



Planning Assessment Report

Development Application DA 212-9-2004

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 212-9-2004.

The application seeks consent for the demolition of existing derelict jetties and construction of marina style finger wharves for up to seven (7) vessels and the relocation of the steel pontoon used by the vessel *the William the Fourth*.

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

It is recommended that the development application be determined by **granting consent**.

2 BACKGROUND

2.1 Site Context

The site is located at Part Lot 51 DP 1036132 Merewether Street Finger Wharves, Newcastle in the Newcastle local government area.

The development application was lodged with the Department on 7 September 2004 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The site is located between Merewether Street Wharf and Lee Wharf on the southern foreshore of "The Basin", Newcastle Harbour. A locality plan is tagged "D". The Lee Wharves are located to the west of the site. As part of the Honeysuckle Corporation Development, the Maritime Museum is to be relocated to Shed A, as shown on this plan. A public promenade runs along the southern foreshore of the site and south of this promenade is the Boardwalk Development which includes shops, cafes, commercial and residential units. To the south-east of the site is the Merewether Street Wharf and Crowne Plaza Hotel.

The areas to the west, south and east of the site all form part of the Honeysuckle Corporation Development. The property boundary of the site comprises the extension of 'the line is face of timber fenders' from both Lee Wharf No.1 and Merewether Street Wharf.

A site visit was conducted of the site on 4 August 2005.

2.2 Relevant approvals

Approvals from integrated approval bodies are as follows:

- NSW Maritime – Part 3A Permit, *Rivers and Foreshore Improvement Act*.

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for:

- (1) Demolition of the four (4) existing derelict jetties;
- (2) The construction of finger wharves consisting of marina style concrete pontoons, comprising a 3 metre wide main walkway and three (3) x 2.4 metre wide fingers; and mooring piles, gangways and ramps, for up to seven (7) vessels; and
- (3) The relocation and use of the steel pontoon currently used by the vessel *William the Fourth*.

A plan of the proposed finger wharves is tagged "E".

4 STATUTORY FRAMEWORK

4.1 *Statement of permissibility*

The site is located in the 3(c) City Centre Zone, pursuant to Clause 16 of the *Newcastle Local Environmental Plan 2003*. Recreational and commercial facilities are permitted in this zone.

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.

4.3 *Legislative context*

The original development application represented integrated, local development.

4.4 *Other statutory provisions*

The site is subject to the following documents which form the latest and most relevant planning controls against which the proposal is to be assessed:

- *Newcastle Development Control Plan No. 40 – City West* (DCP 40); and
- *Newcastle Development Control Plan No. 49 – Notification Policy* (DCP 49).

5 CONSULTATION

5.1 *Public consultation*

The application was notified, in accordance with the Regulations and DCP 49 including:

Notifications landowners/occupiers	– Adjoining and adjacent landowners in the Honeysuckle Precinct including owners and occupiers of premises in Centenary Road identified as being potentially impacted by the proposed development.
Newspaper advertisements	Advertised in Newcastle Herald on 18 October 2004.
Site notices	17 October 2004.
Exhibition dates	Start: 18 October 2004. End: 15 November 2004.
Exhibition venues	▪ DIPNR Planning Information Centre, 20 Lee Street, Sydney; ▪ DIPNR Hunter Regional Office, 464 King Street, Newcastle; and ▪ Newcastle City Council, 282 King Street, Newcastle.

Eleven (11) submissions were received regarding the Application. Issues are considered in Section 6.2 of this report.

5.2 Referrals

5.2.1 Integrated Approval Bodies

The application was referred to the NSW Maritime Authority (NSW Maritime) on 8 October 2004 as an integrated approval body under Part 3A of the *Rivers and Foreshore Improvement Act*. NSW Maritime (then Waterways Authority) responded on 26 November 2004 and advised that a Part 3A Permit would not be required for the proposed development provided that all the General Terms of Approval (GTAs) issued for the development are met. The GTAs provided by NSW Maritime have been included as conditions of consent.

5.2.2 Council

The application was referred to Newcastle City Council (Council) on 8 October 2004. Council responded on 8 February 2005 and raised no objection to the proposal subject to the following conditions:

- An archival record of the jetty structures being prepared prior to demolition and a copy of the record being provided to Council for inclusion in Local Studies collection at the Newcastle Regional Library;
- No responsibility of maintaining or managing the proposed pontoons and mooring piles falling to Council;
- The Department's consideration of the impact of waves and wash on the structures; and
- Ensuring that the proposed pontoons are accessible to the public.

