

COUNCIL ASSESSMENT REPORT

Panel Reference	2017HCC010
DA Number	DA/675/2017
LGA	Lake Macquarie City Council
Proposed Development	Mixed Use Development (Residential Flat Building, Commercial Premises and Associated Works)
Street Address	482 The Esplanade, WARNERS BAY (Lot 122 DP 578045, Lots 1 & 2 DP 1116535) 486 The Esplanade, WARNERS BAY (Lot 3 DP 32518) 488 The Esplanade, WARNERS BAY (Lot 4 DP 32518) 12 King Street, WARNERS BAY (Lot 2 DP 155951) 14 King Street, WARNERS BAY (Lot 1 DP 155951) 16 King Street, WARNERS BAY Lot 122 DP 578045, 1 Howard Street, WARNERS BAY (Lot 3 DP 155951)
Applicant	YPI Yahov Property Investments (Warners Bay) Pty Ltd
Owner	YPI Yahov Property Investments (Warners Bay) Pty Ltd
Date of lodgement	3 January 2017
Number of Submissions	18 Submissions from 13 Authors
Recommendation	Approval
Regional Development Criteria (Schedule 4A of the EP&A Act)	The development has a CIV of \$44 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, including Clause 4.6 submission (Appendix A) Amended Application (Appendix B) Additional Information (Appendix C) External Agencies/Authorities Responses (Appendix D) SEPP65 Design Review Panel Endorsed recommendations (Appendix E) Apartment Design Guide Assessment (Appendix F) Public Submissions (Appendix G) Planning response to issues raised in public submissions (Appendix H) Recommended Conditions (Appendix I)
Report prepared by	Brian Gibson, Senior Development Planner, Lake Macquarie City Council
Report date	16 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

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

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

Not Applicable

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

Executive Summary

Date Lodged: 24 April 2017

Submission Period: 20 May 2017 to 21 June 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*.

10 November 2017 to 21 November 2017#

Re-notification of the amended proposal

Zoning: B2 **Local Centre** (Lake Macquarie Local Environmental Plan 2014)

Approval Bodies: RMS

NSW Water (Department of Industry)

Referral Agencies: Hunter Water Corporation

Ausgrid

NSW Police

CIV: \$44,025,000

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.

It is expected the proposed development will not be contrary to the provisions of SEPP 71 noting the site is not subject to flooding or Sea Level Rise, and is separated from the Lake foreshore by the existing foreshore reserve and The Esplanade.

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 14 August 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.

The development fronts King Street and The Esplanade, both of which are designated as classified Roads.

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.

In correspondence dated 15 June 2017 the RMS provided conditions of consent.

Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)

Part 1 Preliminary

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 LEP 2014. The maximum height permitted for the site by LEP 2014 is 22m.

The development proposes a building height of 22.9m for the western tower (The Esplanade) and a building height of 22.6m for the eastern tower (Howard Street Building).

An assessment determined the exceedance of the maximum height of building as proposed by this development be supported.

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 Warners Bay Town Centre and fronts the Lake although is separated by a foreshore park and The Esplanade. The land is not subject to flooding or sea level rise.

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

The assessment identified the proposal will have no impact on existing public access along the coastal foreshore, its amenity, nor have an impact on biodiversity or ecosystems. The development is deemed to be a suitable design having regard to the desired future character under the Warners Bay Town Centre Plan, and the scenic quality of Warners Bay.

Part 7 Additional local provisions

Clause 7.1 Acid Sulfate soils

The site is mapped as being affected by Class 5 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, an Acid Sulfate Soils Assessment undertaken for the site found no actual or potential acid sulfate soils.

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.

The proposed development involves significant earthworks in the form of excavation/cut up to 6.5m.

An assessment found no issues with the proposed cut and the likely impacts subject to further testing of the soils in the vicinity of the BP Service Station for contamination. A Remediation Action Plan has been submitted and reviewed by Council's Environmental Team, who support the findings subject to the imposition of consent conditions.

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 part of the building facing the primary street frontage has an active frontage and is used as a commercial premises.

An assessment of the development in terms of activation of the streetscape found the development has a commercially active ground floor frontage to the three street frontages.

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 April 2017.

The development proposes two six storey towers above a basement car park and ground level car park splayed with commercial space along Howard Street, King Street and The Esplanade. The western tower fronting The Esplanade (Lakefront Building) will have a building height of 22.9m (7 storeys) whilst the eastern tower (Howard Street Building) will have a building height of 22.6m (7 storeys) (refer to Figure 1 below) including:

- Ground floor commercial premises with 1390m² (906m² in the Lakefront Building and 484m² in the Howard Street building);
- The residential flat building comprising both towers (Upper Ground to Level 7) consists of 110 residential units, eleven of which are Adaptable Dwellings. The unit mix is as follows:
 - 23 x 1 bedroom;
 - 57 x 2 bedrooms; and
 - 30 x 3 bedrooms.
- Vehicle access from Howard Street;
- Excavation to accommodate 1-2 levels of basement car parking;
- Car parking at lower ground and basement levels to accommodate a total of 212 car spaces and two parking spaces each for bikes and motorbikes; and
- Landscaping including a communal terrace area on the upper ground level.

The proposal includes the demolition of existing buildings and structures, and the removal of existing vegetation.



Figure 1 – Perspective of the proposed development as viewed from northwest (intersection of King Street and The Esplanade)

Site & Locality

The development site is located along the eastern shores of Lake Macquarie within the Town Centre of Warners Bay. 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 Warners Bay Town Centre.

