

COUNCIL ASSESSMENT REPORT

Panel Reference	2017HCC002
DA Number	DA/11/2017
LGA	Lake Macquarie City Council
Proposed Development	Demolition Works, Commercial Premises and Residential Flat Building
Street Address	5 Edgar Street, Belmont (Lot 10 Sec B DP 585) 7 Edgar Street, Belmont (Lot 11 Sec B DP 585) 9 Edgar Street, Belmont (Lot A DP 400644,) 11 Edgar Street, Belmont (Lot B DP 400644) 2 Sharp Street, Belmont (Lot 6 DP 12898) 4 Sharp Street, Belmont (Lot 5 DP 12898) 6 Sharp Street, Belmont (Lot 4 DP 12898) 8 Sharp Street, Belmont (Lot 1 DP 353066) 10 Sharp Street, Belmont (Lot 2 DP 353066) 32 Brooks Parade, Belmont (Lot 3 Sec B DP 585) 36 Brooks Parade, Belmont (Lot 4 Sec B DP 585) 38 Brooks Parade, Belmont (Lot A DP 339105) 40 Brooks Parade, Belmont (Lot B DP 339105) 42 Brooks Parade, Belmont (Lot 8 DP 12898)
Applicant	Monteath and Powys Pty Ltd
Owner	Allbeach Pty Limited AM, KL and MF Brown BSE Holdings Pty Limited Lakesharp Developments Pty Limited Robert Neil McDonald
Date of lodgement	3 January 2017
Number of Submissions	24 Submissions from 19 Authors
Recommendation	Refusal
Regional Development Criteria (Schedule 4A of the EP&A Act)	The development has a CIV of \$39 million therefore being above the \$20 million threshold for Regional Development (at time of lodgement).
List of all relevant s79C(1)(a) matters	• Lake Macquarie Local Environmental Plan 2014 • Lake Macquarie Development Control Plan 2014 • State Environmental Planning Policy 71 – Coastal Protection • State Environmental Planning Policy (Infrastructure) 2007
List all documents submitted with this report for the Panel's consideration	Statement of Environmental Effects and supporting plans/documents (Appendix A) Amended Application (Appendix B) Additional Information (Appendix C) External Agencies/Authorities Responses (Appendix D) Applicant's Isolation Lot Submission [Commercial in Confidence] (Appendix E) Submission by 44 Brooks Parade [Commercial in Confidence] (Appendix F) Public Submissions (Appendix G)
Report prepared by	Brian Gibson, Senior Development Planner, Lake Macquarie City Council
Report date	9 November 2017

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?	Yes
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Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	Yes
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Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes
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Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?	Not Applicable
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Conditions

Have draft conditions been provided to the applicant for comment?	No
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Executive Summary

Date Lodged: 3 January 2017

Submission Period: 28 January 2017 to 27 February 2017*

* The development is Nominated Integrated Development in relation to the Water Management Act 2000. Accordingly the application was Advertised Development being Advertised Development under the *EP& A Act 1979*.

4 September 2017 to 19 September 2017#

Re-notification of the amended proposal

Zoning: B4 Mixed Use Zone (Lake Macquarie Local Environmental Plan 2014)

Approval Bodies: RMS

NSW Water (Department of Industry)

Referral Agencies: Hunter Water Corporation

Ausgrid

NSW Police

CIV: \$39,000,000

Legislative Clauses:

State Environmental Planning Policy 71 – Coastal Protection

The development site is located within the Coastal Zone under SEPP71. The application is to be assessed having regard to the aims of the SEPP and the matters for consideration as listed under Clause 8.

Subject to resolving the issues with the isolated lot and complying with Council's Flooding and Sea Level Rise planning controls, it is expected the proposed development will not be contrary to the provisions of SEPP 71.

State Environmental Planning Policy (Infrastructure) 2007

Division 5 Electricity Transmission or distribution

Clause 42 *Notification of Electricity Substation Development* requires written notice from the electricity supply authority with regard to the intention to install a substation.

The matter was referred to Ausgrid who provided a reply dated 16th January 2017 advising no objection to the development subject to conditions being imposed.

Division 17 Roads & Traffic

Clause 101 requires the consent authority not to grant consent to development on land that has a frontage to a classified road unless it has considered the point of access and other traffic performance and safety issues.

Clause 104 requires the consent authority when considering traffic-generating development to consult with the Roads & Maritime Service and to take into consideration any of its requirements.

Presently the RMS has requested through Council additional information to enable it to form an opinion regarding the proposed development.

Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)

Part 1 Preliminary

Clause 1.9A Suspension of covenants, agreements and instruments

An Easement applies to the development site to Drain Water (Variable Width) which burdens the land owner and benefits Lake Macquarie City Council.

In this regard, Council's Assets Management – Drainage requires the overhangs to be removed from the easement however has advised of no objection to the proposed encroachment by the pedestrian walkway.

Part 4 Principal development standards

Clause 4.6 Exceptions to development standards

A clause 4.6 variation has been submitted for the development with regard to the contravention of the maximum height of building development standard under Clause 4.3 of the LMLEP 2014.

The exceedance of the maximum height of building is not supported, particularly noting the isolated lot.

Part 5 Miscellaneous provisions

Clause 5.5 Development within the coastal zone

The land is mapped as being within the coastal zone. The proposed development is a redevelopment of an existing (low density) urban area within the Belmont Town Centre. The land is subject to flooding and sea level rise, and fronts the Lake although is separated by a foreshore park and Brooks Parade.

Consent must not be granted unless the consent authority has considered public access, its relationship with the surrounding area and impact on the natural scenic quality, the amenity of the foreshore and the cumulative impacts on the coastal catchment through stormwater discharge, etc.

Without resolution of the isolated lot issue it is not possible to complete an assessment in relation to the coastal zone.

Clause 5.10

The land is mapped as a sensitive aboriginal landscape area on the Sensitive Aboriginal Landscape Area Map. The consent authority is required to consider a heritage report and assess the likely impacts of the proposed development on the sensitive aboriginal landscape, including consultation with aboriginal community groups.

The applicant provided a Due Diligence Report which was referred to local Aboriginal communities. Council's Heritage Officer having reviewed the report and assessed the proposal recommends the imposition of conditions.

Part 7 Additional local provisions

Clause 7.1 Acid Sulfate soils

The site is mapped as being affected by Class 2 Acid Sulfate Soils. Additionally the

development will intercept the water table with construction off the basement car park.

The consent authority must not grant consent unless an acid sulphate soils management plan has been considered. In this regard, a complete assessment as to the extent of the potential environmental harm caused by any interference with acid sulphate soils has not been undertaken due to the unresolved issues with the isolated lot.

Clause 7.2 Earthworks

The consent authority must consider before granting consent the implications of the proposed development on the environment/locality in relation to earthworks. A complete assessment has not been undertaken based on the isolated lot being unresolved (whereby the design may change).

Clause 7.3 Flood planning

The development site is mapped as part of the Flood Planning Area. The consent authority is required to consider the implications of the flooding characteristics on life and property with respect to the development and ensure the development does not adversely affect flooding behaviour. A complete assessment has not been undertaken based on the isolated lot being unresolved (whereby the design may change).

Clause 7.4 Coastal Risk planning

The development site is mapped as coastal risk under the Coastal Risk Map. The consent authority must not grant consent without considering coastal hazards with regard to life, the proposed development, adjoining development and the environment.

A complete assessment of the coastal risks has not been undertaken based on the isolated lot being unresolved (whereby the design may change).

Clause 7.10 Residential development in certain business zones

The development is for a mixed use development incorporating commercial/retail and a Residential Flat Building. The development is located within a B4 zone and the consent authority must not grant consent unless it is satisfied that part of the building facing the primary street frontage has an active frontage and is used as a commercial premises.

A complete assessment of the activation of the streetscape has not been undertaken based on the isolated lot being unresolved (whereby the design may change).

Clause 7.21 Essential Services

The consent authority must not grant consent unless it is satisfied the required essential services are available to serve the development. The site has available to it the required essential services and infrastructure to accommodate the development.

PROJECT DESCRIPTION

The Development Application is for a Mixed Use Development (Commercial Premises & Residential Flat Building) including demolition of existing structures (the Statement of Environmental Effects and supporting plans/documents are attached as Appendix A). The application was lodged in January 2017.

The development site is an amalgamation of 14 lots located at the western periphery of the Belmont Town Centre and is to the east of the Lake foreshore. The development site has frontage to Edgar Street, Sharp Street and Brooks Parade (see Figure 1 for a perspective of the development from the corner of Brooks Parade and Sharp Street). The development site comprises an area of 6,753m².



Figure 1: Development perspective as viewed from the Lake foreshore opposite the corner of Brooks Parade and Sharp Street, Belmont

The development comprises two retail/commercial units (447.16m²), 130 residential units in the form of four detached towers sitting over a basement car park (135 car parks, 13 accessible parks and 3 motor cycle parks) and a podium car park (16 car parks, 2 accessible parks and 3 motor cycle parks). The development consists of four towers above the basement car park, positioned in the north-east, north-west, south-east and south-west corners of the site.

The tower at the corner of Brooks Parade and Sharp Street (Block A) is eight storeys and measures 26.3m excepting the plant and lift overrun which is 28.1m. Two of the proposed towers (Block B fronting Brooks Parade & Block C fronting Edgar Street) are six storeys and each measures 20m excepting the lift overrun which is 22m, whilst the tower (Block D) located at the corner of Edgar Street and Sharp Street is also six storeys and measures 20.6m excepting the plant and lift overrun which is 22.3m. The maximum height permitted under the Height of Building Map of the LMLEP 2014 is 22m (refer to Figure 5 below).