In its assessment, the Department considered issues raised by Council and included conditions in the consent accordingly.

5.2.3 Hunter Water Corporation

The application was referred to the Hunter Water Corporation on 8 October 2004. Hunter Water responded on 6 December 2004 and raised no objection, in principle, to the proposal. Hunter Water provided comments regarding water supply and wastewater connections which were conditioned as appropriate.

5.2.4 Roads and Traffic Authority (RTA)

The application was referred to the RTA on 8 October 2004. RTA responded on 26 October 2004 and raised no objections to the proposal.

5.2.5 Newcastle Port Corporation (NPC)

The application was referred to NPC on 8 October 2004. NPC responded on 3 November 2004 and raised no objections to the proposal. NPC raised issues to be included in the assessment and conditions to ensure that no aspect of the proposal impacts upon commercial shipping and/or port operations at the Port of Newcastle. Conditions of consent have been included accordingly.

5.2.6 Mine Subsidence Board (MSB)

The application was referred to the MSB on 8 October 2004. MSB responded on 26 October 2004 and advised that to be eligible for compensation, the development has

been approved subject to the improvements being designed in accordance with the relevant codes (approval valid for two years from the date of the development consent).

5.2.7 NSW Heritage Office

The application was referred to the NSW Heritage Office on 8 October 2004. NSW Heritage responded on 5 November 2004 and raised no objections to the proposal and raised comments relating to the reuse of salvageable material and recording the existing structures. Comments provided by NSW Heritage have been conditioned accordingly.

5.2.8 NSW Department of Primary Industries (Fisheries) (NSW DPI)

The application was referred to NSW DPI on 8 October 2004. NSW DPI responded on the 18 October 2004 and raised no objection to the proposal. NSW DPI provided comments relating to syngnathiformes, particularly seahorses that were recently declared a protected species and, if present at the site, should be relocated to a similar habitat. A condition of consent was included accordingly.

5.2.9 Environmental Protection Authority (EPA)

The application was referred to the EPA on 8 October 2004. No response was received by the EPA.

5.2.10 Rail Estate – State Rail Authority (SRA)

The application was referred to the SRA on 8 October 2004. No response was received by the SRA.

5.3 Internal consultations

The Department of Infrastructure, Planning and Natural Resources Hunter Regional Office was been consulted regarding the application and has raised no objections to the proposal.

5.4 Public submissions

The application was advertised in the Newcastle Herald on 18 October 2004 and adjoining landowners and occupiers were notified by mail. One (1) public submission was received which objected to the proposal as:

- The development proposal seemed to provide no possibility for landing passengers from small dinghies or canoes, which ignores this part of the tourism / recreational market and alienates the foreshore from use by the boating section of the public.

Although the recommended consent does not include approving the use of the marina (see above), it is considered that use of the marina for private boating would be unlikely as the proposed uses for the facility include commercial and charter vessels and exhibition vessels for the Newcastle Maritime Museum, which would be potentially incompatible with the use of the marina for private boating use. It is recommended in the consent however that public access to the marina be maintained (see Section 6.2 of this Report).

6 CONSIDERATION

6.1 *The Environmental Planning & Assessment Act*

6.1.1 *Section 79C*

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

The subject site is 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 *Use of the Marina*

Issue: Use of the marina has not been defined.

Raised by: Urban Assessments, Council

Consideration: The SEE states that the proposed use of the marina will be used by exhibition vessels associated with the Maritime Museum, commercial vessels, charter boats and other selected vessels, including the heritage vessel *William the Fourth*. Preliminary assessment by Urban Assessments raised issues with the use of the wharves not being clearly defined and about the level of public access proposed. The Applicant advised that final arrangements for public access would be resolved when the use of the wharves is clearer.

Due to the lack of clarity about the use of the wharves, draft conditions of consent restricted the use to exhibition, and charter vessels, for embarking/disembarking of passengers, associated with the Newcastle Maritime Museum (NMM) and the heritage vessel *William the Fourth*. Conditions also restricted the use of the wharves as not for profit, not to be used for casual berthing, permanent mooring or overnight vessels, other than exhibition vessels associated with the NMM; and that any change to this proposed use to be by separate development application. Further conditions of consent restricted the hours of operation of the marina and control of activities such as litter bins and loading and unloading of vessels.

