

DATE OF DETERMINATION	Wednesday, 13 March 2019
PANEL MEMBERS	Jason Perica (Chair), Michael Leavey and Susan Budd
APOLOGIES	Kara Krason, Cr John Mackenzie and Cllr Jason Dunn
DECLARATIONS OF INTEREST	None

Public meeting held at Travelodge Newcastle on 13 March 2019, opened at 4:00pm and closed at 6.57pm.

MATTER DETERMINED

2018HCC038 – Newcastle City Council – DA2018/01109 at 854 Hunter Street, Newcastle (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 relating to building separation, to not support the clause 4.6 variation relating to building height 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

While the Panel held concerns regarding the approach to development of the site and order of applications (the Concept application should have been the first application), the Panel was nonetheless supportive of the overall development of the site and the mix of uses. The removal of a heritage item was approved by the land owner under Part 5 of the Act and a carparking structure to service the future development (and available publicly in the interim) was previously approved by the Council. This process somewhat constrained the scope of holistic consideration of the site by the Panel, which is the purpose of a Concept Plan.

Provision of a commercial building adjoining the train station and bus interchange was sound, promoting provision of jobs and sustainable travel behaviour. The location of the parking (already approved), was shielded from the main streets.

The main issues discussed and debated related to the street wall heights, design excellence/urban design, traffic, parking, the constrained nature of Beresford Lane servicing a number of properties and uses, and the future relationship with the sites to the south on the corner of Hunter Street and Stewart Avenue.

The Panel generally agreed with the environmental assessment by Council staff. The Panel noted the application had been considered by the Design Review Panel (DRP) and Council's Urban Design Consultative Group (UDCG) on a number of occasions.

The Panel had regard to the applicant's clause 4.6 variation request regarding the minimum separation distances within Clause 7.4 of Newcastle Local Environmental Plan 2012 ('the LEP'). The proposed separation between buildings was close to compliance, at an oblique angle to limit any adverse interface and was between buildings containing different uses (which helped mitigate any privacy issues). The Panel was satisfied the applicant's written request satisfactorily addressed required matters within clause 4.6 of the LEP and it was considered granting consent would be in the public interest, despite the non-compliance.

In terms of the height exceedance, both the future residential/mixed use building envelopes on Hunter Street exceeded 90m by 10% (to 99m). This was understood to have been refined through discussions and engagement with the DRP and the UGDC during the Concept DA assessment, as outlined in the assessment report, although not modified in the application before the Panel. While the Panel noted some potential for a minor variation to the height limit to allow differential height between buildings and noting FSR compliance, it nevertheless was considered appropriate that the height exceedance be considered at the detailed DA stage, when a range of other relevant details and requisite considerations are able to be assessed.

Similarly, while the Panel was conceptually supportive of some reduction in parking for the commercial building due to accessibility, the full allocation to different uses was not clear at this stage and this should be reviewed and clarified when the Stage 4 DA is made. Subsequently, Condition 16 was retained.

The Panel noted and expected that the building envelopes would and should be refined and modulated during the detailed DA process and wanted to ensure this was clear in the terms of the decision/approval. In considering envelopes, future buildings should not fill every square metre, as a range of design excellence and other considerations were relevant to ensure high quality buildings. In particular the street wall height(s) to Hunter Street will need to be considered in the context of existing heritage items adjacent to the site, and the objectives and intentions of Council's DCP controls, rather than relying on the height of the previous heritage item on the site which has now been demolished.

Certain recommended conditions were varied as considered reasonable to allow appropriate staging of details, with some being deleted as they were more relevant to the detailed DA stage(s).

