



Planning Assessment Report

Development Application DA 166-7-2004

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 166-7-2004.

The application seeks consent for Additional 2 Levels comprising no more than 13 dwellings to a consented Residential Flat Building (Building B2) and other Modifications to that Building and Subdivision.

The Minister for Infrastructure and Planning is consent authority under Clause 7 (2) of the *Newcastle Local Environmental Plan 2003*.

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

2 BACKGROUND

2.1 Site Context

The site is located at Lot 4 DP 883474 and Part Lot 21 DP 1051525 Honeysuckle Drive, Newcastle in the City of Newcastle Council local government area. (Tag “D”)

The development application was lodged with the Department on 8 July 2004 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The site is adjacent to Newcastle Harbour and extends over both sides of Honeysuckle Drive. The land on which the subject DA applies is adjacent to Honeysuckle Drive and near “the Squareabout”.

Situated close to the site is the development known as “the Boardwalk”, Civic Railway Station and the Civic Railways Workshop Group, the latter two being state significant heritage listed buildings associated with the site’s former railway uses. The land is within the Newcastle City Centre Heritage Conservation Area.

The land is low and flat with elevations of around 2.0m AHD. There is little vegetation remaining on site. The site is currently being remediated as part of recent development consents.

A site visit was conducted of the site in July 2004.

2.2 Relevant approvals

The Minister previously granted consent to the development application DA No. 230-5-2003. The current development application DA 166-7-2004 relies on the construction of DA 230-5-2003

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for:

- (1) Amendments to the subdivision of proposed Lots 24 and 25 in the development consent DA 230-5-2003;
- (2) Provide two additional parking spaces in the basement of Buildings B1, B2, and B7 that formed part of the development consent DA 230-5-2003;
- (3) Insertion of structural columns to the through site link off Honeysuckle Drive that formed part of the development consent DA 230-5-2003;
- (4) Amendments to the levels and unit mix on Levels 4 and 5 in Buildings B2 proposed in the development consent DA 230-5-2003;
- (5) Inclusion of Levels 6 and 7 in Building B2 comprising a total of no more than 11 units; and
- (6) Amendments to the facade design of Building B2 that formed part of the development consent DA 230-5-2003 to accommodate additional levels to Building B2.

3.1 Amended Plans

On 10 November 2004 the Applicant, submitted amended plans the application incorporating:

- Inclusion of a deep soil well,
- Changes to structural columns to the through site link,
- Internal amendments to units on upper levels,
- Setback of the eastern edge of the upper two levels,
- Setback to southern edge of upper two levels.

These amendments differ only in minor respects from the development application submitted and do not give rise to any additional impacts. Accordingly, these amendments were accepted as a replacement application in accordance with clauses 55 and 90 of the *Environmental Planning & Assessment Regulation 2000* (the Regulations). In accordance with clause 90 of the Regulations further notification of the application was not undertaken (or alternatively, describe re-notification process), and the applicant was advised of the acceptance of the amended plans on 27 January 2005.

4 STATUTORY FRAMEWORK

4.1 Statement of permissibility

The proposed development is permitted in the 3(c) City Centre Zone as commercial premises pursuant to clause 16 of the *Newcastle Local Environmental Plan 2003*.

4.2 Instrument of consent and other relevant planning instruments

Pursuant to Clause 7(2) of the *Newcastle Local Environmental Plan 2003*, the Minister is the consent authority.

The environmental planning instruments, draft environmental planning instruments, development control plans, and regulations applicable to the land to which the development application relate are as follows:

- *State Environmental Planning Policy No.32—Urban Consolidation (Redevelopment of Urban Land)* (SEPP 32),

- *State Environmental Planning Policy No.55—Remediation of Land (SEPP 55),*
- *State Environmental Planning Policy No.65—Design Quality of Residential Flat Buildings (SEPP 65),*
- *Hunter Regional Environmental Plan (HREP),*
- *Newcastle Local Environmental Plan 2003 (Newcastle LEP),*
- *Newcastle Development Control Plan 24—Car parking (DCP 24),*
- *Newcastle Development Control Plan 40—CityWest: Unlocking the potential (DCP 40), and*
- *Section 94 Contributions Plan No1 and Section 94 Contributions Plan No2 (Newcastle Section 94 Plans)*

4.3 **Legislative context**

The proposed development is local development pursuant to Part 4 of the Act and Newcastle LEP.

