

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSHCC-6
DA Number	DA2019/00904
LGA	Newcastle
Proposed Development	Landscape and public domain works for use as a recreation area
Street Address	110 Scott Street, Newcastle
Applicant/Owner	Hunter and Central Coast Development Corporation
Date of DA lodgement	26 August 2019
Number of Submissions	Nine submissions
Recommendation	Approved
Regional Development Criteria (Schedule 4A of the EP&A Act)	In accordance with Clause 20 of <i>State Environmental Planning Policy (State and Regional Development) 2011</i> , the subject development application is Crown development as it has a capital investment over \$5 million. The Joint Regional Planning Panel is the determining authority for the application.
List of All Relevant Section 4.15 (1)(a) Matters	<p>Environmental planning instruments: s4.15(1)(a)(i)</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy No. 55 - Remediation of Land • State Environmental Planning Policy (Coastal Management) 2018 • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • Newcastle Local Environmental Plan 2012 <p>Development Control Plan: 4.15 (1)(a)(iii)</p> <ul style="list-style-type: none"> • Newcastle Development Control Plan 2012

List all documents submitted with this report for the Panel's consideration	Appendix A – Draft Conditions of consent Appendix B - Documents submitted with the application Appendix C – NSW Office of Environment and Heritage 'General Terms of Approval'
Report prepared by	City of Newcastle
Report date	16 December 2019

Summary of s4.15 matters**Yes**

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Legislative clauses requiring consent authority satisfaction**Yes**

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Clause 4.6 Exceptions to development standards**Not
Applicable**

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Special Infrastructure Contributions**Not
Applicable**

Does the DA require Special Infrastructure Contributions conditions?

Conditions**Yes**

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

Development application (DA2019/00904) has been lodged with Council, seeking consent for landscaping and public domain works.

The proposal was placed on public exhibition for a period of 30 days from 2 September 2019 to 1 October 2019 in accordance with the *Environmental Planning & Assessment Act 1979* (EP&A Act), *Environmental Planning & Assessment Regulations 2000* (EP&A Regulation) and Section 8 of Newcastle Development Control Plan 2012 (DCP). Nine submissions were received during the notification period.

The proposal is integrated development pursuant to Section 4.46 of the Act, as approval is required from the NSW Office of Environment and Heritage under the *Heritage Act 1977*, due to Newcastle Railway Station being listed on the State Heritage Register. In this respect, the application has been processed as '*nominated integrated development*' under the *Environmental Planning and Assessment Act 1979* and '*General Terms of Approval*' have been received from the NSW Office of Environment and Heritage.

The proposed development is in the public interest and will allow for the orderly development of the site, principally for public purposes. The proposal will allow for the ongoing viability of a heritage building and the creation of public recreation opportunities in an accessible location that is well serviced by public transport.

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to Part 4 '*regional development*' of *State Environmental Planning Policy (State and Regional Development) 2011* as the subject development application is a type classified under Schedule 7, being Crown development over \$5 million. The proposed development has a capital investment value of \$6,710,477.00 including GST.

The proposal is a Crown development, as it is being undertaken by Hunter and Central Coast Development Corporation. The following statutory provisions are relevant to Crown development:

- Section 4.33 of the EP&A Act states that a consent authority (other than the Minister) must not refuse its consent to a Crown development application, except with the approval of the Minister, or impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.

- Pursuant to Section 6.7(2) of the EP&A Act, the Crown is self-certifying and therefore a Construction Certificate will not be obtained and a Principal Certifying Authority will not be appointed for the development.
- Pursuant to Section 6.9(2) of the EP&A Act, an Occupation Certificate is not required for the occupation or use of a new building that has been erected by or on behalf of the Crown.

On this basis, the draft conditions of consent have been supplied to the applicant for approval. At the time of writing the report, formal agreement with the conditions had not been obtained. It is anticipated that agreement on the conditions will occur prior to the determination meeting of the Panel.

1. INTRODUCTION

This report provides a detailed overview of the development proposal for landscaping and public domain works at 110 Scott Street, Newcastle. The development application is reported to the Hunter and Central Coast Joint Regional Planning Panel in accordance with Clause 20(1) and Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011*, as the development is a Crown development over \$5 million, with the value of works being \$6,710,477.00 including GST.

2. SITE DESCRIPTION

The site is comprised of Lots 12 and 13, DP 1251435, known as 110 Scott Street Newcastle. The combined site area is approximately 1.285 ha.

