

<b>JRPP No.</b>	2018HCC039
<b>DA No.</b>	DA2018/01107
<b>Proposal</b>	Erection of 12 storey commercial building with ground floor retail and basement car park
<b>Property</b>	Lot 100 DP1245750 854 Hunter Street, Newcastle (also known as 6 Stewart Avenue)
<b>Recommendation</b>	Approval
<b>Applicant</b>	Doma Interchange Development Pty Ltd
<b>Report By</b>	City of Newcastle

## SUPPLEMENTARY ASSESSMENT REPORT AND RECOMMENDATION

### Proposed Development

Erection of 12 storey commercial building with ground floor retail and basement car park.

### Hunter and Central Coast Joint Regional Planning Panel (JRPP) Determination

The JRPP resolved to defer consideration of the application on 13 March 2019 and provided the following record of the decision:

#### ***“REASONS FOR DEFERRAL***

*The panel was supportive of the commercial and retail use of the site. The Panel was also conceptually supportive of the arguments supporting the variation to the separation between buildings standard within Newcastle LEP 2012. There were also a number of other positive aspects of the proposal including the ground treatment and public domain considerations to the east and north, and setback to Stewart Avenue at the lower levels. The Panel could see the argument to support an alternative streetwall approach to the east rather than the DCP wall height with no setback. The colonnade and setback has merit given the relative protrusion of the site eastwards compared to surrounding sites and the relationship with the public domain to the north, being the adjoining rail station and Light Rail terminus.*

*However, the detail of the DA was not considered by the Design Review Panel (DRP) following its lodgement and the terms of the design competition waiver included the DRP reviewing details and materials, which should occur after DA lodgement. Further, there were aspects of the proposal the Panel wanted the DRP to specifically consider in providing advice regarding the lodged DA, including relating to the height of the lower level setback/colonnade to Stewart Avenue and the relationship, setbacks and presentation of the upper levels of the building to the laneway to the south, including implications for future development on the site to the south.*

#### ***TERMS OF DEFERRAL***

*The development application be deferred, and the Council staff refer the development application to the Design Review Panel, as soon as practicable. In referring the Development Application, the Panel shall be requested to give specific consideration and provide its advice regarding the following:*

- 1. Details, materials and articulation (also noting this was a requirement within the terms of waiving a design competition);*
- 2. The height of the colonnade area to Stewart Avenue. Specifically, wouldn't it be a better design outcome to increase the height of the colonnade by one storey to match the height of the roof element of the adjoining train station (which defines the*

*public domain to the north), with the building recess above also increased by one level to maintain proportions between the setback and the recess (and as the recess may visually relate to the carpark more than the Hunter Street streetwall/podium?*

3. *Review the appropriateness of the southern setback at upper levels (above the recess) in terms of the effect of the building massing and presentation (in the absence of an above-streetwall setback) on a narrow laneway, and having regard to potential redevelopment of the site to the south, and the impacts of the setback as proposed on development options for the site to the south, including options for residential development at upper levels.*

*Following advice from the DRP, the matter shall be reported back to the Panel for determination, which may be by electronic means (with efforts made for the same Panel to consider the matter, if possible)."*

### **Response to matters raised by JRPP**

A meeting of the Design Review Panel (DRP) was held on 25 March 2019, to consider the matters arising from the terms of deferral of the JRPP resolution of 13 March 2019. The applicant's presentation to the DRP is documented at **Appendix A**.

The comments of the DRP, included in full in the report of their meeting at **Appendix B**, include the following statements that summarise their responses to the three items in the terms of deferral:

1. Details, materials and articulation - *"Details materials and articulation are supported"*.
2. The height of the colonnade area to Stewart Avenue – *"The height of the colonnade is supported as proposed"*.
3. Appropriateness of the southern setback at upper levels – *"the setback, as proposed, is supported by the Panel"*.

### **Other matters raised by the applicant**

Apart from responding directly to the JRPP's deferral of the determination of the application, the applicant has also responded to some of the recommended conditions of development consent. In this respect, letters from KDC, dated 9 April 2019 and 16 April 2019, and a supplementary traffic impact report by GHD, dated April 2019, are attached at **Appendix C**, **Appendix D** and **Appendix E** respectively.

