



Planning Assessment Report

Development Application DA 149-6-2005

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 149-6-2005.

The application seeks consent for demolition of the existing weatherboard dwelling; construction of a 4-storey residential apartment building comprising four (4) units and basement car parking for eight (8) vehicles; and strata subdivision into 4 lots.

The Minister for Planning is the consent authority under Clause 10(2) of *State Environmental Planning Policy No.71 – Coastal Protection* (SEPP 71).

It is recommended that the development application be **refusing consent**.

2 BACKGROUND

2.1 History

A development application (DA) was lodged for a similar development consisting of 4 residential units and a basement car parking level for 8 vehicles. This DA was approved by Port Stephens Council on 28 October 2003. This development consent is currently being contested in the Land and Environment Court over issues such as lawfulness of the consent and height controls and definition.

The applicant lodged DA 149-6-2005 with the Department with an aim to obtain a different development consent for the Site that could be acted on immediately.

The applicant has advised that DA 149-6-2005 is based on the original development as approved, including building envelopes and height.

2.2 Site Context

The site is located at Lot 8 DP 15998, 78 Magnus Street, Nelson Bay in the Port Stephens local government area. A locality map is tagged “D”. The development application was lodged with the Department on 28 June 2005 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The subject site has an area of 573.33 square metres. The subject site falls approximately four metres from the southern boundary of Magnus Street to the rear of the site to the north. A single storey weatherboard dwelling and associated outbuildings currently occupy the site.

To the east, the site adjoins a 2 storey duplex building at No. 76 Magnus Street and a 4 storey apartment building at No. 74 Magnus Street. To the west, the site adjoins a 2 storey residential dwelling at No. 80 Magnus Street. To the rear of all these properties, including the subject site, is an adjoining public reserve which fronts Victoria Parade, beyond which is the foreshore. A site plan is attached at tag “E”.

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for:

- demolition of the existing buildings;
- construction of a 4-storey residential flat building and basement level car parking consisting of 4 units and car parking for 8 cars; and
- subdivision into 4 strata lots.

3.1 Amended Plans

The original proposal was unsatisfactory in respect of height, setbacks, landscaping, site coverage, density of development, vehicular parking, privacy and aesthetic appearance. The applicant was advised on 2 March 2006 that the Department was finalising the assessment of the DA with a recommendation to the Minister for refusal. A meeting was held on 14 March 2006 with officers of Urban Assessments and the applicant's architects to discuss possible means to overcome the abovementioned non-compliances. Following this meeting, amended plans were received by the Department on 12 April 2006. It is considered that these amendments do not adequately address the issues raised by the Department and a recommendation will be made that the amended application be refused.

4 STATUTORY FRAMEWORK

4.1 Statement of permissibility

The subject site is zoned 2(c) Residential under the *Port Stephens Local Environmental Plan 2000* (LEP). Pursuant to clause 19, the proposed use of a residential flat building is permissible with consent.

4.2 Instrument of consent and other relevant planning instruments

Pursuant to Clause 10(2) of SEPP 71, the Minister is the consent authority for the proposed development.

Other relevant planning instruments applicable to the site are:

- *Coastal Protection Act 1979*;
- *NSW Coastal Policy 1997*;
- *Hunter Regional Environmental Plan 1989* (Hunter REP);
- *Port Stephens Council Development Control Plan PS 1 – Urban Housing and Dual Occupancy Guidelines* (DCP 1);
- *Port Stephens Council Development Control Plan PS 2 – Car Parking Code* (DCP 2);
- *Port Stephens Council Development Control Plan PS 10 – Building Standards and Notification Procedures for development Applications* (DCP 10);
- *Port Stephens Council Development Control Plan No. PS11 – Controls for Site Waste Management and Minimisation* (DCP 11).
- *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1);
- *State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP 55); and

- *State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings (SEPP 65).*

4.3 Legislative context

The proposed development represents State significant development.

5 CONSULTATION

5.1 Public consultation

The application was notified, in accordance with the Regulations and DCP 10 including:

Notifications landowners/occupiers	– Adjoining and surrounding owners and occupiers.
Newspaper advertisements	Advertised in the Port Stephens Examiner on 27 October 2005.
Site notices	A site notice was placed on the site on 28 October 2005.
Exhibition dates	Start: 28 October 2005. End: 28 November 2005.
Exhibition venues	▪ Department of Planning, Information Centre, 23-33 Bridge Street, SYDNEY; ▪ Department of Planning, Hunter Regional Office, 464 King Street, NEWCASTLE WEST; ▪ Port Stephens Council, 116 Adelaide Street, RAYMOND TERRACE; and ▪ Tomaree Library and Community Centre, Town Centre Circuit, SALAMANDER BAY.