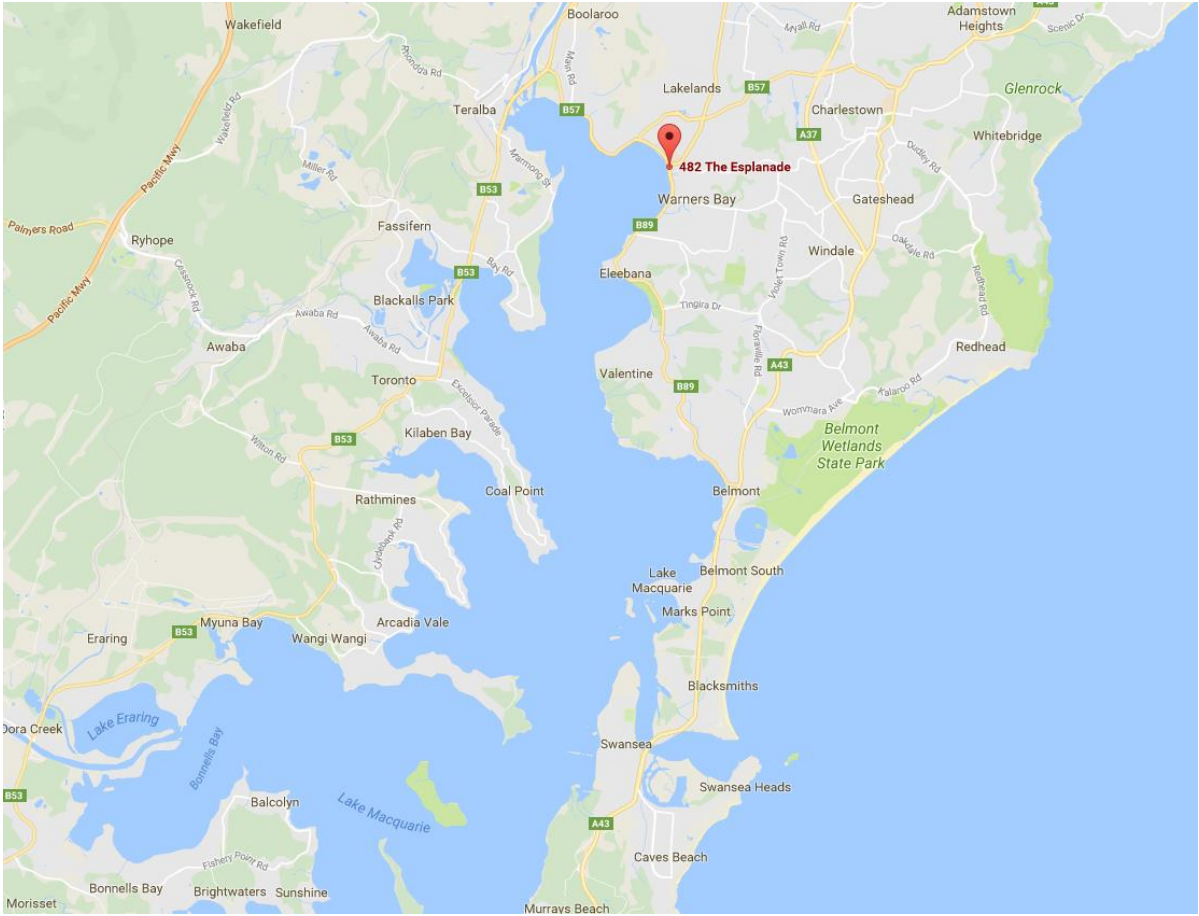


Figure 2: City of Lake Macquarie

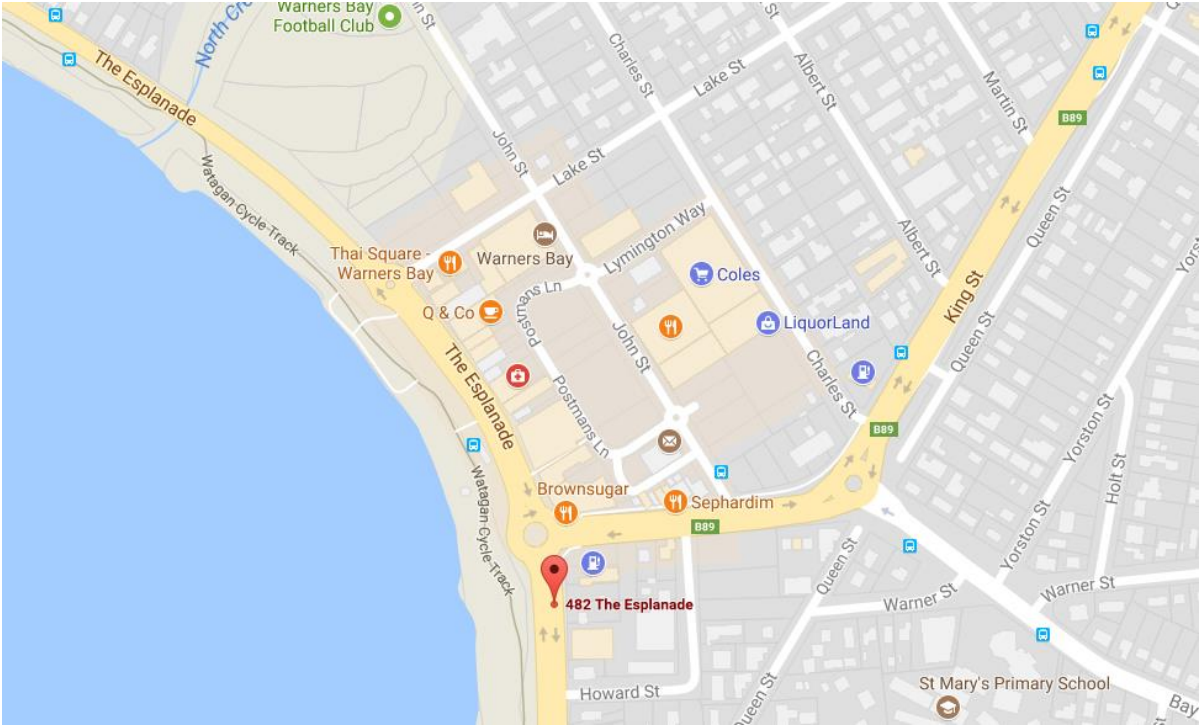


Figure 3: Warners Bay Town Centre

The development site is an amalgamation of eight lots. Figure 4 below details the

development site as shaded in red.



Figure 4: Development Site

The land is irregular in shape with a frontage to The Esplanade of 55m, the corner apex at The Esplanade and King Street having a dimension of 9.5m, frontage to King Street of 82.40m and Howard Street of 49.65m. The site area is 5,101m², and falls from approximately 9m AHD in north-east corner to approximately 4.5m AHD in the south-west corner (a fall of 5m between Howard Street and The Esplanade).

Both King Street and The Esplanade are designated as main roads by Roads & Maritime Service. In addition the land is affected by the following constraints:

- Geotechnical zones T6;
- Class 5 Acid Sulphate Soils; and
- Contaminated Land.

The land currently contains low density development consisting predominantly of single storey commercial buildings and residential dwellings constructed in the period between the 1950s to 1980s. The land contains pockets of vegetation, including native vegetation, centrally within the amalgamated site.

The site is located on a prominent corner, being the round-a-bout at the intersection of King Street and The Esplanade. It also has a western outlook to the Lake and adjoining foreshore reserve.

Immediately adjoining the site to the south at 492 The Esplanade is a five storey mixed use development approved in 2002 with a maximum RL of 15m. To the north are one to two storey commercial and retail developments located on the opposite side of King Street. To the east is a six storey mixed use development with a maximum RL of 21.7m approved in 2005 located on the opposite side of Howard Street.

Background

As stated above the development site contains a mix of low density commercial and residential development developed in the 1950s and 1980s.

The amalgamated development site was established by a previous owner, with a proposal submitted to Council's SEPP65 Design Review Panel in November 2015.

The development site and intellectual property were on sold to the current owner, with a revised scheme submitted to the Design Review Panel (DRP) on 14 December 2016.

The panel considered the revised proposal to be a very positive design compared to the previous scheme, and providing the relatively few issues raised under the nine design principles are addressed the proposal is likely to constitute a very positive lakefront presence in respect to its presentation and performance under the ADG principles.

This application was then lodged with Council on 24 April 2017.

Hunter & Central Coast Joint Regional Planning Panel

The Hunter & Central Coast Joint Regional Planning Panel (JRPP) held a briefing for the proposed development on 27 July 2017. The key issues discussed were:

- Key site
- Height non-compliance
- No FSR control
- Parking provision
- Ceiling heights
- Building presentation to the street, design excellence, visibility from the water
- Lack of landscaping – need for revision
- Noncompliance with building separation controls/ SEPP 65 – need to consider separation allowance, overshadowing, privacy, urban design outcomes and possibly revisiting neighbour setback relationship

Assessment Report

Assessment Report Contents

1. Integrated Referrals
2. Building Height
3. Building Separation
4. SEPP65 / Apartment Design Guide
5. Car Parking Provisions
6. Section 79C: Potential Matters for Consideration
7. Conclusion
8. Recommendation

1. INTEGRATED REFERRALS

The applicant nominated the development 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), NSW Water and Subsidence Advisory NSW 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 19 May 2017. In correspondence dated 15 June 2017 (refer to Appendix D) the RMS advised of having no objection to the proposed development subject to the following conditions being included within the Conditions of Consent:

- Infill the existing landscaped median with concrete (or coloured concrete to Council's specifications) on King Street, between The Esplanade and John Street.
- Install an RMS rated pedestrian fence on the median between the existing pedestrian refuge at The Esplanade and the existing signalised pedestrian crossing at John Street.

Council subsequently wrote to the RMS on 13 October 2017 requesting a review of the conditions on the basis of the following.

The requirement to install a rated pedestrian fence on the King Street median strip fronting the subject land is contrary to the objectives of the Area Plan to promote and improve pedestrian connectivity and commercial activity on the southern side of King Street. The RMS correctly note that the intensification of the subject site may increase pedestrians crossing King Street, however, the proposed design response principally serves to maintain vehicular flow to the detriment of pedestrian connectivity and overall amenity of the Town Centre.

This section of King Street is an existing designated 40 km/hr High Pedestrian Activity Area (HPAA). The RMS notes these areas benefit from additional infrastructure to serve pedestrian movements. Available data from the NSW Centre for Road Safety shows zero pedestrian collisions have occurred on this part of King Street between 2012 and 2016.

The preferred outcome as specified in the Warners Bay Town Centre Area Plan is the conversion of the roundabout at the intersection of King St/The Esplanade to a signalised intersection (at the time of consultation with the RMS the requirement for a rated pedestrian fence was not raised). Until then, Council recommends the interim design response be to further slow traffic within the Town Centre boundary using traffic calming measures and to incorporate informal pedestrian crossing opportunities into the existing medium strip. These interim measures can then be re-addressed at the time of the Streetscape Master Plan implementation. It is further noted that no such treatment exists in The Esplanade, between the King Street and Lake Street roundabouts, where similar conditions exist and a higher number of pedestrians are observed crossing outside of the Pedestrian Refuge or the Pedestrian Signalised Crossing.

Council requests a review of this imposition with regard to DA/675/2017.

To date Council has not received a response.

1.2 Water Management Act 2000

The application was referred to NSW Water on 19 May 2017. To date Council has not received a response despite following up with a direct e-mail request to an officer of

NSW Water on 24 May 2017.

1.3 Mine Subsidence Act 1961

The application was referred to Subsidence Advisory NSW on 19 May 2017. In correspondence dated 3 July 2017 Subsidence Advisory NSW advised Council the property is not within a proclaimed Mine Subsidence district and is not subject to any building restrictions imposed by the Subsidence Advisory NSW.

Note: at lodgement the application form was ticked in relation to being Integrated Development in relation to the Mine Subsidence Act, 1963. The development site remained within a proclaimed Mine Subsidence District until new provisions came into effect on 1 July 2017 whereby the development site was no longer within a proclaimed Mine Subsidence District.

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.

