



## **Planning Assessment Report**

### **Development Application DA 192-8-2004**

#### **'The Dolphins' Harrington Waters Estate, Harrington**

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## **1 SUMMARY**

This report is an assessment of the proposed development the subject of Development Application (DA) number DA 192-8-2004. The DA was lodged with the Department on 13 August 2004. A site visit was conducted 25 February 2005 by another assessment officer.

The application seeks development consent pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979 (the Act) for the erection of three (3) x four (4) storey serviced apartments (total 54) with basement car parking, associated landscaping and site works.

The Minister for Planning is consent authority pursuant to Clause 10 of State Environmental Planning Policy No. 71 – Coastal Development (SEPP 71) as the proposed serviced apartments fall within the meaning of a tourist facility in Schedule 2.

It is recommended that the development application be determined by **granting development consent subject to the imposition of appropriate conditions.**

## **2 BACKGROUND**

### **2.1 Locality Context**

The site is located in the township of Harrington in the local government area of Greater Taree City Council (the Council).

Harrington is at the mouth of the Manning River approximately 20 kilometres east of Taree. The Manning River passes through the main urban centres of Wingham and Taree and discharges into the Pacific Ocean between Harrington and Manning Point.

The site is within the 'resort precinct' of a large land holding known as the Harrington Waters Estate, Harrington.

### **2.2 Site Context**

The site is legally described as:

- Lot 4146 in DP 1045068 (area of 16.23 hectares); and
- Part Lot 320 in DP 1045068 (area of 35.06 hectares).

These lots also incorporate other components of the Harrington Waters Estate including the resort precinct (hotel, serviced townhouses, bowling green, golf course etc) and residential subdivision. The area south of Harrington Road comprising the golf course and resort precinct has an area of approximately 23 hectares with approximately 4 hectares being utilised for the resort precinct (area bounded by the Washpool, the golf course, the drainage line from the golf course and the river). The balance of the golf course north of Harrington Road has an area over 26 hectares.

The estate is bound by Harrington Road to the north, the back channel of the Manning River estuary to the east, the Manning River to the south, and cleared pasture land to the west.

The estate site has previously been filled with soil dredged from the Manning River and has been cleared of mature native vegetation with the exception of the area surrounding the Washpool and centre creek where River Mangrove and She Oaks remain.

A Locality plan is at **Tag B** and a Site Plan/Map is at **Tag C**.

### **2.3      *Relevant approvals***

Prior approvals from Greater Taree City Council (the Council) for the Harrington Waters Estate are as follows:

- DA 79/98 (approved 10 March 2000) for the construction of a golf course and artificial water bodies;
- DA 927/99 (approved 10 March 2000) for consent to fill the surrounding areas within Stage 4 of Harrington Waters Estate which includes the site;
- DA 794/2002 (approved 23 July 2002) for development of a resort (integrated development). This comprised:
  - a) a hotel (750m<sup>2</sup> licensed area);
  - b) a sailing club/boat shed;
  - c) 2 tennis courts;
  - d) a bowling green;
  - e) 2 manager's residences;
  - f) car parking for 182 vehicles and 4 buses;
  - g) a motel complex comprising 2 building containing 30 units and a separate building containing a reception and dining room/restaurant;
  - h) golf pro shop and buggy storage and change rooms associated with the adjacent golf course;
- Modification to DA 794/2002 (approved 27 May 2003) to allow the following changes:
  - a) increased hotel area;
  - b) a sailing club (storage for 30 skiffs) for public and guest use;
  - c) 2 tennis courts, for public and guest use;
  - d) 1 manager's residence;
  - e) car parking for 222 cars and 5 buses;
  - f) a motel complex comprising 2 building with 48 suits, reception, lounge and breakfast areas;
  - g) golf pro shop and buggy storage and change rooms associated with the adjacent golf course;
  - h) 7 tourist apartments in a building adjacent to the Washpool;
  - i) a maritime museum to accommodate historic items and information relating to the shipping and nautical heritage of Harrington and the Manning River; and
- DA 125-5-2002 (approved 25 November 2002) for consent to dredge upstream. A previous dredge licence had expired and a new licence was not granted to the former dredge site.

### 3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent pursuant to Section 80(1) of the Act for the erection of three (3) x four (4) storey serviced apartment buildings with basement/podium car parking (93 in total) and associated terraced areas. Each building will contain 11 x 3 bedroom apartments and 7 x 2 bedroom apartments bringing the total for each building to 18 apartments (54 in total overall). The buildings are approximately square in plan form with a central core. A pitched roof form has been adopted with small gables used to articulate corners and the centre of the façade to each elevation.

