

Panel Reference	PPSHCC-22
DA Number	DA2019/01169
LGA	Newcastle
Proposed Development	Mixed use development - demolition of structures, erection of two 14 storey mixed-use buildings with shared basement carparking (286 spaces), comprising seniors housing (114 bed aged care facility and 82 independent living units), residential flat building (166 units), medical centre, food and drink premises (café and restaurant) and retail premises (salon).
Street Address	309 King Street Newcastle West (Part Lot 1 DP 826956)
Applicant/Owner	Western Suburbs (Newcastle) Leagues Club Ltd
Date of DA lodgement	06 November 2019
Number of Submissions	Nil
Recommendation	Approval

Background

The subject application (DA2019/01169) is being reported to the Hunter Central Coast Regional Planning Panel (HCCRPP) on 9 December 2020.

The application is recommended for approval subject to conditions of consent (as attached to the assessment report at Appendix A). City of Newcastle's (CN) recommended conditions of consent were provided to the applicant on 1 December 2020.

An email from Anthony Williams (Director – WPP Planning and Property), planning consultant for the application, was received on 7 December 2020, which attached a written submission outlining the matters on which the applicant intended to address the HCCRPP (**Attachment A**). Correspondence from Allens Solicitors was also attached (**Attachment B**).

The written submission, and supporting legal request, raised concerns with four of the recommended conditions of consent including: condition 12 – clearance to basement car park, condition 17 – residential waste management, condition 41 – wind tunnelling, and condition 42 – public art. A response to the written submission is provided below.

Condition 12 – clearance to basement car park

Condition 12 relates to the required clearance height to the proposed basement car park and is extracted below:

The height clearance for the proposed vehicular access and proposed roller door height at Level 0 which leads to the basement parking areas is to be minimum 3.5m clear to allow for minimum height clearance for small rigid vehicles in accordance with AS/NZS 2890.2:2004 - Off-street commercial vehicle facilities. Full details are to be included in documentation for a Construction Certificate application.

The applicant's submission states that the recommended condition is 'unreasonable and unnecessary', on the basis that the plans submitted detail a 3.0m clearance to the basement car park and documentation has been provided demonstrating adequate arrangements can be made for all service vehicles including the majority of ambulance vehicles. The applicant acknowledges

that the 'Mercedes Benz Sprinter 519 Bariatric Specialist (Ambulance)' cannot access the basement car park due to it having a 3.2m clearance, however the applicant provides that:

"The circumstances under which this vehicle would be required to attend the aged car facility would be very infrequent."

The applicant proposes that a plan of management could be prepared to document the access arrangements for all ambulance vehicles including the Mercedes Benz Sprinter 519 Bariatric Specialist (Ambulance).

CN requested the applicant provide amended plans to achieve required clearance levels during the assessment process. The applicant failed to provide the requested information and as such a condition of consent has been recommended to ensure compliance with Australian Standard AS2890.2, this is to ensure adequate height clearance to provide entry for both Ambulances and the Small Rigid Vehicles (SRV) proposed to service the site. In this regard, table 4.1 of AS2890.2 prescribes the basic vertical height clearance of 3.5m for SRV.

The applicant's proposal to address clearance issues by provision of a plan of management fails to address the requirement of 3.5m clearance for SRV. Further, given the inclusion of seniors housing and an aged care facility within the development, the failure to cater for access and serviceability by all NSW Ambulance vehicles is not acceptable. The application relates to a new development on an unconstrained site and the applicant has not demonstrated any reasonable basis for a failure to cater for adequate clearance heights to the proposed basement car park.

The recommended condition of consent will result minor design changes to increased clearance heights to satisfy AS2890.2. The design changes are able to be addressed at detailed design staged prior to release of Construction Certificate. It is noted that any increased height which may result from the design amendments can be facilitated within the maximum height controls prescribed under cl.7.5 NLEP.

Condition 17 – residential waste management

Condition 17 requires that the applicant make provision for servicing of residential waste collection by CN. The condition is extracted below:

Prior to the issue of any Construction Certificate a residential waste collection bin storage area is to be designed with consultation of City of Newcastle's Waste & Commercial Management team along Bull St frontage of the site within 10m-15m walking vicinity of the proposed Loading Zone on Bull St (Note: the loading zone can be relocated if required subject to consultation with Council) for potential waste collection by Council.

