

COUNCIL ASSESSMENT REPORT

Panel Reference	2019NTH010
DA Number	DA2018 – 814.1
LGA	Port Macquarie-Hastings Council
Proposed Development	Coastal Protection Works – Replacement of Flynns Beach seawall
Street Address	Lot 7052 DP 1121282, Pacific Drive/Tuppenny Road, Port Macquarie
Applicant/Owner	Michilis Pty Ltd/Port Macquarie-Hastings Council (as Trustee)
Date of DA lodgement	16 November 2018
Number of Submissions	0
Recommendation	Consent subject to conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Clause 8A(1)(b) coastal protection works carried out by or on behalf of a public authority
List of all relevant s4.15(1)(a) matters	• 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 (State and Regional Development) 2011 • State Environmental Planning Policy (Coastal Management) 2018 • 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	• Plans • Statement of Environmental Effects • Ecological Impact Assessment
Report prepared by	Ben Roberts – Development Assessment Planner
Report date	4 April 2019

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 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?
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP Yes

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 (S7.24)?

**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

This report considers a Development Application (DA) for coastal protection works. The proposed work includes construction of a seawall and associated infrastructure to replace a deteriorating section of an existing retaining wall. The work will involve removal of the old retaining wall and construction of an approximately 80m long seawall and landscaping works.

The development is Integrated Development under the *Fisheries Management Act 1994* and General Terms of Approval (GTAs) have been issued by NSW Department of Primary Industries.

It is noted that a public authority is exempt from Controlled activities via clause 41 of the Water Management (General) Regulation 2018.

The proposal has been advertised in accordance with Council's Development Control Plan 2013. Following exhibition of the application and at the time of writing this report, no submissions had been received.

This report provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979. The consent authority must be satisfied in relation to a number of provisions in relevant environmental planning instruments applicable to the proposal before granting consent to the development. A detailed assessment of the relevant clauses is noted within the report. A summary is also provided below:

- **Clause 7 of SEPP No. 44 – Koala Habitat Protection.** Council officers are satisfied that the land is not potential koala habitat.
- **Clause 7 of SEPP No. 55 – Remediation of Land.** The land is not known to have previously been used for a purpose referred to in Table 1 of the contaminated land planning guidelines. The land is therefore not considered to be contaminated and Council officers are satisfied that the proposed development meets the provisions of clause 7(1) of the SEPP.
- **State Environmental Planning Policy No. 62 – Sustainable Aquaculture**
Given the nature of the proposed development and proposed stormwater controls the proposal will be unlikely to have any adverse impact on existing aquaculture industries.
- **State Environmental Planning Policy (State and Regional Development) 2011.** The development is identified as regionally significant development

being coastal protection works to be carried out by or on behalf of a public authority.

- **State Environmental Planning Policy (Coastal Management) 2018.** The site is located within a coastal use area / coastal environment area and within a proximity area to Littoral Rainforest. The proposal is compatible with the surrounding coastal and built environment and considered to be consistent with the aims and relevant provisions of this policy. The proposal is an important structure in terms of managing coastal erosion and protecting sensitive adjoining environments. The proposal also plays a key role in providing for a functional and safe public space.
- **Clause 7.13 of the Port Macquarie-Hastings LEP 2011 – Essential Services.** Clause 7.13 requires the consent authority to be satisfied that any services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required. No specific services are required for this development.

In summary, the assessment of the proposed development has adequately addressed all consent considerations required by the above environmental planning instrument clauses. It is therefore considered that the Panel can proceed with determining the application, subject to the recommended conditions of consent.

The Applicant has been provided with a copy of the draft 'without prejudice' conditions for review. There are no matters of disagreement in relation to the draft conditions.

1. BACKGROUND

Existing sites features and surrounding development

The development is proposed to be carried out on part of Lot 7052 DP 1121282 Tuppenny Road / Pacific Drive, Port Macquarie. The lot has an area of approximately 17.8 hectares and is in essence a coastal strip of Crown land under trustee management of Port Macquarie-Hastings Council.

