

DATE OF DETERMINATION	Tuesday, 13 November 2018
PANEL MEMBERS	Garry West (Chair), Pamela Westing, Stephen Gow, Paul Drake and Robert Hussey
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held at Port Macquarie-Hastings Council on 13 November 2018, opened at 9.30am and closed at 10.45am.

MATTER DETERMINED

2018NTH005 – Port Macquarie-Hastings – DA2018-58.1 at 4 Clarence Street, Port Macquarie (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The reasons for the decision of the Panel to approve the Clause 4.6 variation were:

- The Panel has considered the Applicant's request pursuant to cl.4.6 of the Port Macquarie-Hastings Local Environmental Plan 2011 (LEP) to vary the development standard contained in Clause 4.3 relating to height of buildings.
- The Panel is satisfied that the Applicant's request adequately addresses the matters to be demonstrated by the Applicant under Clause 4.6(3), namely that:
 - compliance with the development standards would be unreasonable or unnecessary in the circumstances of the case by presenting a consistent development outcome to its surrounding context; and
 - there are sufficient environmental planning grounds to justify contravening the development standard as the proposed development continues to meet the objectives of the height of buildings development standard and will not have an adverse impact to adjoining properties.
- Moreover, in the Panel's view the proposed development will be in the public interest because it will remain consistent with the objectives of the standard as well as the objectives for development in the zone R4 high residential under the LEP.
- Notwithstanding that the Panel does not accept that Council has abandoned the height limit in the area.

Further reasons for the decision of the Panel to grant approval were:

- The proposal has successfully addressed the design principles and criteria contained in the Apartment Design Guide,
- SEPP 71 Coastal Protection – the site is predominately cleared and located within an area zoned for high residential purposes,

- The proposal responds to the existing character of adjoining and neighbouring developments immediately east and west of the site and directly responds to the height, bulk and scale of these developments,
- There are no significant adverse privacy or overshadowing impacts identifiable.

CONDITIONS

The development application was approved subject to the conditions in the Council Assessment Report with the following amendments:

- New condition B (16) requiring architectural embellishment of the southern wall elevation to be made subject to the satisfaction of Council prior to the issue of a Construction Certificate;
- Condition E (15) was amended to reference the correct condition regarding a final dilapidation report;
- New condition E (23) requiring a recreation management plan to establish noise levels of no greater than 5 dBA at the property boundaries, hours of use and management of the use of the recreation facilities;
- New condition E (24) requiring evidence of electricity and telecommunications for the development;
- New condition E (25) to ensure satisfactory security measures are provided to the external gates of the ground floor units; and
- Condition F (1) was amended to refer to 'residents' rather than 'patrons'.

PANEL MEMBERS	
Garry West (Chair)	Pamela Westing
Stephen Gow	Paul Drake
Robert Hussey	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018NTH005 – Port Macquarie-Hastings – DA2018-58.1
2	PROPOSED DEVELOPMENT	Demolition of existing motel and erection of 48 unit residential flat building including Clause 4.6 variation to Clause 4.3 (Height of Building) under Port Macquarie-Hastings Local Environmental Plan 2011 at Lot 6, DP SEC 60A DP 758852 & Lot 1 DP 1083291
3	STREET ADDRESS	4 Clarence Street, Port Macquarie
4	APPLICANT OWNER	McNeil Architects Australian Post-Tel Institute Ltd t/a API Leisure & Lifestyle
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$20 million (lodged before 1 March 2018)
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <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 62 – Sustainable Aquaculture State Environmental Planning Policy No 64 – Advertising and Signage State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development State Environmental Planning Policy No 71 – Coastal Protection State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (State and Regional Development) 2011 Port Macquarie-Hastings Local Environmental Plan 2011 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Port Macquarie-Hastings Development Control Plan 2013 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil [Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 30 October 2018 Written submissions during public exhibition: ten (10) Verbal submissions at the public meeting: <ul style="list-style-type: none"> Support – NIL Object – NIL Council assessment officer – Patrick Galbraith-Robertson; Dan Croft, Group Manager, Development Assessment and Caleb Scholes, Development Engineer On behalf of the applicant – Malcolm McNeil, Consultant Architect and Bruce Richards, Member of the Board of Directors

