

Development Assessment Panel

Business Paper

date of meeting: Wednesday 5 June 2024

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

time: 2:00 PM

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	19/07/23	15/08/23	20/09/23	18/10/23	15/11/23	7/02/24	6/03/24
David Crofts (Independent Chair)	✓	✓		✓	✓	A	
Chris Gee (Independent Member)		✓	✓	✓	✓	✓	✓
Michael Mason (Independent Member)	✓	✓	✓	✓		✓	✓
Dan Croft (Group Manager Development Services)	✓	✓	✓	✓	✓	✓	✓
Tony McNamara (Independent Member)			✓		✓	✓	✓
Other attendees							
Mayor Peta Pinson							
Melissa Watkins (Director Community, Planning and Environment)	✓						
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)	✓				✓	✓	
Kate Kennedy (Building Surveyor)							
Warren Wisemantel							
Bob Slater (Development Assessment Planner)							
Alton Dick (Stormwater Engineer)							
Fiona Tierney (Development Assessment Planner)		✓		✓			✓
Nicholas Powers (Development Assessment Planner)							✓

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

Development Assessment Panel

Meeting Dates for 2024

7 February	Function Room	2.00pm
21 February	Function Room	2.00pm
6 March	Function Room	2.00pm
5 June	Function Room	2.00pm
19 June	Function Room	2.00pm
3 July	Function Room	2.00pm
17 July	Function Room	2.00pm
7 August	Function Room	2.00pm
21 August	Function Room	2.00pm
4 September	Function Room	2.00pm
18 September	Function Room	2.00pm
2 October	Function Room	2.00pm
16 October	Function Room	2.00pm
6 November	Function Room	2.00pm
20 November	Function Room	2.00pm
4 December	Function Room	2.00pm

Development Assessment Panel Meeting

Wednesday 5 June 2024

Items of Business

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06	General Business	

AGENDA

DEVELOPMENT ASSESSMENT PANEL 05/06/2024

Item: 01

Subject: ACKNOWLEDGEMENT OF COUNTRY

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

Item: 02

Subject: APOLOGIES

RECOMMENDATION

That the apologies received be accepted.

Item: 03

Subject: CONFIRMATION OF PREVIOUS MINUTES

RECOMMENDATION

That the Minutes of the Development Assessment Panel Meeting held on 6 March 2024 be confirmed.

PRESENT

Members:

Chris Gee (Independent Member)
Michael Mason (Independent Member)
Tony McNamara (Independent Member)
Dan Croft (Group Manager Development Services)

Other Attendees:

Grant Burge (Development Engineering Coordinator)
Chris Gardiner (Senior Development Assessment Planner)
Fiona Tierney (Development Assessment Planner)
Beau Spry (Development Assessment planner)
Nicholas Powers (Development Assessment Planner)

The meeting opened at 2.00pm.

01 ACKNOWLEDGEMENT OF COUNTRY

The Acknowledgement of Country was delivered.

02 APOLOGIES

Nil.

03 CONFIRMATION OF MINUTES

CONSENSUS:

That the Minutes of the Development Assessment Panel Meeting held on 7 February 2024 be confirmed.

04 DISCLOSURES OF INTEREST

There were no disclosures of interest presented.

**05 DA2023 - 700.1 DUAL OCCUPANCY AND STRATA SUBDIVISION AT LOT: 1
DP: 1227144, NO. 5A TREETOP CRESCENT PORT MACQUARIE.**

Speakers:

Robyn Dawson (Opposing the application)
Michael Lohmann (Opposing the application)
Kerry Provis (Opposing the application)

CONSENSUS:

That DA2023 - 700.1 for a Dual Occupancy and Strata Title Subdivision at Lot 1, DP1227144, No. 5A Treetop Crescent, Port Macquarie, be determined by granting consent subject to the recommended conditions.

**06 DA2022 - 931.1 SCHOOL (STAGE 1 & 2) AND CONCEPT APPLICATION FOR
STAGE 3 EXPANSION OF SCHOOL AT LOT 10 DP 1223845, NO. 456 JOHN
OXLEY DRIVE, THRUMSTER**

Speakers:

Amanda Vagg (Opposing the application)
Margaret Fettell (Opposing the application)
Jamie Brennan (Opposing the application)
Camellia Chooi (Opposing the application)
Scott Marchant (applicant)

CONSENSUS:

That DA2022 - 931.1 for a School (Stage 1 & 2) and Concept Application for Stage 3 Expansion of School at Lot 10, DP 1223845, No. 456 John Oxley Drive, Thrumster, be deferred to enable the applicant to undertake an arborist assessment of all trees to be retained on site and provide a tree management safety plan so as to manage the safety of future users of the school site.

**07 DA2019 - 917.2 SECTION 4.55 MODIFICATION TO ALTERATIONS AND
ADDITIONS, CONSTRUCTION OF SECONDARY DWELLING, SWIMMING
POOL AND TENNIS COURT TO INCLUDE TENNIS COURT LIGHTING AT LOT
12 DP707776, NO. 12/12A LINKS CRESCENT, PORT MACQUARIE**

Speakers:

Margie Cassegrain (Opposing the application)
Jaclyn Rajcany (Opposing the application)
Rhonda Radley (Opposing the application)
Russell Moran (Opposing the application)
Wayne Anderson (Opposing the application)
Cicely Sylow (applicant)

CONSENSUS:

That DA 2019 - 917.2 for a section 4.55 modification to alterations and additions, construction of secondary dwelling, swimming pool and tennis court to include tennis court lighting at Lot 12, DP 707776, No. 12/12A Links Crescent, Port Macquarie, be deferred to enable the proponent to undertake an ecological impact assessment of the proposed tennis court lighting.

08 GENERAL BUSINESS

Nil

The meeting closed at 4.35pm.