The lot is zoned RE1 Public Recreation and E2 Environmental Conservation, in accordance with the Port Macquarie-Hastings Local Environmental Plan 2011, as shown in the following zoning plan. The site of the proposed work is zoned RE1 Public Recreation:



The site is located approximately 2 kilometres south east of the Port Macquarie town centre within the Flynnns Beach locality. Land immediately to the north of the site contains the Flynnns Beach surf club building. Land immediately to the south comprises the Tuppenny Road connection to Pacific Drive with adjoining coastal vegetation and beach interface. Land immediately adjoining to the east is the beach with ocean beyond. Land immediately adjoining to the west is coastal vegetation comprising mapped littoral rainforest with Pacific Drive beyond.

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



2. DESCRIPTION OF DEVELOPMENT

The proposal includes construction of a seawall and associated infrastructure to replace a deteriorating section of an existing retaining wall. The work will involve removal of the old retaining wall and construction of an approximately 80m long seawall with associated stormwater management and landscaping works.

Plans of the proposed development are included in the attachments to this report.

Public Exhibition and Referrals

- 16 November 2018 – Application lodged
- 5 December 2018 to 4 January 2019 - Public exhibition via advertisement in the local papers.
- 1 February 2019 - NSW Department of Primary Industries – Fisheries – General Terms of Approval issued.
- 26 February 2019 – Application identified as being regionally significant.
- 6 March to 5 April 2019 – Re-exhibition via advertisement in the local papers identifying the proposal as being regionally significant and the Northern Joint Regional Planning Panel being the consent authority.

3. STATUTORY ASSESSMENT

The provisions (where applicable) of:

(a)(i) Any environmental planning instrument

State Environmental Planning Policy No. 44 - Koala Habitat Protection

With reference to clauses 6 and 7, the subject land has is greater than 1 hectare (including any adjoining land under same ownership) and therefore the provisions of SEPP must be considered.

The Department of Planning and Infrastructure's Circular No. B35, Section 1.5 states that "In relation to affected development applications it is the intention of the policy that investigations for 'potential' and 'core' koala habitats be limited to those areas in which it is proposed to disturb habitat".

The application has demonstrated that no Koala habitat will be removed or modified therefore no further investigations are required.

State Environmental Planning Policy No. 55 – Remediation of Land

Following an inspection of the site and a search of Council records, the subject land is not identified as being potentially contaminated and is therefore considered suitable for the intended use in accordance with Clause 7(1) of the SEPP.

The land is not known to have been used for a purpose referred to in Table 1 of the contaminated land planning guidelines. Therefore, a preliminary investigation is not required prior to determining the application.

State Environmental Planning Policy No. 62 – Sustainable Aquaculture

Given the nature of the proposed development and proposed stormwater controls the proposal will be unlikely to have any adverse impact on existing aquaculture industries.

State Environmental Planning Policy (State and Regional Development) 2011

Clause 20 - The proposal is regionally significant development identified in Schedule 7 of the SEPP, being coastal protection works to be carried out by or on behalf of a public authority. The Northern Joint Regional Planning Panel is the relevant consent authority.

State Environmental Planning Policy (Coastal Management) 2018 and Clause 5.5 of Port Macquarie-Hastings Local Environmental Plan 2011

The site is located within a coastal use area / coastal environment area and within a proximity area to Littoral Rainforest.

In accordance with clause 7, this SEPP prevails over the Port Macquarie-Hastings LEP 2011 in the event of any inconsistency. Specifically it is noted that 'coastal protection works' are a prohibited land use under the Port Macquarie-Hastings Local Environmental Plan. Clause 19(2)(b) of this policy provides that coastal protection works by a public authority may be carried out by or on behalf of a public authority with development consent

Having regard to clauses 13 and 14 of the SEPP and clause 5.5 of the Port Macquarie-Hastings LEP 2011 the proposed development is not considered likely to result in any of the following:

- a) any adverse impact on integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment;

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

Council's environmental engineers have provided input to the design of the seawall and it has been determined to be fit for purpose from an engineering perspective. The proposal is an important structure in of managing coastal erosion and protecting sensitive adjoining environments. The proposal also plays a key role in providing for a functional and safe public space. The proposed development is considered to be compatible with the surrounding coastal and built environment.