A lot with an area of 328.8m² at the corner of Brooks Parade and Sharp Street is not included with the development. This lot is bounded by Sharp Street (south), Brooks Parade (west) and the development (north and east). The applicant has stated 'extended efforts' have been made to acquire 44 Brooks Parade and are ongoing. The application presents an alternative design which includes the adjoining lot.

An amended application was lodged in August 2017, being substantially the same proposal. The amended documentation and plans are attached as Appendix B. Additional information containing an alternative design for 44 Brooks Parade is attached as Appendix C.

Site & Locality

The development site is located along the eastern shores of Lake Macquarie within the

Town Centre of Belmont. Figure 2 below identifies the location of the development site relative to the City of Lake Macquarie whilst Figure 3 provides detail of the site relative to the Belmont Town Centre.

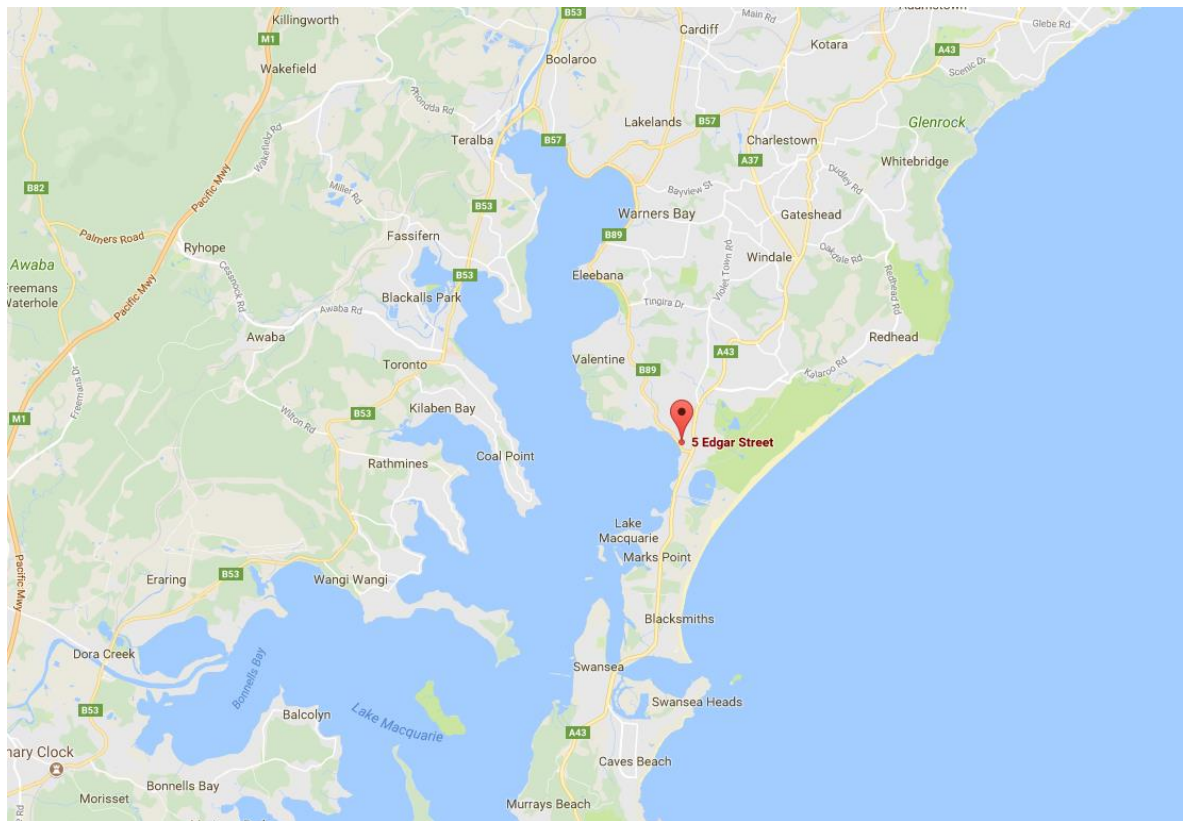


Figure 2: City of Lake Macquarie

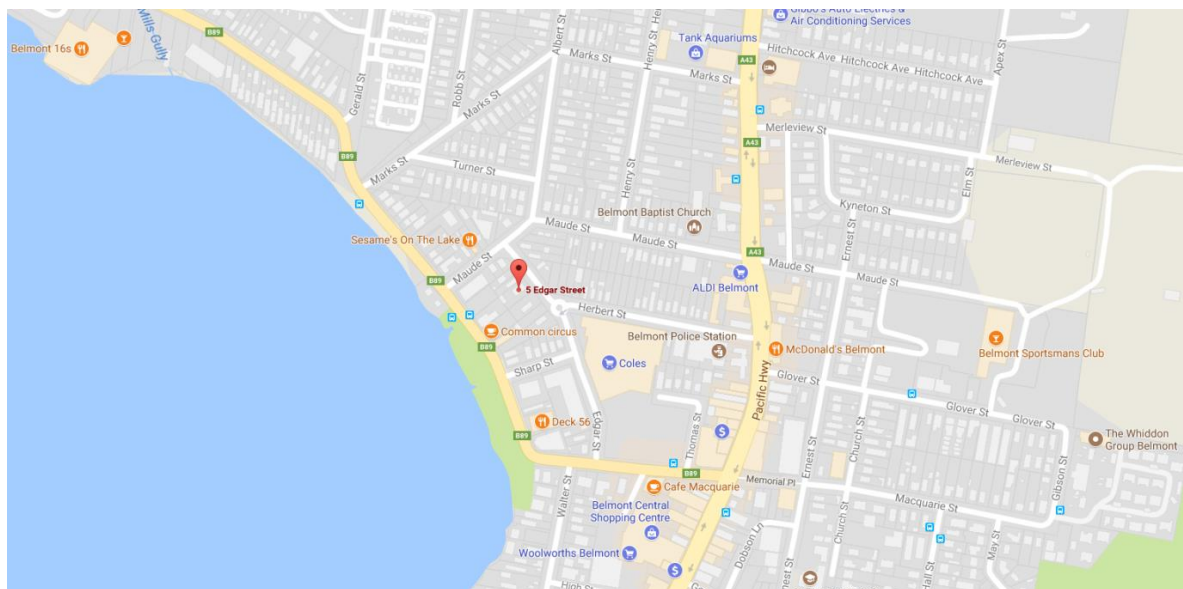


Figure 3: Belmont Town Centre

The development site is an amalgamation of 14 lots. Figure 4 below details the development lot as bounded in yellow and red, with the yellow bounded area to incorporate the proposed mixed use development whilst the red area is to be a lot excised via subdivision as part of the development.



Figure 4: Boundary of development site

The site is generally flat (an existing ground level of 0.93m to 1.78m AHD) and is subject to Council's Sea Level Rise and Adaptation Policy. It is also a nominated flood planning area under LMLEP 2014.

The surrounding area has undergone significant redevelopment in the last ten years with four large residential / mixed-use developments being constructed. In addition, development of several areas of retail land holdings has also been undertaken resulting in a very attractive and more vibrant Belmont town centre.

Lake Macquarie is located to the west of the site across Brooks Parade. Belmont Foreshore in this area has been the subject of significant foreshore stabilisation and rehabilitation works over the last eight years, which has also assisted in promoting this area of Belmont as an attractive place to live and recreate.

The development site has an open stormwater channel traversing from Edgar Street to Brooks Parade. The Town Centre Area Plan identifies this channel as providing pedestrian and visual connectivity between the town centre and the foreshore. Mature Fig trees are located along part of the frontage of Edgar Street.

The site consists predominantly of older building stock incorporating single dwelling houses and small shops, which are to be demolished to facilitate the development. Adjoining the site at the northern corner of Brooks Parade and Sharp Street is a single lot (328m²) with a two storey dwelling house which is not included in the development plans as the proponent has not been able to secure the lot as part of the land holdings for this development.

Across Sharp Street to the south of the development site (on the corner of Sharp Street and Brooks Parade) is a landmark building, 'Belmont Towers', an eight storey residential flat building constructed in the 1960's. Belmont Towers has a height of about RL29m measured to the top of the lift overrun. The height of Belmont Towers excluding the lift overrun is approx. RL 25m. Across Sharp Street to the southeast (corner of Edgar and Sharp) is the 6 storey mixed use 'Belmont Central Apartments' (2009). Further south along Brooks Parade are two mixed use developments, the 'Deck Apartments' being 6 storeys (2008) and the

'Wharf Apartments' being 6 storeys with mezzanine (2015).

Table 1 below provides details of relative heights and storeys of existing development in proximity to the site.

Location	No. of Storeys	Building Height (m)	Building height Max RL (m)
46 Brooks Parade (Belmont Towers)	8	23	24.66 – Main parapet 27.05 – splayed setback parapet
13-17 Edgar Street (Belmont Central)	6	19.8	20.98
58 Brooks Parade (Wharf Apartments)	6 plus mezzanine	22.76	23.78
54-56 Brooks Parade (Deck Apartments)	6	20.28	21.3
24-26 Brooks Parade (Santorini Apartments)	5	16.05	17.39

Table 1: Relative Heights and Storeys of development in proximity

North of the site is Hunter Water Corporation (HWC) owned land, which has a pump station. Further to the north of the HWC on the corner of Brooks Parade and Maude Street is a five storey mixed use development constructed in 2008 known as 'Santorini'. Completing the block are four lots to the north-east (not including the residue of 5 Edgar Street which is not included as part of the mixed use development) each containing a single storey detached dwelling.

To the south-east of the site across Edgar Street is Belmont Citi Centre, a shopping centre including a Coles Supermarket which has its loading dock area opposite this proposal. To the north-east are single storey detached dwelling houses of older housing stock likely to be redeveloped due to the B2 zoning.

