

**Submission
No 98**

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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SUBMISSION
TO
PARLIAMENTARY ENQUIRY
ON
NSW PLANNING FRAMEWORK

beyond reactive development control:

PERFORMANCE-BASED DEVELOPMENT ASSESSMENT

INTEGRATING DESIGN AND ASSESSMENT TECHNIQUES
IN LAND USE AND DEVELOPMENT
TO ACHIEVE HIGH QUALITY, 'WIN-WIN' OUTCOMES

prepared by

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PART 1: Can development control really work?

Asking a question like this may appear to be an unconventional and perhaps even negative way to start a submission on development control procedures, but it is undoubtedly an important question - perhaps even a fundamentally important one - that preoccupies the minds of most so-called 'stakeholders' involved in land use and development in Australia today.

A whole swag of vested interests – be they town planners, building surveyors, developers, property and building owners, architects and designers, engineers, neighbours of proposed development, community interest groups, environmental action groups, government at various levels and their politicians - all of these 'players' in the development control process are today constantly disappointed that development control regulations and procedures presume to serve everyone's interests, but in reality tend in practice to satisfy no-one's. It is a national dilemma that has been intensifying over at least the last quarter of a century, and at this point to many - but not all - it does not appear to have a solution. The question is therefore a good way to begin a submission, because it goes to the heart of how a development control system should be structured and operated if it is to work effectively for all concerned.

In 1995 the Australian Government published a two-volume set of town planning guidelines called the Australian Model Code for Residential Development, otherwise known as *AMCORD - A National Resource Document for Residential Development*. In so many ways *AMCORD* was a radical and groundbreaking package of well-crafted and carefully considered ideas. It also represented a major watershed and shift in Australian town planning and development control because for the first time a set of national guidelines articulated and established principles for a new, 'performance-based' approach to residential development control; an approach that - it was argued and hoped – would supersede traditional numerical and prescriptive development regulations that were clearly failing to deliver high quality, environmentally adequate and economically sound development. It was an approach that would supposedly replace outmoded prescriptive methods with new types of regulations and processes that gave overriding priority to the achievement of specified performance outcomes.



Since its inception, now well over ten years ago, *AMCORD* has influenced the form and structure of most contemporary development control regulations and procedures around the country, and not only in residential development, but in most other forms of development as well. It remains the seminal work in Australian town planning, and justifiably so.

In reality, however, *AMCORD* is now a largely ignored and forgotten development control tool amongst development professionals and statutory planners – those entrusted with the responsibility of getting the process right on both sides of the development control counter. Like the Holy Bible, it sits on an imaginary shelf - but often a real one as well - gathering intellectual dust, rarely if ever consulted, but regularly cited when it becomes pragmatically convenient to do so for some – incorrectly though.

To make matters worse, much of the innovative and logical wisdom of *AMCORD* has been unfortunately misunderstood and misrepresented on both sides of the development control counter, and especially by naïve and inexperienced strategic planners who are supposed to be the experts in how to craft intelligent development control packages. Numerous attempts around the country to introduce newer, ‘performance-based’ development codes have generally failed badly, and most stakeholders have responded to them with dismay and derision. Such initiatives have also reinforced - if not worsened - often-pointless adversarial approaches to conflict resolution, and especially in appellate courts and tribunals.

But it is also true that *AMCORD* got at least one cornerstone concept fundamentally wrong; it developed and presented at least one crucially significant idea in a substantially incorrect and misleading way, a way that has led the overwhelming majority of newer development control plans seriously astray.

As some stakeholders have argued, new ‘performance-based’ development controls tend to consist of unwieldy packages of performance objectives that are typically vague and ambiguous ‘motherhood’ statements of intent that merely foster serious conflict of interpretation amongst the ‘stakeholders’, as opposed to providing interpretive certainty. Then, to compound the problem, these performance objectives are generally matched against prescriptive indicators of acceptability (typically called ‘Acceptable Solutions’, ‘Preferred Solutions’, ‘Design Suggestions’ and the like) that are inevitably interpreted as ‘deemed-to-comply’ standards of acceptability; that is to say, compliance is considered to be



achieved as long as a proposal is within the limits set by the accompanying prescriptive indicators, regardless of what a performance objective may or may not require, and regardless of whether the objective is actually satisfied. This is exactly the opposite of what the *AMCORD* guidelines intended.

Also, and in contrast to what the *AMCORD* guidelines actually advocate, almost all ‘performance-based’ regulations fail to establish a clear relationship between the large numbers of performance controls that generally make up newer environmental planning instruments and development control plans. Typically, there is no clear explanation upfront of whether certain controls are ‘absolute’ expectations – that is, there is no discretion in meeting the control - or whether they are ‘discretionary’ expectations – that is, they are able to be interpreted and even adjusted for the circumstances, and then weighed up against other elements of merit.

Added to this major deficiency, these types of regulations invariably fail to establish an essential hierarchical order of controls. There is often little - if any - explanation of the natural ranking of controls. For example, should heritage conservation or streetscape character objectives outrank energy efficiency requirements where there may be conflict between these undoubtedly important objectives?

Of course, intensifying this negative trend even further have been two additional systemic complications: first, the shrinking numbers of trained, skilled and experienced practitioners on both sides of the development control counter; and second, unjustified political interference from elected representatives who fail to adhere to their legislative obligations of detached judiciousness and fairness.

As these trends have been building, Australia has also experienced a decade of increasing concern about the state of the environment, and also increasing expectations about environmental standards, including the relatively dramatic elevation in priority of such planning objectives as heritage conservation, urban design and streetscape character compatibility, environmental sustainability, socio-economic impacts, amenity protection, land capability, integrated site planning, and the like. But, these growing expectations have occurred in a context of increasing stakeholder conflict and confusion about just what development codes do and don’t mean, and also what they really expect of proposed development. So, it isn’t just a case of the environmental merit ‘bar’ getting



higher and higher, or even dwindling skills combining with unreasonable political interference, that have caused so much heartache and inefficiency and conflict in Australian development control; it has also been a case of serious confusion and uncertainty about just what are the standards of acceptability being placed on the development control counter.

At least, some stakeholders argue, the old system of numerical maxima and minima - for such indicators as building density, site coverage, height, number of storeys, setbacks, landscaped area, private and communal open space, car parking and the like - provided interpretive clarity, minimised arguments about expectations and provided some certainty. When properly managed - as it has been contended - this system also provided local communities with a degree of certainty about where development limits lay, and to some extent older style, prescriptive codes were seen as reliable social contracts with local communities.

The problem with this particular view is of course simple: it may suit the purposes of development proponents or those who insist on unambiguous standards of acceptability, but it does not come even close to meeting growing demands for ecological sustainability, let alone other expectations, such as heritage conservation, streetscape character compatibility, environmental land capability, integrated development, amenity protection for adjoining properties, or even high quality design outcomes. While some stakeholders may lament the passing of purely prescriptive forms of development control, few would argue that the physical quality of development in Australia over the last quarter of a century has not been generally poor. Outstanding results are few and far between, and they are generally achieved despite planning regulations, and not because of them.

The answer to this crisis of competing values clashing with unclear and ambiguous codes is not an easy one. But, there is at least one solution, one that retrieves *AMCORD*'s logical clarity of regulatory format, resolves its inadequacies and combines this with intelligent procedures; procedures that integrate the previously separate design and development assessment processes so that the judgment of proposed development by a politically independent and well informed public authority is commenced well before a proposal is fully designed, documented and submitted as a development application that carries the deeply-entrenched expectations of its proponents. Said in a perhaps simpler way, the future for successful development control in Australia rests with two key ideas:



Firstly, making regulations far more understandable, unambiguous, consistent and ‘street-smart’ to as many of the stakeholders as possible – in other words, achieving a smart common language of planning values.

