

Our ref: DOC24/544812-14

Ms Elle Durrant
Newcastle City Council
12 Stewart Avenue
Newcastle West 2302
edurrant@ncc.nsw.gov.au
Letter uploaded to the NSW Planning Portal

Address: 105, 109, 111 and 121 Hunter Street, 3 Morgan Street, 22 Newcomen Street, 66-74 King Street, Newcastle

Proposal: Review of determination of modification application – Concept staged development comprising of retail, commercial, residential and shop top housing - change to design.

Development Application no: RE2024/00002, CNR-70345, A-85303. Received: 4 July 2024.

Subject: Review of Modification to Integrated Development Application, *National Parks and Wildlife Act 1974*

Dear Ms Durrant

Thank you for referring the above review of determination of modification application to our office. We have considered the plans and documents and provide the following comments in relation to Aboriginal cultural heritage matters pursuant to s.90 of the *National Parks and Wildlife Act 1974*.

We note the following overview of the planning and approval history for this proposal:

- Original DA – DA2017/00701 Concept DA Staged Development. DA was not applied for via the NSW Planning Portal. Development consent granted 2 January 2018 by Hunter and Central Coast Regional Planning Panel.
- Mod DA - MA2023/00175 – refused 15 May 2024 by Hunter and Central Coast Regional Planning Panel. A review of our records identifies this modification was not referred to Heritage NSW under the *National Parks and Wildlife Act 1974*.
- Current DA – Review of determination RE2024/00002. Lodged 7 June 2024.
- Stage 1 DA2019/01150 approved 4 January 2018 by Hunter and Central Coast Regional Planning Panel. Aboriginal Heritage Impact Permit (AHIP) C0003431 / 4298 was issued 19 March 2018 for test and salvage excavations, community collection and harm through the

proposed works. Archaeological excavations were undertaken on site. This AHIP expired 19 March 2020. Stage 1 is completed.

- Stage 2 DA2018/00354 approved 15 March 2019 by Hunter and Central Coast Regional Planning Panel. AHIP C0005464 / 4557 was issued 10 January 2020 for salvage excavations, community collection and harm through the proposed works. This AHIP is active and expires 10 January 2025.
- Stage 3 and 4 DA2023/00419 is under assessment. Heritage NSW issued General Terms of Approval 28 August 2023 requiring an AHIP prior to commencement of works (refer to DOC23/567110-52).

Advice

We note Aboriginal objects (AHIMS 38-4-1084) are located on the land and have been the subject of AHIPs for Stage 1 (C0003431/4298) and Stage 2 (C0005464/4557) and General Terms of Approval have been issued for Stages 3 and 4.

We understand that this referral is for a review of modification for a concept DA (RE2024/00002) and no construction or ground works will be undertaken as part of the concept DA. As there are no construction works proposed for this review of modification of the concept DA, no harm to Aboriginal objects will occur and an Aboriginal Heritage Impact Permit is therefore not required for RE2024/00002.

Accordingly, our understanding is that since there is no harm to Aboriginal objects from this proposal, we consider the development is not integrated for the purposes of the *National Parks and Wildlife Act 1974* and we cannot provide general terms of approval.

If Council considers approving the development, we provide recommended conditions of consent for Aboriginal cultural heritage matters in **Attachment A**.

If you have any questions in relation to this matter, please contact Lyndon Patterson, Senior Assessments Officer, at Heritage NSW on 6022 0619 or lyndon.patterson@environment.nsw.gov.au.

Yours sincerely



Kym McNamara
Manager Assessments
Heritage NSW
Department of Climate Change, Energy, the Environment and Water
As Delegate under *National Parks and Wildlife Act 1974*

17 July 2024

Attachment A - Recommended Conditions of Consent for 105, 109, 111 and 121 Hunter Street, 3 Morgan Street, 22 Newcomen Street, 66-74 King Street, Newcastle, Development Application: RE2024/00002, CNR-70345

If Council consider approving the Development Application, Heritage NSW recommend the following conditions to ensure the protection of known Aboriginal sites and ensure that no additional harm is caused should Aboriginal cultural heritage be encountered:

- No Aboriginal objects may be harmed without an approval from Heritage NSW under the *National Parks and Wildlife Act 1974*.
- If any Aboriginal object(s) are discovered and/or harmed in, or under the land, while undertaking the proposed development activities, the proponent must:
 - Not further harm the object(s)
 - Immediately cease all work at the particular location
 - Secure the area so as to avoid further harm to the Aboriginal object(s)
 - Notify NSW Environment Line as soon as practical by calling 131 555 or emailing: info@environment.nsw.gov.au, providing any details of the Aboriginal object(s) and its location
 - Not recommence any work at the particular location unless authorised in writing by Heritage NSW.
- If harm to Aboriginal objects cannot be avoided, an application for an Aboriginal Heritage Impact Permit must be prepared and submitted to Heritage NSW before work may continue.
- In the event that skeletal remains are unexpectedly encountered during the activity, work must stop immediately, the area secured to prevent unauthorised access and NSW Police and Heritage NSW contacted.