In addition to the westerly Lake aspect, upper levels of the development capture ocean views to the east and southeast across the Belmont Town Centre. The site also has views of residential precincts of Belmont and Belmont North to the north towards a vegetated hillside and ridgeline.

Located in close proximity to the development site are shopping centres, schools, medical facilities, banks, a post office, sporting facilities, library and major public bus routes.

Background

The development site was assembled by a consortium over the past decade to facilitate a significant development. A number of approaches have been made to Council regarding design options/outcomes for the site, though no development application has previously been lodged. These approaches involved Prelodgement meetings with Council Staff and the SEPP65 Design Review Panel (DRP).

The previous discussions have related to a multi storey development for either a Mixed Use Development or a Seniors Living Development. A consistent aspect through the various proposals has been built forms that exceed the height controls under the applicable Development Control Plans at the time, and now more recently LMLEP 2014.

In a number of meetings with the proponents in 2013 and 2014 both Council and the DRP advised the proposed variation to the controls in terms of height had not been adequately justified through a strategic and urban design analysis for the site and surrounding context. At a later meeting an Urban Design Analysis (UDA) was provided, however the DRP advised it was not logical and comprehensive and did not provide a justification that adopts recognised methodology to support any significant variation to Council's general policy

frame work.

At a meeting held with the proponent on 25 September 2014 Council reiterated an UDA is required justifying the significant departure from Council controls. Council advised it did not support the development as presented on the basis of the UDA provided to date. Council recommended the proponent engage an experienced urban designer with a team of related disciplines to inform the project and UDA.

Following the September 2014 meeting, Council received no further contact from the proponent and was unaware of the preparatory work leading towards lodgement of this application.

Assessment Report

Assessment Report Contents

1. Integrated Referrals
2. Building Height
3. Isolated Lot
4. SEPP65 Design Review Panel
5. Additional Design Issues
6. Section 79C: Potential Matters for Consideration
7. Conclusion
8. Recommendation

1. INTEGRATED REFERRALS

The proposed development is defined as Integrated Development under Section 91 of the Environmental Planning and Assessment Act 1979 in relation to the Roads Act 1993 and the Water Management Act 2000. The matter was referred to the Roads & Maritime Service (RMS) and NSW Water seeking their respective General Terms of Approval (GTAs).

1.1 Roads Act 1993

The application and related Traffic Impact Assessment were referred to the RMS. On 13 March 2017 Council received advice that a revised Traffic Impact Assessment was required (refer to Appendix D for a copy of the correspondence).

A subsequent Traffic Impact Assessment was received by Council and referred to the RMS on 1 September 2017. On The 27 September 2017 the RMS requested Council to provide the SIDRA files for the development. The applicant submitted the SIDRA files to Council on the 28 September 2017, which were forwarded to the RMS that same day.

Council received advice from the RMS on 25 October 2017 as follows:

Our Road Network Analyst has reviewed the additional traffic report information (in conjunction with the Sidra files) and has raised the below issues. RMS request either updated information or justification regarding:

- 1. All models need to be reviewed for their lane lengths in Geometry. In all three intersections all approaches have been coded with lane length of 500m which is not the case.*
- 2. In all models Peak flow period adopted for pedestrian and vehicle volumes is 60 min. SIDRA default is 30min.*
- 3. Network these three intersections together to see how the Brooks Road Corridor performs with the proposed development?*

Council has not sought the information from the applicant at this stage based on this report to the Hunter & Central Coast JRPP.

1.2 Water Management Act 2000

The application was referred to NSW Water on 13 January 2017. To date Council has not received a response despite following up with direct e-mail requests to an officer of NSW Water on 28 March 2017 and 24 May 2017.

2. BUILDING HEIGHT

Under Clause 4.3 of LMLEP 2014 and the Height of Building Maps the site has a maximum height of 22m. An excerpt of the map is shown in Figure 5 below.



Figure 5: Height of Building excerpt from the LMLEP 2014 Maps

The proposed development has three of the four towers complying with the maximum height limit. The fourth tower, located on the south-west corner has a proposed height of 26.3m (28.1m to top of lift overrun).

As a consequence of the proposed development exceeding the maximum height of building permitted for the site a Clause 4.6 submission has been lodged (refer to Appendix B for a copy of the submission). The conclusion of the Clause 4.6 submission states:

The proposal does not strictly comply with the maximum building height control as prescribed by Clause 4.3 of the Lake Macquarie Local Environmental Plan 2014. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Lake Macquarie LEP 2014 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance, and that the use of Clause 4.6 of the Lake Macquarie LEP 2014 to vary this development control is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the maximum building height is not necessary and that a better planning outcome is achieved for this development by allowing flexibility in the application.

Council's SEPP 65 Design Review Panel considered the design and provided the comment with respect to the proposal exceeding the maximum height, an excerpt of which is provided below:

Built Form & Scale

A development that responds to the context of the site and its constraints:

- 1) Should provide a minimum of 3 metre landscape setback to the drainage easement.*
- 2) Would be setback in accordance with SEPP65 separation distances to the isolated site on the corner of Brooks Parade and Sharp Street.*
- 3) Would provide a better interface to the isolated site on the southern boundary by relocating or removing the vehicular access point. The area abutting the corner site should form of a landscape setback.*
- 4) Comply with the height controls.*
- 5) Garbage facilities would be located wholly within the site and preferably in the basement. Reversing of loading vehicles across a footpath in a new development is problematic.*
- 6) Podium level parking would be avoided.*

While the panel is of the view that while the current proposal demonstrates better built form relationships than previous schemes, it fails to address a number of previously identified shortcomings and does not provide sufficient justification to depart from key controls.

On a site of this size with three street frontages, the panel would anticipate the design approach would provide for a variety of forms and to provide each building with its own architectural character. The use of continuous balconies is discouraged as this both provides a bulkier form, reduces privacy within apartments, and tends to provide a monotonous façade expression.

If the recommended setbacks are achieved, this would give rise to some more slender buildings which would present as a better built form and would assist in providing different architectural character.

Density

In the absence of an FSR control, the density will be determined by the extent of development achievable within the relevant site constraints and controls.

Where setback controls and height controls or requirements are breached, this then results in additional floor area that would not have been anticipated by the controls.

Aesthetics

The overall expression of architectural and landscape form does not provide a development that is fitting for this important site as outlined above under Built Form and Landscaping.

The taller tower in the south west corner of the site does not mark the street corner because of the remaining isolated site, and no exceedance of the height control is warranted.

Recommendation:

There remain a number of shortcomings in the subject application which have previously been identified in reviews of earlier proposals for the site considered by the Panel. These issues, as identified under the headings above, are significant and go to the inherent planning and design approach

for the site. The identified non-compliances and design issues are therefore not readily addressed by simple modifications to the design.

The Panel is therefore unable to support the proposal, nor suggest readily implemented amendments to the design, or Conditions of Consent that might address the concerns identified.

Further analysis of the proposed height exceedance is as follows:

(i) Solar Access

The solar access diagrams (9am, 12pm and 3pm as at 21 June) provided with the application identify:

44 Brooks Parade	Totally overshadowed at 9am and 12pm. The 3pm shadows detail the majority of the adjoining lot as being impacted by shadows except for the south-western corner of the site.
Belmont Towers	Is largely unaffected by shadows cast by the development however impacts at 1pm and 2pm are unclear.
Belmont Apartments	Residential units should maintain compliant solar access in the morning period, being unaffected by the proposed development. Impacts occur in the afternoon period though the extent of which is unclear.

Note, solar access details for a compliant development have not been provided so it is unclear as to the extent of the impact attributable to the height exceedance.

(ii) Apartment Design Guide (ADG) Building Separation

The ADG requires a building separation distance of 6-12m for up to 4 storeys, 9-18m for up to 8 storeys, and 12-24m for up to 9 storeys and above. Note, the minimum separation distance is to be contained on the development site.

The proposed development provides a basement that has a varying level of above and below 1.2 metres above natural ground, with a further 8 storeys above. The building separation distances between the development and 44 Brooks Parade are:

Basement:	zero setback from the northern boundary of 44 Brooks Parade and 1.5 metres from its eastern boundary.
Ground:	3m setback from the northern boundary of 44 Brooks Parade and 1.5 metres from its eastern boundary.
1/2/3:	3m setback from the northern boundary of 44 Brooks Parade to the wall and 1.125m from the balcony.
4/5/6/7:	5.5m setback from the boundary of 44 Brooks Parade to the wall and 5m from the balcony.
8:	9.4m setback from the boundary of 44 Brooks Parade, Belmont.

Using the minimum distance the development is to be setback from the property boundary, the proposal is not compliant with the ADG for

all levels (noting the ADG states 'No building separation is necessary where building types incorporate blank party walls. Typically this occurs along a main street or at podium levels within centres').

Note, the existing building located at 44 Brooks Parade does not comply with the required setbacks for the ground and first floor.

(iii) Privacy & Amenity

The proposed development includes windows for commercial and residential floor space oriented to the south (towards 44 Brooks Parade) that is located within the building setbacks as detailed above. These windows on the southern façade of block A extend up through to and including the seventh floor.

Likewise the dwelling house located at 44 Brooks Parade contains windows oriented to the north and east (towards the development site).

The reduced setbacks and design of the proposed development is expected to impact on the amenity and privacy of its residents and residents at 44 Brooks Parade, Belmont.

(iv) Urban Design Analysis

Prior to lodgement of the development application Council and the DRP considered designs for the site that included the proposed height exceedance. As advised above, both Council and the DRP advised the proposed variation to the controls in terms of height needs to be examined through an UDA.