And secondly, creating a development control procedural system that integrates the currently separate development design and assessment processes, and in so doing driving constructive negotiations between stakeholders from the earliest possible point – in other words, maximising the chances for smart, ‘win-win’ outcomes that avoid conflict and adversarial models of development control.

If truly ‘sustainable’ development - that is, development that achieves both economic and environmental expectations - is the goal for the future, then these are arguably the two fundamental keys to achieving that goal.

BUT WHAT DOES ALL THIS MEAN IN PRACTICE?

What do these utopian ideas or principles mean in practice? Are they noble and idealistic sentiments that simply cannot be converted into effective, day-to-day development control regulations and procedures for delivering positive development outcomes for both sides of the counter? Can it be done? If so, how? Are the resources available, and especially in regional and rural areas? Are they in any case affordable? Are the necessary skills available? And most importantly, does the necessary belief and commitment exist on both sides of the development control counter to make such an ‘ideal’ system work?

REGULATION: A ‘PERFORMANCE-BASED’ AND ‘PLACE-BASED’ DEVELOPMENT CONTROL SYSTEM

While the earliest and generally unsuccessful experiments in performance-based development codes tried to partially (and in some cases totally) jettison prescriptive controls, there are now emerging arguments that prescriptive and numerical development controls actually serve several, crucially important functions.



Firstly, prescriptive development controls - and especially ones like minimum site area requirements, minimum site widths, maximum floor space ratios, minimum landscaped area ratios, maximum site coverage, minimum setbacks, maximum height limits, envelope controls and the like - serve the fundamental role describing the notional limits of development proponents' rights and expectations to develop land. And this is important just for the fact that development proponents are actually owed the right of having some benchmark of what they can aim for.

But prescriptive controls also serve an equally important purpose of establishing benchmarks against which broader community interests and objectives of environmental management and amenity protection can be weighed. The simple truth is that many 'new-age' development control plans set out dense packages of environmental objectives and performance expectations - which are of course the necessary 'obligations' that development must meet - but increasingly they are failing to set out the reasonable entitlements of development proponents. Is it any wonder then that far too many development appeals become typically bogged down with determining just how to balance the interests of the conflicting parties as expressed through a combination of prescriptive and performance controls, and just how to weigh up the interests of appellants against the public interest? If you have spent any time in development appeal tribunals or courts, you will know exactly what I am talking about.

Having said that, however, the cornerstone for achieving high quality and sustainable development in the future actually rests with entrenching the fundamental principle that clearly stated and explained performance objectives and criteria – in other words the qualitative and environmental outcomes being sought – should - and must - always predominate over any associated prescriptive indicators. At times, for example, with maximum density of development or height, this may mean that a particular development proposal is unable to justify going to the applicable prescriptive limits, because it cannot satisfy the over-riding performance objectives to an adequate degree. But, at other times it may mean a proposed development can exceed or vary from the prescriptive limits, because it can satisfy the over-riding performance objectives through intelligent, high quality design, thereby making the prescriptive indicators irrelevant in the circumstances - in other words, letting the evidenced environmental outcomes dictate the limit of development either side of the prescriptive indicators, with the over-riding proviso being the achievement of relatively rigorous principles of ecological sustainability.



This fundamental idea – that intelligent performance criteria must always predominate - is in part what has influenced and driven the substantial efforts of the Land and Environment Court of New South Wales in recent times to develop a comprehensive package of State-wide ‘planning principles’ that can guide judgments about development where there may be conflict between notional development rights expressed through prescriptive controls and notional development responsibilities expressed by associated performance criteria, or otherwise where there is an evident inadequacy or absence of one or the other type. The only serious question raised by this generally commendable and successful initiative by the Court to effectively establish development policies is whether it is fundamentally at odds with its primary judicial role. Should Courts dabble in the creation of policy? In terms of that important question, it is perhaps appropriate to say euphemistically that the Court is still out on that one.

In any case, this conceptual approach to intelligently marrying prescriptive and performance controls has two major consequences for development control plans:

- (i) Over-riding performance objectives - what real qualitative and environmental outcomes are being sought - and performance criteria - the principles that must be addressed to achieve the qualitative outcomes - must be as clear, efficacious and ‘street-smart’ as possible, in the process avoiding as much ambiguity and potential misrepresentation as possible. In other words, they should not – at least not within reasonable limits - mean different things to different people, irrespective of their differing values and priorities; and,
- (ii) There must be a tested and reasonable compatibility between what selected prescriptive indicators suggest is possible and what is reasonably expected through the performance objectives and criteria. For example, a prescriptive density measure may indicate that a maximum floor space ratio of up to 0.7:1 is permissible and notionally possible, but if achieving the associated performance objectives and criteria can only be generally done with a density of around 0.5:1 before major conflicts begin to emerge, then evidently the selected maximum entitlement does not reasonably reconcile with its associated objectives and criteria.



As a result of such concerns about the relationship between performance and prescriptive measures, some authorities utilise ‘precautionary’ prescriptive standards that represent a conservative benchmark of nominal acceptability, and then allow variations through evidenced merit; for example, in some parts of inner Sydney maximum density controls are set artificially low in relation to historical subdivision patterns in order to establish a strong bargaining platform.

Other authorities are discarding long-standing prescriptive controls where they are becoming a barrier to good quality outcomes, replacing them with more effective controls; for example, the long-standing, traditional prescriptive indicator of building density - typically expressed as Maximum Floor Space Ratio (Maximum FSR) – is being overridden or complemented by Minimum Landscaped Area requirements, in the process making development concepts landscape-driven, instead of building mass and car parking driven which is unfortunately so often the case.

Whatever the ‘fine-tuned’ relationship between prescriptive and performance measures should be, there is also a need to establish a clear hierarchical order of, and relationship between, ever-increasing numbers of individual controls that generally make up newer development control plans. As previously noted, effective and unambiguous development control plans should clearly explain the relative importance of the controls, and in particular distinguish between, on the one hand, those controls that may be ‘absolute’ expectations that cannot be compromised, and on the other hand controls that may be ‘discretionary’, that is expectations that may be highly desirable, but subject to weighing up against other competing considerations. In other words, the effective delivery of an intelligent package of development control measures brings with it the need to also establish a natural ranking of controls, and then to articulate that ranking system to all the users very clearly and very unambiguously.

Effective development control plans are also increasingly adopting a ‘place-based’ approach to defining qualitative acceptability; in other words, demanding outcomes that achieve a desired ‘character’ for a place, whether it be a streetscape, an entire urban precinct, a combination of urban and natural places, or even the conservation of natural landscape. In any event, ‘character compatibility’ is not confined to conserving existing character, it is more often concerned with the idea of achieving a desirable future character that may actually seek to correct the mistakes of the past, or encourage the achievement of a character not yet existing.



Beyond setting out a logical, unambiguous and hierarchical package of development controls, the most effective and successful development control plans are those that also answer the two most ubiquitous and confronting questions or demands that typically come across the development control counter to assessment officers: “What do you mean, exactly?” and “You’ve told me what you don’t want, now tell what you do want?” In other words, development control plans - and the people who deliver them through the development assessment process - can only go so far in informing stakeholders through words, numbers and sketchy diagrams about what constitutes acceptable and unacceptable development when it begins to take on physical form. For this reason, successful development control plans should also include carefully prepared interpretive guidelines on a wide range of subjects that present and explain examples of acceptable and unacceptable development, and then articulate why one is acceptable and another unacceptable. However, the inclusion of such guidelines is a rare animal indeed.

