component.
- All site servicing for any intended future planned Tavern / Hotel and Serviced Apartments will be completed from off street locations to be determined in the final designs that are yet to be completed.
- Further detailed designs including vehicle swept turn path assessments and height clearance requirements (ie. for commercial vehicles) are to be completed for the detailed designs of all driveway / site servicing access locations.
- As part of the original planning for the area required a bus route to loop through the Seaside and Rainbow Beach Estate are including the to be



constructed Ocean Blue Boulevard. As part of this modification report an assessment of the future bus route was completed. The outcome of the assessment indicated the already constructed sections of the bus route do not meet the current design requirements. It is recommended that Council complete a number of investigations to minimise any road safety issues that may occur as a result of the non conforming bus route. A minimum it is recommended parking restriction signage be installed along the route to minimise any conflicts with parked vehicles.

- A high level assessment of the carparking required for the development has been completed where can be expected there will be between 515 and 558 off street carparking spaces provided as a minimum. The site has capacity to achieve minimum parking requirements.
- As part of ongoing detailed assessments, considerations for internalisation will be considered for the retail and commercial components of the village which may result in a reduction in the amount of carparking spaces for these land use components. Further detailed assessment considerations may be:-
  - Internalisation
  - Accessibility when considering security parking, and
  - Specialise requirements of the land use in question.
- Further detailed assessment and detailed designs will be completed with each development application submission with regard to the geometric design of the carparking areas including driveways.
- The comments regarding the existing roads and bus route will be forwarded to Council's Traffic department for further investigation.
- The Streetwise recommendation was as follows:

"In accordance with the traffic impacts assessments completed for this planning modification in this report it is recommended the following be adjusted / deleted and approved as proposed:

- Deletion of Bombora Way between Ocean Blue Boulevard and Whitewater Terrace.
- Deletion of the Service Lane between Whitewater Terrace and what was Bombora Way.
- Deletion of the Service Lane between the eastern end of Ocean Blue Boulevard and Seaside Drive including redirection of access by properties fronting Summer Circuit (Lot 12 DP 1226839, Seaside Estate). "
- The Streetwise report has been assessed and is considered that the modification to change the road network and delete the laneways and Bombora Way can be supported. The concerns raised during the assessment regarding the manoeuvring from the central parking spaces in Ocean Blue Boulevard have been resolved by a Swept path diagram submitted by the applicant during assessment.

The follow amendments will be required to the current consent conditions:

- Condition A(1) - Add Traffic Management date 7 December 2022
- Condition B(3) - Remove Road 8
- Condition E(22) - Add restriction to require access points as per the proposed modification subdivision plan.

### Water and Sewer

The water and sewer considerations of the modification have been reviewed. From a Water and Sewer prospective the addition of the following condition to modification is recommended:

- Notwithstanding any other conditions of this consent, a Subdivision Certificate may be issued for the Master Lots within the Hilltop Village area being Proposed Lots 101, 401 and 402, provided that:
  - i) Adequate arrangements have been made to facilitate servicing of those lots, to the satisfaction of Council; and
  - ii) Compliance is demonstrated with Conditions E3 and E4 as they relate to the lots being created; and
  - iii) If unserviced Master Lots are proposed, a suitable restriction to the satisfaction of Council, must be provided to alert prospective purchasers that the subject lots are not serviced and that the servicing of the lots is to be provided at the expense of the owner of the land.

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

The amendment relates to road and laneway layouts, which has also amended the subdivision layout. The changes will permit traffic movements as envisaged within the original approvals, but the design has considered the topography of the land, reduced conflict between users by limiting vehicular access points but maintains a main street with bus stops, loading bays and visitor and disabled carparking on the street.

Satisfactory amenity and public pedestrian connections are achieved between Seaside Drive and Surfers Drive, Ocean Blue Boulevard and Whitewater Terrace.

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

Site constraints have been adequately addressed and appropriate conditions maintained and modified as recommended.

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

Noted.

### 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.

Existing consent conditions are in place to address the above matters and are not recommended to be modified.







### 5. CONCLUSION AND STATEMENT OF REASON

The application has been assessed in accordance with Section 4.15 and 4.55 of the Environmental Planning and Assessment Act 1979.

Issues raised during assessment and public exhibition of the modification application have been considered in the assessment of the application.

The proposed modification development does not raise any significant general public interest issues beyond matters already addressed in this report. Overall, the proposed development is consistent with the provisions and objectives of the relevant planning controls and will have an acceptable impact on the surrounding natural and built environment. Approval of the application is considered to be in the public interest as it achieves the LEP objectives for development in the zone. No significant adverse environmental, social or economic impacts on the locality have been identified. Accordingly, the proposal is considered to be in the public interest.

#### Attachments

- 1   DA2012 - 381.5 Recommended Modified Conditions
- 2   DA2012 - 381.5 Plans
- 3   DA2012 - 381.5 Additional Information

Port Macquarie-Hastings Council  
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NSW Australia 2444  
DX 7415  
e council@pmhc.nsw.gov.au

ABN 11 236 901 601



?????? 2023

Parcel Number: 65985

Land Dynamics Australia  
PO Box 2459  
PORT MACQUARIE NSW 2444

Dear Sir/Madam

**DA 2012/381.5 - Modification of Consent Pursuant to Section 4.55 (2) of the Environmental Planning & Assessment Act 1979**

I refer to your application dated 8 April 2021 to modify the design of previous approved subdivision under DA 2012/381 at LOT: 12 DP: 1226839 Summer Circuit LAKE CATHIE.

Please be advised that pursuant to Section 4.55 (2) of the Act, your application to modify the consent has been granted, subject to:

- A. Amend the following conditions as outlined in modified consent:
  - A(1), B(3) and E(22)
- B. Add the following conditions as outlined in modified consent:
  - A(30)
- C. Delete the following conditions:
- D. Reimposition of all other previously approved conditions of consent as originally determined 21 February 2013 and as modified 27 August 2013, 22 December 2016, 15 November 2017 and with this approval dated ????? 2023.

The applicant is advised that Section 8.9 of the Act confers on an applicant who is dissatisfied with the determination, right of appeal to the Land and Environment Court.

A revised schedule of development consent conditions is attached.

Yours sincerely

Apply electronic signoff

**pmhc.nsw.gov.au**

**PORT MACQUARIE OFFICE**  
17 Burrawan Street, Port Macquarie NSW 2444

**WAUCHOPE OFFICE**  
49 High Street, Wauchope NSW 2446

**LAURIETON OFFICE**  
9 Laurie Street, Laurieton NSW 2443



**SCHEDULE OF CONDITIONS ATTACHED TO THIS CONSENT**

The conditions of consent referred to in the Notice of Determination for DA No 2012/381 are as follows:

No.1	Modification No.1	27 August 2013
No.2	Modification No.2	22 December 2016
No.3	Modification No.3	15 November 2017
No.4	Modification No.4	???2023

**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
Volume 1 - Statement of Environmental Effects	Milland Pty Ltd & Seawide Pty Ltd	King & Campbell Pty Ltd	July 2012
Volume 2 - Specialist Reports	Milland Pty Ltd & Seawide Pty Ltd	King & Campbell Pty Ltd	July 2012
Concept Plan and Approval Statement of Commitments	MP07_0010 - Appendices B & C	Minister for Planning and Infrastructure	28 November 2011
Stage 1 Project Approval	MP07_0010 - Appendices D & E	Minister for Planning and Infrastructure	28 November 2011
Site Plan	DA02 - Sheet 01 Revision B	King & Campbell Pty Ltd	23 July 2012
Proposed Subdivision with existing zones	DA03 - Revision C	King & Campbell Pty Ltd	30 January 2013
Proposed Subdivision Layout Plans as modified	DA04 - Sheets 01, 02 - Revision C	King & Campbell Pty Ltd Land Dynamics	30 January 2013 13 December 2016



	5105 Drawing 1 of 1 Revision B		
Indicative Staging Plan and Table as modified	DA05 Revision C and 3.1.2 of SoEE 5105 Drawing 1 of 1 Revision G	King & Campbell Pty Ltd Land Dynamics	31 January 2013 28 November 2016
Indicative Landscape Plan	DA06 Revision B	King & Campbell Pty Ltd	23 July 2012
Infrastructure Servicing Plans	DA07 Revision B Sheet 01 - Intersection detail Sheet 02 - Sewer reticulation strategy Sheet 03 - Water main strategy Sheet 04 - Relocation of existing services Sheet 05 - Proposed sewer truck strategy	King & Campbell Pty Ltd	23 July 2012
Bushfire Asset Protection Zones	DA08 Revision B	King & Campbell Pty Ltd	23 July 2012
Stormwater Management Plan	DA09 Revision B	King & Campbell Pty Ltd	23 July 2012
Indicative Site Cross Sections	Sheets 01 and 02	King & Campbell Pty Ltd	27 July 2012
Voluntary Planning Agreements	Appendix G	-	14 September 2011
Statement of Mutual Intent	Appendix H	-	21 May 2012
Vegetation Management Plan	Appendix I	King & Campbell Pty Ltd	July 2012
Cultural Heritage Management Plan	Appendix J	King & Campbell Pty Ltd	July 2012
Bushfire Protection Assessment	Appendix K	Australian Bushfire Protection Planners Pty Ltd	23 March 2010
Construction Management Strategy	Appendix L	King & Campbell Pty Ltd	July 2012
Total Water Cycle Management Plan	Appendix M	King & Campbell Pty Ltd	July 2012



Geotechnical Constraints Assessment	Appendix N	Martens Consulting Engineers	July 2012
Acid Sulfate Soil Assessment	Appendix O	Martens Consulting Engineers	July 2012
Area 14 Draft Ocean Drive Corridor Plans	Appendix P	King & Campbell Pty Ltd	7 June 2012
Flora and Fauna Survey	Appendix Q	Peter Parker Environmental Consultants	July 2012
Traffic Management	Appendix R	King & Campbell Pty Ltd	July 2012
Hydrogeological Investigation and Stormwater Management Assessment	Appendix S and letter from Martens dated 8 November 2011	Martens Consulting Engineers	July 2012 and 8 November 2012.
Flood Assessment	Appendix T	Cardno Pty Ltd	13 October 2010
Groundwater Management Plan	Appendix U	Martens Consulting Engineers	July 2012
Seawide Estate Section 96(1A) Modification	6766 - 0002 Revision A	Hopkins Consultants Pty Ltd	6 August 2013
Revised Subdivision layout plan for Lots 73-75	5105 Drawing 1 of 1 Issue B	Land Dynamics Australia	2 November 2017
Traffic report for Development Modification submitted to Department of Planning, Industry and Environment		Streetwise Road Safety and Traffic Services	7 December 2022
Revised subdivision layout plan with zoning plan underlay	Drawing 8	Land Dynamics Australia	7 December 2022
Letter regarding proposed modifications ref 5105		Land Dynamics Australia	26 September 2022

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. <sup>4</sup>



- (2) (A004) An application for a Construction Certificate will be required to be lodged with Council prior to undertaking subdivision works and a Subdivision Certificate is required to be lodged with Council on completion of works.
- (3) (A007) The development must only proceed in accordance with the approved stages as set out below:
  - Stage 1 - Project Approval Environmental Works
  - Stage 2 - Boundary Adjustment with Special Terms Right-of-Carriageway over existing track in use.
  - Stage 3 - First Development Stage (S2 on Seawide Property, Stages 1A, 1B and 2 on Milland Property)
  - Stage 4 - Additional Development Stages (S3-S7) and/or (M6, M8, M9 & M10)

Unless specified, the conditions of this consent will apply to all stages, with any decision on any discrepancy with conditions and associated staging resting with Council. Any decision to allow a change to staging will rest with Council along with applicable conditions and any contributions payable. <sup>2</sup>

- (4) (A011) The design and construction of all public infrastructure works shall be in accordance with Council's adopted AUSPEC Specifications which are prescribed at the time of commencement of engineering works.
- (5) (A016) This consent does not override any requirements of the *Native Vegetation Act 2003* and/or the *Environmental Protection and Biodiversity Conservation Act 1999*.
- (6) (A019) Prior to preparation of any engineering design plans, the consultant preparing the design plans will need to contact Council's Engineering Development Section within Infrastructure Division to discuss the extent and scope of all works and details required on the design plans to conform to Council's Development Control Plans, Codes, Policies and AUSPEC Specifications. Some of the issues to be discussed and incorporated in the design plans include, but are not limited to the following:
  - Traffic Impact Study (TIS) Requirements
- (7) (A029) The provision, at no cost to Council, of concrete foot paving along the Ocean Drive frontage as follows:
  - a) From Ocean Drive & Miala Street intersection to proposed shareway/footway along the eastern side of Road #6, a 2.5m metre wide shareway/footpath is required with design details in accordance with AUSPEC and Council Standard drawings.  
  