A Strategic Planning and Urban Design Analysis was lodged with the application. The UDA was prepared by the applicant, Monteath Powys and states in conclusion:

The strategic planning and urban design analysis has demonstrated that the preferred option represents an appropriate and efficient use of a significant site in the Belmont town centre, and provide high quality development in a prominent location on Lake Macquarie's foreshore.

It is identified that the site can accommodate mixed use development within the strategic planning framework prepared for the site. Consideration of the urban design, environment, and supply and demand factors for residential dwellings in Belmont indicates that the potential development is consistent with the desired strategic outcomes for Belmont, Lake Macquarie and the Lower Hunter. This report also finds that potential development would be largely consistent with Town Centre Area Plan. A review by Council accepts that variations to other controls, could yield an acceptable outcome, based on merit provided any adverse effects are adequately addressed.

Whilst the DRP made no specific reference to the UDA in its assessment of this application, Council notes DCP2014 identifies the site as a Concept Plan site where an Urban Design Analysis may be undertaken to support variations to the Area Plan provisions and that may assist with any Clause 4.6 submission. In this regard it is unclear if additional height is justifiable for Building A as the UDA does not address:

- the future built mass on the isolated lot at 44 Brooks Parade;

- the relative proportions of proposed Buildings A, B, C & D;
- the relative parapet and lift overrun heights for Belmont Towers and the proposal;

It is considered a more rigorous presentation of the proposed massing scheme be provided, including:

- *44 Brooks future development as a separate building mass,*
- *Montages when viewed from boundary street in each direction at say 1.5m above ground*
- *Montage when viewed from lake at say 1.5m above water level*

The applicant has provided indicative drawings of development options for the adjoining lot at 44 Brooks Parade, inclusive of:

- how the development would respond to acquisition of the lot;
- should the lot not be acquired then design responses for both the development site and the adjoining lot. The design response for the development site is as discussed in this report.

The development options for the adjoining lot are attached as Appendix C. These designs have not been tested and are only an indicative urban form however issues are apparent with the interface between the built forms along the northern boundary of 44 Brooks Parade, how the adjunct form sits within the streetscape next to Block A of the development site, accessibility, parking and manoeuvring, and non-compliance with the setback requirements of the DCP 2014 (Part 10.2 - Belmont) and the ADG. Refer to Figures 6A & B below for the indicative relationship between the two forms.



Figure 6A: Indicative commercial floor plan for 44 Brooks Parade



Figure 6B: Indicative residential unit floor plan for 44 Brooks Parade

In summarising the above, the application is not supported in its current form based on the concerns raised by the DRP and the impacts of the height exceedance not having been fully analysed.

Should the proponent seek to proceed with the height exceedance it is recommended a revised UDA be required. The revised UDA is to be provided by a company independent to the parties presently involved (or as appointed by Council under applicant funding).

3. ISOLATED LOT

The development site consists of 14 lots as bounded in yellow in Figure 7. Adjoining the development site is 44 Brooks Parade as bounded in red in Figure 7.



Figure 7: Boundaries of the development Site and the Isolated Lot

The applicant advised of attempts to acquire the lot or reach an option for its inclusion in a development over a period of time. A previous option (2006-2008) lapsed with no further agreements reached with the adjoining owner.

Therefore the application is to be considered in the context of an Isolated Lot. Council's DCP 2014 (Part 4 Development in Business Zones, Section 2.20 *Lot Amalgamation*) defines an isolated lot as:

an allotment that is bounded on all sides (excluding road frontage) by existing (or approved) medium to high-density residential or commercial development that would preclude the development of the allotment(s) beyond a dwelling house or dual occupancy dwelling or a two storey commercial or mixed use building.

The objectives of Section 2.20 are:

- a. *To avoid isolated lots with limited development potential.*

Comment: The isolated lot at 44 Brooks Parade has a single two storey brick and concrete tile dwelling house and a detached shed/studio with vehicular access off Sharp Street as shown in Figure 8 below.



Figure 8: Existing improvements located at 44 Brooks Parade, Belmont

The lot has a rectangular configuration and is generally oriented east-west, having an area of 328.8m² and site dimensions of 29.225m for the northern boundary, 12.65m for the eastern boundary, 29.045m for the southern boundary (Sharp Street) and 10.06m for the western boundary (Brooks Parade).

The site is similarly zoned B4 Mixed use with a height of building limit of 22m, though with no minimum lot size or FSR. The setback controls under the Block plan in DCP 2014 (Part 10.2 – Belmont) as shown on Figure 9 below.

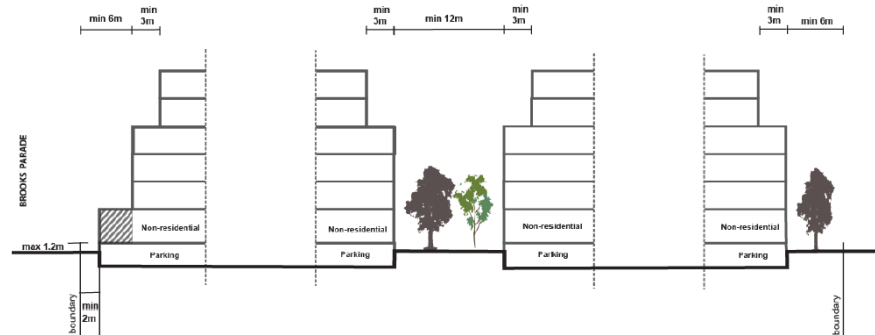


Figure 9: Cross section of built form for the Block plan in the Belmont Town Centre

From the front property boundaries a setback of 2m applies to the basement car park/podium and a maximum 50% of the non-residential level off Brooks Parade, 6m to the car park/podium and non-residential level off Sharp and Edgar Streets and levels 2-4 above (residential), and 9m to levels 5-6 (residential). Setbacks from the common boundary with other lots as per the above diagram must meet the ADG requirements, ie. 6m setback for non-residential and residential levels up to the fourth level, and 9m setback for levels five and six.

In considering the above setbacks, it must be noted 44 Brooks Parade has a varying east-west width of 10.06 to 12.65m. Therefore any development outcome on the lot would not be compliant with the required setbacks as indicated below in Figure 10.

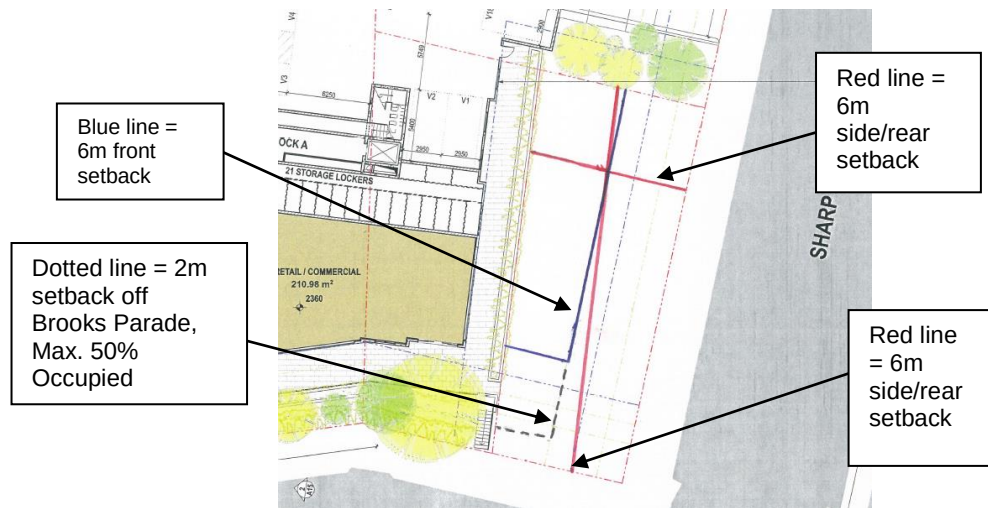


Figure 10: Setbacks applying to 44 Brooks Parade

- b. To support efficient development and increase floor space yields on amalgamated sites.*

Comment: As the development presently stands, the inability for 44 Brooks Parade to be amalgamated results in an inefficient development. The applicant has presented an alternative design whereby 44 Brooks Parade is amalgamated which demonstrates (excluding the height exceedance) improved density outcomes (refer to Appendix B).

Additionally, as referenced above under objective a. as a standalone site 44 Brooks Parade would require variations to planning controls in order to permit a built outcome and economic use of the land (other than the existing). This built outcome generates a poor urban design outcome and impacts on the streetscape.

- c. To accommodate the desired built form of the town centre.*

Comment: The block 'C' controls in DCP 2014 (Part 10.2 - Belmont) identify a built form at the corner of Brooks Parade and Sharp Street that necessitates the amalgamation of the development site and 44 Brooks Parade. The boundaries of the Block C control plan are shown in Figure 11 below.

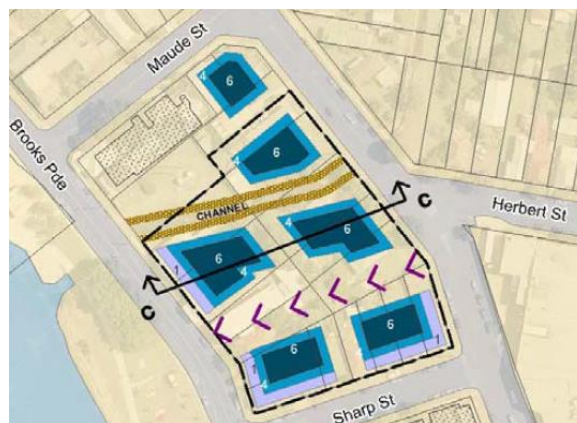


Figure 11: Block C control plan – Belmont Town Centre Area Plan

The inclusion of this corner lot in the proposal is highly desirable and permits the successful resolution of street character, solar access and pedestrian movements and interactions between the public footpath

and the podium level commercial areas.

