



Planning Assessment Report

Development Application DA 320-12-2004

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 320-12-2004.

The application seeks consent for shop fit-out of Lot 23 DP 1062601, Shop 2 within the Boardwalk Development, 1 Honeysuckle Drive, Newcastle as a retail/café, takeaway ice-cream, coffee bar facility, ticketing for tourist itineraries and hire of bicycles, plus the use of an outdoor seating area. The appropriate land use described under the *Newcastle Local Environmental Plan 2003* is “restaurant/shop”.

The Minister for Infrastructure and Planning is consent authority under clause 7(2) of *Newcastle Local Environmental Plan 2003* (LEP). The proposal is generally consistent with the range of environmental planning instruments applying in this area.

Under the instrument of delegation dated 4 August 2003 and having regard to the Guidelines for Delegates, it is considered appropriate that the application be determined under delegation by a Team Leader, Urban Assessments.

It is recommended that the development application be granted consent subject to conditions (tagged ‘A’).

2 BACKGROUND

2.1 Site Context

The subject site (Site) is located at Shop 2, Boardwalk South, 1 Honeysuckle Drive, Newcastle, in the Newcastle City Council local government area.

The development application was lodged with the Department on 24 December 2004 in accordance with the *Environmental Planning and Assessment Act 1979* (the Act).

The Site forms part of the development known as “the Boardwalk”. The Boardwalk consists of three separate buildings known as Building E (east), Building S (south) and Building N (north) which were granted consent in DA 40-2-2001 on 8 October 2004 for mixed-use functions consisting of office/commercial space, residential, restaurants/cafes and carparking facilities. The Site is located on the ground floor of Building S.

The development site is directly adjacent to the heritage listed Railway Workshops to the south, the Crowne Plaza Hotel and Conference Facilities to the east, and the former Mine Subsidence Board Workshops to the northwest.

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for:

- The fitout of Shop 2 within Building S of the development known as “the Boardwalk” for a retail/cafe, takeaway ice-cream, coffee bar facility (ie, “restaurant”);
- Total seating capacity of no more than 40 persons;
- Use of outdoor lease area for seating up to 15 people (inclusive in the 40 patrons); and
- Provision for ticketing for tourist itineraries and short-term hire of cycling equipment.

4 STATUTORY FRAMEWORK

4.1 *Statement of permissibility*

The site is zoned 3(c) City Centre Zone within the LEP. The proposed development is permissible with consent.

4.2 *Instrument of consent and other relevant planning instruments*

Pursuant to clause 7(2) of the Newcastle LEP, the Minister is the consent authority.

4.3 *Legislative context*

The proposed development is local development.

4.4 *Other statutory provisions*

Newcastle DCP 40 – City West applies to the site of the proposed development.

5 CONSULTATION / PUBLIC EXHIBITION

5.1 *Public consultation*

In accordance with the provisions of Newcastle DCP 49 – Notification Policy, the application was not required to be notified or exhibited. The application was referred to Lake Group Strata, Strata Managers for the Boardwalk Development, who distributed the application to the lot owners of the Boardwalk Development. Three (3) submissions were received, objecting to the development proposal. Issues raised in these submissions are discussed in Section 6.2 of this report.

5.2 *Referrals*

5.2.1 *Council*

The application was referred to the Newcastle City Council for comment on 24 January 2005. In their response on 21 February 2005, Council raised no objections to the proposal. Issues raised by Council are discussed in Section 6.2 of this report. Council’s full submission is tagged “C”.

5.2.2 *Honeysuckle Development Corporation*

The application was referred to Honeysuckle Development Corporation (HDC) for comment on 24 January 2005. In their response on 23 February 2005, HDC raised no objections or issues to the proposal.

6 CONSIDERATION

6.1 *The Environmental Planning and Assessment Act*

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. On balance, it is considered that the proposed.

6.2 *Issues*

6.2.1 *Hours of Operation*

- Issue:* Hours of operation may affect the amenity of residents of the Boardwalk.
- Raised by:* Urban Assessments, public submissions
- Consideration:* The Applicant applied for the hours of 8.00 am to 12.00 pm inclusive, seven days a week.
- Urban Assessments raised concern at the proposed hours as the Body Corporate and the public submissions advised that there have been complaints about the noise impacts from the existing restaurants and cafes within the development area.
- The location of the proposed shop within the southern building of the Boardwalk Development and the fact that the southern building does not contain any residential units, suggests that the proposed use would likely create minimal noise impacts to the residents of the Boardwalk Development. It was considered appropriate to alter the hours of operation to 10.00 pm Sunday to Thursday and 12.00 pm Friday and Saturday.
- After discussions, the Applicant requested that the hours of opening be amended to 7.30 am.
- This will not likely create significant residential amenity impacts and is acceptable.
- Resolution:* A condition of consent will be included to approve the hours of operation as 7.30 am to 10.00 pm Sunday to Thursday and 7.30 am to 12.00 pm Friday and Saturday.

6.2.2 *Use of Outdoor Area*

- Issue:* Use of the outdoor area for seating and other activities related to the proposed use
- Raised by:* Urban Assessments, public submissions
- Consideration:* The public submissions raised the issue that the development application was made without the Applicant obtaining landowner's consent for the use of the outdoor area.
- The Applicant subsequently applied for consent from the Body Corporate SP71866 for the common property on which the outdoor seating area is proposed and the Body Corporate granted their approval on 12 April 2005.
- Consideration:* The public submissions objected to the use of the outdoor seating area for the proposed bicycle rack, mobile coffee cart, retail stands and ice cream stand because these uses were prohibited under the By-Laws of the Body Corporate.

The Department considered these requests and requested a copy of the By-Laws and found that the hiring of such equipment is not prohibited, although the use of such items is prohibited.

This is a governance matter for the Body Corporate and the By-Laws on use do not fetter the granting of development consent.

Resolution:

This matter would be covered by the By-Laws and regulated by the Body Corporate.

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.

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

8 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The Applicant was asked to comment on the draft conditions of consent on 23 February 2005 and a final draft on 12 April 2005. The Applicant responded to the final draft of conditions on 13 April 2005 and was generally in support of the conditions. The Applicant sought an amendment of the proposed hours of operation to allow the shop to open at 7.30 am rather than the 8.00 am previously applied for. The Department accepted this amendment.

9 DELEGATION

Under the instrument of delegation dated 4 August 2003, the Minister has delegated to Team Leaders and officers holding a higher position his functions under the Act for granting development consents except where they relate to designated development or development that is declared to be State Significant development (other than under SEPP 56).

Having regard to the Urban Assessments Guidelines for Delegates, it is considered appropriate that the application be determined under delegation by a Team Leader.

10 RECOMMENDATION

It is recommended that the Team Leader, Urban Assessments as delegate of 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 7(2) of *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 Approval Under delegation

Prepared by:

Endorsed by:

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Determined as Delegate of the Minister
for Infrastructure and Planning**