Construction of works shall be completed as part of the earlier of Milland (stages 1A, 1B & 2) and/or Seawide (S2) development stages. Details to be provided in conjunction with the Construction Certificate for subdivision works and/or Section 138 Roads Act Application.
  - b) From the existing Ocean Drive pedestrian refuge between Lake Cathie Medical Centre and Abel Tasman Road connecting to the beach access, a minimum 1.2m metre wide footpath is required with design details in accordance with AUSPEC and Council Standard drawings. The location of the access can be provided through one of the following:



- 1) a 4m wide public access way connecting Ocean Drive to the Road #3 public footpath network; or
- 2) Concrete footpath paving along the eastern side of Ocean Drive (from the pedestrian refuge to Road #5 pedestrian footpath paving network).

Construction of works shall be completed as part of the first development stage of Seawide (S2) works. Details to be provided in conjunction with the Construction Certificate for subdivision works and/or Section 138 Roads Act Application. <sup>2</sup>

- (8) (A031) Approval pursuant to Section 138 of the Roads Act, 1993 to carry out works required by the Development Consent on or within public road is to be obtained from Port Macquarie-Hastings Council.

Such works include, but not be limited to:

- Civil works
  - Traffic management
  - Work zone areas
  - Hoardings
  - Concrete foot paving (width)
  - Footway and gutter crossing
  - Functional vehicular access
  - Ocean Drive & Abel Tasman Intersection Works
- (9) (A032) The developer is responsible for any costs relating to minor alterations and extensions of existing roads, drainage and Council services for the purposes of the development.
- (10) (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.

- (11) (A034) At the terminal end to any public road associated with a given development stage, "dead-end" roads are to be extended to AUSPEC standard (AUSPEC D1.5) joining smoothly with the existing section of road ending in a temporary sealed nine (9) metre radii cul-de-sac with reflectorised posts.

Prior to Subdivision Certificate, a special terms right-of-carriageway shall be formed over temporary turning circles to enable the use of the turning area by Council and the public with formal released of the easement in full with future road dedication of the turning area.

- (12) (A044) Extension or modification of the town water supply system where necessary to serve the development, at no cost to Council.
- (13) (A045) Extension or modification of the town sewerage system where necessary to serve the development, at no cost to Council.
- (14) (A047) Provision to each lot of a separate sewer line to Council's main.
- (15) (A050) All water, sewer and stormwater services necessary to service the development must be provided in accordance with Council's requirements. All services are to be designed and constructed in accordance with Council's AUSPEC Specifications.
- (16) (A052) All Sewage Pumping Stations are to be contained wholly within a separate lot dedicated to Council inclusive of constructed and sealed access handle to the public road. Construction details are to be submitted to Port Macquarie-Hastings Council with the application for Subdivision Construction Certificate.
- (17) (A053) The required relocation and/or replacement of the sewer pipe that traverses the land is the responsibility of the proponent. Any relocation or replacement work shall be undertaken in accordance with Council's adopted AUSPEC Design and Construction Guidelines. Any costs associated with these works shall be the responsibility of the proponent or any other persons as agreed to otherwise.

Construction details are to be submitted to Port Macquarie-Hastings Council with the application for Subdivision Construction Certificate.

- (18) (A056) One (1) metre clear distance is required around any vertical inspection shaft and any manhole.
- (19) (A057) The applicant is to ensure the proposed development will drain to the existing point of connection to Council's sewerage system.
- (20) (A195) Release of each subdivision stage will be contingent upon the successful implementation of the Vegetation Management Plan to Council's satisfaction.
- (21) (A198) Ocean Drive Traffic Impact Study for Ocean Drive & Abel Tasman Road Intersection Works. As required or warranted, the intersection shall be incrementally upgraded to the ultimate intersection design (including signalisation) as required in accordance with the Area 14 corridor traffic requirements. All cost associated with construction of intersection improvements (including but not limited to signalisation, road work, drainage, pedestrian features, utility relocations, street lighting, and line marking) shall be constructed at no cost to Council or the RMS. Improvements cost and cost



offsets shall be defined in a VPA or Section 94 contribution plan scheme, as appropriate.

1. Prior to the issue of the first Construction Certificate (for subdivision works) associated with Lot 4, DP 615261 (Seawide, S2) or Lot 1 DP 374315 (Milland, stages 1A, 1B & or 2), the applicant shall provide the following:

- a. Traffic Impact Study (TIS) by a suitably qualified traffic consultant analysing the capacity and operation of the Ocean Drive & Abel Tasman Drive intersection. Requirements of the TIS shall be agreed upon through a methodology statement with Council and the RMS prior to study.

At a minimum the traffic study shall evaluate:

- i. Traffic generating impacts associated with the full buildout of the development lands anticipated to utilize the intersection (inclusive of Lot 1, DP 374315; Lot 4, DP 615261; Lot 1232, DP 1142133; and Lot 5, DP 25866). Traffic generation shall be estimated from the Roads & Maritime Services (RMS), *Guide to Traffic Generating Development*.
- ii. Existing traffic impacts at the Ocean Drive & Abel Tasman Road intersection during the morning and afternoon peak periods.
- iii. Future traffic conditions associated with traffic generating impacts and background traffic growth not associated with the development lands stated above.

Traffic analysis shall be conducted using the agreed upon methodology, software (i.e. SIDRA or similar), and procedures to evaluate:

- i. Existing and future traffic conditions at the Ocean Drive & Abel Tasman Road intersection.
  - ii. Required intersection geometry to address develop detailed concept plans for future intersection improvements (including signalisation).
- b. Detailed concept plans for the ultimate intersection design (including signalisation) at Ocean Drive & Abel Tasman Road intersection. Concept plans shall be formed to the necessary level of detail to establish the ultimate intersection layout required at completion of the development and establish necessary subsurface infrastructure locations (i.e. utility and conduit locations) to be constructed with intersection improvements and shall fit in with Council Area 14 corridor planning of future Ocean Drive widening to a four-lane (dual carriageway) arterial.

2. Prior to the issue of each Construction Certificate (for subdivision works) associated with this development application on Lot 4, DP 615261 or Lot 1 DP 374315, the applicant shall provide the following:

- a. Traffic Impact Study (TIS) by a suitably qualified traffic consultant analysing the capacity and operation of the Ocean Drive & Abel Tasman Drive intersection. Requirements of the TIS shall be agreed upon through a methodology statement with Council and the RMS prior to study. The purpose of the study will be to determine any:
  - i. Necessary intersection and road improvements to be constructed with the associated development stage(s).
  - ii. Signalisation requirements with the proposed development stage. Signal warrant analysis shall be conducted using the current Roads



& Maritime Services (RMS) traffic signal warrant criteria at the time of study.

At a minimum the traffic study shall evaluate:

- iii. Traffic generating impacts associated with the current development stage(s) anticipated to utilize the intersection (inclusive of Lot 1, DP 374315; Lot 4, DP 615261). Traffic generation shall be estimated from the Roads & Maritime Services (RMS), *Guide to Traffic Generating Development*.
  - iv. Existing traffic impacts at the Ocean Drive & Abel Tasman Road intersection during the morning and afternoon peak periods.
  - v. Vested and/or reserved traffic impacts from previously approved development stages not realised in existing conditions.
  - vi. Future traffic conditions associated with traffic generating impacts and background traffic growth not associated with the development lands stated above.
- b. Any outstanding intersection improvements associated with the ultimate intersection design (including signalisation) not completed prior to the final stage of development shall be constructed as part of the final stage of this development. <sup>2</sup>
- (22) (A199) - Right of Carriageway with Lead In Road Boundary Adjustment. If no road has been formed to provide public access to existing Lot 1, DP 374315 (as proposed to be modified by boundary adjustment in Stage 2), a right-of-carriageway shall be formed in favour of existing Lot 1, DP 374315 (as modified by boundary adjustment) as part of the application for Subdivision Certificate for the boundary adjustment (in Stage 2) to provide legal access.
- (23) The three (3) sewer rising mains that currently traverse Lot 4 DP 615261 are to be relocated to within proposed Road No 1 in accordance with the staging plan. Pipelines are to be installed by the developer. Connections to live mains are to be carried out by Council or under Council supervision.
- (24) The sewer infrastructure works as detailed in the sewer reticulation strategy are to be undertaken at the respective stages as outlined in the staging table and staging plan.
- (25) The overflow gravity sewer main is to be constructed to the new SPS in Lot 1 DP 374315 during stage S2. The existing system has the capacity to accept an additional 20 residential lots. Once 20 residential lots are released (or additional ET as approved by Council's Sewerage Services Manager) the sewer by pass works shall be completed prior to the release of any further Subdivision Certificates.
- (26) All abandoned sewer rising mains shall be removed and appropriately disposed of.
- (27) The applicant is to enter into and comply with the planning agreements under section 93F of the *Environmental Planning and Assessment Act 1979*, known as the Seaside Area 14 Stage 1B Planning Agreement dated 14 September 2011 between Port Macquarie Hastings Council and Seaside Pty Ltd and the Milland Area 14 Stage 1B Planning Agreement dated 14 September 2011 between Port Macquarie Hastings Council and Milland Pty Ltd, in relation to the carrying out of the development the subject of this consent.
- (28) The Environmental Management Land is to be dedicated as a public reserve free of cost to Council in accordance with the Seaside Area 14 Stage 1B Planning





Agreement and Milland Area 14 Stage 1B Planning Agreement at the time of dedication of the adjoining perimeter road in accordance with the approved staging plan, unless otherwise agreed by Council. The south-western environmental management land is to be dedicated as a public reserve free of cost to Council at the time of dedication of the adjoining road as part of stage 1A. <sup>2</sup>

- (29) The whole of the eastern component of the Local Park and adjoining perimeter road to be dedicated as a public reserve free of cost to the council in accordance with the Seaside Area 14 Stage 1B Planning Agreement and Milland Area 14 Stage 1B Planning Agreement at the same time as dedication of the perimeter road for stage 1A or S2, whichever occurs first. The remainder of the local park is to be dedicated as a public reserve free of cost to the Council in conjunction with the first Subdivision Certificate for land zoned B4 and located immediately adjacent to the local park. <sup>2</sup>
- (30) Notwithstanding any other conditions of this consent, a Subdivision Certificate may be issued for the Master Lots within the Hilltop Village area being Proposed Lots 101, 401 and 402, provided that:
- Adequate arrangements have been made to facilitate servicing of those lots, to the satisfaction of Council; and
  - Compliance is demonstrated with Conditions E3 and E4 as they relate to the lots being created; and
  - If unserviced Master Lots are proposed, a suitable restriction to the satisfaction of Council, must be provided to alert prospective purchasers that the subject lots are not serviced and that the servicing of the lots is to be provided at the expense of the owner of the land.<sup>4</sup>

#### **B – PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE**

- (1) (B001) 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 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. New roads within the subdivision.
  3. Earthworks, including filling of the land for flood protection.
  4. Public parking areas including;
    - a. Driveways and access aisles;
    - b. Parking bays;



- c. Delivery vehicle service bays & turning areas in accordance with D1 and AS 2890.
  5. Sewerage reticulation.
  6. Water supply reticulation.
  7. Stormwater systems.
  8. Erosion & Sedimentation controls.
  9. Location of all existing and proposed utility services including:
    - a. Conduits for electricity supply and communication services (including fibre optic cable).
    - b. Water supply
    - c. Sewerage
    - d. Stormwater
  10. Landscaping.
  11. Provision of a bus bay in accordance with Council's adopted AUSPEC Design and Construction Guidelines and shelter in accordance with Council standard drawings located at in accordance with Council's current requirements along Collector Road network.
  12. Provision of a paved and signed cycleway route along Road #1 (from Ocean Dr to Road #14, Road #14 (from Road #1 to Road #6, Shareway (from Road #14 to Ocean Drive in accordance with AUSTRoads Part 15 and Council's adopted AUSPEC Design and Construction Guidelines.
  13. Provision of pedestrian access ways a minimum of 4m wide, from Ocean Drive pedestrian refuge to Road #3 or Road #5 footpath network; such access ways to include a concrete pathway 1.2 m wide including kerb ramps where necessary.
  14. Detailed intersection layout at the junction of Ocean Drive & Abel Tasman Road, Ocean Drive & Hilltop Village Road Roundabout; all additional public intersections; and private access laneways servicing the "Hilltop Village" in accordance with AUSTRoads Pt 5 "Intersections at Grade" giving particular attention to sight distance.
  15. Designs for Stormwater/detention/water quality treatment facilities must be accompanied both a construction staging plan to detail the timing of construction of the varying components of the system and by Maintenance Schedule(s) prepared in accordance with AUSPEC D7.
- (3) (B004) Road network within the subdivision is to be categorised with carriageway width as follows: <sup>1</sup>

Road 1 No. "Lead in Road"	Width 25m	Type: Collector Road (with on street cycleways)  Pavement to be designed to "Commercial "Road Standard"
Road 2 No.	Width 16m	Type: Commercial Street
Road 3 No. (south of Road #2)	Width 15m	Type: Local Street