The site is the former Newcastle Railway Station, which ceased operations in 2016. The site also incorporates the former bus interchange, located within the northern portion of Lot 13.

The site is bounded by Wharf Road to the north and abuts the Market Street Lawn to the west. The site is divided into distinct areas including the railway station buildings along the Scott Street and Watt Street frontages, the platforms and former track areas, and the former bus depot to the north of the site.

The site is currently developed with a mix of buildings and remnants of railway infrastructure associated with the former Newcastle Train Station. Minimal vegetation has been retained throughout prior development works.

The site is currently being redeveloped as part of the *Revitalising Newcastle* program to accommodate retail, commercial and landscaped open space areas designed for events and community use. The site is being temporarily activated until a long-term use and operator for the site is identified.

3. PROPOSAL

The development application has been submitted for landscape and public domain works as part of the redevelopment of the former Newcastle Station site. The proposed development includes high quality landscaping works designed to respond to the heritage significance of the site and surrounding coastal environment.

The proposed landscape design elements include:

- Multipurpose plaza

- Sculptural seat walls
- Railway track interpretations with granite insets
- Mist and light installations
- Performance stage

4. PLANNING ASSESSMENT

4.1 Environmental Planning and Assessment Act 1979 (EP&A Act)

4.1.1 Section 4.5 – Joint Regional Planning Panels

Section 4.5 of the EP&A Act and Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 requires the Joint Regional Planning Panel (JRPP) to determine applications for Crown development over \$5 million.

The capital investment value of the application is \$6,710,477.00 including GST. In accordance with Clause 20 of State Environmental Planning Policy (State and Regional Development) 2011, the application is to be determined by the Hunter and Central Coast Regional Planning Panel.

4.1.2 Section 4.46 – Integrated Development

The proposal is integrated development pursuant to Section 4.46 of the Act, as approval is required from the NSW Office of Environment and Heritage under the *Heritage Act 1977*, due to the presence of an item (i.e. Newcastle railway station) that is listed on the State Heritage Register. The NSW Office of Environment and Heritage granted their '*General Terms of Approval*' on 25 November 2019.

4.1.3 Section 4.15(1) Evaluation

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) of the Environmental Planning and Assessment Act 1979, as detailed hereunder.

4.1.3.1 *The provisions of any environmental planning instrument*

State Environmental Planning Policy (State and Regional Development) 2011

This policy sets out the functions of regional panels in determining applications for regional development. Clause 20 of the SEPP requires the Joint Regional Planning Panel to be the determining authority for development included in Schedule 7 of the SEPP. This includes Crown development over \$5 million in value. The application is

submitted to the Hunter and Central Coast Joint Regional Planning Panel for determination as the value of works is over \$5 million.

State Environmental Planning Policy No.55 (Remediation of Land) (SEPP No.55)

This policy requires consideration to be given to previous uses on the site and whether the site needs to be remediated for future uses. Clause 7(1) (b) and (c) of SEPP No.55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

The site is subject to a Remediation Action Plan that has been reviewed by a Site Auditor, certifying that the remediation strategy is appropriate for the intended land use.

Council's Senior Environmental Protection Officer considers the proposal to be acceptable and has recommended a number of conditions be imposed on any consent granted regarding the remediation of the site. On this basis the provisions of SEPP 55 have been met.

State Environmental Planning Policy (Coastal Management) 2018

The site is located within the Coastal Environment and Coastal Use Areas.

The site is located a distance of approximately 70m from the Newcastle Harbour. The proposed works will not impact the coastal environmental values associated with the foreshore nor will the landscaping works impact on natural coastal processes. The lot is sited above the mean high water mark and the site or proposed uses do not facilitate any detrimental impact on water quality marine vegetation. Appropriate erosion and sediment control devices will be used during construction.

The site is generally cleared from past development uses and the proposal will not impact native vegetation and fauna or their habitats. Access to public open space will not be inhibited by the proposal.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) is one of a suite of Land Management and Biodiversity Conservation (LMBC) reforms that commenced in New South Wales on 25 August 2017.

The Vegetation SEPP works together with the *Biodiversity Conservation Act 2016* and the Local Land Services Amendment Act 2016 to create a framework for the regulation

of clearing of native vegetation in NSW. Part 3 of the Vegetation SEPP contains provisions similar to those contained in cl.5.9 of Newcastle Local Environmental Plan (cl.5.9 now repealed) and provides that Council's DCP can make declarations with regards to certain matters, and further that Council may issue a permit for tree removal.