Each apartment has been provided with a large wrap around balcony which is primarily accessed from the living room. Balconies have also been provided to secondary living rooms (bedrooms). Each building is based on the same floor plan but has been mirrored to address orientation in relation to access, views and sunlight. The podium arrangement varies on each building.

The land has previously been filled to the approved level of 3.0m AHD and no additional fill is proposed. Each building will have a basement car park with a floor level of 1.8m AHD. The design ARI 100 year water level in the adjoining lake system is 1.41m AHD. It is proposed to waterproof the entire basement car park areas with no openings below 2.8m AHD. All access ramps and pedestrian points are set at this level so as to avoid the entry of flood waters.

The maximum height of the buildings is 13.95m or the equivalent of 4 storeys. Storage is provided within the basement level car parking area of each building as is a garbage storage area.

#### 3.1 *Amended Plans*

On 4 July 2005 the applicant submitted an amended set of plans clarifying that consent was being sought for a building height of 13.95m (AHD 3.3 to 17.25). The applicant advised that the originally submitted drawings that were placed on exhibition showing a height of 15.5m (3.3 to 18.8 AHD) were incorrect.

These amendments differ only in minor respects from the DA 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.

The amended architectural drawings (referred to below and at **Tag D**) prepared by the Roche Group (all dated 30 July 2004) are the subject of this report:

- 03/050-DA-01 Rev B;
- 03/050-DA-02;
- 03/050-DA-03;
- 03/050-DA-04;
- 03/050-DA-05;
- 03/050-DA-06 Rev A;
- 03/050-DA-07 Rev A;
- 03/050-DA-08;
- 03/050-DA09;
- 03/050-DA-10;
- 03/050-DA-11;

- 03/050-DA-12 Rev A;
- 03/050-DA-13 Rev A;
- 03/050-DA-14;
- 03/050-DA-15;
- 03/050-DA16;
- 03/050-DA17;
- 03/050-DA-18 Rev A; and
- 03/050-DA-19 Rev A.

In addition to the above Landscape Concept Plan (LD01, dated July 2004. prepared by Andrews Neil) will form part of any development consent issued.

## **4 STATUTORY FRAMEWORK**

### **4.1 *Statement of permissibility***

Pursuant to the provisions of the Greater Taree Local Environmental Plan 1995 (LEP 1995), the site sits over the following three zones:

- 6(b) Open Space Private;
- 7(a) Environmental Protection Habitat; and
- 2 (a) Residential (pursuant to Amendment No. 53 to LEP 1995). This was a draft amendment at the time of lodgement and was adopted on 10 September 2004).

As the proposed development is considered to be generally consistent with the relevant objectives of the zone, it is therefore permissible with development consent (refer to Section 79C assessment at **Tag E**).

### **4.2 *Instrument of consent***

The proposed development is located within the coastal zone, as defined in Part 1(3) of State Environmental Planning Policy No. 71- Coastal Protection (SEPP 71).

The DA is identified as significant coastal development, specified development under Schedule 2(c) of SEPP 71 as it involves development for the purposes of serviced apartments which are contained within the meaning of a tourist facility. The Minister is the consent authority for tourist facilities in the coastal zone pursuant to Clause 10 of SEPP 71.

### **4.3 *Legislative context***

The application and the likely impacts of the proposed development have been considered in accordance with Section 79C of the Act (refer **Tag E**).

#### **4.3.1 *Relevant planning instruments and guidelines***

The proposed development is subject to an assessment under the following environmental planning instruments and development control plans/guidelines/policies:

- SEPP 71;
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65);
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55);
- State Environmental Planning Policy No. 11 – Traffic Generating Developments (SEPP 11) – refer to Section 5.2.4 for referral to the RTA and their comments;

- State Environmental Planning Policy No. 14 – Koala Habitat (SEPP 14);
- Hunter Regional Environmental Plan 1989 (HREP 1989);
- Greater Taree Local Environmental Plan 1995 (LEP 1995);
- Water Management Act 2000 (part 3A permit);
- NSW Coastal Policy;
- Greater Taree Development Control Plan 1995 (DCP 1995); and
- Greater Taree Development Control Plan No. 13 – Off Street Vehicle Parking and Access (DCP 13).

An assessment of the proposal's consistency or otherwise with the above instruments/guidelines is undertaken in the S79C assessment at **Tag E**.