UNCONFIRMED

Item: 04
Subject: DISCLOSURES OF INTEREST

RECOMMENDATION

That Disclosures of Interest be presented

DISCLOSURE OF INTEREST DECLARATION

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

(Refer to next page and the Code of Conduct)

Pecuniary Interest

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

Non-Pecuniary

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

Managing non-pecuniary conflicts of interest

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

AGENDA

DEVELOPMENT ASSESSMENT PANEL

05/06/2024

SPECIAL DISCLOSURE OF PECUNIARY INTEREST DECLARATION

*This form must be completed using block letters or typed.
If there is insufficient space for all the information you are required to disclose,
you must attach an appendix which is to be properly identified and signed by you.*

By <i>[insert full name of councillor]</i>	
In the matter of <i>[insert name of environmental planning instrument]</i>	
Which is to be considered at a meeting of the <i>[insert name of meeting]</i>	
Held on <i>[insert date of meeting]</i>	
PECUNIARY INTEREST	
Address of the affected principal place of residence of the councillor or an associated person, company or body (the <i>identified land</i>)	
Relationship of identified land to councillor <i>[Tick or cross one box.]</i>	<input type="checkbox"/> The councillor has interest in the land (e.g. is owner or has other interest arising out of a mortgage, lease, trust, option or contract, or otherwise). <input type="checkbox"/> An associated person of the councillor has an interest in the land. <input type="checkbox"/> An associated company or body of the councillor has interest in the land.
MATTER GIVING RISE TO PECUNIARY INTEREST¹	
Nature of land that is subject to a change in zone/planning control by proposed LEP (the <i>subject land</i>)² <i>[Tick or cross one box]</i>	<input type="checkbox"/> The identified land. <input type="checkbox"/> Land that adjoins or is adjacent to or is in proximity to the identified land.
Current zone/planning control <i>[Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]</i>	
Proposed change of zone/planning control <i>[Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]</i>	
Effect of proposed change of zone/planning control on councillor or associated person <i>[Tick or cross one box]</i>	<input type="checkbox"/> Appreciable financial gain. <input type="checkbox"/> Appreciable financial loss.

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

Councillor's Signature: **Date:**

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

Last Updated: 3 June 2019



Important Information

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

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

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

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

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

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

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

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

Item: 05

Subject: DA2023 - 536.1 MULTI DWELLING HOUSING AND STRATA TITLE SUBDIVISION AT LOT:2 DP 1295723, NO.22 CASTLE COURT PORT MACQUARIE

Report Author: Development Assessment Planner, Vanessa Penfold

Applicant: J Hands
Owner: Libby Lane Pty Ltd
Estimated Cost: \$1,450,000
Parcel no: 72363

Alignment with Delivery Program

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

RECOMMENDATION

That DA2023 - 536.1 for Multi dwelling housing and strata subdivision and at Lot 2, DP 1295723, No. 22 Castle Court, Port Macquarie be determined by granting consent subject to the recommended conditions.

Executive Summary

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

Following exhibition on 2 occasions, 2 submissions were received on behalf of several owners/residents of Castle Court, Port Macquarie.

The proposed design has been amended during assessment to include:

- an increase in setback from eastern boundary from 197mm to 972mm,
- re-orientation of unit 3 to create a courtyard at the street frontage and garage at the rear, and
- a visitor parking space located at the north of the site, with a turning area adjacent to unit 3 garage.

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

This report recommends that the development application be approved subject to the attached conditions / refused for the following reasons (Attachment 1).

AGENDA

DEVELOPMENT ASSESSMENT PANEL 05/06/2024

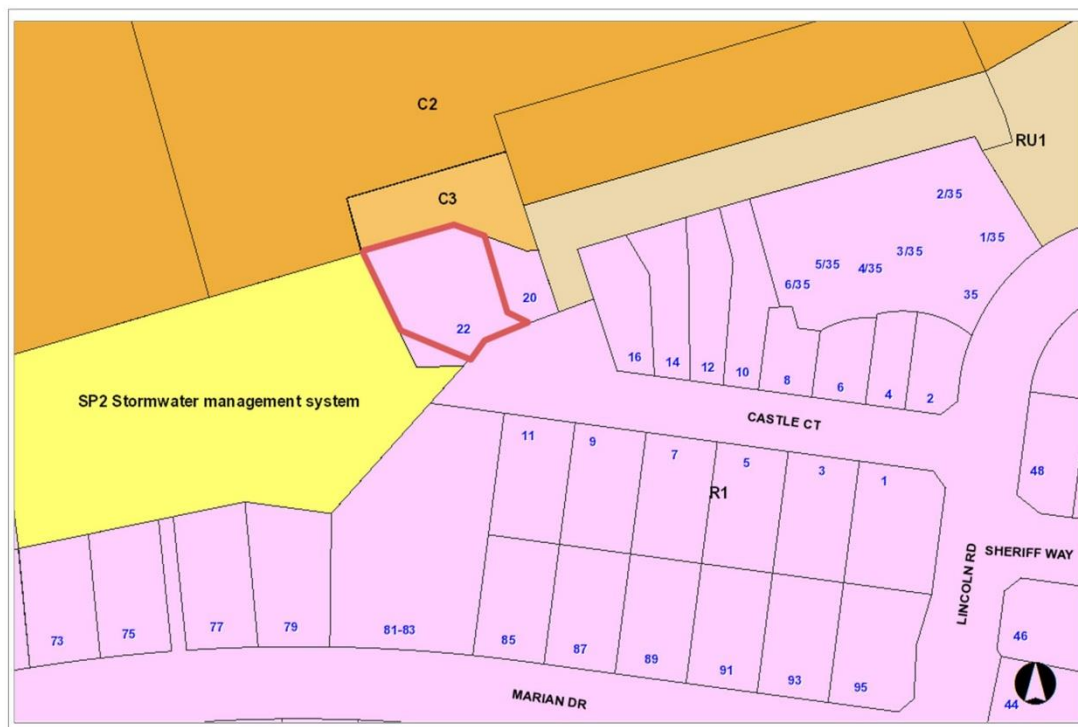
The reason for the application being referred to Council's Development Assessment Panel (DAP) due to the number of objections to the proposal that have been received. A copy of the DAP Charter outlining the delegations and functions of the DAP is available on Council's website.

1. BACKGROUND

Existing Sites Features and Surrounding Development

The site has an area of 899m² and was created as part of a 2 lot subdivision approved in November 2022. The subject site and adjoining Lot 1 benefit from a 20m wide bushfire Asset Protection Zone at the rear. The site is clear of vegetation and has been filled so that future development can achieve a suitable minimum (FPL3) floor level.

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



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



2. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposal include the following:

- 4 x 2 bedroom dwellings and strata subdivision.

Plans of the proposed development are at the end of this report (Attachment 2).

