

COUNCIL ASSESSMENT REPORT

Panel Reference	2018NTH003
DA Number	DA2015 – 600.3
LGA	Port Macquarie-Hastings
Proposed Development	Modification to Hardware and Building Supplies and Bulky Goods Premises
Street Address	18 John Oxley Drive, Port Macquarie
Applicant/Owner	CVC Mezzanine Finance Pty Ltd
Date of DA lodgement	6 February 2018
Number of Submissions	None
Recommendation	That DA2015 – 600.3 for a modification to hardware and building supplies and bulky goods premises at Lots 12 & 13 DP 1088869, No. 18 John Oxley Drive, Port Macquarie, be determined by granting consent subject to the modified conditions.
Regional Development Criteria	Clause 21(1)(b) of State Environmental Planning Policy (State and Regional Development) 2011 being a s96(2) to a development previously determined by the JRPP.
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy No. 44 - Koala Habitat Protection • State Environmental Planning Policy No. 55 - Remediation of Land • State Environmental Planning Policy No. 64 – Advertising and Signage • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (State and Regional Development) 2011 • Port Macquarie-Hastings Local Environmental Plan 2011 • Port Macquarie-Hastings Development Control Plan 2013
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Plans • Current consent conditions • Recommended modified consent conditions
Report prepared by	Chris Gardiner – Development Assessment Planner
Report date	26 March 2018

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Executive Summary

The Northern Joint Regional Planning Panel granted consent to DA2015 – 600.1 (2015NTH018) for bulky goods retail premises and hardware and building supplies (including Masters Home Improvement store) and 2 lot Torrens title subdivision at the subject site on 10 December 2015.

Council granted consent to a Section 96(1A) application on 12 March 2018. This modification introduced staging to the development and permits bulk earthworks to proceed ahead of the proposed building works.

This report considers a Section 96(2) modification (now Section 4.55(2)) to the development.

This report provides an assessment of the application in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

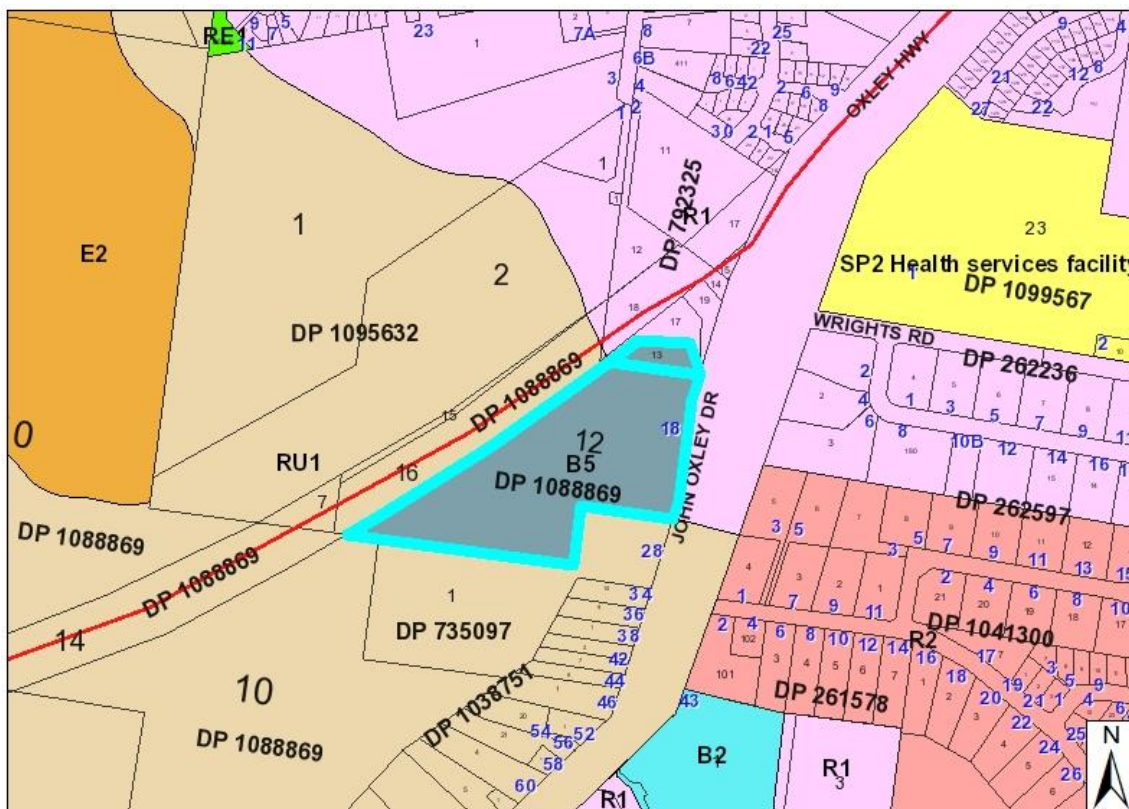
Following neighbour notification and advertising of the application, no submissions have been received.

1. BACKGROUND

Existing sites features and surrounding development

The site has an area of 4.81 hectares.

The site is zoned B5 Business Development in accordance with the Port Macquarie-Hastings Local Environmental Plan 2011, as shown in the following zoning plan:



The site is located approximately 4.5 kilometres south-west of the Port Macquarie

Central Business District and adjoins the Oxley Highway on its north-west boundary.

The site falls east to west from approximately 9.5m AHD at the eastern boundary to approximately 2m AHD in the western corner of Lot 12 DP 1088869.