## 5 CONSULTATION

### 5.1 Public consultation

The application was notified, in accordance with the Regulations and the DIPNR Urban Assessments Notification Policy including:

|                                             |                                                                                                                                                                                                                                                                                   |
|---------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Notifications – landowners/occupiers</b> | <ul style="list-style-type: none"><li>• Adjoining and adjacent landowners were notified of the DA.</li></ul>                                                                                                                                                                      |
| <b>Newspaper advertisements</b>             | <ul style="list-style-type: none"><li>• Advertised in Taree Manning River Times on 9 September 2004 and 21 September 2004 (extension of exhibition period notice)</li></ul>                                                                                                       |
| <b>Site notices</b>                         | <ul style="list-style-type: none"><li>• No site notice erected</li></ul>                                                                                                                                                                                                          |
| <b>Exhibition dates</b>                     | <ul style="list-style-type: none"><li>• 10 September to 24 September 2004 (extended to 6 October 2004)</li></ul>                                                                                                                                                                  |
| <b>Exhibition venues</b>                    | <ul style="list-style-type: none"><li>• DIPNR Resource Centre, Ground Floor, Henry Deane Building 20 Lee Street, Sydney;</li><li>• DIPNR Hunter Regional Office, Level 4 251 Wharf Road, Newcastle; and</li><li>• Greater Taree City Council, 2 Pulteney Street, Taree.</li></ul> |

A total of **55** submissions were received. A summary of submissions is at **Tag F**. Issues raised in the submissions are considered in Section 6.2 of this report.

### 5.2 Referrals

#### 5.2.1 Integrated Approval Bodies

The application is integrated development as an approval is required under Part 3A of the Rivers and Foreshores Improvement Act 1948. DIPNR Regional requested further information regarding groundwater impacts (refer **Tag G**). The applicant provided the further information on 2 December 2004 (refer **Tag H**). This was found to be satisfactory by DIPNR Regional who then issued their general terms of approval (refer **Tag I**).

#### 5.2.2 Council

The DA was referred to the Council on 2 September 2004. Council responded on 22 October 2004 requesting an extension of time to provide a submission until after the matter was reported to Council's Planning Committee (refer **Tag J**).

Council at its meeting 20 October 2004 resolved:

- Council raises no objection to the erection of the proposed 4 storey serviced apartments in the resort precinct of Harrington Waters Estate, provided Lot 4122 (No. 39) Josephine

Boulevard is consolidated into the golf course site and landscaped to screen the development from residential lots to the north; and

- Should development consent be granted, Council considers that the condition numbers 1-14 as detailed in the report to the Planning Committee should be imposed.

A copy of Council's submission (22 October 2004) is at **Tag K**.

### **5.2.3 Department of Environment and Conservation (DEC)**

The DA was referred to DEC on 2 September 2004. DEC declined to provide comments for this DA as they have already provided comments regarding the rezoning of the land for the Harrington Waters Estate development (refer **Tag L**).

### **5.2.4 Roads and Traffic Authority**

The DA was referred to the RTA on 12 July 2005 to make comments in accordance with the requirements of SEPP 11. The RTA responded 20 July 2005 (refer **Tag M**) as follows (in part):

- As Harrington Road is a local road, Council is both the consent authority and roads authority;
- The information has been reviewed and the RTA has no objections to the proposal as it is unlikely that the proposed development by itself will have any significant impact on the classified road network; and
- The RTA has reviewed the capacity of the proposed at grade intersection and is satisfied that grade separation is not required at this time.

### **5.2.5 Internal Urban Design Review**

Prior to lodgement of the DA, the applicant met (2 June 2004) with officers at DIPNR. At this meeting two options were canvassed, one being 3 x 4 storey buildings (as now lodged) and the other 2 x 6 storey buildings. Mike Brown reviewed the plans as currently proposed and provided the following comments (8 July 2004 refer **Tag N**):

- 3 x 4 storey buildings are far less likely to dominate visually than the 2 x 6 storey towers; and
- Though proposed for tourist accommodation, the buildings are otherwise undistinguishable from residential apartments for which SEPP 65 would apply. I have concern about internal planning and orientation etc (refer to Section 6.2.2 for comments/assessment in relation to this issue).

## **6 CONSIDERATION**

### **6.1 The Environmental Planning & Assessment Act, 1979 (the Act)**

#### **6.1.1 Section 79C**

SEPP 44 applies to the proposed development as Greater Taree City Council is listed in Schedule 1 of the SEPP 44. Based on the information contained within the applicant's SEE, the Department is satisfied that the site is not a 'potential koala habitat' or a 'core koala habitat' pursuant to clauses 7 and 8 of SEPP 44 respectively. The DA has been assessed against the guidelines of the SEPP 44 and it is considered that it complies with the aims and objectives of the policy.