		Pavement design to "Commercial" Street Standard with SA kerb adjacent to medium density development
Road 3 No. (north of Road #2)	Width 15m	Type: Local Street
Road 4 No.	Width 15m	Type: Local Street
Road 5 No.	Width 15 m	Local Street
Road 6 No. "Recreational Street"	Width 19m	Type: Collection Road Pavement design to "Commercial" Street Standard between Road #3 and Road #9 with SE kerb only permitted adjacent to "General Residential" uses
Road 7 "Hilltop Village Main Street" No.	Width 25m	Type: Commercial Street
<del>Road 8 No.</del>	<del>Width 16m</del>	<del>Type: Commercial Street</del>
Road 9 No.	Width 16m	Type: Local Street Pavement design to "Commercial" Street Standard with SA kerb adjacent to medium density development
Road 10 No.	Width 15m	Type: Local Street
Road 11 No.	Width 15m	Type: Local Street
Road 12 No.	Width 15m	Type: Local Street
Road 13 No.	Width 15m	Type: Local Street with SA kerb adjacent to medium density development



Road 14 No.	Width 15m	Type: Collector Road (with on-street cycleways) with SA Kerb
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- (4) (B005) Approved design plans by the RMS of the proposed engineering works detailed below shall be submitted to the Council as the Road Authority for approval prior to the issue of a Construction Certificate.
  - *Ocean Drive & Abel Tasman Road intersection improvements and signalisation*
- (5) (B006) The provision of additional civil works at no cost to Council necessary to ensure satisfactory transitions to existing work as a result of work conditioned for the development. Design plans are to be approved by Council prior to issue of the Construction Certificate.
- (6) (B007) If engineering works are of a value equal to or greater than \$25,000, a detailed estimate of cost of the civil engineering works and documentary proof of payment of the levy required by the Building and Construction Industry Long Service Payments Act must be provided to Council prior to any approval of engineering plans.
- (7) (B008) This consent approves the staging of the subdivision subject to:
  - a. the applicant supplying an updated staging plan when lodging a Construction Certificate application showing each of the preceding stages and the proposed stages of the subdivision;
  - b. compliance with any other conditions of consent in relation to the staging of works.
- (8) (B015) Provision to each lot of a separate water connection (un-metered and sealed) to Council's main. All work will need to comply with the requirements of Council's adopted AUSPEC Design and Construction Guidelines and Policies.
- (9) (B016) Provision to each lot of a separate sewer line to Council's main. All work will need to comply with the requirements of Council's adopted AUSPEC Design and Construction Guidelines and Policies. Any abandoned sewer junctions are to be capped off at Council's sewer main.  
  
Construction details are to be submitted to Port Macquarie-Hastings Council with the application for Construction Certificate.
- (10) (B017) Submission to Council of an application for water service connections and compliance with Council's requirements for the provision of such connections. Payments of costs to provide for these connections and/or extensions are to be made prior to the issue of the Construction Certificate. This application is also to include an application for the disconnection of any existing service not required.
- (11) (B019) The local water supply reticulation mains are to loop within the subdivision to minimise dead ends and connect to the existing reticulation wherever possible.
- (12) (B022) Prior to issue of a Construction Certificate, for the proposed total development, the proponent is to provide a water supply strategy detailing subdivision staging and the corresponding water supply work (including augmentation) necessary to support each stage. The strategy is to incorporate



the latest changes in water supply design requirements as well as being modelled on software compatible with that used by Council.

- (13) (B030) An application under Section 138 of the Roads Act 1993 is to be submitted to and approved by Council for works associated with the development on or within the Public Road.
- (14) (B033) An Erosion and Sediment Control Management Plan shall be submitted to and approved by the Principal Certifying Authority with the application for Construction Certificate.

The plan shall include measures to:

- a. Prevent site vehicles tracking sediment and other pollutants from the development site.
  - b. Dust control measures.
  - c. Safety measures for temporary and permanent water bodies including fencing and maximum batter slopes.
  - d. Contingencies in the event of flooding.
- (15) (B034) 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.

- (16) (B039) Structural engineer's details for all reinforced concrete footings (Boardwalk Works) are to be submitted with the application for Construction Certificate.
- (17) (B052) The provision of splay corners in accordance with Port Macquarie-Hastings Council DCP 2011. Details must be submitted to and approved by Council prior to issue of the Construction Certificate.
- (18) (B053) The design of the carpark and accesses is to be in accordance with AUSPEC and AS 2890. Certification of the design by a suitably qualified consultant is to be provided prior to issue of the Construction Certificate (for public car park and on-street parking).
- (19) (B056) Prior to the issue of any Construction Certificate plans, the provision of water and sewer services to the land are to be approved by the relevant Water Authority and relevant payments received.



- (20) (B057) The existing sewer including junction and/or stormwater drainage shall be located on the site and the position and depth indicated on the plans which accompany the application for the Construction Certificate.
- (21) (B195) The water main layout proposed with the development application as well as proposed water main adjustments are acceptable in principle. The water main layout shown is to also include parallel reclaimed water mains. Final details and water main sizings are to be addressed with the engineering plans.
- (23) (B197) A stormwater drainage plan prepared in accordance with AUSPEC D5 and D7 and the Total Water Cycle Management Plan dated July 2012 prepared by King and Campbell must be submitted with the application for Construction Certificate. The plan shall include details of any staging of the construction/landscaping of the stormwater treatment facilities and nominate the trigger(s) for handover of the completed facilities to Council at the completion of the development.
- (24) (B198) Road #14 shall be constructed full width between Road #1 and Road #6 as part of Stage 1B. <sup>2</sup>
- (25) (B199) As Traffic control signals are required on a classified road. The developer will be required to enter into a Works Authorisation Deed (WAD) with RMS, which will exercise its powers under Section 87 of the Roads Act 1993 (The Act) and/or the functions of the roads authority, to oversee the Traffic control signals in accordance with Sections 64 and 71, as applicable, for all works under the WAD.  
  
Upon Council's determination of the warrants for signalisation of the Ocean Drive - Abel Tasman intersection, the developer shall enter into a WAD with RMS for all road works associated with the installation of Traffic Control Signals on the classified road (Ocean Drive).  
  
Upon Council's determination of the warrants for the signalisation of the Ocean Drive - Abel Tasman intersection the developer shall complete all road works associated with the installation of traffic control signals as required under the WAD to practical completion, as determined by RMS, prior to issuing any further subdivision certificate for the proposed subdivision. All works shall be undertaken at full cost to the developer to the satisfaction of RMS.
- (26) (BP200) Amended detailed Landscape Plans are to be submitted and approved by Councils Recreation and Buildings section for each stage of the development prior to the issue of a Construction certificate. The detailed landscape plans are to include a modified Street Tree Species List, a minimum 12 months maintenance schedule, Advanced Street Tree Planting Pit detail with all street tree stock to be advanced 75 to 100litre NATSPEC compliant.
- (27) (BP201) A Tree Protection Plan is to be submitted and approved by Councils Recreation and Buildings section to ensure all measures are taken to prevent damage to trees and other vegetation (including root systems) to be retained during site works and construction. Please contact Council's Tree Management Section for details to be provided in the Tree Protection plan.
- (28) Cost sharing of the proposed sewer infrastructure works is to be determined and formalised.

#### 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) (C002) Prior to the commencement of any works, a pre-construction meeting shall be organised by the applicant. This meeting is to be attended by the applicant or consultants, principal contractor and Council's development engineer or his representative.
- (3) (C004) Erosion and sediment controls in accordance with the approved management plan shall be in place prior to the commencement of any works or soil disturbance and maintained for the entirety of the works until the site is made stable by permanent vegetation cover or hard surface.
- (4) (C005) 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.

Each toilet provided must:

- a. be a standard flushing toilet, connected to a public sewer, or if connection to a public sewer is not available, to an on-site effluent disposal system approved by the Council, or
- b. an approved temporary chemical closet.

The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.

- (5) (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.
- (6) (C008) No access through the reserve shall be allowed without first obtaining written approval from Council's Parks and Gardens Manager. No clearing or damage to any vegetation on the reserve is permitted. No spoil, fill, waste liquids or solid materials shall be stockpiled on or allowed to move beyond the fence line for any period on the adjoining reserve during or after the development. In the event of accidental damage, the site must be revegetated to the satisfaction of Council. Such approval would need to be undertaken in accordance with Council Policy.
- (7) (C012) Prior to the commencement of work, the location and depth of the sewer main and connection point in relation to the floor level shall be confirmed to ensure that appropriate connection to the sewer can be achieved.
- (8) (C013) Where a sewer manhole exists within a property, access to the manhole shall be made available at all times. Before during and after construction, the sewer manhole 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.
- (9) (C195) A Qualified ecological consultant is to inspect all native trees approved for removal prior to felling. If there are any koala or other fauna species in the tree, work is to cease until the animal has moved from the area.
- (10) (C196) Trees protection fencing is to be in place prior to commencement of any works on site and must remain in place until the works are complete. No building materials or other items is to be placed or stored within fenced off areas.

**D – DURING WORK**

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

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

- (2) (D003) The slope of the cut/fill batter shall be in accordance with Council's adopted AUSPEC Design and Construction Guidelines. Adequate safety fencing is to be provided if maximum batter slope is exceeded.
- (3) (D004) The capacity and effectiveness of erosion and sediment control measures shall be maintained at all times in accordance with the approved management plan until such time as the site is made stable by permanent vegetation cover or hard surface.
- (4) (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.
- (5) (D014) Work on the project being limited to the following hours, unless otherwise permitted by Council:-
- Monday to Saturday from 7.00am to 6.00pm
  - No work to be carried out on Sunday or public holidays
- The builder to be responsible to instruct and control his sub-contractors regarding the hours of work.
- (6) (D019) Building equipment and/or materials shall be contained wholly within the site and shall not be stored or operated on the footpath or roadway, unless specific written approval has been obtained from Council beforehand.



- (7) (D025) The sewer junction shall be capped off with an approved fitting in conjunction with demolition works and Council notified to carry out an inspection prior to backfilling of this work.
- (8) (D032) A garbage receptacle for the reception of all waste materials from the site shall be provided prior to building work commencing and shall be maintained and serviced for the duration of the work.
- (9) (D033) Should any Aboriginal objects be discovered in any areas of the site then all excavation or disturbance to the area is to stop immediately and the National Parks and Wildlife Service, Department of Environment and Conservation is to be informed in accordance with Section 91 of the *National Parks and Wildlife Act 1974*. Subject to an assessment of the extent, integrity and significance of any exposed objects, applications under either Section 87 or Section 90 of the *National Parks and Wildlife Act 1974* may be required before work resumes.
- (10) (D035) Stockpiles of topsoil, sand, aggregates, spoil or other material shall be stored clear of any natural drainage path, trees (nominated for retention) constructed drainage systems, easement, water bodies, or road surface and located wholly within the site with measures in place to prevent erosion or movement of sediments in accordance with the approved management plan. All spillage of materials, as a result of delivery or handling, must be removed as soon as practicable and placed into suitable receptacles for reclamation or disposal in a manner that does not cause pollution of the environment.
- (11) (D036) Open and piped drains, gutters, roadways and access ways shall be maintained free of sediment for the duration of the work. When necessary, roadways shall be swept and drains and gutters cleaned of sediment build up.
- (12) (D195) Street tree planting is to be undertaken by a landscaper, horticulturist or arborist experienced in planting advanced trees in accordance with Councils Advanced Street Tree Planting Guide.
- (13) (D196) Removal of trees is to be undertaken in compliance with Workplace Health and Safety Act 2011, Regulations and NSW Work Cover code of practice amenity tree industry.
- (14) (D197) Disposal of trees approved for removal is to be undertaken in a sustainable manner where possible such a chipped or mulched and reused onsite. Burning of vegetation is not permitted.

#### **E – PRIOR TO THE ISSUE OF SUBDIVISION CERTIFICATE**

- (1) (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.
- (2) (E006) Completion of engineering and environmental works for any land (other than proposed public roads) to be transferred to Council, in accordance with the approved Construction Certificate.
- (3) Payment to Council, prior to the issue of the Subdivision Certificate, unless deferral of payment has been approved by Council, of the Section 94 contributions set out in the "Notice of Payment – Developer Charges" schedule attached to this consent. The contributions are levied, pursuant to the Environmental Planning and Assessment Act 1979 as amended, the Seawide Area 14 Stage 1B Planning Agreement and the Milland Area 14 Stage 1B Planning Agreement dated 14 September 2011 and in accordance with the provisions of the following plans:



- Hastings S94 Administration Building Contributions Plan
- Hastings Administration Levy Contributions Plan
- Community Cultural and Emergency Services Contributions Plan 2005

The plans may be viewed during office hours at the Council Chambers located on the corner of Burrawan and Lord Streets, Port Macquarie, 9 Laurie Street, Laurieton, and High Street, Wauchope.

The attached "Notice of Payment" is valid for the period specified on the Notice only. The contribution amounts shown on the Notice are subject to adjustment in accordance with CPI increases adjusted quarterly and the provisions of the relevant plans. Payments can only be made using a current "Notice of Payment" form. Where a new Notice of Payment form is required, an application in writing together with the current Notice of Payment application fee is to be submitted to Council.