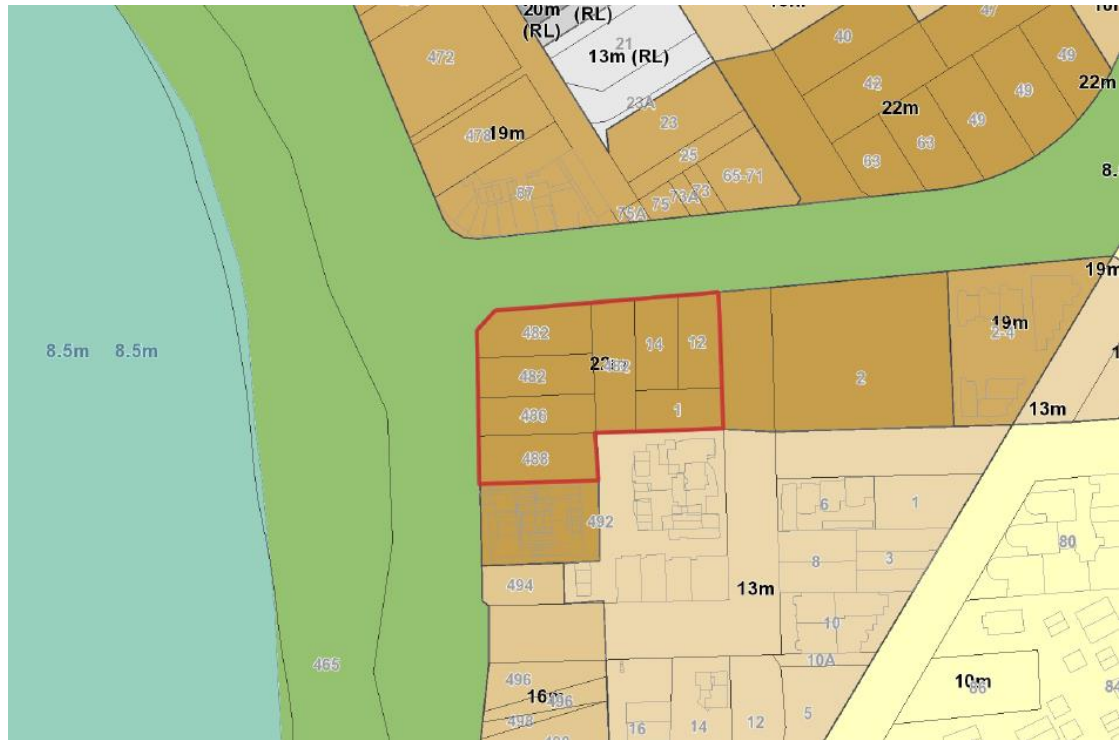


Figure 5: Height of Building excerpt from the LMLEP 2014 Maps

The objectives of clause 4.3 are as follows:

- (a) to ensure the height of buildings are appropriate for their location,
- (b) to permit building heights that encourage high quality urban form.

The figure below provides a height plane detailing the development's exceedance with the 22m maximum height of building.

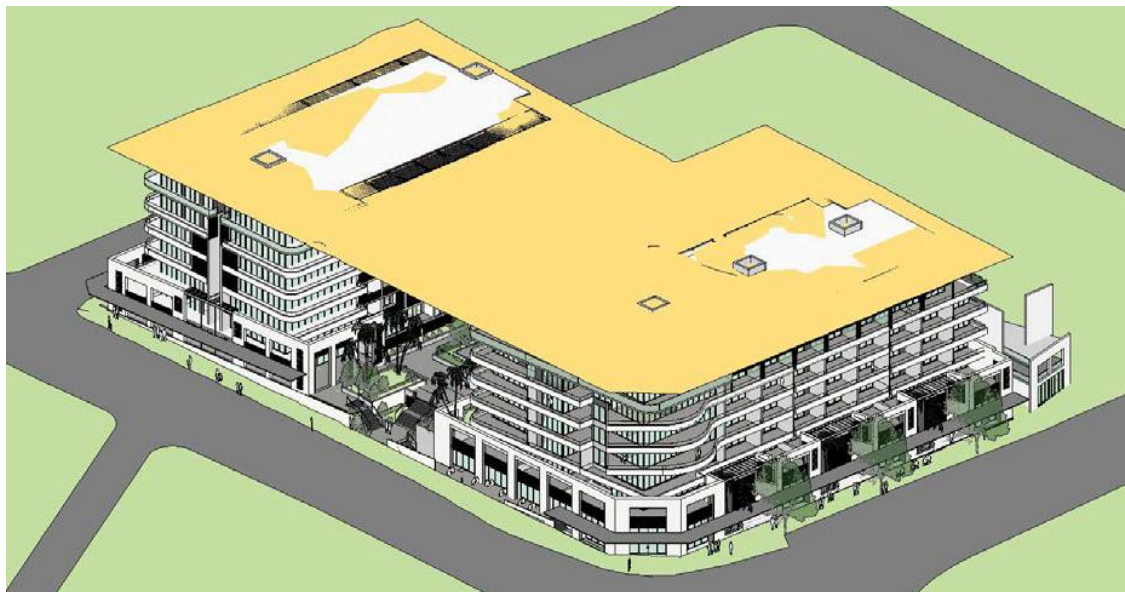


Figure 6: Extent of Height Exceedence

Figure 6 above details the areas of exceedence which include parts of the roof and lift

overruns.

A written submission under Clause 4.6 of LEP2014 has been provided by the applicant in support of the variation (refer to Appendix A for a copy of the 4.6 submission).

Clause 4.6 provides the following objectives:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Subclause (3) provides:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The development seeks flexibility with regard to the maximum height of building limit by arguing the non-compliance is minor and the development affords a better outcome to the alternative.

The extent of the exceedence is described as follows:

- Lift over runs

- the height limit is exceeded by 900mm
- other lift over runs exceed the height limit by 800mm, 600mm, 200mm and 100mm.

- Roof structure

- the part of the roof structure for the Howard Street building that exceeds the height limit is limited to a maximum of 300mm over approximately one third of the roof area.
- the part of the roof structure for The Esplanade building that exceeds the height limit is limited to a maximum of 200mm over approximately 10% of the roof area.

Figure 7 below provides a graphic of the exceedences in both plan form and building envelope:

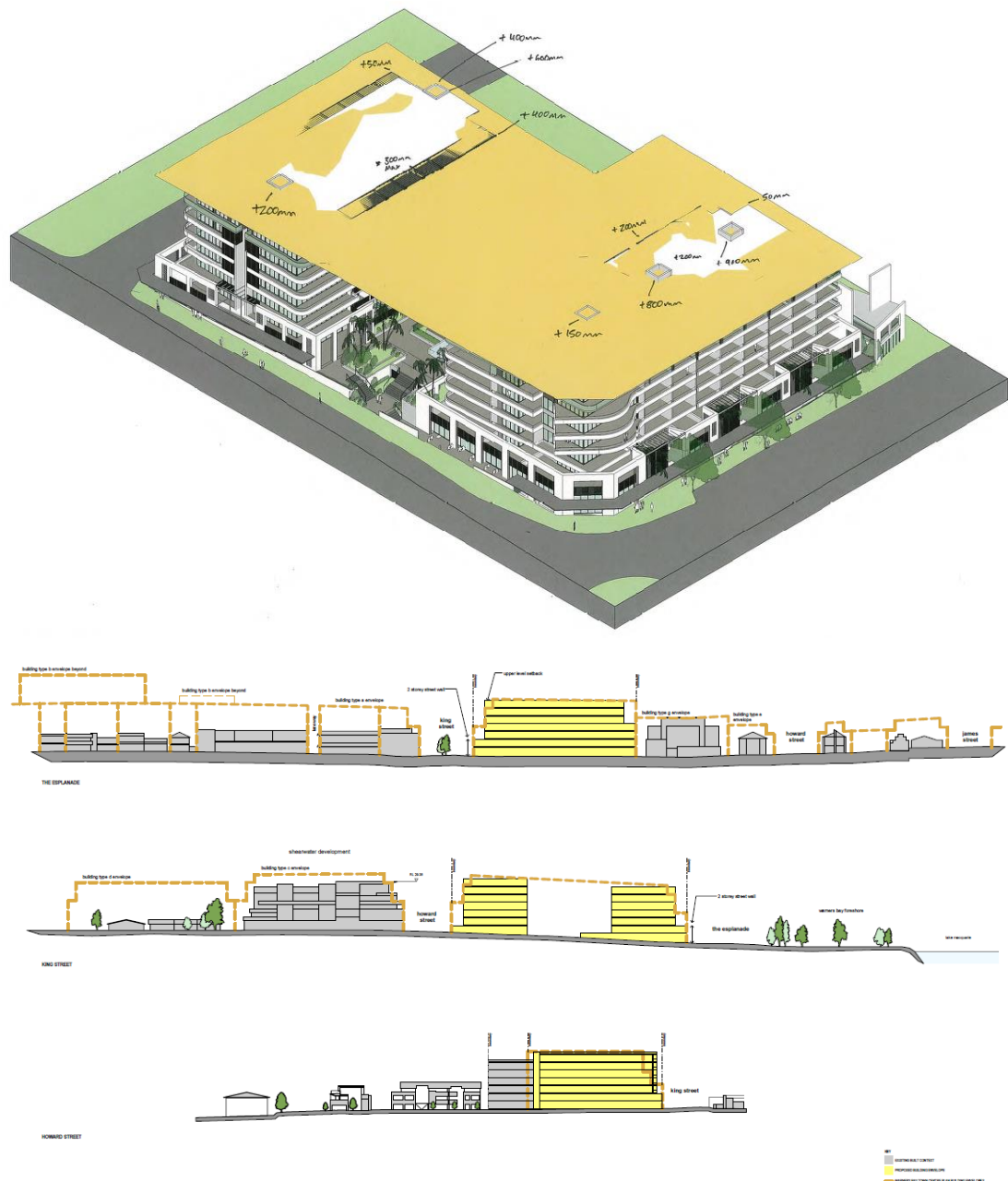


Figure 7: Details of encroachments

The development presents two distinct towers, each seven storeys. One tower fronts The Esplanade, the other Howard Street, with the frontage to King Street incorporating the end of each tower and the void in between. The proposal has been designed to maximise the built outcomes, whereby each tower is generally compliant with the maximum height of building limit of 22 metres which affords the option to create the large central void. This void provides for building separation and a break-up of the building mass, creates a dynamic communal space for residents, allows significant solar access to the development site and development to the south at 492 The Esplanade, and enhances the urban design of the Warners Bay Town Centre.

