

9 April 2013

**DETERMINATION OF MODIFICATION APPLICATION  
NEWCASTLE HOSPITAL SITE CONCEPT PLAN  
(MP05\_0062 MOD 2)**

**1 BACKGROUND**

The Newcastle Hospital site at the time of the concept plan approval consisted of a number of lots bounded by King Street, Watt Street, Church Street and Shortland Esplanade including the David Maddison Building (DMB) and the United Services Club (USC) car park. The concept plan was approved by the then Minister on 3 January 2007 for mainly residential development with ancillary non residential uses such as retail and commercial uses. The approval allowed a maximum GFA for the whole site, including a maximum for the DMB site, the USC site and a total for Stages 1A, 1B and 1C. It also included requirements for public domain improvements and site design principles for future development.

On 25 January 2007, approval was granted to subdivide the site into two lots (Lot 11 and Lot 12) which allowed the David Maddison Building as one lot (Lot 11) and the balance of the concept plan site as a second lot (Lot 12). The United Services Club (USC) car park site is a separate lot, therefore not part of this subdivision. The subdivision approval required restrictive covenants be registered on title stipulating a maximum GFA and FSR for each lot.

On 9 July 2008, approval was granted by the then Minister to develop Stages 1A and 1B of Lot 12. The approval was for 146 residential dwellings, 89 hotel suites, and retail and conference facilities.

On 12 June 2012, Newcastle City Council approved the adaptive reuse of the DMB for commercial purposes with parking provided in the USC car park.

Figure 4 in the Department's Report shows the subject site in its context.

**2 THE PROPOSED MODIFICATIONS**

The modification application was lodged 22 June 2012 and this sought approval to modify the concept plan as follows:

- To exclude the DMB site and stratum airspace above the USC car park site from the concept plan and to delete the associated building envelopes, FSR and GFA;
  - To amend the building envelopes for Stage 1C by:
    - reducing the width of the building by increasing the western set back by about 6.7m,
    - shifting the building envelope about 6.7m southward,
    - increasing the maximum height from RL49.1 to RL49.75;
  - to extend the building envelope to the southern boundary;
  - to revise the concept plan boundary to reflect the survey plans;

By letter dated 10 December 2012, the proponent amended the modification application seeking to allow 'hotel' in the concept plan and this modification was re-notified and exhibited from 14 December 2012 to 31 January 2013.

**2. DELEGATION TO THE COMMISSION**

The amended modification application was referred to the Commission 18 February 2013 for determination under Ministerial delegation dated 14 September 2011 due to the number of submissions received. Thirty six submissions were received as a result of the first exhibition and twenty nine for the amended application.

Ms Jan Murrell (chair) and Mr Garry Payne AM were nominated to constitute the Commission to consider and determine the application. They visited the site and surrounds twice on 19 March 2013, before and after the public meeting.

### **3. DEPARTMENT'S ASSESSMENT REPORT**

By way of background the Director-General's Environmental Assessment Report ('the Assessment Report') referred to the Commission on 22 November 2012 was returned to the Department 5 December 2012 and a formal amendment to the application to include the additional use of 'hotel' dated 10 December 2012, was submitted by the proponent.

The Department publicly exhibited and re-notified this amendment and invited submissions. An updated Assessment Report was then referred to the Commission for determination on 18 February 2013.

This updated Report considered the proposal, its statutory context, and public and agency submissions. The report also included the proponent's response to issues raised in submissions from the first exhibition where a number of changes were made, in particular to address view and traffic impacts.

The Report assessed the following issues:

- View impacts;
- Traffic impacts;
- Hotel use;
- Urban design; and
- Other issues including floor space, building height, overshadowing; solar access and privacy, and open space.

The Department's assessment concluded that the proposed modifications to the approved concept plan are acceptable as any resultant environmental impacts would be minimal and can be adequately mitigated or managed. On the additional use of 'hotel' to be allowed on the site the report stated that this is consistent with the vision for the site in the local planning controls and the strategic planning undertaken for the region and that future development applications would be required to address impacts. The Department recommended approval of the proposed modification application, subject to conditions.

### **4. MEETINGS WITH STAKEHOLDERS**

#### **4.1 The Proponent**

The Commission met with the Proponent on 5 December 2012 for a briefing on the proposal. The meeting focused on the proponent's request to include hotel use as part of the modification application. The Commission noted that the proposed hotel use was not part of the modification application and advised the proponent that the proposed use could not be considered without a formal modification application. The additional use of 'hotel' could be the subject of a new modification or by way of an amendment made to the current modification application.

