



Strategic Sites and Urban Renewal, Urban Assessments

Planning Assessment Report

Application to Modify Development Consent

MOD 59-9-2008 modifying DA 39-3-2005

1 SUMMARY

This report is an assessment of Modification Application (MOD 59-9-2008), modifying DA 39-3-2005 under Section 96(1A) of the Environmental Planning and Assessment Act 1979 (the Act) that was lodged by Pacific Lifestyle Projects on 20 August 2008. Amended plans and supporting information received on 20 August 2008, 25 November 2008 and 27 November 2008.

The application seeks to modify Development Application DA 39-3-2005 approved by the Minister on 25 September 2005 by proposing minor internal and external modifications to the approved development.

The site is located at Lot 4 DP 883474 and Part Lot 21 DP 1051525, Honeysuckle Drive, Newcastle.

Under the instrument of delegation dated 19 December 2007, the application can be determined by the Executive Director, Strategic Sites and Urban Renewal.

It is recommended that the application be approved.

1.1 *Relevant development approvals / modifications:*

On 28 May 2004, DA 231-05-2003 was approved by the Minister for Infrastructure and Planning. The approval granted consent for the construction of Building B7 (a 6 storey mixed development) comprising basement level car parking, ground level retail / commercial floor space (1251m²), gymnasium, roof terrace and 5 storeys of service apartments comprising 74 one bedroom apartments.

On 21 December 2004, Mod 126-12-2004 was approved under delegation by the Senior Planner, Urban Assessments. The modification granted consent for an amendment to Condition No. B28 to remove the requirement for '*a certificate of compliance to be included in documentation for a construction certificate*' and alter to allow the certificate to be issued '*prior to occupation certificate*'.

On 23 February 2005, Mod 8-1-2005 was approved under delegation by the Senior Planner, Urban Assessments. The modification granted consent for amendments to the wording of Condition No. A2 due to the approval of amended plans.

On 7 June 2005, Mod 13-1-2005 was approved under delegation by the Acting Team Leader, Urban Assessments, Office of Sustainable Development Assessment and Approvals. The modification granted consent to moving Building B7 so that the building was 12m from Building 2, reducing the number of serviced apartments from 74 to 70, deletion of one car space from the basement, colour changes to the north and south elevations to correspond to adjoining buildings and a number of other minor internal and façade modifications.

On 3 March 2006, Mod 185-11-2005 was approved under delegation by the Acting Deputy-Director General, Office of Sustainable Development Assessment and Approvals. The modification granted consent for amendments to Condition No. B36 regarding footpaving and an amendment to Condition No. F8 regarding road improvements.

On 25 September 2005, DA 39-3-2005 was approved under delegation by the Deputy-Director General, Office of Sustainable Development Assessment and Approvals. The approval granted consent for an additional two levels to the building and additions to the roof plant level. In particular, the proposal included an additional 11 serviced apartments; a new swimming pool; extension to the balconies on the south west corner of the building and basement car park; and other minor modifications to the approved Building B7.

1.2 *The proposed modifications the subject of this application*

The following modifications to the DA are proposed:

