

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	18 March 2025
DATE OF PANEL DECISION	18 March 2025
DATE OF PANEL MEETING	11 March 2025
PANEL MEMBERS	Alison McCabe (Chair), Roberta Ryan, John Mackenzie, Stephen Leathley
APOLOGIES	Tony McNamara
DECLARATIONS OF INTEREST	Elizabeth Adamczyk and Charlotte McCabe have declared a conflict of duties due to previously being briefed on the adjacent council owned site at Rail Bridge Row and did not participate in the meeting.

Public meeting held by teleconference on 11 March 2025, opened at 3:30pm and closed at 4.00pm.

MATTER DETERMINED

PPSHCC-264 – Newcastle – DA2023/01154 – 237 Wharf Road, Newcastle 2300 – Residential Flat Building (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 has had the benefit of several briefings from Council and the applicant.

The Panel also held a public briefing in December 2024.

The development has been amended since lodgement to address specific concerns regarding the Brown Street view corridor, location of existing stormwater assets, retention of trees, and height of the building.

The proposed development has been considered by the Urban Design Review Panel and is considered to exhibit design excellence.

Clause 7.5(6) permits consent to be granted for a height 10% greater than the 20-metre height control where a development exhibits design excellence. The development benefits from these provisions such that a 22-metre height would be permitted on the site.

The building form, height, and siting is generally consistent with the controls relevant to residential flat buildings. A greater setback to the eastern boundary has been provided to incorporate the Brown Street view corridor.

The proposal involves a 921.4m² GFA exceedance of the floor space ratio development standard (1.5:1 to 1.85:1). The development also has the potential to impact views from properties, particularly to the south, that currently enjoy views over the existing commercial building.

The Panel notes that the height and siting of the development is one anticipated by the controls.

It is the height of the building that specifically impacts upon views. The Panel notes that the height is consistent with that anticipated by the controls and that the view impacts arising from the development are reasonable. The Panel has had regard to how a building may be sited on the site, and impacts arising from a strictly compliant scheme.

The Panel has considered a variation to the floor space ratio and considers that the form, siting, and scale of the building is acceptable and that a variation to the standard can be supported as the objectives of the standard is met and the environmental planning grounds of compatibility with character, protection of the view corridor, good design, and minor impacts are sufficient.

The Panel considers that the development will make a positive contribution to the city and has merit.

Application to vary a development standard:

Following consideration of a written request from the applicant the Panel is satisfied that:

- a) The applicant has demonstrated that compliance with cl. 4.4 (floor space ratio) is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard;
- b) compliance with the development standard is unreasonable and unnecessary in the circumstances for the reasons outlined in the clause 4.6 written document; and
- c) there are sufficient environmental planning grounds to justify contravening the development standard for the reasons outlined in the clause 4.6 written document.

Development Application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to uphold the Clause 4.6 variation to floor space ratio and approve the application for the following reasons:

- The development exhibits design excellence.
- The built form, scale and siting are responsive to the site context.
- The development maintains public view corridors.
- The impacts arising from the development are considered acceptable.

CONDITIONS

The development application was approved subject to the conditions in the Council assessment report.

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:

- View loss.
- Brown Street viewing corridor being compromised.
- Height of development.
- Variation to the Floor Space Ratio.
- Impact of streetscape and character.
- Traffic and parking impacts.
- Overshadowing, privacy, tree removal, noise impacts.
- Impacts of roof top services.

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

PANEL MEMBERS



Alison McCabe (Chair)



Roberta Ryan



Stephen Leathley



John Mackenzie

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-264 – Newcastle – DA2023/01154
2	PROPOSED DEVELOPMENT	Residential Flat Building – including ancillary development (pools) and demolition of existing structures.
3	STREET ADDRESS	Lot 1 DP 747803 & Lot 102 DP 736173 - 237 Wharf Road, Newcastle 2300
4	APPLICANT/OWNER	The Trustee for P R Duncan Family Trust Tamba Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Capital Investment Value over \$20M (DA lodged before 1 March 2019)
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Sustainable Buildings) 2022 State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Newcastle Local Environmental Plan 2012 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Newcastle Development Control Plan 2023 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Section 61 - demolition of buildings. 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 2025 List any clause 4.6 variation requests here: CI4.4 – Floor Space ratio NLEP 2012 Written submissions during public exhibition: 26 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Rodney Kleeman On behalf of the applicant – Brock Hall, John Streeter, Emma Mason, Kate Hopoi Total number of unique submissions received by way of objection: 21
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Preliminary Briefing: 30 January 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Tony McNamara, John Mackenzie, Peta Winney-Baartz <u>Applicant Representatives</u>: John Streeter, Brock Hall, Emma Mason, Mahafuj Ali, Kate Hopoi <u>Council assessment staff</u>: Iain Watt, Amy Ryan <u>Department</u>: Leanne Harris, Holly McCann

		<ul style="list-style-type: none"> • Site inspection: <ul style="list-style-type: none"> ○ Alison McCabe: 16 February 2024 ○ Roberta Ryan: 7 December 2024 ○ John Mackenzie: 2 December 2024 ○ Stephen Leathley: 10 March 2025 • Council Briefing: 18 June 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, John Mackenzie, Peta Winney-Baartz ○ <u>Council assessment staff</u>: Iain Watt, Geoff Mansfield, Amy Ryan ○ <u>Department</u>: Leanne Harris, Holly McCann • Public Briefing: 2 December 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, John Mackenzie, Elizabeth Adamczyk ○ <u>Council assessment staff</u>: Iain Watt, Geoff Mansfield, Amy Ryan ○ <u>Department</u>: Leanne Harris, Holly McCann • Final briefing to discuss council's recommendation: 11 March 2025 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Stephen Leathley, John Mackenzie ○ <u>Council assessment staff</u>: Iain Watt, Brian Gibson, Elle Durrant
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report