The DA 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, and, where relevant, a detailed assessment is provided as noted in the table below.

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.

Assessment in accordance with Section 79C is at **Tag E**.

## **6.2 Issues**

### **6.2.1 Impacts on adjoining residential lots and building height**

**Issue:** The development will impact on the low density village character. Building height is excessive.

**Raised by:** Public, The Department

**Consideration:** Public submissions raise concern that the proposed height is excessive and will negatively impact on the current amenity of the site. They are also concerned that it will set a precedent for future high-rise development in the area.

There are no development standards or guidelines for tourist facilities in local EPI's and plans/policies. However, the LEP does state that for tourist facilities in residential zones Council must ensure that the proposal is compatible in scale and nature with surrounding land uses.

The site is located on a significant bend in the Manning River. A principle road access runs to the north of the resort precinct leading through Harrington Waters Estate and into the existing village of Harrington. The proposed buildings are considered to fit clearly within a defined precinct and are appropriate within the context of the proposed landscaped setting rather than a more traditional residential street. The buildings represent a transition zone between conventional subdivision to the east and the golf course and resort precinct.

The resort precinct has been approved as such and this provides for an intensification of use that varies from the surrounding residential development. Heights above two storey are considered appropriate in this precinct and furthermore do not materially impact on the residential amenity of the adjacent residential allotments, particularly in relation to visual and acoustic privacy, views, overshadowing, access to daylight and natural ventilation and outlook.

Notwithstanding the aforementioned, Block B is located within close proximity of the approved residential dwelling house allotments on Josephine Street. In order to ensure the amenity (as referred to above) of these dwellings is maintained it is recommended that Lot 4122 (the lot, which is the closest to Block B) be merged into the lot immediately to the north which is proposed to be used as a golf course (under construction).

It is noted that Council raised no objection to the proposal, however they recommended exactly the same as above in relation to Lot 4122 on Josephine Street. In response to these recommendation from both Council and the Department, the applicant (who verbally has advised they no raise no objection to this recommendation) has sought independent legal advice from Mallesons Stephen Jaques (dated 13 October 2005 refer **Tag O**). They have provided examples (see below) of how to address this issue satisfactorily within a development consent having regard to the objective of ensuring the maintenance of appropriate amenity levels for the adjacent residential allotments.

**Resolution:** A condition of development consent is recommended to ensure an appropriate level of amenity for the adjacent residential allotments. Two options are available as follows:

*"In accordance with Section 80A(1)(b) of the Environmental Planning and Assessment Act, 1979, prior to the issue of a construction certificate for serviced apartment building Block B, development consent (DA 0052/2002D) must be modified so that Lot 4122, the subdivision of which was approved by DA 0052/2002D, is consolidated into the golf course site being Lot 4146 in DP 1065326 and part Lot 320 in DP 1045068."*

Or

*"Prior to the issue of a construction certificate for serviced apartment building Block B, Lot 4122 in DP 10655326 must be consolidated into Lot 4146 in DP 10653326 (the golf course site) by registration of a plan of consolidation."*

Essentially each option is the same as they both require the consolidation of the lot into the golf course site prior to the issue of a construction certificate for Block B. However, in this instance, Option 1 is the more appropriate condition as it is more stringently worded and reduces the potential for ambiguity as to whether the lot can be consolidated into the golf course site without modification to the original consent.

### **6.2.2 Built form and urban design**

**Issue:** The proposal should be assessed having regard to the design quality principles of SEPP 65.

**Raised by:** The Department

**Consideration:** An internal urban design review of the proposed development found the buildings are otherwise undistinguishable from residential apartments for which SEPP 65 would apply. Concern was raised about the internal planning and orientation of the buildings.

**Resolution:** The site is generally flat and the buildings will be visible within this part of the landscape, firstly because of their height (4 storeys) and the lack of existing development in proximity. As such it is considered that the design of the apartments must be of a high standard and use high quality materials.

In response to the Department's concerns, the applicant undertook an independent SEPP 65 report from Peter Andrews a registered architect from Andrews Neil Pty Ltd (refer **Tag P**). This certified report addressed the ten design quality principles of SEPP 65 which generally found the proposal to be consistent with its requirements.

Notwithstanding the above, and given that the buildings will be visible from the surrounding public domain, it is considered appropriate in this instance to recommend a condition of development consent that requires the submission of a sample board and colour palette of the proposed external materials and finishes prior to the issue of a construction certificate for the Director's approval.

