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18 April 2024

Dear Damian,

RESPONSE TO RECORD OF DEFERRAL - 121 HUNTER STREET, NEWCASTLE

1. INTRODUCTION

This letter has been prepared to respond to the Record of Deferral regarding the modification application (MA) MA2023/00175 relating to Stage 3 and 4 East End of the development at 121 Hunter Street, Newcastle.

The Hunter and Central Coast Regional Planning Panel (HCCRPP) deferred the MA on 19 March 2024 post the HCCRPP meeting on the 11 March 2024. HCCRPP reference number PPSHCC-220.

During the public meeting, objectors raised concerns regarding the visual impact of the proposed modification in comparison to the already approved Concept DA. During the public meeting the Panel raised no concerns in regard to the views with either the Applicant or other members of the consultant team who were present. The Panel agreed to defer the determination of the application to seek further information in relation to visual impacts. The Panel should review the following documents for a complete and robust view assessment:

- View Sharing and Visual Impact Assessment (Version 2) dated February 2024.
- Supplementary Response to Deferral prepared by Urbis (Visual) dated 17 April 2024.

The HCCRPP must consider the significant process to date in respect to view sharing and visual impact. The Applicant has examined the view sharing and visual impact in significant detail, as follows:

- During the Competitive Design Process that was undertaken competitors had to consider the re-massing of bulk from the view corridor. The Jury commented that *"The SJB scheme demonstrated alignment with the Concept DA and proposed amendments were well considered and provided benefits in the creation of new view lines towards the Christ Church Cathedral which would otherwise have been obscured if the Concept DA layout was maintained. The Jury acknowledged there was a logic and benefit to the re-distribution of the massing out of the view corridor towards other parts of Stage 3 and Stage 4 as it achieves a better urban design outcome while causes minimal additional overshadowing."*

- Post the Architectural Design Competition, six Design Integrity Panel (DIP) meetings occurred. At the conclusion of the Design Integrity Process, the DIP endorsed the lodgement of the DA to CN. The Letter of Advice and Endorsement from the DIP dated 10 March 2023 confirms the proposal *has demonstrated alignment with the Concept DA and the re-distribution of the massing out of the central view corridor towards other parts of Stage 3 and Stage 4*. View sharing and visual impact was a core consideration during the 6 x DIP meetings.
- The DIP and Urban Design Review Panel (UDRP) included Dr Philip Pollard. Dr Pollard is a view impact expert, and was satisfied with the level of assessment, and impacts from a view sharing perspective. Specifically, Dr Pollard was supportive of the improved public domain views to the Christ Church Cathedral.
- UDRP Session No. 1 occurred on 5 July 2023 where the UDRP gave the 'green light' endorsement of the Development Application. The UDRP commented:
 - The Panel considered the Visual Impact Assessment prepared by Urbis to be a comprehensive and well researched document that provided a balanced assessment of visual impacts of the proposal.
 - Public views are particularly important given the significance of the Hill and the area's Indigenous and Colonial heritage, and the Panel found these views to be considered appropriately.
 - Further accurate modelling of the views from private locations may be considered warranted by CN, but the principles outlined in the VIA are accepted by the UDRP, and private view impacts are not likely to be higher than "moderate" at most.
- At the request of CN, additional modelling was completed by Urbis and submitted in February 2024. This modelling included a significant assessment of private views at Newcastle Club, Newcomen Apartments, Herald Apartments and Segenhoe Apartments.
- CN officers are supportive of the VIA (and modification of the Concept DA more generally). The Council Assessment Report states the following:
 - A comprehensive assessment of the views and vistas has been submitted by the applicants having regard to the Land and Environment Court (LEC) planning principle established within *Tenacity Consulting v Waringah* [2004] NSWLEC 140 ('Tenacity').
 - The submitted VIA is sufficiently robust and detailed to ensure that a comprehensive assessment of view impact could be undertaken, and an assessment of the key impacted sites.
 - view impacts have been determined to be reasonable and the modification is found to be satisfactory having regard to the principals outlined in *Tenacity* and undertaking a balanced assessment of the proposal in its entirety. Further, the redevelopment and revitalisation of the Newcastle City Centre as detailed within CNs strategic planning framework cannot reasonably be constrained and limited based on impact to private views.
 - It is not considered that a "...more skilled design.." could reasonably provide for a better outcome balancing the "...same development potential and amenity.." against a reduction in "...the impact on the views of neighbours." Conversely, the applicant's proposal (DA2023-00419) has undertaken a comprehensive design development process, as discussed above, to reach the considered balancing of various issues resulting in the design as proposed and

would likely require the loss of development/amenity to the overall proposal to further decrease private view impacts.