The land has frontage to both John Oxley Drive and the Oxley Highway. However, access is denied to the Oxley Highway and an existing acoustic wall and landscaping have been established along this frontage.

The site has previously been used as a caravan park. Permanent structures associated with the former use were demolished under DA2014 - 54.1 in 2014, although some internal roads remain on the site.

To the east of the site are existing low density residential zoned allotments occupied by a mix of residential dwellings and medical uses.

To the north and west of the site, on the opposite side of the Oxley Highway are residential uses, including a manufactured home estate used for seniors housing.

To the south of the site is a seniors housing development known as Sienna Grange.

Charles Sturt University and Lake Innes Village shopping centre are located nearby to the south-east of the site and the Port Macquarie Base Hospital is located on the north-east corner of the Oxley Highway - John Oxley Drive - Wrights Road intersection.

The existing subdivision pattern and location of existing development within the immediate locality is shown in the following aerial photograph (2012):



2. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposed modification include the following:

- A modification to the development description, to delete reference to a Masters store;
- Deletion of the proposed 2 lot Torrens title subdivision;
- A modification to the Hardware and Building Supplies premises (approved as the Masters Home Improvement Store) and Bulky Goods Premises, including;
 - The re-positioning of each building, including subsequent relocation of loading docks;
 - Changes to the floor area of each building resulting in a minor modification to the overall approved floor area; and
 - A modification to the approved built form finishes and signage;
- Minor modifications to the car park orientation and circulation routes within the site;
- The rewording/deletion of conditions of consent, as required by the above built form changes.

Amended plans are included in the attachments to the report.

3. STATUTORY ASSESSMENT

Is the proposal substantially the same?

In *Moto Projects (No2) Pty Ltd v North Sydney Council (1999 NSWLEC 280)*, Bignold J notes that the test of whether the modified development is *substantially the same* is relative to the particular circumstances of the individual modification application.

The planning principle in *Moto Projects* requires consideration of the following matters in determining whether a development is substantially the same as that for which consent was granted:

- That the development as modified must remain substantially the same as the development as approved. Substantially the same does not mean identical or the same, but rather essentially or materially or having the same essence.
- That the comparison between the development as modified and the development as approved should include both a qualitative and quantitative assessment.
- That the comparative task should not exclude a particular feature that is an important or essential feature of the development.

The Applicant has submitted an analysis of the planning principle including and comparisons of the key aspects of the approved development and the proposed development. The proposal is considered to be substantially the same development for the following reasons.

- The modified proposal retains the key aspects of the original development (hardware and building supplies and bulky goods premises);
- The location of the access and the extent of the site frontage works remain the same;
- The site coverage, height, bulk and scale of the development are not significantly different to the development originally approved.

Are there any condition(s) of consent imposed by a Minister, government or public authority that require modification?

See comments later in this report under Bushfire regarding modification to conditions imposed by the NSW Rural Fire Service.

Does the application require notification/advertising in accordance with the regulations and/or any Development Control Plan?

Neighbour notification and advertising has been undertaken in accordance with Council's DCP.

Any submissions made concerning the modification?

No submissions were received in relation to the proposed modification.

Any matters referred to in section 79C (1) relevant to the modification?

(a) The provisions (where applicable) of:

(i) any Environmental Planning Instrument:

State Environmental Planning Policy No. 44 - Koala Habitat Protection

A Koala Plan of Management (KPoM) was approved as part of the original development and applies to the land and adjoining road corridor in John Oxley Drive.

Key management actions in the approved KPoM include:

- Installation of advisory signage for pedestrians with dogs;
- Ongoing fox control;
- Installation of floppy top fencing between the habitat corridor and John Oxley Drive and advisory signage for motorists;
- Offset planting for habitat loss; and
- Appropriate construction phase management for tree removal.

Conditions were imposed on the original consent to ensure that the development was carried out in a manner consistent with the KPoM. The modified proposal remains consistent with the KPoM.

State Environmental Planning Policy No. 64 – Advertising and Signage

The proposed development includes proposed advertising signage in the form of business/building identification signs.

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

The following assessment table provides an assessment checklist against the Schedule 1 requirements of this SEPP:

Applicable clauses for consideration	Comments	Satisfactory
Clause 8(a) Consistent with objectives of the policy as set out in Clause 3(1)(a).	The proposed signage is of high quality design and finish and would be compatible with the desired character for a B5 zone. The signage would provide effective communication in suitable locations.	Yes
Schedule 1(1) Character of the area.	The proposal is compatible with the desired future character of the locality. There is no established theme for outdoor advertising in the area.	Yes

Schedule 1(2) Special areas.	The site is located adjacent to residential areas. However, the design and location of proposed signs are not considered likely to detract from the amenity or visual quality of these areas.	Yes
Schedule 1(3) Views and vistas.	The signage would not affect any significant views or vistas, or impact on the viewing rights of other advertisers. A visual assessment has been submitted with the application, which demonstrates that the proposed signage would not be obtrusive when viewed from the Oxley Highway entrance to Port Macquarie or the adjoining residential development at Sienna Grange.	Yes
Schedule 1(4) Streetscape, setting or landscape.	<p>The scale and proportion of the proposed signage is appropriate for the setting. The proposed pylon signs (9.83m and 9.0m high) are comparable with the height of the building.</p> <p>Condition B(27) of the original consent required amended plans in relation to the pylon sign in the John Oxley Drive frontage, as follows:</p> <p><i>An amended plan of the proposed pylon sign at the John Oxley Drive frontage shall be submitted for the approval of the Principal Certifying Authority prior to the issue of a Construction Certificate for Stage 2. The sign shall be reduced in height to a maximum of 16.50m AHD, with no increase in width or advertising display area.</i></p> <p>The plans submitted with the modification confirm that the pylon sign will comply with the height restriction and the intention of the condition. It is recommended that condition B(27) be deleted.</p>	Yes
Schedule 1(5) Site and building.	The scale and proportions of the proposed wall signs are appropriate for the dimensions of the buildings.	Yes
Schedule 1(6) Associated devices and logos with advertisements and advertising structures.	Lighting and logos have been designed as an integral component of the sign structures.	Yes
Schedule 1(7) Illumination.	<p>The proposal includes illuminated signage.</p> <p>Condition A(15) of the original consent required all illuminated signage to be fitted</p>	Yes