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Site inspection and briefing on 13 November 2018 Attendees: <ul style="list-style-type: none"> <u>Panel members</u>: Garry West (Chair), Pamela Westing, Stephen Gow, Paul Drake and Robert Hussey <u>Council assessment staff</u>: Patrick Galbraith-Robertson; Dan Croft, Group Manager, Development Assessment and Caleb Scholes, Development Engineer
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report as amended at the meeting and attached as Schedule 2.

SCHEDULE 2

DA NO: 2018/58

DATE: 25/10/2018

PREScribed CONDITIONS

The development is to be undertaken in accordance with the prescribed conditions of Part 6 - Division 8A of the *Environmental Planning & Assessment Regulations 2000*.

A – GENERAL MATTERS

- (1) (A001) The development is to be carried out in accordance with the plans and supporting documents set out in the following table, as stamped and returned with this consent, except where modified by any conditions of this consent.

Plan / Supporting Document	Reference	Prepared by	Date
Development plans	Drawing number D01_A to D04_A D05/B D06/A to D08/A D09/B to D12/B D13/A to D19/A D20/B D21/A to D22/A D23/B to D24/B D25/A to D26/A D27/B to D28/B D29.1/A to D35/A	McNeil Architects	27 August 2018
Communal Recreation Facilities Management Plan		API Leisure & Lifestyle	
Landscape sketch plan	Drawing 1 to 4	Rupert G.H Milne Home, Landscape Consulting	1 February 2018
Draft strata subdivision			16 May 2018
BASIX certificate	882385M	Concept Designs Australia	1 February 2018
Report on test Trenches		Edward Higginbotham & Associates Pty Ltd	31 August 2016

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

- (2) (A002) No work shall commence until a Construction Certificate has been issued and the applicant has notified Council of:
- a. the appointment of a Principal Certifying Authority; and
 - b. the date on which work will commence.

Such notice shall include details of the Principal Certifying Authority and must be submitted to Council at least two (2) days before work commences.

- (3) (A005) This consent allows the strata-subdivision of the units, subject to the submission of an application for a Strata Certificate.

- (4) (A008) Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure.

- (5) (A009) The development site is to be managed for the entirety of work in the following manner:

1. Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
2. Appropriate dust control measures;
3. Building equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained. Where work adjoins the public domain, fencing is to be in place so as to prevent public access to the site;
4. Building waste is to be managed via an appropriate receptacle;
5. Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
6. Building work being limited to the following hours, unless otherwise permitted by Council;
 - Monday to Saturday from 7.00am to 6.00pm
 - No work to be carried out on Sunday or public holidays

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

- (6) (A011) The design and construction of all public infrastructure works shall be in accordance with Council's adopted AUSPEC Specifications.

- (7) (A012) This consent does not provide for staging of the development. Any staging will require a separate consent or an amendment to this consent.

- (8) (A013) The general terms of approval from the following authorities, as referred to in section 93 of the Environmental Planning and Assessment Act 1979, and referenced below, are attached and form part of the consent conditions for this approval.

- NSW Heritage Council - The General Terms of Approval, Reference DOC18/252319 and dated 15 May 2018, are attached and form part of this consent.

- (9) (A014) This approval does not provide any indemnity to the owner or applicant under the Disability Discrimination Act 1992 with respect to the provision of access and facilities for people with disabilities.

- (10) (A017) A separate development application for any proposed advertising signs (other than signs which are exempt development or approved under this consent) must be submitted to and approved by council prior to the erection or display of any such signs.