**PROCESS:
INTEGRATING THE DESIGN AND ASSESSMENT PHASES
OF DEVELOPMENT**

An intelligently-written and well-presented development control plan is limited in terms of how it can effect acceptable development in isolation. Even the smartest development control plans won’t automatically deliver high quality design outcomes by themselves. You cannot simply toss a development control plan across the counter and expect it to deliver good development outcomes. The reason for this is, of course, that development control is as much about PROCESS as it is about REGULATION. Cost-effective, high quality and sustainable developments are now being achieved through intelligently managed procedures that replace traditional adversarial models of development control with processes that focus on anticipating and avoiding conflict through a combination of well-informed design and stakeholder interaction during both the design and development assessment phases. In other words, high quality design outcomes are now being achieved where the interactive barriers between stakeholders are broken down and the ‘players’ negotiate efficiently and ethically about possible development solutions from the earliest possible point.



Some planning authorities are now implementing a range of conflict minimisation policies for development control, such as pre-DA advice, conferencing and opinion services, design review panels, mediation programs, determination review procedures and even compulsory, pre-DA site analysis and design response submission requirements where a development application cannot not be legally submitted until a preliminary, in-principle stage of evidenced viability is passed.

But such conflict minimisation initiatives have generally laboured against entrenched attitudes persisting on both sides of the development control counter, attitudes that regard such ideas as costly, impractical digressions and complicating irritants that tend to extend and overcomplicate the development control process without achieving any major benefits for any of the stakeholders. It is also true to say that many such pre-DA processes are regularly shanghaied and led astray by ill-informed individuals on both sides of the counter, and also because there is seldom if ever any kind of 'in-principle' framework or interpretive principles in place.

The reasons for these attitudinal and systemic problems are numerous. Few stakeholders believe it is their primary responsibility to facilitate environmentally acceptable development outcomes, and some stakeholders see their objective as stopping development at all costs - as a result exploiting conflict minimisation to merely negate the design and assessment process. Other stakeholders - on both sides of the development control counter - are fundamentally threatened by such conflict minimisation approaches, because these processes tend to be self-accountable, as well as transparent in communication, negotiation and action. As a result there is far less opportunity to misrepresent proposed development or hide behind procedural barriers. Still other stakeholders - and typically development proponents and the professionals who service the development process - fundamentally misunderstand what such conflict minimisation and stakeholder negotiation processes are really all about, what actions they require, and why.

And yet, if it is accepted that the future is all about implementing and achieving ecologically sustainable development, or ESD - that is, a hard-fought and intelligently crafted balance between environmental and economic imperatives - then it must also be accepted that the traditional adversarial model of development control, where stakeholders fight out an essentially political battle of wits and influence, is seriously outdated and increasingly irrelevant and destructive.



Arguably perhaps, it must be accepted that the future of development control rests with far more effective and professionally delivered conflict avoidance and conflict resolution techniques that intelligently find the illusive 'win-win' approaches to environmentally sound and profitable development. While there is no shortage of examples from around Australia where pre-DA processes continue to fall short of achieving effective results, there are also emerging cases where such non-adversarial approaches are achieving outstanding results; and certainly approaches that intelligently respond to the increasingly familiar development proponent's entreaty:

"I don't care how hard your environmental standards are, just tell me clearly what they are and then manage the process efficiently and fairly".

So, can development control really work? The answer is undoubtedly yes, but only where there is an intelligent and professional approach to combining effective and unambiguous environmental regulation with street-smart processes that accept development is not just a physical act, but also a political process of community interaction demanding the highest degree of accountability, fairness and intelligence.



PART 2:

An Alternative Design and Assessment Framework

Although *AMCORD* is undoubtedly an extraordinary set of guidelines for creating effective performance-based development codes, the primary hierarchical structure and grouping of its Design Elements are not necessarily conducive to either guiding a responsible design process by proponents, or informing development assessment officers on how to prioritise performance expectations and make the ultimate 'on-balance' judgment of merit for development applications.

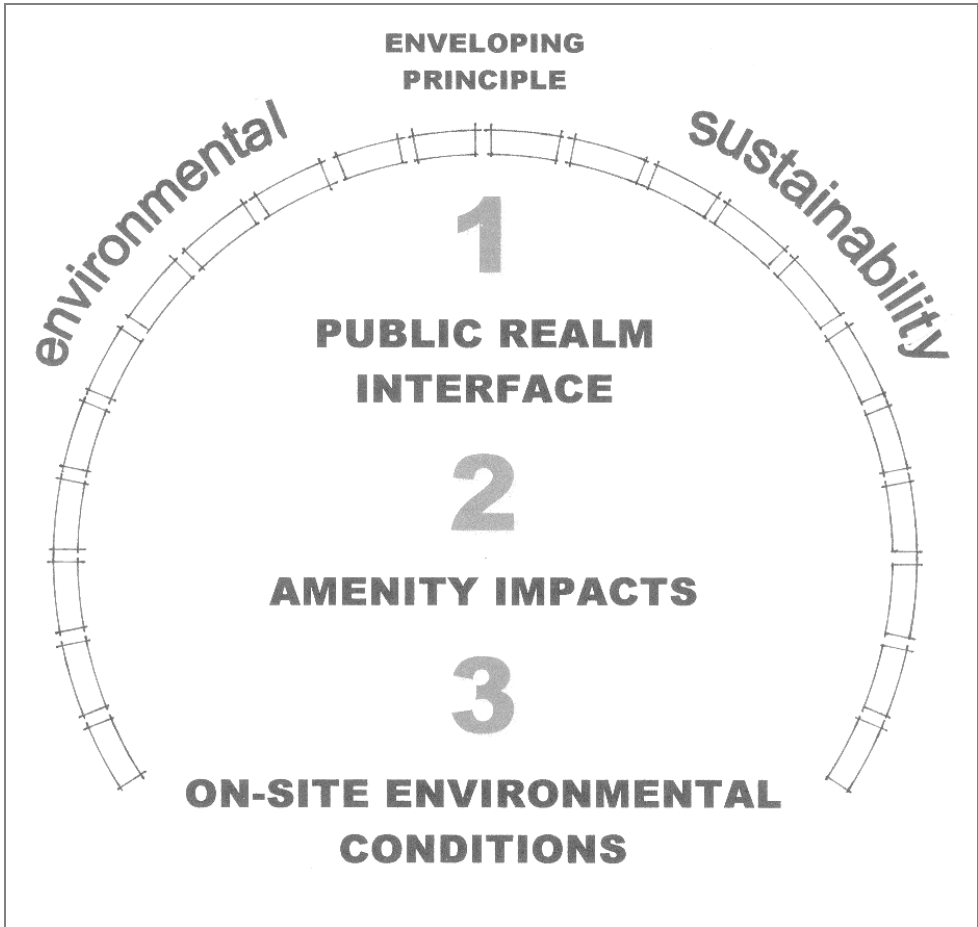
In fact, *AMCORD* itself advocates the 're-bundling' of Design Elements to suit specific development circumstances and contexts. Furthermore, in advocating the crucial importance of assessing the development context and carrying out comprehensive site analysis as a design 'platform' for generating appropriate design, *AMCORD* actually puts forward four primary categories of consideration:

- planning and development intentions for the site;
- the relationship of the site to the local community;
- the relationship of the site to adjoining properties;
- physical characteristics of the site.