The matters raised by the applicant relate to three recommended conditions of consent that were included in Appendix A of the assessment report that was considered by the JRPP at its meeting of 13 March 2019, as follows:

#### Condition C6

The condition, as recommended to the JRPP at its meeting of 13 March 2019, is as follows:

#### **C6 Contribution Toward Public Art**

*1% of the capital cost of development is to be allocated towards a public artwork feature(s) to be installed on the site in accordance with Newcastle Development Control Plan 2012, Section 6.01.03 - General Controls, Part B5- Public Artwork. The final details of all proposed public artworks within the site and associated costings are to be submitted to the Council Public Art Reference Group for written approval prior to the issue of the Construction Certificate, for works, other than for demolition, ground works and mine*

*subsidence. The artwork shall provide visual interest for pedestrians and interpret or reflect the local setting, landscape setting and/or cultural setting of the Newcastle area. The feature shall be designed to ensure long-term durability and be resistant to vandalism.*

The applicant has sought to change the timing required for final details of all proposed public artworks within the site and associated costings are to be submitted to the Council Public Art Reference Group for written approval, to be at or prior to completion of the ground floor structure of the building, rather than prior to the issue of a construction certificate. It is considered that the completion of the ground floor structure provides a reasonable timing mechanism for the resolution of this matter, provided that such resolution includes the need to have obtained approval from City of Newcastle's Public Art Reference Group for the required public art at that stage.

An amended condition is recommended as follows:

**C6 Contribution Toward Public Art**

*1% of the capital cost of development is to be allocated towards a public artwork feature(s) to be installed on the site in accordance with Newcastle Development Control Plan 2012, Section 6.01.03 - General Controls, Part B5- Public Artwork. The final details of all proposed public artworks within the site and associated costings are to be submitted to and approved by City of Newcastle's Public Art Reference Group at or prior to completion of the ground floor structure. The artwork shall provide visual interest for pedestrians and interpret or reflect the local setting, landscape setting and/or cultural setting of the Newcastle area. The feature shall be designed to ensure long-term durability and be resistant to vandalism.*

Condition C20

The condition, as recommended to the JRPP at its meeting of 13 March 2019, is as follows:

**C20 Loading/Servicing**

*The design of the development is to be modified to provide for all loading / servicing activity (including waste collection) associated with the development to be undertaken either within designated loading dock areas and/or kerbside in an approved and designated loading zone. The design is to ensure that all service vehicle movements are to be capable of forward entry and exit, ie, without the need to reverse into vehicular traffic flows. Required modifications are to be approved by Council before the issue of a Construction Certificate for the proposed development.*

The applicant has sought to amend the condition, to provide for a loading and unloading management plan to be the mechanism for achieving satisfactory arrangements, in lieu of any potential physical change to the proposed development, as per the following alternate condition:

*"A loading and unloading management plan is to be submitted and approved by Newcastle City Council prior to the release of the Occupation Certificate. The plan is to detail all measures and procedures that will be undertaken to facilitate the loading bay being utilised in a safe and efficient manner. The plan is also to detail the general times of day and types of deliveries that are expected to be undertaken."*

The City of Newcastle's (CN) Senior Development Officer (traffic) has provided the following advice regarding the applicant's submission:

*"The applicant is proposing for the operation of the loading dock to be controlled through an approved 'Loading Dock Management Plan' to avoid on street congestion and potential traffic conflict associated with vehicles reversing into the dock area. It has been argued that*

*Beresford Lane is a service lane with limited traffic and the proposed loading dock will function as an 'Occasional Service' loading dock as defined under the AS 2890.2. It is however noted that even under AS 2890.2 an Occasional Service Loading Dock requires vehicles to enter and exit the area in a forward direction unless otherwise agreed by the responsible Road Authority. The Road Authority must consider matters of traffic safety and congestion when considering to waive the requirement for forward entry and exit to the loading dock area.*

*In the first instance it is considered that Beresford Lane will carry traffic volumes in excess of a typical Service Lane by virtue of providing access to the kiss and ride area associated with the bus/ rail interchange. Any congestion resulting from a loading dock operation would therefore adversely impact on access to this transport facility.*

*Secondly the nature and mix of uses proposed within the building would typically result in service activity exceeding that of an 'Occasional Service' but rather more akin with that of a 'Regular Service' as defined under the AS 2890.2 thereby increasing the potential for on-street congestion and traffic conflict associated with the operation of the proposed loading dock.*