- (11) (A030) The restoration of any vehicle access rendered redundant by the development, to standard kerb and footpath formation at no cost to Council, in accordance with Council's current AUSPEC Specifications and Standards. All works must be approved by Council pursuant to Section 138 of the Roads Act.

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

Such works include, but not be limited to:

- Civil works
- Traffic management
- Work zone areas
- Hoardings
- Concrete foot paving
- Footway and gutter crossing
- Functional vehicular access

- Pedestrian refuge on Clarence Street, east of Munster Street.
- Both kerb return and pram ramp details accommodating stormwater flows on the southern side of Clarence Street.

(13) (A033) The applicant shall provide security to the Council for the payment of the cost of the following:

- 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.

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

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

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

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

(14) (A037) Provision of an automatic stormwater sump and pump system designed by a Practising Hydraulic Engineer for the disposal of seepage and stormwater in the basement storey. The system shall incorporate a standby pump. The design plans for the required services must be approved by Council pursuant to Section 68 of the Local Government Act 1993.

(15) (A057) The applicant is to ensure the proposed development will drain to the existing point of connection to Council's sewerage system.

B – PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

(1) (B001) Prior to release of the Construction Certificate, approval pursuant to Section 68 of the Local Government Act, 1993 to carry out water supply, stormwater and sewerage works is to be obtained from Port Macquarie-Hastings Council. The following is to be clearly illustrated on the site plan to accompany the application for Section 68 approval:

- Position and depth of the sewer (including junction)
- Stormwater drainage termination point
- Easements
- Water main
- Proposed water meter location

(2) (B003) Submission to the Principal Certifying Authority prior to the issue of a Construction Certificate detailed design plans for the following works associated with the developments. Public infrastructure works shall be constructed in accordance with Port Macquarie-Hastings Council's current AUSPEC specifications and design plans are to be accompanied by AUSPEC DQS:

- Road works along the frontage of the development.
- Earthworks, including filling of the land for flood protection.
- Public parking areas including;
 - Driveways and access aisles;
 - Parking bays;
 - Delivery vehicle service bays & turning areas.
- Sewerage reticulation.
- Water supply plans shall include hydraulic plans for internal water supply services and associated works in accordance with AS 3500, Plumbing Code of Australia and Port Macquarie-Hastings Council Policies.
- Stormwater systems.
- Detailed driveway profile in accordance with Australian Standard 2890, AUSPEC D1, and ASD 207, Port Macquarie-Hastings Council current version.

8. Provision of a full width concrete footpath along Clarence Street.

- (3) (B010) Payment to Council, prior to the issue of the Construction Certificate of the Section 94 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 the provisions of the following plans:

- Port Macquarie-Hastings Administration Building Contributions Plan 2007
- Hastings S94 Administration Levy Contributions Plan
- Port Macquarie-Hastings Open Space Contributions Plan 2018
- Hastings S94 Major Roads Contributions Plan
- Port Macquarie-Hastings Community Cultural and Emergency Services Contributions Plan 2005

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

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

- (4) (B011) As part of Notice of Requirements by Port Macquarie-Hastings Council as the Water Authority under Section 306 of the Water Management Act 2000, the payment of a cash contribution, prior to the issue of a Construction Certificate, of the Section 64 contributions, as 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 in accordance with the provisions of the relevant Section 64 Development Servicing Plan towards the following:

- augmentation of the town water supply headworks
- augmentation of the town sewerage system headworks

- (5) (B024) Submission to Council of an application for water meter hire, which is to be referred to the Water Supply section so that a quotation for the installation can be prepared and paid for prior to the issue of a Construction Certificate. This application is also to include an application for the disconnection of any existing service not required.