#### **4.2 Meeting with Department of Planning and Infrastructure**

On 5 December 2012, the Commission met with staff of the Department of Planning and Infrastructure to seek clarification on the proposed 'hotel' use. The Commission advised the Department that the proposed use of 'hotel' could not be considered as part of the current modification application without a formal amendment being submitted by the proponent to allow re-exhibition and an assessment by the Department. The proponent subsequently amended its modification application to allow the necessary due processes.

#### **4.3 Meeting with Newcastle City Council**

On 19 March 2013, the Commission met with a senior officer of Newcastle City Council for a briefing of Council's view on the Department's recommendation for approval with conditions. Council did not object to the modifications but raised concerns about amenity and it is satisfied that the Department's Assessment Report has addressed most of the issues it raised in its submission.

On behalf of Council the only outstanding issue raised is the landscaped forecourt along Shortland Esplanade. The approved concept plan indicates this area could be developed up 8 storeys (Figure 5 in the Department's Assessment Report). In Council's view this area should remain as a landscaped area with the drop-off facility for the hotel to compensate some of the loss of landscaped area and open space within the concept plan site following the decision to retain the DMB for commercial uses and exclusion of same from the site.

#### **4.4 Public Meeting**

The public meeting was held on 19 March 2013 at the Newcastle City Hall where 6 people spoke to the Commission with over 80 people in attendance to observe the proceedings. Appendix 1 is a list of speakers who presented at the Commission meeting. The key issues raised at the meeting include:

##### Submissions objecting to modifications

- Traffic impacts
  - King Street is at capacity and should not be used to access Stage 1C,
  - Existing traffic in King Street is already an issue,
  - Watt Street and Shortland Esplanade should be used for Stage 1C, and
  - The proposed access point for Stage 1C will create a fourth major access point to King Street within 30 metres of each other;
- The DMB and USC sites should not be excised from the concept plan because:
  - it will eliminate the preferred vehicular access to Watt Street,
  - it will remove any control over the future use of these sites,
  - the USC site is the best location for future access to/from Watt Street for Stage 1C and could also provide additional commercial uses;
- The retention of the DMB:
  - will deny the area new buildings that are compatible with the developments in Stages 1A and 1B, and
  - will prevent the creation of vibrant activity spaces at street level;
- The inclusion of 'hotel use':
  - the need for a second hotel,
  - inadequate social and economic impacts,
  - hotel is a permitted use in the current zone, hence does not need to be expressly included in the Concept Plan,
  - the proposed hotel should be assessed on its merits through the DA process,
  - current anti-social behaviour associated with hotel bar and restaurants will be exacerbated by an additional pub/hotel, and
  - the approved concept plan includes one hotel, not two;
- built form and design
  - the proposed unit size and mix are not compatible to the high quality design and standard of construction of Stages 1A and 1B. It should be a requirement that the design and quality of construction of Stage 1C should be at least equal to that of Stages 1A and 1B,
  - need to preserve the original intent of a high quality residential development for the site;
- overshadowing on the beach; and
- whether modification should be allowed when the concept plan has been modified four times; and
- the power of the Commission to determine the modification application.

##### Submissions supporting modifications

- support the shifting south and reduction of the width of the northern building envelope; and
- the retention of the DMB and its conversion to commercial use;

## 5 COMMISSION'S CONSIDERATION

The Commission has reviewed the Department's assessment report and associated documents, including submissions from Newcastle City Council, agencies and the public, and the proponent's changes in response. It has also considered the views expressed by the presenters who spoke at the Commission meeting and the written submissions received at and after the meeting. The written submissions include form letters and a petition which raised similar issues to those presented at the meeting. The Commission's comments of relevant issues are as follows.

### The excision of the DMB and USC car park sites from the concept plan

The two key objections to the proposed excision of the DMB and USC car parking sites from the concept plan are:

- the transfer of the GFA to the remaining site will intensify the development of Stage 1C; and
- the existing concept plan and the environment that its implementation will create was the basis of purchases by all parties. The proposed modifications will destroy the expected environment and devalue adjacent properties.

The Commission notes that the Department's assessment report indicated that the approved concept plan has factored in the possibility that the DMB and USC car park may not form part of the redevelopment.