- Ground Floor
 - Relocation of the exit door to the fire stairs;
 - Redesign of the access ramp to comply with Australian Standard requirements;
 - Change of use of baggage room to a kitchen for use by employees and also for preparation of pre-prepared lunches for meeting rooms within the building;
 - Inclusion of 2 separate mail box areas on the southern elevation adjacent to the lobby / reception entrance; and
 - Inclusion of a service door for the delivery of goods when the lobby / reception entrance door is closed. The proposed door is located between the two mail boxes.
- First Floor
 - The unit known as the hospitality suite has been converted into a two bedroom serviced apartment;
 - Inclusion of a ventilation grill instead of an approved highlight window to the lobby area to comply with the requirements of the Building Code of Australia;
 - Modification to the planter box in the south-eastern corner;
 - Inclusion of two disabled accessible wet areas within the gym area;
 - Modification to the screen at the pool edge from timber battens to aluminium battens;
 - Inclusion of two meeting rooms instead of the gym area;
 - Total number of perimeter doors have been reduced; and
 - Modification to the pergola located over the pool deck area.
- Second, Third, Fourth and Fifth Floor,
 - Modification to the single bedroom unit on the south-western corner of the building for use by people with disabilities. The change relates to an amendment of the kitchen circulation space, additional glazing width to the kitchen and reduction in the balcony width; and
 - Inclusion of a ventilation grill instead of an approved highlight window to the lobby area to comply with the requirements of the Building Code of Australia.
- Sixth Floor
 - Modification to the single bedroom unit on the south-western corner of the building for use by people with disabilities. The change relates to an amendment of the kitchen circulation space, additional glazing width to the kitchen and reduction in the balcony width;
 - Inclusion of a ventilation grill instead of an approved highlight window to the lobby area to comply with the requirements of the Building Code of Australia;

- Minor internal modifications to the south-eastern corner unit; and
- Modification to the north-eastern and north-western units including deletion of the Balinese bathroom, inclusion of an additional bedroom within this area and other minor internal amendments to improve living areas.
- Seventh Floor
 - Modification to the single bedroom unit on the south-western corner of the building for use by people with disabilities. The change relates to an amendment of the kitchen circulation space, additional glazing width to the kitchen and reduction in the balcony width;
 - Inclusion of a ventilation grill instead of an approved highlight window to the lobby area to comply with the requirements of the Building Code of Australia;
 - Minor internal modifications to the south-eastern corner unit;
 - Modification to the north-eastern unit including deletion of the Balinese bathroom and other minor internal amendments to improve living areas; and
 - Modification to the north-western unit including additional floor area by a reduction to the adjoining plant area, inclusion of a study within the revised floor plan and other internal amendments to improve living areas.

The applicant has advised that:

- The modification proposal will increase the overall GFA for the site by 33m², which includes Buildings B1 and B2 within the site, from 18,784m² to 18,817m² and in particular Building B7 increases to 7,405m².
- The additional floor area alters the FSR for the overall development from 2.489:1 (18,784m² / 7545sqm) to 2.493:1 (18,817m² / 7545sqm).
- The car parking required to be provided for the development has not been altered by the proposed amendments.

2 STATUTORY FRAMEWORK

2.1 *Statement of permissibility*

During the assessment of the original application, the site was zoned 3(c) - City Centre Zone under the Newcastle Local Environmental Plan 2003. 'Commercial premise' were permitted within this zone and therefore the development was permissible. Newcastle Local Environmental Plan 2003 did not contain a separate definition for 'Serviced Apartments'.

Newcastle City Centre Local Environmental Plan 2008 came into force on 1 February 2008. The site is now zoned B4 - Mixed Use under Newcastle City Centre Local Environmental Plan 2008, which contains a definition for 'Serviced Apartments' that is permissible within the zone.

2.2 *Instrument of consent and other relevant planning instruments*

Pursuant to Newcastle City Local Environmental Plan 2008, Council is the consent authority except as stated within the Act. However, the Minister for Planning or her delegate is the consent authority for modifications to consents granted by the Minister. Therefore, the Minister for Planning or her delegate is the consent authority for the subject application.

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 City Centre Local Environmental Plan 2008 (Newcastle City Centre LEP)
- Newcastle Development Control Plan 24 - Car parking (DCP 24),
- Newcastle Development Control Plan 2005 (DCP 2005), and
- Section 94 Contributions Plan No.1 and Section 94 Contributions Plan No.2 (Newcastle Section 94 Plans)

2.3 Other statutory provisions

Newcastle DCP 40 - City West previously applied to the site during the assessment of the original application. With the gazettal of the Newcastle LEP in 2003, Newcastle Development Control Plan 2005 was developed and gazetted in 2005. DCP 2005 repealed a number of Development Control Plans, including DCP 40.