CONDITIONS

The development application was approved subject to the conditions in the Council Assessment Report with the following amendments:

- **A new Condition 2A to state:**
"The height of the proposed towers in Stage 4 to Hunter Street is limited to 90m. While there may be potential to consider a height variation in the future with a detailed development application (up to 99m to allow height variation if facilitating design excellence), this is more appropriately considered at the detailed DA stage, and considering the merits of a Clause 4.6 Variation and the following matters:
 - (a) Design Excellence and views of the DRP and UGDC;
 - (b) Urban Design considerations;
 - (c) Internal amenity;
 - (d) Impacts on surrounding land; and

(e) SEPP 65/ADG consideration, guidelines and compliance”

- **A new Condition 2B to state:**

Subject to Condition 2A above, the future buildings subject to detailed DA(s) shall be located within the envelopes and the Panel would expect refinement, modulation and adjustment within the envelopes (with minor variations where justified and substantially the same), in addressing and responding to:

- (a) Design Excellence;
- (b) Urban Design considerations and relationship with streets, lanes, public domain and surrounding existing and potential future buildings, including heritage items;
- (c) Internal amenity;
- (d) Impacts on surrounding land; and
- (e) SEPP 65/ADG consideration, guidelines and compliance.

- **Condition 3 be amended to state:**

The development shall be undertaken in the following sequential order:

Stage 1: Multi Storey Carpark

Stage 3: Commercial Building

Stage 4 Mixed Use (Residential) Building

- **Condition 11 be amended to state:**

Prior to the issue of an interim or final occupation certificate (whichever occurs first) for the development the subject of this development application the developer is to obtain the consent of Roads and Maritime Services pursuant to Section 87 Roads Act 1993 - Traffic Control Facilities, in relation to Hunter Street traffic signal upgrade works.

- **Condition 20 be amended to add the following sentence at the end of the condition:**

This requirement may be waived if satisfactory alternative arrangements are made, to the satisfaction of Council's Regulatory, Planning and Assessment Unit, at the detailed DA stage. If this is pursued, details shall include realistic traffic projections of Beresford Lane (including potential future development of the site to the south), options to minimise traffic queuing and a Servicing Management Plan that considers the use of the loading areas, hours of use, truck size, alternative arrangements and any other measures to minimise traffic conflicts.

- **Condition 35 be amended to state:**

The Developer is to undertake the following works within Hunter Street and Stewart Avenue, adjacent to the site generally in accordance with the City Centre Public Domain technical manual, at no cost to Council and in accordance with Council's guidelines and design specification:

- Kerb and gutter replacement
- Full width footway paving
- Associated drainage works
- Street tree planting in gap-graded structural soil vaults
- Street furniture - bins, bicycle racks




- **Condition 36 be amended to state:**

The reconstruction of Beresford Lane and Cooper Street being completed and operational prior to the issue of an interim or final occupation certificate (whichever occurs first) for the development the subject of this development application.

- Delete Conditions 24, 37, 46-50 and 55.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel notes that they were no written submissions made during public exhibition.

PANEL MEMBERS	
 Jason Perica (Chair)	 Michael Leavey
 Susan Budd	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018HCC038 – Newcastle City Council – DA2018/01109
2	PROPOSED DEVELOPMENT	Concept Development Application for a mixed use development comprising retail, commercial, public spaces, residential apartments and associated car parking.
3	STREET ADDRESS	Lot 100 DP1245750 854 Hunter Street, Newcastle
4	APPLICANT/OWNER	Applicant: Doma Interchange Development Pty Ltd Landowners: Hunter Development Corporation
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 (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 • Development control plans: <ul style="list-style-type: none"> ○ Newcastle Development Control Plan 2012 • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> • 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: 27 February 2019 • Applicant's response to draft conditions of consent dated 8 March 2019 • Written submissions during public exhibition: Nil • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In support – Nil ○ In objection – Nil ○ Council assessment officer – Priscilla Emmett

		<ul style="list-style-type: none"> ○ On behalf of the applicant: <ul style="list-style-type: none"> Simon Swaney – Bates Smart (Architect) Bradley Dory – Bates Smart (Architect) Gavin Edgar – DOMA Group Sean Kearney – DOMA Group Grant Wood – GHD (Traffic Consultant) Steve O'Connor – KDC (Town Planner) Patrick Quinlan – KDC (Town Planner) Naomi Weber – KDC (Town Planner)
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection and briefing: Wednesday, 13 March 2019 • Final briefing to discuss council's recommendation, Wednesday 13 March 2019, 3:00pm. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Jason Perica (Chair), Michael Leavey and Susan Budd ○ <u>Council assessment staff</u>: Priscilla Emmett and Tracey Webb
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report