

DATE OF DETERMINATION	13 December 2016
PANEL MEMBERS	Jason Perica (Chair), Kara Krason, Michael Leavey, Cllr Brad Luke
APOLOGIES	Cllr Sharon Waterhouse and alternate Cllr Allan Robinson
DECLARATIONS OF INTEREST	None

Public meeting held at Travelodge Newcastle on Tuesday 13 December 2016, opened at 3.00 pm and closed at 5.40 pm. Determination of this item occurred at around 4.40pm.

Councillor Brad Luke left the meeting at 5pm (to attend a Council meeting) and was not in attendance for the decision on this matter, although was in attendance for speakers and part of the Panel discussion.

MATTER DETERMINED

2016HCC026 - Newcastle City Council, DA 2016/00384, Demolition of building, erection of multi-level mixed use development including 156 residential units (as amended), two commercial units, two basement levels for parking and associated loading and site works, at No. 73-79 Railway Lane, Wickham

PANEL CONSIDERATION AND DECISION

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

The Panel determined to defer determination of the application in order for the following to occur:

- (a) The applicant to submit amended plans and information which:
 - i. Setback the eastern two levels above the loading area and adjoining the pub to the east a minimum of 3m from the boundary, with associated internal redesign which also ensures no east-facing windows and provides for a landscaped strip at the communal rooftop area above the units at least 1m wide and of appropriate depth to support plants which may grow down the eastern elevation;
 - ii. Setback the two towers at least 3m for the lower 4 levels and 6m from the northern side boundary above level 4, with the northern elevations revised to include secondary window openings and design elements which make use of the lighting and ventilation opportunities to the north, while not providing for future adverse privacy impacts between buildings if the neighbouring site to the north is developed (such as by use of high sill window openings);
 - iii. In making the above changes, the FSR and height is not to increase beyond that proposed;
 - iv. Confirms that the acoustic assessment has been undertaken in accordance with the relevant guidelines referred to in SEPP (Infrastructure) 2007; and considers cumulative impacts and the actual/approved capacity of the adjoining beer garden to the east of the site and its operation as an entertainment venue; and that the design will achieve compliance with the noise requirements in the relevant guidelines referred to above and through what design measures

- v. Confirms the legal Right of Way to the adjoining site to the east will be able to be maintained through construction;
 - vi. The appropriate fee and cheque be made to Sydney Trains;
- (b) The Council formally seek comments from Sydney Trains and the Mine Subsidence Board again, with a request to provide expedited comments, given the long time elapsed since the referral(s);
- (c) The JRPP Secretariat assist the Council in terms of part (b) above;
- (d) The Council staff provide a report upon receipt of the plans in response to (a) above and the outcome of efforts in (b and c) above to the JRPP as soon as is practicable, for subsequent consideration by the Panel by electronic means.

The decision was unanimous. However, Mr Perica did not concur with the need to setback the eastern portion of the building from that proposed (as in a(i) above), as he was of the view that a lesser setback as proposed, revised to have no side windows, would benefit the relationship between sites by better blocking any noise from the adjoining beer garden to the proposed development.

REASONS FOR THE DECISION

The Panel generally agreed with the environmental assessment and balance of considerations within the Council staff assessment report. However, the Panel was not supportive of a new large building, which is likely to provide a significant contribution to the future character of the area, having some relatively significant non-compliances with SEPP 65 (Design Quality for Residential Apartment Development) and associated Apartment Design Guide in relation to building setbacks. This was particularly the case for the northern elevation, where the design approach also failed to make appropriate use of the site's northern orientation. The lack of openings in this northern elevation detracted from the presentation of the building, which will be prominent, at least until the adjoining site gets developed and from within that site when developed. The northern treatment also did not capitalise on opportunities for sun access and ventilation for units within the development.

Similarly, the lack of setback to the east was not considered justified and warranted a better relationship with the adjoining pub in terms of visual separation and reducing openings to avoid noise/vibration, while also providing a landscaped wall opportunity.

The Panel noted the considerable delays in advice from RailCorp and then Sydney Trains in advising Council about procedural matters in the referral for concurrence, although was concerned that agency may claim it was not officially lodged, and this warranted a last attempt to obtain comments (which should also be sought from Mine Subsidence Board given the matter has been deferred).