In terms of considering flexibility to allow the encroachment the alternative design should be considered. With the development having three road frontages, a building up to 22 metres could be constructed along each full frontage subject to compliance with setbacks. This outcome would have a more significant visual impact at the streetscape level, with the town Centre and from vistas around the lake.

Additionally the 4m fall across the site (east to west) constrains the ability to maximise the built outcome in terms of the building envelope without exceeding the height limit. Even with the narrow building alignment perpendicular to the slope, minor height exceedences have occurred. Note, the development has compliant floor to ceiling heights and slab thickness with the exception of the Tenancies 5, 6 & 7 which have a varying internal height of 2.7 to 3.6m.

Therefore a flexible approach is required to enable consideration of the proposal having regard to the site constraints, planning controls and urban design outcomes.

In terms of outcomes from the development, the proposal will enhance the Town Centre through the attractive design, commercial outcomes and accessibility residential development in proximity to services and amenities. Having regard to adjoining development (492 The Esplanade), whilst the proposal will reduce solar access currently available compliant solar access is provided in accordance with the ADG. Additionally whilst the building separation is not strictly in compliance with setbacks under DCP2014 and the ADG, considering the desired future character for the Town Centre the development presents an urban form which is supported by the DRP.

Therefore having regard to the above it is considered compliance with the development standard is unreasonable and unnecessary noting the future desired context of the Town Centre, the site constraints, the proposed built form/outcome and noting the endorsement by the DRP. In particular, the development is permissible within the B2 zone, meets the zone objectives, is generally compliant with DCP2014 and the ADG.

Clause 4.6 further states under subclause (4):

Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.

The applicant's Clause 4.6 submission adequately addresses the matters under subclause 4.6(3).

The proposed development is deemed to satisfy the objectives of the development standard, is identified as being consistent with the zone objectives (refer to Section 79C(1)(a)) and is therefore in the public interest.

Assumed concurrence is provided by Planning Circular PS 08-003 dated 9 May 2008.

2. BUILDING SEPARATION

The development has sought to address the setback requirements under the ADG and the Warners Bay Town Centre Area Plan under DCP2014. The building massing at the time of lodgement, which is generally consistent with the revised design the subject of this assessment, was presented to Council at a pre-lodgement meeting and later to the DRP also as a pre-lodgement item.

At these meetings the general building massing was supported noting it included a break along King Street which afforded significant solar access through the centre of the site and to the adjoining residential development at 492 The Esplanade.

The DRP recognised the implications of the two towers being aligned north-south with regard to building separation and solar access to the development to the south. The advice provided to the applicant was the design needed to demonstrate the adjoining development attained compliant solar access and amenity, and was no worse in regard than a compliant development.

Of note was the relationship between the southern elevation of the tower fronting The Esplanade and the northern elevation of the existing building at 492 The Esplanade.

The adjoining development at 492 The Esplanade was developed in 2002 under a separate planning regime, and therefore does not comply with the required setbacks under the Warners Bay Town Centre Areas Plan and the ADG. The adjoining development has a minimum setback of 2.7m.

The development provides setbacks as follows:



Figure 8: Setbacks under the ADG (blue line)

The development provides a zero setback for the ground floor and levels 1, 2 & 3. Levels 4, 5 & 6 provide a 4.5m setback to the wall, with a further encroachment by the balcony. The ADG requires a 6m setback for development on both sides of the property boundary at level 4 and above (noting the variation for development in town centres).

Figure 9 below provides a visual representation of the building separation between the

development and the adjoining building.

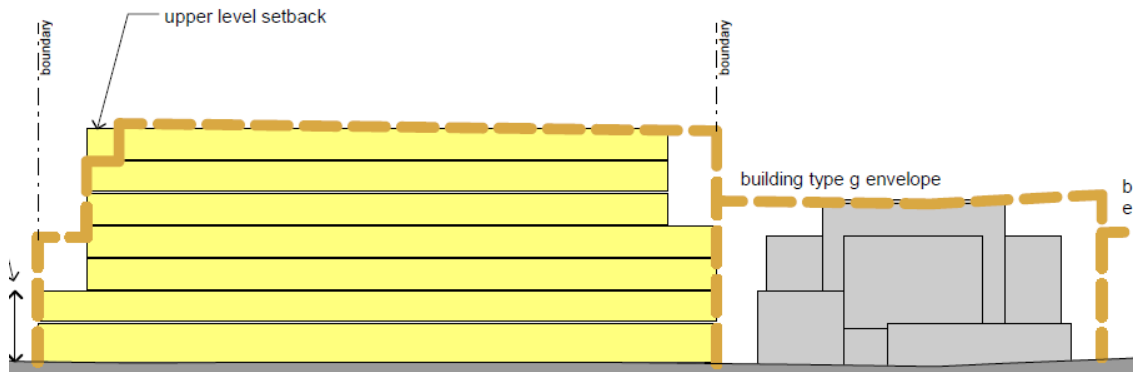


Figure 9: Building separation between the development and the adjoining development

As provided by the ADG, variations to the setback controls are permitted where the development is located in a town centre. Additionally the development seeks to satisfy the built form for 'building type C' under the Warners Bay Town Centre Area Plan by building for the full frontage of The Esplanade the commercial level.

Whilst the development does not strictly meet the setback requirements for building separation under the ADG, it does provide a transition between the different urban forms desired under the Warners Bay Town Centre Area Plan.

In support of addressing the concerns regarding the adequacy of the building separation the applicant provided a 'Neighbour Interface Study' which includes a detailed envelope analysis, neighbour façade study, solar access and comparative analysis of the permitted form and the development (refer to Appendix B).

3. SEPP65 DESIGN REVIEW PANEL

The DRP considered the proposal as lodged at its meeting of 14 June 2017 and the amended application at its meeting of 13 September 2017. The endorsed recommendations of the DRP are provided in Appendix E.

In addition to addressing the nine design principles at the September meeting, the DRP also considered issues raised at the JRPP briefing regarding building separation at the southern boundary for The Esplanade tower.

In summary the DRP advised it is satisfied with the scheme, subject to minor improvements to resolve the relationship with adjoining development to the south. The improvements in question relate to an additional setback to the southern part of level 4, requiring the setback of the building at level 4 to match the 4.5m setback of the building at levels 5 and 6 from the southern boundary.

The amended application (refer to Appendix B) and additional information (refer to Appendix C) seek to address the recommendations of the DRP.

4. CAR PARKING PROVISIONS

An assessment of the development against the car parking requirements under the Warners Bay town Centre Area identified the following table:

	No. Units/Area	Rate	Required	Proposed		Provided
1 Bed Unit	23	0.5 per Unit	11.5	23	178	175
2 Bed Unit	57	0.75 per Unit	42.75	37 @ 2 per Unit & 21 @ 1 per Unit being 74 & 21 respectively		
3 Bed Unit	30	1.0 per Unit	30	60		
Commercial	1390m2	1 per 40m2	35	28 spaces as combined dual use plus 7 dedicated to Commercial (1 per tenancy)		7
Visitor (Units)	110	0.25 per Unit	27.5			28*
Accessible spaces						11 (1 for Com, 1 for Com/Vis and 9 for Res.) Note, not included in above calculations
Motor Cycle		1 per 20 parking spaces	8	4		4
Total			147 (8)	213 (4)		210 # (4)

* Proposed as shared arrangement

As counted

The development requires a total of 147 car parking spaces. The number provided is stated as 212 although 210 were counted (inclusive of 11 accessible parking spaces) and 4 motor cycle spaces.

The development therefore provides an excess of parking overall and for the residential, however is deficient in relation to the Commercial & Visitor car parking. The design provides the residential car parking in a secure area with controlled access, whilst the visitor and commercial car parking will not have controlled access.

The Warners Bay Town Centre Area Plan stipulates development should comply with the required car parking and not have either an excess or deficient number. The

proponent provided a submission by Intersect Traffic (refer to Appendix C) which argued the following points:

- (1) Public transport Usage
- (2) Residential Parking Demand
- (3) Cross-Use of Development Components
- (4) Location of site within the Warners Bay Town Centre Precinct
- (5) Different peak parking demand periods – visitor v's commercial parking
- (6) Reduced visitor car parking rates

Note, a public submission has been received raising specific concerns with the car parking arrangements/allocation (refer to Appendix G).