In recent years I have used these categories of consideration on both sides of the development counter to develop an alternative, conceptual design and assessment framework that organises controls into logical packages of inter-related matters for consideration.

This alternative, conceptual design and assessment framework is based on the contention that most, if not all proposed developments present issues in three primary categories: (i) ***the public realm interface*** or, otherwise, those issues that are concerned with the relationship between proposed development and the broader public interest; (ii) ***amenity impacts*** or, otherwise, those issues that are concerned with the potential physical impacts that are likely to occur between proposed development and immediate neighbours; and (iii) ***on-site environmental conditions*** or, otherwise, the performance expected of development for its own sake and that of its occupants, visitors and users.

The framework then contends that over-arching these individual categories of consideration are principles of environmental sustainability through which individual issues or matters for consideration must be interpreted. It is stressed that this alternative framework is not meant to replace the more detailed assessment of an application’s merits by way of legally applicable local codes, but it does provide a far more effective tool for guiding the design process, optimising stakeholder negotiations and assisting in clarifying the relative priority of performance expectations in any given circumstances; in essence helping to integrate the design and development assessment processes.



**ALTERNATIVE DESIGN AND ASSESSMENT
FRAMEWORK
FOR
APPLYING PERFORMANCE-BASED
DEVELOPMENT CONTROL STANDARDS
IN
SITE-SPECIFIC CIRCUMSTANCES**

CATEGORY 1: PUBLIC REALM INTERFACE

1.1 STREETScape & NEIGHBOURHOOD CHARACTER

- Streetscape Character
- Regional and Local Landscape Character
- Building Appearance & Neighbourhood Character
- The Public Domain

1.2 ENVIRONMENTAL RESPONSIBILITY AND LAND CAPABILITY

- Ecological Values
- Ecological Corridors
- Scenic Values
- Bushland Protection
- Bushfire Risk
- Water Bodies, Waterways and Wetlands
- Flood and Stormwater Management
- Development on Flood Prone Land
- Sloping Land and Unstable/Reactive Soils
- Erosion Prevention and Sediment Control
- Air Quality
- Overall Waste Management Strategies

1.3 SOCIAL AND CULTURAL IMPACTS

- Protection of Low Income Housing
- Affordable Housing Aspects

1.4 ECONOMIC IMPACTS

1.5 HERITAGE CONSIDERATIONS

1.6 TRAFFIC AND TRANSPORT

- Accessibility Considerations
- On-Street Parking Impacts
- Traffic Generation and Safety Considerations

CATEGORY 2: AMENITY IMPACTS

2.1 PRIVACY

- Visual Privacy
- Aural (Noise) Impacts

2.2 SOLAR ACCESS

- Overshadowing
- Solar Access Rights

2.3 VIEW AND ASPECT

- Views and View Sharing
- Physical Overbearing

2.4 BOUNDARY AND INTER-SITE LANDSCAPE EFFECTS

2.5 WIND SHEAR

2.6 REFLECTIVITY

2.7 EMISSION CONTROL

CATEGORY 3: SITE PLANNING AND BUILDING DESIGN

- 3.1 SITE PLANNING
- 3.2 FRONT BOUNDARY SETBACKS
- 3.3 BUILDING ENVELOPE AND SITING
- 3.4 LANDSCAPE AND COMMUNAL OPEN SPACE
- 3.5 PRIVATE OPEN SPACE
- 3.6 DESIGN FOR CLIMATE AND ENERGY EFFICIENCY
- 3.7 ON-SITE CAR PARKING AND ACCESS
- 3.8 SECURITY
- 3.9 DWELLING ENTRY AND INTERIOR
- 3.10 ACCESSIBILITY AND ADAPTABILITY
- 3.11 SITE FACILITIES AND SERVICES
- 3.12 HOUSING ON HEAVY TRAFFIC ROUTES
- 3.13 ON-SITE BUSHFIRE PROTECTION MEASURES

ALTERNATIVE DESIGN AND ASSESSMENT FRAMEWORK CHECKLIST FOR APPLYING PERFORMANCE-BASED DEVELOPMENT CONTROL STANDARDS IN SITE-SPECIFIC CIRCUMSTANCES

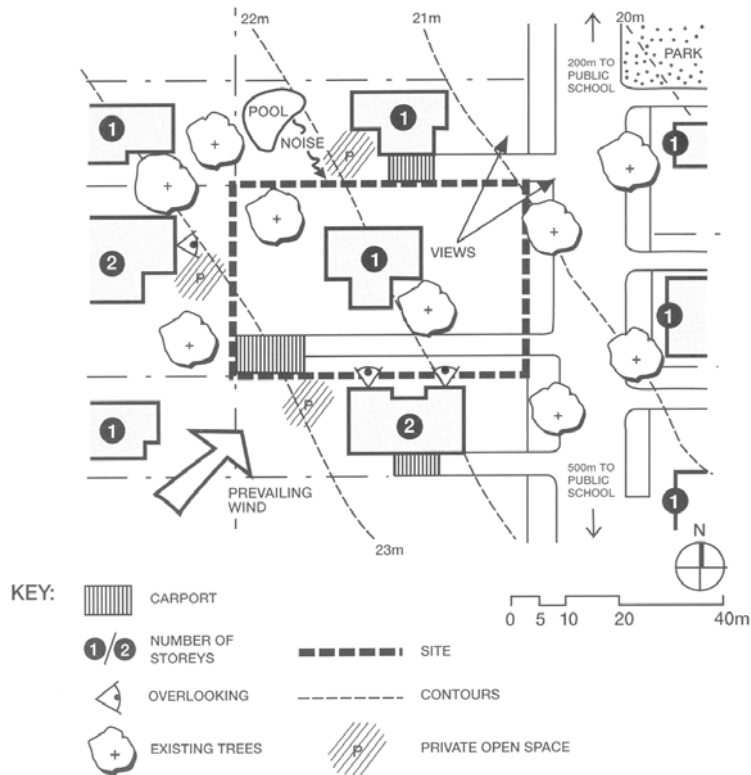
This checklist is by no means complete and comprehensive for every site or every development scenario, but it does represent an effective starting point for considering the 'in-principle' acceptability of schematic designs.

PART 3:
**Site analysis and design response
techniques as
effective design and assessment tools**

FIRST:
COMPREHENSIVE SITE ANALYSIS

Irrespective of how well performance-based codes are written, development applications often fail because of major technical or qualitative deficiencies, or because of sustained objections. Typically, such proposals are poorly constructed because they have not adequately anticipated and dealt with site or contextual constraints that eventually translate into project deficiencies. In such circumstances, a high-standard design process guided by the technical process of *Site Analysis and Design Response* can usually address such development problems, avoid considerable conflict between stakeholders, save substantial time, effort and money on both sides of the development control counter, and also identify profitable, high-quality designs.

Traditionally, however, site analysis is given only token attention as a design or development control tool. In fact, while development codes often require inclusion of site analysis submissions with development applications, many designers and architects tend to leave the preparation of site analysis submissions to the last minute just prior to the lodging of development applications; in other words, site analysis is seen as a submission requirement, as opposed to a design tool. All too often it is little more than a compilation of superficial site context information presented as an advocacy statement that typically includes the final design. Also, some council DCPs do not adequately explain what a site analysis actually is and what it should achieve. To make matters worse, many development assessors do not necessarily give site analysis very much priority in determining the adequacy of a development application. Rarely, if ever, does site analysis truly inform and guide the design for a development application, but equally, site analysis is rarely considered to be an important component of the assessment process.