11 public submissions were received regarding the application. Issues are considered in Section 6.2 of this report.

5.2 Referrals

5.2.1 Integrated Approval Bodies

The application is not integrated.

5.2.2 Council

The application was referred to Port Stephens Council on 21 October 2005 in accordance with the requirements of DCP 10. Council responded on 4 January 2006 (tagged "X"). Issues raised by Council are discussed in detail in Section 6.2 of this report.

5.3 Internal consultations

The application was referred to the Hunter regional office on 21 October 2005. The Hunter office did not make a submission.

6 CONSIDERATION

6.1 *The Environmental Planning & Assessment Act*

6.1.1 *Section 79C*

The application and the likely impacts of the proposed development have been considered in accordance with Section 79C of the Act. Significant issues are discussed below in Section 6.2.

The subject site is not considered suitable for the proposed development. Submissions have been considered and issues raised in submissions are discussed in Section 6.2. The proposal is not in the public's interest and is considered unsatisfactory for the reasons stated below in Section 6.2 and in the Compliance Table (tagged "C").

6.2 *Issues*

6.2.1 *SEPP 1 objection – site area per dwelling*

Issue: The SEPP 1 Objection lodged by the applicant for minimum site area per dwelling under Clause 19 of the Port Stephens LEP is not supported by the Department.

Raised by: Urban Assessments, public submissions

Consideration: The applicant lodged a SEPP 1 Objection against Clause 19 of the Port Stephens LEP. This clause reads as follows:

(19) A person shall not erect a dwelling house, dual occupancy housing or urban housing on land within a zone specified in the Table to this clause unless –

(a) the allotment on which the building is proposed to be erected has an area of not less than the minimum area for each dwelling specified in the Table in respect of the type of housing and zone concerned.

[For Urban Housing, the minimum site area per dwelling specified by the Table is 150sq m].

The applicant provided the following justification to support the objection:

- the site area is only 6.67 sq m less than the development standard that would allow 4 units on the site;
- the previous LEP permitted a similar development standard of 145 sq m per dwelling; and
- SEPP 1 allows development standards to be varied.

The site has an area of 573.33 sq m. Under this clause of the LEP, a site area of 600 sq m is required for a four unit residential dwelling on the site. The site therefore falls short of this requirement by 26.67 sq m.

The applicant stated that density of development of the site is not such a critical factor as the site adjoins an open space area which is not densely developed and allows for greater solar access and views to all proposed units. They further claim that the proposed development is a response to the site conditions and that the proposed variation is well founded due to these reasons.

The applicant also states that a draft amendment to remove this

particular clause of the LEP has been publicly exhibited. Council did not raise this in their submission and the Department has not been made aware of this.

It is considered that the proposed development constitutes an overdevelopment of the site. Whilst this issue if treated alone could possibly be supported, together with the other numerous non-compliances of the proposal, cannot be supported.

It is considered that the impact of an increase in density of the site, coupled with these other non-compliances are likely to causes the following impacts:

- Social effects: It is considered that the bulk, scale and setbacks caused by an overdevelopment of density on the site are likely to adversely impact users of the adjoining public reserve. When standing on this reserve, the proposed development is overbearing, causing a negative amenity effect on adjoining residents and users of the reserve.
- Visual effects: DCP 1 sets out performance criteria including considering the likely impact of privacy, obstruction of view and overshadowing. It is considered that that these objectives cannot be successfully achieved if the proposed development was permitted.
- Amenity effect: As above, it is considered that the lack of setbacks, increased density, bulk, scale and height of the proposed development will have an adverse impact upon the reserve and adjoining development.

Resolution: SEPP 1 aims to provide flexibility for development standards where a better outcome could be achieved by providing site responsive design. The applicant's justification for varying this development standard does not contain significant merit to warrant support by the Department. Overall, the proposed development is considered excessive and inconsistent with the objectives of the development controls applicable to this site. The recommendation to the Minister is not to grant concurrence for the SEPP 1 objection for the proposed development.

6.2.2 Site coverage and setbacks

Issue: The development proposal does not comply with the site coverage and setback requirements of DCP 1 and DCP 10.

Raised by: Urban Assessments, public submissions

Consideration: DCP 1 uses floor space ratio, site coverage, site area and setbacks as development standards to limit the size and bulk of buildings and to achieve the objectives of preventing excessive development.

The maximum site coverage for the site under the DCP is 75%. The proposed development is well in excess of this requirement, when the deck and other paved surfaces are included in the calculations.