The proposed development is integrated development pursuant to Section 91 of the Act as approval is required under the *Heritage Act, 1977* for the purposes of a Section 60 approval. By virtue of the development requiring integrated approvals under the *Heritage Act, 1977*, the proposed development is advertised development pursuant to clause 5 of the *Environmental Planning and Assessment Regulations, 2000*.

5 **CONSULTATION**

5.1 **Public consultation**

The application was notified, in accordance with the Regulations and *Newcastle Development Control Plan No.49 – Notification Policy* including:

Notifications – landowners/occupiers	36 land owners and occupiers
Newspaper advertisements	Advertised in Newcastle Herald on 13 August 2004
Site notices	13 August 2004
Exhibition dates	Start: 13 August 2004. End: 6 October 2004
Exhibition venues	▪ Planning Information Centre, 20 Lee Street Sydney ▪ Newcastle City Council, 412 King Street, Newcastle ▪ DIPNR (Hunter Region), 464 King Street, Newcastle

11 submissions were received regarding the Application. A summary of submissions is included in the Compliance Table (tag “C”). Issues, whether or not raised in these submissions, are considered in Section 6.2 of this report.

5.2 **Referrals**

5.2.1 **Integrated Approval Bodies**

The application was integrated under *Heritage Act, 1979* and *Mine Subsidence Compensation Act, 1961*. The Heritage Council and Mine Subsidence Board have issued separate general terms of approval for the development (these are included in the proposed conditions of consent).

5.2.2 Council

The application was referred to the Newcastle City Council on 13 August 2004. Council responded on 21 December 2004. Council's resolved the following:

That Council has objection in principle to the proposed addition of two levels onto Building B2 and ancillary minor adjustments to carparking and subdivision, as outlined in DA 166-7-2004 lodged with the consent authority. Should the Minister approve this development, then Council requests that the required Section 94 contribution be increased in proportion to the increased number of dwellings proposed and, should the proposed basement car parking be considered deficient in relation to the overall calculation of floorspace for both the residential/serviced apartments and commercial components of Buildings B1, B2, and B7, an appropriate additional condition being imposed requiring payment of a further Section 94 contribution pursuant to the provisions of Council's adopted Contributions Plan No 1. 2001

This resolution of Council was counter to the recommendation by Council's planning staff that raised no objection to the development and requested that, if recommended for consent, adequate Section 94 contributions were applied. Given that the nature of the development is small and it remains unclear on what grounds Council objects to the Development, there is no impediment to the issuing of a development consent subject to conditions, including the levying of additional Section 94 contributions.

5.2.3 Newcastle Ports Corporation

The Newcastle Ports Corporation was advised by letter of the development on 13 August 2004. The Corporation responded on 3 September to advise that they did not object to the development subject to the following conditions:

- (1) The proponent ensuring that suitable noise attenuation design and materials are employed to minimise or eliminate noise generated from port activities including, but not limited to, the port's fog siren, ship and tug horns and pilotage helicopter movements; and
- (2) The proponent ensuring that lighting and other aspects of the building design (eg reflective materials including external glazing or cladding, etc) do not represent a hazard to safe navigation within the port. In the event of any significant interference with navigation or maritime operations generally, it is requested that, as a condition of development approval, the proponent agree to undertake appropriate remedial work as may reasonably be required by NPC.

In considering this request, it appears that the Newcastle Ports Corporation is seeking a substantial role in altering the design of the building. The role being sought by the Newcastle Ports Corporation is of concern, though, and should be limited to the Applicant consulting and ensuring that the building does not impact on Port activities.

5.2.4 RailCorp

RailCorp was advised by letter of the development on 13 August 2004. RailCorp responded on 9 September 2004 and recommended that conditions of consent be imposed on the proposed development:

- (1) to ensure that development satisfied the noise and vibration interim guidelines prepared by RailCorp,

- (2) to provide a report on Electrolysis risk to the development from stray currents and take all necessary remedial action to minimise this risk,
- (3) to impose developer contributions to provide for a bridge over or under Merewether Street and Hannel Street to separate road and rail,
- (4) to impose developer contributions for the upgrade of railway stations within the vicinity of the site.

In considering these requests, it was considered appropriate to ensure that the Applicant address noise, vibration and the risk of electrolysis as post-consent issues. However, with regards to developer contributions, the request by RailCorp is inappropriate. This is because RailCorp's request provides no certainty to the Applicant and public generally on the timing or amounts of money required for rail infrastructure.

