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**DAC 20/07/21 – 50 HONEYSUCKLE DRIVE NEWCASTLE & 726
HUNTER STREET NEWCASTLE WEST- DA2021/00225 -
SUBDIVISION - 2 INTO 11 LOTS**

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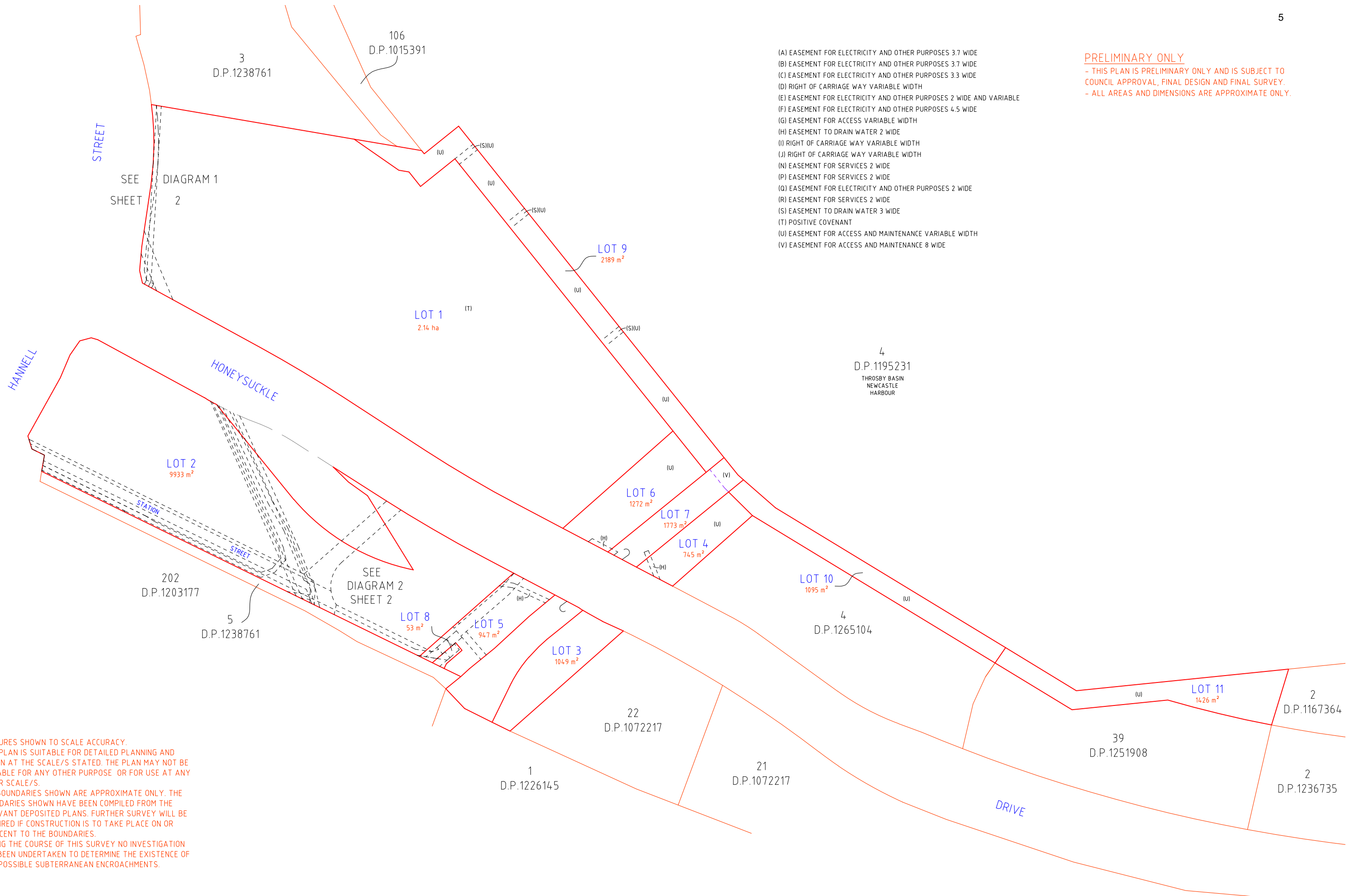
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ITEM-13 Attachment A: Submitted Plans

