



Planning Assessment Report

Development Application DA 181-8-2004

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 181-8-2004.

The application seeks consent for the demolition of existing buildings comprising a dwelling and a garage and construction of a 6-unit residential flat building over basement car parking and strata subdivision. The building comprises 2 components linked by a common entry foyer with the northern component having 2 and 4 storeys, and the southern component having 4 storeys over 2 levels of basement car parking.

The site falls within Part 1(3) of SEPP 71 – Coastal Protection. The proposal is State significant development as it falls under Schedule 2 of the SEPP as the proposed development is greater than 13m in height. The Minister for Planning is the consent authority under clause 10(2).

The subject site is zoned Residential C pursuant to the Port Stephens Council LEP 2000.

The proposal complies with the aims of SEPP 71 and the relevant environmental planning instruments and policies. The height, bulk and scale are not excessive and will fit the desired future character of the area as reflected in the local planning controls and approved and existing development in the locality. The proposal will have minimal impact on visual amenity of the coast and surrounds. Any impact on privacy and solar access of neighbouring development is within acceptable limit. Reticulated sewer is available to the site and stormwater will be connected to the Council's stormwater system along Victoria Parade and therefore, any impact on water quality will be negligible. It is recommended that the development application be **granted consent**.

2 BACKGROUND

2.1 History

The original proposal was unsatisfactory in respect of height, aesthetic appearance, setbacks and vehicular access. The applicant was advised on 12 November 2004. The applicant responded to the Department's concerns on 21 December 2004 and amended plans and additional information were received on 17 February 2005. Respondents to the original proposal were notified of the amended proposal on the same day.

2.2 Site Context

The site is Lot 2 DP 15998, No. 90 Magnus Street, Nelson Bay in the Port Stephens local government area. The development application was lodged with the Department on 3 August 2004 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The irregular quadrilateral site has a site area of 968m². The site falls approximately 5m from the south-eastern corner at the street frontage to the north-western corner at

the rear. A weatherboard dwelling is located at the northern part and a garage near the middle of the site.

The site adjoins a dwelling to the east at No. 88 Magnus Street. The Port Stephens Council has granted a development consent for a 4-storey residential flat over basement parking on this site. To the adjoining west, at Nos. 92 and 94, are two 2-storey residential flat buildings. To the adjoining rear of all these properties, including the subject site, is a public reserve which fronts Victoria Parade. Beyond Victoria Parade is the foreshore. Across Magnus Street are 4 to 5-storey residential flat buildings, one of which is under construction. See Attachment B for the locality of the site.

A site visit was conducted on 13 May 2005.

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for demolition of existing buildings comprising a dwelling and a garage and construction of a 6-unit residential flat building over basement car parking and strata subdivision. The building comprises 2 components linked by a common entry foyer with the northern component having 2 and 4 storeys, and the southern component having 4 storeys over 2 levels of basement car parking for 14 car spaces.

Because of the cross fall of the site, 2 vehicular access points are proposed, one along the eastern boundary to the upper basement and the other is along the western boundary to the lower basement. A pedestrian access is proposed along the eastern property boundary.

The proposal is at Attachment C.

4 STATUTORY FRAMEWORK

4.1 Statement of permissibility

The subject site is zoned Residential C under the *Port Stephens Council LEP 2000*. Pursuant to clause 19, the proposed development is permissible in the zone with consent.

4.2 Instrument of consent

The site falls within Part 1(3) of SEPP 71 – Coastal Protection. Pursuant to clause 9(1) of *State Environmental Planning Policy No. 71 – Coastal Protection* (SEPP 71), the proposed development is State significant development listed in Schedule 2 as the proposed building is greater than 13 metres in height. Under clause 9(2), the Director-General has granted concurrence to the Port Stephens Council to determine building over 14m in height pursuant to clause 58(1) of the *Hunter Regional Environmental Plan 1989*. The concurrence does not apply where a SEPP 1 is required [clause 9(3)] as is the case in this application. In this regard, the Minister for Planning, with the concurrence of the Director-General, is the consent authority for the development. The Director-General is exercising concurrence of SEPP 1 in this instance.