Application Chronology

- 1 August 2023 - Application lodged with Council
- 15 August to 28 August 2023 - First notification period
- 24 August 2024 - General comments received from Essential Energy
- 6 October 2023 - Council staff requested additional information
- 13 October 2023 - RFS request for additional information
- 18 October 2023 - Applicant response to RFS
- 20 November 2023 - NSW RFS response letter
- 8 December 2023 - Applicant responded to submissions and request for additional information and provide updated plans.
- 22 January 2024 - Council staff requested additional information (parking)
- 19 April 2024 - Applicant provided updated plans and SOEE
- 30 April to 13 May 2024 - Second notification period

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

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

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

**State Environmental Planning Policy (Biodiversity and Conservation) 2021
Chapter 4 Koala Habitat Protection 2021**

Clause 4.4 - This SEPP applies to all non-rural zoned land within the Port Macquarie-Hastings Local Government Area.

Clause 4.10 - Having considered the SEPP, the application and on completion of a site inspection, Council is not prevented from granting consent in this case for the following reasons:

1. The property is not subject to a KPOM;
2. The site has a land area less than 1 hectare; and
3. The site not considered to be core koala habitat.

**State Environmental Planning Policy (Resilience and Hazards) 2021
Chapter 2 Coastal Management**

Clause 2.5 - This SEPP prevails over the Port Macquarie-Hastings LEP 2011 in the event of any inconsistency.

The site is located within proximity to coastal wetland mapped on the adjoining lot at the rear. Having regard to clause 2.8 (proximity to coastal wetlands) of this SEPP, the proposed development is not considered likely to result in any of the following:

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

The site is not located within a coastal use area or coastal environment area.

Clause 2.12 - The proposal is not likely to cause increased risk of coastal hazards on the land or other land.

Chapter 4 Remediation of Land

Clause 4.6 - Following an inspection of the site and a search of Council records, the subject land is not identified as being potentially contaminated and is suitable for the intended use.

State Environmental Planning Policy (Sustainable Buildings) 2022

A BASIX certificate has been submitted demonstrating that the proposal will comply with the requirements of the SEPP. It is recommended that a condition be imposed to ensure that the commitments are incorporated into the development and certified at Occupation Certificate stage.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Clause 2.48 - Development in proximity to electricity infrastructure - referral to Essential Energy has been completed. Essential Energy have no specific concerns regarding the development but have provided some general advice that has been provided to the applicant.

Clause 2.118 refers to development with frontage to a classified road. In this case, the development does not create any additional crossovers onto the classified road or substantial increase in traffic.

The development does not trigger any of the traffic generating development thresholds of Clause 2.121. Referral to the NSW Roads and Maritime Services (RMS) is not required.

Based on the above, the proposed development addresses relevant clauses in the SEPP and will not create any significant adverse conflict in terms of traffic or noise.

State Environmental Planning Policy (Primary Production) 2021

Part 2.5 Division 4 - The proposed development will create no adverse impact on any oyster aquaculture development or priority oyster aquaculture area.

Port Macquarie-Hastings Local Environmental Plan 2011

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

- Clause 2.2 - The subject site is zoned R1 General Residential.
- Clause 2.3(1) and the R1 zone landuse table - The proposal is best characterised as multi-dwelling housing and strata subdivision and is a permissible landuse with consent.

The objectives of the R1 zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- Clause 2.3(2) - The proposal is consistent with the zone objectives as the development will contribute to the variety of housing types and densities to meet the housing needs of the community.
- Clause 4.1 - The minimum lot size for subdivision is 1,000m². However, pursuant to Clause 4.1(4) this control does not apply to the proposal as strata subdivision is sought. The existing residential lot has an area of 899m².
- Clause 4.3 - The maximum overall height of the building above ground level (existing) is 7.29m and complies with the standard height limit of 8.5m applying to the site.
- Clause 4.4 - The floor space ratio of the proposal is 0.54:1 which complies with the maximum 0.65:1 floor space ratio applying to the site.

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- Clause 5.10 - Heritage. The site does not contain or adjoin any known heritage items or sites of significance. The site is also disturbed from past activities/works on-site.
- Clause 5.21 - Flood Prone land - The site has been filled under a previous consent for subdivision. The finished levels of the land have been established at between 4.1m - 4.3m AHD and the dwellings are capable of meeting a minimum floor level that achieves Flood Planning Level 3 (FPL3) of 4.53m AHD. The design provides for a minimum lower level finished floor level of 4.58m AHD.
- Clause 7.5 - The site is not identified as Koala Habitat
- Clause 7.13 - Satisfactory arrangements can be made for provision of essential services including water supply, electricity supply, sewer infrastructure, stormwater drainage and suitable road access to service the development. A suitable condition has been included.

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

No relevant draft instruments apply to the site.

(iii) Any Development Control Plan in force

Port Macquarie-Hastings Development Control Plan 2013

DCP 2013: Part B - General Provisions - B2: Environmental Management			
DCP Objective	Development Provisions	Proposed	Complies
Cut and Fill Regrading			
3	a) Development must comply with Council's Developments, Public Place & Events - Waste Minimisation and Management Policy.	Satisfactory arrangements can be put in place for storage and collection of waste. The applicant has shown on the plans 8 bins at the street frontage. A private service is recommended due to potential congestion on street during Council's standard collection day - currently Tuesday each week. Standard condition recommended for construction waste management.	Yes
4	a) Development shall not exceed a maximum cut of 1.0m and fill of 1.0m measured vertically above the ground level (existing) at a distance of 1.0m	Cut and fill does not exceed 1m change to existing ground levels. The land has already been filled to achieve flood planning level.	Yes

	outside the perimeter of the external walls of the building (This does not apply to buildings where such cut and fill is fully retained within or by the external walls of the building).		
5	a) A certified practicing structural engineer must certify any retaining wall greater than 1.0m.	Retaining wall required along western boundary due to previous filling of the site. Suitable condition regarding engineering details for the retaining wall to be included on draft consent.	Yes
	b) Where a combination of a fence and a wall is proposed to be greater than 1.2m high: <ul style="list-style-type: none"> - be a maximum combined height of 1.8m above existing property boundary level; - be constructed up to the front boundary for a maximum length of 6.0m or 30% of the street frontage, whichever is less; - the fence component has openings which make it not less than 25% transparent; and - provide a 3m x 3m splay for corner sites, and - provide a 900mm x 900mm splay for vehicle driveway entrances. 	Proposed retaining wall and fencing to western side boundary will be greater than above 1.8m above ground level at the adjacent fire trail. The approximate combined height will be a maximum 2.5m. Considered acceptable in this case as the boundary fencing will be obscured from view from the street - Castle Court.	No* However, considered acceptable. Refer to comments below.

