

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	28 October 2024
DATE OF PANEL DECISION	28 October 2024
DATE OF PANEL MEETING	21 October 2024
PANEL MEMBERS	Tony McNamara (Acting Chair), Susan Budd, Stephen O'Connor
APOLOGIES	None
DECLARATIONS OF INTEREST	Brian Kirk and Jason Dunn declared a perceived conflict of interest in response to matters raised by the community. A statement regarding these declarations was read by the Chair at the start of the meeting and is on the public record.

Public meeting held in person and by teleconference (hybrid) on 21 October 2024, opened at 11:00am and closed at 1:30pm.

MATTER DETERMINED

PPSHCC-306 – Newcastle – RE2024/00002 at 105,109,111 & 121 Hunter Street, Newcastle 2300 – Section 8.2 Review (as described in Schedule 1).

BACKGROUND

On the 14th May 2024 the Hunter and Central Regional Planning Panel refused PPSHCC-220 for a modification to the concept approval for this site. The Panel members were Roberta Ryan (Acting Chair), Helen Lochhead and Kim Johnson.

The Panel's reasons for refusal were:

- *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.*

Following this determination the Applicant requested a review of the decision under Division 8.2 of the Environmental Planning and Assessment Act 1979. No changes were made to the proposal however additional information was provided in support of the review application and also in response to information requests from Council officers and the Panel. The Council engaged Patch Planning to undertake an independent planning assessment of the application together with Envisage Consulting to complete an independent review of relevant visual impact assessment matters associated with the modification application.

PANEL CONSIDERATION AND DECISION

The Review 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.

REVIEW OF DEVELOPMENT APPLICATION

The Review Panel determined to refuse the review application pursuant to section 8.4 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Review Panel considered the Consultant Planner's assessment report noting the recommendation for approval together with the previous Panel's reasons for refusal.

The Review Panel generally agreed with the balance of considerations and recommendation of the Consultant Planner's assessment report and determined to approve the review application for the reasons outlined below. The panel considers that the additional information provided in support of the review application provides a comprehensive response to the previous Panel's reasons for refusal of the application to modify the Concept Approval.

The Review Panel is satisfied that the modified Concept Approval is substantially the same development as the originally approved Concept Approval. In forming this view, the Panel had regard to relevant case law including the recent decision of Preston CJ in *Canterbury Council v Realize Architecture Pty Ltd [2024] NSW LEC 31*.

The modified concept application continues to provide for a staged mixed used development for the revitalisation of the Newcastle East End precinct with residential, commercial and retail uses as well as enhanced public spaces and through-site links. The modified proposal continues to provide for the retention and adaptive reuse of heritage buildings on the site, including the Municipal Building located in Stage 3. While the modification provides for some changes to the distribution of height and built form envelopes across Stages 3 and 4, including increased height for some built form elements, the proposal as a whole remains compliant with the maximum Floor Space Ratio prescribed by Clause 4.4(2) of the Newcastle Local Environmental Plan 2012 (NLEP 2012). While the proposed building envelopes for Buildings 3 (West), 3 (South), 4 (North) and 4 (South) exceed NLEP 2012 height controls the Panel is satisfied that the proposed increased heights are reasonable and can be supported.

Importantly the modification facilitates the delivery of a significantly enhanced public domain outcome including opening the visual link between Newcastle Harbour and the Cathedral as envisaged by Newcastle DCP 2012, as well as a reconfigured Market Square.

In relation to impacts on public and private views, the Panel accepts the visual impact analysis and conclusions of the review undertaken by Envisage Consulting as documented in its report of 10 October 2024, including the assessment of impacts of additional public and private view loss due to the proposed increased height which are assessed as minor to moderate. The Panel considers the additional impacts on identified public and private views are reasonable when balanced against the considerable public benefits arising from the new built form envelope massing across Stages 3 and 4 of the development site.

In making this determination the Panel has considered the original Panel's reasons for approval of the Concept Plan, which anticipated that the final built form for each stage of the project would continue to be refined through the detailed design phase for each stage of the development.

The primary purpose of the modification application is to allow for the redistribution of built form across the Stage 3 and 4 areas of the development site to accommodate a new view corridor from Newcastle Harbour to the Cathedral which was previously blocked by the now demolished Council Carpark and

building envelopes in Stage 3 of the approved Concept Plan. The changes sought to the approved Concept Plan follow a comprehensive design excellence process resulting in a reconfigured proposal for Stages 3 and 4 which is strongly supported by the Government Architect of NSW, Council's Urban Design Review Panel, the Design Integrity Panel and the First Nations Community who engaged extensively through a Connecting with Country process.

The Panel notes that the proposal as modified contains a deficit of 76 residential visitor spaces across Stages 1-4 (26 residential visitor parking spaces for Stages 3 and 4) when assessed against the requirements of DCP 2012 and that the shortfall of 26 residential visitor spaces for Stages 3 and 4 will be offset by a new condition requiring an additional 26 bicycle parking spaces to be provided within the Stage 3-4 precinct. The proposal is fully compliant in terms of providing resident parking for every proposed apartment and the shortfall in commercial parking is attributable to Stages 1 and 2 which are either constructed or under construction. The Panel further notes that DCP 2023 adopts a new approach to parking in the Newcastle CBD, moving from prescribing minimum parking rates to a merits-based assessment approach with maximum parking rates to promote sustainable transport choices and increased use of public transport. The parking to be provided for stages 3 and 4 complies with DCP 2023 requirements and the Panel considers the shortfall of 26 residential visitor parking spaces for Stages 3 and 4 when assessed against the requirements of DCP 2012 and the new approach adopted under DCP 2023 to be acceptable. In forming this view, the Panel had the benefit of reviewing the information contained in the Council Supplementary Report dated 24 October 2024 which discussed the various Council policies aimed at encouraging active transport and the advantages of a less car-oriented city. Having regard to the policy position Council has now adopted the Panel considers that the proposed parking arrangements are satisfactory.