The lack of amalgamation is not in the public interest as it results in a poorer streetscape and urban design outcome, whereby both the development site and 44 Brooks Parade have diminished/compromised density outcomes and built forms due to accommodating the existence of the other building and require variations to planning controls.

d. *To minimise the number of driveway crossings from the street or lane.*

Comment: Amalgamation of 44 Brooks Parade would reduce the number of driveway crossings in Sharp Street and assist in improved streetscape outcomes including public safety.

Controls

1. *Site amalgamation should not result in an isolated lot that is unviable for redevelopment to the scale and intensity desired for the locality.*

Comment: As identified above under the objectives for the isolated lot controls, development of the amalgamated lots as proposed would result in 44 Brooks Parade being unviable for redevelopment to the scale and intensity as identified in the Belmont Town Centre Area Plan. Any development of the lot is restricted both by the lot width and area once the required setbacks are applied as shown in Figure 10.

The existing residence located at 44 Brooks Parade does not comply with the setbacks under the Belmont Town Centre Area nor the ADG. This residence is a two storey single dwelling house which is considered an underutilisation of the B4 zoned land.

2. *Development that would result in the creation of an isolated lot must be supported by documentation that demonstrates in writing that an offer to purchase has been made to the owner(s) of the isolated lot, and the owner has refused to negotiate. A Licensed Valuer must base the offer on at least one recent independent valuation.*

Comment: A valuation of 44 Brooks Parade was obtained by the developer on 1 August 2016 (refer to Appendix E). This valuation was carried out by S. P. Owens, a registered Valuer (no. 1107) and determined the value to be \$950,000.

In correspondence dated 25 January 2017 the valuation and an offer to purchase 44 Brooks Parade for \$1,250,000 was submitted to the owner of 44 Brooks Parade, Belmont. The owner responded on 1 February 2017 rejecting the offer (refer to Appendix F).

The applicant submitted further details regarding ongoing negotiations however no outcome in the form of an agreement has been achieved. The developer has stated a willingness to continue negotiations with the owners of 44 Brooks Parade with the intent to acquire the isolated lot, likewise the owners of 44 have expressed a willingness to continue to negotiate and to sell the lot should a suitable price be determined (they have expressed no desire for an option).

3. *Development that would result in the creation of an isolated lot must provide for a future extension incorporating the isolated lot or demonstrate that the isolated lot can be developed independently.*

Comment: At time of lodgement building plans were presented that incorporated the isolated lot at 44 Brooks Parade, Belmont. To construct the

development as per the plans required acquisition of the lot at the time of construction, as the additional works being the result of the acquired lot could not be retro-fitted to the development due to the integrated design.

Additional information submitted (Appendix C) presented two designs for the isolated lot at 44 Brooks Parade should the lot remain isolated. Assessment comments have been provided above regarding the suitability of the designs in terms of the Belmont Town Centre Area Plan under DCP 2014.

The application has demonstrated benefits in terms of density, urban design and compliance with Council's policies/controls in comparison to the likely outcome should the lot remain isolated.

4. *Development that would result in the creation of an isolated lot must comply with the Planning Principles established by the Land and Environment Court in Melissa Grech v Auburn Council [2004] NSWLEC 40, Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189 and Karavellas v Sutherland Shire Council [2004] NSWLEC 251.*

The Planning Principle as outlined under Karavellas v Sutherland Shire Council [2004] NSWLEC 251 is:

- *Firstly, is amalgamation of the sites feasible?*
- *Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?*

The principles to be applied in determining the answer to the first question are set out by Brown C in Melissa Grech v Auburn Council [2004] NSWLEC 40. The Commissioner said:

- *Firstly, is amalgamation of the sites feasible?*

Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.

Comment: An assessment of the development site and the isolated lot confirmed amalgamation is feasible in the context of meeting the desired built form of the Belmont Town Centre Area Plan (DCP 2014).

The isolated lot does not have a minimum lot size for which it can be assessed against in terms of the B4 zone under the LMLEP2004, however the assessment above (Figure 10) has highlighted compliant development is not achievable to the desired density and controls under the Belmont Town Centre Area Plan (DCP 2014).

Negotiations have been ongoing between the developer and the property owner since 2006, however the formal submission of a valuation and an offer to purchase occurred in early 2017 around the time of lodgement of the application.

Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other

reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.

Comment: The Valuation dated 1 August 2016 was provided to the owners of 44 Brooks Parade on 25 January 2017, a time difference of almost six months.

Since that time no further valuations have been provided to Council however it is understood the developer and the owners of 44 Brooks Parade later agreed the owners would obtain a valuation (at the developers cost) for the purpose of further negotiations. A valuation was obtained and submitted to the developer, with a subsequent offer made to the owners.

In this regard, the developer has stated an offer in line with the valuation and additional monies to cover relocation costs/reasonable expenses was made to the owners however this offer was rejected.

Alternatively the owners advised of having provided the valuation to the developer but have not stated any offer was made, rather that the developer was seeking to obtain a further independent valuation.

In considering the valuations presented as evidence, Council can only rely on the valuation dated 1 August 2016. This valuation is not considered recent noting a media reports (SMH, 1/11/2017 'Significant turn of events': Sydney property prices suffer quarterly fall) stating "...home prices across regional NSW are outperforming Sydney, with values up 9.7 per cent over the past twelve months, led by the Newcastle and Lake Macquarie region".

Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979.

Comment: The developer has provided a chronology of negotiations having occurred since 2006. This chronology outlines negotiations and agreements or rejection of offers over an extended period of time. The developer and owners of 44 Brooks Parade have provided evidence of a willingness to engage with the other regarding the amalgamation. Therefore significant weight can be given in consideration of the application.

Additionally however assessing whether the offers are reasonable or unreasonable is difficult considering the 'recent' valuation as provided to the owners in January 2017, and submitted to Council in July 2017. Similarly details of the ongoing negotiations, including valuations have not been documented in accordance with the planning principle.

- *Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?*

In the decision Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189 the principles of Brown C were extended to deal with the second question:

The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as noncompliance with a minimum allotment size, will both sites be able to

achieve a development of appropriate urban form and with acceptable level of amenity.

To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.

The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments.

Comment: As stated previously, the B4 zone which incorporates the development site and isolated lot does not have a minimum lot size mandated by LMLEP2014. The planning controls to be considered in determining a compliant development are set out under Clause 4.3 of the LMLEP2014, in the Belmont Town Centre Area Plan in DCP 2014 and the ADG.

The above assessment of the proposed development and the indicative development of the isolated lot identify variations to the setback controls are necessary to allow an economic use of the isolated lot. The resulting developments with reduced/non-compliant setbacks impacts on the desired/preferred built form, density, site coverage and streetscape. This is not an appropriate urban form.

Having regard to amenity, the proposed development has significant impact on the isolated lot and the indicative built form in terms of building separation as demonstrated by the limited solar access afforded, privacy and amenity.

In answering the question should the development be amended to provide compliant or greater setbacks or developments on both sites be reduced to allow reasonable development to occur it is considered that any outcome other than amalgamation is neither orderly nor economic. This is evident in that should the isolated lot remain it compromises development on both lots and defeats/undermines the planning controls.

Note: Council may determine that sites with a frontage of less than 20 metres are not suited to achieving the maximum permissible height for that lot.

Comment: The site has two frontages, one less than 20m. Additionally the it has a varying width of 10 to 12.5m. Consequently, development would not be able to achieve the maximum height limit of 22m (particularly as any redevelopment would require variations to setback controls under the DCP 2014 and ADG as shown in Figure 10).

4. SEPP65 DESIGN REVIEW PANEL

The DRP considered the original proposal at its meeting of 8 February 2017. A subsequent meeting to review the amended information submitted on 29 August 2017 did not proceed as the isolated lot issues raised by the DRP had not been resolved or changed.

The DRP comments relative to the nine design principles are as provided in Table 2 below:

Context & Neighbourhood Character	The site is in an area undergoing change and is located on a highly visible site on the waterfront of eastern shores of Lake Macquarie. This is the fourth proposal that the panel has considered for this site and understands that it involves a boundary adjustment with property to the north east with frontage to Edgar Street. The proposed development also continues to leave an isolated site on the corner of Brooks Parade and Sharp Street. It is understood that a number of offers have been made to purchase this site. The location of the drainage easement on the northern boundary creates an amenity constraint. The inability to purchase the corner block poses another constraint to a desired outcome for site development. Further constraint is the requirement to locate habitable spaces in the order of 1.2 to 1.8 metres above street level, to avoid potential inundation. These have been known constraints for some time and a development needs to respond to them positively. Council has recently adopted specific height controls within the LEP for the site and this policy framework has been adopted in the full knowledge of the nature and form of surrounding development.
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Built Form & Scale	A development that responds to the context of the site and its constraints would: 1) Should provide a minimum of 3 metre landscape setback to the drainage easement. 2) Would be setback in accordance with SEPP65 separation distances to the isolated site on the corner of Brooks Parade and Sharp Street. 3) Would provide a better interface to the isolated site on the southern boundary by relocating or removing the vehicular access point. The area abutting the corner site should form of a landscape setback. 4) Comply with the height controls. 5) Garbage facilities would be located wholly within the site and preferably in the basement. Reversing of loading vehicles across a footpath in a new development is problematic. 6) Podium level parking would be avoided. While the panel is of the view that while the current proposal demonstrates better built form relationships than previous schemes, it fails to address a number of previously identified shortcomings and does not provide sufficient justification to depart from key controls. On a site of this size with three street frontages, the panel would anticipate the design approach would provide for a variety of forms and to provide each building with its own architectural character. The use of continuous balconies is discouraged as this both provides a bulkier form, reduces privacy within apartments, and tends to provide a monotonous façade expression. If the recommended setbacks are achieved, this would give rise to some more slender buildings which would present as a better built form and would assist in providing different architectural character.
Density	In the absence of an FSR control, the density will be determined by the extent of development achievable within the relevant site constraints and controls. Where setback controls and height controls or requirements are breached, this then results in additional floor area that would not have been anticipated by the controls.

