

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	5 July 2022
DATE OF PANEL DECISION	5 July 2022
PANEL MEMBERS	Stephen Gow (Chair), Susan Budd, Clare Brown and John MacKenzie
APOLOGIES	Peta Winney-Baartz
DECLARATIONS OF INTEREST	<p>Alison McCabe declared a conflict of interest as her company, SJB, has undertaken work for the applicant in relation to another site. Ms McCabe has had no involvement in the preparation of this application.</p> <p>Juliet Grant declared a conflict of interest as her company, Gyde Consulting, has undertaken work for the applicant in relation to another site. Ms Grant has had no involvement in the preparation of this application.</p> <p>Sandra Hutton declared a conflict of interest as the Statement of Environmental Effects for this application was prepared by ADW Johnson, her previous employer. Ms Hutton has had no involvement in the preparation of this application, and no longer works for ADW Johnson.</p>

Papers circulated electronically on 20 June 2022.

MATTER DETERMINED

PPSHCC-102 – Newcastle – DA2021/01459 at 924 Hunter Street Newcastle West – mixed use development (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.

Development application

The Panel determined 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

The Panel determined to approve the application for the following reasons:

1. Subject to the recommended conditions, the proposed development is consistent with the objectives of the applicable environmental planning instruments, being the *Newcastle Local Environmental Plan 2012* (NLEP) and applicable State Environmental Planning Policies and draft State Environmental Planning Policies.
2. The development is permissible in the B3 Commercial Core zone under the NLEP and will contribute to the transition and revitalisation of Newcastle City's West End Precinct.
3. The proposed development is considered to be of an appropriate scale and form for the site and the desired future character of the locality, while its design is consistent with Council's relevant development standards. Further, the Panel notes that Council's Urban Design Review Panel supports the proposal in terms of its design quality. The heritage-listed Dairy Farmers Clock Tower

will be retained as part of the development and a heritage interpretation plan is to be prepared and implemented as a condition of consent.

4. Subject to the recommended conditions, the proposed development is also considered acceptable having regard to the provisions of the Newcastle Development Control Plan (NDCP) 2012.
5. The proposed development is conveniently situated within close walking distance of the Newcastle Interchange hub for public transport services. A Green Travel Plan is required as a condition of consent to encourage the use of alternative modes of transport by building occupants and users.
6. The Panel notes that Transport for NSW has not objected to the development having considered the current status of planning for a potential future expansion of the Newcastle light rail system in the locality.
7. The proposed development will incorporate appropriate management and mitigation of potential environmental impacts, including through conditions of consent; and will not result in unacceptable adverse impacts upon the natural or built environments.
8. The Panel notes that only one public submission was received, in connection with the width of Tighe Street. This was reviewed with the applicants and suitable conditions of consent have been applied to address the functionality of Tighe and Railway Streets for both pedestrian and vehicular traffic.
9. In conclusion, the proposed development is a suitable and planned use of the site, with social and economic benefits for the community. The Panel considers that the approval of this application is in the public interest.

CONDITIONS

The Development Application was approved subject to the conditions in the Council Assessment Report with the following amendments:

- Remove reference to SEE from table of approved documentation in Condition 1
- Condition 27 to be amended to read:
All stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on the stormwater management concept plan & strategy prepared by Northrop Consulting Engineers Job No. NL200577 Drg. No's DA-C04.01 Rev 3 & DA-C09.01 Rev 4, dated 27/05/2022. The reuse and on-site detention (OSD) tanks and outlet connection from the OSD to the street is to be designed to futureproof the development with consideration that the potential for drainage pipe under 904-908 Hunter St, Newcastle West being removed. The design should ensure that any future road works in Tighe St and potential removal of drainage at 904-908 Hunter St will not impact the internal development stormwater system. Full details are to be included in documentation for a Construction Certificate application
- Condition 33 to be amended to read:
The design elements incorporated within the submitted architectural design, as assessed within the submitted wind report by ARUP dated October 2021, are to be reflected on the architectural and landscape plans submitted with the required Construction Certificate. Any amendments which would change impacts on Council roads, and any impacts on the publicly accessible areas including footpath and public rights of carriageway, would require separate approval and the impacts are to be negotiated with Council and any implementation plan (if required) is to be agreed by Council.
- Condition 39 to be amended to read:
A Heritage Interpretation Plan is to be prepared by an experienced heritage interpretation practitioner and submitted with the documentation for a Construction Certificate. The Interpretation Plan shall be in accordance with the Heritage Council's "Interpreting Heritage Places and Items Guidelines" (2005). The plan must interpret the multiple uses and history of the site, including promotion of the Aboriginal cultural heritage values of the study area, in a way that is engaging, informative and readily accessible to the majority of visitors. Written approval of the Heritage Interpretation Plan from Council's Heritage Officer is to be obtained prior to the issue of any Construction Certificate.