The indicative site analysis above is from a long-ago abandoned *NSW Model Code: A Model for Performance-based Multi-unit Housing Codes* published by the NSW Government. This drawing, which is accompanied by a comprehensive checklist of matters to consider, is a typical graphic representation of what a site analysis should generally include and how the information can be conveyed. However, while this approach to site analysis may be good at identifying site and context factors that are likely to affect proposed development, it does not do the equally important job of identifying ways in which proposed development might affect the surrounding context, including not only the adjoining and nearby private properties, but the broader public realm as well. More significantly still, it does not convey any information as to what the ‘analysis’ actually means in terms of ‘constraints’ and ‘opportunities’; that is, the ‘do’s’ and ‘don’ts’ (or development principles) by which a proposed development for a site should be guided.

As a result, there has been a growing movement in some parts of Australia in recent times for ‘comprehensive’ site analysis (that is, one which actually ‘analyses’ the site and context survey results into constraints and opportunities) to be formally invoked as a pre-requisite to the preparation of specific design solutions and subsequent development applications; in other words at the preliminary design and pre-DA stages.

Consistent with the AMCORD model, a 'comprehensive' site analysis should include up to five sections:

1: PROJECT CONTEXT

This section briefly presents and explains the site and its context.

*It also explains the development brief and its objectives,
plus the regulatory context for the project*

2: PUBLIC REALM INTERFACE CONSIDERATIONS

This section investigates the environmental, social and economic

relationship between a site (and any possible development on it)

and the broader PUBLIC REALM context

3: AMENITY IMPACT CONSIDERATIONS

This section investigates the AMENITY IMPACT relationships

between a site (and any possible development on it)

and the adjoining and nearby properties

4: SITE PLANNING CONSIDERATIONS

This section investigates the specific SITE PLANNING factors

that are likely to affect proposed development

5: CONSTRAINTS AND OPPORTUNITIES

This section is the heart of a comprehensive site analysis, because it contains the overall conclusions that can be read from the raw site analysis information; and typically expressed as development principles or

CONSTRAINTS AND OPPORTUNITIES

It should be stressed that the overall purpose of a comprehensive site analysis is not to just present raw contextual and site information, but more importantly to identify meaningful conclusions (which is what effective analysis should do) and resolve just what all of that information means in terms of how and why development should be limited (or encouraged) for the particular circumstances. Without this last section of Constraints and Opportunities, site analysis can be a substantially meaningless compilation of isolated site or contextual development factors that remain to be given meaning and value.

S E C O N D : D E S I G N R E S P O N S E

Development applications obviously represent the physical and qualitative expectations of applicants and the culmination of hard work by both applicants and their consultants. But, regardless of this, they may not be acceptable to other stakeholders (including neighbours, community activists and the local planning authority itself) who may make quite different value judgments to those which have guided applicants and their consultants. To avoid such conflict of perceptions and fatal value judgments, conceptual designs - and later developed designs - should be accompanied by a **Design Response Report**, a document that addresses the results of the preceding site survey and analysis process, and then evidences how the development principles, or constraints and opportunities, are reflected in the design.

Depending on the complexity of proposals, a Design Response Report may have up to five primary sections:

1: EXPLANATION OF THE DESIGN

This section presents and explains the proposal and its primary features, usually schematic design sketches with accompanying explanatory text.

2: PUBLIC REALM INTERFACE COMPATIBILITY

*This section describes how the proposed design satisfies the
PUBLIC REALM INTERFACE
development principles identified by the preceding site analysis.*

3: AMENITY PROTECTION

*This section describes how the proposed design satisfies the
AMENITY PROTECTION
development principles identified by the preceding site analysis.*

4: ON-SITE PLANNING

*This section describes how the proposed design satisfies the
ON-SITE ENVIRONMENTAL
development principles identified by the preceding site analysis.*

5: REGULATORY COMPLIANCE

This section describes briefly how the proposed design satisfies the relevant development standards and planning controls

Some Design Response Reports can also include a further two recommended sections:

6: ECOLOGICAL SUSTAINABILITY

*This section describes how the proposed design meets the principles of
ECOLOGICAL SUSTAINABILITY
(including energy efficiency ratings likely to be achieved)*

and

7: RESULTS OF STAKEHOLDER CONSULTATIONS

*This section describes the outcomes of
STAKEHOLDER CONSULTATIONS*

Of course, the preparation of both site analysis and design response submissions should be a matter of ‘horses for courses’; that is, the relative complexity (or simplicity) of these design/assessment tasks should reflect the relative complexity of the actual development proposal. Small extensions to existing houses, for example, should be accompanied by relatively simple submissions, while multi-unit housing or large commercial developments need to be resolved and evidenced by way of more complex and comprehensive submissions.

The critical point, of course, is that both site analysis and design response techniques should be integral parts of the design process that pragmatically and effectively inform the proposed design that makes up a development application. They should not be simply superficial DA submission packages that are a result of working backwards from an essentially finished product. If this is done legitimately and done well, then it maximises the chances for conflict avoidance and true ‘win-win’ outcomes that are both profitable and in the public interest.

PART 4:

A standard template for site analysis and design response statements

The following is a typical 'performance-based' Site Analysis and Design Response Report prepared by the presenter using the alternative design and assessment framework. It has been developed into a standard presentation template that incorporates all of the elements and principles put forward in the previous two sections.

The template consists of up to seven sections:

SECTION 1: PROJECT CONTEXT

A brief description of the site and its immediate context, an explanation of the development brief and development objectives, information about what processes have occurred to date (especially any details of stakeholder consultations) and finally a brief description of the regulatory context applicable to the project

SECTION 2: SITE ANALYSIS (1) - PUBLIC REALM INTERFACE CONSIDERATIONS

Identification and discussion of all the relevant public realm issues brought up by the project and the site

SECTION 3: SITE ANALYSIS (2) - AMENITY IMPACT CONSIDERATIONS

Identification and discussion of all the potential amenity impacts issues raised by the project

SECTION 4: SITE ANALYSIS (3) - SITE PLANNING CONSIDERATIONS

Identification and discussion of the specific site planning issues raised by the proposed development

SECTION 5: SITE ANALYSIS (4) - CONSTRAINTS AND OPPORTUNITIES

*Identification of all the applicable development principles and objectives that are raised through the site analysis
(arguably the heart of the entire site analysis and design response process)*

SECTION 6: DESIGN RESPONSE (1) – DESIGN STATEMENT

A brief description of the main features of the developed design and an explanation of how the scheme addresses and satisfies all the identified constraints and opportunities

SECTION 7: DESIGN RESPONSE (2) – DESIGN STATEMENT

A brief description of how in general the scheme satisfies the relevant instruments and codes



site analysis
and
design response
report

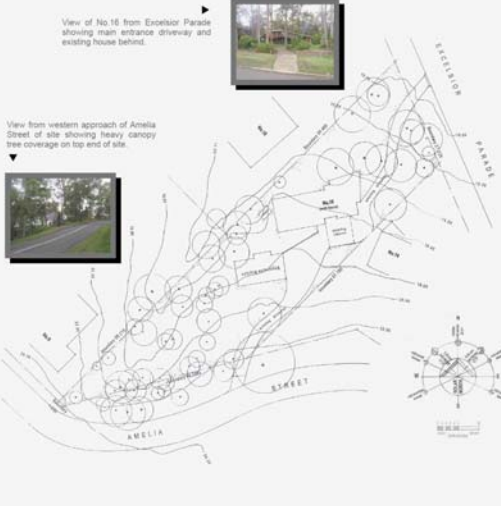
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COVER SHEET

SITE AND CONTEXT ANALYSIS 01:

project context



View of No 16 from Excelsior Parade showing main entrance driveway and existing house behind.