	with a timer to switch off illumination between the hours of 11.00pm and 5.30am. The Applicant has not requested any modification to this condition and it remains relevant.	
Schedule 1(8) Safety.	The design and location of the proposed signage is not considered likely to adversely impact on vehicular or pedestrian safety in the locality.	Yes

Part 3 of the SEPP is not applicable to the proposal as it does not include any advertisements or advertising structures.

State Environmental Planning Policy (Infrastructure) 2007

The application is for traffic generating development listed in Schedule 3 of the SEPP and has been referred to the NSW Roads and Maritime Service (RMS) in accordance with clause 104(3)(a). The RMS comments and other matters requiring consideration under clause 104(3)(b)(ii) and (iii) are discussed in the assessment of access, traffic and parking impacts addressed later in this report.

State Environmental Planning Policy (State and Regional Development) 2011

Clause 24(3) – The development was regionally significant development (Section 96(2) modification of development originally determined by the JRPP) prior to the amendment of this policy on 1 March 2018 and remains regionally significant development in accordance with the transitional provisions.

Port Macquarie-Hastings Local Environmental Plan 2011

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

- Clause 4.3, the Height of Buildings Map identifies a maximum height of buildings of 8.5m (green) and 11.5m (yellow) as detailed in the map below.

- The proposal incorporates measures to minimise and manage the flood risk to life and property associated with the use of land. Buildings are proposed to have floor levels at 4.38m AHD (being the 1:100 year flood level, plus climate change allowance, plus 500mm freeboard), which exceeds the minimum requirements of Council's Flood Policy 2015.
- The proposal is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.
- The proposal is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding. Car parking areas are proposed to have a minimum finished level of 3.58m AHD, which would permit a maximum water depth of 300mm in the 2100 design 1:100 flood event. Appropriate flood warning time and safe evacuation routes are available for the site.

Conditions were imposed on the original consent confirming the minimum finished levels for buildings and parking areas in the development and requiring construction to be appropriate to the flood hazard. These conditions remain relevant to the modified development.

- Clause 7.13, satisfactory arrangements are in place for provision of essential services including water supply, electricity supply, sewer infrastructure, stormwater drainage and suitable road access to service the modified development.

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

No draft instruments apply to the site.

(iii) Any Development Control Plan in force:

Port Macquarie-Hastings Development Control Plan 2013

The proposal is consistent with the DCP (as applicable) as detailed in the following compliance table:

DCP 2013: Business & Commercial Development			
DCP Objective	Development Provisions	Proposed	Complies
3.4.3.1	Setbacks: A zero metre setback to ground floor is preferred in all business zone developments.	Front setback to John Oxley Drive varying between approximately 9m and 145m. Minimum 6.5m setback to Oxley Highway.	No (see below)
3.4.3.2	Where a zero setback cannot be achieved, such as where parking can only be provided between the building and the street, a minimum 3.0m pedestrian setback is provided between the edge of the car park and the building.	Hardware and building supplies: 1.7m Bulky goods premises: 2.15m Satisfactory grades for the pedestrian areas within the development, between tenancies, and connecting to the adjoining public roads are achievable.	No*

	<ul style="list-style-type: none"> • The 3.0m pedestrian setback must be: open and accessible for pedestrians for its entire length and width; • clear of columns (other than awning posts where provided) and other obstructions; • has a pavement matching the gradient of the adjoining footpath and connects pedestrian areas on neighbouring sites; and • connects without any lip or step to adjoining footpaths or abutting pedestrian areas on neighbouring sites. 		
3.4.3.4	Colours, construction materials and finishes should respond in a positive manner to the existing built form, character and architectural qualities of the street	Site is in an area undergoing transition. Materials and finishes considered to achieve a satisfactory character.	Yes
3.4.3.5	The maximum length of any similar façade treatment is 22m.	Maximum length of similar front façade treatment is approximately 50m	No*
	Side and rear facades are to be treated with equivalent materials and finishes to the front façade.	Yes	Yes
3.4.3.15	<p>Landscaping: A landscape plan shall be submitted with the development application and include:</p> <ul style="list-style-type: none"> • Existing vegetation; and • Existing vegetation proposed to be removed; and • Proposed general planting and landscape treatment; and 	Landscaping plan submitted.	Yes