The Applicant responded to the draft conditions advising the Department that the NMM is now not in a position to take on the responsibility for the proposed facility and as such, the Applicant is obliged to keep its options open regarding the facility's ongoing operation and management. The Applicant requested that the conditions restricting the future use of the marina be deleted.

The Department concluded that the information provided and the potential impacts on the public domain resulting from potential uses were too uncertain to grant an open-ended consent for future use of the wharves. The applicant was given the opportunity to revise the future use of the marina to be assessed under this DA but they advised that they did not wish to do this.

Resolution: Due to this lack of clarity about the future use and the potential issues raised in granting an open-ended consent for use, it was concluded that this consent would be recommended for approval for construction of the marina and that a separate development application to the relevant consent authority would be necessary for the use of the marina. Conditions of consent were included accordingly. Further conditions of consent were included ensuring an Operations Management Plan and Traffic Management would accompany any future development application for use. A further condition of consent was included for the control of activities such as provision of litter bins and ticketing stalls.

6.2.2 Public Access of the Marina

<i>Issue:</i>	Public access of the marina has not been defined.
<i>Raised by:</i>	Urban Assessments, Council
<i>Consideration:</i>	The issue of public access to the marina was raised by Urban Assessments and Council. As above, the Applicant advised the Department that arrangements for public access would be resolved when the use of the marina was more clearly defined.
<i>Resolution:</i>	Conditions of consent were included such that the marina would remain accessible to the public and arrangements to ensure this occurred would accompany any future development application for the use of the marina.

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 NSW Maritime Authority 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 determined by **granting** consent.

8 DELEGATION

Recommendation has been amended to reflect the Instrument of Delegation dated 12 September 2005.

9 CONSULTATION WITH THE APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 25 July 2005. The applicant responded on 8 August and 17 August 2005 and raised issues with a number of the conditions imposed. The Applicant requested the following matters:

- (1) Delete conditions relating to restriction of use of the finger wharves (being Conditions F8, G3, G5 and G6) and replace with wording approving the use of the wharves for exhibition and charter vessels, including those associated with the Maritime Museum and in accordance with another condition stating that a Management Plan for the berthing facility associated with the proposed pontoon and detailing the responsibilities associated with the management and public liability of the facility be submitted for Team Leader approval prior to the issue of an Occupation Certificate;
- (2) Delete Condition G6 relating to hours of operation as they would be addressed in the Management Plan as outlined above;
- (3) Clarification of a Works Manager as defined in Part C of Schedule 1;
- (4) Clarification of the requirement for a 2.5 metre wide access way (ramps) between the pier and the pontoon as stated in Condition B4;
- (5) Delete restrictions relating to impact piling in Condition D16(3) as no similar restriction was placed on similar consents on surrounding areas; and

- (6) Clarification of Condition D20 relating to relevant approvals by NSW Maritime Authority as the Applicant owns land below MHWL.

Regarding the issues raised at points (1) and (2) above, the Department's responses to the matters raised by the Applicant regarding the use of the marina are discussed in Section 6.2 of this Report. It was considered by the Department that the issue of use of the marina could not satisfactorily be resolved by a Team Leader approval as this does not allow for public consultation which is considered important in assessing any future use. The remaining issues raised by the Applicant have been resolved as follows:

- Regarding point (3) above, the Applicant was advised that the Works Manager relates to their obligations as a Crown construction authority;
- Points (4) and (6) above have been amended accordingly; and
- Point (5) above was amended to include a clause relating to a Construction Management Plan to amend the requirements of the condition.

The applicant was provided with a second draft of conditions on 19 August 2005. The DA is considered to be a Crown development application, as defined by the Act. As required by section 116C(b), approval of the draft conditions of consent was received by the Applicant was given on 9 September 2005.

10 RECOMMENDATION

It is recommended that the Deputy-Director General, Office of Sustainable Development, Assessments and Approvals, as delegate for the Minister for Planning as described by the Instrument of Delegation dated 12 September 2005, and pursuant to Sections 81 and 96(1A) of the *Environmental Planning and Assessment Act, 1979* and clause 122 (2) of the *Environmental Planning and Assessment Regulations, 2000*:

- (A) **approve** the application subject to conditions (tagged "A"), and
- (B) authorise the Department to carry out notification of determination of the application to modify the consent.

For Approval under Delegation:

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