



114-120 CARY STREET, TORONTO
TREE REMOVAL, EXCAVATION AND THE CONSTRUCTION OF A SHOP TOP HOUSING DEVELOPMENT, INCLUDING BASEMENT CAR PARKING AND ASSOCIATED LANDSCAPING

APPLICANT & DEVELOPER – TORONTO INVESTMENTS NO 1. PTY LIMITED

The Site

The subject site is known as No. 114-120 Cary Street, Toronto and comprises of nine individual lots, with the following legal descriptions:

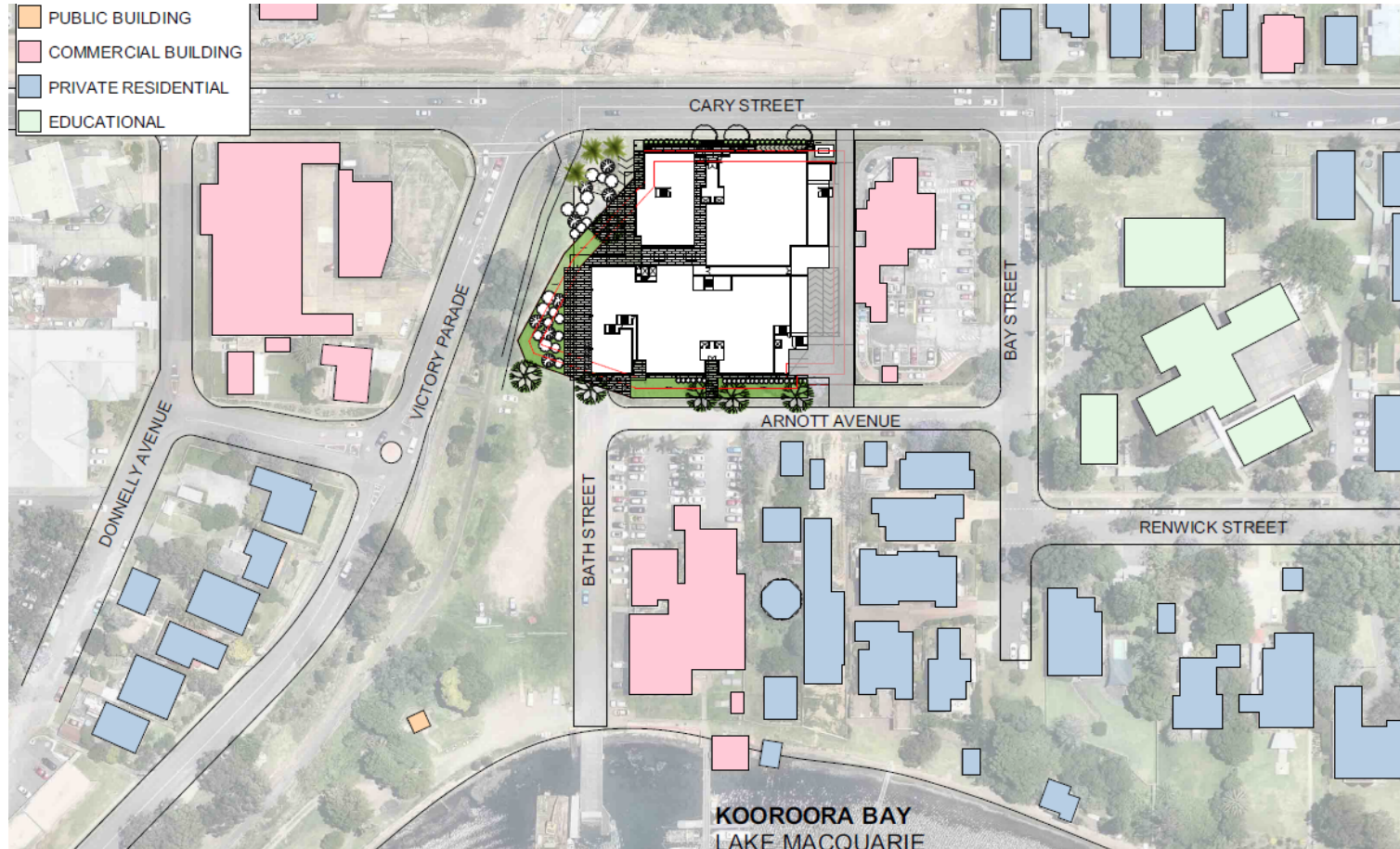
- Lots 4, 5, 6 and 7 Section 6 DP 2505 (114-120 Cary Street);
- Lots 9 and 10 Section 6 DP 2505 (1 Bath Street);
- Lot 100 DP 874314 (2 Bath Street);
- Lot 8 Section 6 DP 2505 (Bath Street); and
- Lot 101 DP 1110774 (3 Arnott Avenue).