4.3 Other relevant planning instruments and statutory provisions

The following plans and policies also apply to the site:

State Environmental Planning Policy No. 1 – Development Standards

Coastal Protection Act 1979

NSW Coastal Policy 1997

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

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

Residential Flat Design Code

Port Stephens Council DCP PS 1 – Urban Housing and Dual Occupancy Guidelines

Port Stephens Council DCP PS 2 – Car Parking Code

Port Stephens Council DCP PS 10 – Building Standards and Notification Procedures for Development Applications

NSW Coastal Policy 1997 are addressed in the Compliance Table (see Attachment E). The other planning instruments and statutory provisions are discussed as follows:

Port Stephens Council LEP 2000 and SEPP 1 - Development Standard

Pursuant to clause 19 of the *Port Stephens Council LEP 2000*, “urban housing”, which means housing consisting of 3 or more dwellings (whether attached or detached)”, is permissible in the Residential C zone. The development standards require that the FSR shall not exceed 1.8:1, minimum site area per dwelling of 150m² and maximum height of 15m. The proposed FSR of 1.47:1 and density of 161.3m² site area per dwelling comply with the development standards.

“Height” is defined in the dictionary of the LEP as “height, in relation to a building means the maximum height of the building measured vertically from the natural ground level or the finished ground level of the completed building, whichever is the lower.” The amended proposal received by the Department on 21 December 2004 and 17 February 2005 considered the decision of the Land and Environment Court dated 19 November 2004 in *Chan Industrial Pty Ltd v Port Stephens Council*. Cowdroy J ruled that “the correct level for the purpose of measurement required by the definition is the ‘*finished ground level of the completed building*’, not the natural ground level as it existed prior to the construction of the building.” Based on this interpretation, the height of the proposed building, measured vertically from the finished ground level to the highest level point is 17.95m. A SEPP 1 objection is submitted seeking variation of the 15m development standard.

The objectives of the Residential C zone are:

- (a) to promote the principles of urban consolidation by providing residential areas which meet the diverse needs of the community with a wide choice in housing and associated public and commercial uses, and
- (b) to facilitate an ecologically sustainable approach to residential development by minimising fossil fuel use, protecting environmental assets and providing for higher densities and a more efficient use of existing infrastructure and services, and
- (c) to ensure that new development in the zone has regard to the character of the area in which it is proposed and does not have an unacceptable effect on adjoining land by way of shading, invasion of privacy, noise and the like, and
- (d) to ensure that design of residential areas takes into account environmental constraints including soil erosion, flooding and bushfire risk, and

- (e) to provide for non-residential uses that are compatible with the area and service local residents.

The LEP does not specify any objective for the height control. DCP PS1 – Urban Housing and Dual Occupancy Guidelines, which applies to Residential C zone, specified the objectives of height as follows:

- (1) to ensure that the height, scale and length of new development is not excessive and relates well to the local context and overall constraints.
- (2) to encourage design which creates desirable living conditions?
- (3) to ensure that the amenity of surrounding properties is properly considered.
- (4) to minimise site disturbance and cut and fill.

The proposal provides for density which complies with the development standard under clause 19 of the LEP. This is consistent with the zone objectives of maximising the efficient use of existing infrastructure and services.

The locality is in transition. Though the size and scale of the proposed building are significantly greater than existing adjoining development to the east and west, it will be consistent with the desired future character in the locality having regard to the controls in the LEP for the zone, and development approved and under construction on sites adjoining and in the vicinity of the subject site. The proposed design has been amended at the Department's request. It is now reasonably well articulated. It could not be considered excessive in bulk or scale.

The design provides for north-facing living area and master bedroom to all the 6 units to maximise the capture of solar access. All the units also have north-facing balcony. A significant part of the private open space is north-facing. Natural ventilation to the units is satisfactory. The design minimises the number and size of west-facing windows. In the site context and having regard to the site orientation and configuration, the building is reasonably well-designed to minimise energy usage.

The shadow diagrams submitted in support of the application indicate that there will be some overshadowing of adjoining properties particularly the west adjoining developments in the morning during the winter solstice. At mid-day, the shadow moves almost completely cleared of the affected developments. There will be some impact on the adjoining east development at 3pm but most of the shadow falls on the front building setback of the subject site and Magnus Street. Having regard to the permissible use in the zone, the site context and site orientation, the overshadowing impact on adjoining residents is reasonable and could not be considered as significant.