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- (A) EASEMENT FOR ELECTRICITY AND OTHER PURPOSES 3.7 WIDE
- (B) EASEMENT FOR ELECTRICITY AND OTHER PURPOSES 3.7 WIDE
- (C) EASEMENT FOR ELECTRICITY AND OTHER PURPOSES 3.3 WIDE
- (D) RIGHT OF CARRIAGE WAY VARIABLE WIDTH
- (E) EASEMENT FOR ELECTRICITY AND OTHER PURPOSES 2 WIDE AND VARIABLE
- (F) EASEMENT FOR ELECTRICITY AND OTHER PURPOSES 4.5 WIDE
- (G) EASEMENT FOR ACCESS VARIABLE WIDTH
- (H) EASEMENT TO DRAIN WATER 2 WIDE
- (I) RIGHT OF CARRIAGE WAY VARIABLE WIDTH
- (J) RIGHT OF CARRIAGE WAY VARIABLE WIDTH
- (N) EASEMENT FOR SERVICES 2 WIDE
- (P) EASEMENT FOR SERVICES 2 WIDE
- (Q) EASEMENT FOR ELECTRICITY AND OTHER PURPOSES 2 WIDE
- (R) EASEMENT FOR SERVICES 2 WIDE
- (S) EASEMENT TO DRAIN WATER 3 WIDE
- (T) POSITIVE COVENANT
- (U) EASEMENT FOR ACCESS AND MAINTENANCE VARIABLE WIDTH
- (V) EASEMENT FOR ACCESS AND MAINTENANCE 8 WIDE

PRELIMINARY ONLY
 - THIS PLAN IS PRELIMINARY ONLY AND IS SUBJECT TO COUNCIL APPROVAL, FINAL DESIGN AND FINAL SURVEY.
 - ALL AREAS AND DIMENSIONS ARE APPROXIMATE ONLY.

NOTES:

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de Witt Consulting
 planning ■ surveying ■ project management

HUNTER REGION
 7 Canberra Street Charlestown
 PO Box 850 Charlestown NSW 2290
 P 02 4942 5441 F 02 4942 5301
 E admin@dewittconsulting.com.au

WESTERN REGION
 87 Herbert Street Gulgong
 PO Box 232 Gulgong NSW 2852
 P 02 6374 2911 F 02 6374 2922
 ABN 23 104 067 405

TITLE	PROPOSED SUBDIVISION LOT 100 D.P.1096718 AND LOT 5 D.P.1265104 PROPOSED EASEMENTS
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Rev	Date	Amendment
H	28.05.21	ADDED EASEMENT
G	03.03.21	LAYOUT AMENDED - LOT 9
F	1.02.21	EASEMENT AMENDMENTS
E	30.10.20	EASEMENT AMENDMENTS
D	12.10.20	LAYOUT AND EASEMENTS AMENDED
C	23.07.20	LOT LAYOUT CHANGES
B	15.07.20	EASEMENT AMENDMENTS
A	23.06.20	FIRST ISSUE

JOB ADDRESS: HONEYSUCKLE DRIVE, NEWCASTLE		REVISION	JOB REF:
CLIENT: LINDSAY DYNAN		G	9364
SCALE: A1 1:750 A3 1:1500	ORIGIN OF LEVELS	DRAWN	BT / JG
SURVEY DATE: N/A	N/A	CHECKED	CC
PLAN DATE: 28.05.21		APPROVED	CC
DATUM: N/A			
CAD REF: 9364MF190314	DRAWING REF: 9364-PROPOSED SUBDIVISION-28.05.21		SHEET No 1/2