The approved maximum GFA for the concept plan is as follows:

- whole site – 53,971m<sup>2</sup>,
- DMB site – 12,055m<sup>2</sup>,
- USC site – 1200m<sup>2</sup>,
- Stages 1A, 1B and 1C – 40,716m<sup>2</sup>

The recommended conditions of approval for this modification application is to limit the total GFA for the site after excision of the DMB and USC sites to 40,716m<sup>2</sup>, same as provided in the original approval. Therefore, the excision will not result in any intensification of development in the Stage 1C part of the site. In other words, the proponent forfeits development potential by the excision of land from the concept plan and is unable to redistribute this to other parts of the site.

The Commission agrees with the Department that the modification to the concept plan is appropriate as it allows the existing DMB, USC car park facilities to be utilized at the same time recognizing the development of Stages 1A, 1B and 1C. Any future redevelopment of the DMB and USC sites will be subject to the controls of relevant environmental planning instruments applicable at the time the development application is lodged.

An associated issue raised at the public meeting in regard to the proposed excision of the DMB and USC site is the Commission's power to determine this modification application. Section 75W of the *Environmental Planning and Assessment Act 1979* provides that a proponent may request the Minister to modify a project previously approved by the Minister. The Department has considered the issue in Section 3.1 of the Assessment Report and concluded that the Minister (or his delegate) may approve or disapprove of the carrying out of the project under Section 75W of the Act.

The Commission notes s.75W provides:

#### **75W Modification of Minister's approval**

(1) In this section:

**Minister's approval** means an approval to carry out a project under this Part, and includes an approval of a concept plan.:

**modification of approval** means changing the terms of a Minister's approval, including:

- (a) revoking or varying a condition of the approval or imposing an additional condition of the approval, and
- (b) changing the terms of any determination made by the Minister under Division 3 in connection with the approval.....

(7) This section does not limit the circumstances in which the Minister may modify a determination made by the Minister under Division 3 in connection with the approval of a concept plan.

### Traffic and parking

Objections to the proposed modification focused on the potential traffic impact on King Street, which is said to be at capacity and cannot cope with additional traffic generated by Stage 1C. The evidence indicates that residents' experience of current traffic problem is a matter that can be dealt with by better traffic management in the area. Nonetheless, the Commission has closely examined the plans, photos presented by residents, public submissions as well as visiting the site and surrounds twice, before and after the public meeting. The Commission agrees with the Department's recommendation that for the concept plan site, access should be provided from King Street, Watt Street and Shortland Esplanade (Recommended Condition 11d retains the southern preferred Watt Street access.). However, the Commission considers the assessment of future development application for Stage 1C should include:

- Whether a restriction should apply to the King Street access point having regard to its existing traffic volume and street capacity, the close proximity of nearby access points and the potential conflict with on-street parking and pedestrian traffic. Options for consideration include restricting the access either as an entrance or exit, not two way access; or for emergency only;
- The practicality and efficiency of restricting the Shortland Esplanade as the main access point to Stage 1C development. Council has indicated that future traffic management plan may restrict Shortland Esplanade to a one way street. Therefore the access point from Shortland Esplanade may become a left in/left out only in the medium to long term.
- The underground car park for Stage 1C is designed to connect to the USC car park. The design should be flexible enough to allow future development of an integrated underground car parking area that provide access to Watt Street for Stage 1C given that the proponent owns a 2.2m wide laneway between the Avira Building and the USC car park and the air stratum over the car park.

### Loss of view

The Commission believes impact on views should be considered in the context of reasonable expectations having regard to the building envelopes and development potential already approved in the concept plan in 2007 for this site. The potential development of the subject site was also known before more recent residential development to the west of the subject site.

The Commission in accepting the Department's assessment has carefully considered the issue of view impacts, and the submissions made by residents, and agrees with the Department's conclusion that the shifting of the building envelope southward and the relatively minor increase in building height overall would have negligible impact on views. The Commission also accepts the Department's assessment that having regard to relative floor levels that the 0.65m increase in height is acceptable and will have negligible impact on views.

At the same time the Commission adopts the recommendation of the Department to include a design principle for the consideration of sharing of views through building design and layout in future development applications, however this is adopted in the context of an assessment of reasonable expectations.

### Overshadowing

Similarly for the overshadowing issue the Commission agrees having regard to general principles that the change in impact created by the modification sought to move the building envelopes to the south and the increase in height would not warrant refusal of the modification and the Commission accepts the Department's conclusion that the impact is acceptable.