- (4) As part of Notice of Requirements by Port Macquarie-Hastings Council as the Water Authority under Section 306 of the Water Management Act 2000 the payment of a cash contribution, prior to the issue of a Subdivision Certificate, unless deferral of payment has been approved by Council, of the Section 64 contributions, as set out in the "Notice of Payment – Developer Charges" schedule attached to this consent is required. The contributions are levied in accordance with the provisions of the relevant Section 64 Development Servicing Plan towards the following:
  - augmentation of the town water supply headworks
  - augmentation of the town sewerage system headworks
- (5) (E010) Driveways, access aisles and parking areas shall be provided with an approved surface. Such a surface shall be on a suitable pavement, constructed and maintained in accordance with Council's Development, Design and Construction Manuals (as amended).
- (6) (E012) Dedication as public road to Council, the area required for road widening along the frontage of the development at no cost to Council. Details are to be incorporated in the plan of subdivision.
- (7) (E032) Provision within the titles to the land for those lots having frontage to Road 1 - Ocean Drive (Lots 3-9 & 65) & Road 2 - Ocean Drive (Lots 3-9 & 65) of a restrictive covenant denying vehicular access across their frontages. Evidence of registration of the restriction shall be submitted prior to occupation or the issue of the Subdivision Certificate.
- (8) (E033) All public roads are to be constructed in accordance with approved construction plans and Council's current AUSPEC Specifications and dedicated up to the boundaries of all adjoining properties where shown on the approved plan.
- (9) (E034) Prior to occupation or the issuing of the Subdivision Certificate provision to the Principal Certifying Authority of documentation from Port Macquarie-Hastings Council being the local roads authority certifying that all matters required by the approval issued pursuant to Section 138 of the Roads Act have been satisfactorily completed.
- (10) (E035) Prior to occupation or the issuing of the Occupation Certificate, provision to the Principal Certifying Authority of documentation from the Roads and Traffic Authority (RTA) being the roads authority certifying that all matters required by



approval issued by Section 61 and/or Section 138 of the Roads Act have been satisfactorily completed. A copy of this is to be submitted to Council prior to the release of the engineering security bond.

- (11) (E039) An appropriately qualified and practising consultant is required to furnish a Compliance Certificate to the Principal Certifying Authority confirming:
- 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.
- (12) (E049) 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 Occupation Certificate. The copyright for all information supplied, shall be assigned to Council.
- (13) (E053) All works shall be certified by a practicing Civil Engineer or Registered Surveyor as compliant in accordance with the requirements of AUSPEC in accordance with the Council's *Interim Requirements for the Maintenance and Certification of Public Infrastructure Provided Through Land Developments* (dated 6 September 2010) prior to issue of the release of the security bond to guarantee completion of public works.
- (14) (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.
- (15) (E061) Landscaped areas being completed prior to occupation or issue of the Subdivision Certificate or an appropriate bond is in place.
- (16) (E064) Provision of street lighting to all new roads in accordance with AS1158 and compliance with the requirements of the electricity authority regarding provision of electricity to serve the development. Provision shall be made for placement of conduits for future requirements or upgrades. Evidence by way of letter from the electricity provider, indicating compliance with this condition shall be submitted prior to the issue of the Subdivision Certificate.

Any proposal to erect non-standard, prestige or Smart Poles (or equivalent) street lighting shall:

- Forward all plans to the service provider for comment;
- Include instruction for completion of 'Lighting Requirements';
- be referred to Council together with details of the difference in annual charges over a twenty five (25) year period in accordance with Policy R5 – Street Lighting on Public Roads;
- Supply to Council to keep in stock, one (1) extra pole for every six (6) run of poles.



- (17) (E065) 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.
- (18) (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
- (19) (E068) Prior to the issue of a Subdivision Certificate, written advice is to be submitted from the relevant service providers confirming that its requirements for the provision of services required by this consent or other approval have been satisfied.
- (20) (E072) Lodgement of a security deposit with Council upon practical completion of the subdivision works in accordance with the Council's *Interim Requirements for the Maintenance and Certification of Public Infrastructure Provided Through Land Developments* (dated 6 September 2010).
- (21) (E075) Road names proposed for the subdivision shall be submitted for Council approval prior to lodgement of the Subdivision Certificate. A suitable name for any new road(s) shall be in accordance with Council's adopted policy.
- (22) (E076) The plan of subdivision and Section 88B instrument shall establish the following restrictive covenants; with the Council having the benefit of these covenants and having sole authority to release, vary or modify these covenants. Wherever possible the extent of the land affected by these covenants shall be defined by bearings and distances shown on the plan of subdivision.
  - a. Prohibiting direct vehicular access to and from Ocean Drive.
  - b. Prohibiting direct vehicle access to Road 7 and Road 9 other than the locations specified on the revised subdivision layout prepared by land Dynamics Australia, dated 7 December 2022.

Details are to be submitted to Council prior to issue of the Subdivision Certificate.<sup>4</sup>
- (23) (E079) Submission to the Principal Certifying Authority of certification by a Registered Surveyor prior to the issue of a Subdivision Certificate that all services and domestic drainage lines are wholly contained within the respective lots and easements.
- (24) (E080) The applicant is required to make provision in the application for a Subdivision Certificate:
  - a. dedication as public road of the area required for road widening,
  - b. dedication as public road of a 3m splay corner.
- (25) (E081) The applicant will be required to submit prior to the issue of the Subdivision Certificate, a geotechnical report confirming construction of all earthworks in accordance with AUSPEC D6 and/or indicating the suitability of all allotments for future home/building sites; such report to provide details of:





The surface levels of the allotments created and any other area filled or reshaped as part of the development.

- a. Compaction testing carried out to Level 1 of Appendix B AS 3798.
  - b. Standard penetration tests and calculated N values.
  - c. Bore logs
  - d. Site classification of all allotments in accordance with AS2870.2011 - *Residential Slabs and Footings*.
- (26) (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 Subdivision Certificate. The copyright for all information supplied, shall be assigned to Council.
- (27) A restriction as to user under Section 88B of the Conveyancing Act, 1919 shall be placed on the titles of the proposed residential lots with a direct frontage to Ocean Drive. The restriction shall specify that prior to Council or the Principal Certifying Authority issuing a Construction Certificate or Complying Development Certificate a report shall be submitted to the Principal Certifying Authority certifying that the building design incorporates category 2 construction measures and will achieve the acceptable daytime and night time noise levels contained within AS/NZS 2107:2000 - Acoustics - Recommended design sound levels and reverberation times for building interiors.
- (28) Prior to or concurrently with any Subdivision Certificate creating the laneway or proposed Lots 73 or 75 south of Hilltop Village Main Street (proposed Road No 7), the entire private Right of Access shown on the approved plans shall also be created benefitting adjacent lots. This includes the Right of Access over proposed Lot 167 benefitting Lots 73 and 75. 6x6m splay corners or lesser area that caters for manoeuvring of a Medium Rigid fire truck shall be provided in each direction at each bend or tee. Prior to dedication of any land for the laneway to Council, the laneway shall be constructed to AUSPEC Commercial standard.<sup>3</sup>