While not making a decision, the Panel noted the Clause 4.6 lodged and considered the arguments put forward by the applicant, Council staff and an objecting neighbour, as well as observations from the site visit.



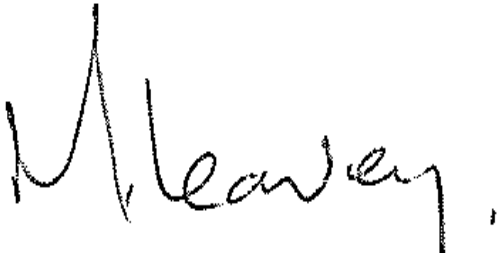
The Panel noted comments from Council's Urban Design Consultative Group, though agreed with staff that the removal of the corridor to the north of the southern wing of the building was not necessary as it would have adverse fire egress impacts and amenity impacts to common corridors (although understood the desire to make greater use of northern exposure, which was a general principle shared by the Panel).

The Panel accepted the advice regarding reasonable access to the RoW in the south-eastern portion of the site by the applicant's lawyer, by allowing appropriate head clearance for trucks, although was concerned to ensure such access was able to be maintained through construction.

For various reasons related to the design of the proposal and important considerations from other agencies, the Panel was of the view deferral was appropriate in this instance.

CONDITIONS

N.A.

PANEL MEMBERS	
 Jason Perica (Chair)	 Kara Krason
 Michael Leaway	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2016HCC026 - Newcastle City Council, 2016/00384
2	PROPOSED DEVELOPMENT	Mixed use multi unit development, Demolition of building, erection of multi-level mixed use development including 156 residential units, two commercial units, two basement levels for parking and associated site works
3	STREET ADDRESS	73-79 Railway Lane, Wickham
4	APPLICANT/OWNER	Applicant: P Blake Owner: Wickham Lands Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Capital investment value of more than \$20 million.
6	RELEVANT MANDATORY CONSIDERATIONS	<p>Environmental planning instruments:</p> <ol style="list-style-type: none"> 1. SEPP (State and Regional Development) 2011 2. State Environmental Planning Policy (Urban Renewal) 2010 3. State Environmental Planning Policy (Infrastructure) 2007 4. State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004 5. State Environmental Planning Policy No. 55 – Remediation of Land 6. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development 7. Newcastle Local Environmental Plan 2012 <p>Draft environmental planning instruments: Nil</p> <p>Development control plans:</p> <ul style="list-style-type: none"> • Newcastle Development Control Plan 2012 • Section 94A Development Contributions Plan 2009 <p>Planning agreements: Nil</p> <p>Regulations:</p> <ul style="list-style-type: none"> • Environmental Planning and Assessment Act Regulation 2000 <p>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality.</p> <p>The suitability of the site for the development.</p> <p>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> and <i>Environmental Planning and Assessment Regulation 2000</i>.</p> <p>The public interest, including the principles of ecologically sustainable development.</p>
7	MATERIAL CONSIDERED BY THE PANEL	<p>Council Assessment Report;</p> <p>Appendix A - Conditions of consent</p> <p>Appendix B – Documents submitted with the application</p> <p>Appendix C – Applicant's request for a Clause 4.6 variation</p> <p>Appendix D – Consultation with Department of Primary Industries – Water</p> <p>Appendix E – Consultation with Ausgrid</p>

		<p>Appendix F – Urban Design Consultative Group Report</p> <p>Appendix G – Consultation with RMS</p> <p>Appendix H – Legal advice from applicant regarding the Right of Way for the Hotel</p> <p>Updated Clause 4.6 Variation Request (with highlighted changes to that provided within the business papers)</p> <p>Addendum memo from Council staff dated 13 December 2016 with additional/revised conditions</p> <p>Written submissions during public exhibition: Two</p> <p>Verbal submissions at the panel meeting:</p> <ul style="list-style-type: none"> • Support – nil • Object – Mr Felix Bonomini, Mr Ian Lobb • On behalf of the applicant – Craig Marler, Barney Collins
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<p>13 December 2016 – Site Inspection</p> <p>13 December 2016 – Final Briefing Meeting</p> <p>28 July 2016 – Briefing Meeting</p>
9	COUNCIL RECOMMENDATION	Approve
10	DRAFT CONDITIONS	Attached to the council assessment report, with additional/revised conditions in a memo from Council staff dated 13 December 2016.