



City of
Newcastle



CITY OF NEWCASTLE

PUBLIC VOICE COMMITTEE

Councillors,

In accordance with section 367 of the Local Government Act, 1993 notice is hereby given that a Public Voice Committee will be held on:

DATE: Tuesday 19 November 2019

TIME: 5.30pm

VENUE: Council Chambers
2nd Floor
City Hall
290 King Street
Newcastle NSW 2300

J Bath
Chief Executive Officer

**City Administration Centre
282 King Street
NEWCASTLE NSW 2300**

Tuesday 12 November 2019

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PUBLIC VOICE COMMITTEE
19 November 2019

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PUBLIC VOICE SESSIONS

ITEM-1 PV 19/11/19 - DA2018/01301 - 59 DARBY STREET, COOKS HILL - DEMOLITION OF STRUCTURE, ERECTION OF SIX-STOREY MIXED USE DEVELOPMENT, INCLUDING COMMERCIAL, SERVICED APARTMENTS AND RESIDENTIAL APARTMENTS

**APPLICANT: JGM PROPERTY INVESTMENTS PTY LTD
OWNER: MARKOVIC HOTELS PTY LTD
REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE/ MANAGER REGULATORY, PLANNING AND ASSESSMENT**

BACKGROUND

An application has been received seeking consent for the demolition of the buildings on the site, erection of a six-storey mixed use development, including commercial premises, serviced apartments and residential apartments.

A copy of the submitted plans for the proposed development is appended at **Attachment A**.

The application will be referred to the Development Applications Committee for determination, due to:

1. The number of submissions received during public notification of the application.
2. The proposed variation to the height of buildings development standard of Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (38.6% variation proposed).

The proposed development was publicly notified in accordance with City of Newcastle's (CN) public participation policy and 27 submissions have been received in response.



Subject Land: 59 Darby Street Cooks Hill

The objectors' concerns included:

- i) Character / visual appearance
- ii) Overdevelopment
- iii) Building setbacks
- iv) Overshadowing impacts
- v) Privacy impacts
- vi) Acoustic impacts
- vii) Visual impacts
- viii) Parking impacts
- ix) Traffic impacts
- x) Drainage impacts
- xi) Waste management
- xii) Dust pollution
- xiii) Height exceedance impacts
- xiv) Negative impacts to Heritage Conservation Area
- xv) Street trees will impact existing powerlines

1.0 THE SITE

The subject property comprises of Lots 63 and 64 DP 1109172, Lot 53 DP 151167, Lot 27 DP 150134 and Lot 44 DP 150066, known as No.59 Darby Street Cooks Hill. The land is irregular in shape with a combined area of 2,681m², being a corner lot with frontages to Darby Street (48.165m) and to Queen Street (57.12m). The site is inside and adjacent to the boundary of the City Centre, as defined by the NLEP 2012.

The site has a 1.5 metre cross-fall from east to west toward Darby Street.

The site currently contains a two-storey vacant building, previously utilised as Roads and Maritime Services administration offices. There are several ancillary structures within the site including a single storey brick amenities building in the north-eastern corner of the site and a demountable building. There are several small shrubs / trees on the site.

The general form of development in the area consists of a broad mix of uses, including single dwellings (single story and two-storey), a low-rise multi dwelling housing complex off Queen Street (Regency Park), a three-storey commercial building on the adjacent site to the north and low scale commercial developments along Darby Street, to the south. Civic buildings and infrastructure close to the site includes Newcastle Art Gallery, Newcastle Library and Civic Park, all located to the west of the site.

The site is within the Newcastle City Centre Heritage Conservation area. There are several heritage items located close to the site, including 'Newcastle War Memorial Cultural Centre', 'Baptist Tabernacle', 'Newcastle Synagogue', 'Civic Park', 'St Andrews Presbyterian Church' and 'Former Railway Overpass'.

2.0 THE PROPOSAL

The applicant seeks consent for the demolition of buildings on the site and the erection of a six-storey mixed use development, including commercial premises, serviced apartments and residential apartments. Further details of the proposed six-storey mixed use development are as follows:

- i) Basement level - 67 car parking spaces and lift access.
- ii) Ground floor level – Restaurant / Bar (245m²), Gallery '*commercial premises*' (192m²), Food Store '*neighbourhood supermarket*' (221m²), 13 car parking spaces, lobby and associated facilities, club lounge, lifts and plant and other service rooms.
- iii) First floor level (Podium) and separation into two buildings, 'A' (*serviced apartments*) and 'B' (*residential flat building*). The podium level includes a landscaped area and a common room for building 'B' residents.
- iv) Second floor level – Serviced apartments (building 'A') and residential flats (building 'B');
- v) Third floor level – Serviced apartments (building 'A') and residential flats (building 'B');
- vi) Fourth level – Roof terrace (building 'A' only) and common room serviced apartment access (building 'A').

