

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	16 December 2024
DATE OF PANEL DECISION	13 December 2024
DATE OF PANEL MEETING	5 December 2024
PANEL MEMBERS	Tony McNamara (Chair), Susan Budd, Stephen O'Connor
APOLOGIES	Nil
DECLARATIONS OF INTEREST	Alison McCabe - Potential of a perceived conflict of interest because SJB Architects are involved.

Public meeting held by teleconference on 5 December 2024, opened at 11.00am and closed at 12:30pm.

MATTER DETERMINED

PPSHCC-204 – Newcastle – DA2023/00419 at 121 Hunter Street, Newcastle 2300 – Mixed use - commercial and residential premises (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.

Application to vary a development standard:

The Panel notes that the DA was accompanied by a written request under clause 4.6 (3) of the Newcastle LEP. The height and built form envelopes for this development are established under Concept Approval D/2017/00701 (as modified) and the DA is required to be consistent with the terms of that Concept Approval. The Panel is of a view that the written request to vary the height of buildings development standard was not required for this application, however for abundant caution the Panel has considered the merits of the application and determines as follows:

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Newcastle Local Environmental Plan 2012 (LEP), that has demonstrated that:

- a) compliance with cl.4.3 (height of buildings) is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

the Panel is satisfied that:

- a) the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 (height of building) of the LEP and the objectives for development in the MU1 - Mixed Use zone; and
- c) the concurrence of the Secretary has been assumed.

Development Application:

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*, subject to conditions (see details of conditions below).

The decision was unanimous.

REASONS FOR THE DECISION

The Panel generally agreed with the assessment and balance of considerations in the independent planner's assessment report and determined to approve the application for the reasons in that report and as set out below.

East End Stages 3 and 4 are the final stages of a significant urban revitalisation project in the heart of the Newcastle city centre which is the subject of a Concept Plan Approval (D/2017/00701 as modified). The Panel is satisfied that the development is consistent with relevant provisions of the approved Concept Plan including the height, floor space ratio, building envelopes and approved uses for Stages 3 and 4.

The East End Stage 3 and 4 development is the realisation of the winning architectural scheme endorsed following a competitive architectural design process and refined through extensive Design Integrity Panel and Urban Design Review Panel (URDP) review. The final design also incorporates design elements which are the outcome of comprehensive consultation with First Nations community members through the Connecting with Country process undertaken as part of the consultation for the project. The final design of the Stage 3 and 4 development is supported by the UDRP. The Panel is satisfied the Stage 3 and 4 development exhibits design excellence and notes that conditions of consent have been imposed to ensure design excellence is maintained through the construction phase of the development including retention of the project architects for the winning scheme and ongoing oversight by the URDP.

The East End Stage 3 and 4 development will contribute to positive heritage outcomes, including the retention and adaptive reuse of the Municipal Building and integration of the facades of 105 and 111 Hunter Street as well as providing a significant public benefit by delivering the new view corridor from Newcastle Harbour to the Christchurch Cathedral as envisaged in Newcastle DCP 2012. While Blackhall House is approved for demolition, a new condition of consent has been included to require the preparation of a Heritage Salvage Strategy to consider reuse of salvaged fabric/elements removed from heritage listed and contributory buildings as interpretive element(s) in the common areas of new buildings within Stage 3 and 4.

The site has been assessed as requiring remediation and the Panel is satisfied that appropriate conditions of consent have been imposed to ensure the site will be remediated to the appropriate standard prior to occupation.

Stages 3 and 4 of the East End project will deliver 195 new apartments, commercial and retail space and a commendable public space outcome in the form of Market Square and through site links, including the Harbour to the Cathedral corridor. The Panel considers the development will deliver considerable social and economic benefits to the City of Newcastle and is consistent with the objectives of the Newcastle LEP and the MU1 Mixed Use zone. The Panel considers the development is generally consistent with applicable planning controls and agrees that areas of non-compliance identified in the assessment report are acceptable on merit. The Panel further considers that environmental impacts are acceptable, including the loss of some private and public views, noting these impacts generally flow from the built form envelopes established by the approved Concept Plan for the broader East End site.

The Panel appreciates the contributions made by members of the community who made submissions and participated in the public hearing, noting that some members of the community supported the project while others expressed concern about the scale of the built form and impacts, including heritage impacts, loss of views and the extent of change proposed. On balance the Panel considers the East End Stage 3 and 4 development will deliver considerable public benefit to the City of Newcastle and its residents by contributing to the revitalisation of the city centre, delivering a sophisticated built form and public domain outcome as well as much needed housing and jobs.

The Panel considers the development is consistent with the objectives of the Environmental Planning and Assessment Act and that the granting of development consent is in the public interest.

CONDITIONS

The development application was approved subject to the conditions in Attachment B - Revised Draft Schedule of Conditions published on the NSW Planning Portal (Portal). This incorporates a number of changes to the conditions attached to the assessment report as detailed in a Council memo to the Panel dated 10 December 2024 and also published on the Portal.

The Council and applicant suggested a number of minor revisions to the draft conditions to clarify timing and other matters, correct typographical errors and incorrect references.