The proposal has been considered in accordance with the DCP, as detailed in this report, and is considered to be satisfactory.

Other State Environmental Planning Policies

The proposal is not contrary to the provisions of any other relevant State Environmental Planning Policy.

Regional Environmental Plan

There are no regional environmental plans that are relevant to this proposal.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

Clause 2.3 Land Use Table - Zoning

The site is zoned SP3 Tourist (Lot 13) and RE1 Public Recreation (Lot 12) under NLEP 2012.

The proposal is consistent with the SP3 zone objectives for the following reasons:

- The proposed landscape works have been designed to enhance the tourist value of the site through integrated planting and outdoor seating provisions.
- The works will facilitate the outdoor component of the Newcastle Station redevelopment.
- The proposal will accommodate a range of compatible tourist uses within the greater site area.

The proposal is considered to be consistent with the RE1 zone objectives for the following reasons:

- The landscape works will promote the use of public open space within the site for recreational purposes.

- The proposal will facilitate a recreational setting that is compatible with existing and future internal commercial uses.
- The works will enhance the natural environment through landscape planting and interpretative art installations which are reflective of the site history.

The proposed development is permissible with consent and meets the objectives of each zone..

Clause 4.1 Minimum subdivision lot size

No subdivision of the site is proposed.

Clause 4.3 Height of buildings

The site has a maximum building height of 10m. The proposal does not increase the height of existing buildings or propose any new buildings.

Clause 4.4 Floor space ratio

The site has a maximum floor space ratio of 1.5:1. The landscape works do not increase the gross floor area of existing buildings or propose any new buildings.

Clause 5.5 Development within the Coastal Zone

The proposed development will not impact on access to the foreshore. It also will not impact on the amenity of the foreshore through overshadowing or loss of views from a public place. The site contains little vegetation at present and therefore the development will not have a negative impact on existing ecosystems or biodiversity in the area.

Clause 5.10 Heritage Conservation

The subject site is subject to state and local heritage listings:

- Newcastle Railway Station, Local Heritage listing (Database ID 2170218) which relates to the railway station buildings along Scott Street
- Newcastle Railway Station group, State Heritage listing (Database ID 4801028) which relates to the site of the station including the tracks, platforms, Signal Box, Retort building, Gas Holder and landscape elements.

A Statement of Heritage Impact, detailing the history of Newcastle and the subject site, has been submitted with the application. The Statement of Heritage Impact found:

“The Newcastle Railway Station is representative of the small number of grand Victorian period railway stations built at key railway centres in NSW in the late 1870s and 1880s. From an architectural perspective the modifications to the station building, including the loss of the southern pavilion reduce its value as a representative example.

The grouping of the station building with the multiple platforms, signal box, the remains of the adjacent gas works, railway accommodation and archaeological remains of the former goods yard and loading docks form an outstanding railway precinct that is rare in NSW due to its urban setting and its context of the late nineteenth and early twentieth century city centre of Newcastle.”

An assessment of the likely impact of the proposed works on the heritage significance of the site has been undertaken. The Statement of Heritage Impact concludes:

“The proposed works will have no impact on the cultural heritage values of the former Newcastle Railway Station.

The proposed works to the former Newcastle Station will activate a currently underutilized heritage place with a new landscaped civic space that will be appreciated and maintained into the future.

It is concluded that the proposed works will have a positive impact on the heritage values of the site. The site will be reactivated and a number of historic themes will be interpreted, allowing visitors to the site to appreciate the importance of the heritage place.”

Approval is required under the *Heritage Act 1977* due to the presence of an item (i.e. Newcastle Railway Station) that is listed on the State Heritage Register. In this respect, the application has been processed as 'nominated integrated development' under the Environmental Planning and Assessment Act 1979 and 'General Terms of Approval' have been received from the NSW Office of Environment and Heritage.

The General Terms of Approval have requested additional information be submitted as part of the Section 60 application in regard to the location of the interpretative measures, lighting and signage. In addition, the demolition of the Platform 4 awning has not been supported and requirements for site protection, drainage and archaeology have been imposed.

Section 4.48 of the *Environmental Planning and Assessment Act 1979* provides that Council must not refuse development consent on heritage grounds if the same development has been the subject of an approval arising from integrated development for which a heritage approval is required. It is considered that the granting of '*General Terms of Approval*' for the proposed development by the NSW Office of Environment and Heritage effectively makes an assessment under this clause of the NLEP mostly redundant.

