



Planning Assessment Report

Application to Modify Development Consent

MOD 168-11-2005 modifying DA 232-05-2003

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application Modification number MOD 168-11-2005 modifying DA 232-05-2003 under section 96(1A) of the Act lodged by Caverstock Group Pty Ltd on 7 November 2005.

The application seeks to modify Development Application DA 232-05-2003 approved by the Minister on 20 May 2004.

The site is located at 5-7 Honeysuckle Drive, Newcastle.

Under the instrument of delegation dated 12 September 2005 and having regard to the Guidelines for Delegates, it is considered appropriate that the application be determined under delegation by the Deputy Director-General, Office of Sustainable Development Assessments and Approvals.

It is recommended that the modification application be **approved**.

1.1 *Relevant approvals / modifications:*

DA 232-05-2003 approved on 20 May 2004:

Granted for the carrying out of a Public Domain Works including:

- Continuous Newcastle Harbour Foreshore Promenade with minimum 8 metre width.
- Demolition of existing dilapidated remnants of wharf structure and sea wall.
- 4 metre wide timber boardwalk.
- 3 metre wide timber pontoon/floating walkway.
- Landscaping of Public Open Space.

Since the granting of development consent, the following modifications have been lodged;

MOD 145-09-2005 approved by on 15 October 2005:

- Amended Condition A2 to reflect the following:
 - o Convert the single length boardwalk to three timber platforms connected by fixed aluminium gangways.
 - o Relocate the hinged aluminium gangways leading to the pontoon to conform to the reconfigured plan, creating only one access point to the pontoon instead of two.
 - o Reduce the length of the pontoon from 90m to 72m and facilitate berthing on both sides.

2 THE PROPOSED MODIFICATIONS

The proposed modifications are shown on the plans at Tag “B”.

The applicant is seeking to modify Condition A2 to reflect the following;

- o Amended paving pattern to allow maintenance access around to south east corner of Lee Wharf Building C.
- o Extension of the seawall up to Lee Wharf Building C.

The modification application originally included a boundary adjustment. The applicant has since advised that the boundary adjustment is the subject of a development application for which Newcastle Council is the consent authority. The request for the boundary adjustment was withdrawn in writing from the modification application on 2 February 2006 (tagged “C”).

3 STATUTORY FRAMEWORK

3.1 *Statement of permissibility*

The proposed development is permitted in the 3(c) City Centre Zone as commercial premises pursuant to Clause 16 of the Newcastle LEP 2003.

3.2 *Instrument of consent and other relevant planning instruments*

Pursuant to Clause 7(2) of the Newcastle LEP, the Minister was the consent authority for the original application. Clause 7(2) has now been repealed by the gazettal of SEPP (Major Projects) 2005. However the Minister for Planning is approval authority for modifications to consents the Minister has granted

3.3 *Legislative context*

Newcastle DCP 2005 applies to the site of the proposed development. This modification is not considered to be in conflict with the provisions of the DCP.

4 CONSULTATION / PUBLIC EXHIBITION

4.1 *Public consultation*

Newcastle DCP 2005 requires modification applications to be notified where the use and enjoyment of the adjoining owners and occupiers land may be detrimentally affected.

The modifications are of a minor nature and the adjoining land will not be detrimentally affected. Therefore notification of the proposal was not considered necessary and the application was not notified.

4.2 *Council*

The application was referred to Newcastle City Council on 16 January. A response from Council was received on 6 March 2006.

Council advised that the submitted plan does not clearly identify the change proposed to the promenade boundary. The Council provided a plan of the new boundary that has been agreed upon by the Council and the applicant. The boundary adjustment was withdrawn from the application on 2 February 2006.

Council raised no other objections or concerns to the approval of the modification application

4.3 Integrated approval bodies

The integrated approval bodies of the original application are not required to be notified of the S96(1A) application. However, the Department chose to advise the NSW Heritage Office and Newcastle Ports Corporation.

The NSW Heritage Office advised that the modification relates to development which is outside the boundary of the State Heritage Register listing, is considered to be minor and will not pose additional heritage impacts.

No response was received from the Newcastle Ports Corporation.

The application was not referred to the NSW Maritime Authority for comment on the extension to the seawall due to the minor nature of the extension. The applicant is required to comply with the conditions of the Part 3A permit issued by NSW Maritime. The permit issued by NSW Maritime dated 8 June 2005 states that the permit has been issued for the works described in the original application only and any additional permits or amendments to the permit will be required for any additional works (tagged "D").

5 CONSIDERATION

5.1 Section 96

The application is considered to meet the prerequisites of Section 96(1A) of the Act in that the proposed modifications are considered to be of minimal environmental impact, and that the development as modified is considered to be substantially the same development as that to which consent was originally granted.

5.2 Section 79C

The application and the likely impacts of the proposed development have been considered in accordance with Section 79C of the Act. The consideration is also given to relevant provisions of Newcastle LEP 2003 and Newcastle DCP 2005. It is considered that the proposed development complies with all relevant aims, objectives and controls and is in the public interest.

6 CONCLUSION

The Minister for Planning is consent authority for modifications to consents he has granted.

The proposed development as modified is considered to be substantially the same development as that originally approved.

The application has been considered with regard to the matters raised in section 79C of the Act.

On balance, it is considered that the proposed development as modified is acceptable and should be approved.

7 DELEGATION

Under the instrument of delegation dated 12 September 2005, the Minister has delegated to the Deputy Director General his functions under Section 96(1A) of the Act relating to modifying development consents.

It is considered appropriate that the application be determined under delegation by the Deputy Director General.

8 RECOMMENDATION

It is recommended that the Acting Deputy Director General of the Minister for Planning 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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