The site is predominately cleared and located within an area zoned for public recreational purposes.

Port Macquarie-Hastings Local Environmental Plan 2011

- Clause 2.2, the subject site is zoned RE1 Public Recreation. In accordance with clause 2.3(1) and the RE1 zone landuse table, the proposed development for a coastal protection works is prohibited. Refer to comments and overriding provision of SEPP Coastal Management 2018 earlier within this report.

The objectives of the RE1 zone are as follows:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

In accordance with Clause 2.3(2), the proposal is consistent with the zone objectives having regard to the following:

- The development will allow for the continued safe recreational use of public open space;
- Clause 2.7, the demolition requires consent as it does not fit within the provisions of SEPP (Exempt and Complying) 2008.
- Clause 5.5 - Development within the coastal zone - relevant objectives of this clause are addressed by SEPP (Coastal Management) 2018 section (see above).
- Clause 5.10 – Heritage. The site does not contain or adjoin any known heritage items or sites of significance.
- Clause 7.2, in relation to the earthworks proposed:
 - the works will not lead to any adverse impact upon existing drainage patterns, soil stability of the site or adjoining/adjacent sites, any nearby water course or known environmental sensitive area within the immediate locality;

- the works will be unlikely to adversely affect potential additional future landuses on the site;
- the existing soil quality and structure will not present a constraint to the construction of the proposal on the site;
- no fill is identified to be imported to the site to construct the development;
- the likely change in levels associated with the proposed development will not have an adverse effect on the amenity of adjoining/adjacent properties to the site;
- the site does not contain any known items of aboriginal or other cultural significance;
- appropriate conditions of consent are proposed to manage the impact of the works.
- Clause 7.13, no essential services are required to service the development.

(a)(ii) Any proposed instrument that is or has been placed on exhibition

No draft instruments apply to the site.

(a)(iii) Any DCP in force

Port Macquarie-Hastings Development Control Plan 2013:

Assessment Checklist for DCP 2011 – General Provisions

Provision	Requirements	Proposed	Complies
2.3.3.1 and 2.3.3.2 Cut and fill regrading	Cut and fill 1.0m max. 1m outside the perimeter of the external building walls. Any retaining wall >1.0 in height to be certified by structure engineer.	Greater than 1m cut and fill proposed. Consent condition has been recommended requiring engineer certification for the seawall.	Yes
2.3.3.4 Environmental management Areas and Buffers	The following buffer provisions to ecologically endangered communities and watercourses do not apply: 1. To land less than 1ha in area; 2. To land where there is a current and valid approval for urban purposes; 3. To any application to modify an existing valid approval under section 96 of the Environmental Planning and Assessment Act 1979. Where there is a conflict between the 'Environmental Management Areas and Buffers' provisions and 'Area Based Provisions' for a	The site is located within 50m of an identified EEC typically requiring a 50m buffer. However the land surrounding this EEC is existing cleared land, including road infrastructure and development associated with Port Macquarie Surf Life Saving Club and Flynn's Beach. The land is subject to current and valid approvals for urban purposes and the DCP provision for the requirement of a 50 m buffer is not required.	Yes