View from western approach of Amelia Street of site showing heavy canopy tree coverage on top end of site.



THE SITE
The site is an established residential allotment located at 16 Excelsior Parade, Carey Bay - a semi-bushland block overlooking Lake Macquarie.

The block has a site area of 2,356 m², with relatively wide frontages to Excelsior Parade to the northeast (27.12m) and Amelia Street to the southwest (48.35m). It falls about 14 metres from its higher, secondary Amelia Street frontage down to its primary Excelsior Parade frontage; the site being relatively steep closest to Amelia Street (up to 1 in 6), but flattening out as it approaches its Excelsior Street frontage. The allotment is notable for the relatively high number of native canopy trees that have been retained, as well as a relatively pristine creek bed running along its northwestern boundary.

At present a number of buildings are located on the property: (i) an elevated, 1960s-period, single storey house with attached carport, (ii) a large, detached studio towards the rear, and (iii) a small shed on the western side of the house.

THE BRIEF
The primary development objective of the project is to subdivide the existing allotment into two smaller, Torrens titled, residential blocks: the larger, Excelsior Parade fronting block retaining the existing house, and a new, slightly smaller block with its own frontage to Amelia Street. It is expected that the subdivision will involve the demolition of the existing detached studio located behind the main house.

PRECEDENCE

Two applications to subdivide the allotment were lodged with Lake Macquarie City Council in 2001 and 2003, but the Council refused both applications. A third application was lodged in late 2003 (DA2154/2004). This was again opposed by the Council and was formally refused on 14 July 2004. The reasons for refusal included failure to evidence an appropriate building form for the new block, vehicular access safety problems associated with the Amelia St frontage, potential loss of significant vegetation, plus failure to evidence that building on the second block would be feasible in relation to steepness and topographical conditions.

An appeal before the Land and Environment Court (Appeal 10933/2004) was subsequently lodged and the case has proceeded to an on-site hearing; the Court finding provisionally that while the application does not justify consent, it may be possible through further amended plans and evidence to achieve a proposal satisfactory to the Court. This submission is a response to the Court's directions.

REGULATORY CONTEXT

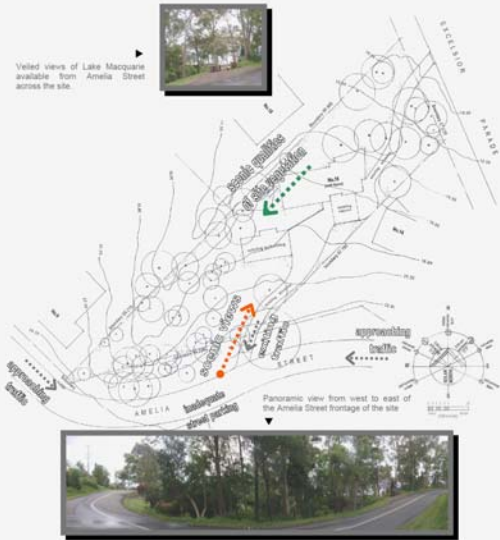
Although the development application was lodged prior to the formal adoption of the current planning regime in Lake Macquarie, it is understood that the parties have agreed that Lake Macquarie LEP 2004 is the primary environmental planning instrument most relevant to the case, and under it DCP 1. In any event, the case raises land capability and contextual issues that must be resolved on a first principles basis.

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PROJECT CONTEXT

SITE AND CONTEXT ANALYSIS 02: public realm interface considerations



STREETSCAPE

The Amelia St frontage is characterised by a dense coverage of native canopy trees and lower vegetation, plus a strong perception of a steep, semi-pristine creek gully dropping to the northeast through the trees. Buildings can be seen in the distance through the trees, but the dominating native landscape character veils the perception of site development. The site's character is integral to the immediate context of a semi-bushland residential area. Notably, the relatively deep verge vegetation provides much of the veiling landscape effect. These positive streetscape features indicate that any further development of the site should (i) minimise the loss of native vegetation, (ii) conserve the heavy landscape buffering, (iii) minimise vehicular and pedestrian access penetrations, and (iv) reduce the visual predominance of built form to a minimum.

VEHICULAR ACCESS

On Amelia St, traffic approaches at 40-60 kph from both directions, while the maximum frequency of traffic is about 50-60 movements per hour, and typically much less. For the existing southeastern driveway, reaction times from both directions are between 4-5 seconds, although aural signals increase these times perceptibly. Overall, these are on balance acceptable within the circumstances of a low-density area, albeit marginally so.

For the northwestern driveway, the proposed subdivision brings with it the need to provide for adequate on-site turn-around facilities for the existing house.

SCENIC QUALITIES

Because of close proximity to the lake and the rising topography, the heavy native tree vegetation of the site makes a strong mid-level landscape contribution to the immediate foreshore character as seen from the lake. As a result, further development of the site should: (i) minimise the loss of significant canopy trees as much as reasonably possible, and (ii) wherever possible achieve landscape regeneration.

PUBLIC VIEWS

Also, at present most of the Amelia Street frontage (both the verge and the site itself) is heavily vegetated with a combination of dense canopy trees and lower vegetation. Nevertheless, there are quite attractive views of the lake seen from Amelia Street through the canopy of trees of the site and over the top of the existing house, albeit only in the vicinity of the southeastern corner of the site around the area of the existing driveway entrance. These public vista scenic views deserve to be conserved to some degree, and as a result any further development of the site should: (i) conserve public view lines and therefore (ii) retain the vehicular driveway in its present location (albeit upgraded).

THE VERGE/DRAINING

At present the verge immediately in front of the site along the Amelia Street frontage is unformed and quite narrow, and this is in fact a key feature of the immediate streetscape. However, these conditions do not allow for safe on-street parking for the site. Accordingly, further development should provide adequate parking on site, both resident and visitor.

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PUBLIC REALM INTERFACE CONSIDERATIONS

SITE AND CONTEXT ANALYSIS 03:

amenity impact considerations

No. 18 Excelsior Parade:

Some potential for distant overlooking from proposed subdivision and new house. Otherwise, no likely amenity impact problems.

No. 16 Excelsior Parade:

Some potential for overlooking from proposed subdivision and new house. Otherwise, no likely amenity impact problems.

No. 9 Amelia Street:

Some potential for overlooking from proposed subdivision and new house, as well as some possibility of early morning overshadowing. Otherwise, no likely amenity impact problems.

No. 14 Excelsior Parade:

Small potential for distant overlooking from proposed subdivision and new house. Otherwise, no likely amenity impact problems.

Houses opposite in Amelia St:
Some limited potential for scenic view losses. Otherwise, no likely amenity impact problems.

AMENITY IMPACTS

The existing allotment adjoins three other residential blocks: No's 14 and 18 Excelsior Pde and No 9 Amelia St. All three adjoining blocks are potentially impacted by site development of No 16. Subdivision and further development of the allotment also has the potential to impact on housing located on higher ground opposite on Amelia Street, as well as on the existing house of No 16 to which the proposed new allotment and its eventual housing will relate most closely.

