

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	Thursday, 28 February 2019
PANEL MEMBERS	Michael Leavey (Chair), Lindsay Fletcher and Cr John Mackenzie
APOLOGIES	Kara Krason and Clr Jason Dunn
DECLARATIONS OF INTEREST	<p>Jason Perica declared a reasonably perceived conflict as he has a client who owns a theatre in proximity to the site and while there is no potential physical impacts on that property, the application to be considered includes a theatre as part of the proposal.</p> <p>Lindsay Fletcher noted that because Alison McCabe was listed to address the Panel as part of the applicant's team that Alison is a State appointed expert member of the Southern Region Planning Panel and as he is an alternate Panel Member of all District & Regional Panels he has occasionally sat on Southern Regional Panel Meetings with Alison McCabe. However, having taken advice from the Panels Secretariat, he did not believe this constituted a conflict of interest that needed to be declared and advised that he had not had any discussions with Alison or anybody else from her firm, or the applicant's team, in relation to any applications before the Panel.</p>

Public meeting held at Travelodge Newcastle, 12 Steel Street, Newcastle on 28 February 2019, opened at 4.00pm and closed at 7:15pm.

MATTER DETERMINED

2018HCC026 – Newcastle City Council – DA2018/00354 (Stage 2 DA) at 147, 151, 153 Hunter Street; 98, 100, 102, 104, 108, 110 King Street; 15, 21, 31, 33 Wolfe Street and 14 Thorn Street Newcastle NSW 2300 (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.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The Panel determined to support the clause 4.6 variation to building heights and to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

In relation to the variations to the maximum building height development standards imposed by clause 4.3 of Newcastle Local Environmental Plan 2012 ("NLEP 2012"), the Panel is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6 of NLEP 2012, and
- (ii) the proposed development will be consistent with the objectives of the standard and the objectives for development within the B4 Mixed Use zone under NLEP 2012.

In supporting the application the Panel generally agreed with the assessment of environmental impact, conclusions and recommendations within the Council staff assessment report, and was of the opinion that the proposal:

- is consistent with the modified Staged Concept Development Application (2018HCC027);
- represents a significant urban renewal project for the Newcastle CBD;
- has been subject to an extensive urban design review process that satisfies the requirements for demonstrating design excellence, and is supported by the Council's Urban Design Consultative Group;
- remains below the overall allowed Floor Space Ratio applying to the site;
- provides public domain improvements to the site, and in particular a mid-block pedestrian connection between Wolfe and Thorn Streets;
- makes provision for heritage conservation and ongoing use of heritage items identified under Newcastle LEP 2012;
- is supported by the Council's independent heritage advice;
- does not unreasonably impact on views towards the Christ Church Cathedral, having regard to the requirements of Newcastle DCP 2012 and the existing development potential of other properties also within view lines towards the Cathedral and its spires;
- has acceptable amenity impacts, subject to some additional conditions of consent around construction management and community consultation and liaison;
- will not result in unreasonable solar access impacts on the adjoining terrace at 106 King Street having regard to the solar impacts that would arise from a development complying with the current height limits applying to the site under Newcastle LEP 2012, as demonstrated in Plans DA-4107 and DA-4108 submitted with the application. The Panel also noted the terrace at 106 King Street is zoned B4 Mixed Use, is within the Newcastle CBD area and is used for non-residential purposes (ie a Doctor's surgery); and
- has been referred to relevant state and servicing agencies, who have raised no objections to the development.