As the proposal is principally internal amendments, no concerns are raised having regard to the requirements of the controls.

This modification is generally consistent with the above controls.

3 CONSULTATION / PUBLIC EXHIBITION

Public consultation of the proposed modification, in accordance with the City of Newcastle Public Notification DCP, is not required on the basis that the use or enjoyment of adjoining land is not detrimentally affected by the works contemplated under the proposed Section 96(1A) modification.

Further, public consultation of the proposal was not considered necessary given the minor nature of the modification.

3.1 Referrals

3.1.1 Integrated approval bodies

The original DA was Integrated Development under the Heritage Act 1977 and the Mine Subsidence Compensation Act 1961.

The matter being modified does not alter any general terms of approval of the integrated agencies and accordingly, the matter was therefore not referred to NSW Heritage Council or the Mine Subsidence Board for comment.

3.1.2 Council

For reasons stated in part 4.1 of this report, regarding the minor nature of the modification proposed, the application was not referred for comment.

3.1.3 Internal consultations

For reasons stated in part 4.1 of this report, the application was not referred for comment.

4 CONSIDERATION

4.1 Section 96

The application is considered to meet the prerequisites of Section 96(1A) of the Act in that the matter being modified will have 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. The application was not required to be notified by the Regulations or Council's Development Control Plan.

The amendments proposed are minor in nature and do not have a negative impact upon the approved built form as they are predominantly internal.

Hospitality Suite

The modification proposes to convert the approved hospitality suite on the level 1 into a two bedroom serviced apartment with no external windows to the bedrooms (refer below at **Figure 1**). The bedrooms are proposed to be sealed off by sliding glass doors and only gain access to light and ventilation via a sliding door to the balcony on the eastern side of the unit adjacent to the living area and approximately 4.5 metres from the bedrooms.