The design provides for windows and doors to living areas and bedrooms that overlook the north (rear) and south (front – Magnus Street). Small, high level and fixed glazing are proposed to a retreat and lobbies along the eastern wall. Small and high level windows to bedrooms, toilets and a living/dining area and privacy screen to western end of balconies are proposed along the western elevation. Having regard to the design, location and size of windows and openings and the provision of privacy screening to balconies, it is considered that any impact on privacy of adjoining and adjacent residents will not be significant.

There will be some increase in noise resulting from the development. However, the noise increase will be associated with residential living. Any unreasonable noise is governed by the Protection of the Environment Operations Act 1997. A condition is recommended that site and construction works shall be carried out during normal hours to minimise noise impact on neighbouring residents. To minimise soil and sediment impact on downstream properties and water quality, the applicant has proposed the installation of erosion control measures.

The site is not affected by flooding or subject to bushfire risk.

The applicant proposed a maximum cut of 4.5m to provide for the lower basement car parking. The cut will be contained within the building footprint and will not have impact on visual amenity of the area. As the site is located at a high level it is unlikely that the cut will have impact on acid sulphate soil and thus water table.

As the lower basement car park will be excavated below existing ground level, most of the top floor of the southern component of the building will exceed 15m. However, how well a development relates to the local context and overall site constraints in terms of height will be more a function of height above natural ground level. In this regard, the height above natural ground to the highest point is less than 15m. The amended proposal relates satisfactorily to the local context and site constraints. It will be consistent with the desired future character of the precinct. In this regard, the development complies with the objectives of the Residential C zone and the objectives of "height" as contained in DCP PS1. It is considered that a case has been advanced that strict compliance with the 15m development standard in the circumstances of the case is unnecessary and unreasonable.

The development is highly visible from the foreshore, adjoining public reserve and Victoria Parade. Clause 44 of the LEP requires a consent authority to take into consideration the probable aesthetic appearance and visual amenity of the locality of a development which is visible of any waterway, main or arterial road, public reserve or land zoned as open space. Matters for consideration under this provision of the LEP are:

Cl 44(3)(a) the height and location of any building that will result from carrying out the development

The issue of height has been discussed in the previous paragraphs. The proposed building is stepped down the site, from Magnus Street (south) towards Victoria Parade (north) in response to the slope of the land. The northern component is part 2 storeys and part 4 storeys with the 3th and 4th storey being stepped back 5m to 10.5m from the western property boundary. The top floor of the southern component is also stepped back 4.8m to 12m from the western boundary. The building design is an appropriate response to the site context and site constraints.

Cl 44(3)(b) the reflectivity of materials to be used in carrying out the development

The applicant does not propose to use external materials which are reflective. An appropriate condition is recommended that glazing use shall not exceed a reflectivity index of 20%.

Cl 44(3)(c) the likely effect of carrying out the development on the stability of the land

The subject site has a slope of 9%. There is no evidence that the site is geologically unstable. Subject to the implementation of standard building practice during site and construction works, it is unlikely that the stability of the land will be undermined.

CI 44(3)(d) any bushfire hazard

The site is located at the fringe of the town area. It is not subject to bushfire risk.

CI 44(3)(e) whether carrying out the development is essential to the viability of the land concerned

The applicant advised that rental of the existing dwelling represents a poor return and the proposed development improves the return.

CI 44(3)(f) The likely extent and effect of carrying out the development on vegetation on the land concerned

The subject site does not contain any significant tree. Given the control of the zone which permits urban housing, it is reasonable to allow removal of the existing vegetation on the site.

Clause 47 requires the consent authority not to approve a development unless satisfactory arrangement is made for the provision of water supply, disposal of effluent and stormwater. Reticulated water supply and reticulated effluent disposal are available to the site. The development could discharge the increase in stormwater to the Council's stormwater system along Victoria Parade.

SEPP 71 – Coastal Protection

It is considered that the proposal is consistent with the aims and objectives of SEPP 71. The subject site is not located along a coastal foreshore though visible from the waterway. The proposed development will not detrimentally affect public access. The design is an appropriate respond to the site constraints and site context. The building is reasonably well articulated. It is not excessive in bulk or scale. It will fit in the desired future character of the locality. Therefore, any impact on the visual amenity or scenic quality of the foreshore will be minimal.

It is unlikely that the proposed development would have a detrimental impact on the environment and water quality. Reticulated water supply and reticulated effluent disposal are available to the site. The development could discharge stormwater to the Council's stormwater system. See Attachment E for detailed assessment.