#### F – OCCUPATION OF THE SITE

nil

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

#### Rights of Appeal

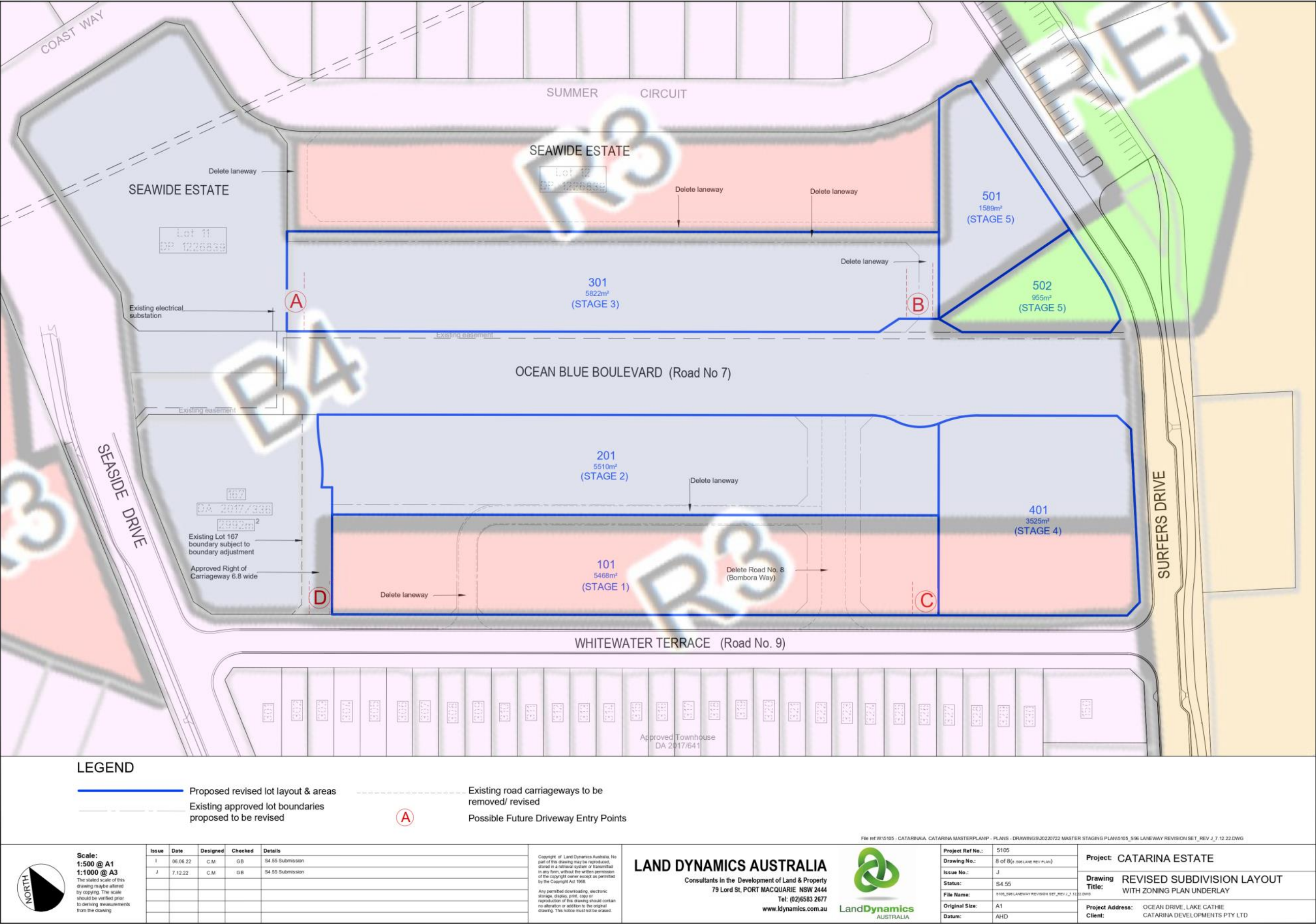


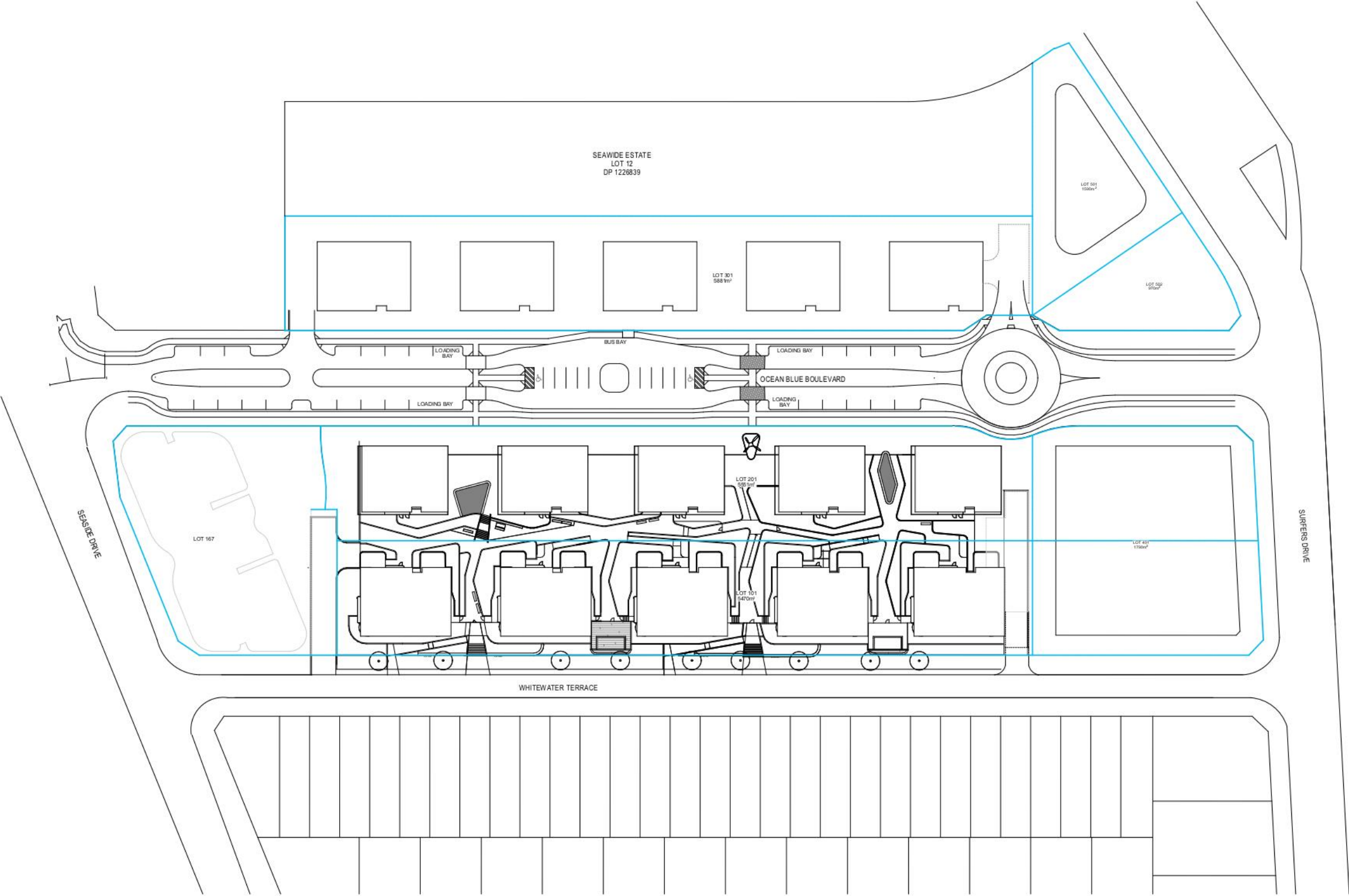
If you are dissatisfied with this decision a request for a review of the determination may be made to Council, under the provisions of Section 8.2 of the Environmental Planning and Assessment Act 1979.

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

Yours sincerely

Apply electronic signoff





PO Box 601 Kotara  
NSW 2289 Ph 49524425  
Nominated Architect: Daniel Hadley 8209

Notes  
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Verify all dimensions and levels on site and report any discrepancies prior to the commencement of work and any ordering of materials.  
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The completion of the issue details checked and authorised section below is confirmation of the status of the drawing. The drawing shall not be used for construction unless endorsed "For Construction" and authorised for issue.

Consultants

Issue	Description	Date
01	Client Review- Masterplan	22/08/2022
02	Masterplan	23/08/2022
10	Masterplan Updated roads	25/08/2022
P4	For Review	8/09/2022

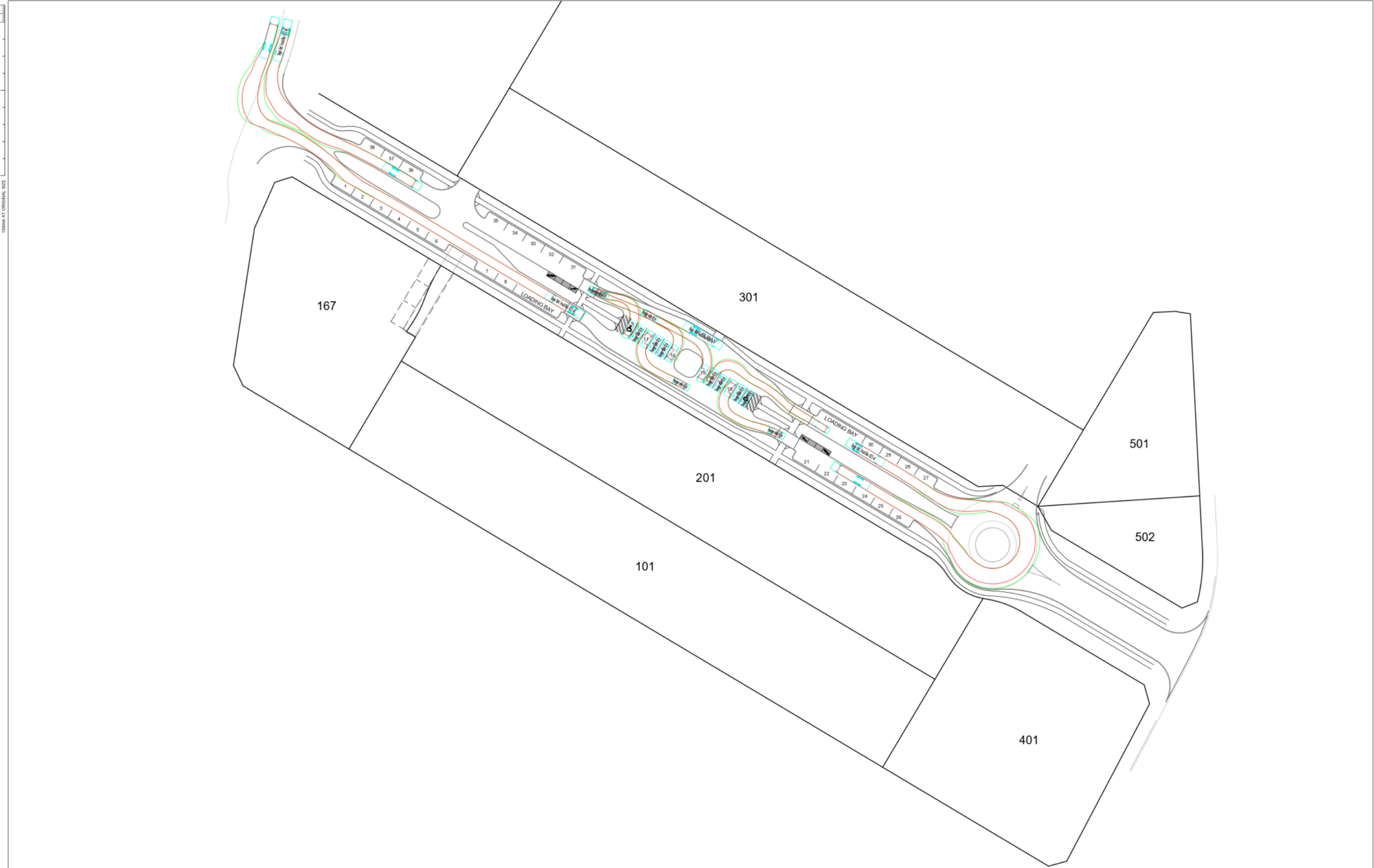
Project  
Residential Apartment Building  
Location  
Masterplan for Catarina Estate  
Client  
Justice Fox

Drawing  
MASTERPLAN  
Scale  
1:1000 @ A3  
DRAWN  
NE, RR  
QA CHECKED

Drawing Number  
DA001  
Issue  
P4  
Project Number  
22101

ELK  
designs





REV	DESCRIPTION	DATE	DRAWN	SURVEY	CHECK	APPROVED
A		07/02/23				

**SCALES**

0 5 10 20 30

Full Size 1:500, Half Size 1:1000

Scale (m)

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CONTACT DIAL BEFORE YOU DIG PRIOR TO COMMENCING ANY EXCAVATION WORKS

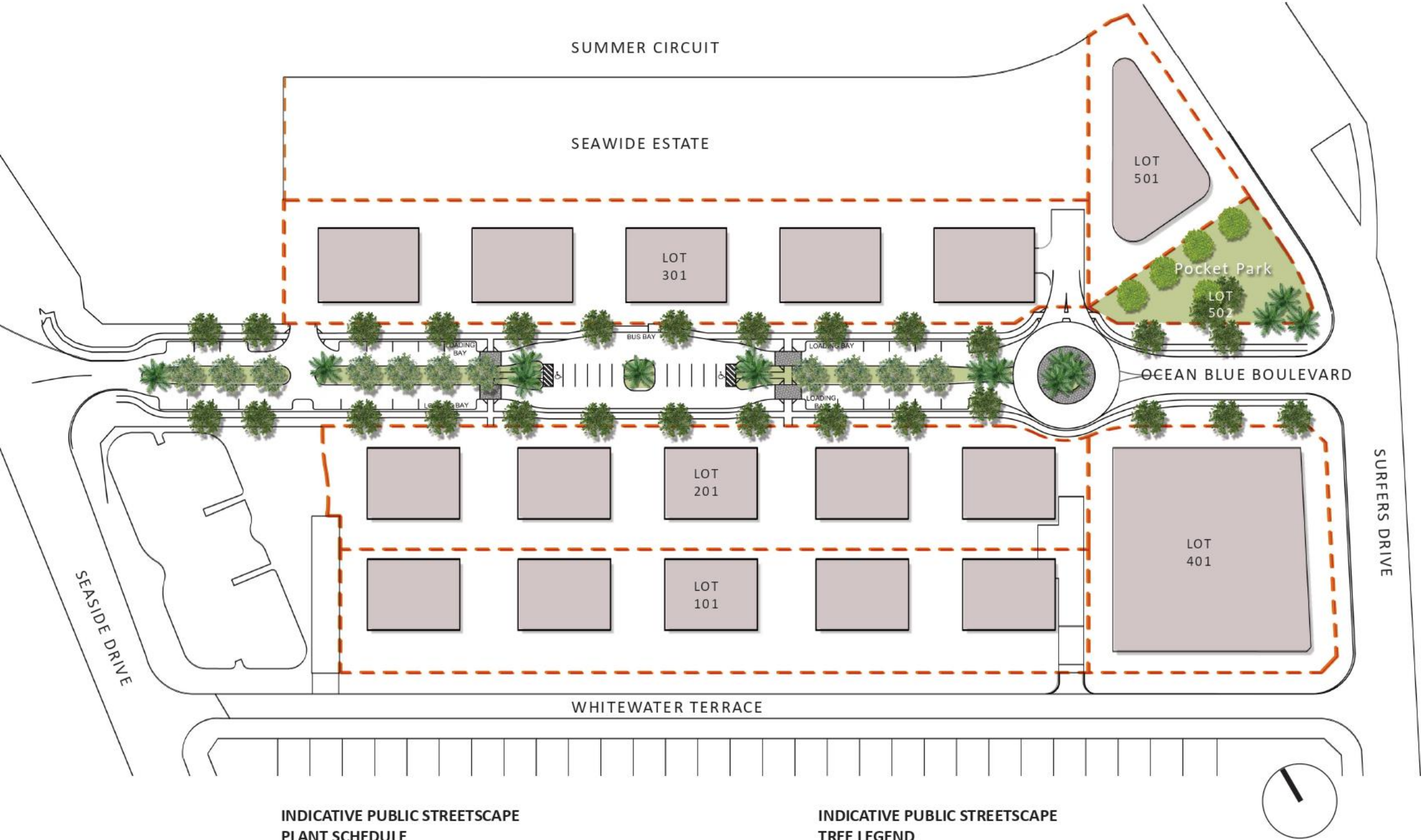
**PRELIMINARY ISSUE**

NOT FOR CONSTRUCTION

**NOTE:**

LOCATION OF UNDERGROUND SERVICES ARE APPROXIMATE ONLY AND LAND DYNAMICS HOLDS NO WARRANTY TO THE LOCATION OF THE LINE WORK HEREIN

PROJECT: CATARINA HILLTOP			
DRAWING TITLE: OCEAN BLUE BOULEVARDE TURN PATHS			
ORIGINAL SIZE: A1	LAND DYNAMICS JOB No: 5105	DRAWING No: 0001	REV: A



INDICATIVE PUBLIC STREETSCAPE  
PLANT SCHEDULE

TREES	<i>Archontophoenix cunninghamiana</i>	Bangalow Palm
	<i>Cupaniopsis anacardioides</i>	Tuckeroo
	<i>Melaleuca quinquenervia</i>	Broad-leaved Paperbark
	<i>Tristaniaopsis laurina</i>	Water Gum
GRASSES AND GROUND COVERS	<i>Banksia integrifolia</i>	Coastal Banksia
	<i>Carpobrotus glaucescens</i>	Pigface
	<i>Casuarina glauca</i>	River Oak
	<i>Hibbertia scandens</i>	Guinea Flower
	<i>Hardenbergia violacea</i>	False Sarsaparilla
	<i>Ficinia nodosa</i>	Knobby Club Rush
	<i>Lomandra longifolia</i>	Mat Rush

INDICATIVE PUBLIC STREETSCAPE  
TREE LEGEND

-  *Archontophoenix cunninghamiana*
-  *Tristaniaopsis laurina*
-  *Melaleuca quinquenervia*
-  *Cupaniopsis anacardioides*