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

Bushfire Hazard Management

18	a) APZs are to be located outside of environmental protection zones and wholly provided within private land. Note perimeter roads provided as part of a residential subdivision are classified as being part of the subdivision and not a	The site is identified as bushfire prone. There is an existing APZ registered on the title at the rear of the site and	Yes
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	separate permissible land use within environment protection zones.	adjacent Lot 1, 20 Castle Court. Structures are not proposed within APZ area. Additional APZ not proposed within environmental protection zone.	
Flooding			
19	a) Development must comply with Council's Floodplain Management Plan and Flood Policies.	Site is identified as flood prone however, has been filled such that the proposed development can achieve floor levels compliant with FPL 3.	Yes

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

DCP Objective	Development Provisions	Proposed	Complies
Road Hierarchy			
23	Vehicle driveway crossings are minimal in number and width (while being adequate for the nature of the development), and positioned: - to avoid driveways near intersections and road bends, and - to minimise streetscapes dominated by driveways and garage doors, and - to maximise on-street parking.	One driveway crossing proposed.	Yes
Parking Provision			
24	a) Off-street Parking is provided in accordance with Table 3. 1 parking space per each 1 or 2-bedroom unit + 1 visitor's space per 4 units.	A single garage is proposed for each dwelling and opportunity for informal stacked parking within the driveway to unit 1 and 2. One visitor space provided at rear of the site. Proposal meets the minimum requirements.	Yes
Parking Layout			

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28	c) Parking spaces shall generally be behind the building line but may be located between the building line and the street when: <ul style="list-style-type: none"> - it is stacked parking in the driveway; or - it can be demonstrated that improvements to the open space provided will result; and - the spaces are screened (densely landscaped or similar) from the street by a landscaping with a minimum width of 3.0m for the entire length of the parking area. 	Dwelling parking spaces are contained within attached garages.	Yes
	d) Parking design and layout is provided in accordance with AS/NZS 2890.1 - Parking facilities - Off-street car parking.	Garage dimensions are capable of complying.	Yes
34	a) All parking and manoeuvring spaces must be designed to avoid concentrations of water runoff on the surface.	Residential driveway only. No adverse impacts identifiable noting that details are required to be submitted with the Section 68 application prior to construction.	Yes
	b) Council will not permit the discharge of stormwater directly into kerbing and guttering or table drains for any development other than that of a minor nature.	Part of the proposed development will drain to an OSD system before being discharged to the Council system and adjacent drainage basin. Suitable condition applied to require final stormwater design to be provided to Council for review prior to the issue of the construction certificate.	Yes

DCP 2013: Part B - General Provisions - B5: Social Impact Assessment and Crime Prevention

DCP Objective	Development Provisions	Proposed	Complies
Crime Prevention			
43	a) The development addresses the generic principles of crime prevention:	The proposed development will be unlikely to create any adverse	Yes



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	<ul style="list-style-type: none"> - Casual surveillance and sightlines; - Land use mix and activity generators; - Definition of use and ownership; - Basic exterior building design; - Lighting; - Way-finding; and - Predictable routes and entrapment locations; - as described in the Crime Prevention Through Environmental Design (CPTED) principles. 	<p>concealment/entrapment areas or crime spots that would result in any identifiable loss of safety or reduction of security in the immediate area. The development will also provide a level of natural surveillance within the locality.</p> <p>Lighting and CCTV can be installed retrospectively by the owner, should they wish to have further security in the future.</p>	
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DCP 2013: Part C - Development Specific Provisions - C1: Low Density Residential Development

DCP Objective	Development Provisions	Proposed	Complies
Front Setbacks			
44	<p>a) Dwellings may incorporate an articulation zone to a street frontage at no less than 3m from property boundary. The following building elements are permitted within the articulation zone:</p> <ul style="list-style-type: none"> - an entry feature or portico; - a balcony, deck, patio, pergola, terrace or verandah; - a window box treatment; - a bay window or similar feature; - an awning or other feature over a window; - a sun shading feature. <p>b) These building elements should not extend above the eave gutter line, other than a pitched roof to an entry feature or portico that has the same pitch as the roof on the dwelling house.</p>	Development is not proposed within the articulation zone.	N/A

	c) The primary road front setback shall be: Classified road = any frontage 6.0m Primary frontage = 4.5m Secondary frontage = 3.0m Ancillary Lane = 2.0m Large lot residential and rural zones = 10.0m	The primary front setback to Castle Court is 5.525m.	Yes
45	a) A garage, carport or car parking space should: <ul style="list-style-type: none"> - be at least 1m behind the building line, where the dwelling(s) has a setback from a front boundary of 4.5m or more, or - be at least 5.5m from a front boundary, where the dwelling(s) has a setback of less than 4.5m. 	The garages to unit 3 and 4 are located at the rear of the site. The garages to unit 1 and 2 are setback 5.5m from the front boundary, however, are not located 1.0m behind the building line This is considered acceptable because the two single width garage doors are flanked by the porch entries and the appearance of the garages offset by first floor windows. The buildings are located at the end of a cul-de-sac and set back sufficiently from the street, with no adverse impact on streetscape identified.	Yes/No* Refer to comments below.
	b) The total width of the garage/carport openings should not be more than 6m and not more than 50 per cent of the width of the building.	The total width of the garage openings are not more than 6.0m and not more than 50 per cent of the width of the building.	Yes
	c) Driveway crossovers are no greater than 5.0m in width.	Shared driveway crossover no greater than 5.0m in width at kerb.	Yes
Side and Rear Setbacks			
46	a) A minimum rear boundary setback of 4m is to be provided to dwellings (including verandahs, patios and decks).	The rear boundary setback is greater than 4.0m for units 2 to 3. The setback to Unit 1 is less than 4.0m at the north east corner, however, considered acceptable because no dwellings are permitted at the rear on the adjoining lot due to an APZ.	Yes