CONDITIONS

The development application was approved subject to the conditions in the Council Assessment Report, with some modifications and additional conditions as set out below

- Amend Condition: Plans and Documentation - There were some minor updates and amendments in the referencing of some of the listed documents, as detailed in Schedule 2. The Panel was generally supportive of the amendments put forward by the Council, and as requested by the applicant, with the exception of removal of reference to the Solar Analysis diagrams, which are to be retained given the reliance on the plans as part of the assessment of the application, and removal of reference to the "Construction Noise and Vibration Management Plan", which is to be retained given the importance of construction management measures, and notwithstanding the document is also attached to another approved document

- Amend Condition A4: Community Liaison, by adding the following paragraph at the end of the condition:

"Prior to any site works commencing the applicant is to submit to the Council for its written approval a Community Liaison Plan, which details the operations of the Community Liaison Committee, including processes for responding to complaints/ concerns and processes for advising residents of Council approved works to take place outside of normal construction hours. It is recommended that the applicant consider establishing and maintaining a web site with contact details of the nominated contact person in case of complaints/ concerns, and to publish details of any Council approved works to take place outside of normal construction hours, including the duration of those works. This website should also include a non-identifiable record of complaints/concerns raised by the community and response."

Reason: to improve community liaison arrangements relating to construction management.

- Amend Condition A15: Historical Archaeology, part (c) by replacing the words “Ref: 3971/R01, by Umwelt, June 2017” with “Ref: 3971/R03, by Umwelt, May 2018”.

Reason: to update the relevant document reference.

- Delete Condition B8: Demolition Standard

Reason: the condition is a duplicate of Condition B5

- Delete Condition B10: Demolition Requirements

Reason: the condition is a duplicate of parts a) to e) of Condition B5

- Amend Condition C2: Land Consolidation to read:

“The whole of the land is to be consolidated into a single title and documentary evidence of the lodgment for registration of a survey plan of consolidation with NSW Government Land & Property Information shall be submitted to Council prior to the issuing of the first Construction Certificate involving the King Street Terraces development”.

Reason: to ensure that site consolidation is carried out at an appropriate stage.

- Amend Condition C4 – Contribution Towards Public Art to delete the word “Council” in the fourth line, and insert instead “Council’s Public Art Reference Group and the Newcastle Urban Design Group (in relation to treatment of the ‘Urban Chandelier Art Installation’ adjoining the Lyrique Theatre, and its relationship with the architectural design and heritage values of the site)”

Reason: to clarify the referral and approval requirements for public artwork with regards to Council’s public art policy, and to ensure the public art treatment is consistent with, and complements the architectural detailing of the development and the heritage values of the site.

- Delete Condition C12 :Food Premises Standard

Reason: The application does not involve any food premises.

- Amend Conditions D19: House Numbering for Council to reallocate street addresses to reflect the change in unit layout.

Reason: to ensure correct street numbering allocation




- Amend Condition E9: Right of Way – King Street to correct the dimensions and nature of the right of way, and to clarify the right of way needs to be created, so that the condition now reads:

“A right of way, 1.2m wide x 2.5m high, which benefits No. 106 King Street and which burdens 108 King Street (Lot 100 DP 810457) and 110 King Street (Lot 1 DP735255) is to be created. The necessary survey plan and accompanying instrument under Section 88B of the Conveyancing Act 1919 (NSW) shall be registered with NSW Government Land & Property Information prior to the issuing of an Occupation Certificate for the proposed development, it being noted that the instrument is to provide that the right-of-way is unable to be relinquished, varied or modified without the concurrence of Council.”

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The Panel notes that issues of concern included impacts on 106 King Street (including construction work hours, noise, right of way access and loss of sunlight) and more generally construction noise and inadequate past response to community concerns, heritage impacts, building heights, car parking and adequacy of exhibition.

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and recommended conditions of consent and that no new issues requiring assessment were raised during the public meeting. The Panel also made modifications and additions to recommended conditions of consent to further address matters of community concern.

