

DETERMINATION AND STATEMENT OF REASONS
HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	15 May 2024
DATE OF PANEL DECISION	14 May 2024
DATE OF PANEL BRIEFING	13 May 2024
PANEL MEMBERS	Roberta Ryan (Acting Chair), Helen Lochhead, Kim Johnston
APOLOGIES	Nil
DECLARATIONS OF INTEREST	<p>Alison McCabe declared a conflict of interest due to work undertaken by SJB Architects on this site.</p> <p>Peta Winney-Baartz – declared a late reasonably perceived conflict of interest due to a reasonably perceived conflict of duties given their role as City of Newcastle Councillors.</p> <p>John Mackenzie - declared a late reasonably perceived conflict of interest due to a reasonably perceived conflict of duties given their role as City of Newcastle Councillors.</p>

Papers circulated electronically on 6 May 2024.

MATTER DETERMINED

PPSHCC-220 – Newcastle – MA2023/00175 at 121 Hunter Street, Newcastle 2300 – Sec 4.55(2)
Modification to DA2017/00701 - CONCEPT Staged development comprising of retail, commercial, residential and shop top housing - change to design (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.

On the 11th March 2024 the Panel held a public meeting on this matter and heard from all of those wishing to address the Panel.

The participating objectors provided clear and reasoned arguments which were beneficial to the Panel's deliberations. Specific concerns related to visual impacts of the proposed modification were raised by many of the submitters.

The Panel agreed to defer the determination of the application to seek further information in relation to visual impacts as well as further details regarding the provision of car parking having regard to the demolition of the Council car park since the approval of the original concept DA.

In response to the Panel's deferral the applicant has provided further information and Council has prepared a supplementary report and revised conditions. The Council continued to recommend approval of the application. This material was reviewed by the Panel and a further briefing held with Council.

The Panel however was not satisfied that the modification application had met the threshold test of being substantially the same development given the increased yield, FSR, and height increases proposed.

Council's assessment and analysis did not robustly test the cumulative impacts on private and public views. The Panel's position was that even moderate view loss may be considered unreasonable where the impacts

on views arise because of noncompliance of the proposed modification application with one or more planning controls.

The Panel was also concerned with the parking deficiency and reliance on on-street parking. The Panel considered that the analysis of car parking was not clearly quantified.

The Panel considered that there is insufficient information to support the application and refusal was warranted.

Modification Application

The Panel determined to refuse the modification application pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to refuse the application for the reasons at Schedule 2


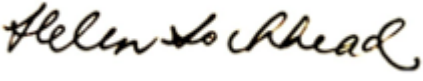

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during the public exhibition and heard from all those wishing to address the Panel during the public meeting on 11th March 2024.

The Panel notes that issues of concern included:

- Whether the modification is substantially the same development
- Height and inconsistency with the planning controls
- Proposal is an overdevelopment.
- Impacts on character, streetscape, and heritage.
- Visual impacts, views, overshadowing, and privacy impacts.
- Impacts on Christ Church Cathedral view corridors
- Acoustic impacts
- Tree removal

The Panel considers that issues raised by the community have not been adequately addressed by the Applicant.

PANEL MEMBERS	
 Roberta Ryan (Acting Chair)	 Helen Lochhead
 Kim Johnston	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-220-Newcastle - MA2023/00175
2	PROPOSED DEVELOPMENT	Sec 4.55(2) Modification to DA2017/00701 - CONCEPT Staged development comprising of retail, commercial, residential and shop top housing - change to design
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	Section 4.55(2) Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Planning Systems) 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 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Part 5 (Divisions 1,2 and 3) 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: 4 March 2024 Council supplementary assessment report: 6 May 2024 Written submissions during public exhibition: 17 Verbal submissions at the public meeting held on 11th March 2024: <ul style="list-style-type: none"> Ian Baker (The Newcastle Club) Kerrie Kerr Karen Read (Newcastle East Residents Group) Martin Tongue Dean Katherine Bowyer (Christ Church Cathedral) Tania Bloomfield Geoff Sharrock (Newcastle Inner City Residents Alliance) Marilyn Foureur (Segenhoe Community Group) Helen Sharrock Mark Metrikas (Hunter Branch of the National Trust) On behalf of the applicant – Naomi Ryan, Andrew Harvey, Isabella Tonks, Warren Duarte, Paulo Macchia, Jane Maze Riley, Rachel Yabsley, Nathan Dawes, Greg Lee, Kerime Danis, Chris Palmer. Total number of unique submissions received by way of objection: 17
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

		<ul style="list-style-type: none"> ○ <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 ○ Site inspection: <ul style="list-style-type: none"> ○ <u>Roberta Ryan</u> (Acting Chair): 28 February 2024 ○ Kim Johnston: 5 March 2024 ○ Helen Lochhead: 8 February 2024 ○ Assessment 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>Council</u>: Damian Jaeger, Ashlee Rutherford, Geof Mansfield, Amy Ryan and Eliza Arnott ○ <u>DPE</u>: Leanne Harris, Holly McCann ○ Final briefing to discuss council's recommendation: 11 March 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Roberta Ryan (Acting Chair), Helen Lochhead, Kim Johnston, John Mackenzie, Peta Winney-Baartz ○ <u>Council assessment staff</u>: Damian Jaeger, Amy Ryan, Elle Durrant, Geof Mansfield, Priscilla Emmett ○ <u>DPE</u>: Leanne Harris, Holly McCann ○ Final briefing to discuss council's supplementary report: 13 May 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Roberta Ryan (Acting Chair), Helen Lochhead, Kim Johnston, ○ <u>Council assessment staff</u>: Damian Jaeger, Amy Ryan, Elle Durrant, ○ <u>DPE</u>: Leanne Harris, Holly McCann
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment and supplementary report

SCHEDULE 2

REASONS FOR REFUSAL

- The consent authority is not satisfied that the modification application is substantially the same development as the concept approval pursuant to Section 4.55 (2)(a) of the *Environmental Planning and Assessment Act 1979*.
- The modification application will have unacceptable cumulative impacts on both public and private views and is therefore unacceptable pursuant to Section 4.15 (1)(b) *Environmental Planning and Assessment Act 1979*.
- The development will create unacceptable impacts given the deficiency in car parking and is therefore unacceptable pursuant to Section 4.15 (1)(b) *Environmental Planning and Assessment Act 1979*.
- The development is not in the public interest having regard to impacts on views and the deficiency of car parking spaces pursuant to Section 4.15(1)(e) *Environmental Planning and Assessment Act 1979*.