The proposed unit configuration is 30 serviced apartments within Building 'A' and 24 residential units within Building 'B' (four x one-bedroom apartments, 16 x two-bedroom apartments and four x three-bedroom apartments).

A copy of the submitted plans is appended at **Attachment A**.

The various steps in the processing of the application to date are outlined in the Processing Chronology appended at **Attachment B**.

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's public participation policy and 27 submissions were received in response.

The concerns raised by the objectors in respect of the proposed development are summarised as follows:

a) Statutory and Policy Issues

- i) Height – excessive height not consistent with the development standard and inconsistent with transitioning to medium density on adjacent sites.

b) Amenity Issues

- i) Overshadowing – additional overshadowing into the multi dwelling housing development on the adjacent site (Regency Park).
- ii) Privacy – overlooking of properties and common facilities with Regency Park.
- iii) View loss – obstruction of views for many residents from east of the site.
- iv) Tree impacts – impacts to existing tree line on adjacent Regency Park site associated with common facilities.

c) Design and Aesthetic Issues

- i) Bulk and scale – scale and massing are not consistent with existing or desired built form of streetscape or Newcastle City Centre Heritage Conservation area.
- ii) Visual impacts – the dominance of the proposal in terms of visual impact on Darby Street.
- i) Building setbacks – the building does not transition to the lower controls on the adjacent site.

d) Traffic and Infrastructure Issues

- i) Traffic impacts – increased traffic movements on Queen Street, impacting the intersection with Darby Street.
- ii) Parking – increased pressure on street parking and not enough parking for residents, service apartments and commercial premises onsite.
- iii) Stormwater impacts – impacts to existing arrangements and Darby Street, with increased pressure on existing system.
- iv) Street tree impacts – proposed street tree planting will impact existing Ausgrid infrastructure.

e) Miscellaneous

- i) Acoustic impacts – construction impact noise and ongoing resident impacts from communal areas.
- ii) Waste management – collection of waste from the street frontage not acceptable with many bins.
- iii) Dust pollution – construction impacts and concerns regarding exposure to asbestos during demolition.
- iv) Public Interest – benefit considered minimal.

4.0 DEVELOPMENT OFFICER PLANNING ASSESSMENT

The submitted application has been assigned to Senior Development Officer, Ian Clark, for assessment.

The following comments are provided regarding key issues raised in submissions:

- a) The proposal has been considered by CN's Urban Design Consultative Group (UDCG) and is conditionally supported, subject to the proposal addressing a range of issues, in particular, the proposed exceedance of the height of buildings and that further resolution of the façade design and articulation of setback controls was required.
- b) The proposal does not comply with the height of buildings development standard of 14m, with the maximum height proposed to be 19.4m.
- c) The proposal complies with the floor space ratio development standard of 2.5:1, being proposed to be 2.1:1.
- d) The proposal does not propose on-site loading and unloading facilities to be provided for commercial premises.
- e) A submitted Waste Management Plan involves general and recycling waste being collected directly from the site.
- f) The proposal complies with the parking rate required under the Newcastle Development Control Plan 2012.
- g) The overshadowing impact of the proposal on adjacent properties primarily involves the overshadowing from the western aspect.

The above issues, along with other issues raised by objectors will be addressed in an assessment report to the Development Applications Committee.

ATTACHMENTS

Attachment A: Submitted plans – 59 Darby Street Cooks Hill – under separate cover

Attachment B: Processing Chronology – 59 Darby Street Cooks Hill – under separate cover

ITEM-2 PV 19/11/19 - DA2003/2991.01 - 89 PARK AVENUE KOTARA - MODIFY OUTSIDE CORE TRADING HOURS AND ACCESS

APPLICANT: WESTFIELD MANAGEMENT LIMITED
OWNER: SCENTRE CUSTODIAN PTY LIMITED
REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE/ MANAGER REGULATORY, PLANNING AND ASSESSMENT