PLAN:  
Modified Exhibit 6B

SCALE: 1:1000@A3

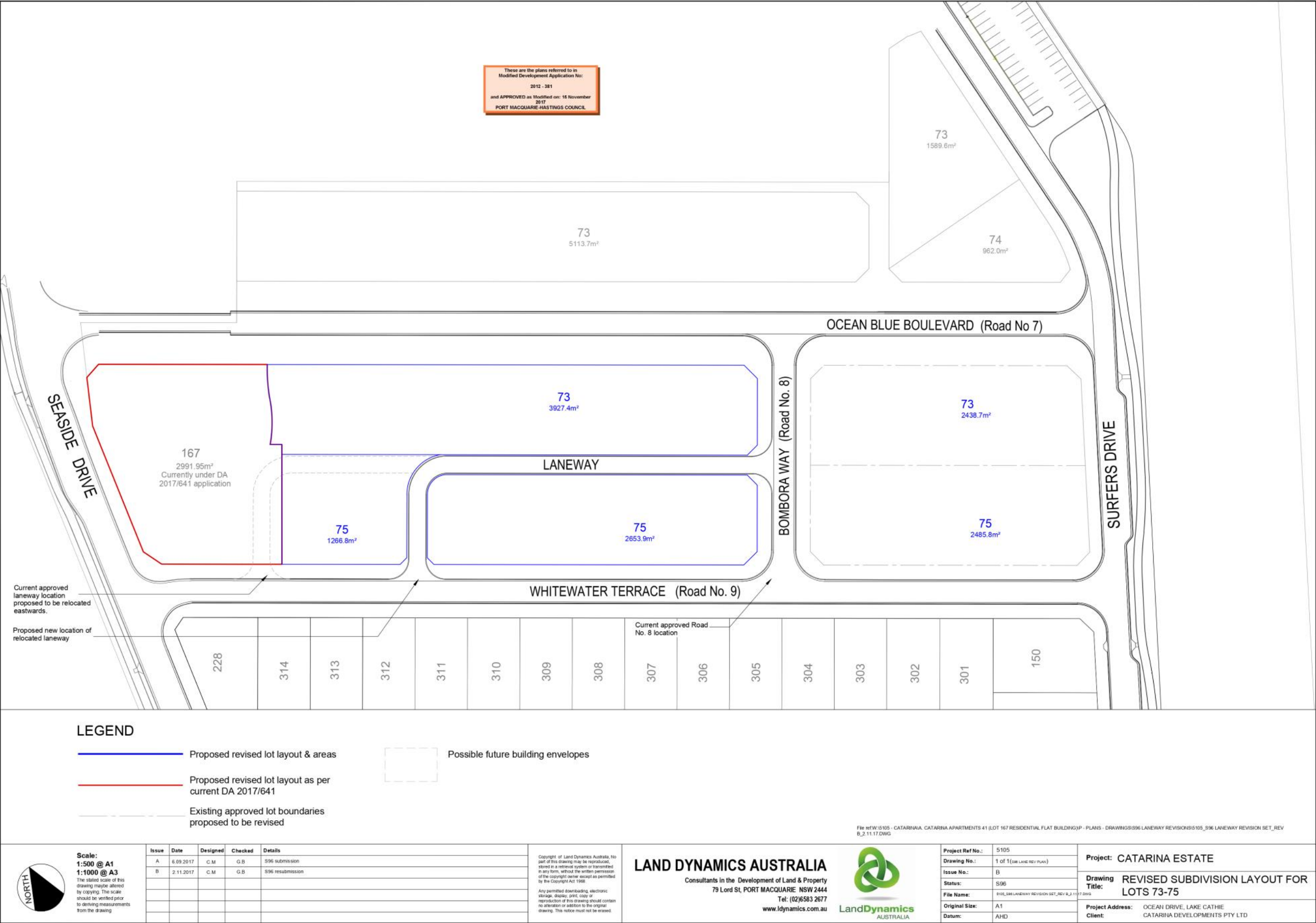
DATE: 11 Sept 2022

CLIENT:  
Justice Fox

LANDSCAPE ARCHITECT:  
Rebecca Doblo  
Myrtle Street  
Dorrigo 2453

PROJECT:  
**CATARINA ESTATE  
HILLTOP VILLAGE**









26 September 2022  
Ref: 5105

The General Manager  
Port Macquarie Hastings Council  
Corner Lord and Burrawan Streets  
**PORT MACQUARIE NSW 2444**

Attention: Dan Croft / Ben Roberts

Dear Dan,

**Re: Application for S.4.55 (1A) Modification of Development Consent 2012/381 at Lot 3 DP 1247192 and Lot 12 DP 1226839, Seaside Drive, LAKE CATHIE**

## 1. INTRODUCTION

The following is an update/amendment to the Section 4.55(1A) application which was submitted to Council last year to modify Development Application DA 2012/381 – Approved Subdivision. This amendment to the modification application relates specifically to roads and laneways associated with Lot 3 DP 1247192 being the Hilltop Village at Lake Cathie as part of the Catarina development and Lot 12 DP 1226839 the adjoining Seaside Estate development.

We have also included as an attachment, the Response to Submissions letter for the Section 75W application to modify the Part 3A Concept Approval, which has been lodged with the NSW Department of Planning and Environment (DPE) for concurrent assessment.

Separate Development Applications will soon be lodged to Port Macquarie-Hastings Council for the proposed buildings on the remaining undeveloped land within the precinct.

## 2. SUBJECT LAND

The subject land is identified as Lot 3 DP 1247192 and Lot 12 DP 1226839, Seaside Drive Lake Cathie. The land forms part of a wider subdivision, with the northern portion developed as Seaside Estate and the southern portion as Catarina. This Modification relates to the northern portion of Catarina (Lot 3 DP 1247192), which is known as the Hilltop Village, and the southern portion of Seaside Estate (Lot 12 DP 1226839). Refer to **Figure 1**.

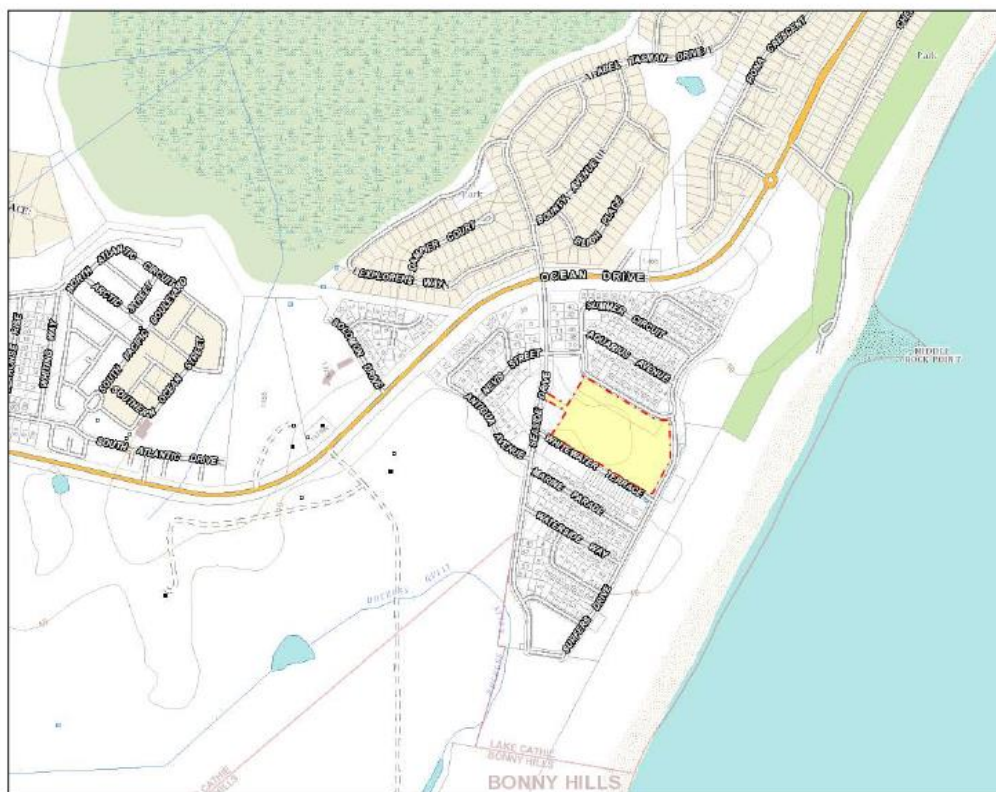


Figure 1: Site Location Plan (source: [www.sixmaps.nsw.gov.au](http://www.sixmaps.nsw.gov.au))

### 3. DESCRIPTION OF THE PROPOSED AMENDMENTS

Following further discussions with PMHC and the Department, the Catarina project team has investigated options to revise the road network and connectivity in and around the area of Hilltop Village of the Concept Plan approval.

The amendment to the modification application in response to the submissions seeks to:

- Maintain the originally approved east-west Ocean Blue Boulevard/main street.
- Delete the previous Bombara Way connection between Ocean Blue Boulevard to Whitewater Terrace.
- Delete the east-west mid-block laneways to the north and south of Ocean Blue Boulevard.
- Provide new pedestrian north-south linkages between Ocean Blue Boulevard and Whitewater Terrace.
- Subdivide the land in a staged progression to ensure efficiencies in the development of the Catarina Hilltop Village Precinct.

The originally approved Subdivision Plan is identified in **Figure 2**.

The originally submitted Modification plan, is identified in **Figure 3**.

This subdivision plan has been revised and is to be replaced with **Figure 4**. This plan shows the proposed revised subdivision layout, includes deletion of Bombara Way and laneways from the plans, connection along Ocean Blue Boulevard between Seaside Drive and Surfers Drive, and identifies the vehicular access points to the carpark basements.

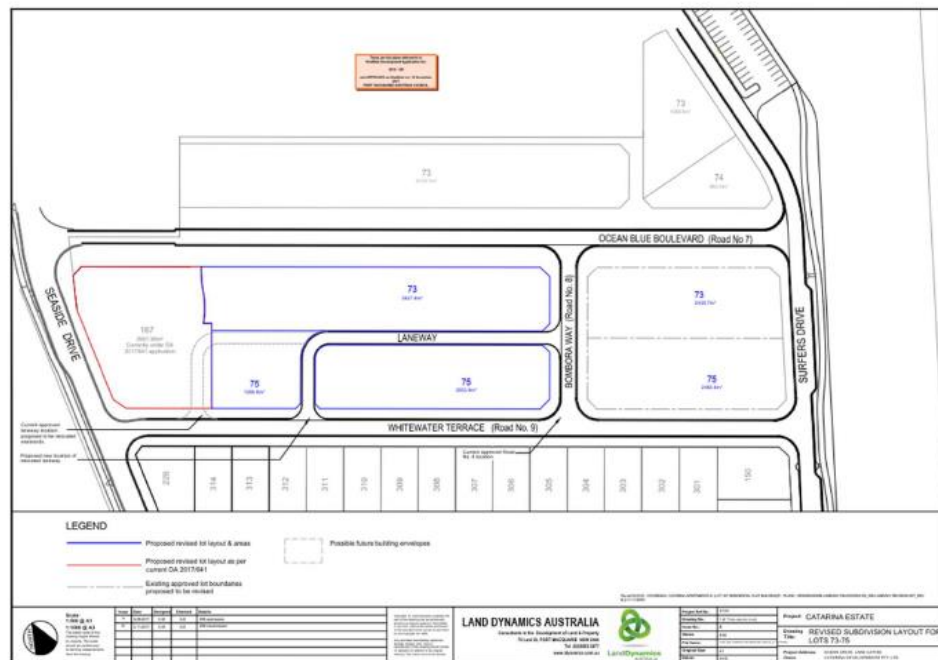


Figure 2: Originally Approved Subdivision Plan

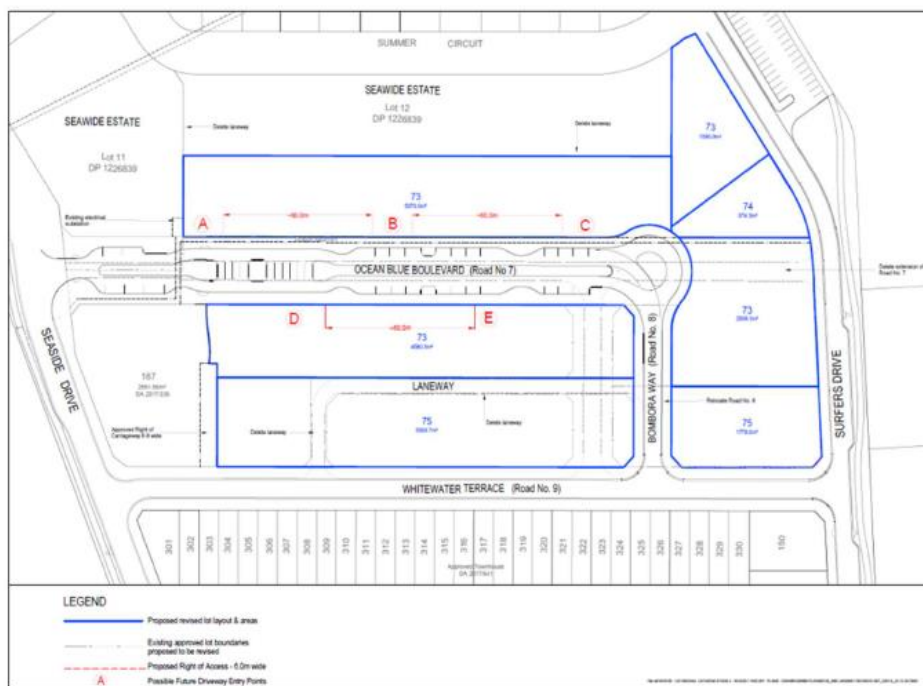


Figure 3: Originally proposed Plan submitted with Modification Application - detailing changes to the laneway