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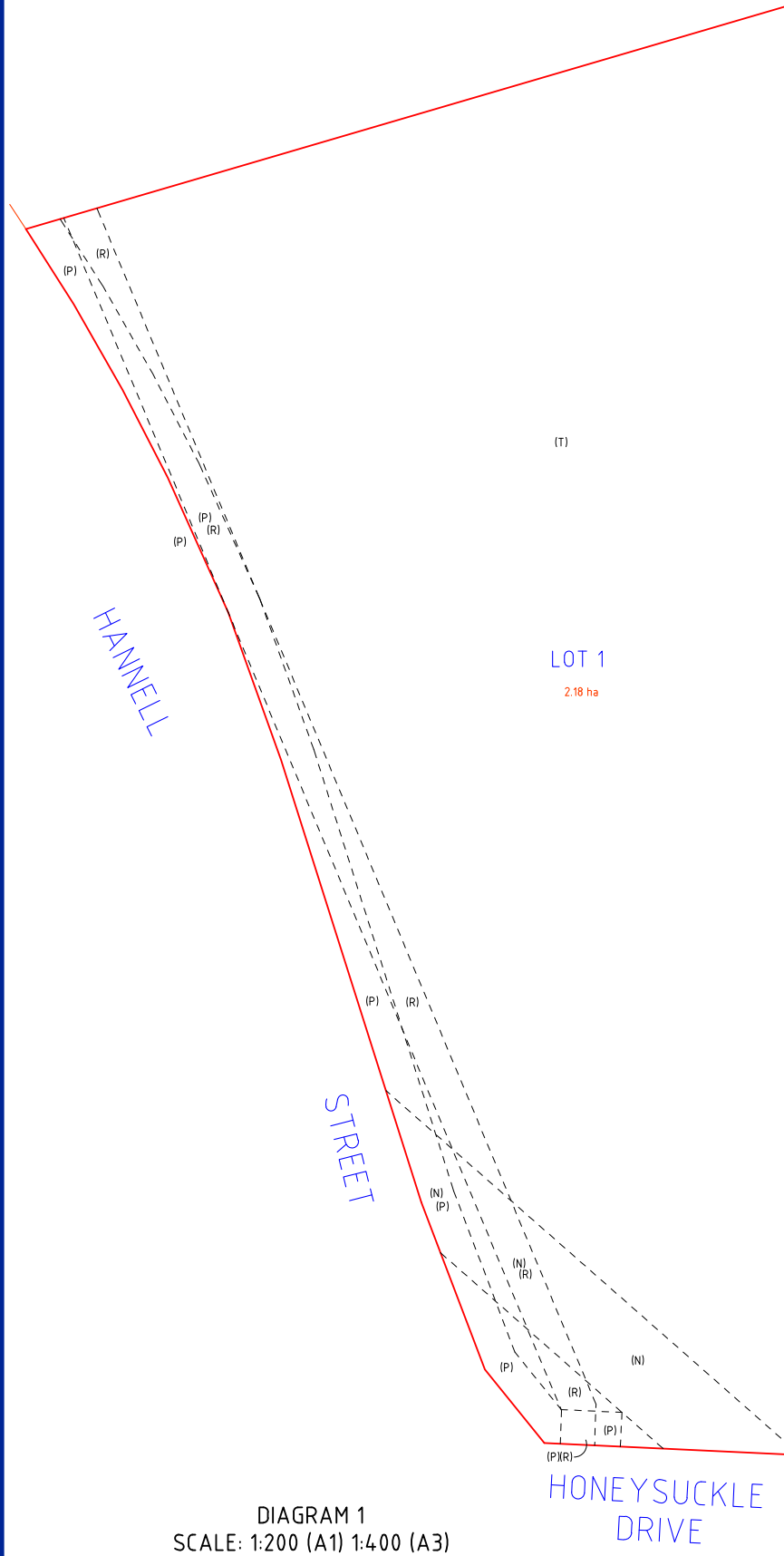


DIAGRAM 1
SCALE: 1:200 (A1) 1:400 (A3)

