



Our ref: 1221164

17th May 2013

General Manager
Newcastle City Council
City Administration Centre
PO Box 489
Newcastle NSW 2300

Dear Mr Gouldthorp,

RE: OBJECTION TO DA 12/0549 - 1 KING ST NEWCASTLE, ERECTION OF TWO MULTI STOREY COMMERCIAL/RESIDENTIAL BUILDINGS – FINAL STAGE OF ROYAL NEWCASTLE HOSPITAL CONCEPT PLAN

JW Planning Pty Ltd act for Mr P. Anderson owner of Unit 908, 67 Watt Street Newcastle (Arvia Apartments on land previously occupied by the Wirraway Flats) adjacent and to the west of the site of the proposed DA.

BACKGROUND

1. This submission is made following the Planning and Assessment Commission's approval of the modification application to the Royal Newcastle Hospital Concept Plan on the 9th April 2013.
2. The modified concept plan now includes; an increase in the RL heights and number of floors and relocation of the southern building to the south, the inclusion of a hotel; the excision of the David Madison Building land from the concept plan; and the addition, among others, of concept plan View sharing principles.
3. These modifications to the concept plan are required to inform the preparation of Development Applications and be consistent with the concept plan approval and to be considered by the consent authority when determining DAs.
4. Whilst we accept the determination of the modification application to the concept plan and that council can now continue its assessment of DA 12/0549, there are still serious outstanding issues with the DA to which we object and bring to Council's attention before it makes a recommendation to the Joint Regional Planning Panel as the consent authority.
5. From our phone discussion with Steve Mascia, (Council's Assessment Officer) on Monday 6th May 2013, we understand Council is continuing with its assessment, will not be re-exhibiting the DA and intends to submit an assessment report and recommendation to the Joint Regional Planning Panel in late May or early June 2013.
6. When assessed under section 79C of the Environmental Planning and Assessment Act 1979 (the Act), the application is incomplete in a number of significant areas. In the circumstances set out below, we do not believe that Council is able to properly assess the application and subsequently it cannot grant consent to the development.

MODIFIED CONCEPT PLAN – INCLUSION OF A HOTEL

7. The Planning and Assessment Commission's Determination report on the inclusion of a hotel into the concept plan agreed with the Department of Planning and Infrastructure's assessment "*that concerns of anti-social behaviour associated with a bar and licensed facilities are matters more appropriately dealt with at the development application stage*". Section 5.5 of the Statement of Environmental Effects for the DA provides rudimentary social and impact assessment of the proposed hotel and bar into the site.
8. The amenity impacts of hotel, public bar and function room in this area has the potential to generate significant noise and anti-social behaviour during the evening from patrons attending the bar and function room that are not hotel guests.
9. Newcastle city centre is one of the worst areas in the state for experiencing serious alcohol induced anti-social behaviour during evenings and weekends. Significant resources and time has been spent by the public authorities and the business community concerning liquor licences, bar management and policing to manage this difficult issue. However, the DA makes no mention of this.
10. This significant socio economic issue is compounded by the density of 100s of residents now and in the future, living in and around the site. There is no information in the DA to allow Council to make an informed assessment of the potential social impacts of a hotel and bar in the DA.
11. Other social impacts not considered are increased traffic and parking demand during the evenings for visitors to the bar and function room who are not guests at the hotel and hence – and in the absence of information - are likely to park on the street;
12. The Director General's Report recommending the Minister approve the Concept Plan (Dec. 2006) makes reference in Appendix F Draft Statement of Commitments that "*subsequent Project Application(s) will take account of the Social Plan prepared by Heather Nesbitt Planning submitted with this Concept Plan*". The DA does not refer to this social plan nor does it adequately consider the social and economic implications of locating a hotel, public bar and conference room into what is now a high density residential area with other hotels and public bars nearby.
13. The DA information concerning traffic and parking consider the difference in car parking requirement and provision for the hotel only. No information is provided on the size of the public bar and conference room, what the car parking demand is likely to be and how this demand will be managed.

MODIFIED CONDITIONS OF APPROVAL FOR CONCEPT PLAN – SITE DESIGN PRINCIPLES – VIEW SHARING

14. Condition 11 of the PACs determination includes the following:

11 Site design principles

Objectives

- *Provide for view sharing between new and existing buildings.*
- *Maximise outlook and views from principal rooms and private open spaces without compromising visual privacy.*

Design Principles

- *The design, height and bulk of proposed buildings within the building envelopes should incorporate the sharing of views through the location and orientation of buildings and land uses, gaps between buildings, placement of windows, balconies and open space.*

To achieve consistency with the concept plan approval requires application of the view sharing principles and that the ultimate building envelope must be different to what would otherwise have been expected.

If the proponent has not provided information on how to respond to this new design principle, then council is unable to undertake an assessment of this issue in the DA and determine the adequacy or otherwise of the development satisfying the approved concept plan.

15. If council is of a view to not re exhibit the DA, then Council is limiting the ability for affected members of the public to view the DA against the modified concept plan.

VISUAL IMPACT AND VIEWS

16. The application does not acknowledge DA 09/0766 and the changing of unit layouts that were oriented with north and south views in the Minister's approved Peninsula Apartments to east views.
17. To assist Council on how view sharing is to be considered for this application, reference is made to planning principles established by the Land and Environment Court for guidance.