	<ul style="list-style-type: none"> • Design details of hard landscaping elements and major earth cuts, fills and any mounding; and • Street trees; and • Existing and proposed street furniture including proposed signage. 		
3.4.3.17	Where car parking cannot be provided under or behind the building and Council has agreed to permit some or all of the parking in the front setback, a landscaped strip with a minimum width of 3.0m is provided along the entire frontage/s of the site.	Proposal includes a 3m wide landscaped strip along the front boundary to John Oxley Drive.	Yes
3.4.3.18	At grade car parking incorporate water sensitive urban design principles to drain pavement areas.	Bio-retention gardens proposed throughout parking areas.	Yes
3.4.3.19	Fencing for security or privacy shall not be erected between the building line and the front boundary of a site.	None proposed.	Yes
3.4.3.27	The number of vehicular crossovers shall be kept to a minimum and appropriate sight lines provided to ensure safe integration of pedestrian and vehicular movement.	Number of crossovers is consistent with approved development.	Yes
	At-grade / surface car parking areas adjacent to streets shall be generally avoided or at least adequately softened by appropriate landscaping.	<p>Proposal includes 3m wide landscaped strip along John Oxley Drive frontage. Landscaping, including tree planting, is also proposed in the parking areas.</p> <p>Part of the parking area is also cut in below ground level in John Oxley Drive, which would also reduce visual impact.</p>	Yes
3.4.3.31	Pedestrian and vehicle movement areas are separated to minimise conflict.	Combination of separated concrete footpaths and painted pavement areas for pedestrian use.	Yes

	Changes in pavement material, levels, lining or tactile treatments are used to distinguish changes between vehicle and pedestrian access ways.	Yes	Yes
3.4.3.33	Secure and convenient parking/storing for bicycles is provided close to the entrance of the development and with good surveillance.	Bicycle parking provided near the entrances to both buildings.	Yes
3.4.3.35	Commercial Development Adjoining Residential Land uses: The development is designed so that all vehicle movement areas and servicing areas are located away from adjoining residential areas.	Main service vehicle access road located to the north and west of the site, away from adjoining residential areas. However, the main vehicular access/egress and the exit from the hardware and building supplies tenancy are located along the southern boundary of the site and adjoin residential development.	No (see below)
	Where this cannot be achieved visual and acoustic treatment of the interface is required.	Acoustic wall/fence 3m high proposed along southern side of the site at a 3m setback from the property boundary. Landscaping proposed between the acoustic wall/fence to reduce visual impact.	Yes
	The building elevation adjoining the residential area must be; <ul style="list-style-type: none"> • Articulated, with changes in setback at intervals no greater than 10m; • Use a variety of materials and treatments; • Be setback a minimum of half the height of the wall or a minimum of 3.0metres whichever is greater. 	South elevation of building complies with setback requirements, but is articulated at approximately 40m intervals with no change of building materials.	No*
	Waste areas are located and managed to minimise pests, noise and odour.	Bulk waste storage possible in rear loading areas of each of the buildings, which would not affect the amenity of	Yes

		residential development to the south.	
	The Strategy is to make provision for quality artwork(s) within the development in publicly accessible location(s) and take into account the links and connections between the development and the area's natural and cultural heritage.		
	The public art is to be 1% of the total cost of the development to provide works of art for appreciation from the public domain.		

DCP 2013: General Provisions			
DCP Objective	Development Provisions	Proposed	Complies
2.2.2.1	Signs primarily identifying products or services are not acceptable, even where relating to products or services available on that site.	No signage identifying products or services proposed.	Yes
	Signage is not permitted outside property boundaries except where mounted upon buildings and clear of pedestrians and road traffic.	All signage proposed within property boundaries.	Yes
	On-premise signs should not project above or to the side of building facades	None of the proposed wall signs project above or to the side of the building facade.	Yes
2.2.2.2	Where there is potential for light spill from signage in a non-residential zone adjoining or adjacent to residential development, illuminated signage is to be fitted with a time switch to dim by 50% or turn off the light by 11pm each night, depending on the nature of the development.	Condition A(15) of the current consent requires the signage to be fitted with a timer to turn off between 11.00pm and 5.30am.	Yes
2.3.3.1 – 2.3.3.3	Cut and fill and retaining walls.	Substantial cut and fill is still proposed for the modified proposal, generally consistent with the approved	See 2.3.3.3 below

		development. Existing conditions of consent address issues of safety, stability, stormwater drainage and haulage of bulk material. No additional conditions are considered necessary for the modified proposal.	
2.4.3	Bushfire risk, Acid sulphate soils, Flooding, Contamination, Airspace protection, Noise and Stormwater	Refer to main body of report.	
2.5.3.3	Off-street parking in accordance with Table 2.5.1. (Provision to consider reduced parking where supported by parking demand study)	<p><u>Required:</u> In accordance with Table 2.5.1 the following parking rates are applicable to the proposal:</p> <ul style="list-style-type: none"> - Bulky goods premises: 1 space per 100m² GFA for display, plus 1 space per 2 employees (warehouse area). - Hardware and building supplies: 1 space per 70m² display. <p>Based on areas and employee rates, total parking required by DCP = 354 spaces</p> <p><u>Proposed:</u> 457 spaces, including 4 car and trailer bays and 12 accessible parking spaces.</p>	Yes
2.5.3.7	Parking layout in accordance with AS/NZS 2890.1 and AS/NZS 2890.2	Capable of complying. Existing conditions require certification of the design prior to the issue of a Construction Certificate and certification of the completed parking prior to the issue of an Occupation Certificate.	Yes
	Parking spaces generally located behind building line, unless screened with 3m wide landscaping.	Parking spaces forward of the building line but 3m wide landscaped area proposed for John Oxley Drive frontage excluding vehicle access locations.	Yes
2.5.3.8	Accessible parking provided in accordance with AS/NZS 2890.1, AS/NZS 2890.2 and AS 1428	Total of 12 accessible spaces proposed. 2.6% of total parking provision (457 spaces).	Yes