Council's Integrated Planning Department reviewed the proposed variation to the car parking requirements, both in terms of the excess of residential parking and deficient commercial/visitor parking. The referral advised if the JRPP is supportive of a shared off-street commercial/visitor parking arrangement appropriate conditions should be imposed requiring the submission of a traffic/parking management plan for the approval of Council to be enforced for the life of the development. This plan will need to demonstrate the most efficient use of the shared commercial/visitor parking spaces can be achieved, ie. introduce time limited parking to ensure turnover, encourage use by patrons and deter use by employees, not allocate parking to any particular tenancy(s).

Further, it is recommended the seven commercial spaces located in the secure car parking be transferred into the unsecured area. The suggested location is to swap the commercial C1 to C7 with spaces 46 to 49 and 54 to 57. This will require the stacked parking spaces 36 to 39 to be reversed to be access off the aisle adjoining spaces 24 to 27, and will result in one less residential space and one additional commercial space.

5. Section 79C: Potential Matters for Consideration

An assessment in relation to Section 79C of the Environmental Planning & Assessment Act 1979 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 10:



Figure 10: Land mapped under SEPP 71 Coastal Policy

This application has been assessed having regard to the aims of the SEPP. The development is not foreseen as having an adverse impact on achieving the aims of the SEPP, noting the development is generally compliant with planning controls under LEP2014 and DCP2014, is separated from the Lake by a foreshore park and The Esplanade, is not flood prone nor is it subject to Sea Level Rise, will have no direct impact on the amenity of the foreshore or related coastal processes and is not identified/constrained with regard to heritage or natural environs/ecology.

The application will provide high density residential accommodation in proximity to the Lake. The existing site is elevated and separated from the lake foreshore, and presently contains low density development. The new built form has been reviewed by Council'sDRP who generally concurred with the urban design outcome, inclusive of consideration of the aesthetics and visual impacts.

Therefore in terms of the matters for consideration (Clause 8) 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. Ausgrid raised no objection to

the development subject to the proponent consulting further with regard to the development needs in relation to existing infrastructure and network capacity. Should development consent be granted, it is appropriate to include the matters as raised by Ausgrid as a condition of consent.

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 1.2 Aims of Plan

The aims of the Plan are:

- a) to recognise the importance of Lake Macquarie and its waterways, including the coast, as an environmental, social, recreational and economic asset to Lake Macquarie City and the Hunter and Central Coast regions,
- b) to implement a planning framework that protects areas of significant conservation importance, while facilitating development and public facilities in appropriate areas, that are accessible to a range of population groups, to accommodate Lake Macquarie City's social and economic needs,
- c) to promote the efficient and equitable provision of public services, infrastructure and amenities,
- d) to facilitate a range of accommodation types throughout Lake Macquarie City so that housing stock meets the diversity of community needs and is affordable to as large a proportion of the population as possible,
- e) to apply the principles of ecologically sustainable development,
- f) to encourage development that enhances the sustainability of Lake Macquarie City, including the ability to adapt to and mitigate against climate change.

Comment: An assessment of the proposed development has found it to be consistent with the aims of LEP2014.

Clause 1.9A Suspension of Covenants, Agreements and Instruments

There are no agreements, covenants or other similar instruments that restrict the carrying out of that development.

Part 2 Permitted or Prohibited Development

Clause 2.3 Zone Objectives and Land Use Table

Zoning

The land is zoned B2 – Local Centre as per Figure 11 below.

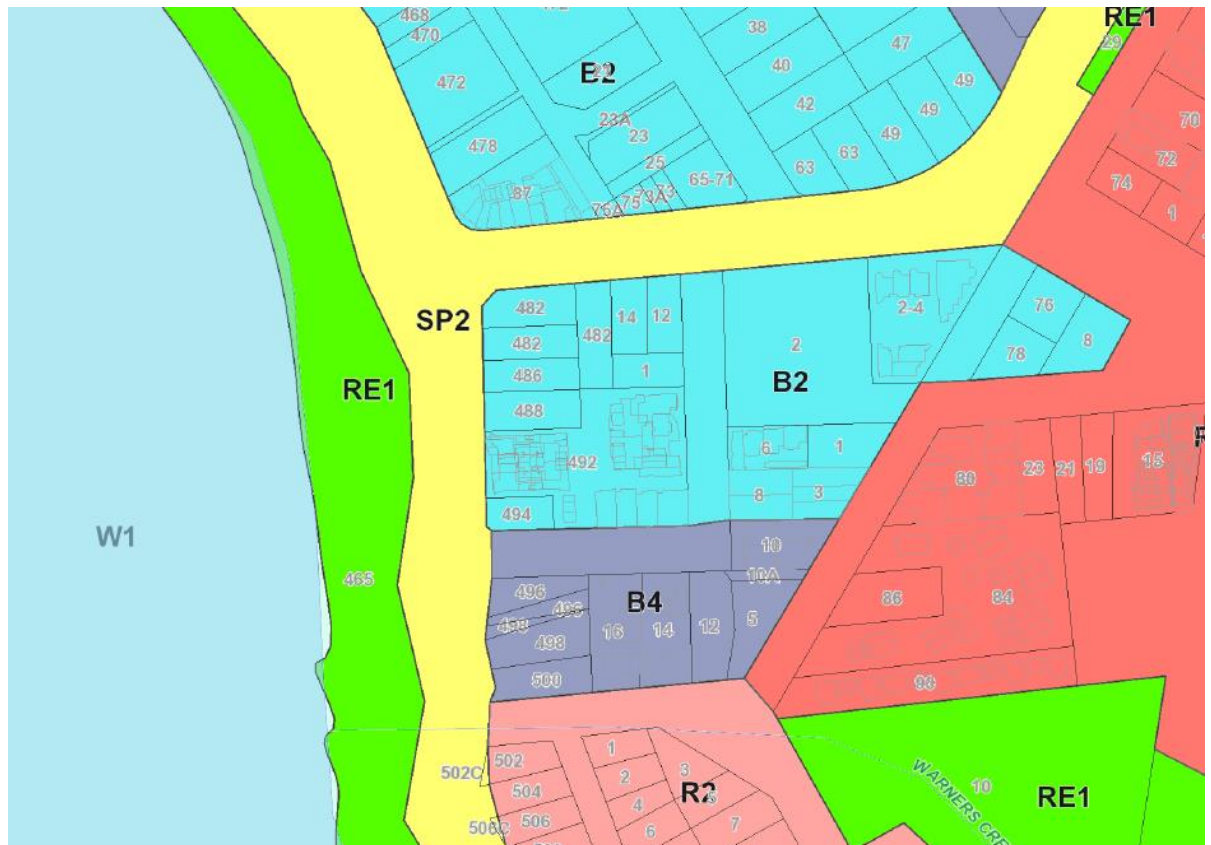


Figure 11: Land Zoning map under LMLEP 2014

Zone Objectives

The following zone objectives apply:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To create spaces that are accessible and are a central focus for the community.
- To provide for housing as part of mixed use developments.

Comment: The proposed development is considered to achieve/support the zone objectives as follows:

- The proposal provides a higher end land use for the amalgamated sites, with increased densities and gross leaseable floor area, enhanced street frontages and improved aesthetics for Warners Bay Town Centre.
- The proposed development incorporates commercial premises in the form of seven separate tenancies having frontage to Howard Street, King Street and The Esplanade. The design provides opportunity for al fresco areas in King Street, and outdoor dining in Howard Street and The Esplanade. These commercial premises are ideally located and presented to serve the needs of residents, employees and visitors to Warners Bay Town Centre.
- It supports and enhances use of public transport, being located in

proximity to the Warners Bay Bus interchange and the lakeside shared pathway. The development also has regard to connecting with the existing footpath network and pedestrian crossing points in King Street, thus providing accessible connections to the foreshore and other services within Warners Bay Town Centre.

- The improvements on the southern side of King Street will enhance the attraction of that part of the Warners Bay Town Centre, thus creating a greater central focus for the community.
- A significant increase in housing supply for Warners Bay Town Centre is provided by the proposed development, including a mix of dwelling types.

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 B2 zone subject to development consent.

Clause 2.5 Additional Permitted Uses for Particular Land

The land is not identified in Schedule 1.

Clause 2.6 Subdivision – Consent Requirements

Subclause 1 provides that land may be subdivided but only with development consent.

The development proposes to consolidate the eight parcels of land. It is recommended a condition be imposed regarding the subdivision of the land should development consent be granted.

Clause 2.7 Demolition Requires Development Consent

This clause provides that demolition may only be carried out with development consent.

The development proposes demolition of all existing structures located on the eight lots. It is recommended a condition be imposed regarding the demolition of the structures should development consent be granted.

Clause 2.8 Temporary Use of the Land

The proposed development does not incorporate any temporary use of the land.

Part 3 Exempt and Complying Development

The part of LEP2014 is not applicable to the development.

Part 4 Principal Development Standards

Clause 4.1 Minimum Subdivision Lot Size

The development site is not mapped as requiring a minimum lot size on the Lot Size Map.

Clauses 4.1A to 4.2C

Clauses 4.1A to 4.2C are not applicable to the development.