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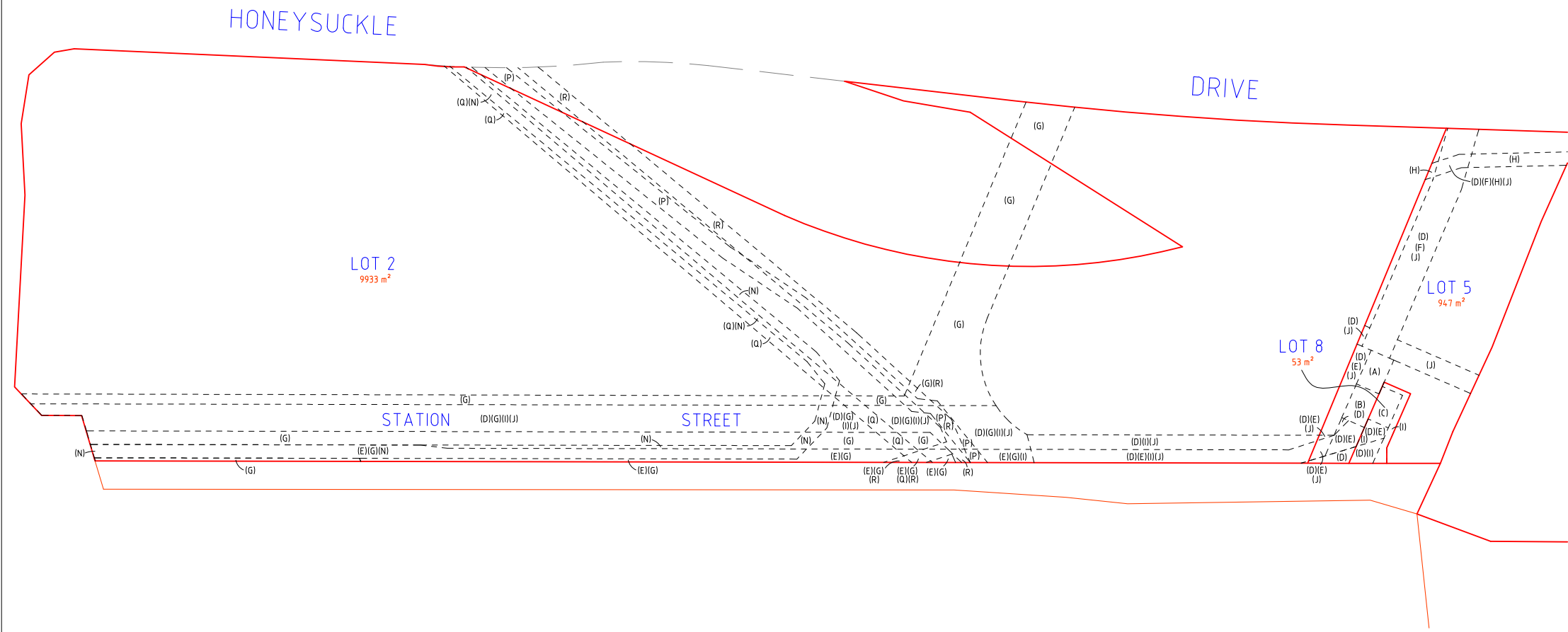


DIAGRAM 2
SCALE: 1:400 (A1) 1:800 (A3)

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SURVEY DATE: N/A	N/A	BT
PLAN DATE: 28.05.21		CHECKED CC
DATUM: N/A		APPROVED CC
CAD REF: 9364MF190314	DRAWING REF: 9364-PROPOSED SUBDIVISION-28.05.21	SHEET No
		2/2



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HUNTER STREET NEWCASTLE WEST- DA2021/00225 -
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ITEM-13 Attachment B: Draft Schedule of Conditions

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Application No: DA2021/00225

Land: Lot 5 DP 1265104
Lot 100 DP 1096718

Property Address: 50 Honeysuckle Drive Newcastle NSW 2300
726 Hunter Street Newcastle West NSW 2302

Proposed Development: Subdivision - 2 into 11 lots

SCHEDULE 1

GENERAL CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 4.17 of the *Environmental Planning and Assessment Act 1979*. The conditions relate to any matter referred to in Section 4.15(1) of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.
2. The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Proposed Plan of Subdivision	Job Ref: 9364 Sheet 1-2	De Witt Consulting	28.05.2021

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.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

3. An application is to be made for a Subdivision Certificate. The application is to be supported by a survey plan of subdivision, five copies thereof and a Section 50 Certificate from the Hunter Water Corporation.
4. A detailed survey is to be provided confirming the location of all existing Council stormwater infrastructure and services across proposed Lot 2 development site. All active Council stormwater networks are to be investigated, surveyed, and located (including CCTV footage and relevant reports). An easement to drain water being minimum 3.0m wide or as directed by Council is to be created over located stormwater pipelines within the proposed Lot 2 not already accounted for in the Proposed Plan of Subdivision. Such easements are to be in favour of Council and are to be noted on the approved plan of subdivision, prior to the release of the subdivision certificate.

5. An appropriate notation is to be placed on the plan of subdivision and an instrument under Section 88B of the *Conveyancing Act 1919* being submitted to City of Newcastle setting out the terms of easements as required by this consent. City of Newcastle, in addition to the owner of the land benefited by the easement, is to be a party whose consent is needed to release or vary easements.
6. The applicant is to contact CN GIS Specialist, Strategy, and Engagement Team to obtain finalised street addresses (house numbering).

ADVISORY MATTERS

- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both City of Newcastle and any other relevant authorities.

