

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

DATE OF DETERMINATION	23 March 2021
PANEL MEMBERS	Alison McCabe (Chair), Sandra Hutton, Juliet Grant and John MacKenzie
APOLOGIES	Jason Dunn
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 10 March 2021.

MATTER DETERMINED

PPSHCC-50 – Newcastle – DA2020/00621 at 625 Hunter St, Newcastle West – mixed use development (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 had the benefit of a briefing from both council officers and the applicant team. Council's assessment report recommended refusal of the development principally on the basis of:

- Lack of clause 4.6 exemption to development standards and non-compliance with FSR, height and building separation;
- Lack of on site car parking;
- Lack of loading and unloading facilities to service the development;
- Unacceptable waste management arrangements;
- Heritage impact; and
- Insufficient information.

The report included nine reasons for refusal.

The applicant's representative acknowledged that without the clause 4.6 variation requests, the Panel could not approve the application. They formally requested that the matter be deferred to afford the opportunity for the applicant to address the insufficient information request, submission of relevant clause 4.6 variations and additional information to address the issues raised in the report. The Panel was informed that it was not the applicant's intention to not comply with the FSR control and that the clause 4.6 variation requests have been prepared.

Notwithstanding the above, the proposal would not be providing car parking, would not have a loading and unloading facility on site and would require waste to be picked up from the street. The applicant noted that under the provisions of the SEPP (ARH) 2009 development of studios, whether as ARH or otherwise did **not** require car parking and that the application could not be refused on these grounds. The Panel was also informed of potential solutions for waste collection to occur in closer proximity to the proposed waste storage areas, such as changes to stopping restrictions and siting of bus stops. These solutions are not part of the proposal and are subject to consideration by other external parties.

The Panel recognises the strategic need and desirability for Affordable Rental Housing, a mix of dwelling types in the City and the benefits that would arise from these and a ground level food and drink premises at this location. The Panel acknowledges the location and proximity of the site to alternate active modes of transport beyond the private motor vehicle that are emerging within the Newcastle City Centre.

The Panel noted that the GFA calculation provided did not appear to be correct and the plans had not nominated what units were actually identified for affordable rental housing – this made the calculation of the applicable FSR difficult. Details of sub-basement works were lacking and the works required to meet the Subsidence Advisory NSW GTA were not evident or clear.

The amended documents were lodged in November 2020. The Panel understands Council made a number of requests for additional information to be submitted, which was not forthcoming.

The Panel notes that the applicant has exercised their right to appeal the deemed refusal of the application in the Land and Environment Court.

The Panel notes that the site has a frontage of 10m to Hunter Street. Coupled with the fact that the heritage building is a contributory element in the streetscape, means that vehicular access from Hunter Street is not something that would be supported. The width of the site would make car parking on site near impossible in the absence of some sort of car lift arrangement.

The Panel in its deliberation considered that the site is not suitable for the form, scale and intensity of the development proposal. The basic functions such as a minimum amount of car parking, servicing and waste management cannot be provided on site and as proposed result in unreasonable impacts on the streetscape, public domain and pedestrian amenity.

The road conditions in front of the site do not support vehicles pulling up in proximity. Loading and unloading needs to occur from Steele Street and garbage bins would be located on the Hunter Street frontage. No car parking for 38 units, a portion of which are **not** affordable housing, is not supported. It is not clear whether the proposal meets ADG solar access requirements and the number of units with no solar access exceeds the maximums included within the ADG.

The Panel notes that the configuration of the loft apartments with a separate bedroom level, would more typically be categorised as one (1) bedroom units (though undersized) thereby attracting a car parking requirement.

The Panel considers that development of this site should be pursued with an adjoining site or alternatively, a different proposal with reduced scale and intensity which may include a review of land use, that also addresses site frontage and road environment constraints and solutions.

The current proposal is not supported.

Development application

The panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* for the reasons contained in Schedule 2.

The decision was unanimous.

REASONS FOR THE DECISION

The reasons for the decision are attached at Schedule 2.

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:

- Deficiency in parking
- Non-compliance with required setbacks

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)	 Juliet Grant
 Sandra Hutton	 John MacKenzie

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-50 – Newcastle – DA2020/00621
2	PROPOSED DEVELOPMENT	[Insert description as per the council assessment report as it may have been amended since lodgment]
3	STREET ADDRESS	625 Hunter St, Newcastle West (Lot 1 DP 998023)
4	APPLICANT/OWNER	11 Church St Pty. Ltd/ 11 Church Street Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	- Environmental planning instruments: - State Environmental Planning Policy (State and Regional Development) 2011 - State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 - State Environmental Planning Policy No 55 – Remediation of Land - State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development - State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes)(2002 EPI 337) - State Environmental Planning Policy (Affordable Rental Housing) 2009 - State Environmental Planning Policy (Coastal Management) 2018 - State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 - Newcastle Local Environmental Plan 2012 - Draft environmental planning instruments: Nil - Development control plans: - Newcastle Development Control Plan 2012 - Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019 - Planning agreements: Nil - Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: - 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	- Council assessment report: 10 March 2021 - Council memorandum received: 16 March 2021 - Written submissions during public exhibition: one
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	- Briefing: 18 November 2021 <u>Panel members</u>: Alison McCabe (Chair) and Sandra Hutton <u>Council assessment staff</u>: Gareth Simpson, Holly Hutchens, Damien Jaeger, Amy Ryan and Tracey Webb - Site inspections: - Alison McCabe: 22 November 2020 - Sandra Hutton: 15 March 2021 - Final briefing to discuss council's recommendation: 17 March 2021