2.5.3.9	Bicycle and motorcycle parking considered and designed generally in accordance with the principles of AS2890.3	Bicycle parking proposed adjacent to both buildings.	Yes
2.5.3.12 and 2.5.3.13	Landscaping of parking areas	Landscaping concept provided with the application, which includes larger trees and spreading groundcovers.	Yes
2.5.3.19	Off street commercial vehicles facilities are provided in accordance with AS/NZS 2890.2	Capable of complying.	Yes
	<p>Loading bays will be provided in accordance with the following requirements;</p> <ul style="list-style-type: none"> • Minimum dimensions to be 3.5m wide x 6m long. (This may increase according to the size and type of vehicle). • Vertical clearance shall be a minimum of 5m. • Adequate provision shall be made on-site for the loading, unloading and manoeuvring of delivery vehicles in an area separate from any customer car parking area. • A limited number of 'employee only' car parking spaces may be combined with loading facilities. • Loading areas shall be designed to accommodate appropriate turning paths for the maximum design vehicle using the site. • Vehicles are to be capable of manoeuvring in and out of docks without causing conflict with other street or on-site traffic. 	<p>Proposed loading bays are dimensioned to accommodate 25m semi-trailers and B-Doubles for the hardware and building supplies building and 12.5m heavy rigid vehicles for the bulky goods tenancy. Swept path analysis has been provided in the TPS Group Traffic Engineering Report demonstrating that the access roads and manoeuvring areas are of sufficient dimensions for their intended use.</p> <p>Loading and manoeuvring areas are separated from public car parking and pedestrian areas.</p>	Yes

	<ul style="list-style-type: none"> Vehicles are to stand wholly within the site during such operations. 		
	Other commercial development shall provide one loading bay for the first 1,000m ² floor space and one additional bay for each additional 2,000m ² .	<p>Proposed development includes 4 loading bays.</p> <p>The development would require 10 loading bays to comply with this requirement. However, this is not considered necessary having regard to the nature of the development.</p>	No, but acceptable.
2.5.3.20	The location and design of loading bays should integrate into the overall design of the building and car parking areas.	Loading bays located at the rear of the buildings and integrated with building design.	Yes
	Where visible from the public domain, loading bays are located behind the building.	Yes	Yes
	Where loading bays are located close to a sensitive land use, adequate visual and acoustic screening is provided.	Acoustic wall/fence 3m high proposed along southern side of the site at a 3m setback from the property boundary. Landscaping proposed between the acoustic wall/fence to reduce visual impact.	Yes

DCP 2013: Chapter 4.4 - Port Macquarie West (John Oxley Drive East)			
DCP Objective	Development Provisions	Proposed	Complies
4.4.2.1	A development application should be accompanied by a Noise Impact Assessment report, which is to be prepared by a professional acoustician in accordance with the <i>Industrial Noise Policy 2000</i> , NSW Environment Protection Authority and with applicable Australian Standards.	Noise impact assessment submitted with the application. See comments later in this report under Noise and Vibration.	Yes
4.4.2.2	Sunlight to the principal area of ground-level private and other key open space of adjacent residential properties shall not be reduced to	The modified proposal would provide a substantially greater building setback to the southern boundary and would reduce the extent of overshadowing.	Yes

	less than 3 hours between 9.00am and 3.00pm on June 22.		
	Buildings shall not reduce the sunlight available, to the north-facing windows of living areas in existing adjacent dwellings, to less than the above specification.		
4.4.2.3	<p>The design details for any development application should address mitigation of any adverse impacts of the proposed development, when viewed from outside the site, in relation to:</p> <ul style="list-style-type: none"> • siting and bulk of buildings • car parking areas • signage. <p>Photomontages could be used to illustrate the visual impacts on the property to the south, and when viewed from east-bound traffic on the Oxley Highway.</p>	<p>Photomontages have been submitted with the application, showing the expected visual impact from locations on the Oxley Highway, John Oxley Drive and within the adjoining Sienna Grange residential development.</p> <p>The visual impact is proposed to be mitigated by a combination of the following measures:</p> <ul style="list-style-type: none"> - Excavation of the building into the northern end of the site. - Provision of landscaping along the John Oxley Drive frontage and between the proposed noise wall and Sienna Grange to the south. - Existing noise wall and landscaping along the Oxley Highway frontage. - Detailing of building facades. <p>The submitted information demonstrates that the proposal would have a satisfactory visual impact when viewed from outside the development site.</p>	Yes

The proposal seeks to vary Development Provision 3.4.3.2 in relation to the width of the pedestrian paths between the parking area and the buildings.

The relevant objectives are:

- To ensure that the development provides adequate pedestrian areas and integrates into the adjoining sites.
- To ensure that structures and queues do not undermine pedestrian movement.

The proposal is considered to be consistent with the objectives of the control for the following reasons:

- Bunnings have advised that their experience with other stores is that customers typically use the road network to access the boot/tray of their vehicles with trolleys after purchasing goods. Footpaths are generally only used by customers on their way to the premises and the width of pathways is considered suitable for the volume of pedestrian traffic.
- The site has no potential to connect with other commercial uses on adjoining land having regard to the residential zoning to the south and location of major roads on the other lot boundaries. The pedestrian area would therefore not need to accommodate additional off-site pedestrian traffic.
- The parking layout provides for satisfactory movement of pedestrians within the site that would limit conflict with vehicular traffic.

The proposal seeks to vary Development Provision 3.4.3.5 in relation to maximum shop front width and variations in facade treatment.