The proposed concept development as modified remains consistent with the objectives for the Newcastle City Centre in clause 7.1 of NLEP 2012 and relevant provisions of DCP 2012 as it will facilitate the revitalisation of the East End Precinct and the Newcastle City Centre more generally, contributing to employment, other economic growth opportunities and much needed housing stock. The Panel therefore considers that approval of the review application is consistent with the objectives of the *Environmental Planning and Assessment Act 1979*, and in the public interest.

The Panel appreciates the high degree of community interest in this development evidenced by the large volume of submissions (both by way of objection and by way of support). The Panel understands the well-articulated concerns raised by the community through written submissions and at the public determination meeting and the consistently expressed desire to achieve a good planning outcome for this significant urban revitalisation site.

CONDITIONS

The review application was approved subject to the recommended conditions in the planner's assessment report with the following amendments:

- Condition 1A - deleted the word "expect" and replaced it with "except".
- Condition 20A - additional wording inserted to clarify that the 26 visitor bicycle parking spaces to be provided across Stages 3 and 4 are in addition to those required to satisfy the provisions of Section 7.03 of NDCP 2012, or the applicable standard at the date of lodgement of a DA, as set out in condition 20 of the consent.
- Condition 44 - inserted the words "pedestrian only link" after the words "Morgan Street".




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 included:

- View impacts particularly on the Cathedral, The Newcastle Club, Segenhoe Apartments,
- Modification being substantially different to the approved concept
- Changes in planning controls since the concept approval
- Parking deficiency and flaws in the parking report
- Heritage impacts
- Development not being in the public interest

- Support for the project and continued revitalisation of the East End
- Unique approach to designing for Country, and Aboriginal heritage values
- Lack of affordable housing as part of the proposal
- Positive social and economic impacts that will result from the proposal.
- Current negative impacts economic, social, graffiti, on local businesses with lack of action on the site

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	
 Tony McNamara (Acting Chair)	 Susan Budd
 Stephen O'Connor	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-306 – Newcastle – RE2024/00002
2	PROPOSED DEVELOPMENT	Section 8.2 Review
3	STREET ADDRESS	105,109,111 & 121 Hunter Street, Newcastle 2300
4	APPLICANT/OWNER	East End Stage 4 Pty Ltd East End Stage 3 Pty Ltd and East End Stage 4 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 (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 Newcastle Development Control Plan 2023 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Nil 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"> Patch Planning assessment report: 11 October 2024 Council Supplementary Report received on 24 October 2024 Written submissions during public exhibition: 252 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Geoff Sharrock Mark Metrikas on behalf of the Hunter Branch of the National Trust Ian Baker on behalf of the The Newcastle Club Geoffrey Barnett Michael Combs Charles Stephenson Leroy Maher Marilyn Foureur AM on behalf of Segenhoe Community Group Brian Ladd Mark Hickey Rose Cogger Lucy Glover Alicen Lewis Howard Laughton Karen Read obo Newcastle East Residents Group (10 mins) Peter Zygadlo John Harrington

		<ul style="list-style-type: none"> ○ On behalf of the applicant – Andrew Harvey, Naomi Ryan, Jane Maze-Riley, Addam Haddow, Wesley Grunsell, David Jaggars, Greg Lee, Chris Palmer, Kerime Danis, James Oldknow • Total number of unique submissions received by way of objection: 116
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Preliminary Briefing: 8 August 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Brian Kirk (Alternate Chair), Susan Budd, Tony McNamara ○ <u>Council assessment staff</u>: Amy Ryan, Elle Durrant, Brian Gibson, David Ryner, Mason Stankovic, Stacey Broadbeck, Philip Pollard ○ <u>Applicant Team</u>: Andrew Harvey, Naomi Ryan, Isabella Tonks, Warren Duarte, Adam Haddow, Wesley Grunsell, Nathan Dawes, David Jaggars, Greg Lee, Paulo Macchia, Chris Palmer, Jane Maze-Riley, James Oldknow ○ <u>Department</u>: Leanne Harris • Site inspection and Briefing: 2 September 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Brian Kirk (Alternate Chair), Susan Budd, Tony McNamara, Stephen O'Connor, Jason Dunn ○ <u>Council assessment staff</u>: Priscilla Emmett, Brian Gibson, Elle Durrant, Mason Stankovic, Georgia Quinn, Stacey Brodbeck, Philip Pollard, Paulo Macchia ○ <u>Applicant Representatives</u>: Naomi Ryan, Andrew Harvey, Jane Maze-Riley, Sam Arnaout, Warren Duarte, Addam Haddow, Wesley Grunsell, Nathan Davies, Greg Lee, Chris Palmer, Kerime Danis, James Oldknow ○ <u>Department</u>: Leanne Harris • Final briefing to discuss council's recommendation: 21 October 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Tony McNamara, Susan Budd, Stephen O'Connor ○ <u>Council assessment staff</u>: Amy Ryan, Elle Durrant, Brian Gibson, Mason Stankovic, Priscilla Emmett, Stacy Brodbeck, Brad McCarren, David Ryner, Raj, Prakash, Timothy Daley, Isabelle Rowlatt, Philip Pollard ○ <u>Department</u>: Aoife Wynter and Leanne Harris
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to Patch Planning's assessment report