- (6) (B034) Prior to release of the Construction Certificate the submission of details to Council for the disposal of any spoil gained from the site and/or details of the source of fill, heavy construction materials and proposed routes to and from the site, including, but not limited to:

- The pavement condition of the route/s proposed (excluding collector, sub-arterial and arterial roads) for the haulage of fill material to the site and/or haulage of excess material from the site. The condition report shall include photographs of the existing pavement and pavement deflection test results taken in the travel lanes;
- Recommended load limits for haulage vehicles and;
- A procedure for monitoring the condition of the pavement during the haulage;
- Bond to guarantee public infrastructure is not damaged as a result of construction activity,

and;

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

- (7) (B038) Footings and/or concrete slabs of buildings adjacent to sewer lines or stormwater easements are to be designed so that no loads are imposed on the infrastructure. Detailed drawings and specifications prepared by a practising chartered professional civil and/or structural engineer are to be submitted to the Principal Certifying Authority with the application for the Construction Certificate.

- (8) (B041) Prior to the issue of the Construction Certificate a dilapidation report shall be prepared by a suitably qualified person for buildings on adjoining properties. Such report shall be furnished to the Principal Certifying Authority.

- (9) (B072) A stormwater drainage design is to be submitted and approved by Council prior to the issue of a Construction Certificate. The design must be prepared in accordance with Council's AUSPEC Specifications and the requirements of Relevant Australian Standards and make provision for the following:

- a) The legal point of discharge for the proposed development is defined as Council's piped drainage system.
- b) All allotments must be provided with a direct point of connection to the public piped drainage system. Kerb outlets are not permitted.

- c) The design shall incorporate on-site stormwater detention facilities to limit site stormwater discharge to pre development flow rates for all storm events up to and including the 100 year ARI event. Note that pre development discharge shall be calculated assuming that the site is a 'greenfield' development site as per AUSPEC requirements.
- d) The design shall include water quality controls designed to achieve the targets specified within AUSPEC D7.
- e) Where works are staged, a plan is to be provided which demonstrates which treatment measure/s is/are to be constructed with which civil works stage. Separate plans are required for any temporary treatment (where applicable e.g. for building phase when a staged construction methodology is adopted) and ultimate design.
- f) The design is to make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.
- g) An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
- h) The design shall provide details of any components of the existing stormwater drainage system servicing the site that are to be retained.
- i) The stormwater plan must include detail of how the proposed basement carpark will be drained. Where minor surface areas drain to the basement, such as from the access driveway, a pump out system is permitted with discharge directed to the OSD storage tanks(s).
- j) Pump-out of the subsoil drainage associated with the basement carpark is not permitted unless adequately justified in the Integrated Structural and Geotechnical Engineering Report, as specified below.
- k) Where subsurface waters are permitted to be pumped from the basement, discharge must be connected directly to Councils piped drainage system via the OSD storage.
- (10) (B053) The design of the carpark and accesses is to be in accordance with Australian Standard 2890 (including AS 2890.1, AS 2890.2 and AS 2890.6). Certification of the design by a suitably qualified consultant is to be provided to the Principal Certifying Authority prior to release of the Construction Certificate.
- (11) (B071) Prior to the issue of any Construction Certificate, the provision of water and sewer services to the land are to be approved by the relevant Water Authority and relevant payments received.
- (12) (B195) Each individual unit shall be individually metered for water with the meters either located at easily accessible locations or there's the option for utilizing remotely read electronic meters. Details are to be provided on the hydraulic plans.
- (13) (B196) Final water service sizing will need to be determined by a hydraulic consultant to suit the domestic and commercial components of the development, as well as fire service and backflow protection requirements.
- (14) (B197) Council records indicate that the development site is currently connected to sewer via a junction to the sewer line that runs outside the southern property boundary. The proposed development shall drain all sewage to an existing or proposed sewer manhole. Details are to be provided on the engineering plans.
- (15) (B198) A Certifying Authority must not issue a Construction Certificate for the development unless the certifying authority has received the statement by the qualified designer verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles.
- (16) Prior to the issue of a Construction Certificate, architectural embellishment of the southern wall elevation shall be made to the satisfaction of Council.