END OF CONDITIONS

SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; *Newcastle Local Environmental Plan 2012* (NLEP) and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012 (NDCP).
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- City of Newcastle has considered and accepted the proposed development standard variation made under Clause 4.6 of the *Newcastle Local Environmental Plan 2012*. The proposed variation is considered acceptable in the particular circumstances of this case as the variation will not adversely affect the size of the development lot or reduce the extent of public recreation land on the site.
- No objections were received, and no negative neighbour impacts are anticipated.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

- Confirm and clarify the terms of Council's determination;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and measures for acceptable environmental performance; and
- Provide for the ongoing management of the development.



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ITEM-13 Attachment C: Processing Chronology

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PROCESSING CHRONOLOGY

**DA2021/00225 – 50 Honeysuckle Drive Newcastle & 726 Hunter Street
Newcastle West**

22 February 2021	-	Application lodged
10 March 2021	-	Application publicly notified
21 April 2021	-	Request for further information on cl 4.6 Exceptions to development standards
9 May 2021	-	Amended clause 4.6 and subdivision plans with additional easement submitted.
15 June 2021		Amended Plan of Subdivision



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ITEM-13 **Attachment D:** 4.6 Clause variation

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Appendix C. Clause 4.6 Variation request

Clause 4.6 Variation Request

This Clause 4.6 request to vary a development standard is prepared in accordance with the Department of Planning and Infrastructure (2011) "Varying development standards: A Guide" and consideration of principles established in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Wehbe v Pittwater Council* [2007] NSWLEC 827.

What is the environmental planning instrument that applies to the land?

The environmental planning instrument (EPI) to which this variation relates is the *Newcastle Local Environmental Plan 2012* (NLEP 2012).

What is the zoning of the land?

The portion of the site requiring a variation to the standard is zoned RE1 Public Recreation pursuant to NLEP 2012

What are the objectives of the zone?

The objectives of the RE1 Public Recreation zone are:

- *"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"*

What is the development standard being varied?

The Applicant seeks to vary the minimum lot size standard of 40ha, in accordance with the provisions of clause 4.1(3) of the NLEP 2012:

"The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land".

What are the objectives of the development standard?

Clause 4.1 of NLEP 2012 objectives of the minimum lot size standard are:

- "(a) to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,*
- (b) to facilitate greater diversity in housing choice,*
- (c) to ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form,*
- (d) to ensure that the subdivision of land in Zone E4 Environmental Living—*
 - (i) will not prejudice its possible future development for urban purposes or its environmental conservation, and*
 - (ii) will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land".*

What is the proposed variation to the standard?

The proposed subdivision will create nine (9) additional lots zoned RE1 Public Recreation, less than the 40ha minimum lot size (refer Table 7-1).

Table 7-1: Proposed RE1 zoned lots

Lot	Location	Size	Deviation from standard
Lot 3	Cottage Creek South East	1,049 m ²	99.74%
Lot 4	Cottage Creek North East	745 m ²	99.81%
Lot 5	Cottage Creek South West	947 m ²	99.76%
Lot 6	Cottage Creek North West	1,272 m ²	99.68%
Lot 7	Cottage Creek channel north	1,773 m ²	99.56%
Lot 8	NLR Substation	53 m ²	99.99%
Lot 9	Throsby Promenade	2,189 m ²	99.45%
Lot 10	Lee 5 / 45HD Promenade	1,095 m ²	99.73%
Lot 11	Lee 4 / 35HD Promenade	1,426 m ²	99.64%
	Total RE1 zoned land	1.02ha	

Justification

Clause 4.6 of the NLEP 2012 enables an exception to the minimum lot size standard upon consideration of a written request from the applicant justifying the exception against the matters for consideration identified below.

Justification against clause 4.6 matters is provided in the Table 7-2 below.

Table 7-2: Justification against the requirements of Clause 4.6

Requirement of Clause 4.6	Comment
(1) The objectives of this clause are as follows: (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,	The subject lot is already less than the applicable 40ha minimum lot size development standard. Flexibility in applying the minimum lot size standard is appropriate for this particular development.
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	The provision of undersized lots provides for the timely and efficient redevelopment, maintenance and divestment of RE1 Public Recreation zoned land to public ownership.
(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any	The minimum lot size development standard is not expressly excluded from the operation of this clause.