- The applicants have provided a comprehensive assessment of the public view corridors associated with the site and in context of the NDCP.
- An assessment of the applicant's VIA finds that the impacts on most of the view corridors are acceptable, and height increases to the Concept DA proposed under this s4.55 modification (and the concurrent DA2023/00419) are satisfactory. As detailed within this report, the proposal will significantly enhance the view corridor from the harbour to the Christ Church Cathedral as detailed by Section 6.01 of the NDCP, where block three has been relocated further to the east, increasing the width of the corridor and achieving greater public domain benefits.

Despite the significant history and robust considering of view impact and sharing (including review and comfort from CN and Dr Philip Pollard) the HCCRPP have requested further information regarding views.

On 20 March 2024 Urbis sought clarification from the HCCRPP on the Record of Deferral via City of Newcastle (CN). Clarification was not provided by the HCCRPP to Urbis' queries, considering this we have interpreted the view concerns and provided a response that is robust and complete in our opinion.

All matters have been adequately addressed and the HCCRPP can finalise determination of the MA because the private and public views are acceptable. It is our understanding that determination is scheduled for 13 May 2024. Urbis request attendance at this meeting to answer any questions related to view impact.

2. KEY POINTS IN RESPONSE TO RECORD OF DEFERRAL

The following key points are brought to CN and HCCRPP's attention:

Segenhoe:

- **16** units across levels 1, 2, 3 and 4 **retain all existing views** in all directions and are unaffected by the proposal.
- **12** north facing units at levels 5, 6 and 7 have potential views to the proposal via the north-east edge of the building's side (north boundary). These units are partially affected, from some rooms by a **low/minimal extent of view loss per dwelling**.
- **3** east facing units at levels 5, 6 and 7 have potential views to the proposal via the junction of the side and front boundary. These units are partially affected, from some rooms by a **low/minimal extent of view loss per dwelling**.

Herald Apartments:

- **61/64** units across levels ground, basement 1, floors 1, 2, 3, 4, 5, 6 & 7 **retain all existing views**.
- The west end of levels 5 and 6 are occupied by 2 units. The northernmost unit includes 3 bedrooms and 1 living which present to the western elevation. Loss of scenic compositions affects 1 room only per dwelling in one view direction, via a side boundary to the north-west to a low/minimal or less extent.
- The west end of level 7 is occupied by one penthouse unit. Loss of scenic compositions affects 1 room only per dwelling in one view direction, via a side boundary to the north-west to a low/minimal or less extent.
- **3 rooms out of 3 dwellings, out of 64 units** at the Herald Building are affected. As demonstrated in the VIA, of the 3 dwelling the view loss is low/minimal.

Newcastle Club:

- All rooms and outdoor spaces with north side boundary views from ground, level 1 and 2 will be affected by view loss. View loss of scenic compositions in northerly views from ground, level 1 and 2 is caused by the approved concept and/or permissible envelope.
- All rooms and outdoor spaces with existing views to the east, north-east and west-north-west, south and west from ground 1, and 2 are not affected and retain all existing views.
- One room or space occupies the north end of the Newcastle Club floorplate at each floor. Only northerly views via a side boundary, from 3 rooms (at ground, 1 and 2) out of all rooms within the Club are affected by view loss in northerly (side) views.
- The extent of view loss is shown in photomontages 03, 04 and 05 (Urbis VIA), where blocking of scenic compositions is caused by the approved concept and/or permissible envelope.

Public Views:

- **Public views are enhanced.** The modification does not result in any significant loss of public views. In fact, there is an improvement to key DCP viewpoints, specifically the view to the Christ Church Cathedral from Market Street and the Harbour. All DCP views (plus additional) have been modelled to demonstrate this.

3. RESPONSE MATRIX

This section provides a response to the matters raised by the HCCRPP in the Record of Deferral. It should be read in conjunction with the attachments.