Sustainability	The proposal includes a substantial area of glazed balustrades and full height windows in both residential and commercial spaces that are afforded minimal if any sun-screening. While some limited exposure of habitable spaces to the west may be justified on the basis of views, substantially more functional sun-shading should be provided to reduce heat loads. No specific inclusions beyond the minimum mandatory requirements of BASIX were nominated.
Landscape	The communal open space proposal appears to include excessive areas of hard paving, at the expense of plantings. The panel recommends the scheme be revisited to provide for a softer, more domestic outcome. It appears that the deep soil requirement is not achieved. The diagram provided to indicate deep soil includes significant areas which would not qualify under the “deep soil” definition, due to insufficient width. There is a need for substantial areas of consolidated deep soil to allow for successful planting of large scale trees in strategic locations across the site. The panel recommends that the verges to the concrete drainage channel be considered as a landscape feature and planted and treated accordingly. The stairs from Brooks Parade should be widened to create a more generous address from the street. They should incorporate two or more short flights with generous landings, integrated with the lift design. The level difference between Brooks Parade and the podium should have an intermediate landscaped terrace to create a better relationship to the street.
Amenity	Internal rooms and deeply recessed alcoves which appear to be intended for use as study spaces do not have access to light and ventilation and are considered to be non-compliant with the ADG. Some of these spaces have capacity to be walled off post-completion and used as bedrooms – which would be very unpleasant spaces. On the northern side of the site, the location of the balconies and outdoor living spaces at a nil setback to the open drainage easement results in poor amenity to those units. All residential lobbies should be provided with access to natural light and ventilation as per the ADG recommendations. As presented, almost all common corridors and lobby spaces are fully enclosed.
Safety	The location of the unloading/loading facility comprises pedestrian safety with vehicles reversing over public footway. Mailboxes located in an unsecured location at the street will potentially provide opportunities for mail theft, their location should be reconsidered to a secured area.

Housing Diversity & Social Interaction	No internal area is provided for communal use to residents. It is suggested that in accordance with the ADG, space with an external aspect and that is reasonably accessible, should be provided for communal use. One option for this would be to convert the retail/commercial space on Sharp Street for this purpose.
Aesthetics	The overall expression of architectural and landscape form does not provide a development that is fitting for this important site as outlined above under Built Form and Landscaping. The taller tower in the south west corner of the site does not mark the street corner because of the remaining isolated site, and no exceedance of the height control is warranted.
<u>Recommendation:</u> There remain a number of shortcomings in the subject application which have previously been identified in reviews of earlier proposals for the site considered by the Panel. These issues, as identified under the headings above, are significant and go to the inherent planning and design approach for the site. The identified non-compliances and design issues are therefore not readily addressed by simple modifications to the design. The Panel is therefore unable to support the proposal, nor suggest readily implemented amendments to the design, or Conditions of Consent that might address the concerns identified. <u>Note</u> To address the Panel's comments, the applicant is advised to (<i>recommendation of panel</i>) The applicant has not demonstrated how the isolated site can either be integrated with or developed by itself. This exercise needs to have regard to how the sites would be developed individually or together in accordance with the controls as required the planning principles for isolated sites. The documentation lodged with the application is deficient in respect to the following: - Sun eye diagrams to accompany the solar access statistics (DA51-A) to demonstrate compliance sun penetration requirements under the ADG. - A series of cross site sections and detailed sections to indicate the relationship between the elements of the development, public domain and adjoining properties. These sections should show level relationships as well as indications of proposed character. - Contextual photo montages should be provided that illustrate the proposals (in colour) within the existing context. - Diagrams that demonstrate compliance with cross flow ventilation requirements of the ADG. - Details of storage provided within apartments and at basement level	

Table 2: DRP Comments

5. ADDITIONAL DESIGN ISSUES

The following comments have been selected for review as part of this report:

1) Building Design

- a. Internally the proposal complies with ADG minimum building separation requirements although the opening running east west is compromised by the skewed orientation of Block A. This is a consequence of the isolated lot at 44 Brooks Parade.
- b. The lift access from the street in place of ramps is unsafe and unlikely to operate in flooding events. The lifts are also undesirable from a social inclusiveness point of view. The lifts are to be replaced by a generous ramp access and interim terrace level which will also improve the streetscape presentation and urban design of the development.
- c. The basement car park appears to dictate the streetscape outcomes. The basement car park is to be redesigned such that the streetscape is the priority, with expanded deep soil planting to improve the streetscape.
- d. The podium level parking is not supported and should be removed (relocated to the basement) to enable an improved outcome in the form of a pedestrian access way, a possible drop off zone, or an additional opportunity for retail space that addresses Sharp Street.
- e. The function of the Multi-purpose room is not well defined as there is only access to it through the car park and it is unlikely to be well utilised. The space should be reconsidered in line with the above point.
- f. Clause 5.6 Architectural roof features of the LMLEP 2014 allows additional height beyond HOB limit for architectural roof features and to incorporate plant, which is desirable given the visual sensitivity of the site from the lake, foreshore and more elevated parts of the town centre. Roof forms can be used to incorporate lift overruns and plant within the roof volume whilst also providing roof overhang for solar protection.
- g. Development is to be setback from the drainage channel for stability, compliance with Council's Policy for Building Over or Adjacent to a Drainage Easement and accommodate landscape planting in order to improve the canal elevation that is highly visible from Brooks Parade.
- h. The substation in the front setback along Edgar Street is not supported. The design is to be revised with the substation incorporated into the building footprint.
- i. The location of booster infrastructure is to be identified.
- j. The loading dock and access to the podium car park off Sharp Street are on a secondary active frontage (DCP 2014 Area Plan). These activities conflict with the pedestrian corridor between the Coles Citi Centre area and the lake foreshore and are to be removed to improve the streetscape of Sharp Street and pedestrian safety. A suitable alternative service facility is to be provided.
- k. The podium level on Sharp and Brooks should support and maximise commercial pedestrian based trade. The entry points for pedestrians on these frontages are out of proportion to the scale of development and should be more legible and generous.
- l. Pedestrian access remains ambiguous as to the public or private spaces within the central thoroughfare. The design is to revise the pedestrian

forecourt areas of the towers to improve legibility as to ownership.

- m. Non-discriminatory access to the outdoor space is not provided on the 1st floor in Block A.
- n. Storage lockers for the adaptable units need to be located on the car park level as the locker areas for Blocks A & D are not accessible.

2) Scenic Values

The site is prominently located along Brooks Parade within Belmont Town Centre and being a large site and multi-storied will have visual impacts. A visual impact statement is contained within the Statement of Environmental Effects however no accompanying photomontages are provided.

Photomontages are to be provided that:

- i. accurately reflect the proposal within the lakeside context;
- ii. identify key visual catchment viewpoints including Lake Macquarie and the Pacific Highway.
- iii. accurately reflect the materials and colours proposed in the architectural design.

3) Streetscape Improvements

The site is within the Belmont Streetscape Master Plan precinct and therefore streetscape improvements are to be shown as per the Master Plan. Where possible existing street trees including those along Brooks Parade are to be retained where deemed suitable.

4) Scale and Massing of Planting

For such a large site with large-scale towers, it is necessary to have larger scale planting areas and larger tree canopies/ root volumes. It is required that deep soil areas be increased to Brooks Parade, Sharp Street and Edgar Street and to the canal and canopy tree planting with more mounding and larger canopy trees on podium.

5) Walkway

The proposed walkway adjoining the drainage channel on the northern side of the development appears to have the purpose of providing public access. Clarification of the legal status of public access over the walkway requires clarification.

6) Stormwater

The outlet pipe work from the stormwater tank adjacent to Sharp Street shall not discharge to kerb and gutter.

7) Drainage Easement

Block C encroaches Council's drainage easement. All encroachments of the easement are to be removed.

8) Acoustic

Although the acoustic report details the proposed development should meet the established noise level criteria for residential premises at 44 Brooks Parade and 5 Sharp Street, potential noise impacts from the loading dock require either its relocation/design or restriction to day-time operations only.

9) Car Parking

Quantum

The application proposes a higher level of car parking than permissible under the DCP. Under the applicable rate (A), the proposal should have a maximum of 100 residential spaces, 33 spaces for visitors and 20 for retail, thus a total of 153 parking spaces. The current proposal has 133 residential spaces, 33 visitor spaces and no listed retail spaces, equating to a total of 168 parking spaces being 13 more than the DCP permits.

Arguments need to be submitted for consideration as to why a variation should be supported in terms of exceeding the maximum number of parking spaces.

Additionally the required 20 car parking spaces for retail is to be provided.

Design

The podium level parking is not supported and should be removed (relocated to the basement) to enable an improved outcome in the form of a pedestrian access way, a possible drop off zone, or an additional opportunity for retail space that addresses Sharp Street.

10) Erosion & Sediment

The area of disturbance associated with the development is over 2500m². Lake Macquarie DCP requires a Soil and Water Management Plan (SWMP) for developments where the area of soil surface exposure is greater than 2500m².

The Amended SOEE (Appendix B) contains the statement on Page 74 regarding erosion and sediment control:

"All works associated with the erosion control will be carried out in accordance with relevant standards. All works associated with the sediment control will be carried out in accordance with relevant standards."

The amended application provided no other erosion and sediment control information.