Coastal Protection Act 1979

The proposed development is consistent with the objectives of the *Coastal Protection Act 1979*. The proposal will not restrict public pedestrian access to coastal areas, and it will have minimal detrimental impact on the coastal environment and water quality.

SEPP 55 - Remediation of Land

The aim of the SEPP is to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. There is no evidence that the site is contaminated. The matter, therefore, is not pursued any further.

SEPP 65 - Design Quality of Residential Flat Development

The proposal is a residential flat building as it is 4 storeys above ground level and contains 6 self-contained dwellings. In this regard, SEPP 65 applies to the development. In compliance with clause 50(1A) of the *Environmental Planning and Assessment Regulation*, a design verification from a qualified designer has been submitted which verifies that the design is prepared by him and that the design achieves the design quality principles set out in Part 2 of the SEPP.

A Design Review Panel has not been constituted for the Port Stephens Council pursuant to clause 19. Notwithstanding, the proposal is assessed against the design quality principles as contained in Part 2.

Cl.9 Principle 1: Context

The locality is in transition. Though the building height and scale are significantly greater than existing adjoining development to the east and west, it will be consistent with the desired future character in the locality having regard to the controls in the LEP for the zone, development approved and under construction on sites adjoining and in the vicinity of the subject site.

Cl.10 Principle 2: Scale

The building bulk and scale are greater than the existing adjoining development; however, they could not be considered as excessive and will be consistent with the desired future character of the area. The issue of height is addressed under "Port Stephens Council LEP 2000 and SEPP 1 - Development Standard".

Cl.11 Principle 3: Built form

The proposed development addresses Magnus Street and the northern aspect over the public reserve, Victoria Parade and the foreshore. Similar to the approved development adjoining the subject site and the adjacent building under construction, the building alignment and proportions will fit into the future desired character of the locality. There will be some loss of views from Victoria Parade and the public reserve towards the distant hill to the south. The restriction, however, will not be significant and will be minimal when the view is taken from the foreshore.

Cl.12 Principle 4: Density

The proposed FSR of 1.47:1 and density of 161.3m² per dwelling comply with the development standards of 1.8:1 and 150m² of site area per dwelling, respectively. The proposed FSR and density is consistent with the desired future density as reflected in the *Port Stephens Council LEP 2000*. In establishing the density for the zone, the Council would have considered that it is sustainable having regard to the regional context, infrastructure, transport, community facilities and environmental quality.

Cl.13 Principle 5: Resource, energy and water efficiency

The application was lodged on 3 August 2004, prior to the introduction of BASIX for multi-unit residential development from 1 July 2005. Notwithstanding, the applicant proposes the recycling of materials from demolition of the existing buildings, use of energy-efficient appliance, provision of mechanical ventilation of the basement car parking and deep soil zones for vegetation. Appropriate conditions relating to these matters are recommended.

Cl.14 Principle 6: Landscape

An estimated 240m² of landscape area is proposed. The landscaping will provide aesthetic quality and amenity for the occupants and the adjoining public domain.

Cl.15 Principle 7: Amenity

The design provides for satisfactory amenity for the occupants in respect of appropriate room shapes and dimensions, solar access, natural ventilation, privacy, private open space, storage and access for the less mobile occupants. The development is provided with a lift. Having regard to the site topography, the proposed pedestrian access could achieve a grade of 1 in 14. An appropriate condition is recommended that the pedestrian access comply with AS1428.

Solar access, natural ventilation, privacy and private open space are addressed in this report under "Port Stephens LEP 2000 and SEPP 1 - Development Standard".

Cl.16 Principle 8: Safety and security

Most of the units are designed with balcony and living areas overlooking public and communal spaces while maintaining internal privacy. There is no non-visible external area which may compromise personal safety and security. The vehicular and pedestrian accesses are clear, visible and will, therefore, discourage commitment of criminal acts.

Cl.17 Principle 9: Social dimensions

The locality is in transition. The proposed development is consistent with the desired future character of the precinct as expressed in the *Port Stephens Council LEP 2000*.

Cl.18 Principle 10: Aesthetics

The photomontage and schedule of materials submitted in support of the application indicate that the building elements, texture, finishes and colour will blend in with the environment and consistent with the desired future character of the precinct.