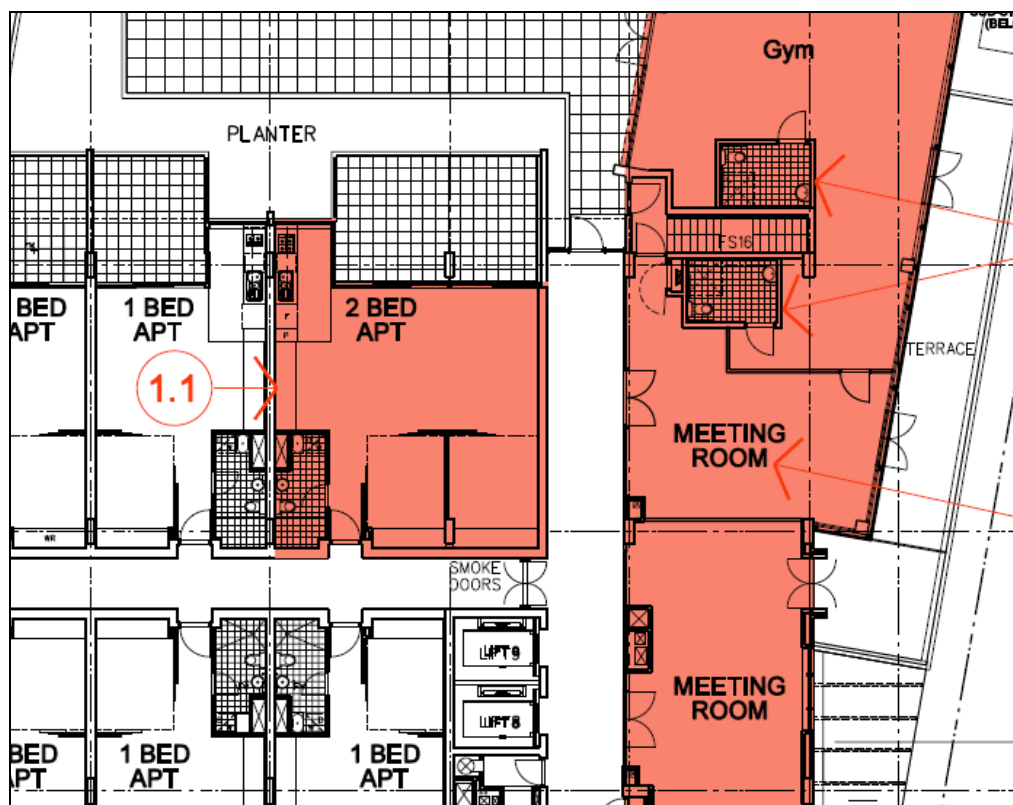


Figure 1 – Hospitality suite converted into bedroom serviced apartment

The Residential Flat Design Code - building configuration (apartment layout) objectives are:

- To ensure the spatial arrangement of apartments is functional and well organised;
- To ensure that apartment layouts provide high standards of residential amenity;
- To maximise the environmental performance of apartments;
- To accommodate a variety of household activities and occupants' needs.

The Department is of the opinion that the conversion of the hospitality suite into a two bedroom apartment is not appropriate and does not achieve the above objectives due to limitations of ventilation, borrowed light and lack of amenity / privacy for the occupants within the apartment. The development also could be strata titled or converted into permanent residences. The design of the proposed apartment for permanent residence is unacceptable is more suitable to a one bedroom studio.

A one bedroom apartment with a large living room / sitting area is more appropriate for this location as indicated by the approved adjoining apartments.

A condition requiring the amendment of the apartment to a one bedroom serviced apartment is included within the recommended conditions of approval.

4.2 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 City Centre LEP. It is considered that the proposed development complies with the statutory controls and the relevant aims and objectives.

4.3 Section 94

Given the amendments to the development, the Section 94 contribution as stated within Condition No. B7 of DA 39-3-2005 is required to be amended. The amendments that impact upon the Section 94 contribution are as follows:

- The addition of one additional bed room to Level 1 (refer to comments with Section 4.1 for discussion on amendments to the hospitality suite)
- The addition of two additional bed rooms to Level 6

Condition No. B7 currently states that an additional contribution of \$3,343.14 is required to be paid for the consent provided under DA 39-3-2005 on top of the contribution of \$19,407.50 (indexed at a rate of contribution applicable at that time) that was conditioned within the approval for DA 231-5-2003 (refer to MOD 13-1-2005). Refer to the table below that illustrates the approved and proposed Section 94 contribution:

Approved – DA 39-3-2005 (18 additional bedrooms provided)

Contribution Category	Rate of Contribution	Amount
Open Space & Recreation	\$185.73 per bed room	\$3343.14
TOTAL		\$3343.14

Current Mod 59-9-2008 including updated contribution rate (21 bedrooms now provided)

Contribution Category	Rate of Contribution	Amount
Open Space & Recreation	\$219.83. per bed room	\$4616.43
TOTAL		\$4616.43

Total additional contribution taking account the updated contribution rate is \$1273.29.

Condition No. B7 is to be amended to have regard to the revised contribution.

5 **CONCLUSION**

The Minister for Planning or her delegate is the consent authority for modifications to consents granted by the Minister.

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.

No notification of the application was required in accordance with the Regulations as the proposal is considered to be a Section 96(1A) modification application.

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

6 **DELEGATION**

Under the instrument of delegation dated 19 December 2007, the Minister has delegated to the Executive Director, Strategic Sites and Urban Renewals his functions under Section 96(1A) of the Act relating to modifying development consents, such as that proposed.

7 **RECOMMENDATION**

It is recommended that the Executive Director, Strategic Sites and Urban Renewals in accordance with the Instrument of Delegation issued by the Minister for Planning, on 19 December 2007, pursuant to Section 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.

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