Note:

1. The above comments are based on an assessment of the proposal against Council's LMLEP2014, DCP2014 and the ADG.
2. The list of issues raised above is not exhaustive.

6. Section 79C: Potential Matters for Consideration

A brief assessment is as follows:

79C(1)(a)(i) the provisions of any Environmental Planning Instrument (EPI) ***State Environmental Planning Policy 71 – Coastal Protection***

The development site is located within the Coastal Zone as shown in Figure 12:



Figure 12: Land mapped under SEPP 71 Coastal Policy

This application has been assessed having regard to the aims of the SEPP. It is not expected that the proposed development will have adverse impact on achieving the aims of the SEPP, noting the development is separated from the Lake by a foreshore park and Brooks Parade.

The application will provide residential accommodation in proximity to the Lake, with improved outcomes for public access to the foreshore. Subject to resolving the issues with the isolated lot and complying with Council's Flooding and Sea Level Rise planning controls, it is expected the proposed development will not be contrary to the provisions of SEPP 71.

State Environmental Planning Policy (Infrastructure) 2007

Ausgrid

Ausgrid provided a response (attached as Appendix D) under Clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007. Should any development consent be granted, it is appropriate to include the above matters as a condition of consent. However should the design change with respect to the isolated lot further consultation with Ausgrid is required.

State Environmental Planning Policy (State & Regional Development) 2011

The development qualifies as Regional Development, based on the proposal having a capital investment value of more than \$20 million (Clause 3 of Schedule 4A under Environmental Planning & Assessment Act, 1979). Consequently the Hunter & Central Coast JRPP exercises the consent functions of Lake Macquarie City Council.

Lake Macquarie Local Environmental Plan 2014

Part 1 Preliminary

Clause 1.9A Suspension of covenants, agreements and instruments

An Easement to Drain Water (Variable Width) applies to Lots 3, 10 & 11 Section B Deposited Plan no. 585. The Easement is registered in Deposited Plan no. 645060,

burdening the land owner and benefiting Lake Macquarie City Council (see Figure 13 below).

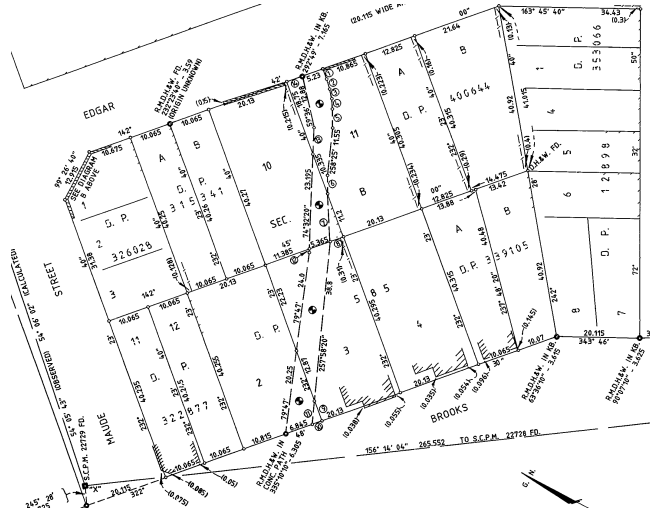


Figure 13: Easement to Drain Water Variable Width (DP 645060)

As stated above in Section 5 of this report, the development currently encroaches the easement with building overhangs and a pedestrian walkway.

Sub-clause (1) provides that any agreement, covenant or other similar instrument that restricts the carrying out of the development does not apply to the extent necessary to serve the purpose of enabling development. Sub-clause (2)(a) however states that sub-clause (1) does not apply to a covenant imposed by Council which is the case with regard to Deposited Plan 645060.

In this regard, Council's Assets Management – Drainage requires the overhangs to be removed from the easement however raised no objection to the proposed encroachment by pedestrian walkway.

Part 2 Permitted or prohibited development

Clause 2.3 Zone Objectives and Land Use Table

Zoning

The land is zoned B4 – Mixed Use as per Figure 14 below.

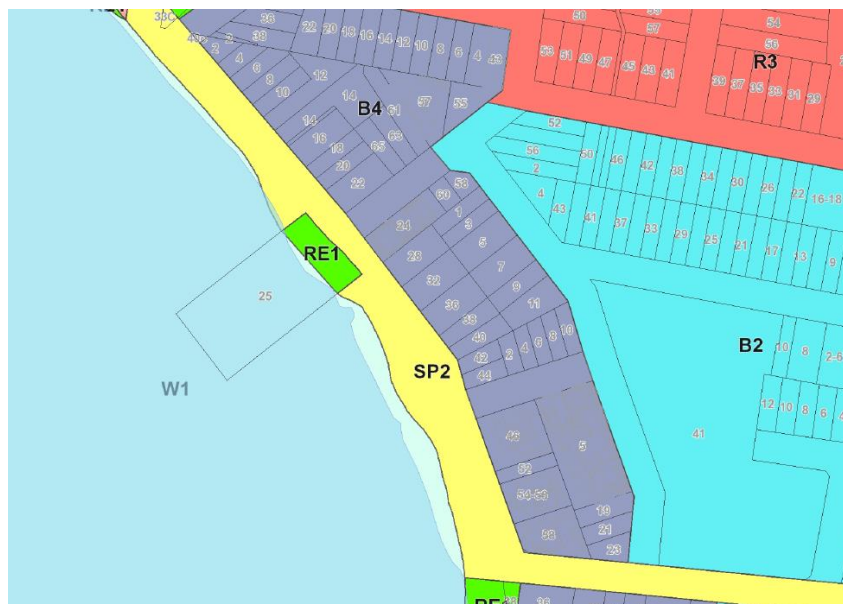


Figure 14: Land Zoning map under LMLEP 2014

Zone Objectives

The following zone objectives apply:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To enable development that complements and enhances the core retail function and trading performance of Zone B2 Local Centre and Zone B3 Commercial Core.

Permissibility

The development is for demolition of existing structures and erection of Commercial Premises and a Residential Flat Building. These landuses and related works are permissible within the B4 zone subject to development consent.

Part 4 Principal development standards

Clause 4.3 Height of Buildings

Refer to comment above under Section 2 Building Height of this report.

A Clause 4.6 variation has been submitted to support the proposal and is contained in Appendix B.

Clause 4.6 Exceptions to development standards

A clause 4.6 variation (refer to Appendix B) has been submitted for the development with regard to the contravention of the maximum height of building development standard referred to in Clause 4.3 of the LMLEP 2014.

As stated in Section 2 Building Height of this report, it is not possible to complete an assessment without resolution of the isolated lot.

Part 5 Miscellaneous provisions

Clause 5.5 Development within the coastal zone

As shown in Figure 15, the land is mapped as being within the coastal zone.

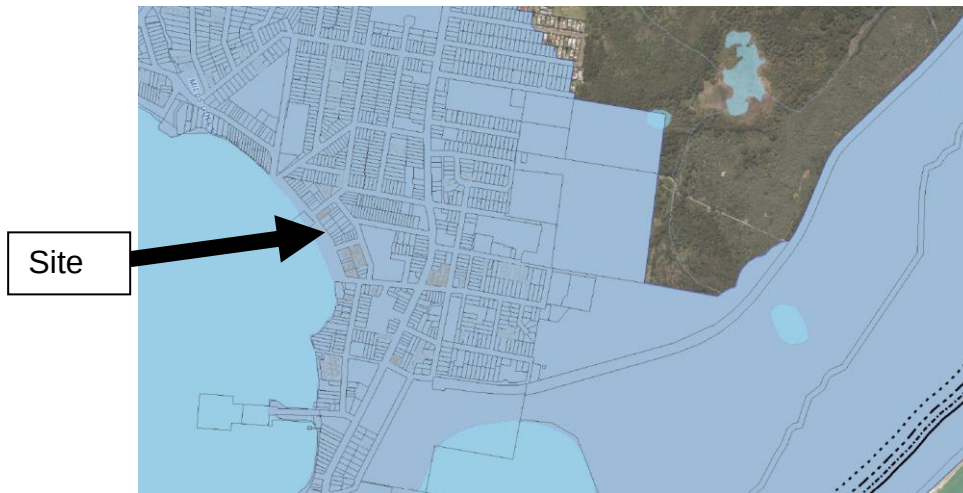


Figure 15: Coastal Zone map

The proposed development is a redevelopment of an existing urban area within the Belmont Town Centre. The land is subject to flooding and sea level rise, and fronts the Lake although is separated by a foreshore park and Brooks Parade. Refer to additional comment under SEPP71.

An assessment of the proposal in terms of the Coastal Zone cannot be undertaken until there is certainty of the design, ie. resolution of the isolated lot.

Clause 5.6 Architectural roof features

The development does not propose any architectural roof feature to address the lift overruns. Refer to Clause 4.3 above for additional comment.

Clause 5.10

The land is mapped as a sensitive aboriginal landscape area on the Sensitive Aboriginal Landscape Area Map as shown in Figure 16 below.



Figure 16: Sensitive Aboriginal Landscape under LMLEP 2014

The applicant provided a Due Diligence Report which was referred to local Aboriginal communities for 28 days as per sub-clause (8)(b).

Council's Heritage Officer advised *"The report does not identify any Aboriginal objects or areas of potential archaeological deposit within proximity to the proposed development, with the area found to fit the definition of disturbed land as defined by OEH."*

The report has been reviewed and deemed adequate for the purposes of assessing Aboriginal Heritage in relation to the proposed development. The application was referred to the Aboriginal Community Groups, with no comments specific to the proposed development being received at the close of the 28 day period."

Standard conditions were recommended with regard to Aboriginal relics and legislative requirements.

Part 7 Additional local provisions

Clause 7.1 Acid Sulfate soils

The site is mapped as being affected by Class 2 Acid Sulfate Soils. Additionally the development will be intercepting the water table in order to construct the proposed basement car park.