Hunter Regional Environmental Plan

Among the aims and objectives of the Hunter Regional Environmental Plan are the promotion of a balanced development for the region; improvement of its urban and rural environments and the orderly and economic development; optimum use of land and other resources, consistent with conservation of natural and man made features and to meet the needs and aspirations of the community; and to co-ordinate activities related to development in the region so there is optimum social and economic benefit to the community.

The proposal is not inconsistent with the aims and objectives of the planning instrument. The proposal will fit the site context and desired future character of the locality. It is an appropriate use of the land and will have minimal impact on the environment and water quality.

Residential Flat Design Code

Local Context

This section of the Code deals with building height, building depth, building separation, setbacks and FSR. Building height, bulk and scale, and FSR are addressed in the section of this report under "Port Stephens Council LEP 2000 and SEPP 1 -

Development Standard” and “SEPP 65 - Design Quality of Residential Flat Development”.

The building separation is satisfactory. As addressed under “Port Stephens Council LEP 2000 and SEPP 1 - Development Standard”, the shadow diagrams indicate that any shading of adjoining development will be within reasonable limit. The design through building setback, location and size of windows and screening to sides of balconies provide for satisfactory level of visual privacy with adjoining development.

The development has a 6m building setback to Magnus Street and a 4.5m setback to the rear property boundary. The setbacks are in keeping with the approved adjoining development to the east (88 Magnus Street) and development to the adjoining west (92 and 94 Magnus Street). There will be some loss of views to the foreshore from some properties on the southern side of Magnus Street. Having regard to the site context, site configuration, reduced built form of the top floor and the scale of development permissible in the zone, the proposed siting and design are appropriate and reasonable.

Site Design

This section of the Code deals with building orientation, stormwater, safety and visual privacy which are addressed in the section of this report under “Port Stephens Council LEP 2000 and SEPP 1 - Development Standard” and “SEPP 65 - Design Quality of Residential Flat Development”.

This section also deals with landscaping, open space, fencing, entry, access and parking. Over 50% of the 240m² landscaping/communal open space will contain deep soil which will allow the planting of medium-sized trees. Each unit is provided with private open space primarily in the form of balcony; 900mm and 1m-1.5m high masonry fence is proposed along Magnus Street and rear boundary, respectively. 1.8m high timber fence is proposed along the side boundaries. In order to maintain the open outlook of the precinct, a condition is recommended that all fencing for the development shall not exceed 900mm.

The development is provided with a pedestrian ramp access along the eastern boundary. Having regard to the site topography, the proposed pedestrian access could achieve a grade of 1 in 14 for access for the less mobile occupants. In respond to the cross fall of the site, 2 separate 5.5m wide vehicular access are provided to the 2 car parking levels containing a total of 14 car spaces. Both the levels can be naturally ventilated. Mailboxes is proposed adjacent the pedestrian access.

Building Design

This section of the Code deals with ceiling heights, internal circulation, apartment layout, balconies, ventilation, energy efficiency, roof design, storage and waste management and water conservation. Ceiling height is 2.7m to habitable rooms. A foyer, with window to provide natural lights, is provided for each floor. Access from the car parking levels to the foyer is through lift or stairway. The apartment layout is satisfactory. Each unit is provided with at least 1 private courtyard or balcony, which adjoins the living area, and north facing. The courtyard and balcony face the street and rear which allow for casual surveillance which will provide for personal safety. The design provides for cross ventilation which will maximise energy efficiency.

The roof is flat with parapet wall around. Part of the roof will be in the form of terrace to provide for private open space. The roof form is similar to the approved adjoining

development to the east. A garbage collection area is provided at the upper basement car parking level. The applicant proposes the recycling of materials from demolition of the existing buildings and installation of energy-efficient appliance.

Port Stephens Council DCP PS 1 – Urban Housing and Dual Occupancy Guidelines and DCP PS 2 – Car Parking Code

Design Process – Context Analysis

The architect has provided an explanation of how the design responds to the site context. "The site is irregular in shape with an area of 968 square metres. The long axis of the site runs almost north-south. The site slopes considerably towards the north (approximately 5m). The site also has a substantial cross fall sloping towards the west along Magnus Street (approximately 2m) . . . The slope is a major generator of the form. . . The angled side boundaries have also contributed to the form of the building. The building has also been stepped along the side boundaries in order to fit regular room shapes within the boundary. This has resulted in highly modulated side elevations, eliminating potential massive unarticulated walls. . ."