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	b) A minimum rear boundary setback of 900mm applies to sheds and swimming pools subject to achieving minimum required private open space area.	N/A	N/A
	c) Council may consider varying rear setback requirements where it is demonstrated that the private open space could achieve better solar access between the building and the side setback. In that instance, one side setback should be a minimum 4m in width (for an equivalent length of rear boundary, behind building line) and the rear setback may be reduced to 900mm.	N/A	N/A
47	a) Ground floors (being <1m above existing ground level) should be setback a minimum of 900mm from side boundaries.	Ground floors minimum side setbacks: Unit 1: 972mm to eastern boundary Unit 4: 3.85m to western boundary.	Yes
	b) First floors and above (including single storey with floor level >1m) should be setback a minimum of 3m from the side boundary, or reduced down to 900mm where it can be demonstrated that the adjoining property's primary living rooms and principal private open space areas are not adversely overshadowed for more than 3hrs between 9am - 3pm on 21 June.	Second storey minimum side setbacks: Unit 1: 972mm to eastern boundary; Unit 4: 4.3m to western boundary; The proposal has been modified during assessment and updated shadow diagrams demonstrate that the adjoining property (No.20 Castle Court primary living rooms and principal private open space areas are not adversely overshadowed for more than 3hrs between 9am - 3pm on 21 June.	Yes

	c) First floors and above should have building walls that step in and out at least every 12m by a minimum of 500mm articulation. Where first floors and above are setback >3m, wall articulation is not required.	First floor wall adjacent to eastern boundary to be maximum length of 12m.	Yes
Private Open Space			
48.	a) All dwellings should have a minimum area of private open space of 35m ² , which includes a principal private open space area with: <ul style="list-style-type: none"> - a minimum dimension of 4m x 4m, and - a maximum grade of 5% for minimum 4m x 4m of the total open space requirement, and - direct accessibility from a ground floor living area and orientated to maximise use. 	All units are provided with private open space compliant with the minimum 35m ² area inclusive of useable 4m x 4m area directly accessible from ground floor living area.	Yes
	b) Private open space may include clothes drying areas and garbage storage.	Drying areas available in courtyards.	Yes
Public Domain and Fencing			
49	a) Front fences built forward of the building line for the primary road frontage should be detailed on the development application plans.	Details provided for front fence to courtyard unit 3. Bin enclosure screening minimum 25% transparent.	Yes
	b) Solid Front fences up to 1.2m high should be: <ul style="list-style-type: none"> - Setback 1.0m from the front boundary, and - Suitably landscaped to reduce visual impact, and - Provide a 3m x 3m splay for corner sites. 	Solid front fences are not proposed.	N/A
	c) Front fences proposed to be more than 1.2m high should be a maximum of 1.8m in height, above existing front property boundary level, and either:	A front fence is not proposed. The bin enclosure fence/screen proposed at the front boundary is a maximum	Yes

	<ul style="list-style-type: none"> - Include landscaped recesses having minimum dimensions of 1.8m long x 900mm deep which occupy no less than 50% of the total length of the fence, or - be erected up to the front boundary for a maximum length of 6.0m or 50% of the street frontage, 	1.8m in height and 25% transparent.	
	d) have openings which make it not less than 25% transparent (no individual opening more than 30mm wide);	Yes	Yes
	e) provide a 3m x 3m splay for corner sites, and	N/A	N/A
	f) provide a 900mm x 900mm splay for vehicle driveway entrances.	N/A	N/A
Bulk and Scale			
51	<p>a) Direct views between indoor living rooms and principal private open space of adjacent dwellings, including proposed dwellings approved on adjoining lots, including possible dwellings on future lots, should be obscured or screened where:</p> <ul style="list-style-type: none"> - Ground and first floor (and above) indoor living room windows are within a 9m radius. - Direct views between principal private open space areas where within a 12m radius. - Direct views between indoor living rooms of dwellings into the principal area of private open space of other dwellings within a 12m radius. 	Direct views between indoor living rooms and principal private open space of adjacent dwellings are sufficiently obscured due to orientation of the dwelling and proposed boundary fencing.	Yes
	b) A balcony, deck, patio, pergola, terrace or	Direct views from alfresco/patio areas will	Yes

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

56	<p>a) For ancillary development in R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential, R5 Large Lot Residential and RU5 Village zones:</p> <ul style="list-style-type: none"> - The height of an outbuilding or the alterations and additions to an existing outbuilding on a lot should not be more than 4.8m above ground level (existing). - The building should be single storey construction with a maximum roof pitch of 24 degrees. - The maximum area of the building should be 60m² for lots less than 900m² and maximum of 100m² for larger lots. - Ancillary development that is a garage, or an outbuilding, or a rainwater tank should not be located in front of the main building line with the exception of swimming pools. 	Water tanks appropriately located.	Yes
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Note: Subdivision provisions of the DCP (except battle-axe handle width) are aimed at the creation of vacant lots (i.e. not lots within an integrated housing proposal such as this) and have therefore been excluded from the above assessment. Servicing requirements are discussed later in this report.

The proposal seeks to vary Development Provisions as follows:

DCP Objective 45

45	<p>a) A garage, carport or car parking space should:</p> <ul style="list-style-type: none"> - be at least 1m behind the building line, where the dwelling(s) has a setback from a front boundary of 4.5m or more, or - be at least 5.5m from a front boundary, where the dwelling(s) has a setback of less than 4.5m.
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Comment: Garages to unit 1 and 2 are located less than 1m behind building line. The setback to garages from front boundary is at least 5.5m. This is considered

acceptable because the two single width garage doors are flanked by the porch entries and the appearance of the garages will be offset by first floor windows. The buildings are located at the end of a cul-de-sac and set back sufficiently from the street, with no adverse impact on streetscape identified.

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

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

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

(iv) Any matters prescribed by the Regulations

No matters prescribed by the regulations are applicable to the proposal.

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

Context and Setting

The site is a vacant lot within an established urban locality. Adjoining the site to the east is a 2 storey dwelling under construction at 20 Castle Court. The locality includes a mix of single dwellings, multi dwelling housing and a child care centre. Council's stormwater basin and fire trail are located to the west of the site. An extensive nature reserve is located to the north of the site.

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

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

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

The proposal does not have significant adverse lighting impacts.

There are no significant adverse privacy impacts.

There are no significant adverse overshadowing impacts. The proposal does not prevent adjoining properties from receiving 3 hours of sunlight to private open space and primary living areas on 21 June.

Access, Traffic and Transport

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

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Water Supply Connection

Council's records indicate that there is an existing 20mm sealed water service from the 100mm main in Castle Court and each unit or lot is to be provided with a separate metered water connection to Council's main, with the meters being located on the road frontage. The design shall be in accordance with Council's Water Supply Services Policy.

Detailed plans will be required to be submitted for assessment with the Section 68 application. Appropriate conditions are recommended in this regard.