*Thirdly the reliance by CN as the responsible road authority on a loading management plan implemented by a third party to control matters of road safety and road network performance is considered somewhat problematic. History has seen that such plans are seldom adhered too or implemented correctly resulting in a constant source of complaint. CN is then placed in the difficult position of trying to enforce a Loading Dock Management Plan through a third party. In reference to the particular measures outlined under Section 3.6 that could form part of any proposed Loading Dock Management Plan, it is stated that minor traffic control can be performed by the Building Manager. The on-road management of traffic is legally only permitted to be undertaken by suitably accredited traffic controllers. Typically this would not be a qualification held by a Building Manager.*

*In conclusion considering the above it is recommended that Condition No. C20 remain unchanged and therefore require all vehicles accessing the loading dock to enter and exit the area in a forward direction."*

With respect to this matter, the following condition was placed on the consent that was granted for the development concept for the site (mixed use development comprising retail, commercial, public spaces, residential apartments and associated car parking – 2018HCC038, DA2018/01109):

***"Loading/Servicing/Waste***

- 21) *The design of the development is to be modified to provide for all loading / servicing activity (including waste collection) associated with the development to be undertaken either within designated loading dock areas and/or kerbside in an approved and designated loading zone. The design is to ensure that all service vehicle movements are to be capable of forward entry and exit, ie. without the need to reverse into vehicular traffic flows. Required modifications are to be approved by Council before being implemented.*

*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."*

It is noted that the JRPP added the second paragraph of the above condition, as an embellishment of the condition recommended by CN, when the JRPP determined to grant consent to the development concept for the site, at the JRPP meeting of 13 March 2019. It is considered that the subsequent submission by the applicant on the subject application only partly addresses the second paragraph of the related condition 21) that was applied to the consent for the development concept for the site.

CN's Regulatory, Planning and Assessment Unit is not satisfied that satisfactory alternative arrangements have been made for loading/servicing activity, ie alternative to all service vehicle movements being capable of forward entry and exit.

While condition 21) that was applied to the consent for the development concept for the site effectively compels CN to consider the suitability of a Servicing Management Plan for loading/servicing activity, as an alternative to all service vehicle movements being capable of forward entry and exit, the condition retains the option of physical changes being made to achieve safe loading/servicing arrangements without the need for permanent complex management arrangements.

Having regard for the proposed loading dock being only two to three car lengths from Stewart Avenue and that Beresford Lane is a public vehicular entry to a major transport interchange, it is considered that the option of physical changes, that could accommodate all service vehicle movements being capable of forward entry and exit, should be retained.

It is considered that the following amended version of recommended Condition C20 would be acceptable to CN:

**C20      Loading/Servicing**

*The design of the development is to be modified to provide for all loading / servicing activity (including waste collection) associated with the development to be undertaken either within designated loading dock areas and/or kerbside in an approved and designated loading zone. The design is to ensure that all service vehicle movements are to be capable of forward entry and exit, ie, without the need to reverse into vehicular traffic flows. Required modifications are to be approved by Council before the issue of a Construction Certificate for the proposed development.*

*This requirement may be waived if satisfactory alternative arrangements are made, to the satisfaction of Council's Regulatory, Planning and Assessment Unit. 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 C21

The condition, as recommended to the JRPP at its meeting of 13 March 2019, is as follows:

**C21      On Site Car Parking Allocation**

*On-site parking accommodation is to be allocated for the building for a minimum of 278 cars, such being set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 'Traffic, Parking and Access' of Newcastle*

*Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.*

The applicant has sought to apply a car parking rate of approximately 1 space per 100m<sup>2</sup> of gross floor area for the proposed commercial building, based on the site being well connected to public transport and reflecting an approach taken in other Australian cities that promote the use of public transport and bicycles for staff commuting to work, as opposed to private vehicles. The supplementary traffic impact report by GHD (**Appendix E**) refers to parking rates in the Willoughby, Waverly and Ryde local government areas as precedents for the proposed rate of one space per 100m<sup>2</sup> of gross floor area.