The site is currently vacant and is located on a prominent corner, which is a gateway site into Toronto. The site is zoned B2 Local Centre under LMLEP 2014.

The site contains a mixture of vegetation, with a number of small trees, weeds and grasses scattered across the site.



Site Context – including approved buildings in LMCC



The site is located in Toronto Town City Centre and therefore has optimal access to public transport, and local services and facilities including shopping centres, professional and health services, and places of leisure. Proximity to transport, shops, services and public open spaces enhances the status of the site as a desirable location for higher density mixed-use development incorporating residential accommodation and retail floor space, similar to other approved developments within Lake Macquarie, and specifically Toronto.



Background

The site was the subject of a previous development application (DA419/2018) lodged with Lake Macquarie Council on 15 March 2018, for a development described as *“Mixed use development with commercial premises and residential flat building”*.

The previous development application underwent numerous pre-DA meetings and was addressed by the SEPP 65 Design Review Panel on three separate occasions.

The development was recommended for **approval** subject to deferred commencement and was reported to the Hunter and Central Coast Regional Planning Panel (“HCCRPP”) on 11 December 2019. The HCCRPP determined to refuse the application on a number of grounds.

The refusal was the subject of a Class 1 appeal Proceedings via the Land and Environment Court in *Toronto Investments No. 1 Pty Limited v Lake Macquarie City Council* (LEC Case No. 2020/00091325).

The Proceedings were discontinued following the matter being part heard. The primary matter that led to discontinuance related to **geotechnical/groundwater matters** that required further testing and analysis which could not be concluded in the timeframe of the Proceedings. **That analysis has now been completed and is provided with this application.**

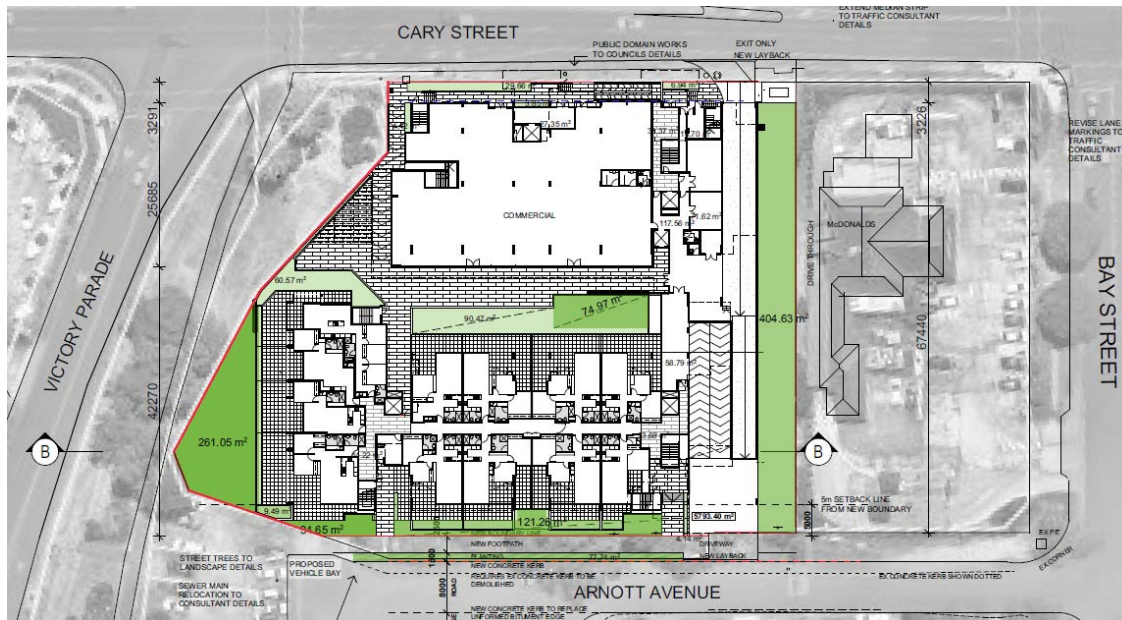
We note that **built form issues were resolved** through the joint conferencing process leading to the hearing and that the new proposal is consistent with the form of development that was agreed by Council’s planning/urban design expert.

The Proposal

The development will comprise of a five storey shop top housing block fronting Cary Street and a five storey residential flat block fronting Arnott Avenue. Communal open space will be located at roof level of both blocks.

Overall, the development will contain 929m² of commercial floor space, 108 apartments and 208 car spaces located over two levels of basement. Vehicular access (ingress and egress) is provided from Arnott Avenue.

All nine lots that make up the site will be amalgamated as part of the development.