The residential waste collection storage area is to be appropriately sized and designed to accommodate for all residential bin collections (including accessibility design) generally in accordance with City of Newcastle DCP requirements and the industry standards (including EPA's Better Practice Guide for Resource Recovery in Residential Developments - 2019 Revision). The waste collection storage area is to be located in close proximity of lifts to service residential units. The waste collection bin storage area is to be designed to the written satisfaction of City of Newcastle's Waste & Commercial Management prior to the issue of any construction certificate. Council's written correspondence is to be provided to the Principal Certifier prior to issue of any Construction Certificate.

The applicant suggests that the recommended will require substantial amendments to the Bull Street elevation, and the location of garbage chutes within the residential building. The applicant further provides that on the basis that the condition seeks to allow for potential waste collection by CN, and as s.7.08 of DCP2012 does not require street collection for mixed-use developments, the condition is unreasonable.

Section 7.08 of DCP2012 does not require on street collection for mixed use developments, the section requires that development includes a designated waste/recycling storage area designed in accordance with the 'Waste Management Technical Manual'. CNs 'Waste Management Technical

Manual' requires that access for collection vehicles. Due to the restricted clearance height CN waste collection vehicles cannot service the proposed basement. The increased clearance height required under recommended condition no.12 still does not facilitate adequate height for waste collection vehicles, as clearance heights for Heavy Rigid Vehicles is not achieved. Accordingly, the condition seeks to facilitate the ability for CN to service the residential components of the development site through on-street collection. A loading zone has been granted in principal approval along Bull Street and there is scope for a residential waste storage area to be located at ground floor in proximity to the loading zone.

The condition also requires that the waste storage area be designed in accordance with the EPA's *Better Practice Guide for Resource Recovery in Residential Developments* (2019 Revision) (EPA Guideline), as the generation estimates provided in the applicant's submitted waste management plan were considered to be inaccurate. The applicants WMP suggests that the proposed residential apartments and seniors independent living units generate 17,080 litres of general waste, and 8,040 litres of comingled recycling. Based on the EPA's Guideline CN estimate 24,920 litres of both general waste and comingled recycling per week will be generated for the residential component of the proposal.

Whilst the applicant suggests waste collection will be facilitated by a private contractor, CN require that the development be appropriately designed to be able to be serviced by CN in the future. Historically, CN have had to manage several legacy developments in which waste servicing was proposed to be managed by a private waste collector by the original developer, however future residential occupants have sought waste collection be facilitated by CN. This issue arises as s.496(1) of the *Local Government Act 1993* (LG Act) specifies that 'a council must make and levy an annual charge for the provision of domestic waste management services for each parcel of rateable land for which the service is available'. The annual charge is applicable irrespective of whether the domestic waste management service is utilised or not.

As a result, situations have arisen where residents of developments which have been designed to be serviced by private waste contractors only, have sought for CN to provide waste service collection. Given these residents are charged the domestic waste management service levy, arrangements have had to be made to provide a waste collection service. This has resulted in undesirable outcomes in some locations, such as the presentation of numerous bins to kerbside.

It is CNs view that it is not reasonable to approve a development which can only be serviced by a private waste collection service when future residents will be charged the domestic waste management service levy. While the developer may elect to use a private waste collector, the development should be designed to ensure that CN is able to service the site due to possibly being required at a future date, given the charge is levied regardless. Furthermore, as the application relates to a new development on an unconstrained site, a design solution (as required by the condition) can be achieved to address this matter.

Condition 41 – wind tunnelling

Condition 41 requires that a wind tunnelling report be provided prior to issue of any Construction Certificate, as extracted below:

A wind tunnelling report is to be prepared by an appropriate qualified and experience engineer. This report is to be prepared in accordance with AS1170.2 and should consider the impact on the building, the environment and pedestrian movements surrounding the development.

Architectural and landscape plans will need to reflect the recommendations of the wind tunnelling report and amended plans and the wind tunnelling report is to be provided to the Principal Certifier prior to issue of any Construction Certificate (excluding any construction certificate for remediation works or demolition). A copy of the wind tunnelling report is to be provided to Council.

