



Planning Assessment Report

Development Application DA 39-3-2005

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 39-3-2005.

The application seeks consent for two additional levels containing 11 serviced apartments and a new plant room to an approved Serviced Apartment Building (Building B7) and other modifications to that building.

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

It is recommended that the development application be **granted consent**.

2 BACKGROUND

2.1 Site Context

The site is located within proposed lot 24 in a subdivision of lot 4 DP 883474 and lot 21 DP 1051525 Honeysuckle Drive, Newcastle in the City of Newcastle Council local government area.

The development application was lodged with the Department on 2 March, 2005 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The site is adjacent to Newcastle Harbour between Honeysuckle Drive and Wright Lane. Immediately adjacent is “*the Divisional Engineer’s Office*”, which is a heritage item.

The land is low and flat with elevations of around 2.0m AHD. There is little vegetation remaining on site.

A location map is tagged “C”.

2.2 Relevant Approvals

The Minister previously granted consent to the development application DA No. 231-5-2003, DA 166-7-2004 and MODS8-1 and 13-1-2005. The current development application DA 39-3-2005 relies on all of these previous approvals.

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for:

Basement: Provision of an additional 54 parking spaces within the existing basement car park by way of an extension below the proposed Right of

	Way (ROW). 10 of the additional spaces are within the existing footprint and 44 within the extension.
Ground level:	Minor modifications to plant rooms and kerb lines and an enlargement of the car park louvre openings in the southern elevation. The provision of pits within the footway of the ROW, for the proposed street trees over the basement extension.
Level 1:	Addition of a lap pool on the roof terrace and an extension of the gymnasium to align with the western façade.
Levels 2–5:	Extension of the balconies on the south western corner of the building.
Level 6:	An additional level containing 3 x 1 and 3 x 2 bedroom serviced apartments.
Level 7:	The relocation and re configuration of the roof level plant room and the addition of 1 x 1 and 4 x 2 bedroom serviced apartments.

3.1 Amended Plans

Following a request from the Department the applicant has submitted an amended elevation for the southern façade of the building. The amendment attempts to soften the building's appearance and lessen its streetscape impact. A stronger south western corner element has also been achieved by wrapping the existing balcony around to the southern side.

4 STATUTORY FRAMEWORK

4.1 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 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.

The environmental planning instruments, draft environmental planning instruments, development control plans, and regulations applicable to the land to which the development application relate are as follows:

- *State Environmental Planning Policy No.32—Urban Consolidation (Redevelopment of Urban Land)* (SEPP 32),
- *State Environmental Planning Policy No.55—Remediation of Land* (SEPP 55),
- *Hunter Regional Environmental Plan* (HREP),
- *Newcastle Local Environmental Plan 2003* (Newcastle LEP),
- *Newcastle Development Control Plan 24—Car parking* (DCP 24),
- *Newcastle Development Control Plan 40—City West: Unlocking the potential* (DCP 40), and
- *Section 94 Contributions Plan No1* and *Section 94 Contributions Plan No2* (Newcastle Section 94 Plans)

4.3 *Legislative context*

The proposed development is local development pursuant to Part 4 of the Act and Newcastle LEP.

4.4 *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*.

5 CONSULTATION

5.1 *Public consultation*

The application was notified, in accordance with the Regulations and *Newcastle Development Control Plan No.49 – Notification Policy* including:

Notifications – landowners/occupiers	51 land owners and occupiers
Newspaper advertisements	Advertised in Newcastle Herald on 8 April, 2005
Site notices	
Exhibition dates	Start: 8 April, 2005. End: 8 May, 2005
Exhibition venues	▪ Planning Information Centre, 20 Lee Street Sydney ▪ Newcastle City Council, 412 King Street, Newcastle ▪ DIPNR (Hunter Region), 464 King Street, Newcastle

No submissions were received regarding the Application.

5.2 *Integrated Approval Bodies*

5.2.1 *Mine Subsidence Board*

The application was referred to the Mines Subsidence Board (MSB) on 5 April, 2005. MSB responded by letter dated 5 May, 2005 and issued general terms of approval for the development. The submission from MSB is tagged “D”.

5.2.2 *NSW Heritage office (HO)*

The application was referred to HO on 5 April, 2005. HO responded by letter dated 18 June, 2005 proposing two general terms of approval to the proposal, which have been incorporated into the consent. The submission from HO is tagged “E”.

5.3 NSW Maritime

The application was referred to NSW Maritime on 5 April, 2005. By email dated 28 July, 2005 NSW Maritime has advised that it does not wish to make a submission on the proposal.

5.4 NSW RTA

The application was referred to The RTA on 5 April, 2005. The RTA by letter dated 13 April, 2005 raises no objection to the proposal. The RTA's letter is tagged "F".

5.5 DIPNR Hunter Region

The application was referred to DIPNR Hunter region on 5 April, 2005. No submission has been received.

5.6 Council

The application was referred to Newcastle City Council on 1 March, 2005. Council provided a draft response on 13 July, 2005 and raised no objection to the approval of the application, subject to the imposition of a number of conditions. A subsequent letter dated 17 August, 2005 confirmed the draft advice. The majority of the matters raised by Council had been considered during the assessment of the proposal and where appropriate included in the conditions of consent.