NO. 18 EXCELSIOR PDE

The adjoining allotment to the southeast is No 14 Excelsior Pde. At present, this has an elevated single storey house located on it towards the front of the block, directly opposite the existing house on No 16. The allotment narrows markedly closer to its secondary Amelia Street frontage. There is some potential for distant overlooking from the proposed subdivision and development of No 16, however overlooking distances to the house and rear courtyard of No 14 are in the range of 30-40 metres. Detrimental overlooking is therefore highly unlikely. Otherwise, there are no amenity impacts indicated.

NO. 16 EXCELSIOR PDE

The adjoining residential allotment to the northwest also has a dwelling house located on it, again directly opposite the existing house on No 16. However, this house and its primary rear courtyard are also in the vicinity of 30 metres from any potential further development on No 16, and fairly heavily screened by canopy trees. There are therefore no detrimental impacts indicated.

NO. 9 AMELIA ST

No. 9 Amelia Street is an established residential block that adjoins the rear of No 16 to the northwest. This allotment does exhibit the potential for detrimental overlooking from subdivision and further development on No 16, and in particular the south-eastern side and rear of the existing house and its immediate courtyard areas. There is also some potential for detrimental early morning overshadowing, albeit minimal. Nevertheless, these potentials indicate a need to incorporate a reasonable buffer between No 9 Amelia St and any future development on No 16.

OTHER AMENITY CONCNS

There is a cluster of housing on the opposite side of Amelia St that at present enjoys scenic views of the lake over No 16 Excelsior Pde. However, these houses are located on much higher ground, and the viewing lines are relatively high. Nevertheless, some care should be taken to ensure that further development on No 16 is not so high that it impinges on those established views. Otherwise, these houses are not potentially affected.

EXISTING HOUSE - NO. 16

The existing house on No 16 is likely to be exposed to any newly created second allotment at the rear of the present site, and especially given that the intervening studio building is likely to be demolished. This exposure has the potential to cause some degree of detrimental overlooking of the rear of the house, albeit its service areas. Nevertheless, it does indicate that need for some ameliorating buffers.

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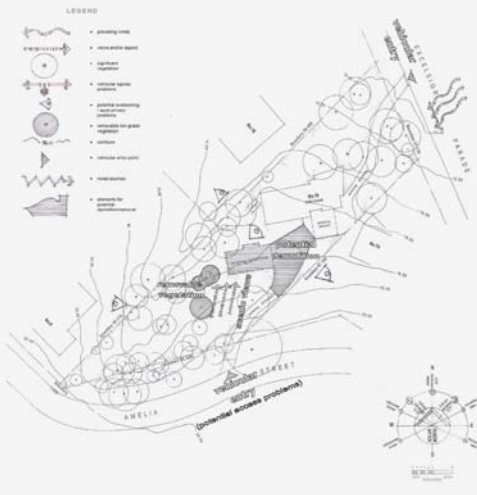
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AMENITY IMPACT CONSIDERATIONS

SITE AND CONTEXT ANALYSIS 04:

site planning considerations



PLANNING FACTORS

Prevailing Winds:

The site receives prevailing cool winds from the northeast off Lake Macquarie.

Views/Aspect:

The site enjoys quality scenic views to the north and northeast over Lake Macquarie through veiling canopy vegetation.

Vehicular Egress:

There are three potentially problematic aspects of vehicular egress associated with proposed subdivision of the site: (i) ensuring that both blocks have an adequate vehicular turn-around areas for forward egress; (ii) ensuring that vehicular egress to and from Amelia St is reasonably safe; and (iii) providing adequate visitor parking on-site for the Amelia St fronting allotment.

Potential Overlooking:

Subdivision and development of a second dwelling house at the rear of the site has the potential for causing some degree of overlooking and visual privacy loss for a number of adjoining houses, although provision of adequate landscape buffers will easily address this potential problem.

Potential Demolition:

Subdivision of the block may necessitate either demolition or relocation of the existing studio building. There are also significant areas of hard paving and driveway in the centre of the site that may become redundant. In both cases, there exists an opportunity to achieve a high degree of landscape regeneration.

Significant Vegetation:

An outstanding topographical feature of the site is the relatively dense coverage of surviving native canopy trees that gives the site a strong semi-bushland character, which in turn contributes strongly to the foreshore character of the lake in the immediate vicinity.

Removable Vegetation:

The overwhelming majority of trees on the site are substantial or maturing native canopy trees in relatively healthy condition. The on-site tree coverage also serves important local landscape character and scenic foreshore conservation objectives, as well as providing important inter-site buffering. On this basis, most of the site trees and lower vegetation deserve to be conserved.

Nevertheless, there are a number of dense clusters of smaller canopy trees where thinning out is justified (and on balance justified), while there are several other trees in less than optimum condition that could justify removal.

Contours / Topography:

Towards the Amelia Street end of the site, the land becomes relatively steep (up to 1 in 6). Also, it is in this location where the natural landscape qualities of the site (and especially in the area of the gully along the north-western boundary) are at their highest. Accordingly, any proposed building in this part of the site must account for the steepness and topographical sensitivity. This suggests a predominance of light-frame construction.

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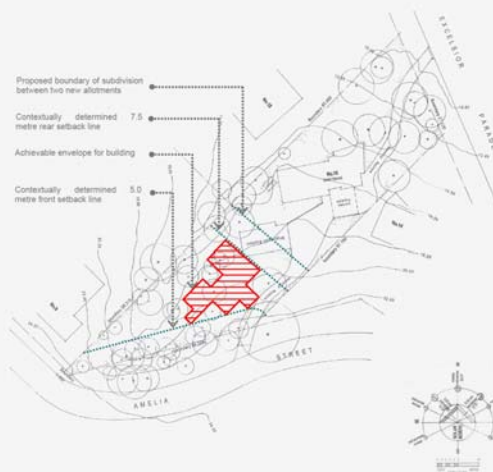
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SITE PLANNING CONSIDERATIONS

SITE AND CONTEXT ANALYSIS 05:

constraints and opportunities



PUBLIC REALM INTERFACE ISSUES

Streetscape:

Because of the densely planted street verge and front setback area, and also the relative location of nearby housing, a minimum front setback of 5 metres from Amelia Street is considered appropriate.

Vehicular Access:

The reaction times and low traffic frequency indicate that the existing Amelia St driveway will be adequate for the new allotment, albeit upgraded. But, the allotment will require on-site turn-around facilities and visitor parking. Similarly, the reduced front allotment will require new on-site turn-around facilities.

Scenic Qualities:

The loss of canopy trees should be reduced as much as possible to smaller saplings and less significant trees in the centre of the rear section of the site.

Public Views:

Public views of the lake available to the northeast along the southeastern side of the site should be retained if possible.

AMENITY IMPACT ISSUES

Landscape Regeneration:

The likely removal of the studio and the redundancy of the central driveway areas create major landscape regeneration opportunities on both allotments.

Visual/aural Privacy:

Landscape buffers along the common boundaries with adjoining properties to the northwest and southeast should be retained and where necessary intensified to ensure maximisation of inter-site privacy. Similarly, landscape buffers along the newly created common boundary between the new allotment and the retained house on No.16 should be achieved through intensive landscape regeneration.

ON-SITE PLANNING ISSUES

Subdivision:

Splitting the site in the vicinity of the detached studio building to create two allotments in excess of 1,000m² each would appear to be the most appropriate form of subdivision. This will obviously necessitate either the demolition of the existing studio, or otherwise its relocation, either off site or on site.

Contours / Topography:

While any building for the new allotment might incorporate a masonry core, it should nevertheless be predominately light-frame construction with minimal site interference to work positively with the steep topography and proximity of canopy trees.