Sewer Connection

Service available. Detailed plans will be required to be submitted for assessment with the Section 68 application. Appropriate conditions are recommended in this regard.

Stormwater

The legal point of discharge for the proposed development is defined as inter allotment drainage connecting to existing Council detention basin.

The plans indicate above ground rainwater tanks containing 3500L of storage for each dwelling to treat roof areas only. It is noted that driveway areas do not appear to be directed to OSD, therefore further demonstration on plans, including associated calculations will need to be provided to Council prior to release of S68 /Construction Certificate. A condition has been listed on the draft consent document to cover this requirement.

All impervious areas within the development lot shall be managed within the development property without concentrating or diverting stormwater to other properties.

Other Utilities

Telecommunication and electricity services are available to the site. Service requirements to be addressed during construction.

Heritage

No known items of Aboriginal or European heritage significance exist on the property. No adverse impacts anticipated. The site is in a residential context and considered to be disturbed land.

Other land resources

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

Water cycle

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

Soils

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

Air and microclimate

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

Flora and fauna

Construction of the proposed development will not require any removal/clearing of any native vegetation, does not trigger the thresholds and is also not located within a mapped Biodiversity Values area. The site is also heavily disturbed from filling. The lot. Based on the above, the development is considered to be compliant with the Biodiversity Conservation Act 2016.

Waste

Satisfactory arrangements are capable of being put in place in place for proposed storage and collection of waste and recyclables. Given the limited street frontage available at the head of the cul-de-sac for placement of individual bins, a private service is recommended that does not occur on the same day as Council collection to avoid congestion on the street. A suitable condition is recommended in this regard.

Standard precautionary site management condition recommended for construction.

Energy

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

Noise and vibration

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

Bushfire

The site is identified as being bushfire prone.

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

Flood Planning

The site has been filled under a previous consent for subdivision. The finished levels of the land have been established at between 4.1m-4.3m and the dwellings are capable of meeting FPL3 of 4.53m AHD by establishing an appropriate freeboard level in the design as shown by the FFL for the lower level at RL 4.58m on the plans.

Safety, security and crime prevention

The proposed development will be unlikely to create any adverse concealment/entrapment areas or crime spots that would result in any identifiable loss of safety or reduction of security in the immediate area. The development will also provide a level of natural surveillance within the locality.

Lighting and CCTV can be installed retrospectively by the owner, should they wish to have further security in the future.

Social impacts in the locality

Given the nature of the proposed development and its location the proposal is not considered to have any significant adverse social impacts.

Economic impact in the locality

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

Site design and internal design

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

Construction

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

Cumulative impacts

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

(c) The suitability of the site for the development

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

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

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

Two written submissions were received from nearby owners/residents of Castle Court. 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	Comment
<ul style="list-style-type: none"> • <u>Traffic</u> - Concern over an increase in traffic and potential for congestion that will block access to the cul-de-sac. 	<p>In terms of traffic generation and potential impacts, the existing road network has sufficient capacity for the proposed development.</p>
<ul style="list-style-type: none"> • The road into Sherwood Estate is in need of urgent repair and the additional cars at the subject property will impact the road into Castle Court causing more damage. 	<p>A traffic impact assessment is not warranted for the scale of residential development proposed and its location.</p>

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<ul style="list-style-type: none"> • Has a traffic impact statement been prepared? 	
<ul style="list-style-type: none"> • <u>Parking</u> - Other multi dwelling properties in the locality that have allowed for visitor parking result in cars parked on the street blocking access. This can be seen in Marian Drive and Friar Close. • Visitors to units 1 and 2 will not use the visitor parking space at the rear. Visitors will park in front of No.16 Castle Court and damage the lawn • The fire easements on both sides of the property will be impacted by additional cars. • Concerned about access and parking for people with disabilities. • Garages are under the minimum standard width and the residents would be more likely to park on the street. 	<p>The proposal complies with the provisions of Council's DCP for a multi-dwelling housing by providing 1 garage space for each 2 bedroom dwelling and 1 off-street visitor parking space for the development. In addition, there is opportunity for informal stacked parking at the front of the garages for units 1 and 2.</p> <p>Fire trail/easement access is not altered by the development.</p> <p>Specific parking for people with disabilities is not required for the individual units in this case.</p> <p>Proposed garage spaces are capable of compliance with the Australian standard.</p>
<ul style="list-style-type: none"> • <u>Alternative proposal</u> - Reducing the number of dwellings from 4 to 2 would reduce negative impact to the street. 	<p>Multi dwelling housing is a permissible use within the R1 residential zone of Castle Court and considered compatible with other low density housing in the locality.</p> <p>The proposal minimum requirement for off-street parking under Council's DCP. Visual privacy and solar access to living room/open space will be maintained for the adjacent dwelling at 20 Castle Court. The amended proposal is considered suitable for the site.</p> <p>An alternative development proposal is a matter for the applicant and not relevant to this assessment.</p>
<ul style="list-style-type: none"> • <u>Garbage collection</u> - Concern about the increase in the number of waste bins in addition to the day care centre bins to be collected - limited area to place bins on street. • Vehicles parked in the cul-de-sac make it difficult for larger vehicles, including garbage trucks to turn. 	<p>A private waste collection service is recommended for the subject development, on an alternative day to the Council collection, to reduce congestion in the cul-de-sac.</p> <p>Current parking and traffic related to construction activity is temporary and will reduce when the building work is completed.</p>
<ul style="list-style-type: none"> • <u>First floor setback</u> - Concerned about the setback of the first floor (972mm) to the eastern boundary and adjacent dwelling at 20 Castle Court and the overshadowing of 	<p>The first floor setback to the eastern boundary is considered acceptable and will not result in significant adverse overshadowing to the principal open space or living rooms of the adjacent</p>

rooms on the western side of the dwelling at 20 Castle Court.	dwelling that is currently under construction at 20 Castle Court.
<ul style="list-style-type: none"> • <u>Noise</u> - There will be an increase in noise. 	The proposed development for residential purposes is considered compatible with the existing development within the residential zone in terms of likely noise generation.
<u>Social Impact</u> - There is no consideration of Council's Social Impact Policy and there was no community consultation on these impacts.	The site is located within an established residential area which is zoned for residential development and considered suitable. Notification of the application has been undertaken in accordance with Council's Community Participation Plan.

(e) The Public Interest

The proposed development will be in the wider public interest with provision of appropriate additional housing.