5.2.5 Roads and Traffic Authority

The Roads and Traffic Authority was advised by letter of the development on 13 August 2004. The RTA responded on 24 September 2005 that it raised no objection to the development.

5.3 Internal consultations

The Hunter Region Office of the Department has been consulted regarding the application by letter on 13 August 2004. The Regional office provided no response to the development application.

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 Site is considered suitable for the proposed development. Submissions have been considered and issues raised in submissions are discussed in Section 6.2. On balance, the proposed development is considered to be in the public interest.

6.2 Issues

6.2.1 View corridor impacts

<i>Issue:</i>	Two additional levels to Building B2 will create adverse impacts on the significant view corridors
<i>Raised by:</i>	Public Submissions
<i>Consideration:</i>	A number of public submissions raised concern that the Applicant did not provide documentation that showed that the development would not affect significant views across Newcastle. DCP 40 identifies a significant view corridor from the "Tree of Knowledge" through the Honeysuckle to the Christ Church Cathedral. This view corridor includes the subject site. (Tag "E") The Applicant was asked to provide a view analysis to establish what impact two additional floor levels on B2 may have on the view corridor. The Applicant subsequently provided a computer generate photomontage that identifies the current development consent DA 230-5-2003 and the proposed development for an additional two levels on Building B2. This information clearly indicates that the proposed

development for an additional two levels on Building B2 will not adversely impact on the view corridor from the "Tree of Knowledge" to the Christ Church Cathedral. (Tag "F")

Resolution: The proposed development, as amended, is acceptable.

6.2.2 Separation distances

Issue: Building B1 and two additional levels are too close

Raised by: Urban Assessment

Consideration: The development application, as lodged, proposed units in Building B2 that would be less than 12 metres from Building B1. This distance is contrary to DCP 40 and Residential Flat Design Code pursuant to SEPP 65, which require an 18 metre separation between the two buildings at this height.

Discussions with the Applicant identified that the separation distances were not satisfactory and that they submit amended plans showing a compliant scheme.

The Applicant provided an amended design that setback the two upper levels of Building B2. An assessment of this proposal indicates that although balconies encroach into the 18 metre separation distance, the amendments reflect the intent of the controls in the Residential Flat Design Code and DCP 40. Furthermore, the design appears to include measures that would help reduce the amenity impacts on the adjoining units.

Resolution: The proposed development, as amended, is acceptable.

6.2.3 Overshadowing of Hunter Square

Issue: Increased amount of overshadowing to Hunter Square

Raised by: Urban Assessments

Consideration: The addition of two levels to Building B2 impacts on Hunter Square, which is an internal courtyard that is accessible by the public, by increasing the amount of overshadowing. The overshadowing diagrams provided by the Applicant suggest that additional overshadowing will result in negligible solar penetration to Hunter Square on the Winter Solstice.

The Applicant was requested to revise the development design to reduce the overshadowing impact on Hunter Square.

The Applicant submitted amending plans that reduced the floor plate of the additional levels. A sectional overshadowing plan identified that at 12-noon, whilst there may be slightly more overshadowing than the current consent, the total amount of overshadowing over Hunter Square would be slightly more than granted consent.

This redesign is considered acceptable

Resolution: The proposed development, as amended, is acceptable.

6.2.4 Structural columns

Issue: Location and design of structural columns affect the urban design of Hunter Square

Raised by: Urban Assessments

Consideration: The amendments propose to introduce six structural columns to the through site link. These columns encroach on the sightlines from Honeysuckle Drive to Hunter square and have a negative effect on this space. The Applicant was advised of this concern and was requested to remove the columns in order to retain clear sight lines between the Square and roadway.

The Applicant advised that it was not possible to remove all columns for engineering reasons and submitted amended plans to reduce the number of columns on site. The amended plans show that columns still encroach on the sightlines Hunter Square and Honeysuckle Drive. An assessment shows that while the impact is less than originally proposed, the sightlines are relatively clear and are more open than those originally submitted. In light of the engineering concerns, this solution represents a better outcome than the original submission.

Resolution: The proposed development, as amended, is acceptable.

7 CONCLUSION

The Minister for Infrastructure and Planning is the consent authority.

The application has been considered with regard to the matters raised in section 79C of the Act and the integrated agencies of the Heritage Council and Mine Subsidence Board who were consulted and provided general terms of approval under the Integrated Development Provisions within the Act.

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, it is considered that the proposed development is acceptable and should be approved.