The proposed development will not significantly affect the heritage significance of the listed heritage buildings, nor detract from their setting or obstruct any view of these heritage items from public places. It is also considered that the proposed development will not adversely affect the heritage significance of the Newcastle City Centre Heritage Conservation Area.

Clause 6.1 Acid Sulfate Soils

The site is affected by Class 3 and 5 acid sulfate soils. The proposal involves relatively minor works that are considered to be outside the scope of the NLEP in respect of the management of acid sulfate soils.

Additional Local Provisions - Newcastle City Centre (Part 7)

While the proposal is considered to be consistent with the objectives of Part 7 of the NLEP, the specific requirements of the clauses in Part 7 of the NLEP have minimal bearing on the subject development proposal.

4.1.3.2 Any draft environmental planning instrument that is or has been placed on public exhibition

There is no exhibited draft environmental planning instrument relevant to the application.

4.1.3.3 Any development control plan (and section 94 plan)

The main planning requirements of relevance in the Newcastle Development Control Plan 2012 (DCP) are discussed in detail below. The proposed development is considered to be consistent with the DCP.

Safety and Security (section 4.04)

The proposed landscape works have been designed to comply with CPTED standards. The works will not inhibit surveillance of the precinct.. Planting will be at a height to

reduce offender concealment and well-spaced landscape elements will aid the promotion of sightlines to internal open space areas. The entrances to the landscaped northern site area are located in prominent positions and all areas will be provided with appropriate visibility in the evening.

Social impact (section 4.05)

The proposed landscaping will enhance the scenic values of the site, create opportunities for events and social community interaction and actively increase patronage of the site and surrounding developments. It is expected that the proposal will generate positive social impacts for the community through increased open spaces and employment opportunities throughout the redevelopment of the precinct. The proposal enhances the compatibility of the site with the Newcastle CBD and surrounding commercial, retail and adjacent open space areas.

Soil management (section 5.01)

The proposed works will not require significant excavation and opportunities for soil erosion are minimal. Erosion and sediment control practices will be adopted during landscape construction works.

Land Contamination (section 5.02)

Land contamination has been considered in this assessment report, in accordance with SEPP55.

Vegetation Management (section 5.03)

Tree removal is required along Wharf Road in addition to the removal of shrub and plantings throughout the existing car park. These will be replaced by suitable species, including native planting, to account for vegetation removal.

The two existing Fig trees located on the site will be retained and protected throughout the proposed works. The trees are important site elements that will become focal points within the landscaped open precinct.

The overall outcome is considered to be acceptable having regard to the loss of the existing trees and the compensatory landscaping. The amenity of the area will be significantly improved in respect of the local character and appearance.

Archaeological Management (section 5.06)

The proposed works will not require significant excavation and the potential for the disturbance of archaeological items is considered low. A process will be implemented and work will cease if archaeological items are identified.

Heritage Items (section 5.05) and Heritage Conservation Areas (section 5.07)

Heritage has been considered in this assessment report. The proposed landscape and public domain works will enhance the heritage significance of the site through compatible design elements, materials and provision of open space and view lines to existing heritage buildings.

Newcastle City Centre (section 6.01)

Given the nature of the proposal, primarily relating to landscaping and public domain works, it is considered that the provisions of this section of the DCP have limited relevance to the proposal. The site is located in the 'foreshore' character area, as identified in this section of the DCP, and the proposal is considered to be consistent with the character statements for the foreshore area.

Landscape, Open Space and Visual Amenity (section 7.02)

The proposed development has been reviewed by City of Newcastle's Public Domain Planner, who raised no objection to the proposed development. The proposed landscape design will provide appropriate planting of trees and shrubs to contribute to the character of the former Newcastle Station redevelopment.

7.09 Advertising and Signage

One pylon style sign is proposed, in addition to lettering being applied to a planter box to Watt Street. The signage design is reflective of the existing and proposed heritage fabric of the Newcastle Station site and will not impact the visual aesthetic of the precinct or locality.

Public Participation (section 8.0)

The proposal has been notified in accordance with this section. Nine submissions were received during the notification period and another submission was received outside of the notification period.

4.1.3.4 Planning agreements

No planning agreements are relevant to the proposal.

