



DATE OF DETERMINATION	15 December 2020
PANEL MEMBERS	Alison McCabe (Chair), Sandra Hutton, Julie Savet Ward and John MacKenzie
APOLOGIES	Jason Dunn
DECLARATIONS OF INTEREST	Juliet Grant declared a conflict of interest, as her employer is the applicant for this development application

Papers circulated electronically on 2 December 2020.

MATTER DETERMINED

PPS-2017HCC049 – Newcastle City Council – DA2017/01338 at 33-57 Annie Street Wickham – mixed use (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

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

This is an application for a mixed use development on a site currently zoned IN2 Light Industrial under the Newcastle Local Environmental Plan 2012 (NLEP 2012). The majority of the site, though not all, is identified as an item of environmental heritage. The application relies on clause 5.10 Conservation Incentives of the NLEP 2012. Subject to meeting the criteria in clause 5.10, uses that would otherwise not be permitted under the existing zoning regime are permitted. Clause 5.10 can only apply to buildings that are heritage items and the land on which they sit. The Panel notes that this does not include Lot 13 DP 830026, which raises a permissibility question.

The site is not an isolated pocket of industrial zoned land. The industrial zoning is extensive, from Tighes Hill in the north and to Hannell Street in the east. Annie Street is the southern border of the industrial zone with Milford Street in this locality being the western boundary. This site is the interface with residentially zoned lands to the west and south.

Of particular relevance to this application is the fact that the site shares a northern and eastern boundary with the Caltex (now Ampol) fuel terminal. The Panel understands that the fuel terminal services the mining, industrial, defence, civil aviation and community markets in the Hunter and surrounding regions. The terminal receives pumped transfers of refined petroleum product from the Caltex fuel terminal in Kurnell via the Caltex owned and operated Sydney to Newcastle pipeline. The pipeline is 220km in length and operates 24 hours a day, seven (7) days a week. The Caltex facility is a 24-hour, seven (7) day a week operation and has been in operation since the 1960s.

Throughout the assessment of this application the proximity of the proposed range of land uses to this existing facility, the potential impacts of the proposal on the operation of the facility, and vice versa, and the hazard and societal risk arising from such a juxtaposition of land uses were raised.

There were numerous letters from the EPA, SafeWork NSW and correspondence from the Industry Assessment (Hazards) Unit within the DPIE. Caltex also raised specific issues in their detailed submissions.

The application was accompanied by a Hazard and Risk Assessment, and the application amended to respond to issues raised in this respect over the course of the assessment.

In preparing the assessment report, Council sought independent advice and commissioned two (2) studies:

- Independent Air Quality Advice – ERM, 1 December 2020; and
- Hazard and Risk Assessment of Ampol Wickham Terminal and Pipeline - Arriscar, 1 December 2020.

These reports are comprehensive and were only available to the applicant on publication of the assessment report online – seven (7) days before the Panel was to commence their deliberation of the matter. The applicant in their briefing to the Panel requested that the Panel defer the determination of this application to provide them with the opportunity to review the documents and provide a response. A preliminary response was provided to the Panel from the applicant's consultants at the applicant's briefing.

This application raises two (2) fundamental issues:

- Acceptability of conservation and built form outcomes; and
- Acceptability of impacts and potential impacts arising from permitting a land use not currently permitted in an industrial zone.

While the merits of the first issue ultimately could be satisfied, noting the quality of the adaptive reuse and architectural and heritage management response to the site and streetscape, the Panel is of the opinion that the second issue raises broader strategic issues and hazard and risk considerations.

The Panel notes that this is not a left over isolated parcel of industrial zoned land. The existing Caltex fuel terminal represents an important infrastructure investment servicing the broader region and is to remain in this location for the foreseeable future. Approval for these types of facilities are not straight forward.

The site and surrounding areas are identified in the Greater Newcastle Metropolitan Plan 2036 within a Catalyst Area – Newcastle Port. The site and lands to the north are within the Thorsby Precinct (p68). The specific reference to this site and surrounds is found in the following extract:

“...plan for relocation of bulk fuels to the Mayfield Port Precinct and investigate renewal opportunities including creative industries and potential medium density housing in the former wool sheds and surrounding sites.”

None of the other recent strategic documents advocate specific change in this area.

The Panel, having regard to all the information provided, is of the opinion that the change in land use poses unacceptable hazard and societal risks to future occupants, even allowing for a higher level of risk to be tolerable for existing facilities and any consideration given to heritage conservation outcomes reliant on adaptive reuse. The health risks associated with the change to a more sensitive land use are unacceptable.