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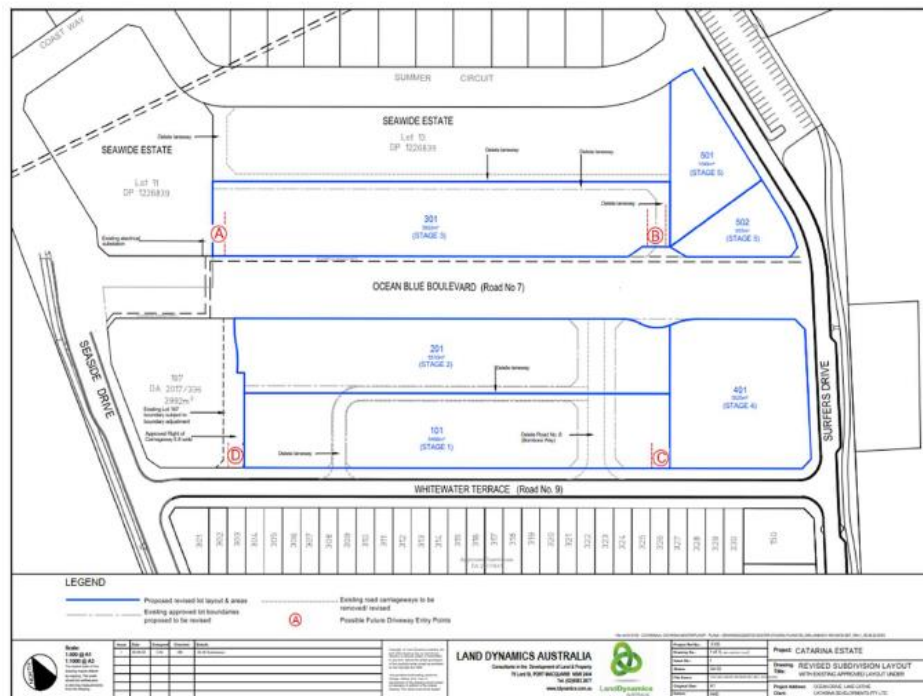


Figure 4: Revised Amended Subdivision Plan – removal of laneways and Bombora Way, Ocean Blue Boulevard

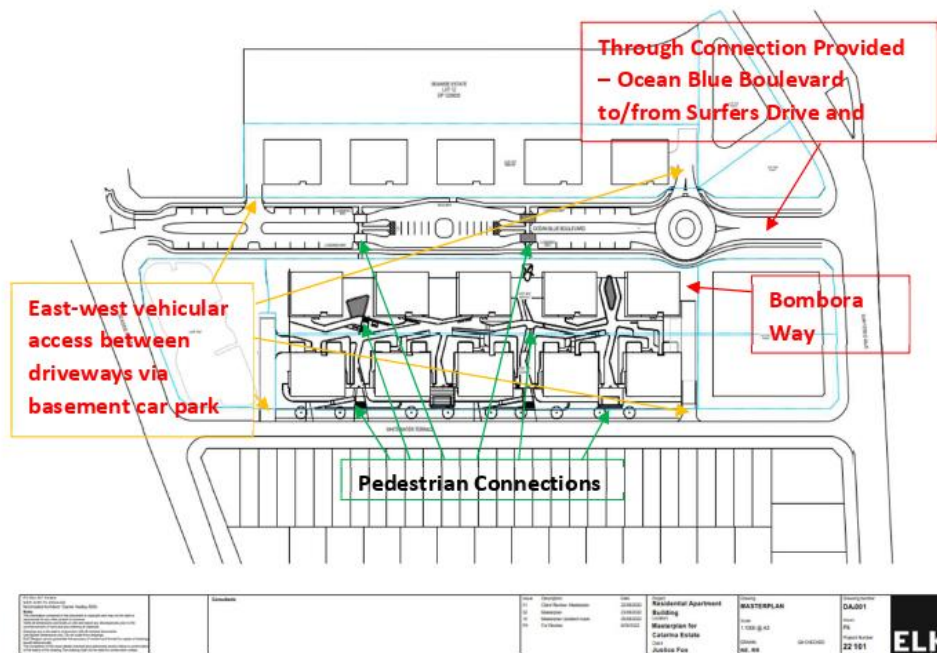


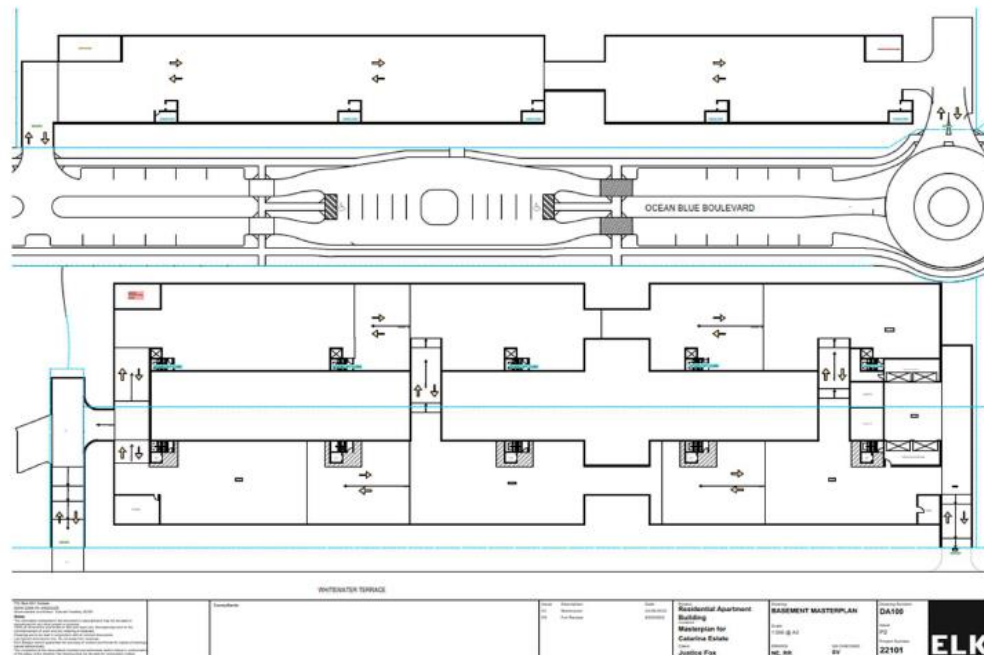
Figure 5: Amended Plan with Amendments Annotated



Refer to **Annexure B**, which provides the existing approved subdivision layout, the amended layout subject of this Modification application and the various staging for the site as it develops.

**Figure 5** provides an annotated illustration of the proposed amendments on the revised plan.

The proposed integrated basement carpark plan and vehicular ingress/egress access arrangements within the Catarina Hilltop precinct are identified in **Figure 6**.



**Figure 6: Integrated Basement Carpark Access**

It is noted that in all plans they reflect the new road design and resulting subdivision pattern. This modification also includes the removal of the laneways, the new design of Ocean Blue Boulevard and incorporation of the integrated basements. This is reflected in the LDA plans:

- Revised Subdivision Layout & Staging Plans dated 06 June 2022.

#### 4.1 RESPONSE TO PORT MACQUARIE-HASTINGS COUNCIL (PMHC) SUBMISSION

##### PMHC Issue 1 – Connectivity Ocean Blue Boulevard to Surfers Drive

" Whilst it is considered that there may be some merit to investigating an alternate design for Ocean Blue Boulevard, linking to Surfers Dr via Bombora Way and Whitewater Terrace, it is considered that further engineering information is necessary to demonstrate that a suitable road gradient is not achievable directly to Surfers Dr in the concept approval location. This should also be compared to the existing Whitewater Terrace road gradient. It is also considered necessary to provide for appropriate details to secure public pedestrian connection directly through to Surfers Dr and the Rainbow Beach car park in a timely manner. The modification application information does not appear to detail at what stage the pedestrian connection will be provided. This is considered particularly important given the proposal to delete the more direct public road connection."





### Applicant's Response to PMHC Issue 1

It is no longer proposed to close the eastern end of Ocean Blue Boulevard. Images of the amended road configuration, **Figure 4 - Figure 6** identify a through road/main street being Ocean Blue Boulevard connecting vehicular and pedestrian access east/west between Seaside Drive and Surfers Drive. It is noted from comments provided by PMHC at a Pre-lodgement meeting on 3 May 2022 relating to the future built form development application, that this amended road configuration is supported in principle. A copy of the Pre-lodgement Minutes is provided at **Annexure E**.

A public pedestrian linkage will also be provided between Ocean Blue Boulevard and Whitewater Terrace, to replace Bombora Avenue. This is to be achieved via appropriate easements through the Stage 1 (proposed Lot 101) and Stage 2 (proposed Lot 201) developments. It is likely that the legal mechanism to ensure public access to the pedestrian linkage would be an easement providing a public pedestrian pathway created under a condition of the future development consent/s for built form on the site. The easements would be expected to be created over the completed built form at ground level as an underground basement carpark sits beneath proposed Lots 101 and 201 buildings.

As the amendment provides for Ocean Blue Boulevard to connect directly through from Seaside Drive to Surfers Drive and connection with the Rainbow Beach car park, the further information regarding the timing and engineering detail regarding the alternate route along Bombora Way are no longer required. The design and construction approval process for the roads will ensure road gradients and access arrangements are appropriate and meet required engineering standards/compliance. The design and engineering details of Ocean Blue Boulevard and integrated basement have been further refined since the Pre-lodgement Meeting because of subsequent discussions with PMHC technical staff and consultant experts. The plans ensure appropriate vehicular and pedestrian connectivity for visitors and residents, disabled and commercial users within the Catarina Hilltop Village and surrounding area. As per **Figure 7**, proposed Lots 101 and 201 have detailed pathway and landscape connectivity as a DA will be subsequently lodged over proposed Lots 101 and 201 as supported by the staging proposal. This delivers Council and DPE certainty in the development design and provides pathways and connectivity throughout the Catarina Hilltop precinct in the absence of the ground level laneways.

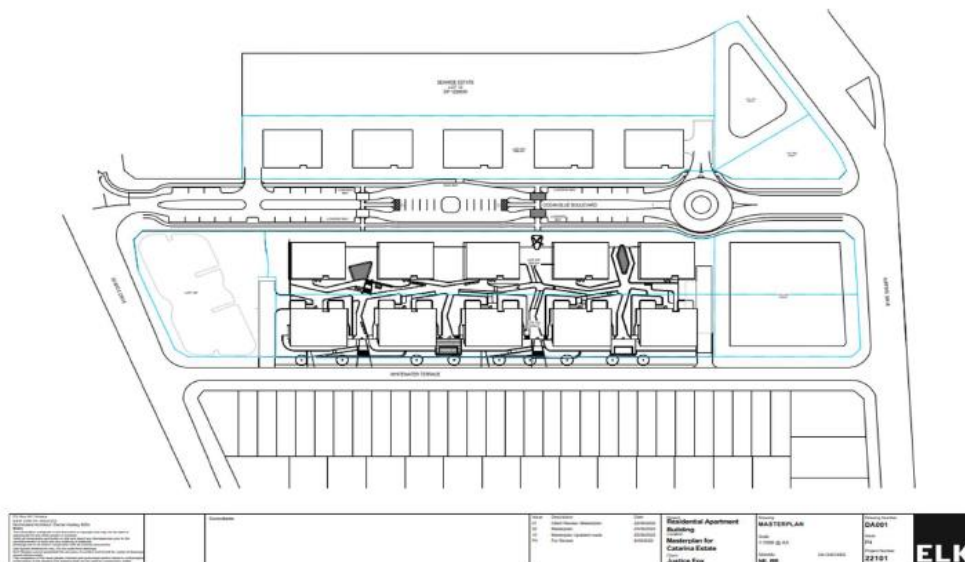


Figure 7: Catarina Hilltop Village Roads & Pathways Connectivity



PMHC Issue 2 – Deletion of Laneways

“ Previous concerns raised in the pre- lodgement meeting minutes around the deletion of the approved laneways remain, for the following reasons:

- a) The laneways were approved to allow for vehicles to service the mixed-use zoned land on Ocean Blue Boulevard and to provide a higher level of urban design and amenity outcomes in the hilltop village. By removing the laneways, servicing will inevitably occur along Ocean Blue Boulevard as indicated in the modification application. The application does not detail where on-street loading bays would be located, it is likely that they will reduce on-street parking and increase the potential for vehicle and pedestrian conflicts.
- b) The proposed restriction of vehicle crossovers in the five nominated locations will additionally reduce on-street parking availability and increase vehicle and pedestrian conflict points. These nominated access locations appear to be approximately 15m in width and could in effect result in more than one access point in each location. The nominated locations directly conflict with pedestrian crossing points and nominated on-street parking. Currently, there is nothing to prevent the B4 zoned land from being subdivided into smaller, individual lots in future. If this were to happen, then each individual property would be entitled to a driveway onto Ocean Blue Boulevard (up to 5.5m wide), further negatively impacting on parking, pedestrian conflict potential and urban design outcomes.
- c) Whilst it is noted that an integrated basement design is being worked on by the proponent so as to potentially provide for a similar function to a laneway, this does not provide sufficient certainty. Relying on such a significant development to provide for an integrated planning outcome at a later stage is considered to be a high-risk solution and not appropriate for a greenfield site. The current approved laneways allow for a range of development outcomes in the future. Whilst Council staff are open to considering an alternate road structure for the hilltop village, a suitable alternative proposal is likely to require a more integrated approach that provides for a greater level of certainty. This has been previously communicated to the proponent on numerous occasions.”