C – PRIOR TO ANY WORK COMMENCING ON SITE

- (1) (C001) A minimum of one (1) week's notice in writing of the intention to commence works on public land is required to be given to Council together with the name of the principal contractor and any major sub-contractors engaged to carry out works. Works shall only be carried out by a contractor accredited with Council.
- (2) (C013) Where a sewer manhole and Vertical Inspection Shaft exists within a property, access to the manhole/VIS shall be made available at all times. Before during and after construction, the sewer manhole/VIS must not be buried, damaged or act as a stormwater collection pit. No structures, including retaining walls, shall be erected within 1.0 metre of the sewer manhole or located so as to prevent access to the manhole.
- (3) (C003) A controlled activity approval shall be obtained from the airport operator for any crane that may be used during the construction phase that would penetrate the Obstacle Limitation Surface (OLS). To avoid any doubt as to whether an approval is

required, applicants should check with the airport operator at the earliest possible stage.

D – DURING WORK

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

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

- (2) (D006) A copy of the current stamped approved construction plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.
- (3) (D007) A survey certificate from a registered land surveyor is to be submitted to the Principal Certifying Authority at footings and/or formwork stage. Such certificate shall set out the boundaries of the site, the actual situation of the buildings and include certification that siting levels comply with the approved plans.
- (4) (D015) The swimming pool shall not to be filled with water until a safety fence/barrier complying with the current Swimming Pools Act and Regulations has been installed and an inspection has been carried out and approval given by the Principal Certifying Authority.
- (5) (D016) Where depth of water in the pool exceeds 300mm during construction a temporary barrier or fence in accordance with the current Swimming Pools Act and Regulations is to be erected or other precaution taken so as to prevent entry of children into the pool.
- (6) (D025) The sewer junction shall be capped off with an approved fitting in conjunction with demolition works and Council notified to carry out an inspection prior to backfilling of this work.
- (7) (D029) The demolition of any existing structure shall be carried out in accordance with Australian Standard AS 2601-1991: *The Demolition of Structures*. No demolition materials shall be burnt or buried on site. The person responsible for the demolition works shall ensure that all vehicles leaving the site carrying demolition materials have their loads covered and do not track soil or waste materials onto the road. Should the demolition works obstruct or inconvenience pedestrian or vehicular traffic on an adjoining public road or reserve, separate application shall be made to Council to enclose the public place with a hoarding fence.

Should asbestos be present, its removal shall be carried out in accordance with the National OH&S Committee – *Code of Practice for Safe Removal of Asbestos* and *Code of Practice for the Management and Control of Asbestos in Workplaces*.

For further information on asbestos handling and safe removal practices refer to the following links:

[Safely disposing of asbestos waste from your home](#)

[Fibro & Asbestos - A Renovator and Homeowner's Guide](#)

[Asbestos Awareness](#)

- (8) (D046) Should any historical relics be unexpectedly discovered in any areas of the site not subject to an excavation permit, then all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW is to be informed in accordance with Section 146 of the *Heritage Act 1977*.