Design Elements

Streetscape and Setbacks

The front setback to Magnus Street is 6m. This complies with the DCP PS10 building line and is in keeping with the building line for approved adjoining development at 88 Magnus St and existing development at 92 Magnus Street. The combined garage openings of 12m are less than 50% of the 35.4m frontage width of the site. The scale of the development is not overbearing.

The issue of side setback is addressed under "Port Stephens Council LEP 2000 and SEPP 1 - Development Standard".

Building Height, Bulk and Scale

The matters are addressed under "Port Stephens Council LEP 2000 and SEPP 1 - Development Standard".

External Appearance

The bulk and scale is greater than existing adjoining development but will be consistent with the character of the desired future. The building is reasonably well modulated with articulation of building elements including balconies, balustrades and awnings and use of rendered walls, metal wall cladding and louvre screening. The northern and southern elevations are predominantly glazed to maximise outlook and solar access. Minimal glazed areas are provided along the eastern and western elevation to minimise overlooking. The building has flat roof surrounded by parapet walls.

Usable Open Space

Unit 1 at the ground level has 35m² of usable open space. With the exception of Unit 2, the proposed balcony of all the other units comply with the minimum area of 8m² of private open space and a minimum dimension of 2m with direct access from the main living area of the unit. A condition is recommended requiring the dimension of the balcony to Unit 2 be increased to 2m.

Views and Visual and Acoustic Privacy

Views and visual privacy are addressed "Port Stephens Council LEP 2000 and SEPP 1 - Development Standard" and "Residential Flat Design Code". Noise arising from the development is expected to be associated with residential living. Should air-condition/heating be installed, a condition is recommended that it shall be contained in an acoustically screened enclosure.

Car Parking and Vehicular Access

A total of 14 car parking spaces in 2 basement levels are provided; 2 spaces for each unit and 2 visitors' car spaces in accordance with DCP PS 2 requirement for dwelling containing more than 2 bedrooms. The dimensions of the car spaces and turning areas are satisfactory and will allow cars to exit the parking areas in a forward direction.

Energy Conservation

Each dwelling is proposed to achieve a minimum energy efficiency rating of 3.5 stars.

The proposal will comply with the DCP requirements that development shall not reduce the sunlight available to windows of north-facing living areas of adjacent dwellings to less than 3 hours and any shading of private open space shall not exceed 2 hours between 9am and 3pm in mid-winter.

Water Management

Stormwater from the development will discharge by gravity flow to the Council's stormwater system which runs along Victoria Parade.

Heritage Considerations

The site does not contain any heritage item. There are no heritage items in the immediate vicinity of the site.

Water Management Design Features

The applicant will install energy efficient features and appliances including tap and flow regulators, shower heads, dual flush toilets and water efficient dishwashers and washing machines.

5 CONSULTATION

5.1 Public consultation

The application was notified in accordance with the Regulations including:

Notifications landowners/occupiers	96 adjoining and adjacent owners/occupiers were notified of the original proposal and 11 respondents were notified of amended proposal
Newspaper advertisements	Advertised in Port Stephens Examiner on 19 August 2004
Site notices	Erected on 20 August 2004.
Exhibition dates	Original proposal: 20 August - 17 September 2004; Amended proposal: 22 February – 15 March 2005
Exhibition venues	<ul style="list-style-type: none">▪ Planning Information Centre, 20 Lee Street, Sydney;▪ Hunter Regional Office, 251 Wharf Road, Newcastle; and

	<ul style="list-style-type: none">Port Stephens Council, 116 Adelaide Street, Raymond Terrace <p>In addition to the above venues, the amended proposal was also exhibited at Salamander Bay/Tomaree Library, Salamander Bay</p>
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5.2 Submissions

Eleven (11) public submissions were received during exhibition of the original proposal. The amended proposal attracted 9 submissions. The Port Stephens Council raised no concern with the proposal and provided conditions of consent. Relevant issues raised in the public submissions included excessive height, bulk and scale; impact on visual amenity; overdevelopment of the site; out of character; inconsistency with desired future character; loss of views; set an undesirable precedent; inadequate side setbacks; overshadowing; privacy impact; inadequate private open space; and use of reflective materials. The issues are considered in section 6.2 of this report.