Table 1 Response Matrix

HCCRPP Comment	Applicant Response	Information Reference
<p>1. The Applicant to provide further consideration of the visual impact assessment modelling which details, clarifies and compares the cumulative impact of the proposed changes to the building height and includes the following:</p> <p>a. all impacted properties (Newcastle Business Club, Segenhoe and the Herald Apartments) which will retain views if the modification is approved,</p>	<p>As outlined in the key points above, views are retained to most dwellings. Specifically:</p> <p>Segenhoe:</p> <ul style="list-style-type: none"> 16 units across levels 1, 2, 3 and 4 retain all existing views in all directions and are unaffected by the proposal. <p>Herald Building:</p> <ul style="list-style-type: none"> 61/64 units across levels ground, basement 1, floors 1, 2, 3, 4, 5, 6 & 7 retain all existing views. <p>Newcastle Club:</p> <ul style="list-style-type: none"> All rooms and outdoor spaces with existing views to the east, north-east and west-northwest, south and west from ground 1, and 2 are not affected and retain all existing views. The visual change is considering as moderate. 	<p>Section 1.3 of the supplementary information provided in response to the Record of Deferral.</p> <p>Section 4 of the VIA.</p>
<p>b. all impacted properties (Newcastle Business Club, Segenhoe and the Herald Apartments) which will lose views if the modification is approved,</p>	<p>As outlined in the key points above, no property will entirely lose their view. Specifically:</p> <p>Segenhoe:</p> <ul style="list-style-type: none"> 12 north facing units at levels 5, 6 and 7 have potential views to the proposal via the north-east edge of the building's side (north boundary). 	<p>Section 1.3 of the supplementary information provided in response to the Record of Deferral.</p>

HCCRPP Comment	Applicant Response	Information Reference
	<p>These units are partially affected, from some rooms by a low/minimal extent of view loss per dwelling.</p> <ul style="list-style-type: none"> 3 east facing units at levels 5, 6 and 7 have potential views to the proposal via the junction of the side and front boundary. These units are partially affected, from some rooms by a low/minimal extent of view loss per dwelling. <p>Herald Building:</p> <ul style="list-style-type: none"> 3 rooms out of 3 dwellings, out of 64 units at the Herald Building are affected. This means some views are retained from other rooms. The impacts are low/minimal (or less). <p>Newcastle Club:</p> <ul style="list-style-type: none"> All rooms and outdoor spaces with north (side) boundary views from ground, level 1 and 2 will be affected by view loss. View loss of scenic compositions in northerly views from ground, level 1 and 2 is caused by the approved concept and/or permissible envelope. The visual change is considering as moderate. 	Section 4 of the VIA.
c. explanation of view impacts (positive and negative) resulting from the demolition of the council car park having regard to the maximum building height for this site in any future development,	<p>CN do not have an agreed plan for the council car park site. Therefore, Urbis have modelled a compliant scheme which is 24 metres in height and included the through site link as per the Newcastle LEP and DCP.</p> <p>The visual effects of a permissible envelope (24m) have been modelled</p>	Section 1.4 of the supplementary information provided in response to the Record of Deferral.

HCCRPP Comment	Applicant Response	Information Reference
	<p>and are visible in photomontage image numbers 5405, 0169, 0025, 5445.</p> <p>The demolition of the carpark provides an opportunity for CN to continue the through site link and deliver the Harbour to Cathedral connection.</p>	
d. clarification of impacts on 'primary' views of impacted properties, as well as 'secondary' aspects/frontages,	Map 1 illustrates the formal boundaries for each building analysed. The classification of the boundaries is aligned with Tenacity.	<p>Map 1 of the supplementary information provided in response to the Record of Deferral.</p> <p>Section 2 and 3 of the VIA.</p>
e. confirmation of all view loss of impacted properties if the modification was to be approved, compared with the already approved concept plan,	<p>The View Sharing Report prepared by Urbis, dated February 2024, includes 9 certifiably accurate photomontages which visually show the proposed development as a translucent, grey mass. The height of the approved concept envelope is indicated by a white dotted line and the LEP height plane +10% is indicated by a solid green line. The view loss caused by the MOD is the built form shown above the LEP +10% (green solid line).</p> <p>View loss caused by the changes to the Concept DA are as follows:</p> <ul style="list-style-type: none"> Partial view loss for 12 units at levels 5, 6 and 7 (4 dwellings per floor) of the Segenhoe Building (refer to Table 1), via a side boundary (north) for 9 (3 dwellings 	<p>Section 1.5 of the supplementary information provided in response to the Record of Deferral.</p> <p>Section 4 of the VIA.</p>