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

Ecologically Sustainable Development and Precautionary Principle

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

The four principles of ecologically sustainable development are:

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

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

Climate change

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

4. DEVELOPMENT CONTRIBUTIONS APPLICABLE

The site has been provided contribution credit based on one residential lot with area between 450m² and 2000m².

The proposed development will comprise 4 x 2 bedroom dwellings on strata title lots and contributions have been charged accordingly.

As a result, s7.11 contributions apply and a condition of consent has been imposed to ensure payment.

Section 7.12 Contributions

The proposed development is for residential purposes only and s7.12 contributions do not apply.

Section 64 Water and Sewer Contributions

Water and sewer contributions will be determined as part of the Notice of Requirements under Section 306 of the Water Management Act 2000.

An estimate of the applicable contributions is included (Attachment 3).

5. CONCLUSION AND STATEMENT OF REASON


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


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

The proposed 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.  Attachment 1 - Recommended Conditions

2.  Attachment 2 - Plans

3.  Attachment 3 - Contributions Estimate

**FOR USE BY PLANNERS/SURVEYORS TO PREPARE LIST OF
PROPOSED CONDITIONS - 2011****NOTE: THESE ARE DRAFT ONLY****DA NO: 2023/536****DATE: 24/05/2024****PRESCRIBED CONDITIONS**

The development is to be undertaken in accordance with the prescribed conditions of Part 4 - Division 2 of the *Environmental Planning & Assessment Regulations* 2021.

GENERAL CONDITIONS

Condition																											
1	<p>Approved plans and supporting documentation</p> <p>Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.</p> <p>plans</p> <table border="1"> <thead> <tr> <th>Plan number</th> <th>Revision number</th> <th>Plan title</th> <th>Drawn by</th> <th>Date of plan</th> </tr> </thead> <tbody> <tr> <td>J5150 Sheets 1 to 22</td> <td>Issue R</td> <td>Attached Units - Strata</td> <td>Collins w Collins</td> <td>18 April 2024</td> </tr> </tbody> </table> <p>Approved documents</p> <table border="1"> <thead> <tr> <th>Document title</th> <th>Version number</th> <th>Prepared by</th> <th>Date of document</th> </tr> </thead> <tbody> <tr> <td>Statement of Environmental Effects</td> <td>J5150 Rev B</td> <td>Collins W Collins</td> <td>April 2024</td> </tr> <tr> <td>BASIX Certificate</td> <td>1318176M_03</td> <td>Collins W Collins P/L</td> <td>24 July 2023</td> </tr> <tr> <td>Bushfire Assessment</td> <td>1</td> <td>Firebird ecoSultants P/L</td> <td>9 June 2023</td> </tr> </tbody> </table> <p>In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.</p> <p>Condition Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.</p>	Plan number	Revision number	Plan title	Drawn by	Date of plan	J5150 Sheets 1 to 22	Issue R	Attached Units - Strata	Collins w Collins	18 April 2024	Document title	Version number	Prepared by	Date of document	Statement of Environmental Effects	J5150 Rev B	Collins W Collins	April 2024	BASIX Certificate	1318176M_03	Collins W Collins P/L	24 July 2023	Bushfire Assessment	1	Firebird ecoSultants P/L	9 June 2023
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2	<p>Certificates</p> <p>The following certificates relevant to the development in accordance with Part 6 of the Environmental Planning and Assessment Act 1979 shall be obtained at the respective stages:</p> <ul style="list-style-type: none"> • Construction Certificate; • Occupation Certificate; • Strata (Subdivision) Certificate. <p>Condition Reason: To ensure that appropriate building and subdivision certification is</p>																										

	obtained.
3	Notification of Home Building Act 1989 requirements
	<p>1. This section applies to a development consent for development involving residential building work if the principal certifier is not the council.</p> <p>2. It is a condition of the development consent that residential building work must not be carried out unless the principal certifier for the development to which the work relates has given the council written notice of the following—</p> <ul style="list-style-type: none"> for work that requires a principal contractor to be appointed— <ul style="list-style-type: none"> the name and licence number of the principal contractor, and the name of the insurer of the work under the <i>Home Building Act 1989</i>, Part 6, for work to be carried out by an owner-builder— <ul style="list-style-type: none"> the name of the owner-builder, and if the owner-builder is required to hold an owner-builder permit under the <i>Home Building Act 1989</i> the number of the owner-builder permit. <p>3. If the information notified under subsection (2) is no longer correct, it is a condition of the development consent that further work must not be carried out unless the principal certifier has given the council written notice of the updated information.</p> <p>4. This section does not apply in relation to Crown building work certified to comply with the <i>Building Code of Australia</i> under the Act, Part 6.</p>
	Condition Reason: Prescribed condition under section 71 of the Environmental Planning and Assessment Regulation 2021.
4	Shoring and adequacy of adjoining property
	<p>1. This section applies to a development consent for development that involves excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land, including a structure or work in a road or rail corridor.</p> <p>2. It is a condition of the development consent that the person having the benefit of the development consent must, at the person's own expense -</p> <ul style="list-style-type: none"> protect and support the building, structure or work on adjoining land from possible damage from the excavation, and if necessary, underpin the building, structure or work on adjoining land to prevent damage from the excavation. <p>3. This section does not apply if -</p> <ul style="list-style-type: none"> the person having the benefit of the development consent owns the adjoining land, or the owner of the adjoining land gives written consent to the condition not applying.
	Condition Reason: Prescribed condition under section 71 of the Environmental Planning and Assessment Regulation 2021.
5	Erection of signs
	<p>1. This section applies to a development consent for development involving building work, subdivision work or demolition work.</p> <p>2. It is a condition of the development consent that a sign must be erected in a prominent position on a site on which building work, subdivision work or demolition work is being carried out -</p> <ul style="list-style-type: none"> a) showing the name, address and telephone number of the principal certifier for the work, and b) showing the name of the principal contractor, if any, for the building work and a telephone number on which the principal contractor may be contacted outside working hours, and c) stating that unauthorised entry to the work site is prohibited. <p>3. The sign must be -</p> <ul style="list-style-type: none"> a) maintained while the building work, subdivision work or demolition work is being carried out, and b) removed when the work has been completed. <p>4. This section does not apply in relation to -</p>