	defined precinct, the 'Area Based Provisions' prevail. Buffers to endangered ecological communities: a) For coastal floodplain endangered ecological communities a minimum, fully vegetated buffer of 35m must be provided. b) For Freshwater Wetland on Coastal Floodplain endangered ecological community a fully vegetated buffer of 100m is to be provided. c) For all other endangered ecological communities, a fully vegetated buffer of 50m must be provided. d) Stormwater management facilities may be considered within buffer areas only where the applicant can demonstrate the proposal is justified on the basis of practical engineering related site constraints and where it is adequately demonstrated that the applicable objectives are achieved. e) Fully vegetated buffers cannot contain road infrastructure or an asset protection zone. f) Where different buffers (including riparian buffers) apply to an area, the greater of the buffer widths applies.		
2.3.3.5 Environmental management Areas and Buffers	Removal of vegetation appropriately offset via 'improve and maintain' principle. VMP requirements.	The removal of vegetation is proposed to be adequately offset based on expert ecological knowledge. Refer to comments under flora and fauna heading of this report and recommended consent conditions, including a VMP requirement.	Yes
2.3.3.8 and 2.3.3.9 Hollow Bearing Trees	Removal of hollow bearing trees.	No hollowing bearing trees are proposed to be removed.	N/A
2.6.3.1 and 2.6.3.3 Tree	Tree removal (3m or higher with 100m diameter trunk	While no tree greater than 3m in height is proposed to be	Yes

management and Council controlled land	and 3m outside dwelling footprint	removed some vegetation removal is sought. Refer to flora and fauna heading of this report.	
2.7.2.2 Crime Prevention	Design addresses generic principles of Crime Prevention Through Environmental Design guideline.	Adequate casual surveillance available	Yes

(a)(iii)(a) Any planning agreement or draft planning agreement

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

(a)(iv) The regulations

NSW Coastal Policy 1997

The proposed development is consistent with the objectives and strategic actions of this policy. The proposal has been specifically designed to provide protection from the coastal forces of wave action, protection of surrounding sensitive environments and the provision of a function and safe public recreational space.

(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

The proposal will be unlikely to have any adverse impacts to existing adjoining properties and satisfactorily addresses the public domain.

The proposal is consistent with development in the locality and adequately addresses planning controls for the area.

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

The proposal does not have significant adverse lighting impacts.

There are no significant adverse privacy impacts. There is no adverse overshadowing impacts.

Roads, Traffic and Transport

The site is accessed via Tuppenny Road which is accessed via Pacific Drive. Entry to Tuppenny Road is from the northern end from Pacific Drive with exit to the South also onto Pacific Drive. Tuppenny Road is a two lane, one way road with parking along one lane on alternating sides depending on road bends.

Pedestrian access is via wooden stairs from Pacific Drive and via Tuppenny Road. The development itself will not result in any increased traffic movements, however during construction there will be increased construction traffic. It is expected that average vehicles movements will be up to 2 trucks per day and 5 light vehicles. A traffic management planned has been prepared to manage construction traffic. Signage and short period road closure form part of the management provisions.

While there will be some temporary inconvenience to users and local traffic at Flynn's Beach during construction the temporary construction traffic associated with undertaking the development is unlikely to have any significant adverse impacts that would warrant refusal of this application.

Stormwater

The site naturally grades towards the beach. There is no existing stormwater infrastructure (i.e. pipe network or headwalls) located within the extent of works. Stormwater generated from the development will be negligible and the design of the wall incorporates stormwater management details.

Heritage

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

Other land resources

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

Water cycle

The proposed development will be unlikely to have any adverse impacts on water resources and the water cycle.

Soils

The proposed development will be unlikely to have any adverse impacts on soils in terms of quality, erosion, stability and/or productivity subject to a standard condition requiring erosion and sediment controls to be in place prior to and during construction.

Air and microclimate

The construction and/or operations of the proposed development will be unlikely to result in any adverse impacts on the existing air quality or result in any pollution. Standard precautionary site management condition recommended.

Flora and fauna

The proposed development includes clearing of vegetation in order to construct the seawall. The clearing is minimal and limited to that which has grown against the existing retaining wall. The Biodiversity Offset Scheme doesn't apply for the following reasons:

- The site of work isn't identified on the Biodiversity Values Map;
- The extent of clearing is below the thresholds in Clause 7.2 of the Biodiversity Conservation Regulation 2017;
- The application of test of significance (5 part test) demonstrates that the development will not have a significant impact on biodiversity values.