The change in land use will potentially impact on the ongoing operation of the surrounding industrial lands by changing their risk profile and introducing residential and sensitive land use buffers where they do not currently exist.

These issues are not new and there has been sufficient time for the applicant to advocate their position. Council has raised potential land use conflicts as an issue throughout the last four years. The EPA has had concerns about land use conflict since their first written communication in February 2017. The Panel understands the differences in the approaches taken to hazard and risk assessments.

The appropriate range of land uses within this precinct is a matter that has to be considered and addressed strategically if there is to be any significant change.

Development application

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to refuse the application for the reasons outlined in the Council assessment report and the following additional reasons:

1. The proposed development over Lot 13 DP 830026 is prohibited.
2. The proposed use is inconsistent with the policy and strategic framework applying to the site.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition. The Panel notes that several submissions supported the proposal for reasons including the conservation of heritage and urban renewal, with suggestions provided and/or issues of concern raised which included:

- Use of heritage incentive clause
- Conflict of land use and safety
- Heritage value
- Hazard and air quality impacts
- Height of new building envelopes proposed to Milford Street
- Traffic, parking and access
- Social and economic
- Streetscape and external amenity
- Community space
- Environment – drainage & water pressure, advanced tree planting
- General – additional details on retail space, construction and traffic management, public art.

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Sandra Hutton
 Julie Savet Ward	 John MacKenzie

SCHEDULE 1

1	PANEL REF – LGA – DA NO.	PPS-2017HCC049 – Newcastle City Council – DA2017/01338
2	PROPOSED DEVELOPMENT	<p><u>Concept Application</u>: Adaptive reuse of three existing Woolstore buildings and two new building envelopes for a mixed-use development comprising residential apartments, commercial and retail uses, community park, associated car parking, landscaping and public domain works.</p> <p><u>Stage 1 Development Application</u>: Adaptive reuse of existing Woolstore 1 building as residential apartments and a community park, associated site and public domain works.</p>
3	STREET ADDRESS	33-57 Annie Street Wickham
4	APPLICANT/OWNER	City Plan Strategy & Development / Investec Australia Limited (Investec)
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$20 million (DA lodged prior to 1 March 2018)
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (State and Regional Development) 2011 ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ○ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 ○ State Environmental Planning Policy (Infrastructure) 2007 ○ State Environmental Planning Policy No 33 – Hazardous and Offensive Development ○ State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development ○ State Environmental Planning Policy No 71 - Coastal Protection ○ State Environmental Planning Policy (Coastal Management) 2018 ○ Newcastle Local Environmental Plan 2012 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Newcastle Development Control Plan 2012 ○ Section 94A Development Contributions Plan 2009 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> • Coastal zone management plan: 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> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 2 December 2020 • Written submissions during public exhibition: 11 • Total number of unique submissions received by way of objection: 8
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 18 August 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair) and Sandra Hutton ○ <u>Council assessment staff</u>: Amy Ryan, Amanda Gale, Rajnesh Prakash, Roland Payne and Tracey Webb

		<ul style="list-style-type: none"> • Site inspections: <ul style="list-style-type: none"> ○ Alison McCabe (Chair): 22 November 2020 ○ Sandra Hutton: 7 December 2020 • Final briefing to discuss council's recommendation: 8 December 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Julie Savet Ward and John MacKenzie ○ <u>Council assessment staff</u>: Amanda Gale, Amy Ryan, Priscilla Emmett, Rajnesh Prakash, Michelle Bisson and Tracey Webb ○ <u>Consultants</u>: James Grieve, John Paul Maiorana and Raghu Raman ○ <u>Department</u>: Leanne Harris and Lisa Foley • Applicant Briefing: 8 December 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Julie Savet Ward and John MacKenzie ○ <u>Council assessment staff</u>: Amanda Gale, Amy Ryan, Priscilla Emmett, Rajnesh Prakash, Michelle Bisson and Tracey Webb ○ <u>Consultants</u>: James Grieve, John Paul Maiorana and Raghu Raman ○ <u>Department</u>: Leanne Harris and Lisa Foley ○ <u>Applicant representatives</u>: Helen Deegan, Ivan Goodman, Tim Greer, Ksenia Totoeva, Paul Fairweather, Karin Nilsson, Peter Hunt, Aleks Todoroski, Selwyn Schroeder, Robert Westgarth, David Cupit, Stephen Batey and Barney Collins <p><u>Note:</u> Applicant briefing was requested to respond to the recommendation in the council assessment report</p>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not provided