PANEL MEMBERS	
 Michael Leavey (Chair)	 Lindsay Fletcher
 Cr John Mackenzie	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018HCC026 – Newcastle City Council – DA2018/00354
2	PROPOSED DEVELOPMENT	Development Application for a Mixed Use Development incorporating Retail Premises, Shop Top Housing, Car Parking and Associated Works
3	STREET ADDRESS	147, 151, 153 Hunter Street; 98, 100, 102, 104, 108, 110 King Street; 15, 21, 31, 33 Wolfe Street and 14 Thorn Street (Lot 1 DP 84634, Lot 500 DP 879162, Lot 1 DP 718456, Lot 100 DP 810457, Lot 1 DP 735255, Lot A DP 89504, Lot 1 DP 84577, Lot 1 DP 195975, Lot B DP 89504, Lot 1 DP 122380, Lot 1 DP 122381, Lot 10 DP 1043870)
4	APPLICANT/OWNER	Applicant: East End Stage 2 Pty Ltd Owner: Iris Land Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Urban Renewal) 2010 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy (Coastal Management) 2018 State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy No. 55 Remediation of Land State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development 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>: Nil 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: 14 February 2019 Written submissions during public exhibition: 7 Verbal submissions at the public meeting (Note: submissions on 2018HCC026 and 2018HCC027 were heard concurrently given the relationship between the applications) <ul style="list-style-type: none"> In support – Nil In objection – Ron Brown, Helen Sharrock, Dr Joshua George, Paul David and Steve Busteed Council assessment officer – Priscilla Emmett

		<ul style="list-style-type: none"> ○ On behalf of the applicant – Alison McCabe, Stuart Campbell and on behalf of Iris Land Pty Ltd Joanne McGuinness and Jamie Boswell.
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection and briefing: Thursday, 28 February 2019 • Final briefing to discuss council's recommendation, Thursday, 28 February 2019 at 3.30pm. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Michael Leavey (Chair), Lindsay Fletcher and Cr John Mackenzie ○ <u>Council assessment staff</u>: Priscilla Emmett, Elaine Treglown (consultant) TCG Planning, Tracey Webb
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report

SCHEDULE 2

Amendments to Condition : Plans and Documentation

The modified condition is reproduced below, with amendments shown in track changes style

Architectural Plans

Architectural Plans prepared for CKDC Architecture, Job No. 1786, listed as follows:

<i>Drawing No.</i>	<i>Rev.</i>	<i>Name of Plan</i>	<i>Date</i>
DA-0001	-	Contents	19.12.2018
DA-0002	E	Schedule 1 SEPP 65 Matrix	30.11.2018
DA-0003	G	GFA Calculations	30.11.2018
DA-0004	E	GFA Calculation	30.11.2018
DA-1001	F	Site Analysis Plan	30.11.2018
DA-1002	F	Site Plan	30.11.2018
DA-1101	I	Basement Level 2 Plan	30.11.2018
DA-1102	I	Basement Level 1 Plan	30.11.2018
DA-1103	H	Ground Floor Plan	30.11.2018
DA-1104	H	Level 01 Plan	30.11.2018
DA-1105	H	Level 02 Plan	30.11.2018
DA-1106	H	Level 03 Plan	30.11.2018
DA-1107	H	Level 04 Plan	30.11.2018
DA-1108	H	Level 05 Plan	30.11.2018
DA-1109	H	Level 06 Plan	30.11.2018
DA-1110	H	Level 07 Plan	30.11.2018
DA-1111	H	Roof Plan	30.11.2018
DA-1200	C	Adaptable Apartment	11.05.2018
DA-2001	H	North and East Elevations	30.11.2018
DA-2002	H	South, West and Laneway Elevation	30.11.2018
DA-2003	F	Courtyard and Laneway Elevations	30.11.2018
DA-3001	H	Sections A, B and C	30.11.2018
DA-4001	D	Solar Analysis 9am	28.11.2018
DA-4004	D	Solar Analysis 12 noon	28.11.2018
DA-4007	D	Solar Analysis 3pm	28.11.2018
DA-4008	D	View from Sun Analysis	28.11.2018
<i>Drawing No.</i>	<i>Rev.</i>	<i>Name of Plan</i>	<i>Date</i>
DA-4009	D	View from Sun Analysis	28.11.2018