Clause 4.3 Height of Buildings

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

Clauses 4.4 to 4.5

Not adopted.

Clause 4.6 Exceptions to development standards

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

Part 5 Miscellaneous provisions

Clauses 5.1 and 5.4

Clauses 5.1 and 5.4 are not applicable to the development.

Clause 5.5 Development within the coastal zone

As shown in Figure 12, the land is mapped as being within the coastal zone.

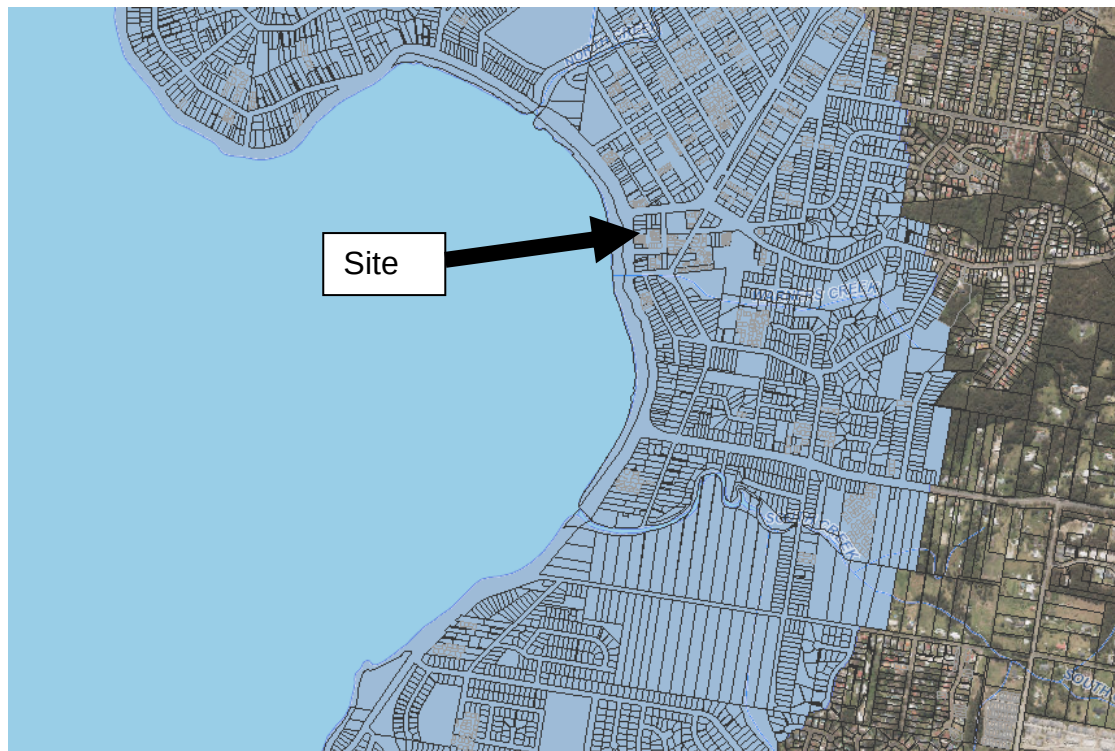


Figure 12: Coastal Zone map

The proposed development is a redevelopment of an existing urban area within the Warners Bay Town Centre. The land is not subject to flooding or sea level rise, and although it fronts the Lake is separated by a foreshore park and The Esplanade. Refer to additional comment under SEPP71.

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.

Clauses 5.7 & 5.8

Clauses 5.7 and 5.8 are not applicable to the development.

Clause 5.9 & 5.9AA

Repealed.

Clause 5.10 Heritage Conservation

The development site is not mapped as a heritage site nor as being part of the sensitive Aboriginal landscape.

Clauses 5.11 to 5.13

Clauses 5.11 to 5.13 are not applicable to the development.

Clauses 5.14 and 5.15

Not adopted.

Part 7 Additional local provisions

Clause 7.1 Acid Sulfate soils

The site is mapped as being affected by “Class 5” within the Acid Sulfate Soils Map of LEP2014. Additionally the development will intercept the water table in order to construct the proposed basement car park.

Subclause 2 requires development consent for the carrying out of works on land shown on the Acid Sulfate Soils Map.

Subclause 3 provides that development consent must not be granted unless an acid sulfate soils management plan has been prepared for the proposed works on accordance with the Acid Sulfate Soils Manual.

Subclause 4 however provides that development consent is not required whereby a preliminary assessment of the proposed works identifies an acid sulfate management plan is not required for the works.

In this regard, an Acid Sulfate Soils Assessment has been prepared for the site by Aurora Environmental Consulting dated 7 September 2015. The assessment identified samples tested over the site as not being consistent with actual or potential acid sulphate soils.

Therefore an Acid Soils Sulfate Management Plan is not required and no further consideration of Clause 7.1 is required.

Clause 7.2 Earthworks

Earthworks, up to 6.5 metres of cut, is required to construct the proposed two levels of basement car parking.

Subclause 2 requires development consent for earthworks. Subclause 3 requires before granting development consent matters be considered as follows:

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
- (b) the effect of the development on the likely future use or redevelopment of the land,
- (c) the quality of the fill or the soil to be excavated, or both,
- (d) the effect of the development on the existing and likely amenity of adjoining properties,
- (e) the source of any fill material and the destination of any excavated material,
- (f) the likelihood of disturbing relics,
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of

the development.

Council's Development Engineer has assessed the excavation with regard to stormwater and geotechnical issues. The applicants stormwater management plan and geotechnical report have been endorsed by the Development Engineer.

Council's Contaminated Land Working Group and Principal Environmental Management Officer reviewed the development and related excavation with regard to contamination. This review included consideration of a third party contaminated site Remedial Action Plan dated 28 March 2017 by contaminated site consultants Coffey Environmental management. It has been recommended a condition be included in any Development Consent granted requiring a Contaminated Site Validation occur prior to the issue of an Occupation Certificate.

The excavation will enable the redevelopment of the land, generally consistent with the planning controls under LEP2014 and DCP2014.

Clause 7.3 Flood Planning

The development site is not mapped as being flood prone.

Clause 7.4 Coastal Risk Planning

The site is not mapped as being part of the Coastal Risk Zone.

Clause 7.5 Terrestrial Biodiversity

The development site is not mapped on the Terrestrial Biodiversity Map.

Clause 7.6 Limited Development on Foreshore Area

The development site is not mapped as containing any foreshore area under LEP2014.

Clause 7.7 Development on Sensitive Aboriginal Landscape Areas

The development site is not mapped as being part of the sensitive Aboriginal landscape.

Clause 7.8 Air Space Operations

The development does not penetrate the limitation or operations surface for Lake Macquarie airport.

Clause 7.9 Service Stations in Certain Zones

The proposed development does not incorporate a service station.

Clause 7.10 Residential development in certain business zones

Subclause 2 states development consent must not be granted for the purposes of a residential flat building on land in Zone B2 Local Centre unless it is part of a mixed use development in which most of the ground floor of the building facing the primary street has an active frontage and the consent authority is satisfied it is to be used for the purposes of commercial premises or a health services facility.

The development site is zoned B2 Local Centre and incorporates commercial premises (seven tenancies) at the street front of The Esplanade, King Street and Howard Street. Interspersed between the tenancies are access foyers to the residential units and the communal areas for residents, and access to the basement car park and utilities/waste room. Located between the two towers in King Street is the communal open space for the residential flat building, landscaping and access stairs

from the street level to the al fresco area for tenancy 5.

The development was considered as having adequate active street frontages providing a connection between pedestrian and vehicle traffic and the building interiors. Further amendments were however identified to further enhance the design such that the street interface contained active spaces, ie. bar windows, alfresco areas, and improved public domain areas/landscaping.

Clauses 7.11 – 7.19

Clauses 7.11 to 7.19 are not applicable to the development.

Clauses 7.20 Development on Environmentally Sensitive Land

The development site is not identified as environmentally sensitive land on the Environmentally Sensitive Land map.

Clause 7.21 Essential Services

Subclause 1 requires development consent not be granted to development unless services essential for the development are available or adequate arrangements have been made to make them available.

In this regard, the required essential services and infrastructure are available to accommodate the development as demonstrated by:

- Hunter Water have endorsed the plans on 13 April 2017, advising the development can be serviced with regard to water & sewer.
- Ausgrid provided correspondence dated 22 May 2017 confirming the development can be serviced with regard to electricity.
- Stormwater management will occur in accordance with DCP2014 requirements. Council's Development Engineers are satisfied subject to conditions of consent, with the stormwater design.
- The RMS advised on 15 June 2017 of no objection to the proposed site access in relation to the classified road network.
- No objection is raised to the point of access regarding the local road network.

Clause 7.22 – 7.23

Clauses 7.22 to 7.23 are not applicable to 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

Part 1 – Introduction

Section 1.15 – Development Notification Requirements

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. The advertisement dates were:

20 May 2017 to 21 June 2017

An amended application was renotified on the following dates:

10 November 2017 to 21 November 2017

1.5 – B2 Local Centres

Refer to comment under Part 10.3 Warners Bay Town Centre Area Plan of DCP 2014.

