

Relevant JOINT REGIONAL PLANNING PANEL

Meeting held at Newcastle City Hall on Thursday 22 September 2016 at 2.30 pm

Panel Members: Jason Perica (Chair), Lindsay Fletcher, Michael Leavey

Apologies: Sharon Waterhouse, Brad Luke, Allan Robinson

Declarations of Interest: Kara Krason declared a conflict of interest as her company provides consultancy services to the Applicant, EG Funds, from time to time.

Determination and Statement of Reasons

2015HCC029 – Newcastle City Council – DA2015/10299 28 Bolton Street Newcastle as described in Schedule 1.

Date of determination: 22 September 2016

Decision:

The Panel determined to approve the development application as described in Schedule 1 pursuant to section 80 of the *Environmental Planning and Assessment Act 1979*.

Panel consideration:

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel adjourned during the meeting to discuss matters and formulate a resolution.

Reasons for the Panel decision:

The Panel generally agreed with the assessment of the proposal as outlined in the assessment report by Council staff. The Panel unanimously approved the application, particularly noting the following main reasons:

1. The proposal complied with core planning controls within Newcastle LEP 2012, with the exception of Clause 4.3 (Building Height). In this regard, the Panel had regard to the applicant's Clause 4.6 Variation Request (as amended and provided to the Panel), the Council staff assessment of that request, the objectives of Clause 4.3, the objectives of the zone and the nature of the site and surrounding development and was satisfied there were sufficient environmental planning grounds to support the proposed variation. It was particularly noted the proposal was within the maximum FSR and the height non-compliances largely arose from design amendments suggested through the application process to provide communal open space on the roof, and to reduce reliance on lower communal areas closer to neighbours. The non-compliances were localised, were affected by the slope of the land and were sited to reasonably minimise visual impacts and amenity impacts on surrounding public and private land. The height non-compliance(s) did not set any universal precedent due to the particular nature and circumstances of the case, did not undermine the control itself and did not raise a matter of State or regional significance
2. The general support of the proposal by the Council's independent Urban Design Consultative Group, and the site planning and design measures adopted, in the context of SEPP 65 and associated considerations in that Plan and Apartment Design Guide;
3. The proposal would result in a positive heritage outcome for the building on the site, including conservation works;
4. The current site could be considered as underdeveloped in the context of the applicable planning controls, which could also be considered to favour redevelopment of the site. The proposed redevelopment of the site appropriately balanced site constraints, interface with the public domain, the applicable planning controls and impacts on surrounding amenity;
5. The proposal complied with objectives within Newcastle LEP 2012;
6. The proposal was satisfactory when considered against required considerations within applicable environmental planning instruments;
7. The proposal would appropriately activate the site and the area, and assist in achieving desirable redevelopment of the wider area, as encouraged in SEPP (Urban Renewal) 2010, without alienating other land;
8. There were noted to be amenity impacts on surrounding land from the proposal, particularly to the residential flat building immediately to the north of the site (known as "City Extra"). However, in the context of the planning controls applying to the site and the rational site planning associated with the proposal, these impacts were considered acceptable. Privacy impacts were considered to be the primary potential impact from the proposal and these were reasonably minimised by a setback from

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the side boundary consistent with that recommended in the Apartment Design Guide, privacy screening and measures associated with the podium open space and boundary treatment. The adjoining flat building was closer to the side boundary than current recommended setbacks within the Apartment Design Guide, although this should not unreasonably constrain development of the subject site. It was also noted there were 4 windows associated with 2 units on the upper levels of the adjoining flat building located on the side boundary. These were noted by the Panel to have been approved by the Council. However, the windows did not have any legal protection (by way of an easement for light) and were also not the sole sources for light in the rooms, which had windows to the east or west. Placement of such windows on a boundary do not represent sound planning for areas undergoing redevelopment and should not determine or unreasonably constrain adjoining development where they are not legally protected and not required for BCA compliance. Accordingly, despite the proposal essentially blocking these windows, this was considered acceptable in this instance. Other impacts from the proposal were generally inevitable from redevelopment in accordance with applicable planning controls for an underdeveloped site.

9. The environmental impacts of the proposal were able to be reasonably managed through conditions of consent (as amended).

Conditions: The development application was approved subject to the conditions recommended in the Council Assessment Report, as amended as follows:

- Condition 2 - amended to include reference to the perspectives titled "Street Articulation" to both Newcomen Street and King Street;
- Condition 8 – amended to insert the words "and pedestrian safety for residents accessing the bin storage area on Basement Level 1" at the end of the second sentence.
- Condition 13 – amended to delete the words "any new" prior to "toilets" in the first sentence and amend "and" to "and/or" after cisterns in the first sentence (to allow some appropriate flexibility in design);
- Condition 75 – amend to replace the word "construction" with "any" in the first sentence and move the Condition to an earlier schedule so it applies prior to any construction (so as to enable the community liaison arrangements to be established prior to any works);
- Condition 76 – move to after Condition 71 (so remediation works are carried out prior to Occupation); and
- The advisory matters being lettered rather than numbers, so as not to be confused with conditions.

Panel members:



Jason Perica (Chair)



Lindsay Fletcher



Michael Leavey

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SCHEDULE 1	
1	JRPP Reference – LGA – Council Reference: 2015HCC029 – Newcastle City – DA2015/10299
2	Proposed development: Mixed Use Development Alterations and additions to commercial building to include eight storey residential flat building (121 units) plus three level basement car parking (161 parking bays)
3	Street address: 28 Bolton Street Newcastle
4	Applicant: EG Fund Management Pty Ltd
5	Type of Regional development: Capital Investment Value >\$20 million
6	Relevant mandatory considerations: <ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Major Development) 2005 ○ State Environmental Planning Policy No.55 – Remediation of Land ○ State Environmental Planning Policy (Urban Renewal) 2010 ○ State Environmental Planning Policy No.71 Coastal Protection ○ State Environmental Planning Policy (BASIX) 2004 ○ State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Design ○ Newcastle Locale Environmental Plan 2012 • Development control plans: <ul style="list-style-type: none"> ○ Newcastle Development Control Plan 2012 • Planning agreements: Nil • Regulations: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality. • The suitability of the site for the development. • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> and EPA Regulation. • The public interest, including the principles of ecologically sustainable development.
7	Material considered by the Panel: Council Assessment Report Dated 12 August 2016 Council Supplementary Report Dated 8 September 2016 Written submissions during public exhibition: 8 Verbal submissions at the Panel meeting: Against- John Sievwright, Paul Beith, Linda Harrigan and John Murray; On behalf of the applicant- Kristy Hodgkinson, Rob Miram
8	Meetings and site inspections by the Panel: Site Inspection: 25 August 2016 Briefing Meeting: 28 July, 25 August 2016 & 22 September 2016 Determination Meeting: 25 August 2016 (matter deferred)
9	Council recommendation: Approval
10	Draft conditions: As per Assessment Report