The relevant objective is to avoid bulky and unattractive buildings by encouraging high quality architectural building facades.

The proposal is considered to be consistent with the objectives of the control for the following reasons:

- Narrower shop fronts are not practical for bulky goods premises or hardware and building supplies due to the large display area required for such uses.
- Satisfactory variation in facade treatments has been proposed for the scale of the building.
- The buildings are oriented at an angle to John Oxley Drive and with a considerable setback, which would reduce the visual impact.

The proposal seeks to vary Development Provision 3.4.3.35 in relation to articulation of building walls adjacent to residential areas.

The relevant objectives are:

- To promote compatibility between businesses and commercial development and preserve the amenity of adjoining residential areas.
- To ensure that the interface between business and commercial development and adjoining residential areas is of a high quality and achieves adequate visual and acoustic privacy.

The proposal is considered to be consistent with the objectives of the control for the following reasons:

- The proposal includes an increased side setback, which would improve acoustic privacy between the uses. The side setback has been significantly increased from the approved development, with the service vehicle exit now located around the southern end of the building.
- Screen landscaping and an acoustic barrier 3m high are proposed between the building wall and the adjoining Sienna Grange residential development, to reduce visual impact.
- The southern end elevation is partially open, articulated, incorporates a change in roof height, and an awning.
- The submitted acoustic assessment confirms that satisfactory amenity would be retained for adjoining residential development with the proposed acoustic wall.

Based on the above assessment, the variations proposed to the provisions of the DCP are considered acceptable and the relevant objectives have been satisfied. Cumulatively,

the variations do not amount to an adverse impact of a significance that would justify refusal of the application.

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

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.

v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates:

No Coastal Zone Management Plan applies to the subject site.

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

Existing Roads

The site is located south of the Oxley Highway, adjacent to the intersection with John Oxley Drive and Wrights Road. The north-western boundary of the development lot fronts the Oxley Highway, which is a State classified road and consequently a Controlled Access Road (CAR), requiring all vehicular access to be via other local roads wherever possible. An existing sound wall runs along the length of the site's north-western boundary with the highway.

The Oxley Highway in the vicinity of the site is dual carriageway two-way divided road. The road reserve varies in width ranging between approximately 50 and 60 metres. Oxley Highway is classified as an arterial road.

To the east, the site is bounded by John Oxley Drive (formerly the Oxley Highway). The road reserve along the site boundary ranges between 75m and 120m in width, with a large proportion of the reserve vegetated. The road formation is currently characterised as a two-way, two-lane road having an approximately 10m wide formation at its narrowest point (including shoulders) and additional turning lanes on approach to/departure from nearby intersections. The road is classified by Council as an 'Urban Distributor' under the AUS-SPEC system and is capable of handling additional traffic generated by the development with minimal impact to the existing pavement. Council has developed a concept master plan which includes duplication of the proposed John Oxley Drive corridor to cater to future growth in the area. Council's concept master plan is further explained in the following Roads and Maritime Services section (below).

Roads and Maritime Services (RMS)

Council is the Road Authority for John Oxley Drive and the Oxley Highway, as well as all other local roads in the area. As the Oxley Highway is a State classified road, the RMS' concurrence is required (under s138 of the Roads Act) for any road works in that road reserve. The modified proposal has been referred to the RMS under the provisions of SEPP (Infrastructure) 2007 for formal review and comment. Findings of this review have been incorporated into the assessment of the application, with RMS traffic comments incorporated within the Traffic and Transport section (below).

The traffic assessment has determined that Traffic Control Signals (TCS) are required to be constructed at the access driveway. Traffic Control Signals (TCS) are under the care and control of the RMS and require RMS approval in accordance with Section 87 of the Roads Act 1993. To facilitate TCS installation, the developer is required to enter into a 'Works Authorisation Deed' (WAD) with RMS prior to the issue of any Construction Certificate, with all works under the WAD being completed (to the satisfaction of RMS) prior to the issue of any Occupation Certificate for the proposed development.

Further to the requirements above, it should be noted that at the time of this application:

- a) the RMS is currently reviewing the concept design for John Oxley Drive, Wrights Road and the Oxley Highway intersection upgrade; and
- b) Council is refining the John Oxley Drive corridor master plan in consultation with the community and RMS.

Works defined in the broader traffic schemes noted above are not a sole responsibility of this development and will be managed through a Transport Infrastructure Contribution (TIC) payable to the RMS. Irrespective of this contribution, if the development proceeds prior to works associated with the Wrights Road roundabout and/or the John Oxley Drive duplication, the development will be required to construct any necessary improvements (consistent with future concept plans) to enable satisfactory transitions to the existing road network at no cost to Council or the RMS.

As part of the modified proposal the Applicant has provided a copy of the signed TIC Deed between CVC Mezzanine Finance Pty Ltd and NSW Roads and Maritime Services and a copy of the receipt confirming payment of the relevant contribution to the RMS. It is recommended that condition B(31) be deleted as this requirement has now been resolved.

Traffic and Transport

Council conducted a traffic count on John Oxley Drive immediately south of the site in 2012. Findings of this count determined the Annual Average Daily Traffic (AADT) for the two-way flow of John Oxley Drive is approximately 10,000 trips per day.

Assessment of the traffic impacts associated with the development has occurred in an iterative fashion through numerous studies since the rezoning proposal for the site was reviewed by Council.