SITE PLAN

ELEVATIONS



Specialist Reports & Investigations

The following specialist reports were submitted with the application:

Report	Prepared By	Conclusions
Noise Impact Assessment	Spectrum Acoustic Pty Limited	Based on the results of this assessment, it is our professional opinion that adoption of the recommendations within this report will result in compliance with noise conditions as may be imposed by Council in a development consent.
Bushfire Assessment Report	Newcastle Bushfire Consulting	The proposed development can comply with the requirements of Planning for Bush Fire Protection 2019 guidelines as required under section 100b of the Rural Fires Act 1997.
Disability Access Report	Access Solutions	In my opinion this development can comply with the requirements of the benchmarks cited.
Prescribed Ecological Actions Report	Abel Ecology	The proposal is unlikely to have a significant adverse impact on Toronto Wetlands or the biodiversity values within Toronto Wetlands.
Geotechnical Investigation Report	Chameleon Geosciences Pty Ltd	The Reports detail the extensive testing and analysis which was undertaken, and conclude that minimal to no impact will occur to the wetland and adjoining properties.
Groundwater Analysis Groundwater Analysis Peer Review	CMW Geosciences AGE Consultants Pty Ltd	The minor potential loss of inflow from the wetland predicted by the model is considered plausible, and is not considered likely to be discernible from normal climatically induced water level fluctuations.
Statement of Heritage Impact	John Carr Heritage Design	The scheme has been assessed as having minimal effect on both the Heritage Precinct and the nearby individually listed heritage items based on the overall design, the modelling of the facades, the setback off the former railway corridor, the partial screening from existing and proposed landscaping.
Stormwater Management Plan	Northrop	Given the results of the investigations, it is reasoned that the development meets LMCC's requirements.
Traffic Report	Mclaren Traffic	The traffic and parking impacts of the subject development are fully supported. The development will have no adverse impact on the surrounding road network
Visual Impact Assessment	Mansfield Urban	It is concluded that the development will visually improve the current site condition and have minimal and expected visual impacts over time.

Specialist Reports & Investigations – Prescribed Ecology Actions Report

A Prescribed Ecological Actions Report (PEAR) was prepared by *Abel Ecology* and was submitted with this application.

The report provides a highly detailed assessment of the potential impacts of the proposal on species and ecological communities present on the site, and whether there is likely to be any significant effect on any endangered ecological community, endangered population, threatened species or their habitats.

The report identifies a number of sources utilised for the assessment, which include the Environmental Management Plan prepared by *Envirotech* for the original development application under DA419/2018, and the Environmental Management Plan prepared by *Kembla Environmental Consultants* for the LEC proceedings.

In relation to the impacts on the adjoining wetlands, the report makes the following conclusions:

*This report details the potential impacts on Toronto Wetland and shows that the **proposal is unlikely to have a significant adverse impact on Toronto Wetland.***

- *The proposal minimises impacts on groundwater and is consistent with NSW guidelines.*
- *The proposal changes stormwater inputs to Toronto Wetland. The quality of stormwater flowing to Toronto wetland is improved but the quantity is increased. These modifications are unlikely to have a significant negative impact on Toronto Wetland.*
- *No significant impact on any threatened plant community (EECs), threatened plant or threatened fauna species is anticipated by the proposal.*

Specialist Reports & Investigations – Geotechnical & Groundwater

The previous development application was discontinued following the matter being part heard. The primary matter that led to discontinuance related to geotechnical/groundwater matters that required further testing and analysis which could not be concluded in the timeframe of the Proceedings.

A Geotechnical Report was prepared by *Chameleon Geosciences Pty Ltd* and submitted with the application.

Also submitted with the application was a Groundwater Drawdown Model and Detailed Settlement Analysis prepared by *CMW Geosciences*, which was further peer reviewed by *Australasian Groundwater & Environmental Consultants*.

The Reports detail the extensive testing and analysis which was undertaken, and conclude that **minimal to no impact will occur to the wetland** and adjoining properties.

In relation to groundwater, a simulation was utilised to under the effects of the development. The following conclusions were made:

The simulation indicates that:

- *The model predicted changes in groundwater head and flow direction in the site vicinity are considered materially insignificant.*
- *No material change is indicated to groundwater discharge area locations or discharge rate.*

BASEMENT 2 PLAN



BASEMENT 1 PLAN



Specialist Reports & Investigations – Traffic and Parking

The Traffic Impact Statement submitted with the application fully supports the proposed development and makes the following conclusions in relation to parking and traffic:

*A total of **206 car parking spaces are proposed, exceeding the 147 spaces required** under the Lake Macquarie City Council DCP 2014, representing an acceptable outcome. A total of 16 disabled car parking spaces are provided, including 12 for the 12 adaptable units and four (4) for use by the retail component & by visitors to residents. There is sufficient space on the site to provide the bicycle storage required by the DCP and it is recommended that this is required by consent condition.*

*The proposed design **meets the relevant requirements and objectives of AS2890.1, AS2890.2 and AS2890.6** and the design is **sufficient for all parking, loading and servicing uses**. Minor amendments to the roads are recommended in Section 3.5 to improve both vehicle manoeuvring and safety outcomes.*

*The traffic generation of the site has been estimated at some 84 vehicle trips (25 in; 59 out) in the AM and 110 vehicle trips (72 in; 38 out) in the PM peak hour. Detailed SIDRA Intersection 9.0 modelling of the intersection surrounding the site in both the existing and 10-year growth scenarios demonstrate that the development will have **no adverse impact on the surrounding road network**.*

In view of the foregoing, the traffic and parking impacts of the subject development are fully supported.

