

DATE OF DETERMINATION	9 March 2021
PANEL MEMBERS	Alison McCabe (Chair), Sandra Hutton, Susan Budd
APOLOGIES	John Mackenzie
DECLARATIONS OF INTEREST	Juliet Grant declared a conflict of interest as her employer is involved in the application

Papers circulated electronically on 1 March 2021.

MATTER DETERMINED

PPSHCC-22 – Newcastle City Council – DA 2019/01169 at 309 King 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.

The Panel considered this matter in detail at its meeting on 16 December 2020. The matter was deferred to address:

- Basement clearances;
- Waste Management which required changes to plans;
- Design Excellence sign off;
- Clarification of carparking; and
- Revised conditions.

The applicant addressed the areas of deferral through amended plans, and the supplementary assessment report has considered the changes. The Panel is satisfied that the amendments address the issues raised and provide for an appropriate development that will result in a positive contribution to the Newcastle City Centre.

The Panel also considered the applicant's submission regarding proposed conditions 18 and 99.

Application to vary a development standard

The Panel notes that under the provisions of clause 7.5(6) of the Newcastle LEP 2012 a clause 4.6 variation request to the height of building standard is not strictly required. A request was submitted and has been assessed to test the merits of the proposal.

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

- a) compliance with clause 4.3 (Height of Buildings) and clause 4.4 (Floor Space Ratio) 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 clause 4.6 (3) of the LEP; and

- b) the development is in the public interest because it is consistent with the objectives of clause 4.3 (Height of Buildings) and clause 4.4 (Floor Space Ratio) of the LEP and the objectives for development in the B4 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 the conditions attached in the supplementary report and amended as follows:

1. Condition 78 to read:
Remediation must be carried out in accordance with the Remediation Action Plan (prepared by Douglas Partners dated 21 June 2019).
2. Condition 98 to read:
A public right of way shall be registered over the proposed accessway linking Bull Street and King Street (Earthquake Memorial Way). A s88B (Conveyancing Act 1919) instrument shall be prepared nominating Council as a party to the instrument and submitted to Council for approval and endorsement. Evidence of the registration of the ROW and s88B instrument must be provided to Council in writing prior to the issue of any Occupation Certificate.
3. Condition 99 to read:
A restriction as to user must be registered against the titles of the approved Seniors Housing components of the development in accordance with section 88E of the Conveyancing Act 1919 limiting the use of any accommodation on these properties to seniors housing as defined under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. Written evidence of the restriction is to be provided to the written satisfaction of Council prior to the issue of any Occupation Certificate.

The decision was unanimous.

REASONS FOR THE DECISION

The panel determined to uphold the clause 4.6 variation to building height and the clause 4.6 variation to floor space ratio and approve the application for the reasons outlined in the council assessment report and as below:

1. The Panel considers the development has been thoughtfully designed and is an appropriate design response for a key site. The design has been subject to a design review process by the City of Newcastle Urban Design Review Group, and the Panel is satisfied the built form exhibits design excellence.
2. The development will provide a significant improvement to the streetscape, amenity and activation of the site and precinct and includes a positive and considered mix of land uses and housing options.
3. The Panel is satisfied that the Seniors Housing components of the development are appropriately located having regard to existing services.
4. Having regard to the provisions of SEPP 55, the findings of the Site Investigation Reports, the Remediation Action Plan and the conditions of consent, the Panel is satisfied the site will be remediated and will be suitable for the proposed uses.

CONDITIONS




The development application was approved subject to the conditions in the supplementary council assessment report, amended as outlined above. It is noted that:

- Condition 78 – was amended to delete reference to section 7;
- Condition 98 – was amended to be specific about the requirement for a ROW; and

- Condition 99 – was amended to require the restriction to the senior housing components of the development only.
- Condition 18 was not amended or deleted on the basis that the Panel agrees with Council's desire to ensure that the agreed waste management outcomes that facilitate public servicing of certain waste streams are maintained and facilitated during the detailed design phase to their satisfaction.

CONSIDERATION OF COMMUNITY VIEWS

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

PANEL MEMBERS	
 Alison McCabe (Chair)	 Sandra Hutton
 Susan Budd	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-22 – Newcastle City Council – DA 2019/01169
2	PROPOSED DEVELOPMENT	Mixed use development - demolition of structures, erection of two 14 storey mixed-use buildings with shared basement carparking (285 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).
3	STREET ADDRESS	309 King Street Newcastle West (Part Lot 1 DP 826956)
4	APPLICANT/OWNER	Western Suburbs (Newcastle) Leagues Club 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 (State and Regional Development) 2011 ○ State Environmental Planning Policy (Infrastructure) 2007 ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ○ State Environmental Planning Policy No. 55 - Remediation of Land ○ State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development ○ State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP SH) ○ State Environmental Planning Policy (Coastal Management) 2018 ○ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 ○ Newcastle Local Environmental Plan 2012 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Newcastle Development Control Plan 2012 ○ Section 94A Development Contributions Plan 2009 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: • 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: 2 December 2020 • Clause 4.6 Variation Request to NLEP Clause 4.3 Height of Buildings development standard • Clause 4.6 Variation Request to NLEP Clause 4.4 Floor Space Ratio development standard • Council supplementary assessment report: 1 March 2021 • Submission from the applicant: 3 March 2021

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 3 June 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton and John MacKenzie ○ <u>Council assessment staff</u>: Holly Hutchens, Ian Clark, Amanda Gale, Michelle Bisson, Tracey Webb and Priscilla Emmett • Site inspection: <ul style="list-style-type: none"> ○ <u>Alison McCabe (Chair)</u>: 1 April 2020 ○ <u>Sandra Hutton</u>: 1 April 2020 • Final briefing to discuss council's recommendation: 9 December 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Susan Budd and John MacKenzie ○ <u>Council assessment staff</u>: Priscilla Emmett, Amy Ryan, Ian Clarke, Rajnesh Prakash, Erica Broadbent, Akshay Mahajan, Michelle Bisson • Applicant Briefing: 9 December 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Susan Budd and John MacKenzie ○ <u>Council assessment staff</u>: Priscilla Emmett, Amy Ryan, Ian Clarke, Rajnesh Prakash, Erica Broadbent, Akshay Mahajan, ○ <u>Applicant representatives</u>: Philip Gardener, Felicity Rourke, Rob Mirams, David Sparkes, Jeff Garry, Lydia Kuczera, Anthony Williams <p><u>Note</u>: Applicant briefing was requested to respond to the recommendation in the council assessment report</p> • Final briefing to discuss council's recommendation: 8 March 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton and Susan Budd ○ <u>Council assessment staff</u>: Ian Clark, Amy Ryan and Priscilla Emmett
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the supplementary council assessment report