In addition, the Panel has included new conditions as follows:

- New Condition No. 64 (Construction Environmental Management Plan) added to:
Require the CEMP to be prepared prior to any site works commencing. Requirements for the CEMP are consistent with those of condition 9.
- New Condition No. 70 (Heritage Salvage Strategy) added to:
Require a Heritage Salvage Strategy to be prepared prior to any site works commencing. The strategy is to identify the salvage potential of fabric/ elements, original to heritage listed and contributory buildings, that will be demolished to facilitate the development. The meaningful reuse of salvaged fabric/ elements as interpretive element(s) (including options for repository and display) within common areas of the approved development is to be prioritised.
- New Condition No. 75 (Construction hours) added to:
Nominate the hours of construction
- New Condition No's 103 and 179 (Section 88B Instrument - positive covenant in respect to approved public art) added to:
Require a positive covenant for the maintenance of the approved public art to be registered on the title of the site.

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:

- Support for the project and continued revitalisation and activation of the Newcastle East End
- Positive and Social and economic impacts
- Support for the final stages of the proposal, with positive and modern architecture
- Proposal will provide for additional housing stock
- Noncompliance with heritage and environmental controls
- Removal of and impacts on street trees
- Impacts on heritage
- Impacts on Christchurch Cathedral
- Parking shortfalls
- Salvage and reuse of heritage fabric
- Height of the buildings
- Non-compliance with Apartment Design Guide (ADG)
- View loss to Newcastle Club
- Geotechnical impacts - need for dilapidation reports
- Lack of affordable housing

The Panel considers that the concerns raised by the community have been adequately addressed in the assessment report and conditions of consent and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS



Tony McNamara (Alternate Chair)



Susan Budd



Stephen O'Connor

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-204 -Newcastle -DA2023/00419
2	PROPOSED DEVELOPMENT	Mixed use – commercial and residential premises
3	STREET ADDRESS	121 Hunter Street, Newcastle
4	APPLICANT/OWNER	East End Stage 3 Pty Ltd East End Stage 3 Pty Ltd and East End Stage 4 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 (Housing) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Industry and Employment) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 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 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 Newcastle Development Control Plan 2023 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Clause 61(1) - 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"> Patch Planning assessment report: 28 November 2024 Clause 4.6 - written request to vary Clause 4.3 - height of buildings Council memo 10 December 2024 and Attachment B - Revised Draft schedule of conditions Written submissions during public exhibition:29 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Peter Zygadlo Alicen Lewis John Harrington Mark Metrikas on behalf of the National Trust Karen Read – Newcastle East Residents Group Ian Baker - Asset Manager Newcastle Club Howard Laughton

		<ul style="list-style-type: none"> ○ The Very Reverend Katherine Bowyer on behalf of Christ Church Cathedral ○ Mark Hickey ○ On behalf of the applicant: Naomi Ryan, Andrew Harvey, Warren Duarte, Sam Arnout, Jane Maize-Riley, Adam Haddow, Wesley Grunsell, Nathan Dawes, Greg Lee, Chris Palmer, Kerime Danis ● Total number of unique submissions received by way of objection: 26
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> ● Preliminary Briefing: 2 August 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Roberta Ryan (Acting Chair), Helen Lochhead, Kim Johnston, Peta Winney-Baartz, John Mackenzie ○ <u>Council assessment staff</u>: Damian Jaeger, Amy Ryan ○ <u>Applicant</u>: Isabella Tonks, Naomi Ryan, Andrew Harvey, Warren Duarte, Kerime Danis, Rachel Yabsley, Adam Haddow, Chris Palmer ○ <u>DPE</u>: Leanne Harris, Lisa Foley, Holly McCann ● Applicant Briefing: 11 December 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Roberta Ryan (Acting Chair), Helen Lochhead, Kim Johnston, John Mackenzie, Peta Winney-Baartz ○ <u>Applicant representatives</u>: Isabella Tonks, Naomi Ryan, Andrew Harvey, Warren Duarte, Kerime Danis, Rachel Yabsley, Adam Haddow, Chris Palmer ○ <u>DPE</u>: Leanne Harris, Holly McCann ● Site inspection and Briefing: 2 September 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Brian Kirk (Alternate Chair), Susan Budd, Tony McNamara, Stephen O'Connor, Jason Dunn ○ <u>Council assessment staff</u>: Priscilla Emmett, Brian Gibson, Elle Durrant, Mason Stankovic, Georgia Quinn, Stacey Brodbeck, Philip Pollard, Paulo Macchia ○ <u>Applicant Representatives</u>: Naomi Ryan, Andrew Harvey, Jane Maze-Riley, Sam Arnout, Warren Duarte, Adam Haddow, Wesley Grunsell, Nathan Davies, Greg Lee, Chris Palmer, Kerime Danis, James Oldknow ○ <u>Department</u>: Leanne Harris ● Final briefing to discuss Council's recommendation: 5 December 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Tony McNamara, (Alternate Chair) Susan Budd, Stephen O'Connor ○ <u>Council assessment staff</u>: Damian Jaeger, Amy Ryan, Elle Durrant, Robert Manev, Rajnesh Prakash, David Ryner, Mason Stanovic, Georgia Quinn, Philip Pollard ○ <u>DPE</u>: Leanne Harris, Holly McCann
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to Patch Planning's assessment report and Council memo dated 10 December 2024