### **6.2.3 Fishery habitat**

**Issue:** Impacts to fishery habitats

**Raised by:** The Department

**Consideration:** The area zoned 7(a) Environment Protection is/was known as the Washpool. In the late 1990's the Department negotiated with the applicant to maintain the Washpool as an open connected waterbody with the Manning River as it was seen as being potentially important habitat and nursery area for fish.

The site now takes all the stormwater and discharge water from the upstream site and is compromised by the fluctuating water quality. Recognising this, when the final development is completed the issues will then be reduced.

If there is going to be significant input of freshwater into the Washpool then the marine/brackish influence in the pool will be destroyed and the function will be lost.

NSW Fisheries recommends that all stormwater be stored as best as possible for re-use with little or no discharge to the Washpool. NSW Fisheries recommends treated stormwater be directed to the drains that connect the Golf Course to the river.

**Resolution:** A condition is recommended that no discharge be permitted to enter the washpool.

### **6.2.4 Traffic impacts and car parking**

**Issue:** Existing roads cannot handle increase in traffic and car parking for disabled persons

**Raised by:** Public and the Department

- Consideration:* The road network forms part of the previous approvals for the site and detailed traffic analysis including safety and generation was undertaken in the assessment of these applications.
- The RTA was referred the DA under the provisions of SEPP 11 and provided comment (refer **Tag M**), which stated that they had no objections to the proposal as it is unlikely that the proposed development by itself will have any significant impact on the classified road network and furthermore the capacity of the proposed at grade intersection has been reviewed and the RTA is satisfied that grade separation is not required at this time.
- No disabled car parking spaces have been provided. Given that each building is proposed to have 31 car parking spaces (for only 18 apartments), it is considered appropriate to combine 2 spaces (in close proximity to the lift for each building to facilitate ease of access) to become one disabled car parking space.
- Resolution:* The RTA were referred the DA under the provisions of SEPP 11 and raise no issue in relation to the increase in traffic in the locality as a result of the development. As such refusal of the application on these grounds is unwarranted.
- A condition of consent is recommended stating that proposed car parking spaces 5 and 6 in each apartment building are to be consolidated into one disabled car parking space.

#### **6.2.5 Infrastructure provision – water supply**

- Issue:* Current infrastructure cannot cope with new development
- Raised by:* Public and the Department
- Consideration:* The applicant was asked to supply information confirming that the site could be serviced in regards to water supply, particularly in relation to the increase in yield over the site from previous approvals.
- The applicant provided confirmation from MidCoast Water (refer **Tag Q**) that the proposed development can be satisfactorily serviced by sewerage and water. MidCoast Water has also recommended the imposition of a condition of consent in relation to this issue (the lodgement of a certificate of compliance).
- Resolution:* Adequate information has been provided in respect of this issue and requires no further attention. A condition of development consent can be imposed to ensure the satisfactory provision of water supply for the development (refer **Tag Q**).

#### **6.2.6 Water quality impacts**

- Issue:* Are there opportunities to reduce potable water usage
- Raised by:* The Department
- Consideration:* The applicant was asked to supply information discussing opportunities to minimise potable water usage.
- The applicant provided a water cycle management plan prepared by WMB Oceanics (refer **Tag R**) which outlined methods for the reduction in potable water usage. This can be achieved by using rainwater tanks to capture and store roof runoff for uses such as toilet flushing, irrigation and car washing. Three separate underground rainwater tanks are able to be constructed adjacent to each building to facilitate the reduction (estimated at 50%) in the usage of potable water.
- Resolution:* A condition of development consent is recommended to require compliance with the Water Cycle Management Plan prepared by WMB Oceanics Australia (refer **Tag R**).

## **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 the Department of Infrastructure,

Planning and Natural Resources (Hunter Region) 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 subject to the attached conditions and should be determined by granting development consent.

## **8 CONSULTATION WITH THE APPLICANT – DRAFT CONDITIONS**

The applicant was asked to comment on the draft conditions of consent on 24 October 2005. The applicant responded on 25 October 2005 (refer **Tag S**) and advised that they accepted the conditions as drafted.

## **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 10 of State Environmental Planning Policy No. 71 – Coastal Protection:

- (A) grant **development consent** to the application (192-8-2004) subject to conditions (refer **Tag A**), and
- (B) authorise the Department to carry out post-determination notification.

Prepared by:

Endorsed by

Scott Lockrey  
Contracting Planner  
**Urban Assessments**

David Mutton  
**Team Leader**  
**Urban Assessments**

Robert Black  
**Director**  
**Urban Assessments**