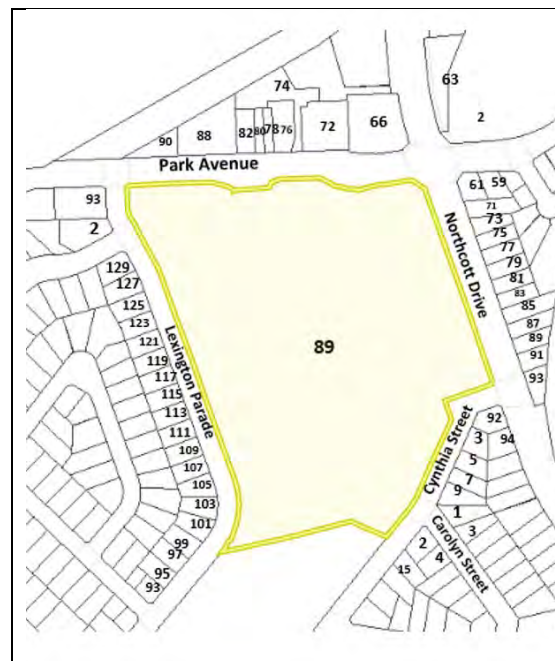
BACKGROUND

An application has been received to modify Condition 2.17 of the consent issued in respect of development application DA2003/2991. The condition requires the Cynthia Street and Lexington Parade driveways of the subject site to be closed to traffic each evening at 6.00pm, with the exception of Thursdays, whereby the driveways are to be closed from 9:30pm.

This condition of consent was imposed to ensure that any increased traffic, in connection with the operation of the shopping centre (Westfield Kotara), would not impact upon the residential amenity of dwellings located to the south of the shopping centre, within the vicinity of the driveways, during evening and night-time periods.

The proposed modification application seeks consent to extend the closing times of the Cynthia Street and Lexington Parade driveways until 10.00pm every day.

A number of further developments have occurred on the site since consent was granted to DA2003/2991. These developments have increased the size of the shopping centre and the type of facilities offered, particularly the rooftop precinct of the centre.



Subject Land: 89 Park Avenue Kotara

In November 2004, development consent was granted in respect of DA2003/2991, to carry out a major expansion of Westfield Kotara, providing for additional retail space, cinemas, additional car parking and a revised vehicular access arrangement.

In March 2011, development consent was granted in respect of DA2010/0904, to construct a new indoor recreation facility and ancillary entertainment facilities. The consent provided additional car parking spaces within a new car park area.

In March 2017, development consent was granted in respect of DA2016/00733, for alterations and additions to the shopping centre, providing additional retail space, additional car parking spaces, re-configuration of loading dock, ramps and roof top circulation.

The subject proposed modified development was publicly notified in accordance with City of Newcastle's (CN) public participation policy and 20 submissions, plus a 73 signature petition, were received in response.

The objectors' concerns include:

1. Amenity issues arising from hours of operation and potential anti-social behavior.
2. Traffic and parking, particularly in respect of Lexington Parade.
3. Miscellaneous issues relating to the history of the imposition of the condition of consent and to the management of the shopping centre.

The application is referred to the Development Applications Committee for determination, due to the application being called in by Councillor Winney-Baartz and Councillor Duncan.

A copy of the submitted plans for the proposed development is attached at **Attachment A.1.0.**

THE SITE

The subject property is known as No.89 Park Avenue Kotara and is occupied by a large multi-level retail and commercial shopping centre, known as Westfield Kotara. The legal description of the site is lot 19 DP 876517, which has an area of 83,750m².

The site is located on the southern side of Park Avenue, between Northcott Drive and Lexington Parade. It has frontages to Park Avenue, Northcott Drive, Cynthia Street and Lexington Parade. The centre has vehicular access from each of these frontages.

The southern side of the shopping centre adjoins Hudson Park.

2.0 THE PROPOSAL

The application seeks consent to modify Condition 2.17 of the consent issued in respect of development application DA03/2991, to extend the closing times of the Cynthia Street and Lexington Parade driveways until 10.00pm every day.

The applicant provided the following reasons in support of the proposal:

“The primary reason for allowing Lexington Parade to be used at night is to allow cinema precinct patrons to leave the carpark in a more direct manner.” and

“Outside of core trading hours, the Cynthia Street driveway is not a convenient egress at nighttime given the existing carpark configuration and the availability of alternate existing egress. Scentre Group advises that the height clearance of the Cynthia Street access means that it is primarily used by taxis serving people with disabilities. It has been deemed to be likely used only by a small number of patrons.”