The applicant's submission identifies they wish for Rob Mirams (Architect – Fender Katsalidis) to

address the Panel with respect to wind tunnelling impacts generated from the process, having regard to the proposed building separation and the requirements of Council both prior to and during assessment.

The applicants submitted Statement of Environmental Effects provided commentary regarding the consideration of wind impacts within the design, including how consideration had been given to ensure wind tunnelling did not adversely impact upon pedestrians or the public domain.

However, the condition has been recommended due to the size of the development and the ability for the proposed buildings to potentially manipulate wind movement a suitably qualified expert's report should be prepared to accompany the Construction Certificate documentation.

Condition 42 – public art

Condition 42 requires that public art to a minimum value of 1% of the capital cost of the development be provided on site. The condition addresses a requirement under s.6.01 'Newcastle City Centre' DCP2012, and is extracted below:

A public art feature shall be designed for the site in consultation with City of Newcastle. The public artwork is to have a minimum value of 1% (\$1,608,992) 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 a Construction Certificate.

The written approval be obtained prior to commencement of above-ground works/ground level slabs and the approved artwork(s) be installed prior to the use of the first Occupation Certificate. This feature is to provide visual interest for pedestrians and interpret or reflect the local setting, landscape setting and/or cultural setting of the Newcastle area. The feature is to be designed to ensure long-term durability and be resistant to vandalism

The applicant has provided advice from Felicity Rourke (Legal Counsel) from Allens, and submit that under the circumstances the condition is unreasonable, and seek for the condition to be amended as follows:

The proposed King Street/Bull Street pathway link is to be designed as a public art feature, in consultation with the City of Newcastle, to the value of 1% of the capital cost of development. The 1% shall be inclusive of the cost of site preparation and landscaping of the pathway link, seating areas, a reflection pool, terraced planting, as well as a faceted wall element to host a memorial. It is to provide visual interest for pedestrians and be interpretive or reflective of its local setting, landscape setting and the cultural setting of the former Newcastle Workers' Club and Trades Hall Council. The pathway/public art feature is to be designed to ensure long-term durability and be resistant to vandalism. The final details of the pathway/public art feature and its associated costing are to be submitted to the City's Public Art Reference Group for written approval prior to the issue of a Construction Certificate, with the written approval being obtained prior to commencement of above-ground works/ground level slabs. The approved pathway/public art feature is to be completed and installed prior to issue of the first Occupation Certificate.

Condition 42 is a standard condition of consent that is imposed upon development within the city centre that is identified as a 'key site' or that has a height over 45metres.. The required 1% spend on public art can include design and construction costs (artwork and mechanisms) as well as designer/curator fees. Maintenance is not considered within the 1% spend. CN do not consider the provision of infrastructure, services, or building design elements as part of the public art calculation. The City of Newcastle Public Art Reference Group (PARG) is responsible for making decisions in respect to public artwork requirements, including whether proposed public artworks satisfy the standard condition requirements.

The Allens advice furnished by the applicant seeks to justify the inclusion of the cost of providing the proposed pedestrian laneway, associated landscaping, and memorial as part of the public art 1% calculation. The advice also reflects the applicants desire to utilise the pedestrian laneway for the

provision of the required public art. The applicant seeks flexibility in the application of the 1% public art requirement, and the advice notes that CN apply the public art requirement in strict terms.

CN is consistent in applying the requirement for public art for developments of this nature across the city. These developments also have included public domain elements and high-quality design outcomes. The provision of a high-quality development does not negate the requirement to provide public artwork in accordance with DCP2012.

Further, approval of proposed public art concept and design, including proposed location of proposed artwork, requires consideration and approval by PARG. The applicant was invited to present a concept proposal to PARG during the assessment process which would have provided an opportunity to confirm the suitability of the use of the proposed laneway as a location for public artwork. The applicant did not take the opportunity to present to PARG and had not engaged an artist to prepare concept designs in respect to public artwork.

Conclusion

CN have recommended approval of the application subject to recommended conditions, inclusive of those conditions contested by the applicant. The applicants request to delete and amend conditions is not supported. Should the Panel determine to approve the application, CN strongly request that the conditions be imposed as recommended.

Attachment A – Applicants written submission prepared by WPP Planning and Property

Attachment B – Correspondence from Allens (signed by Felicity Rourke)