### The 'hotel use'

It was argued by some that given hotel is a permissible use in the LEP therefore it is not necessary to be nominated as a use in the concept plan and can be assessed at the development application stage. On the other hand many objectors contended that a second hotel in the vicinity in the nature of

pub/ bar or licensed facilities will exacerbate the current anti-social behaviour and could lead to an increase in alcohol related problems in the area.

The commission agrees with the Department's position that the use of hotel must be specifically nominated in the concept plan as an additional use given the current concept plan approval only nominates residential and associated uses for the site. The approval of this modification would not circumvent the need for a development application to be submitted and assessed rather it would merely facilitate the making of such an application in the future.

The Department's report has assessed the issue of 'hotel use' from a strategic aspect as well as the potential impacts. The Department's conclusion is that the proposed use is consistent with the local planning controls and it would be at the future development application stage to assess the quantum of 'hotel' floor space within the overall GFA for the site and the details of the hotel. The Department is of the view that concerns of anti-social behaviour associated with a bar and licensed facilities are matters more appropriately dealt with at the development application stage. The proponent has informed the Commission that the hotel is envisaged to be one that offers international standard accommodation.

The Commission notes the concerns of residents, and while the proponent's intentions are also noted, the Commission has concluded that in the circumstances there is a need for greater certainty in the planning process. The additional hotel use sought in the concept plan over-rides the LEP and the Commission is of the opinion that the definition of uses should be explored to provide the best fit of the nature of the proposed hotel for the site. The Newcastle LEP and the standard definitions provide the opportunity for the outcome of the type of hotel facilities envisaged by the proponent to be more closely aligned than by merely making 'hotel' an additional use. 'Hotel' use may be too broad to capture a more appropriately defined use for the site in terms of allowing licensed bars or take away liquor outlets without the need to provide accommodation.

The dictionary to the Newcastle LEP has a definition for 'hotel and motel accommodation' as follows:

*Means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that:*

- (a) Comprises rooms or self-contained suites, and*
- (b) May provide meals to guests or the general public and facilities for the parking of guests' vehicles, but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation*

**Note** Hotel or motel accommodation is a type of tourist or visitor accommodation

The definition for 'tourist and visitor accommodation'

*Means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:*

- (a) Backpackers' accommodation,*
- (b) Bed and breakfast accommodation,*
- (c) Farm stay accommodation*
- (d) Hotel or motel accommodation,*
- (e) Serviced apartments, but does not include:*
- (f) Camping grounds, or*
- (g) Caravan parks, or*
- (h) Eco-tourist facilities.*

In the circumstances, given the location and context of surrounding residential development, the Commission considers the definition of 'hotel and motel accommodation' should be adopted as this provides more certainty by excluding some uses such as backpackers that more specifically fall under 'tourist and visitor accommodation'. At the same time the Commission accepts the Department's report that the assessment and conditions imposed on a future development application must consider any adverse environmental impacts and the insertion of the definition does not diminish the importance of a proper assessment.

#### Open space

The Commission accepts that the retention of the DMB has changed the concept design for the western part of the site with the loss of some internal open space. However, the Commission considers the Department has adequately dealt with the issue in the assessment report. However, it

agrees with Newcastle City Council's view that the proposed forecourt of the northern building should remain a landscaped area with drop-off facility for the hotel to provide better streetscape and amenity to Shortland Esplanade. Therefore, the annotation of RL45.5 (8 Storey) on the plan for this triangular area should be removed.

## **6 COMMISSION'S DETERMINATION**

The Commission has carefully considered the information available including the assessment report, Council and public submissions, views expressed by residents at the public meeting, the Commission's visit to the site and surrounds. The Commission accepts the assessment report has adequately addressed the issues raised in public submissions, and where required, recommends conditions of consent to mitigate potential impacts.

Having regard to the relevant issues the Commission finds the proposed modification should be approved subject to the Department's recommended conditions of consent and the further inclusion of the definition of 'hotel and motel accommodation' in the instrument of approval..



Jan Murrell  
Commission Chair



Garry Payne AM  
Commission Member

## Appendix 1 List of Speakers

### **Planning Assessment Commission Public Meeting Newcastle Hospital Site Concept Plan Modification 2**

Date: 4 pm, Tuesday 19 March 2013  
Place: Newcastle City Hall, 290 King Street, Newcastle

1. Mr Jim Davies
2. Ms Shannon Sullivan, JBA Planning
3. Mr Tony Sullivan
4. Mr Michael Johns
5. Mr Trevor Prior
6. Mr Philip Clay SC