Part 4 – Development in Business Zones

Section 2 – Context & Setting

2.1 - Site Analysis

An adequate Site Analysis Plan has been submitted.

2.2 - Scenic Values

A Visual Impact Assessment (VIA) in accordance with the Scenic Management Guidelines (SMG) and DCP2014 was submitted with the application.

Under the SMG Warners Bay is described as a lake foreshore suburb curving around a narrow bay, 2km wide, between the promontories of Speers Point and Eleebana. The Esplanade is the major road around the lake in the north and provides the main transport to the residential and commercial areas. Parkland lines the foreshore of the lake. The Esplanade and parkland provide a close appreciation of the Lake experience and valuable open space adjoining it.

The SMG identifies the applicable as Scenic Management Zone 5 (lake surround, high settlement). This Zone has a desired future character of encouraging development appropriate for town centres. This includes compact, higher density development with a mix of retail, business and residential uses, active street frontages, and a pleasant atmosphere for pedestrians and attractive streets. The character of buildings and the surrounding landscape should reflect the lakeside location and the popularity of these areas as social and recreational destinations. Physical and visual connections to the lake are important and should be preserved and enhanced.

There were initial reservations with the proposal, particularly its heavy monolithic design which accentuated the street wall effect, uniformity and scale of the residential levels and its lack of landscaping to break up the massing (refer to Figure 13 below).

The development also impacts on lake views from the adjoining Sheer Water development. Views from the Sheer Water will be retained to the north-west and down the King Street corridor, however views over the development site will be lost.

In terms of the lost views, it is recognised that units on the Howard Street elevation were purchased based on the views afforded. These views are currently unimpeded, although the Units are not presently occupied.



Figure 13 – Perspective from Cnr King Street and The Esplanade (Original Design)

Further refinement following a review by Council’s DRP against the ADG, and by Council regarding the Warners Bay Town Centre Area Plan, improved the design in context with the desired higher density outcomes, visual impact and activation of the streetscape (refer to Figure 14 below).



Figure 14 – Perspective from Cnr King Street and The Esplanade (Amended Design)

Generally the development is consistent with the planning controls and the desired future character. The building is a significant increase in density and built form which raises visual impact concerns regarding its setting in terms of views from the lake, relationship with the vegetated ridge lines and transition to adjoining development. Whilst there will be a loss of views afforded to adjoining development, a development of this scale has been set out in Council’s planning controls since 2004.

The DRP as identified in Section 4 of this report, and more particularly in Appendix E, supports the development considering the Warners Bay Town Centre Area Plan, the setting and context.

2.3 - Geotechnical

Refer to comment under Clause 7.2 of LEP 2014.

2.4 - Cut and Fill

Refer to comment under Clause 7.2 of LEP 2014.

2.5 - Mine Subsidence

The site is not located within a proclaimed Mine Subsidence District.

2.6 - Contaminated Land

The development site contains an existing service station and low density residential and commercial development. The proposal is to demolish all existing structures and excavate the site up to 6.5 metres to accommodate two basement levels.

Environmental reports have identified the site contains contaminated soils in the vicinity of the operational area of the service station. The report classifies the material as general solid waste which requires disposal to an approved landfill site with other non-contaminated material to be excavated satisfying ENM criteria and can be used as fill on other sites.

Council's Contaminated Land Working Group and Principal Environmental Management Officer reviewed the proposed development and related excavation with regard to contamination. This review included consideration of a third party contaminated site Remedial Action Plan dated 28 March 2017 by contaminated site consultants Coffey Environmental Management.

It has been recommended a condition be included in any development consent granted requiring contaminated site validation occur prior to the issue of an Occupation Certificate.

2.7 - Acid Sulphate Soils

Refer to comment under Clause 7.1 of LEP2014.

2.8 - Stormwater Management

Stormwater management will occur in accordance with DCP2014 requirements. Council's Development Engineers are satisfied subject to conditions of consent, with the stormwater design.

2.9 – 2.13

Sections 2.9 to 2.13 have been considered and are not relevant to this development.

2.14 - Preservation of Trees & Vegetation

All existing vegetation is to be removed by the development. The site has no registered or otherwise significant trees that require further consideration.

2.15 - European Heritage

The site is not mapped as nor is in the vicinity of a Heritage Item under LEP2014. The site does not contain any existing structures that warrant further consideration.

2.16 - Aboriginal Heritage

The site is not mapped as part of the sensitive Aboriginal landscape under LEP2014. The site does not contain any existing structures that warrant further consideration.

2.17 - Natural Heritage

The site does not contain nor is in the vicinity of any natural heritage items under LEP2014.

2.18 - Social Impact

The development is identified as being generally consistent with the zone objectives, the Warners Bay Town Centre Area Plan (Part 10.3 of DCP2014).

In this regard the development has been assessed against the ADG, and an access report was submitted. The development was found to be generally compliant in terms of accessibility and providing community benefits through improved streetscape outcomes and hence a sense of community, as well as providing significant communal benefits to the residents of the development. Therefore it was deemed a formal Social Impact Assessment was not warranted in this circumstance.

2.19 - Economic Impact

The development is identified as being generally consistent with the zone objectives, the Warners Bay Town Centre Area Plan (Part 10.3 of DCP2014).

The development provides economic benefits to the City and more particularly Warners Bay through the construction employment generated and building materials. Post construction the development will provide increased commercial premises floor space to the Warners Bay Town Centre, along with residents occupying the 110 units which will further strengthen the dynamism of commercial activity in the centre.

2.20 - Lot Amalgamation

The development amalgamates eight lots, which is consistent with the block controls under Warners Bay Town Centre Area Plan (refer to Part 10.3 of the DCP2014). Consequently no lots are isolated by the development.

2.21 - Utility Infrastructure

Site infrastructure such as kiosks and fire hydrants have been detailed on site, adjoining the Howard Street frontage (a secondary street). This infrastructure has been discreetly designed into the front façade of the development, thus minimising impacts on the streetscape and building aesthetics.

The development proposes underground electricity services for the full length of the frontages of the development.

2.22 - Sites where a Concept Plan is required

Refer to comment under Part 10.3 Warners Bay Town Centre Area Plan of DCP 2014.

Section 3 – Streetscape and Public Space

3.1 - Pedestrian Lanes

No pedestrian lanes are proposed as part of the development.

3.2 - Pedestrian Links through Buildings

Pedestrian links are not proposed through the development.

3.3 - Footpath Dining

Footpath dining is not proposed under this application, however provisions have been incorporated into the design to allow for such use, which will subsequently support activation of the streetscape.

3.4 - Streetscape Improvements

Refer to comment under Part 10.3 Warners Bay Town Centre Area Plan of DCP 2014.

3.5 - Non-Discriminatory Access

The Access Report provided with the application demonstrates general compliance with various Australian Standards, the Liveable Housing Guidelines and DCP2014.

3.6 - Lighting

Lighting of the entries and adjoining footpath areas is required. A condition is recommended requiring compliance with DCP2014 and Australian Standards.

Section 4 - Active Street Frontage

Refer to comment under Part 10.3 Warners Bay Town Centre Area Plan of DCP 2014.

Section 5 – Access and Parking

5.1 - Traffic and Vehicle Access

The driveway is located off a secondary road in Howard Street, which will serve all residents and patrons of the commercial tenancies. Similarly delivery and waste collection vehicles will utilise a loading zone in Howard Street.

5.2 - Design of Parking and Service Areas

The development will be conditioned to comply with AS 2890.

5.3 - Bike Parking & Facilities

A condition will apply requiring bicycle parking and related facilities in compliance with DCP2014.

5.4 - Motor Bike Parking

A condition will apply requiring bicycle parking and related facilities in compliance with DCP2014.

5.5 - Car Parking Rates

Refer to comment under Section 5 of the report for an analysis of the car parking rate, provision and allocation.

Section 6 – Development Design

This section has been addressed on Part 10 – Warners Bay Town Centre Area Plan & SEPP65.

Section 7 – Landscape

This section has been addressed on Part 10 – Warners Bay Town Centre Area Plan & SEPP65.

Section 8 – Operational Requirements

Waste

A Site Waste Minimisation and Management Plan for the demolition, construction and operational phases has been provided. The waste management regime designed for the development is deemed suitable.

The intended use does not warrant consideration of liquid trade waste or chemical storage.

Any future use of the commercial premises which requires a trade waste application will be considered as part of the development application or complying development

certificate.

Note, a car wash bay is proposed which will be required to connect to Hunter Water Corporation sewer. A condition is recommended in this regard.

Erosion & Sediment Control

The application requires a soil and water management plan. An assessment of the application has found the erosion & sediment control information provided as being inadequate/deficient.

A condition is recommended requiring submission of a revised soil and water management plan to Council for approval prior release of the construction certificate.

Air Quality

The development is for commercial premises and a residential flat building. The intended uses are not expected to create air quality issues however the basement car park exhaust is located adjacent to the gym in the communal courtyard. The applicant has advised the car park exhaust has been carefully designed to ensure it complies with all Australian Standard and NCC Requirements. Furthermore, the design team believe the car park exhaust is optimally located to avoid impacts to both the basement and podium levels.