Applicant's Response to PMHC Issue 2

The amended proposal is to provide access to the future built form on the northern and southern side of Ocean Blue Boulevard via integrated or connected basements. It is noted, the delay in responding to the submissions is because of the detailed engineering and architectural design needed to provide certainty that this integrated and holistic approach to the design of the Catarina Hilltop Village is achievable and meets client, future resident, and approval authority expectations and increased certainty.

The northern basement (Stage 3), proposed Lot 301 will be accessed from two (2) vehicular access points off Ocean Blue Boulevard located at the eastern and western end of the proposed apartment buildings/basement. The southern basement (Stages 1 and 2), proposed Lot 101 and Lot 102 will be accessed from two (2) vehicular access points off Whitewater Terrace. This integrated basement arrangement is shown in **Figure 6**.

Again, this concept was discussed in a Pre-lodgement meeting at PMHC on 3 May 2022 relating to the future built form development application. An extract from the Minutes (refer **Annexure E**) is as follows:

“ In relation to the laneways, there is considered to be scope to provide a similar function through an integrated basement design and service point(s) as proposed. It is acknowledged that this approach will likely assist with managing the ground level interface with adjoining land holdings.”





As Council acknowledges, the issues relating to potential crossover / pedestrian conflict and servicing arrangements along Ocean Blue Boulevard can be managed, as evidenced within the amended design. The function of the laneways to provide vehicular access between buildings will now be accommodated by the integrated basement on either side of Ocean Blue Boulevard. Two (2) vehicular access points to the basements to the north of Ocean Blue Boulevard and Whitewater Terrace will provide access to the developments located above the basements, whilst reducing conflict between users.

As **Figure 8** shows, pedestrian connectivity and circulation space will be maintained between the buildings at ground level, and a public access pedestrian pathway between Whitewater Terrace and Ocean Blue Boulevard will link residents and visitors to the commercial uses, residential accommodation, and public open spaces within the Catarina Hilltop precinct. These connected spaces and pathways are evidenced in the landscape plan for the development of proposed Lot 101 and shows the connectivity and circulation between and around buildings, and between proposed Lot 101 and Lot 201. The proposed plan considers the gradient differences in the ground levels between the lots, which can be managed and enhanced in the absence of the laneway which are to be removed as part of this modification. This holistic approach to the design of the Catarina Hilltop precinct provides a better urban design approach and improved amenity.

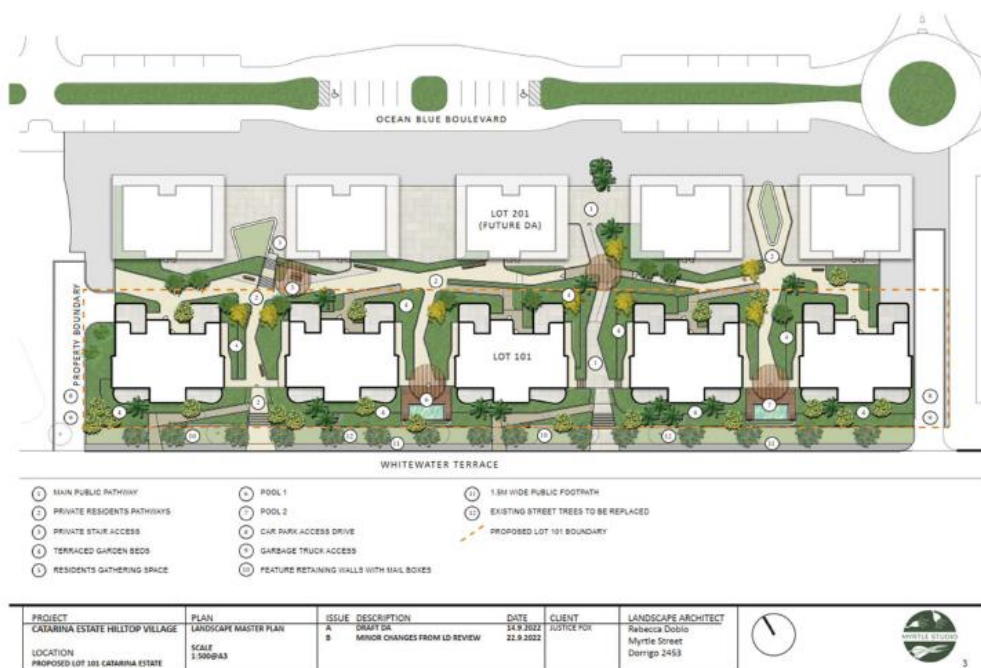


Figure 8: Catarina Hilltop Village – Proposed Lot 1 Landscape and Pathway Connectivity Plan

The proposal therefore deletes the east-west mid-block laneway to the north and south of Ocean Blue Boulevard between proposed Lots 101 and 201; and proposed Lot 301 and Lot 12 DP 1226839. As identified previously, to respond to Council's request to restrict access off Ocean Blue Boulevard so that numerous individual entry points to any development are avoided, and potential conflict between users is reduced; no direct vehicular access points are proposed on the southern side of Ocean Blue Boulevard into proposed Lots 101 or Lot 201. Vehicular access is located at each end of a below ground basement accessed off Whitewater Terrace. This basement provides through traffic flow between buildings and proposed Lots 101 and 201, instead of requiring the previously identified laneway.



Similarly, as previously identified only two (2) direct vehicular access points are proposed on the northern side into proposed Lot 301 off Ocean Blue Boulevard. Vehicular access is located at each end of a single, below ground basement, which provides through traffic flow between buildings instead of requiring the previously identified laneway. Any development within Lot 12 DP 1226839 will have access from Summer Circuit consistent with the adjoining and surrounding development pattern within Seawide Estate.

The removal of Bombora Way and the laneway connections on the north and south onto Ocean Blue Boulevard and adoption of the integrated basement design will result in reduced potential conflict points along Ocean Blue Boulevard. The outcome provides a higher level of urban design, increased amenity in the locality, and less points of potential conflict between residents, visitors, and commercial supply trucks, as there are limited vehicular accesses crossing pedestrian pathways.

Additional on-street visitor parking, disabled access carpark spaces, bus bay, and loading bays are also incorporated into the design of Ocean Blue Boulevard, refer to **Figures 6 and 7**. The accompanying revised Traffic Impact Assessment (refer to **Annexure D**) provides a full assessment of the traffic impacts resulting from the revised plans.

The concern that the site could be subdivided "at any time" is not an uncontrolled or imminent risk, as development consent would be required. The Consent Authority, i.e. PMHC would need to be satisfied that the proposal was consistent with the Concept Plan, and adequately addressed Council's concerns.

The integrated basement arrangement would allow for waste collection from the basement entry turnarounds. It is likely that an on-street loading bay would be the most practical means of servicing the ground floor commercial premises on Ocean Blue Boulevard, and on-street loading bays have been incorporated along Ocean Blue Boulevard, refer to **Figure 6**.

#### 4.2. RESPONSE TO SUBMISSION – NSW RFS

##### NSW RFS Issue 1 – Bushfire Report

"...the Department would appreciate comment on whether required Asset Protection Zones comply with Planning for Bushfire Protection 2019." The NSW RFS is unable to provide comment until an amended bush fire report is submitted to address all undeveloped stages of the estate."

##### Applicant's Response to NSW RFS Issue 1

A Bushfire Hazard Assessment has been prepared by David Pensini. The report addresses the requirements of Planning for Bushfire Protection 2019 and is attached as **Annexure C**.

An artist's impression or perspective image of the proposed amended road layout and indicative future built-form of the Catrina Hilltop precinct are shown in **Figure 9**.





Figure 9: – Perspective Image of Amended Road Layout and Indicative Future Built Form

#### 4.3 CONSIDERATION OF THE S4.55 PROVISIONS

As noted in the original submission, the likely environmental impacts associated with the modified proposal have been considered and have minimal environmental impact. The amendment relates to road and laneway layouts, which has also amended the subdivision layout. The changes will permit traffic movements as envisaged within the original approvals, but the design has considered the topography of the land, reduced conflict between users by limiting vehicular access points but maintains a main street with bus stops, loading bays and visitor and disabled carparking on the street. Amenity and public pedestrian connections are achieved between Seaside Drive and Surfers Drive, Ocean Blue Boulevard and Whitewater Terrace.

Although the subdivision layout has been revised, it is considered to be substantially the same development due to the overall development remaining for residential subdivision purposes, and the development is still for the same use with no material element of change (i.e. no additional land use or varying component added). This modification application does not radically transform the approved development and the key issues relating to lot layout, acoustic and aesthetic impacts, ecological impacts, and bushfire remain satisfactory and manageable. The changes to the road and removal of the laneway layouts in the Hilltop Village will not significantly increase or intensify the use of the development. The removal of the laneways based on the integrated basement design still provides landscaping and development opportunities as envisaged for the village precinct and maintains vehicular and pedestrian connectivity throughout the development.

This application has been considered against the relevant provisions of Section 4.15 and 4.55 of the *Environmental Planning and Assessment Act, 1979*. The proposal is consistent with the original development consent and provides an efficient use for subdivision purposes. Council can be satisfied that the modification does not radically transform the approved development and is of minor environmental impact.

The modified proposal is also consistent with the original Part 3A Concept Approval (07\_0010) regarding the Hilltop Village at Lake Cathie and continues to provide an efficient use for subdivision purposes. Council can be satisfied that the modification does not radically transform the approved residential subdivision, and the concurrent S.75W Modification assessment allows for greater certainty as to the outcome and remains consistent with the aims of the Concept Approval.



The following amended application material accompanies this response to Council's request for further information:

- **Annexure A** - Revised Plans of the Hilltop Village Area by ELK Designs, Project No: 22101
  - Roads and Pathways Connectivity Plan (Masterplan) DWG No. DA001, Issue P4, dated 08.09.2022
  - Basement Plan – DWG No: DA100, Issue P2, dated 08.09.2022
- **Annexure B** - Revised Subdivision Layout & Staging Plans, Land Dynamic Australia, 06 June 2022
  - Existing approved subdivision plan and road layout
  - Revised Subdivision Layout — Project No. 5105, DWG 1, Issue I, dated 06.06.22 (showing staging, laneway removal and future driveway access)
  - Hilltop Masterplan Staging for Stage 2 – Stage 6, Project No. 5105, DWGs 3-7, Issue I, dated 06.06.22
- **Annexure C** - Bushfire Assessment by David Pensini, June 2022
- **Annexure D** - Traffic Impact Assessment, Street Wise Road Safety and Traffic Services, 25.08.22
- **Annexure E** - Minutes of Pre-lodgement meeting with PMHC, 3 May 2022
- **Annexure F** - Revised Statement of Commitments (as amended), Land Dynamic Australia, September 2022
- **Annexure G** - S.75W Modification – Responses to Submission submitted to DPE

The proposed modification of development consent DA 2012/381 may be given effect by modification of Condition 1A to call up the abovementioned plans and reports.

## 5. CONCLUSION

As the Catrina Hilltop precinct has evolved and detailed design occurs, it has become clear that changes are necessary to the road layout. The proposed amendments still achieve the desired traffic and pedestrian connectivity and will result in an overall good planning and urban design outcome.

It is considered that the amendments described in this letter and in accordance with the plans and reports attached as Annexures have addressed the issues raised in the submissions.

This proposed amendment to the modification application remains consistent with the relevant provisions of Section 4.15 and 4.55 of the Environmental Planning and Assessment Act, 1979.

Once the modified Part 3A Concept Approval (07\_0010) regarding the Hilltop Village at Lake Cathie is determined by the Department, Council can determine the subject modification of development consent DA 2012/381.

Yours faithfully

A handwritten signature in black ink, appearing to read 'G. Burns', is written over a light blue horizontal line.

Graham Burns

Director – Land Dynamics Australia