A complete assessment has not been undertaken based on the isolated lot being unresolved (whereby the design may change).

Clause 7.2 Earthworks

Earthworks are required to construct the development. A complete assessment has not been undertaken based on the isolated lot being unresolved (whereby the design may change).

Clause 7.3 Flood planning

The site is designated as a Flood Control Lot – High Hazard and is subject to Sea Level Rise. A complete assessment has not been undertaken based on the isolated lot being unresolved (whereby the design may change).

Clause 7.4 Coastal Risk planning

The site is mapped as being part of the coastal risk zone. A complete assessment has not been undertaken based on the isolated lot being unresolved (whereby the design may change).

Clause 7.7 Development on sensitive Aboriginal landscape areas

Refer to comment above under Clause 5.10(8) of the LMLEP 2014.

Clause 7.10 Residential development in certain business zones

The development site is zoned B4 Mixed Use. A complete assessment has not been undertaken based on the isolated lot being unresolved (whereby the design may change).

Clause 7.21 Essential Services

The site has available to it the required essential services and infrastructure to accommodate the development.

79C(1)(a)(ii) the provisions of any draft EPI

There are no draft environmental planning instruments relevant to this development.

79C(1)(a)(iii) the provisions of any Development Control Plan (DCP)

Development Control Plan 2014

The following sections of Development Control Plan 2014 (DCP 2014) are considered relevant to this proposal.

Part 4 - Development in Business Zones

A complete assessment has not been undertaken based on the isolated lot being unresolved (whereby the design may change).

Part 9.13 – Residential Flat Buildings

A complete assessment has not been undertaken based on the isolated lot being unresolved (whereby the design may change).

Part 10.2 – Belmont Town Centre

A complete assessment has not been undertaken based on the isolated lot being unresolved (whereby the design may change).

Note, the DCP 2014 identifies the site as a 'concept plan site'. Concept plan sites are identified where the appropriate development outcome of a larger site is not known.

At the suggestion of the SEPP 65 DRP, provisions were incorporated into the DCP 2014 to require proponents to undertake an urban design and context analysis as part of a staged DA to determine an appropriate development outcome for a 'concept plan site' in terms of height, setbacks, massing, public benefit, views and the like. The intention of concept plan is to afford the landowner/proponent with a reasonable degree of flexibility.

The application has not been lodged as a staged DA.

79C(1)(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

There is no planning agreement that has been entered into under section 93F, and no draft planning agreement that a developer has offered to enter into under section 93F of the Act that relates to this development.

79C(1)(a)(iv) any matters prescribed by the regulations

There are no matters prescribed by the regulations relative to this development modification.

79C(1)(b) the likely impacts of the development

The likely impacts have not been considered in detail considering the outstanding issues with the isolated lot.

79C(1)(c) the suitability of the site for development

Does the proposal fit the locality?

It has not been demonstrated the development is compatible with the locality based on the issues relating to the isolated lot.

Are the site attributes conducive to development?

It has not been demonstrated the development is compatible with the site attributes based on the issues relating to the isolated lot.

79C(1)(d) any submissions made in accordance with this Act or the Regulations?

Public submissions:

The application is advertised development, being nominated integrated development, and was advertised and notified to adjoining properties from 28 January 2017 to 27 February 2017.

The amended application was notified to the same properties, as originally notified,

from 4 September 2017 to 19 September 2017.

From the advertisement and notification of the application Council received 25 submissions from 19 Authors. A copy of the submissions is attached as Appendix G.

A summary of the issues identified are provided below:

- 1) Compliance with Planning Controls (LMLEP 2014 & DCP 2014)
- 2) Building height
- 3) Loss of views
- 4) Visual impacts
- 5) Loss of existing vegetation
- 6) Adequacy of car parking for Commercial/Retail Units
- 7) Vehicle access, loading dock and podium car park impact on the Sharp Street streetscape and amenity of neighbouring properties
- 8) Viability of the development (previously stated 150 units are required to make the project viable, with the current proposal proposing 130 units)
- 9) Access to basement car park, ie. queuing capacity should a security grill be installed
- 10) Acid Sulphate Soils
- 11) Affordable housing
- 12) Construction impacts & public safety
- 13) Impacts associated with increased traffic movement in the local streets
- 14) Relative to 44 Brooks Parade, amenity impacts, creation of an isolated lot, and Land & Environment Court's Isolation of Adjoining Sites Planning Principle

One of the submissions stated support for the proposed development.

Submissions from public authorities:

A copy of submissions received is attached as Appendix D.

Roads and Maritime

Refer to comment under Section 1.1 *Roads Act 1993* of this report.

Ausgrid

Ausgrid raised no objection to the development in their response dated 10 February 2017 subject to the proponent consulting further with regard to the development needs in relation to existing infrastructure and network capacity.

Hunter Water

Hunter Water advised in correspondence dated 8 March 2017 its primary concern with the development is the potential odour issues due to the proximity to the wastewater pump station.

Hunter Water provided a copy of correspondence it issued direct to the applicant stipulating its requirements with regard to Hunter Water infrastructure in which under condition 3 it states an odour control report is required and that may include possible mitigation to avoid future issues.

NSW Police

No response has been received to Council's referral dated 16 January 2017.

NSW Water

Refer to comment under Section 1.2 *Water Management Act 2000* of this report.

79C(1)(e) the public interest

Until the issue of the isolated lot has not been resolved, the proposed development in its current form is not in the public interest for the reasons discussed above.

7. Conclusion

An assessment has been undertaken of the development application being for the demolition of existing structures and the erection of a Commercial Premises and Residential Flat Building over an amalgamated development site consisting of 14 lots.

The assessment identified a number of non-compliant or unresolved design issues. These issues are considered significant and are fundamental to achieving a coherent and contextual design for the site.

In particular the development will have solar access, amenity and building separation impacts on the adjoining lot at 44 Brooks Parade. Additionally this lot is considered to be an isolated, whereby the lot has insufficient area and dimensions to enable a compliant standalone development let alone achieve/meet the desired outcome under the LMLEP 2014 and DCP 2014. Should the lot be amalgamated with the development site then a suitable outcome can be achieved consistent with planning controls, however without amalgamation both the development site and the adjoining lot produce a poorer urban design outcome.

In this regard, the developer has sought to reach an agreement with the adjoining owner to amalgamate the site with the development. The developer has provided details of negotiations with the owner of 44 Brooks Parade, including a valuation and monetary offer. Council deems the process followed by the applicant with respect to the Planning Principle for isolated lots is not compliant, particularly in regard to the term 'recent valuation'.

The adjoining owner has responded to the developer that they are not satisfied with the monetary offer made. Separately they have advised the developer and Council that they are not objectionable to any approaches to acquire the lot.

Council views both parties are agreeable to the amalgamation of 44 Brooks Parade with the development site, the impediment however an agreed financial quantum has not been reached.

Without resolution of the isolated lot issue Council is unable to support the proposed development. Therefore it is requested the Hunter & Central Coast JRPP provide clear direction to the developer (and adjoining owner) in relation to the isolated lot.

8. Recommendation

In considering the amended development as presented, an assessment has determined it cannot be supported. The assessment identified a number of fundamental design issues which have not been resolved and consequently the application is not in the public interest.

The fundamental issues as identified in the assessment report are in relation to compliance with the building height and other planning controls, isolation of an adjoining lot, urban design outcomes at the streetscape, and addressing the recommendations of the Design Review Panel.

Accordingly, Lake Macquarie City Council as the assessment authority recommends Development Application No. 11/2017 be refused for the following reasons:

- (i) non-compliance with the SEPP 65 Design Review Panel recommendations in relation to the Apartment Design Guide (S79C(1)(a)(i));
- (ii) the building height exceeds the maximum height for the site as provided by the Height of Buildings Map under Clause 4.3 of LMLEP 2014 and the submission under Clause 4.6 of LMLEP 2014 with regard to the Development Standard under Clause 4.3 is not supported (S79C(1)(a)(i));
- (iii) non-compliance with the requirements for the easement to drain stormwater which burdens the subject development lots and benefits Lake Macquarie City Council, as relating to Clause 1.9A of LEP 2014 (S79C(1)(a)(i)); and
- (iv) matters as referenced under Clauses 5.5, 7.1, 7.2, 7.3, 7.4 and 7.10 of the LMLEP 2014 not being to the satisfaction of the consent authority (S79C(1)(a)(i));
- (v) the Planning Principle for 'Redevelopment' (isolation of site - *Karavellas v Sutherland Shire Council* [\[2004\] NSWLEC 251](#) at 17-19) has not been satisfied:
 - a. through providing the adjoining owner with a recent independent valuation by a Licensed Valuer, and
 - b. fails to demonstrate the isolated lot can achieve a compliant standalone development(S79C(1)(b));
- (vi) an isolated lot is a result of the development which has significant implications on the proposed development, the adjoining lot and the broader public interest (S79C(1)(c) & S79C(1)(e));
- (vii) non-compliance with various matters of DCP 2014 under Parts 4, 9.13 and 10.3 (S79C(1)(a)(iii)); and
- (viii) the application is not in the public interest (S79C(1)(d) & S79C(1)(e)).

Endorsement

The staff responsible for the preparation of the report, recommendation or advice to any person with delegated authority to deal with the application has no pecuniary interest to disclose in respect of the application.

The staff responsible authorised to determine the application have no pecuniary interest to disclose in respect of the application. The report is enclosed and the recommendation therein adopted.



Brian Gibson
Senior Development Planner
Lake Macquarie City Council

I have reviewed this report and concur with the recommendation.



Elizabeth J Lambert
Chief Development Planner
Lake Macquarie City Council