E – PRIOR TO OCCUPATION OR THE ISSUE OF OCCUPATION CERTIFICATE

- (1) (E001) The premises shall not be occupied or used in whole or in part until an Occupation Certificate has been issued by the Principal Certifying Authority.
- (2) (E002) A final report on any archaeological site excavations prepared by the archaeologist shall be submitted to Council and the Heritage Council prior to the occupation of any new development on the land.
- (3) (E004) Consolidation of the allotments comprising the site of the proposed development prior to issue of the Occupation Certificate or proposed as part of the application for a Subdivision Certificate.
- (4) (E005) Prior to the release of any bond securities held by Council for infrastructure works associated with developments, a formal written application is to be submitted to Council specifying detail of works and bond amount.
- (5) (E010) Driveways, access aisles and parking areas shall be provided with surface. Such a surface shall be on a suitable pavement, constructed and maintained in accordance with Council's Development, Design and Construction Manuals (as amended).
- (6) (E021) Pool(s) to be fenced in accordance with the Swimming Pools Act, 1992.
- (7) (E022) Depth markers are to be installed on the swimming pool(s).
- (8) (E030) Vehicle ramps, driveways, turning circles and parking spaces being paved, sealed and line marked prior to occupation or the issue of the Occupation Certificate or commencement of the approved land use.
- (9) (E031) Provision of a sign at the front vehicular access point within the property, prior to occupation or the issue of the Occupation Certificate, indicating that visitor/customer parking is available on-site.
- (10) (E034) Prior to occupation or the issuing of the Final Occupation Certificate provision to the Principal Certifying Authority of documentation from Port Macquarie-Hastings Council being the local roads authority certifying that all matters required by the approval issued pursuant to Section 138 of the Roads Act have been satisfactorily completed.
- (11) (E036) Certification by a suitably qualified consultant is to be submitted to the Principal Certifying Authority (PCA) confirming that the car park and internal accesses have been constructed in accordance with Port Macquarie-Hastings Development Control Plan 2013 and Australian Standard 2890 (including AS 2890.1, AS 2890.2 and AS 2890.6) prior to occupation or issue of the Occupation Certificate.
- (12) (E040) Each onsite detention system is to be marked by a plate in a prominent position which states:
"This is an onsite detention system. It is an offence to reduce the volume of the tank or basin or interfere with any part of the structure that controls the outflow".
This plate is to be fixed into position prior to occupation or the issue of the Occupation or Subdivision Certificate.
- (13) (E046) Prior to the issue of an Occupation Certificate, a positive covenant is to be created under Section 88E of the Conveyancing Act 1919, burdening the owner(s) with the requirement to maintain the on-site stormwater detention facilities on the property.
The terms of the 88E instrument with positive covenant shall include, but not be limited to, the following:
- a. The Proprietor of the property shall be responsible for maintaining and keeping clear all pits, pipelines, trench barriers and other structures associated with the on-site stormwater detention facilities ("OSD").
 - b. The Proprietor shall have the OSD inspected annually by a competent person.
 - c. The Council shall have the right to enter upon the land referred to above, at all reasonable times to inspect, construct, install, clean, repair and maintain in good working order all pits, pipelines, trench barriers and other structures in or upon the said land which comprise the OSD or which convey stormwater from the said land; and recover the costs of any such works from the proprietor.
 - d. The registered proprietor shall indemnify the Council and any adjoining land owners against damage to their land arising from the failure of any component of the OSD, or failure to clean, maintain and repair the OSD.

The proprietor or successor must bear all costs associated in the preparation of the subject 88E instrument. Evidence of registration with the Lands and Property Information NSW shall be submitted to and approved by the Principal Certifying Authority prior to the issue of an Occupation Certificate.

- (14) (E048) Prior to the issue of an Occupation Certificate, a positive covenant is to be created under Section 88E of the Conveyancing Act 1919, burdening the owner(s) with the requirement to maintain the water quality control facilities within the site.

In addition, a maintenance schedule for the water quality controls must be submitted to Council for approval with the stormwater work-as executed plans. This maintenance schedule and work as executed plan shall be registered and referred to as part of the positive covenant.

The terms of the 88E instrument with positive covenant shall include, but not be limited to, the following:

- a. The Proprietor of the property shall be responsible for inspecting, maintaining and keeping clear all components of and structures associated with the stormwater quality improvement device (SQID) in accordance with the maintenance plan in order to achieve the design system performance targets.
- b. The Proprietor shall have the SQID inspected annually by a competent person.
- c. The Council shall have the right to enter upon the land referred to above, at all reasonable times to inspect, construct, install, clean, repair and maintain in good working order all components or structures in or upon the said land which comprise the SQID and recover the costs of any such works from the proprietor.
- d. The registered proprietor shall indemnify the Council and any adjoining land owners against damage to their land arising from the failure of any component of the SQID, or failure to clean, maintain and repair the SQID.