5.3 Referrals

5.3.1 Integrated Approval Bodies

The application is integrated development under Section 138 of the Roads Act 1993. The matter was referred to the Port Stephens Council which provided General Terms of Approval.

5.3.2 Council

The application was referred to Port Stephens Council on 12 August 2004 for comment. It was also referred to the Council on 14 February 2006 as the proposal is integrated development under the Roads Act 1993. Council responded on 1 August 2005 raising no concern and recommended conditions of consent.

5.3.3 Internal consultations

The Hunter Regional Office has been consulted regarding the application. The Office raised no concern on the development.

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 (see Attachment D). Relevant issues are discussed below in section 6.2.

The subject site is considered suitable for the proposed development. Submissions have been considered and discussed in section 6.2. On balance, the proposed development is considered to be ecologically sustainable and will be in the public interest.

6.2 Relevant Issues

6.2.1 Height, Bulk and Scale; Visual Impact

Issue: The building is excessive in height, bulk and scale. The development will have impact on visual amenity particularly when viewed from the foreshore.

Raised by: Public submissions

Consideration: The amended proposal received by the Department on 21 December

2004 and 17 February 2005 considered the decision of the Land and Environment Court dated 19 November 2004 in *Chan Industrial Pty Ltd v Port Stephens Council*. In the court case, Cowdroy J ruled that "the correct level for the purpose of measurement required by the definition is the 'finished ground level of the completed building', not the natural ground level as it existed prior to the construction of the building." Based on this interpretation the height of the proposed building, measured vertically from the finished ground level to the highest level point, is 17.95m. A SEPP 1 objection is submitted seeking variation of the 15m development standard.

As the lower basement car park will be excavated below existing ground level, most of the top floor of the southern component of the building will exceed 15m. However, how well a development relates to the local context and overall site constraints in terms of height will be more a function of height above natural ground level. Height above natural ground is less than 15m. Though the height is greater than existing adjoining development to the east and west, it will be consistent with the desired future character in the locality having regard to the local planning controls for the zone, approved adjoining residential flat building and development under construction in the vicinity of the subject site.

The proposed building is stepped down the site in response to the slope of the land. The northern component is part 2 storeys and part 4 storeys with the 3th and 4th storey being stepped back 5m to 10.5m from the western property boundary. The topmost floor of the southern component is stepped back 4.8m to 12m from the western boundary. The building design is an appropriate response to the site context and site constraints.

The bulk and scale is greater than existing adjoining development but will be consistent with the character of the desired future character as reflected in the approved adjoining development, adjacent building under construction and the provisions of the local planning controls. The building is reasonably well modulated with articulation of building elements including balconies, balustrades and awnings and use of rendered walls, metal wall cladding and louvre screening. It could not be considered excessive in bulk or scale. In this regard, there will not be a significant impact on visual amenity from Victoria Parade, the public reserve and the foreshore.

Any impact on solar access of adjoining development will be reasonable within the site context. Most of the window are located to the front and rear of the building with small and highlight windows proposed to the east and west side elevations.

Resolution: Issues are noted.

6.2.2 Overdevelopment

Issue: The proposal is an overdevelopment of the site.

Raised by: Public submissions

Consideration: The development standards under the *Post Stephens Council LEP 2000* require that the FSR shall not exceed 1.8:1 and the minimum site area per dwelling of 150m². The proposed FSR of 1.47:1 and density of 161.3m² site area per dwelling comply with the development standards. In establishing the density for the zone, the Council would have considered the development standards to be sustainable having regard to the regional context, infrastructure, transport, community facilities and environmental quality.

Resolution: Issue is noted.

6.2.3 Out of Character; Inconsistency with Desired Future Character

Issue: The proposal is out of character with existing development and the desired future character of the area.

Raised by: Public submissions

Consideration: The locality is in transition. Though the size and scale of the proposed building are significantly greater than existing adjoining development to the east and west, it will be consistent with the desired future character in the locality having regard to the controls in the LEP for the zone, residential flat buildings approved and under construction on sites adjoining and in the vicinity of the subject site.

Resolution: Issues are noted.

6.2.4 Loss of Views

Issue: The proposal will result in loss of views from development located to the south of the subject site.