- Condition 49 to be amended to read:
A public art feature is to be designed for the site in consultation with Newcastle City Council. The public artwork is to have a minimum value of 1% (\$1,101,377.53) of the capital cost of the development. The final details of all artworks within the site and associated costing are to be submitted to Council's Public Art Reference Group for written approval prior to the issue of any Construction Certificate, the written approval be obtained prior to the commencement of above-ground works/ground level slabs.
 - Insert new condition 49A to read:
On-site flood refuge is to be provided in the development. The minimum on-site refuge level in the building is the level of the Probable Maximum Flood event (reduced level 4.68 m Australian Height Datum). The design and/or suitability of the refuge is to be structurally certified by a professional engineer, ensuring that the building is able to withstand the hydraulic loading due to flooding from the Probable Maximum Flood (Flood Level reduced level 4.68 m Australian Height Datum, Maximum Flow Velocity of floodwaters 1.5 m/s). Full details are to be included in documentation for a Construction Certificate application.
 - Condition 50 to be amended to read:
The proposed remediation work being carried out in accordance with the requirements set out in the submitted Remedial Action Plan (RAP) prepared by Douglas Partners dated 29 April 2022 and the conditions of this consent, except that no bioremediation of excavated soils is to be undertaken on the site as recommended by the RAP.
 - Insert new Condition 96A to read:
An Aboriginal Cultural Heritage Assessment (ACHA) is to be prepared prior to the commencement of any ground disturbance works. The ACHA is to be prepared in accordance with:
 - Code of Practice for the Archaeological Investigation of Aboriginal objects in NSW;
 - Guide to investigating, assessing, and reporting on Aboriginal cultural heritage in NSW; and
 - Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010.
 Should the ACHA determine that Aboriginal objects are likely to be harmed, an Aboriginal Heritage Impact Permit (AHIP) is required to be obtained from Heritage NSW under Part 6 of the National Parks and Wildlife Act 1974 prior to the commencement of any ground disturbance works. The AHIP is to include provision for the completion of Aboriginal archaeological investigations in the form of test excavations and (if required) further salvage activities.
- During any excavation work, in the event that any Aboriginal objects are identified within the area of works, works within the immediate vicinity of the Aboriginal object should cease and Heritage NSW should be contacted so that appropriate management strategies can be identified. Aboriginal objects must be managed in accordance with the National Parks and Wildlife Act 1974.
- In the event that a potential burial site or potential human skeletal material is exposed, work in the vicinity of the remains is to halt immediately to allow assessment and management. If the remains are suspected to be human, it will be necessary to contact local police, Heritage NSW and the Heritage Division to determine an appropriate course of action.
- Condition 108 to be amended to read:
A public right of carriageway is to be created over the publicly accessible private footway, immediately adjoining Council footpath along Railway St and Tighe St, which is designed and will be perceived as a part of the public footpath. A detailed survey plan is to be submitted with an accompanying Subdivision Certificate Application for Council certification and such plan is to be registered with the NSW Government Land Registry Service (LRS) prior to issue of any Occupation Certificate or Subdivision Certificate, whichever occurs first.