Pre-DA and community consultation/engagement undertaken

The proposed development was not subject to a pre-development application or any community consultation given the background of the proposal, and the previous development application (DA/419/2018) on the site which was subject to community submissions during the notification period, in which a total of 20 submissions were received, 13 of those objecting to the proposal, and 7 in support. It should also be noted that 8 of the submissions in objection to the original development application were from people who reside outside the Toronto area.

The notification period for this application was from 26 July 2022 to 16 August 2022, however due to Council's error in uploading documents to the DA tracker for notification purposes, the application has been renotified, and this second notification concluded on 15 September 2022.

An initial review of the submissions received during the notification periods have identified a number of submissions **in support** of the proposed development, and a number of others in support with only minor issues with the proposal.

The submissions in support of the proposal have highlighted the benefits of the development stating that it will **'bring life to an area of Toronto that would benefit from rejuvenation'**, and that the commercial spaces will bring more foot traffic and allow local businesses to boost trade.

The main objections raised within the remaining submissions were in relation to the **traffic impacts** of the proposal and **environmental impacts on the adjoining wetlands**.

The parking and traffic impacts of the development have been assessed by a qualified traffic consultant who has concluded that the proposal provides parking in excess of the Council requirements, and will not have any adverse impacts on the surrounding road network.

The environmental impacts on the adjoining wetlands has also been considered by the application, and the submitted PEAR, Groundwater Drawdown Model and Detailed Settlement Analysis and subsequent Peer Review, have concluded that the proposal is acceptable in this regard.

Issues for further consideration – DA/419/2018 reasons for refusal

The proposed development has undergone considerable design development since the original scheme proposed under DA/419/2018. The original scheme was refused by the Regional Planning Panel for the reasons summarised below – noting our responses in red:

- Inappropriate height and visual impact along Cary Street. The maximum building height at the Cary Street elevation has been reduced and the elevation has been well articulated to minimise visual impact.
- Building height Clause 4.6 not well founded. The Clause 4.6 for building height submitted with this application is more detailed and provides justification and suitable planning grounds for the proposed non-compliance.
- Environmental effects on wetlands not considered. The PEAR, Groundwater Drawdown Model and Detailed Settlement Analysis and the Ground Water Analysis Peer Review submitted with this application consider the impacts of the proposal on the wetlands.
- Inadequate setbacks to northern side boundary. The setback to the northern side boundary has been increased from 3m to 6m.
- Acoustic and odor impacts from adjoining McDonalds. The Acoustic Report submitted with this application completed acoustic testing and no concern was raised with the adjoining McDonalds. The proposal has been designed to minimise the number of windows and openings to the northern boundary in order to reduce any potential acoustic and odor impacts from McDonalds.
- Inconsistent with objectives of LMDCP. The Statement of Environmental Effects submitted with this application addresses all relevant sections of the LMDCP, and highlights that the proposal is consistent with the controls and objectives within the plan.
- Traffic Impacts – lack of RMS support. During the design of the proposal, consultation was undertaken with TfNSW, and any concerns raised by TfNSW have been adequately addressed by the Traffic Report submitted with this application.
- Narrow width of Arnott Avenue. Road widening works are proposed along Arnott Avenue at the request of Council, as detailed within the Traffic Report.
- Non-compliance with visitor parking requirements. The proposal provides a compliant number of visitor parking spaces.
- Issues with Hunter Water. The proposed stormwater management plan is considered to resolve all previous issues with Hunter Water.
- Not in the public interest. The proposed development, as amended from the original scheme, is considered to be in the public interest.

Issues for further consideration – design development

As shown in the images provided of the original and proposed developments, as viewed from Cary Street, the proposal has been reduced in scale and has been designed and finished to reduce the visual bulk of the development through articulation and appropriate colours and materials.

Since the original application under DA/419/2018, the development has been amended to reduce the visual bulk and scale of the building. The building setbacks of the proposal have been amended, and greater building articulation is proposed to ensure that, despite the building height non-compliance, the proposal is suitable for the site and locality, and is compatible with other approved mixed use and residential developments within Toronto.