However, the applicant's proposed redrafted condition provides for a total of 198 car spaces, equating to one space for every 84m<sup>2</sup> of gross floor area of the proposed building, as follows:

*"158 car spaces in the structured carpark are dedicated to the proposed office building (in addition to the 40 basement spaces under the office in Basement 1)."*

The Newcastle Development Control Plan 2012 (DCP) provides for car parking for non-residential development in the Newcastle City Centre to be provided at the rate of one space per 60m<sup>2</sup> of gross floor area, equating to the 278 spaces specified by the condition as previously recommended to the JRPP. The rate of one space per 60m<sup>2</sup> of gross floor area has been applied to the Newcastle City Centre for a considerable number of years and was based on the city centre being well connected to public transport, to an extent that is not significantly different to that of the subject site. However, it is considered that the rate is likely to be subject to a future review.

CN's Senior Development Officer (traffic) has provided the following advice regarding the proposal to reduce the DCP parking rate for the current proposal:

*"Under Council's DCP 2012 a parking provision of 278 spaces is required for the commercial/retail space at a rate of 1 space per 60m<sup>2</sup> of GFA. The proposal comprises car parking of 198 spaces representing a 30% reduction. In this regard the applicant is highlighting, the NSW Government as the major tenant with a reduced parking demand, the availability of alternate transport with the proximity of the site to the Newcastle Transport Interchange and the provision within the development of an increased number of secure bike storage and end of trip facilities as sufficient justification for this parking reduction."*

*"While a reduction in parking is supported based on the availability of alternate transport and the provision of end of trip facilities, I consider it inappropriate to further reduce the parking rate based on the parking requirements of a tenant. Should this tenant relocate in the future this would potentially result in a parking shortfall for this development. On this basis and acknowledging that CN under the 'Newcastle Transport Strategy' made a commitment to support the NSW Government's target of a 20% modal shift it is considered appropriate to reduce the parking by a maximum 20% resulting in a parking requirement of 223 spaces."*

It is considered that there is sufficient justification to reduce the DCP parking rate in this instance, to require a minimum of 223 car parking spaces for the proposed commercial building, ie equating to a rate of one space for every 75m<sup>2</sup> of gross floor area of the proposed building.

However, it is considered that an amendment to recommended Condition C21, to facilitate the proposed reduced parking provision for the proposed commercial building, would be inconsistent with the consent that was granted for the development concept for the site. In this respect, the consent that was granted for the development concept for the site includes the following condition:

*“17) On-site car parking accommodation is to be allocated to the different land uses within the development on the basis of the specific parking rates that are detailed in the Newcastle Development Control Plan 2012, with any excess parking being allocated to the residential component of the development only after the required number of parking spaces has been allocated for the commercial/retail uses.”*

The consent that was granted for the development concept for the site also established a maximum gross floor area for the site, with an allocation that “*generally*” includes surplus parking of 58 spaces (ie 752m<sup>2</sup>). A change to recommended Condition C21, to reduce the number of spaces required for the proposed commercial building, with the balance effectively available for residential apartments on the site, could be considered to result in a further surplus of 55 spaces for the site as a whole. An additional 55 surplus spaces could increase the floor space ratio (FSR) of the development concept for the site, from 4.84:1 to 4.9:1, remaining below the maximum FSR for the site of 5:1, but inconsistent with the following conditions of consent that were granted for the development concept for the site:

***“Floor Area***

- 7) *This consent permits a maximum gross floor area of 58,234m<sup>2</sup> over all stages, inclusive of approved amenities for the Newcastle Bus Interchange (NBI).*

*The allocation of gross floor area across the site shall generally be:*

*Stage 3 (Commercial Building): 16,689m<sup>2</sup>*

*Stage 4: (Mixed Use/Residential Building): 40,673m<sup>2</sup>*

*Surplus Parking (58 spaces): 752m<sup>2</sup>*

*Approved NBI Amenities: 120m<sup>2</sup>*

- 8) *This consent permits a maximum floor space ratio on the total site of 4.84:1.”*

It is considered that the proposed change to the on site parking allocation would necessitate a modification to the consent that was granted for the development concept for the site and, as no such application has been lodged to modify that consent, a change to recommended Condition C21 is not supported at this time.

**Conclusion**

The JRPP’s reasons for deferral have been satisfactorily addressed.

The application is recommended for approval, with an amended set of conditions attached in **Appendix F** to reflect changes that are discussed and supported in this report.

- Appendix A** - Design Review Panel presentation
- Appendix B** - Design Review Panel meeting minutes
- Appendix C** - KDC deferral response
- Appendix D** - KDC public art response
- Appendix E** - GHD supplementary traffic impact assessment
- Appendix F** - Amended recommended conditions of consent