The applicant has submitted an ecological impact assessment, prepared by Cardno Pty Ltd and dated 26 October 2018. A threatened flora species being *Sophora tomentosa* (Silverbush) was detected within the site. Specifically, there were 45 saplings growing along the remains of the existing seawall that would require removal in order to undertake the proposed development. There were also numerous patches of mature Silverbush specimens growing along the sandy beach/vegetation zones south of the proposed seawall.

The ecological assessment recommends the mature patches of Silverbush and Littoral Rainforest be protected from any direct or indirect impact from construction by exclusion fencing and sediment and erosion controls and that the 45 Silverbush saplings be removed, with a high potential for translocation.

The assessment report concludes that provided the recommendations in the report are implemented, the project is unlikely to remove, modify, fragment or isolate any area of habitat important to the long-term survival of any threatened flora or fauna, population or ecological communities in the locality.

The ecological impact assessment report has been reviewed by Council's environmental services section, who concur that the proposal, including removal of the juvenile Silverbush plants, will not result in any significant adverse impact to threatened species or ecological communities. It has been determined that the propagation, via harvesting of seed pods on existing mature Silverbush plants, would provide a higher rate of success than translocation.

It was also recommended by Council's environmental services section that planting of 135 Silverbush plants within protected areas be undertaken as to increase the long term viability of this species. Accordingly, it is recommended that plantings of 135 Silverbush plants be undertaken and details of the compensatory plantings form part of a vegetation management plan. The vegetation management plan is required to be developed and approved by Council's Natural Resource Manager prior to the issue of any occupation certificate.

Subject to the implementation of the recommended consent conditions the proposal would not result in serious and irreversible impacts on biodiversity.

Waste

No adverse impacts anticipated. Standard precautionary site management condition recommended.

Energy

No adverse impacts anticipated.

Noise and vibration

No adverse impacts anticipated. Condition recommended to restrict construction to standard construction hours.

Bushfire

The site is identified as being bushfire prone. However the proposal includes no use subject to any bushfire risk. Further the proposal will not result in any increase bushfire risk. The proposal is consistent with Planning for Bushfire Protection 2006.

Safety, security and crime prevention

The proposed development will be unlikely to create any concealment/entrapment areas or crime spots that would result in any identifiable loss of safety or reduction of security in the immediate area.

Social impacts in the locality

Given the nature of the proposed development and its' location the proposal is unlikely to result in any adverse social impacts.

Economic impact in the locality

No adverse impacts. A likely positive impact is that the development will maintain employment in the construction industry, which will lead to flow impacts such as expenditure in the area.

Site design and internal design

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

Construction

No potential adverse impacts identified to neighbouring properties with the construction of the proposal.

Cumulative impacts

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

(c) The suitability of the site for the development

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

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

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

Following initial exhibition of the application in accordance with DCP 2013, no submissions were received. The initial exhibition failed to identify the development as regionally significant. Subsequently the application was re-exhibited identifying the development as regionally significant and at the time of completing this assessment report the application was still on re-exhibition (i.e. up until 5 April 2019) and no submissions had been received to date. Should any submissions be received an addendum report will be prepared and provided to the Panel prior to the meeting date.

(e) The public interest

The proposed development satisfies relevant planning controls and is not expected to impact on the wider public interest.

Ecologically Sustainable Development and Precautionary Principle

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

The four principles of ecologically sustainable development are:

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

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

Climate change

Refer to comments provided earlier in this report under Port Macquarie-Hastings LEP addressing climate change.

Section 7.11 Contributions

No – The development does not contain any residential component.

Section 7.12 Contributions

No - The development does not contain any commercial/industrial component.

Section 64 Water and Sewer Contributions

No - The development will not require augmentation of water or sewer services.

CONCLUSION AND STATEMENT OF REASON

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

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

The site is considered suitable for the proposed development and the proposal adequately addresses relevant planning controls. The development is not considered to be contrary to the public's interest and will not result a significant adverse social, environmental or economic impact. It is recommended that the application be approved, subject to the recommended conditions of consent provided in the attachment section of this report.