Noise & Vibration

A Noise Impact Assessment, dated April 2017 been prepared by Spectrum Acoustics providing Project Specific Noise levels. Conditions are recommended regarding acoustic certification of the design at the completion of construction, and an operational compliance after occupation.

Further the assessment evaluated potential noise impact to residents and commercial occupants within the development, who will be potentially affected by road traffic noise and noise/vibration generated by mechanical plant and equipment. The selection of various mechanical plant and equipment at this planning stage has not yet been determined, apart from the collective noise generation from air conditioning split systems proposed to be used for individual units. Conditions of consent are considered appropriate to address any concern at this stage.

Construction site noise and vibration has not at this stage has not been addressed by the acoustic consultant, and a condition should be imposed on any consent requiring the submission of a Construction Site Noise Management Plan prior to the commencement of works, including demolition on site.

Part 9.13 – Residential Flat Buildings

13.1 – Site Requirements

The amalgamated site achieves an area greater than 800m², having direct frontage to a public road and a minimum width of 20 metres.

13.2 – Housing Mix

The development provides a mix dwelling types, generally in accordance with Council's controls, including:

One bedroom apartments - 23 being 21%

Two bedroom apartments - 57 being 51%

Three bedroom apartments - 30 being 28%

It is considered this mix of apartments is appropriate for Warners Bay.

Adaptable Dwellings

The development incorporates 110 units, therefore a minimum of 11 adaptable units are required. The development provides 11 adaptable units, and therefore complies.

It is recommended a condition be imposed requiring a compliant path of travel, appropriate dimensions to facilitate wheel chair access and essential features listed in AS 4299.

Part 10.3 – Warners Bay Town Centre

The site is not identified as a 'concept plan site'. The proposal was considered by Council at a Pre-lodgement meeting and a SEPP 65 Pre-lodgement meeting.

The development site is identified as Building Type C as per Figure 15 below:



Figure 15 – Block Control Plan

The Block controls (height, setbacks, built form and elevation treatment) for the Type C building are detailed on the figures 16 & 17 below.

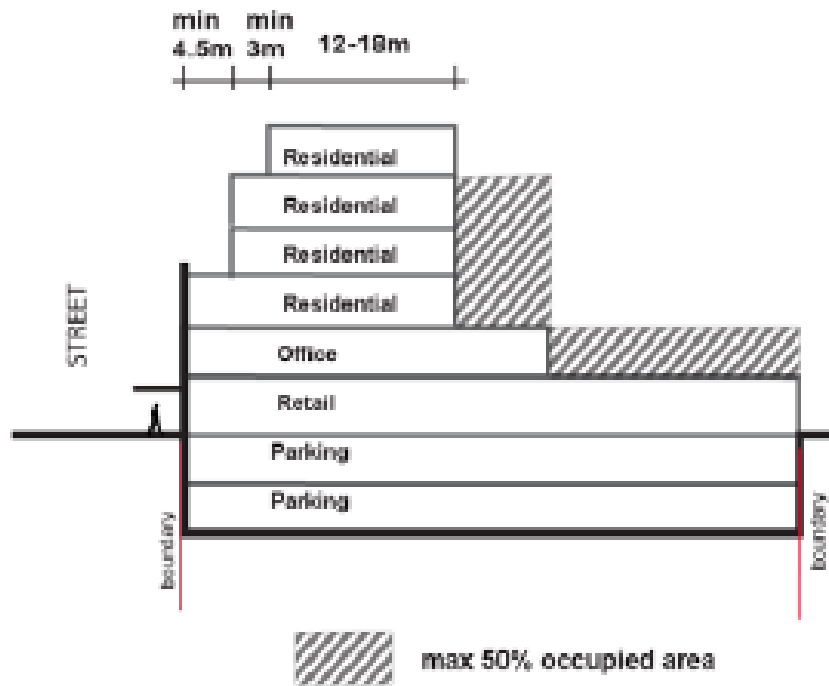


Figure 16 – Building Type C Cross Section

Of particular note is the number of storeys shown (6), with retail on the ground floor and office space above. Residential units are then located on the remaining upper floors.

With regard to the maximum occupied area, the development raises no issues as it does not incorporate a built form (upper levels) along the entire street frontage.



Figure 17 – Building Type C Street Elevation

The desired elevation requires the façade to incorporate detail a three storey high parapet form at street level, with upper levels recessed behind the parapet. The street form is to incorporate narrower facades, predominantly masonry with punched voids and expressed openings for doors and windows.

The proposed built form is not consistent with the Type C Block controls as follows:

- The development proposes seven storeys.
- The Commercial space is setback behind a solid masonry facade, with the glazing recessed into alcoves. The glazing achieves the 70-90% frontage width.

- Only one level of Commercial floor space is provided at street level on the Lower Ground and the Upper Ground. The solid masonry provides a two storey form with the Residential Units are recessed behind the commercial floor below.
- The facades fronting all three streets are broken such that each element is less than 10m in width.
- The Residential Units at Level 2 are recessed behind the lower two storeys. The built form of the Residential Units on Levels 2-7 are generally the same, with external treatment providing variation in detail to afford a lighter horizontal form when progressing through the street, mid and upper levels.

In relation to Street Improvements the development has been assessed against the Warners Bay Streetscape Master Plan, refer to comment under Section 6 of the report.

Car parking is proposed in the basement (two levels), sleeved by the Commercial Premises where site levels cause the car park to be ground level. With regard to car parking rates under the Warners Bay Town Centre Area Plan refer to Section 5 of the report.

Landscape treatment of the King Street frontage between the two towers includes masonry walls, deep soil zones and landscaping to create an attractive break between the buildings and effectively fence the public realm from the residential communal space.

At the rear (southern boundary adjoining 492 The Esplanade) a black batten colorbond fence is proposed. The side access off Howard Street will also utilise a black batten gate to control access for residents to the communal space directly from the street.

The measures identified in the CPTED report regarding surveillance, access control, territorial reinforcement, activity and space management, building design, lighting, access, car parking, fencing, landscaping are concurred with and it is recommended they be included as a condition of consent.

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

The application was advertised development as Nominated Integrated Development in relation to the Water Management Act, in accordance with the Regulations.

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

The likely impacts of the development have been considered in detail under an assessment of DCP2014.

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

Does the proposal fit the locality?

Refer to assessment comment under DCP2014 which demonstrates the development is compatible with the locality.

Are the site attributes conducive to development?

Refer to assessment comment under DCP2014 which demonstrates the site attributes are conducive to the development.

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 20 May 2017 to 21 June 2017.

The amended application was notified to the same properties, as originally notified, from 10 November 2017 to 21 November 2017.

From the advertisement and notification of the application Council received 15 submissions from 11 Authors. A copy of the submissions is attached as Appendix G.

A summary of the issues identified are provided below:

- Out of context with foreshore and Warners Bay
- Impact on views
- Impact on solar access
- Loss of amenity through lack of separation, bulk and scale, noise, lighting
- Traffic impacts in terms of congestion and parking within the road network
- Non-compliance with Planning Controls (LMLEP 2014 & DCP 2014), ie. height, setbacks, deep soil planting, block planning controls
- Bulk and scale is out of context and does not transition nor provide visual relief along The Esplanade
- Lacks arborist report to address removal of native trees
- Decision should favour the local community not foreign investment
- Inadequate Traffic assessment of Howard Street
- Provision for construction workers parking
- The developer should be required to extend timed parking restrictions
- The development should provide the required commercial parking
- Excessive parking for residential units considering proximity of bus interchange and shopping facilities
- Bicycle and motor bike parking to be provided
- Communal areas to have hours of use restricted
- Construction work and hours to minimise disturbance to adjoining residential development

Appendix H provides planning comment as a response to the issues raised.

Submissions from public authorities:

A copy of the responses 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 22 May 2017 subject to the proponent consulting further with regard to the development needs in

relation to existing infrastructure and network capacity.

NSW Police

No response has been received to Council's referral dated 19 May 2017.

NSW Water

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

79C(1)(e) the public interest

The development application has been assessed with regard to the LMLEP2014, the DCP2014, SEPP 65 & SEPP 71, and the ADG. Additionally the application has been considered with regard to the Roads Act and advertised in accordance with the EP&A Regulations. Overall the development is well designed and provides accessible accommodation in a desirable and suitable location.

Consequently the development is in the public interest.

6. Conclusion

An assessment of the proposed development identified it to be consistent with the zone objectives and satisfactory in terms of relevant clauses of the LMLEP2014, generally compliant with DCP2014 and the ADG, and is supported by the DRP. The assessment focussed on a number of issues in relation to building height, building separation, and car parking.

Generally the development is well designed and meets the desired future character of the Warners Bay Town Centre Area Plan, and will support the community through providing accessible housing in a desirable and convenient locations.

In context the variation to the maximum building height limit is deemed to be well founded. The building separation between the proposed development and the adjoining development to the south has been found to be compliant and satisfactory. The car parking number and allocation has also been identified as having merit.

Accordingly it is recommended conditional consent be granted for the proposed development.

7. Recommendation

It is recommended Development Application No. 675/2014 being for Commercial Premises and a Residential Flat Building be granted consent subject to conditions as listed in Appendix I.

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