HCCRPP Comment	Applicant Response	Information Reference
	<p>per floor) and via the 8 junction of the side and front boundary (north and east) for 3 dwellings (one per floor), as per guidance set out in Tenacity.</p> <ul style="list-style-type: none"> Partial view loss for 3 units across levels 5, 6 and 7 (1 dwelling per floor) of the Herald Apartments (refer to Table 2), via a side boundary (west) as per guidance set out in Tenacity. View loss for 3 rooms and outdoor spaces at the northern end of the building at ground, levels 1 and 2 of the Newcastle Club, via a side boundary (north), as per guidance set out in Tenacity. <p>Nevertheless, as a whole the view sharing impacts are acceptable particularly considering the significant public benefit and improvement of the public view corridors.</p>	
f. the specific number of units on each floor of impacted properties that will have further view loss (total numbers of units on each floor), or areas of specific properties impacted (e.g. the Newcastle Club),	As per the commentary above in (e).	Section 1.6 (and Table 1 to 3) of the supplementary information provided in response to the Record of Deferral.
g. the specific storey/level the view assessment relates to in each affected building, and	As per the commentary above in (e).	Section 1.5 of the supplementary

HCCRPP Comment	Applicant Response	Information Reference
		information provided in response to the Record of Deferral.
h. supplementary assessment in relation to loss of significant public views from Hunter Street, Morgan St, Laing St, Market St, waterfront, Hilltop Park to harbour, Nobby's, and Cathedral as raised by submitters in the public briefing.	<p>The Urbis VIA already includes views DCP View 21 (Stockton Wharf) DCP 17 (Morgan Street) DCP View 15 Wharf Road/Market Street) and including DCP 17 from Morgan Street.</p> <p>The Urbis VIA included 10 public domain views from north, west, and east looking towards the Cathedral including from the public domain at Nobbys Head and Fort Scratchley. In all views, access to all of Christchurch Cathedral remains open, intact and available in fact its whole form as presently available. A view from Cathedral Park bank (below the Cathedral is also included).</p> <p>Nevertheless, additional public views from Hunter Street, Morgan St, Laing St, Market St, waterfront, Hilltop Park to harbour, Nobby's, and Cathedral have been included in the Response to Deferral.</p> <p>The modification does not result in any significant loss of public views. In fact, there is an improvement to key DCP viewpoints, specifically the view to the Christ Church Cathedral from Market Street and the Harbour.</p>	<p>Section 1.8 (and Table 4) of the supplementary information provided in response to the Record of Deferral.</p> <p>Section 5 of the VIA.</p>

4. CONCLUSION

The Applicant has examined view sharing and visual impact in significant detail during the Competitive Design Process, six Design Integrity Panel process, UDRP process, and throughout the DA assessment with CN.

The Jury, DIP and UDRP have accepted the view sharing and visual impact conclusions. The DIP and UDRP included Dr Philip Pollard. Dr Pollard is a view impact expert, and was satisfied with the level of assessment, and impacts from a view sharing perspective. Specifically, Dr Pollard was supportive of the improved public domain views to the Christ Church Cathedral.

In addition to the support of Dr Pollard (and the DIP and UDRP members), CN officers are supportive of the VIA and its conclusions.

Nevertheless, the HCCRPP have requested further information as per the Record of Deferral. This additional information is provided in the Supplementary Response to Deferral prepared by Urbis (Visual) dated 17 April 2024. This supplementary information should be read in conjunction with View Sharing and Visual Impact Assessment (Version 2) dated February 2024.

All matters have been adequately addressed and the HCCRPP can finalise determination of the MA. It is our understanding that determination is scheduled for 13 May 2024. Should further clarification or discussion be required, please do not hesitate to contact the undersigned on 0415 598 373.

Kind regards,

A handwritten signature in black ink, appearing to be "NR" with a long, sweeping underline.

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