However, the Council has requested the imposition of a substantial Section 94 Contribution, based on its definition of "*serviced apartments*" as being a form of *dwelling*. In approving the original DA for building B7 the Department levied contributions on a commercial use basis, which for serviced apartments relates to contributions for open space and recreation only. It is considered appropriate to continue with this practice in this instance as serviced apartments have consistently been dealt with as a commercial rather than residential activity.

However, the Council's concern as to the potential need for services, should the development be converted to more traditional dwelling use, is understood. Accordingly, a condition has been imposed requiring further development consent for any use of the proposed units apart from that of serviced apartments. An additional condition requiring an appropriated restriction on the title of the units (if strata subdivided) has also been imposed.

A further letter from Council dated 25 August, 2005 has confirmed its request for the levying of substantial contributions. However the Department's position has been reaffirmed with Council staff who verbally accepted this scenario, although confirming that it is not its preferred position.

Council's final submission is tagged "G".

5.7 Department of Environment and Conservation (DEC)

The application was referred to DEC on 5 April, 2005. No submission has been received.

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 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

6.3 Built Environment Impacts

6.3.1 Separation Distances

Issue: Building separation requirements

Raised by: Urban Assessments

Consideration: The development application, as lodged, provides an 18m separation between the proposed serviced apartments on levels 6 & 7 and building B2. A 17m separation is provided between the northern boundaries on level 7 and B2. This distance is contrary to DCP 40, which requires an 18 metre separation between the two buildings at this height.

However, although the balconies encroach into the 18 metre separation distance, the overall design reflects the intent of the controls in DCP 40. Furthermore, the design appears to include measures that would help reduce the amenity impacts on the adjoining units.

Resolution: The proposed development, as amended, is acceptable.

6.3.2 Floor Space Requirements

Issue: Compliance with FSR

Raised by: Urban Assessments

Consideration: The current development consent DA 231-5-2003 involved the subdivision of the land at Lee Wharf south of Honeysuckle Drive into two proposed lots: Lot 24 and Lot 25. Lot 24, which the current development application relates to, has a site area of 6,764 square metres. With DCP 40 identifying Lot 24 as having an FSR of 2.5:1, this would permit a gross floor area on Lot 24 of 16,910 square metres.

The proposed development includes the addition of two levels to Building B7 would result in an increase of gross floor area to 18,784 square metres. In order to avoid non-compliance with permissible FSR in DCP 40, a previous development consent DA166-7-2004) amended the previous subdivision by altering the subdivision boundary between Lot 24 and Lot 25. This boundary adjustment involves the inclusion wholly within Lot 24 of a right of way and increases the site area of Lot 24 to 7,545 square metres.

A FSR of 2.5:1 would permit a maximum gross floor area of 18,862.5 square metres on Lot 24. The proposal will result in gross floor area less than this amount and a resulting FSR of 2.49:1.

Resolution: The proposed development, as amended, is acceptable.

6.3.3 Shadow Impacts

Issue: Increased amount of overshadowing from the building

Raised by: Urban Assessments

Consideration: The addition of two levels to Building B7 creates a marginal additional shadow, at the winter solstice, which is incremental and generally falls on Wright Lane, the public car park and the rail corridor.

Resolution: The proposed development, as amended, is acceptable.

6.3.4 Building Form

Issue: Height and appearance of building

Raised by: Urban Assessments

Consideration: DCP 40 identifies a maximum building height of 30 metres. The proposal is within this maximum, whilst the plant structures on the roof are also compliant.

The southern elevation as lodged was not sufficiently articulated and an amended design was sought from the applicant, to soften its appearance and lessen the impact on Wright lane and the proposed street. The amendment returns the balcony treatment on the south western corner, which opens up the façade and creates an appropriate corner element.

Resolution: The proposed development, as amended, is acceptable.

6.3.5 Car Parking

Issue: Compliance with relevant criteria.

Raised by: Urban Assessments

Consideration: Under MOD 13-1-2005 building B7 contains 70 serviced apartments. There are no specific car parking requirements for serviced apartments and based on the rate applying to hotels (1 space per 3 bedrooms) 23.3 spaces were allowed for in the existing underground car park.

The proposed development seeks to increase the number of serviced apartments by 11 to a total of 81 and provide 81 spaces on a 1 per unit approach. This rate is greater than that previously required and is reflective of industry recommendations. The application includes an extension to the underground car park to accommodate the extra parking. The total parking for buildings B1, B2 and B7 will increase to 217.

Resolution: The proposed development, as amended, is acceptable.

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 integrated agencies of the Heritage Council and Mine Subsidence Board 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. No submissions were 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 approved.

8 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 2 August, 2005 and responded on 11 and 18 August, 2005 indicating general agreement to the draft conditions subject to minor amendments to them. Verbal acceptance was received on 23 August as to the imposition of an additional condition requiring further consent for any alternate use of the approved serviced apartments.

9 RECOMMENDATION

It is recommended that the Delegate of Minister for Planning, as per the Instrument of Delegation dated 12 September, 2005, pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended prior to 1 August, 2005) 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.

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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