DA-4010	D	ViewfromSunAnalysis	28.11.2018
DA-4011	D	ViewfromSunAnalysis	28.11.2018
DA-4107	A	KingStTerracesSunAnalysis	12.12.2018
DA-4108	A	KingStTerracesSunAnalysis	12.12.2018
DA-5001	F	SEPP 65 Solar Analysis	28.11.2018
DA-5002	D	SEPP 65 Solar Analysis	28.11.2018
DA-5003	F	SEPP 65 Cross Ventilation Analysis	28.11.2018
DA-5004	D	SEPP 65 Cross Ventilation Analysis	28.11.2018
DA-7002	E	External Material Schedule	14.05.2018
DA-7003	C	Signage Strategy	14.05.2018
DA-7004	C	Signage Strategy	14.05.2018
DA-7005	C	Signage Strategy	14.05.2018
DA-8001	F	Ground Floor Demolition Plan	30.11.2018
DA-8002	F	Level01DemolitionPlan	30.11.2018
DA-8003	F	Level02DemolitionPlan	30.11.2018
DA-8004	F	Level03DemolitionPlan	30.11.2018
DA-8005	F	Level04DemolitionPlan	30.11.2018
DA-8006	F	Demolition Elevations	30.11.2018
DA-9000	A	Lyrique Lane Details	19.12.2018
DA-9001	A	Lyrique Lane Details	19.12.2018
DA-9002	A	Lyrique Lane Details	19.12.2018

Landscape and Public Domain Plans prepared by Aspect Studios, listed as follows

Drawing No.	Rev.	Name of Plan	Date
17049_DA-001	F	Drawing List and Public Domain Plan	07.02.2019
17049_DA-002	F	GroundFloorLandscapePlan	07.02.2019
17049_DA-003	F	GroundFloorLandscapeSections	07.02.2019
17049_DA-004	F	Level 01 Landscape Plan + Section	07.02.2019
17049_DA-005	F	Level 06 Landscape Plan + Section	07.02.2019
17049_DA-006	B	Level07LandscapePlans	05.02.2019
17049_DA-007	F	Level08LandscapePlans	07.02.2019
17049_DA-008	F	Planting Palettes	07.02.2019

Planning Documents

- Statement of Environmental Effects for Stage 2 Development Application, dated May 2018, prepared by SJB Planning;
- Submission supplementing the Statement of Environmental Effects and Cover Letter to Newcastle City Council, dated 20 December 2018, prepared by SJB Planning;

- Revised Clause 4.6 Exceptions to Development Standards Statement, prepared by SJB Planning (Ref: 8053B_11.2_Clause 4.6 – HoB_St.2 DA_Amended_181220);
- Revised SEPP 65 Apartment Design Guide Verification Statement, Issue E, dated 7 February 2019, prepared by CKDS Architecture;
- View Analysis – Stage 2, Version 05, dated 9 May 2018, prepared by SJB Architects;
- Exemption to Design Competition correspondence, dated 24 April 2018, prepared by Government Architect NSW.

Heritage and Archaeology

- Heritage Response, Ref. H-17-012, dated 12 December 2018, prepared by City Plan Heritage;
- Heritage Impact Statement, Ref. 17-012, Rev. 02, dated 21 May 2018, prepared by City Plan;
- Conservation Management Plan, Ref. 17-012, Rev. 07, dated 18 May 2018, prepared by City Plan;
- Historical Archaeological Assessment, Report No. 3971/R03/Final, dated 16 May 2018, prepared by Umwelt;
- Draft Aboriginal Cultural Heritage Assessment Report, Report No. 3971/R04/V2, dated 10 April 2018, prepared by Umwelt;

Traffic and Transport

- Transport Impact Assessment, Ref. N140420, Rev C, dated 18 May 2018, prepared by GTA Consultants;
- Construction Traffic Management Plan, Ref. N140420, dated 16 May 2018, prepared by GTA Consultants;
- Waste Collection Swept Turning Path Advice, Ref. N140420, dated 3 December 2018, and Plan, dated 24 January 2018, prepared by GTA Consultants;

Construction Management

- Construction Noise and Vibration Management Plan, Project No. 20180363.1, Rev. 1, dated 5 April 2018, prepared by Acoustic Logic;
- Construction Management Plan for Stage 2 DA, East End Project Block 2, prepared by Iris.

