



## **Planning Assessment Report**

### **Development Application DA 22-2-2005**

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## **1 SUMMARY**

This report is an assessment of the proposed development the subject of Development Application number DA 22-2-2005.

The application seeks consent for the landscaping of the public domain foreshore between the newly developed Harbour Square to the east and the Lee Wharf developments to the west. It also includes the re construction of approximately 36 m of dilapidated seawall between Lee Wharf Shed A (Maritime Centre) and the Lee wharf development sites to the west.

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

It is recommended that the Minister grant consent to the development application subject to conditions.

## **2 BACKGROUND**

### **2.1 Site Context**

The site is located at lots 51 & 53 DP 1036132 and lot 7 DP 883474 on the harbour foreshore at Honeysuckle Drive Newcastle in the Newcastle City Council Local Government Area.

The development application was lodged with the Department on 10 February, 2005 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The site has an area of approximately 1400m<sup>2</sup> and is situated to the west and south of Lee Wharf Shed A. The recently completed harbour Square public domain is located to the east, to the west is the Lee Wharf Developments site and to the south is the "square about" on Honeysuckle Drive.

A site map is tagged "C".

### **2.2 Relevant approvals**

The proposed development requires the following approvals from integrated approval bodies:

- Mine Subsidence Board – S. 15 of the *Mine Subsidence Compensation Act*; and
- Maritime Authority – Part 3A Permit, *Rivers and Foreshores Improvement Act*.
- NSW Heritage office – S57 of the *Heritage Act 1977*.

### **2.3 Previous approvals**

The site is subject to previous development consent DA 458-10-2003 for its remediation which was approved by the Minister on 7 April, 2004.

Several development applications have been approved on lands immediately adjoining the site including for the Maritime centre (DA 429-09-2003), Lee Wharf Public Domain and “square about” road re alignment (DA 232/233-05-2003).

### **3 THE PROPOSED DEVELOPMENT**

The proposed development seeks consent for landscaping of the public domain foreshore between the newly developed Harbour Square and the Lee Wharf developments. A portion of the site has been licensed to the maritime centre as a forecourt space for displays, activities and annual events.

The design for the public domain works will integrate with the paving pattern of the recently completed “Harbour Square” and the curved pavement of the Maritime Centre licensed area. Vehicle access (service and delivery) will be provided in conjunction with the facilities previously approved for the Honeysuckle Drive “square about” Re alignment (DA232-05-2003). However, in order to increase the width of the available pedestrian pavement the proposal seeks to re align the “square about”.

The DA also proposes to replace approximately 36m of the existing timber king pile seawall, with a steel king pile wall. These works extend from the Maritime Centre to the edge of the adjoining Lee Wharf development’s site to the west. The proposed seawall will be of uniform appearance with the seawall at the lee Wharf development’s site and will have a return at the Maritime Centre to prevent retained earth from being lost.

### **4 STATUTORY FRAMEWORK**

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

The proposed works are permitted in the applicable 3(c) City Centre Zone, 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 for the land of the proposed development.

#### **4.3 Legislative context**

The proposed development represents integrated, advertised development.

#### **4.4 Other statutory provisions**

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

- *Newcastle Development Control Plan 40- City West* (DCP 40); and
- *Development Control Plan 49 – Notification Policy* (DCP 49).

### **5 CONSULTATION**

#### **5.1 Public consultation**

The application was notified, in accordance with the Regulation and *Newcastle DCP 49 – Notification Policy*. Public consultation included the following:

|                                             |                                                                                                                                                                                                                                                        |
|---------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Notifications – landowners/occupiers</b> | Adjoining and adjacent owners were notified in writing of the development by letter dated 2 March, 2005.                                                                                                                                               |
| <b>Newspaper advertisements</b>             | Advertised in Newcastle Herald on Saturday 5 March, 2005.                                                                                                                                                                                              |
| <b>Site notices</b>                         | 4 March, 2005.                                                                                                                                                                                                                                         |
| <b>Exhibition dates</b>                     | Start: 7 March, 2005. End: 7 April, 2005.                                                                                                                                                                                                              |
| <b>Exhibition venues</b>                    | <ul style="list-style-type: none"><li>▪ DIPNR Planning Centre, 20 Lee Street, Sydney;</li><li>▪ DIPNR Regional Office, 464 King Street, Newcastle; and</li><li>▪ Newcastle City Council Customer Enquiry Centre, 282 King Street, Newcastle.</li></ul> |

No submissions were received to the proposal.