- Condition 111 to be amended to read:
The required Heritage Interpretation Plan is to be implemented on the site to the written approval of Council's Heritage Advisor prior to the issue of the first Occupation Certificate.
- Condition 112 to be amended to read:
The public art feature approved by Council's Public Art Reference Group is to be installed prior to the issue of the first Occupation Certificate. Details confirming the installation of the public artwork, required as part of this consent, shall be submitted to the Principal Certifier and Council prior to the issue of the Occupation Certificate.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition. The Panel notes that issues of concern included:

- Roadway width of Tighe Street

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report. The Panel notes that in addressing these issues suitable conditions of consent have been applied to address the functionality of Tighe and Railway Streets for both pedestrian and vehicular traffic.

PANEL MEMBERS	
 Stephen Gow (Chair)	 Susan Budd
 Clare Brown	 John Mackenzie

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-102 – Newcastle – DA2021/01459
2	PROPOSED DEVELOPMENT	Partial demolition of existing buildings, erection of mixed-use development comprising commercial premises (retail premises & business premises), two residential towers (30 storey & 24 storey) containing 182 dwellings and 238 associated car parking spaces.
3	STREET ADDRESS	<ul style="list-style-type: none"> • Lot 2 DP 126 • Lot 1 DP 342675 • Lot 1 DP 395367 • Lot 2 DP 445736 • Lot 1 DP 456088 • Lot 1 & 2 DP 1091173 924 Hunter Street Newcastle West
4	APPLICANT OWNER	Thirdi Dairy Farmers Pty Ltd McCloy Newcastle West Pty Limited
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 (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Planning Systems) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Building ○ State Environmental Planning Policy (Industry and Employment) 2021 ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ Sydney Regional Environmental Plan XXX (Deemed SEPP) ○ Newcastle Local Environmental Plan 2012 • Draft environmental planning instruments: <ul style="list-style-type: none"> ○ Draft Remediation of Land SEPP • 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 2021</i>: Cl. 61 (1), Additional matters that consent authority must consider (Demolition of Structures) • 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: 20 June 2022 • Written submissions during public exhibition: one

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Kick-off briefing: 2 December 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Stephen Gow (Chair), Clare Brown and Susan Budd ○ <u>Council assessment staff</u>: Damian Jaeger, Priscilla Emmett, Amy Ryan, Brian Cameron and Olivia Magrath ○ <u>Transport for NSW</u>: Liz Smith and Vanessa Barnett ○ <u>Applicant representatives</u>: Robert Huxley, Scott Shafren, Stuart Campbell, Matt Boyle, Luke Mahaffey and Alan Makelvey ○ <u>Department staff</u>: Leanne Harris and Lisa Foley • Site inspection and briefing: 7 March 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Stephen Gow (Chair), Clare Brown and Susan Budd ○ <u>Council assessment staff</u>: Damian Jaeger, Holly Hutchens, Brian Cameron and William Wang ○ <u>Department staff</u>: Leanne Harris • Final briefing to discuss council's recommendation: 27 June 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Stephen Gow (Chair), Susan Budd, Clare Brown and John MacKenzie ○ <u>Council assessment staff</u>: Damian Jaeger, Brian Cameron, Paul McMurray, Elle Durrant, Rajnesh Prakash, Isobelle Rowlatt, Amy Ryan, Priscilla Emmett, Holly Hutchens, Olivia Magrath and Ellise Redriff ○ <u>Department staff</u>: Leanne Harris and Lisa Foley • Applicant Briefing: 27 June 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Stephen Gow (Chair), Susan Budd, Clare Brown and John MacKenzie ○ <u>Council assessment staff</u>: Damian Jaeger, Elle Durrant, Rajnesh Prakash, Amy Ryan, Priscilla Emmett, Olivia Magrath and Ellise Redriff ○ <u>Department staff</u>: Leanne Harris and Lisa Foley ○ <u>Applicant representatives</u>: Luke Mahaffey, Charlie Mortim, Anthony Darcy, Luke Griffiths, Stuart Campbell, Joel Chamberlain and Matthew Boyle <p><u>Note</u>: Applicant briefing was requested to respond to the recommendation in the council assessment report</p>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report