Ground Issues

- Geotechnical Assessment, Project No. 39826.12, R.005. Rev1, dated 17 May 2018, prepared by Douglas Partners;
- Preliminary Mine Subsidence Assessment, Project No. 39826.12, R.001. Rev1, dated 1 May 2018, prepared by Douglas Partners;
- Preliminary Site Investigation (Contamination), Project No. 39826.12. R.002. Rev0, dated 17 May 2018, prepared by Douglas Partners;
- Remediation Action Plan, Project No. 39826.12. R.003. Rev0, dated 17 May 2018, prepared by Douglas Partners;
- Acid Sulfate Soils Management Plan, Project No. 39826.12. R.004. Rev1, dated 1 May 2018, prepared by Douglas Partners;

Flooding and Stormwater

- *Flooding Impact Assessment, Ref. NL167241, Rev. B, dated 9 April 2018, prepared by Northrop;*
- *Concept Stormwater Management Plan, Job No. NL167241, Rev. B, dated 9 April 2018, prepared by Northrop;*
- *Stormwater Drainage Advice, Ref. NL167241, dated 16 November 2018, prepared by Northrop;*

<i>Internal Civil Works, prepared by Northrop, Ref NL167241</i>			
<i>Drawing No.</i>	<i>Rev.</i>	<i>Name of Plan</i>	<i>Date</i>
<i>P2-C.01.01</i>	<i>A</i>	<i>Cover Sheet and Drawing Schedule</i>	<i>29.03.18</i>
<i>P2-C.02.01</i>	<i>A</i>	<i>Erosion and Sediment Control Plan</i>	<i>29.03.18</i>
<i>P2-C.03.01</i>	<i>A</i>	<i>Ground Floor Civil Works</i>	<i>29.03.18</i>
<i>P2-C.03.03</i>	<i>A</i>	<i>Ground Floor Civil Works</i>	<i>29.03.18</i>
<i>P-C-03.04</i>	<i>A</i>	<i>Ground Floor Civil Works</i>	<i>29.03.18</i>

Other Documents

- Site Survey Plan, Ref. 07/158, dated 13 December 2007, prepared by Monteath and Powys;
- Accessibility Assessment Report 173521.01 (access), Rev. 02, dated 18 May 2018, prepared by City Plan and BCA Performance Solution, Ref. 188117 – Rev. 1.1, dated 19 April 2018, prepared by Code Performance;
- BCA Assessment Report, Report RE173521, Rev.4, dated 16 May 2018, prepared by City Plan;
- Infrastructure Services Report, Job No. SYD0465, Rev.04, dated 10 April 2018, prepared by ADP Consulting Pty Ltd;
- Waste Management Support, Project No. IA148600, Rev. 3, dated 15 May 2018, prepared by Jacobs;
- Capital Investment Value Report and Cover Letter, Project No. 71130.102549, Version 1.0, dated 12 April 2018, prepared by Altus Group;
- DA Cost Estimate, Ref. 102549, dated 12 April 2018, prepared by Altus Group;
- *Strategic Social Plan, Ref. 2126423, dated 14 June 2017, prepared by GHD;*
- *Crime Risk Assessment, Ref. 2126423, Rev 0, dated 17 May 2018, prepared by GHD;*
- *Acoustic Assessment, Project No. 20170518.1, Rev. 1, dated 10 April 2018, prepared by Acoustic Logic;*
- *Correspondence 'Newcastle Stage 2 East End – Acoustic Impacts – 106 King St, Newcastle' Ref: 201803633.1/1102A/R0/MF, dated 11 February 2019, prepared by Acoustic Logic;*
- *Sustainability Report, Job No. SYD0465, Rev. 05, dated 13 April 2018, prepared by ADP Consulting Pty Ltd;*
- *Thermal Comfort and BASIX Assessment, Job No. SYD0296, Rev. 01, dated 11 April 2018, prepared by ADP Consulting;*
- *BASIX Certificate No. 994485M, issued 11 February 2019, prepared by Outsource Ideas Pty Ltd;*
- *Internal Civil Works Plans, Job No. NL167241, Rev A, dated 29 March 2018, prepared by Northrop.*