Views / Aspect:

Building on the new allotment should exploit the availability of high scenic views, cooling breezes and solar access available to the north and northwest.

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CONSTRAINTS AND OPPORTUNITIES

DESIGN RESPONSE 01:

design statement

THE DESIGN CONCEPT

The amended design retains the subdivision as previously proposed, that is, with the existing house located on a reduced block of 1,341.0 m² fronting to Excelsior Pde and a new, second block of 1,015.0 m² fronting Amelia St. However, the scheme now incorporates an alternative design for a substantially light-framed, two-storey dwelling house and driveway that: (i) retains substantial landscape buffers to all four boundary areas, (ii) does not threaten the existing gully running along the north-western boundary, (iii) requires the removal of only four secondary canopy trees or saplings of limited value and (iv) includes major areas of landscape regeneration.

More specifically, the scheme presents the following performance attributes against the development principles identified by the site and context analysis:

Public Realm Interface:

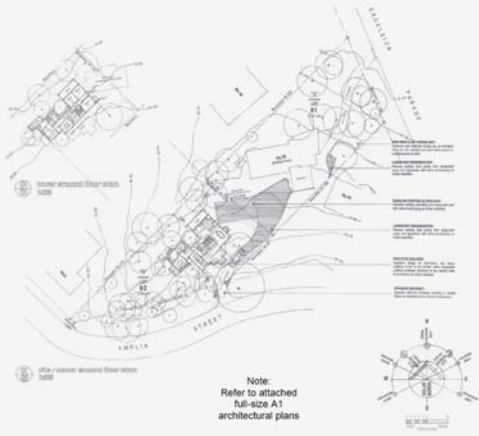
- The proposed house will ensure the retention of a generous, densely planted front setback area and will sit low relative to the adjacent street.
- The scheme will remove only four minor trees. The scenic landscape values of the site will be retained.
- The scheme upgrades the Amelia St driveway access, but also includes on-site turn-around and visitor parking facilities.
- The positioning and relative mass of the indicative house will ensure the retention of scenic public views of the lake available from Amelia St.

Amenity Impacts:

- The proposed subdivision and indicative house design will ensure that the visual and aural privacy of all adjoining houses and their primary courtyard areas (including the existing house on No 16) will be adequately protected.
- The indicative house design will ensure that no adjoining or nearby houses (including those on the opposite side of Amelia St) will lose access to iconic views.
- The indicative house design will ensure that no adjoining or nearby houses will experience detrimental overshadowing impacts.
- The scheme maximises the retention of inter-site landscape buffers through a combination of generous setbacks and landscape regeneration.

On-site Planning:

- The scheme creates two viable allotments that both exceed 1,000m² and have separate street frontages.
- The indicative house design incorporates substantially light-framed construction that is appropriate and sensitive to the topography and landscape of the site.
- The scheme incorporates an indicative house design that maximises solar access, exposure to cooling breezes, scenic views and design for climate.
- The scheme incorporates on-site turn-around and visitor parking for both proposed allotments.



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DESIGN STATEMENT (1)

DESIGN RESPONSE 02:

regulatory compliance

LEP COMPLIANCE

The environmental planning instrument most relevant to the proposed subdivision is Lake Macquarie LEP 2004. Under the provisions of MLEP 2004, subdivision of the existing allotment (as 2(1) zoned land) is permissible with consent provided that it meets the development standards and performance requirements of Cl. 24 (together with Schedule 2) of the LEP. In this regard:

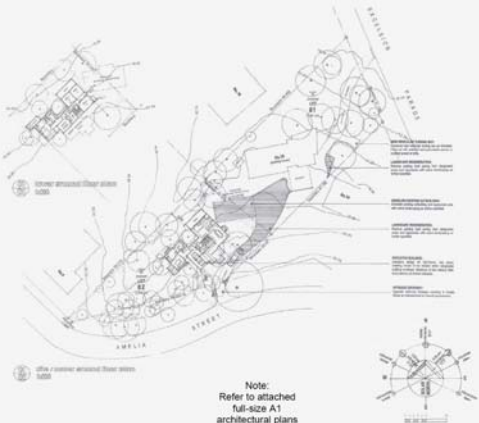
- both proposed allotments are more than double the minimum allotment area requirement of 450m² for standard rectangular blocks and both have street frontages that are well in excess of the minimum requirement of 14 metres; and
- the existence of the existing house (with minor site works) and the indicative dwelling house design for the proposed second allotment confirm that the resulting lots can be developed in an environmentally appropriate manner consistent with the objectives of the Plan.

In this regard, the preceding site and context analysis, plus design responses confirm that the subdivision and anticipated dwelling house development will be consistent with the 2(1) zone objectives set out in Cl. 15 of the Plan, and in particular that the subsequent development will respect the character of surrounding development and will be of good quality design.

DCP COMPLIANCE

The proposed subdivision and anticipated dwelling house development on the site must also meet the applicable provisions of Lake Macquarie Development Control Plan No 1, in particular seven overarching General Principles of Development set out in Part 2 of the DCP and also the specific controls of Part 3.2 - Subdivision. In this regard, the following attributes are noted:

- Both allotments achieve both the applicable minimum site area and site frontage requirements.
- Site coverage rates will be: (i) 28.1% for Lot 81 and (ii) 21.2% for Lot 82.
- The indicative house design and new hard-paved areas for both allotments (building footprint + balconies less than 1.5 metres off ground + new driveways/footpaths), total 215.45m². But, the scheme includes 235.2m² of landscape regeneration areas achieved from demolished buildings and driveways. Therefore, the scheme will achieve a net increase of 19.75m² of deep soil landscape over both sites.
- The scheme responds positively to the unique landscape values and scenic qualities of the site and its context, and will also achieve positive streetscape character outcomes.
- The proposal exhibits no detrimental social or economic impacts.
- The indicative house design evidences that the both allotments will have adequate land capability and be environmentally responsible.
- The scheme is adequate in relation to transport, parking, accessibility and servicing.



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DESIGN STATEMENT (2)

CLOSING REMARKS

The preceding submission has done a number of simple things: first, it has put forward a strong argument that land-use planning and development in NSW suffers from a number of unavoidable elephants in the room – serious and fundamental shortcomings of which everyone is aware, but no-one wants to acknowledge, let alone deal with; but second, it has also argued that there is available a simple, but surprisingly cheap and effective alternative approach to development design and assessment that can work for the overwhelming majority of stakeholders; and finally, it describes the principles, primary structural and procedural elements of such an alternative system.

It only remains for someone to say: Lord, it might just work!

GREG VICKAS

2009

POSTSCRIPT:
A SONG

DA!DA!

(To the tune of 'New York New York')

Start spreading the news,
I'm lodging today,
I wanna big part of it – DA! DA!.

These little town views, I'll be makin' them pay
Why I'll even barter a bit – DA! DA!

I wanna rake up in a city where nothing's cheap
And find I'm king of the fill - top of the heap

Tree-lined avenues, I'll be selling my way
Gonna make a brand new art of it – through my DA

And....If I can fake it here, I'll fake it anywhere
Its up to you – DA! DA!

DA! DA!

I wanna rake up in a city that's mine for keeps,
And find I'm under the sun, top of the cut, king of the fill

Top bloody gun!

These little town views, I'll be selling my way
I'll make a mega-grand from it - through my DA
And if you can fake it here, you're gonna fake it anywhere

Come on, it's up to you – DA! DA!

DA!