

DATE OF DETERMINATION	Thursday, 28 February 2019
PANEL MEMBERS	Michael Leavey (Chair), Lindsay Fletcher and Cr John MacKenzie
APOLOGIES	Kara Krason and Cr 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 has 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

2018HCC027 – Newcastle City Council - DA2017/00701.01 (Modification of Concept Plan) at 105-111, 121, 137-145, 147, 151-153, 163, 169-185 Hunter Street; 22 Newcomen Street; 3 Morgan Street; 66-74, 98-102, 104, 108-110 King Street, 14 Thorn Street and 21, 31, 33, 58 Wolfe 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 approve the modification pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

In supporting the modification 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 substantially the same development as the development for which consent was originally granted, having regard to the assessment undertaken in accordance with section 4.55(2) of the *Environmental Planning and Assessment Act 1979*;
- represents a significant urban renewal project for the Newcastle CBD;

- has been subject to an extensive urban design review process, 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 which will apply to the Stage 2 DA approval;
- 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 modification.

CONDITIONS

The modification to the development consent was approved subject to the conditions in the Council Assessment Report, with changes to numbering to reflect the existing consent conditions to be modified, and with the following amendments and additional conditions as detailed below. The Panel also recommends that Council issue a consolidated development consent to avoid any confusion over consent conditions and the conditions that have been modified.

- Amend Condition 1 to update references to the approval documents, as follows
 - Delete (t), as the document is already attached to the approval document referenced in (z);
 - Delete (x), (y) and (aa), as the documents are already attached to the approval document referenced in (w);
- Amend Condition 5 (Amendment to condition 12 of the consent) to read:




"Where the building envelope is above a retained heritage facade, then it shall be set back in accordance with Newcastle DCP 2012, being 6 metres, unless otherwise justified or approved through a separate development consent for separate stage of the concept development area".
- Amend Condition 6 (Amendment to condition 13 of the consent) to read:

"With the exception of the Thorn Street and Laing Street frontages of Block 3, where the building envelope exceeds the maximum street wall height identified in the Newcastle DCP 2012, then the section of any building above that height shall be set back in accordance with the DCP, being 6 metres, unless otherwise justified or approved through a separate development consent for separate stage of the concept development area".
- Renumber condition 7 to condition 18, renumber condition 8 to condition 19, renumber condition 9 to condition 22 and renumber condition 10 to condition 44.

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 notes that additional conditions and amendments to recommended conditions are required for the Stage 2 DA (2018HCC026) 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.	2018HCC027 – Newcastle City Council – DA2017/00701.01
2	PROPOSED DEVELOPMENT	Staged Concept Development Application for a major redevelopment of Hunter Street Mall, a mixed-use development comprising retail, commercial, public spaces, residential apartments, associated car parking & site works - Application to Modify Stage 2 of Concept Plan pursuant to Section 4.55(2): building envelopes and height, distribution of land uses, floor space and FSR
3	STREET ADDRESS	Lot 1 DP 84634, Lot 1 DP 331535, Lot 1 DP 819134, Lot 500 DP 879162, Lot 1 DP 718456, Lot 100 DP 810457, Lot 1 DP 735255, Lot 1 DP 77846, Lot A & B DP 388647, Lot 31 DP 864001, Lot 31 DP 864001, Lot 32 DP864001, Lot A DP 89504, Lot 1 DP 84577, Lot 1 DP 610140, Lot 1 DP 749729, Lot 100 DP 1098095, Lot 1 DP 723967, Lot 1 DP 195975, Lot B DP 89504, Lot 1 DP 122380, Lot 1 DP 122381, Lot 98 DP 1098034, Lot 2 DP 331535, Lot 10 DP 1043870 105-111, 121, 137-145, 147, 151-153, 163, 169-185 Hunter Street; 22 Newcomen Street; 3 Morgan Street; 66-74, 98-102, 104, 108-110 King Street, 14 Thorn Street and 21, 31, 33, 58 Wolfe Street Newcastle NSW 2300
4	APPLICANT/OWNER	Applicant: Iris Land Pty Ltd c/- Joanne McGuinness Landowners: Iris Land Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.55(2) Modification Application
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 (Coastal Management) 2018 ○ State Environmental Planning Policy (Infrastructure) 2007 ○ State Environmental Planning Policy No. 55 – Remediation of Land ○ Newcastle Local Environmental Plan 2012 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Newcastle Development Control Plan 2012 • 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: 1 • 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 ○ On behalf of the applicant – Alison McCabe, Stuart Campbell and on behalf of Iris Land Pty Ltd Joanne McGinness 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, 3.00pm. 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