	<p>a) building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or</p> <p>b) Crown building work certified to comply with the <i>Building Code of Australia</i> under the Act, Part 6.</p>
	Condition Reason: Prescribed condition under section 71 of the Environmental Planning and Assessment Regulation 2021.
6	<p>Fulfilment of BASIX commitments</p> <p>It is a condition of a development consent for the following that each commitment listed in a relevant BASIX certificate is fulfilled -</p> <ol style="list-style-type: none"> 1. BASIX development, 2. BASIX optional development, if the development application was accompanied by a BASIX certificate.
	Condition Reason: Prescribed condition under section 71 of the Environmental Planning and Assessment Regulation 2021.
7	<p>Construction site management</p> <p>The development site is to be managed for the entirety of work in the following manner:</p> <ol style="list-style-type: none"> 1. Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation; 2. Appropriate dust control measures; 3. Building equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained. Where work adjoins the public domain, fencing is to be in place so as to prevent public access to the site; 4. Building waste is to be managed via appropriate receptacles into separate waste streams; 5. Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. 6. All works within proximity of electrical infrastructure shall be carried out in accordance with the requirements of the relevant electricity authority. 7. Building work being limited to the following hours, unless otherwise permitted by Council; <ul style="list-style-type: none"> - Monday to Saturday from 7.00am to 6.00pm - No work to be carried out on Sunday or public holidays <p>The builder to be responsible to instruct and control his sub-contractors regarding the hours of work.</p>
	Condition Reason: To ensure that construction site is appropriately managed to prevent impacts to adjoining properties, the public domain and to ensure waste is disposed of in a practical and sustainable manner.
8	<p>Public works and utility services alterations</p> <p>The developer is responsible for any costs relating to minor alterations and extensions to ensure satisfactory transitions of existing roads, drainage, public utility services, any easements and Council services at no cost of Council for the purposes of the development.</p>
	Condition Reason: To confirm that the developer is responsible for all public utility costs and alterations.
9	<p>AUSPEC Specifications</p> <p>The design and construction of all public infrastructure works shall be in accordance with Council's adopted AUSPEC Specifications.</p>
	Condition Reason: To ensure public infrastructure works meet appropriate industry standards.
10	<p>General Terms of Approval (State Authority)</p> <p>The General Terms of Approval (GTAs) from the following authorities, as referred to in section 4.50 of the Environmental Planning and Assessment Act 1979, and referenced below, are attached and form part of the consent conditions for this approval.</p>

	NSW Rural Fire Service - The General Terms of Approval, Reference DA20230809003512-Original-1 and dated 20 November 2023 are attached and form part of this consent.
	Condition Reason: To ensure that external State agency requirements are satisfied.
11	<p>Bonds</p> <p>The applicant shall provide security to the Council for the payment of the cost of the following:</p> <ol style="list-style-type: none"> making good any damage caused to any property of the Council as a consequence of doing anything to which the consent relates, 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, remedying any defects in any such public work that arise within twelve (12) months after the work is completed. <p>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.</p> <p>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:</p> <ol style="list-style-type: none"> deposit with the Council, or an unconditional bank guarantee in favour of the Council. <p>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.</p> <p>Condition Reason: To specify the monetary bond required to be paid to protect public infrastructure from damage or defects.</p>

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition	
1	<p>Plumbing permit</p> <p>Prior to release of the Construction Certificate, approval pursuant to Section 68 of the Local Government Act, 1993 to carry out water supply, stormwater and sewerage works is to be obtained from Port Macquarie-Hastings Council. The following is to be clearly illustrated on the site plan to accompany the application for Section 68 approval:</p> <ul style="list-style-type: none"> • Position and depth of the sewer (including junction) • Stormwater drainage termination point • Easements • Water main • Proposed water meter location <p>Condition Reason: To ensure that appropriate infrastructure is provided to service the development and to protect public health and safety.</p>
2	<p>Works in road reserve permit</p> <p>An application pursuant to Section 138 of the Roads Act, 1993 to carry out works required by the Development Consent on or within public road is to be submitted to and obtained from Port Macquarie-Hastings Council prior to release of the Construction Certificate.</p>

	<p>Such works include, but not be limited to:</p> <ul style="list-style-type: none"> • Civil works • Traffic management • Work zone areas • Hoardings • Concrete foot paving • Footway and gutter crossing • Functional vehicular access <p>Where works are proposed on an RMS classified facility, the Road Authority shall obtain RMS concurrence prior to any approval.</p>
	<p>Condition Reason: To ensure that appropriate infrastructure is provided to service the development and to protect public health and safety.</p>
3	<p>Section 7.11 Contributions</p> <p>Payment to Council, prior to the issue of a Construction Certificate of the Section 7.11 contributions set out in the “Notice of Payment – Developer Charges” schedule attached to this consent unless deferral of payment of contributions has been approved by Council. The contributions are levied, pursuant to the Environmental Planning and Assessment Act 1979 as amended, and in accordance with either the provisions of the following plans (as amended) or a Planning Agreement:</p> <ul style="list-style-type: none"> • Port Macquarie-Hastings Administration Building Contributions Plan 2007 • Hastings S94 Administration Levy Contributions Plan 2003 • Port Macquarie-Hastings Open Space Contributions Plan 2018 • Hastings S94 Major Roads Contributions Plan 2004 • Port Macquarie-Hastings Community Cultural and Emergency Services Contributions Plan 2005 <p>The plans may be viewed on Council’s website.</p> <p>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.</p>
	<p>Condition Reason: To ensure that appropriate infrastructure is provided to service the development and to ensure that the development positively contributes to public infrastructure networks.</p>
4	<p>Retaining walls</p> <p>Detailed drawings and specifications prepared by a professional engineer for all retaining walls supporting:</p> <ol style="list-style-type: none"> i. earthworks that are more than 600mm above or below ground level (existing) and located within 1m of the property boundaries; or ii. earthworks that are more than 1m above or below ground level (existing) in any other location; <p>are to be submitted to the Principal Certifier with the application for Construction Certificate.</p>
	<p>Condition Reason: To ensure retaining walls have structural integrity.</p>
5	<p>Utilities and services including Water and Sewer</p> <p>Before the issue of the relevant Construction Certificate, written evidence of the following service provider requirements must be provided:</p> <ul style="list-style-type: none"> • A response from Council as a Water Authority as to whether plans accompanying the application for Construction Certificate would affect any Water Authority infrastructure and whether any further requirements need to be met.
	<p>Condition Reason: To ensure relevant utility and service provider’s requirements are</p>