DCP 1 has building envelope controls however they do not apply to buildings greater than 3 storeys. DCP 10 contains building lines provisions as follows:

Residential zones – 6m to front property; 3 m to side property.

The proposed development proposes less than 1m setback to Magnus Street and 2.15m setbacks to both side properties. The ground floor terrace extends to both side boundaries at the front of the site and covers most of the front of the site. Whilst DCP 10 allows for open balconies or decks to overhang the building line up to a maximum of 1m, this proposed terrace is excessive and does not allow for landscaped or open area on the front or front sides of the building.

Although the setback non-compliances, when considered as a single issue, could be supported as one of the DCP objectives is to provide flexibility in the siting of buildings and the streetscape, performance criteria supporting the objectives of setbacks is that building setbacks should be considered in relation to their height in such a way to ensure that pedestrians do not feel buildings are overbearing. It is the opinion of Urban Assessments that the setbacks, when considered with the height and density non-compliances and in relation to existing developments in the streets, could cause the effect of the building being overbearing on pedestrians.

Similarly, one of the objectives for building bulk and scale state that the provisions are to ensure that new development is not excessive and relates well to the local context and overall site constraints. Again, considering the non-compliance of site coverage as a single issue could be supported however when considered with the other non-compliances of the DA, appear to comprise of overdevelopment of the site.

The Applicant was informed of this assessment and subsequently submitted a revised design to the Department including minor design changes to reduce the height of the building and the bulk of the fourth storey only. The amended design did not address the setback non-compliances or reduce the terrace in any way.

Resolution: It is considered that the amendments as submitted do not adequately address the concerns raised by the Department in its original assessment and that the proposed development constitutes overdevelopment of the site.

6.2.3 Loss of amenity and privacy to adjoining residents

Issue: The proposed development, due to the reasons stated above, is likely to cause negative impacts on the amenity and privacy of the adjoining residents and does not comply with the requirements of DCP 1.

Raised by: Urban Assessments, public submissions, Port Stephen's Council

Consideration: One objective of DCP 1 is to protect the visual and acoustic privacy of nearby buildings and private open space. The proposed siting of the building and the non-compliances mentioned regarding side setbacks are likely to have a negligible impact on the amenity of the surrounding residents.

Overshadowing of the development is likely to have further amenity effects on adjoining neighbours.

Resolution: As abovementioned, the applicant submitted amended designs reducing the buildings' bulk and size on the fourth level only. These amendments however did not reduce the side setbacks or the amount

of development at ground, first or second floors. The Department has therefore concluded that the impact of the development if approved on the surrounding properties is likely to be severe and constitutes overdevelopment of the site.

6.2.4 Building design

- Issue:** The proposed building is out of context with the surrounding properties..
- Raised by:** Urban Assessments, public submissions, Port Stephens's Council
- Consideration:** The proposed building is excessively tall and bulky and is out of context with the surrounding properties. The development would be visible from the foreshore and consideration needs to be given to the aesthetic appearance of the proposed development.
- The building design is incompatible with the adjoining buildings and it is considered that if approved, the development is likely to detract substantially from the visual amenity of the area.
- Resolution:** The development application has numerous significant non-compliances that if considered separately, may be individually supportable in some instances however when considered together in context of the area, are considered to be overdevelopment of the site.
- In this regard, if the proposed development complied with the other controls such as scale, setbacks and bulk, the appearance of the building would less likely be an issue. The applicant was made aware of these concerns at a meeting and submitted a revised scheme. As abovementioned, the applicant submitted amended designs reducing the buildings' bulk and size on the fourth level only. These amendments did not address the overall design of the proposed development and therefore were not considered to adequately address concerns raised by the Department.

7 CONCLUSION

The Minister for Planning is the consent authority.

The application has been considered with regard to the matters raised in section 79C of the Act and Port Stephens Council who were consulted and did not support the proposal.

The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered.

On balance and for the issues discussed above, it is considered that the proposed development is not acceptable and should be determined by **refusing** consent.

8 RECOMMENDATION

It is recommended that the Minister for Planning pursuant to section 80 (1)(b) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 10(2) of *State Environmental Planning Policy No. 71 – Coastal Protection*:

- (A) **Refuse** consent to the application (tagged "A"), and
- (B) authorise the Department to carry out post-determination notification.

For Ministerial Endorsement:
Prepared by:

Endorsed by:

Verity Humble-Crofts
Planner, Urban Assessments

Michael File
**Acting Team Leader, Urban
Assessments**

Heather Warton
Director, Urban Assessments