An initial 'Transport and Traffic Engineering Report' dated 11 February 2013 was prepared by Glen Holdsworth of TTM Group (at that time) in response to Council's Gateway Determination - Planning Proposal to Amend the PMHC LEP 2011 for Commercial Purposes. Key findings of this report (which are supported by generalised RTA survey data) concluded that the proposed development will generate 600 peak hour trips during the PM peak hour, and 1,000 peak hour trips during the weekend midday period.

Council commissioned SMEC to provide a Traffic Study (published 4 July 2013) for the John Oxley Drive Precinct. Findings of this study recommended that access to the proposed hardware and bulky goods development be signalised and include a two-lane (westbound) egress from site and an exclusive southbound right-turn into the site (as proposed).

Colston Budd Hunt & Kafes Pty Ltd conducted further traffic analysis (titled 'Traffic report for proposed Masters Home Improvement Centre and bulky goods development, Port Macquarie') in August 2015 as part of the Development Application. This report included existing traffic counts which correlate with Council's existing survey data above

and determined that the current peak hour traffic volumes during the weekday PM and Saturday midday periods along John Oxley Drive are 900 and 1,200 vehicles per hour, respectively. The report also determined that the current average highest delay during weekday PM and Saturday mid-day peak hours is less than 30 seconds.

Further analysis was conducted by Glen Holdsworth, now with Traffic and Parking Systems (TPS) Pty Ltd, in a second report dated 27 August 2015. Results included Paramics micro-simulation modelling and SIDRA 6.1 intersection analysis based on the previous SMEC report. A follow-up report was issued on 5 November 2015 to address Council requests for additional information as a part of the original DA process, followed by a subsequent 19 November 2015 letter principally to explain differences in southbound right-turn queuing distances between Council's and the developer's SIDRA analyses.

Council staff have previously determined that sufficient information has been provided to support the recommendation that the traffic impact can be adequately addressed by the provision of all infrastructure proposed by the applicant and required by conditions of consent, including signalised access with exclusive turning lanes for storage, acceleration and deceleration. Further to this development, future corridor and intersection improvements planned by RMS and Council will address capacity and safety needs in the surrounding area, in response to increasing traffic growth across the precinct. The proposed modification does not impact the previous assessment and will not alter the effect on the existing road network. The modification includes a reduction in the proposed number of parking spaces from 523 to 457 spaces. However, this is still in excess of the required spaces.

Pedestrian and Road Requirements

The applicant has proposed to provide pedestrian connectivity for the equivalent length of the full frontage of the site in accordance with Council's frontage works policy and this is supported for the proposed hardware and bulky goods use. Instead of directly connecting to the roundabout to the north, which has no formed pedestrian route towards the town centre, footpaths will be required to connect the site to the bus bay proposed along the frontage and also to the proposed traffic signal intersection to the south. Pedestrians and cyclists can cross the road more safely using the signals and the applicant is to provide a shared cycleway consistent with the corridor master plan for the remaining equivalent length of the property frontage. If the development occurs before the RMS/Council upgrade projects, the completed segment of the shared cycleway can then be connected to by those parties.

Although the responsibility of maintaining the private vehicular access roads into the site will be the responsibility of the landowners, Council will need to approve the pavement design for the sections that will be situated within the road reserve as part of the Roads Act (s138) application. This is to ensure that the private junctions are built to a sound standard and premature failures impacting on the public road network will remain unlikely. Road pavement widening and turning lanes will become public assets, and as such the pavement design will need to comply with AUS-SPEC Table D1.5 for an 'Urban Distributor' road.

Stormwater

The landform grades away from John Oxley Drive to the western rear of the site, which is characterised by seasonal wetland/flood prone land. Because of the close proximity to tail waters during rain events, Council has waived the standard requirement for onsite detention of stormwater peak flows. This can be accepted on the basis that attenuation of the peak outflow from this site would be likely to cause the peak to coincide with other catchment peak outflows, thereby increasing the impact of a storm on the downstream catchment, compared with the scenario where no onsite detention is

provided.

AUSPEC D7 provides water quality controls and outcomes to be achieved by onsite treatment prior to release. The design has been amended from the previously approved proposal to incorporate onsite treatment in the form of cartridge filter devices in lieu of the bio-retention swales between the car parking aisles originally proposed. The amended Stormwater Management Plan has demonstrated that the proposal would achieve appropriate stormwater quality outcomes, subject to submission of all design calculations and modelling with the detailed design for acceptance by Council's stormwater engineer.

Council's road drainage currently discharges to the southeast corner of the site into an open swale. The developer is seeking to seal the flow path through the site, and is therefore required to pipe the road drainage through the site to an appropriate discharge point downstream (which has been detailed in the DA plans). An easement is required over this line of pipe with Council as the beneficiary in case Council crews need to access the site to maintain the infrastructure. The overland flow path is also to be contained within this easement, as extreme events will overwhelm the pipe network and flow over the surface. Scour protection works will be required at the proposed outlet to minimise erosion.

Stormwater details will be assessed by Council under the Local Government Act (s68) and Roads Act (s138) applications prior to issue of the Construction Certificate.

Noise and vibration

The proposed hours of operation for the development are:

- 6.00am to 10.00pm - Monday to Friday, and
- 6.00am to 9.00pm Saturdays and Sundays.

The subject site is located near existing and proposed residential development that is potentially sensitive to noise generated by the development.

The Applicant submitted a Noise Impact Assessment prepared by Acoustic Logic and dated 2 June 2015 with the original development application. A further assessment prepared by Acoustic Logic and dated 30 January 2018 has also been submitted for the proposed modified development. The report concludes that noise emissions from the operation of the site will comply with acoustic criteria, preventing unacceptable noise impact on the nearest surrounding residential residents, providing that the recommendations presented in Section 7 of the report are adopted.