8 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 23 December 2004. The applicant responded on 4 January 2005 and 12 January 2005 are commented upon by the Department as follows:

Applicants Comment	Departmental Response
The description of works (refer letter of 15 November 2004) might be better described as: <i>“Additional 2 levels comprising no more than 13 additional dwellings to a consented</i>	This was a description error in the draft consent and is acceptable.
Clarify that the CC only relates to the top two floors	This is acceptable
B1 (3) This is not a requirement of the previous DA B1 (4) This is not a requirement of the previous DA	These conditions flow from a request by the Newcastle Ports Corporation concerning impacts on port activities. The conditions arising from this request are valid and are worth retaining.
B1 (5 & 6) Other DAs just required an easement	These conditions flow from a request from the RailCorp concerning noise, vibration, and Risk of Electrolysis from rail activities near the site. The conditions arising from noise and vibration are valid and are worth retaining. The requirement for a Risk of Electrolysis report should be made an advisory note given that the overall building construction is the subject of another development consent.
B2 (1) Use the term Team Leader rather than Director – to be consistent with original DA	The draft conditions permit Director or their nominee to sign off further approvals under Section 80A (2) of the Act. It is available for the Director to nominate the Team Leader for signature on this DA and, therefore, this represents the same outcome.
B6 No excavation required so please delete	This is acceptable
B7 & B8 Could these not be worded that the previous Erosion and Sedimentation and Dilapidation Reports to cover the section 96 – similar to B17 clause	These conditions are similar in context to those approved in the consent DA 230-5-2003. While the wording is different, the outcomes are similar. The condition should be retained.
B12 Can this not be deleted – already required in main DA	This condition related to traffic control devices and are included in the parent consent DA 230-5-2003. The deletion of these conditions, therefore, is acceptable.
B13 This should better apply prior to OC not CC. Reference should be to B14 not B15 refer F8 B14 This should better apply prior to OC not CC.	These conditions relate to ecological sustainable development and it is appropriate to identify a process of achieving these outcomes before issuing a Construction Certificate and confirming

B15 This should better apply prior to OC not CC. Refer F9	this outcome before issuing an Occupation Certificate. This is acceptable and the conditions should remain.
C9 to C14 No excavation required so please delete	This is acceptable
C17 Can this not be deleted – already required in main DA	This condition requires a Risk Assessment be provided to RailCorp. Its deletion is acceptable given its being conditioned in the main DA.
D3 & D5 No excavation required so please delete D17 & D18 No excavation required so please delete	This is acceptable
E5 No such requirement in other DAs. No common area landscaping in this [DA]	The common landscaping exists within Hunter Square. This space is not easily delineated from other public spaces and it is appropriate to ensure that the surrounding buildings are charged with maintaining landscaping at their cost instead of at the cost of Council. The retention of this condition is appropriate
E5 (2) Not practical to replace plant of same maturity. Suggest add after maturity “as the plant originally planted”	This is agreed and is acceptable.
E5 (3) Should only apply if Owner’s Corporation has not replaced the plant and then only after two notices issued giving 30 days to comply.	The principle of the Owner’s Corporation having a “reasonable notice” and period to act is appropriate. However, the terms of what represent reasonable notice should be a matter dictated by Council’s existing policies or for Council and the Applicant to agree to. Consequently, the condition is amended accordingly
F2 The 12 month certificate can not be issued before the OC. Refer G1.	The condition related to annual fire safety certificates and it is correct that it cannot be issued before the Occupation Certificate. This condition is deleted.
F8 Should refer to B11 through to B15	The Condition relates to compliance with ecologically sustainable development outcomes achieved before the issue of Construction Certificate. Amendments to the references in these conditions are necessary and have been amended accordingly.
F10 No excavation required so please delete F11 No excavation required so please delete	This is agreed and is acceptable.
G19 Could this stipulate a 1 in 50 year floor?	The condition requires the installation of floor warning signs for residents but does not identify the frequency. It is agreed that a time period is appropriate and a 1 in 50 year flood event is acceptable.
AN13 No excavation required so please delete	This is agreed and is acceptable.

9 RECOMMENDATION

It is recommended that the Minister for Infrastructure and Planning pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 7(2) of the *Newcastle Local Environmental Plan 2003*:

- (A) grant **consent** to the application subject to conditions (Tagged “**A**”), and
- (B) authorise the Department to carry out post-determination notification.

Prepared by:

Endorsed by

Antony Pedroza
Planner, Urban Assessments

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

Robert Black
Director, Urban Assessments