Requirement of Clause 4.6	Comment
<p>other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</p>	
<p>(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:</p>	<p>This document comprises a written request to vary the development standard.</p>
<p>a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p>	<p>Compliance with the 40ha minimum lot size is considered unnecessary and unreasonable in the circumstances since the existing lot is below the minimum lot size. It is unreasonable to apply the standard, when Council has already enabled the existing lot to be created in contravention of the standard.</p> <p>The RE1 zoned land forms part of an existing undersized 4.52ha lot. The portion of RE1 zoned land within this lot is currently 1.10ha. The proposed subdivision creates nine (9) lots of RE1 land below the minimum lot size, ranging from 53 to 1,426m².</p> <p>The proposed subdivision does not result in a reduction in the total amount of RE1 Public Recreation zoned land. Therefore compliance with the standard is unnecessary. The proposal merely refines the lot boundaries to align with the RE1 zone boundaries and does not reduce the overall amount of existing RE1 zoned land.</p> <p>Whilst the proposed nine (9) individual RE1 zoned lots created will each be less than 40ha, 8 of the 9 lots will be acquired into the single ownership of CoN and used and maintained as one contiguous piece of public recreation land. Therefore compliance with the standard is unnecessary since provision of 40ha is not necessary to protect the functionality of the RE1 zone.</p> <p>The proposed smaller lots sizes will enable the staged rehabilitation of the public recreation zoned land. The existing zoning and strategic plans for this Honeysuckle West precinct support the proposed RE1 lot configuration, optimising public access to the</p>

Requirement of Clause 4.6	Comment
	<p>rehabilitated Cottage Creek and foreshore public domain.</p> <p>Adherence to the development standard in this instance would result in a negative social and economic outcome for the site, preventing public ownership of the existing RE1 zoned land and preventing the future sale and development of the residual lots.</p> <p>The underlying objectives of the development standard is not adversely affected by the proposed variation. The proposed subdivision lot sizes “meet community and economic needs, while ensuring that environmental and social values are safeguarded”. The lots meet user requirements for the foreshore public domain and facilitate development of residual lots for provide additional housing and commercial development.</p>
<p>b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p>The proposed variation to the development standard does not affect the ability of the lots to adhere to all other applicable development controls.</p> <p>The proposed subdivision will not create any physical development, entitle any future development of the site, or result in any detrimental environmental impacts. The lots provide sufficient dimensions for future development applications to adequately achieve environmentally sustainable development objectives.</p>
<p>(4) Development consent must not be granted for development that contravenes a development standard unless:</p> <p>a) the consent authority is satisfied that:</p> <p>(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p>	<p>This document adequately address the matters prescribed in subclause (3).</p>
<p>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p>	<p>The proposed subdivision is in the public interest as it is consistent with the objectives of the development standard. The proposed subdivision lot sizes “meet community and economic needs, while ensuring that environmental and social values are safeguarded”. The lots meet user requirements for the foreshore public domain and facilitate development of residual lots for</p>

Requirement of Clause 4.6	Comment
	<p>provide additional housing and commercial development.</p> <p>The proposed subdivision is consistent with the objectives of the RE1 zone by:</p> <ul style="list-style-type: none"> • facilitating divestment of public recreation land to public ownership • enabling the efficient maintenance of public recreation land • facilitating public use of RE1 zoned land • providing a unique foreshore setting for recreational activities that is compatible with adjoining future residential and commercial land uses • provide for the protection and enhancement of the Cottage Creek natural environment.
<p>b) the concurrence of the Planning Secretary has been obtained.</p>	<p>Not applicable. Council has delegated power to issue consent under this clause.</p>
<p>(5) In deciding whether to grant concurrence, the Planning Secretary must consider:</p> <p>a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</p>	<p>Contravention of the standard does not raise any matter of significance for State or regional environmental planning.</p>
<p>b) the public benefit of maintaining the development standard, and</p>	<p>Maintaining the development standard would not be in the public interest as described above.</p>
<p>c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.</p>	
<p>(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—</p> <p>(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or</p>	<p>Not applicable.</p>

Requirement of Clause 4.6	Comment
(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.	
(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).	Noted.
(8) This clause does not allow development consent to be granted for development that would contravene any of the following— (a) a development standard for complying development, (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> applies or for the land on which such a building is situated, (c) clause 5.4, (ca) clause 8.1 or 8.2.	Not applicable.

Conclusion

The RE1 zoned land forms part of an existing undersized 4.52ha lot. The proposed subdivision will align lot boundaries to the existing RE1 zone boundaries. Whilst the proposal creates nine (9) new lots of RE1 zoned land below the 40ha minimum lot size, the proposal does not reduce the total amount of existing RE1 zoned land. The undersized lots are created to enable the timely and efficient divestment of the RE1 Public Recreation zoned land to public ownership under the care and maintenance of the CoN.