In *Tenacity Consulting v Warringah* [2004] NSWLEC 140, Senior Commissioner Roseth established four steps in determining what is reasonable view sharing:

a) Firstly is the assessment of views to be affected. *"Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*

Unit 908 has whole views of Newcastle Beach and the ocean and therefore, has extremely valuable views.

b) Secondly is to consider from what part of the property the views are obtained. *"For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".*

Unit 908 has views from the front overlooking Newcastle Beach with lesser views to the sides – north overlooking the city and south overlooking the park and ocean. These views are enjoyed by sitting and standing. Based upon the limited information in the DA, it would appear that the proposed southern building would significantly block views from a standing position from within Unit 908.

c) Thirdly is to assess the extent of the impact. *"This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating"*

The kitchen and living areas extend across the entire unit overlooking Newcastle Beach and the ocean. From the limited information in the DA, it would appear that **the impact of the southern building upon these views would be devastating.**

d) Fourthly is to assess the reasonableness of the proposal that is causing the impact. “**A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable**”

LIMITED APPLICATION OF LANDCOM AND WATT ST DEVELOPMENTS SETBACK AGREEMENT

18. Appendix 21 of the SEE contains an agreement dated 29th May 2006 between Landcom and Watt Street Developments Pty Ltd concerning building setbacks for the development of the Hospital site relative to the Major Project Application MP06_0033. The agreement contains six plans and elevations establishing setbacks from the proposed Arvia Apartments and the Hospital site.
19. The notations on the setback agreement plans make specific reference to “**non habitable rooms**” able to come to the nominated setback distances from the Arvia of:
 - 10.14m up to Level 4 and 14.1m for **Levels 5 and 6** from the south eastern corner of the Arvia; and
 - 6.5m up to Level 4 and 10.4m for **Levels 5 and 6** from the north eastern corner of the Arvia.

The floor plans for the southern building are absent from the DA and despite our repeated requests to Council and the Department of Planning and Infrastructure, the proponent has withheld from providing the southern elevation drawing to allow a full and proper understanding of the relationship of the southern building to the Arvia.

20. In documentation to the Department of Planning and Infrastructure for the proponent’s application to modify the approved Concept Plan (dated 22nd June 2012) ground level to level 8 all contain **habitable rooms** on the western end of the southern building.
21. It is clear that **the setback agreement allows only non habitable rooms to be setback the minimum distances.** In the absence of any other relevant controls in the Concept Plan and in consistent with the proponent’s application of SEPP 65 setback distances for the northern building and the retained David Maddison Building, **the setback for habitable rooms in the southern residential flat building to the existing Arvia residential flat building come under the provisions of SEPP 65 and the referred controls in the Residential Flat Design Code.** **Therefore, the relevant setback controls for the DA are; 12 metres for levels 1 to 4, 18m for levels 5 to 8 and 24m for level 9.**
22. **The agreement makes no reference to what the setbacks from the Arvia are to be for any levels above Level 6.** Again, in the absence of any other controls or guidance in the approved concept plan, **the provisions of SEPP 65 and the referred controls in the Residential Flat Design Code apply.**

SECTION 79C HEADS OF CONSIDERATION

23. The D.A is deficient in allowing Council to fully consider the environmental impacts of the proposal under Section 79C (1) of the Act as follows:

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

There is no information on how the application has considered Condition 11 Design Principles View sharing and addressed the likely impacts of the development upon the Avia Apartments, in particular Unit 908

24. The proposal's omission of the implications of DA 09/0766 and its amending consent leading to significant impacts upon existing residents – in particular devastating loss of views - is not sound development design, is not reasonable and is not justifiable.

CLAUSE 50 OF THE REGULATIONS

25. The application does not comply with Section 78A of the Environmental Planning and Assessment Act 1979 in terms of the information required under Clause 50 and Schedule 1 Part 1, Clauses 1 to 5 of the Environmental Planning and Assessment Regulation 2000.

SUMMARY

26. It is our view that Council cannot grant consent to the development as it has not considered the PAC's modification of the Minister's Instrument of Approval for the Royal Newcastle Hospital Concept Plan. To achieve consistency with the concept plan approval requires application of the view sharing principles and that the ultimate building envelope must be different to what would otherwise have been expected.
27. Council cannot undertake a full and proper assessment of the proposal in accordance with the Act in the absence of the required information concerning design principles view sharing. This information is required under the EP & A Regulations 2000.
28. The preparation and lodgement of DA 09/0766, a subsequent Section 96 application and Council's subsequent consideration and approval of the now constructed Arvia Apartments has fundamentally altered the capacity of the current DA to be consistent with Minister's Approved Concept Plan. With the recently approved modification by the Planning and Assessment Commission this now requires the application of view sharing principles and that the ultimate building envelope must be different to what would otherwise have been expected.
29. The Landcom/Watt St Development agreement concerning setbacks to the Arvia has limited application to non habitable floor space matters only. As the DA proposes habitable floor space adjacent to the habitable floor space of the Arvia building, the provisions of SEPP 65 and the Residential Flat Design Code apply for the entire building including those floors above level 6 that the setback agreement is silent on.
30. It is fundamental to the implementation of the Act that, where development consent is required for the carrying out of development, a full and proper consideration must be given to an application for consent under Section 79C. In the circumstances of this case, this cannot be undertaken due to

significant omissions inherent in the application that prevent the issue of consent to the development.
The application is deficient and cannot be determined by Council other than by way of refusal.

Should you have any enquiries in the matter or require any additional information please do not hesitate to contact the writer on mobile 0414 978 608 or email: trevor@jwplanning.com.au.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Trevor Allen', with a long horizontal stroke extending to the left.

JW PLANNING PTY LTD

Trevor Allen

Senior Urban Planner

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