Raised by: Public submissions

Consideration: There will be some loss of views to the foreshore from some properties on the southern side of Magnus Street. Having regard to the site context, site configuration, reduced built form of the top floor and the scale of development permissible in the zone as reflected in the provisions of local planning controls, the proposed siting and design are appropriate and reasonable.

Resolution: Issue is noted.

6.2.5 Set an Undesirable Precedent

Issue: The proposed development will set an undesirable precedent resulting in similar development in the locality.

Raised by: Public submissions

Consideration: The proposal is consistent with the desired future character of the locality. Notwithstanding, any development will be assessed on its merits having regard to matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979.

Resolution: Issue is noted.

6.2.6 Inadequate Side Setbacks

Issue: Concern is raised that the proposed side setbacks is inadequate.

Raised by: Public submissions

Consideration: The requirement for side setback as contained in DCP PS 1 does not apply to buildings greater than 3 storeys. The northern component is part 2 storeys and part 4 storeys with the 3th and 4th storey being stepped back 5m to 10.5m from the western property boundary. The topmost floor of the southern component is stepped back 4.8m to 12m from the western boundary. The approved residential flat building to the adjoining east has comparable side setbacks as the proposed development.

One of the intent of side setback is to minimise overshadowing impact. As discussed in the next issue, any overshadowing impact on neighbouring residents will not be significant.

Resolution: Issue is noted.

6.2.7 Overshadowing

Issue: The proposal will overshadow neighbouring development particularly developments to the adjoining west.

Raised by: Public submissions

Consideration: There will be some overshadowing of adjoining developments to the west in the morning during the winter solstice. At mid-day, the shadow moves almost completely cleared of the affected development. At 3pm most of the shadow falls on the front building setback of the subject site and Magnus Street. The proposal will comply with DCP PS 1 requirements that development shall not reduce the sunlight available to windows of north-facing living areas of adjacent dwellings to less than 3 hours and any shading of private open space shall not exceed 2 hours between 9am and 3pm in mid-winter.

Resolution: Issue is noted.

6.2.8 Privacy Impact

Issue: The proposal will have privacy impact particularly on developments to the adjoining west.

Raised by: Public submissions

Consideration: The design provides for windows and doors to living areas and bedrooms that overlook the north (rear; foreshore) and south (front – Magnus Street). Small, high level and fixed glazing are proposed to a retreat to Unit 6 and lobbies along the eastern wall. Small and high level windows to bedrooms, toilets and a living/dining area and privacy

screen to western end of balconies are proposed along the western elevation. Having regard to the design, location and size of windows and the provision of privacy screening to balconies, it is considered that any impact on privacy of adjoining and adjacent residents will not be significant.

Resolution: Issue is noted

6.2.9 Construction Period Could be too Long

Issue: Concern is expressed that the developer may take too long to complete the development resulting in impact on neighbouring residents.

Raised by: Public submissions

Consideration: The Environmental Planning and Assessment Act 1979 does not impose a time restriction once site and construction commence. However, it is in the interest of the developer to complete a development within a reasonable time-frame. To minimise impact on neighbouring residents, a condition is recommended that site and construction works be carried out during normal hours.

Resolution: Issue is noted.

6.2.10 Inadequate Private Open Space

Issue: Concern is expressed that there is inadequate private open space for the units.

Raised by: Public submissions

Consideration: Unit 1 at the ground level has 35m² of usable open space. With the exception of Unit 2, the proposed balcony of all the other units comply with the minimum area of 8m² of private open space and a minimum dimension of 2m with direct access from the main living area of the unit. A condition is recommended requiring the dimension of the balcony to Unit 2 be increased to 2m.

Resolution: Conditioned to address concern. See condition No. B19.

6.2.11 Impact from Reflective Materials

Issue: Concern is raised that materials such as glazing and finishes will be reflective, thereby impacting of neighbouring residents.

Raised by: Public submissions

Consideration: A condition is recommended that the finishes of the building shall not be reflective. The glazing shall not exceed a reflectivity index of 20%.

Resolution: Conditioned to address concern. See condition No. B1.

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.

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. The Director-General is exercising concurrence of SEPP 1 in this instance to approve departure of the development standard.

It is recommended that the application be determined with the **granting of consent subject to conditions.**

8 RECOMMENDATION

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

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

Prepared by:

Endorsed by



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6.9.5