Section 7 of the 30 January 2018 report includes the following recommendations:

- Construction of a 3m high acoustic fence/wall along the southern side of the development site as shown on the application plans.
- Detailed design and certification of all mechanical plant to limit noise emissions to EPA requirements.
- Delivery vehicles entering the site between 6.00am and 7.00am shall only enter the northern entry driveway.
- Trucks shall not exit the premises before 7.00am.

Existing conditions B(20), E(22), E(23), and F(10) incorporate the above recommendations, which are similar to the recommendations for the original development. It is recommended that condition F(10) be amended to delete parts b) and c), which are not applicable to the modified proposal.

Waste

Condition B(13) of the current consent requires that if an external area is used for the storage of putrescible material then the area shall be:

- a. Bunded with a minimum volume of the bund being capable of containing 110% of the capacity of the largest container stored, or 25% of the total storage volume, whichever is the greatest.
- b. Provided with a hose tape connected to the water supply;
- c. Paved with impervious material;
- d. Graded and drained to the sewer system, and
- e. Roofed to prevent the entry rainwater.

The Applicant has submitted that Bunnings as the principle tenant cannot satisfy Council's requirement to drain or bund their garbage storage area given their standard operating practice of using forklifts within the Goods Inwards area. Bunnings have comprehensive standard operating procedures and accordingly, the management of waste across all stores is undertaken in accordance with these accepted policies and procedures, as follows:

- Bunnings generally do not include garbage rooms on the basis that a significant amount of putrescible material is not generated. The bulk of waste that is generated includes cardboard, plastics and timber packing. The plastics and cardboard are compressed, baled and collected by commercial contractors. Timber pallets and timber scraps are collected by recycling contractors.
- Any small quantity of putrescible / no-recyclable material that is generated (e.g.; team member food scraps) are contained in 3m³ hoppers with a sealed lid which is collected and maintained by a commercial contractor.
- All collection bins / bales / pallets are stored adjacent the Oxley Highway boundary, which will be delineated by line marking.

The Applicant has requested deletion of condition B(13) as the detailed design requirements set out in this condition are unreasonable and contrary to the standard Bunnings waste management practices that are in operation across all Bunnings stores.

The current condition is considered to be best practice for waste management and includes fail-safes to prevent pollution entering the environment in the event of a spill, leak, or other incident. Details of the Bunnings waste management procedures have not been provided to demonstrate that they would achieve similar or better outcomes. It is recommended that condition B(13) remain on the consent in its current form.

Bushfire

The site is identified as being bushfire prone.

As part of the original application, the Applicant submitted a bushfire report prepared by David Pensini Building Certification and Environmental Services and dated 24 April 2015. The NSW Rural Fire Service (RFS) assessed the development and issued a Bushfire Safety Authority dated 26 October 2015, subject to conditions regarding the following matters:

- Arrangements for emergency and evacuation,
- Management of the site as an inner protection area,
- Installation of water, electricity and gas in accordance with Planning for Bush Fire Protection 2006,
- Landscaping in accordance with Planning for Bush Fire Protection 2006.

An updated Bushfire Hazard Assessment has been prepared by David Pensini Building Certification and Environmental Services and dated February 2018. The amended proposal was forwarded to the RFS and advice was received on 26 February 2018 that it is no longer integrated development requiring approval under Section 100B of the

Rural Fires Act 1997, as the development no longer includes subdivision of land that could lawfully be used for residential purposes.

The proposal is still required to be consistent with the requirements of Planning for Bush Fire Protection 2006 for Class 2-9 buildings. The above conditions of the original Bushfire Safety Authority have been incorporated elsewhere into the consent.

It is recommended that condition A(7) be deleted and replaced with new conditions as noted above.

Cumulative impacts

The proposed development is not expected to have any identifiable adverse cumulative impacts on the natural or built environment.

The proposal is likely to have significant positive economic impacts within the Port Macquarie-Hastings region.

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

Site constraints of bushfire risk, flooding, ecology and traffic have been adequately addressed and appropriate conditions of consent recommended.

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

The application was notified to neighbours and advertised in accordance with Development Control Plan 2013 between 22 February 2018 and 7 March 2018. No written submissions were received on the modified proposal.

(e) The public interest

The proposed development will be in the wider public interest with provision of additional investment and employment opportunities in the region, broadening retail choice and strengthening competition. The development would not compromise the existing retail hierarchy or viability of the Port Macquarie CBD.

The proposed development satisfies relevant planning controls and is considered to be in the wider public interest.

4. DEVELOPMENT CONTRIBUTIONS APPLICABLE

- The development is commercial and involves intensification or expansion of the site and the proposed value of works is \$100,000 or greater. Section 94A contributions apply to the proposal in this regard.
- Development contributions will be required towards augmentation of town water supply and head works and sewer services headworks under Section 64 of the Local Government Act 1993. The modified proposal will alter the calculated contribution due to changes in floor area.

Refer to recommended contribution conditions.

5. CONCLUSION

The proposal is substantially the same development to that originally granted consent. The application has been assessed in accordance with the relevant considerations in Section 96 and 79C of the Environmental Planning and Assessment Act 1979 that are applicable to the modified proposal.

Issues raised during assessment of the application have been considered and where relevant, conditions have been recommended to manage the impacts attributed to

these issues.

The site is considered suitable for the proposed development and will positively contribute to the benefit of the community as a whole. Consequently, it is recommended that the application be approved subject to the recommended modified conditions.