## **5.2 Referrals**

### **5.2.1 Integrated Approval Bodies**

#### **5.2.1.1 Mine Subsidence Board**

The application was referred to the Mines Subsidence Board (MSB) on 1 March, 2005. MSB responded by letter dated 7 March, 2005 and issued general terms of approval for the development. The submission from MSB is tagged “**D**”.

#### **5.2.1.2 NSW Heritage office (HO)**

The application was referred to HO on 1 March, 2005. HO responded by letter dated 10 March, 2005. It granted an exemption to the proposal from the requirement for approval under Section 57(1) of the Heritage Act on the basis that the development is minor with no adverse impact on heritage significance. The submission from HO is tagged “**E**”.

#### **5.2.1.3 NSW Maritime**

The application was referred to NSW Maritime on 1 March, 2005. NSW Maritime issued correspondence dated 31 March, 2005 stating that a Part 3A Permit under the Rivers and Foreshore Act will not be required subject to a range of criteria being met. The general terms of approval are tagged “**F**” and incorporated in the conditions of consent.

#### **5.2.2 NSW RTA**

The application was referred to The RTA on 1 March, 2005. The RTA by letter dated 16 March, 2005 have raised no objection to the proposal subject to the preparation of a Traffic Control Plan for the construction phase. The RTA’s letter is tagged “**G**” and its request will be incorporated in the conditions of consent.

#### **5.2.2 Department of Primary Industries (Fisheries) (DPI-F)**

The application was referred to DPI-F on 1 March, 2005. PI-F by letter dated 5 April, 2005 have raised no objection to the proposal as it envisaged that a Part 3A Permit would be required from NSW Maritime.

As NSW Maritime will not require a Part 3 Permit for the proposal confirmation of the initial response was sought from DPI-F On the basis that NSW Maritime's criteria are to be included in the consent DPI-F is maintaining its initial position. DPI-F's letter (and note of confirmation) is tagged "H".

#### **5.2.4 DIPNR Hunter Region**

The application was referred to DIPNR Hunter region on 1 March, 2005. No submission has been received.

#### **5.2.5 Council**

The application was referred to Newcastle City Council on 1 March, 2005. Council responded on 21 June, 2005 and raised no objection to the approval of the application, subject to the imposition of a number of conditions.

These matters have been considered during the assessment of the proposal. Some of the conditions sought by Council are inappropriate and can not be applied. The remainder have been included in the consent, either as requested, as amended or as part of the Department's standard conditions. Council's submission is tagged "I".

## **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 s.79C of the Act. There are no significant issues or environmental impacts that arise from the proposed works. The proposal will enhance the public domain and protect the foreshore by repairing the seawall and has been designed to comply with all relevant standards and integrate with the existing public domain.

The subject site is considered suitable for the proposed development.

## **6 CONCLUSION**

The Minister for Planning is the consent authority.

The application has been considered with regard to the matters raised in s79C of the Act and the Mines Subsidence Board and NSW Maritime who were consulted and provided general terms of approval under the Integrated Development Provisions within the Act. Other government and referral agencies have also been consulted.

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

The proposal is a further extension of the public domain improvement works for the Lee Wharf area and is considered to be satisfactory. It is therefore recommended that the application be approved.

## 7 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The Applicant was asked to comment on the draft conditions proposed by Council on 21 June, 2005. By letter dated 7 July they raised a number of objections to those conditions.

The concerns raised are similar to those of the Department in terms of validity, applicability and legality. Accordingly, a number of the conditions proposed by Council have not been incorporated into the consent or have been amended somewhat in wording. The applicant's submission is tagged as "J".

The final draft conditions of consent were referred to the applicant on 19 July, 2005. The Applicant responded on 21 July, 2005 indicating general agreement to the draft conditions subject to minor amendments to them. Not all the amendments were incorporated as some conditions are drafted as per the State Significant Development SEPP and require certain monitoring activities to be the responsibility of Council, not the Department. This position was explained to and accepted by the applicant.

## 8 RECOMMENDATION

It is recommended that the Minister for 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.

For Ministerial Approval:

Prepared by:

Endorsed by:

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**A/Team Leader, Urban Assessments**

Robert Black  
**Director, Urban Assessments**

### **Addendum to Planning Report**

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

#### **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.

Robert Black  
**Director, Urban Assessments**