		- o <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Juliet Grant and John MacKenzie - o <u>Council assessment staff</u>: Gareth Simpson, Priscilla Emmett and Amy Ryan and Tracey Webb • Applicant Briefing: 17 March 2021 - o <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Juliet Grant and John MacKenzie - o <u>Council assessment staff</u>: Gareth Simpson, Priscilla Emmett and Amy Ryan and Tracey Webb - o <u>Applicant representatives</u>: John Baker, Allison Burrows, Rhiannon McDermott, Stuart Harding, Nicholas Dowman, Sean Morgan, Mark Fenwick, John Mavros and Aris Zafirellis <u>Note</u>: Applicant briefing was requested to respond to the recommendation in the council assessment report
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not provided

SCHEDULE 2
REASONS FOR REFUSAL

1. The site is not suitable for the scale and intensity of the proposed development [Section 4.15(1)(c) Environmental Planning and Assessment Act 1979].
2. The proposed development does not provide for the functions required of the development. There is insufficient car parking and access arrangements, and an unacceptable waste management solution, and does not result in orderly development.
3. The proposed development is inconsistent with the standards of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* as contained in cl.13 'floor space ratio' [Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979].
4. The proposed development is inconsistent with the objectives and standards of the Environmental Planning Policy No.65 – Design Quality of Residential Flat Development and the Apartment Design Guide (objective 4A-1) as solar access to the proposed dwellings is inadequate [Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979].
5. The proposed development is inconsistent with the objectives and standards of the *State Environmental Planning Policy (Coastal Management) 2019* as contained in cl.14 'development on land within the coastal use are' as impacts on aboriginal cultural heritage and built environmental heritage are not adequately addressed [Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979].
6. The proposed development fails to satisfy the provisions of clause 7.5 Design Excellence of NLEP 2012.
7. The proposed development does not comply with clause 4.3 Height of Building NLEP 2012.
8. The proposed development does not comply with clause 7.10A of NLEP 2012.
9. The proposed development does not comply with clause 7.4 Building Separation NLEP 2012.
10. A clause 4.6 Exception to Development Standard to clause 4.3 and 7.4 of the NLEP 2012 and clause 13 SEPP (AFH) 2009 is required and has not been submitted.
11. The proposed development has not demonstrated that it satisfies clause 5.10 Heritage Conservation NLEP 2012.
12. The proposed development is inconsistent with the following requirements of the Newcastle Development Control Plan 2012 [Section 4.15(1)(a)(iii) Environmental Planning and Assessment Act 1979].
 - a. Section 3.03 – Residential Development - Frontage widths – the applicant has failed to demonstrate that the site is wide enough to accommodate the proposed **development** and all its required functions.
 - b. Section 3.03 – Residential Development – Amenity and solar access – the development fails to achieve required solar access.
 - c. Section 4.05 – Social impact – the applicant has not submitted a social impact assessment or comment.
 - d. Section 5.04. – Aboriginal Heritage – An adequate aboriginal Cultural Heritage Assessment has not been provided
 - e. Section 5.05. – Heritage Items – Inadequate information with respect to heritage conservation including European and Aboriginal heritage.
 - f. Section 6.02 – Heritage Conservation Areas – The applicant has not adequately justified the extent of the contributory building to be retained.
 - g. Section 6.01 B5 – Public Art – the development is required to provide public art and no details have not been provided.
 - h. Section 7.03.02 – Parking Rates - the proposed development fails to provide any car parking provision for the residential units, resulting in a significant shortfall to CN's car parking standard. Further, the proposed development fails to provide any service parking and loading areas in proximity to the site, resulting in an inadequate servicing arrangement for the proposed commercial unit.

- i. Section 7.08 – Waste Management - The waste servicing strategy is not acceptable. Kerb side collection is proposed which will impact on streetscape amenity and adjoining bus stop.
13. The proposed development is not in the public interest [Section 4.15(1)(e) Environmental Planning and Assessment Act 1979].
14. Insufficient information has been provided to properly assess the application:
- a. Clause 4.6 Variation Requests in respect to clause 4.3 'building height' NLEP2012, clause 7.4 'building separation', and cl. 13 'floor space ratio' Affordable Housing SEPP.
 - b. Adequate Aboriginal Cultural Heritage Assessment.
 - c. Heritage assessment and justification in respect to the impacts of the development upon the heritage conservation area and existing contributory building.
 - d. A site survey clearly demonstrating ground level in respect to the development site.
 - e. Plans and cost estimate report identifying the elements of the proposal which have been nominated as affordable housing.
 - f. Details of public art.
 - g. Wind tunnelling assessment.
 - h. Revised SEPP 65 Design Verification Statement in respect to the submitted amended plans.
 - i. Plans, elevations and sections showing the depth and extent of sub surface work.
 - j. Plans identify the extent of earthworks required to meet Subsidence Advisory Requirements, and consideration of environmental assessment of these works.
 - k. Consideration of draft explanation of intended effect of the Housing Diversity SEPP.