The instrument shall be created and registered on the title of the relevant lot(s) with the Lands and Property Information (LPI) NSW. The plan and terms of the easement must be endorsed by Council through formal application prior to lodgement at the Lands and Property Information NSW. Evidence of registration shall be submitted to and approved by the Principal Certifying Authority prior to the issue of an Occupation Certificate.

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

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

- (16) (E051) Prior to occupation or the issuing of any Occupation Certificate a section 68 Certificate of Completion shall be obtained from Port Macquarie-Hastings Council.
- (17) (E056) A Certificate of Compliance under the provisions of Section 307 of the *Water Management Act* must be obtained prior to the issue of any occupation or subdivision certificate.
- (18) (E058) Written confirmation being provided to the Principal Certifying Authority (PCA) from any properly qualified person (eg the builder), stating that all commitments made as part of the BASIX Certificate have been completed in accordance with the certificate.
- (19) (E061) Landscaped areas being completed prior to occupation or issue of the Occupation Certificate. Public landscaping may be bonded as agreed to by Council.
- (20) (E066) Ancillary works shall be undertaken at no cost to Council to make the engineering works required by this Consent effective to the satisfaction of Director of Council's Infrastructure Division. Such works shall include, but are not limited to the following:
- a. The relocation of underground services where required by civil works being carried out.
 - b. The relocation of above ground power and telephone services
 - c. The relocation of street lighting
 - d. The matching of new infrastructure into existing or future design infrastructure
- (21) (E082) Submission of a compliance certificate accompanying Works as Executed plans with detail included as required by Council's current AUSPEC Specifications. The information is to be submitted in electronic format in accordance with Council's "CADCHECK" requirements detailing all infrastructure for Council to bring in to account its assets under the provisions of AAS27. This information is to be approved by Council prior to issue of the Subdivision or Occupation Certificate. The copyright for all information supplied, shall be assigned to Council.
- (22) A certifying authority must not issue an Occupation Certificate to authorise a person to commence occupation or use of the development unless the certifying authority has received the statement by the qualified designer verifying that the development achieves the design quality of the development as shown

in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles.

- (23) Prior to the issue of an Occupation Certificate, the recreation management plan is to be amended to include the following:
- Limit the noise to no greater than 5 dBA above ambient background noise levels at the property boundary.
 - The hours of use of all community amenities is restricted to no later than 9:30pm.
 - The Building Manager shall police regulation of the use of all recreation facilities.
- (24) (E068) Prior to the issue of an Occupation Certificate, evidence to the satisfaction of the Certifying Authority from the electricity and telecommunications providers that satisfactory services arrangements have been made to the development.
- (25) Prior to the issue of an Occupation Certificate, security measures to the satisfaction of Council are to be provided to the external gates of the ground floor units.

F – OCCUPATION OF THE SITE

- (1) (F001) On site car parking in accordance with the approved plans to be provided in an unrestricted manner at all times during the operations of development for use by both staff and residents.
- (2) (F004) The dwellings are approved for permanent residential use and not for short term tourist and visitor accommodation.
- (3) (F027) The swimming pool filtration motor shall be operated between the following hours only:
- Monday to Friday (other than a public holiday)
7.00 am – 8.00 pm
- Saturday to Sunday and Public Holidays
8.00 am – 8.00 pm
- Should noise levels exceed 5dBA above the ambient noise level measured at the boundary, the pool filtration motor shall be enclosed with an effective soundproof unit.
- (4) (F028) The operations of the public pool/spa is to comply with the requirements of the:
- a. Public Health Act 2010,
 - b. Public Health Regulation 2012, and
 - c. NSW Ministry of Health Public Swimming Pool and Spa Pool Advisory Document 2013.
- (5) (F195) The use of the roof top communal recreation facilities shall only be in accordance with the restrictions set out in the approved Communal Recreation Facilities Management Plan.