4.1.3.5 *The regulations (and other plans and policies)*

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act and Regulation 2000*. In addition, compliance with AS 2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

4.1.3.7 *The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*

The proposal will not adversely impact any public or private views. The proposed development is considered to have no unreasonable impact on the amenity and character of the area.

The development will have minimal impact on the natural environment. The proposal will not impact on plant communities, fauna or natural ecosystems.

It is considered that the public nature of the proposed use of the land should have positive social and economic impacts in the locality.

4.1.3.8 *The suitability of the site for the development*

The site is suitable for the proposed development as it is located in the City Centre, which is well serviced by public transport and community facilities. It is considered that adequate services and waste facilities are available to the development.

The proposed use of open space in the foreshore area is consistent with similar uses of nearby foreshore areas in terms of traffic and parking arrangements. At-grade access to the site will be available for pedestrians, from adjacent roads and public transport. Having regard for the City Centre location and the availability of public transport services, it is considered that the proposed use is satisfactory in respect of its accessibility.

Given the nature of the proposed development, it is considered that the proposal is satisfactory in respect of flooding risk.

With respect to contamination, the site is subject to a Remediation Action Plan that has been reviewed by a Site Auditor, certifying that the remediation strategy is appropriate for the intended land use.

The land is within a proclaimed Mine Subsidence District under the *Mine Subsidence Compensation Act 1961*. It is considered that the proposed development does not generate any undue risk in respect of mine subsidence.

No other hazards are known to impact on the property.

4.1.3.9 Any submissions made in accordance with this act or the regulations

The application was notified in accordance with Council's Public Participation policy. The residents/property owners in the vicinity of the subject property were notified of the proposed development and the application was advertised, with a 30 day notification period.

Given the application is categorised as '*nominated integrated development*', due to the need for separate approval to be obtained under the *Heritage Act 1977*, all submissions were forwarded to NSW Office of Environment and Heritage (OEH) for their consideration.

Nine submissions were received in total, including six submissions in support of the proposed development. Three submissions were received raising the following points for consideration:

i) Impact on bird life

Comment: The proposal will not impact on plant communities, fauna or natural ecosystems.

ii) The short-term use of the site, until a long term-use and operator is decided.

Comment: The site is being temporarily activated until an appropriate long-term use and operator for the site is identified.

iii) Contamination due to gas tanks

Comment: The site is subject to a Remediation Action Plan that has been reviewed by a Site Auditor, certifying that the remediation strategy is appropriate for the intended land use. City of Newcastle's Senior Environmental Protection Officer considers the proposal to be acceptable and has recommended a number of conditions be imposed on any consent granted regarding the remediation of the site.

iv) Drainage

Comment: The proposal involves the removal of hardstand areas and replacement with landscaping which will reduce the site runoff and improve water quality of the runoff. Only minor changes are proposed to existing site drainage system.

v) *The effect of heat radiation*

Comment: As above, the proposal involves the removal of hardstand areas and replacement with landscaping which is considered a positive environmental outcome.

vi) *The loss of the bus layover and no safe cycling facility has been provided*

Comment: Noted

The issues and concerns raised in the submissions do not warrant the refusal of the application in its present form or necessitate any further amendments. The proposed development does not raise any other significant general public interest issues beyond matters already addressed in this report. The proposal is considered an acceptable form of development for the site.

In addition, the NSW Office of Environment and Heritage has considered all of the submissions in the process of granting their '*General Terms of Approval*' dated 25 November 2019.

4.1.3.10 The public interest

The proposed development is in the public interest and will allow for the development of the site for public purposes. The proposal will allow for the ongoing viability of a heritage building and the creation of public recreation opportunities in an accessible location that is well serviced by public transport.

5. CROWN DEVELOPMENT

Section 4.33 of the *Environmental Planning and Assessment Act 1979* states that a consent authority must not impose a condition on the consent to a Crown development application, except with the approval from the applicant or the Minister. A copy of the draft conditions of consent has been provided to the applicant for review.

6. CONCLUSION

The proposed development is considered to be acceptable against the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

7. RECOMMENDATION

THAT the Hunter and Central Coast JRPP, as the consent authority, approve development consent to DA2019/00904 for landscaping and public domain works and use as recreation area at 110 Scott Street Newcastle, pursuant to Section 4.17 of the EP&A Act, subject to conditions of consent being resolved with the applicant (the Crown), generally as set out in the draft schedule of conditions subject to the conditions in Appendix A.