The proposed modification does not involve any physical change to the approved development. There is no change to the built form of the approved extensions and no change to the approved car parking, landscaping, general layout and arrangement of facilities and services.

The applicant is primarily seeking to remove the restrictions on vehicular access via the Lexington Parade gates, for customers utilising the rooftop precinct.

A copy of the submitted plans is appended at **Attachment A**. The various steps in the processing of the application to date are outlined in the Processing Chronology appended at **Attachment B**.

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Public Participation Policy and 20 submissions objecting to the proposal have been received, including a petition containing 73 signatures. It is noted that CN's Public Participation Policy provides that, irrespective of the number of signatories on a petition, petitions will only be considered as a single submission.

The concerns raised by the objectors in respect of the proposed development are summarised as follows:

a) Amenity Issues

- i) Westfield is a major shopping centre adjacent to residential areas and the needs of residents should be taken into consideration.
- ii) The Centre is open all day from early morning, with staff turning up from 4.30am.

iii) Residents are entitled to a peaceful time after 6pm when traffic movement stops in the residential streets. Upon gate closure the streets suddenly become quiet and peaceful so residents can enjoy their time after work.

iv) Extending the hours will only add to more unsociable behavior.

b) Traffic and Parking Issues

i) Westfield now has the “Beerhaus”, as well as other restaurants, cinemas, a “Timezone” and a 24-hour Gym located on the rooftop. As a result of these developments, late night traffic and activity has already increased in Lexington Parade and is likely to increase further, especially in the summertime.

ii) Surrounding streets have congested on-street parking from Westfield employees parking - this is an area that is already increasingly struggling and doesn't need the additional car traffic after core trading hours.

iii) The statement that the proposal will have minimal impact is false. It will not necessarily increase patronage, but it will increase traffic volume on Lexington Parade as people travelling north, south, east or west will use this entrance as it is on the same level as the rooftop.

c) Miscellaneous

i) Condition 2.17 was fundamental to enable Westfield to enlarge the centre with many more businesses and develop the rooftop with cinemas and restaurants. The condition of consent 2.17 remained in place as a condition for those developments to proceed.

ii) At the consultation meeting with Westfield staff on 19 June 2019, a motion was passed unanimously by residents that *“the residents want the curfew currently in place to be maintained”*. Numerous concerns were raised by residents at the meeting with Westfield.

iii) Westfield should solve customer complaints by making some modifications to the carpark, put better signage in their carpark, give notification in their carpark of exit closures and promote easier access to rooftop on their social media pages and in their shops.

iv) Customer complaints are internal issues that need to be addressed by Westfield only, so that they don't disrupt the lives of neighbouring rate paying residents.

- v) Considering the likely level of increased impacts on the local residential zone, there is inadequate justification (on planning, economic or social grounds) for the removal of Condition 2.17.

4.0 DEVELOPMENT OFFICER PLANNING ASSESSMENT

The submitted application has been assigned to Senior Development Officer, William Toose, for assessment.

A traffic analysis has been provided as part of the application, which outlines that the predicted traffic increases associated with the proposal will be relatively minor when compared with existing volumes.

An acoustic assessment has been provided which demonstrates that increased traffic noise generated by the proposal will comply with State noise guidelines and is considered acceptable.

The submissions received in response to public notification of the modification application have raised issues of a nature and extent that contend that the proposal will have adverse and unreasonable impacts on the residents of the area.

ATTACHMENTS

Attachment A: Submitted Plans – 89 Park Avenue Kotara – Under separate cover

Attachment B: Processing Chronology – 89 Park Avenue Kotara – Under separate cover

ITEM-3 PV 19/11/19 - DA2019/00339 - 48-56 HUNTER STREET, NEWCASTLE - ALTERATIONS AND ADDITIONS TO COMMERCIAL BUILDING INCLUDING A FOUR BEDROOM DWELLING (SHOP TOP HOUSING)

**APPLICANT: AVIATOR CAPITAL PTY LTD
 OWNER: AVIATOR CAPITAL PTY LTD
 REPORT BY: GOVERNANCE
 CONTACT: DIRECTOR GOVERNANCE/ MANAGER REGULATORY, PLANNING AND ASSESSMENT**

BACKGROUND

An application has been received seeking consent for alterations and additions to commercial building including a four bedroom dwelling (shop top housing).

A copy of the submitted plans for the proposed development is included at **Attachment A**.

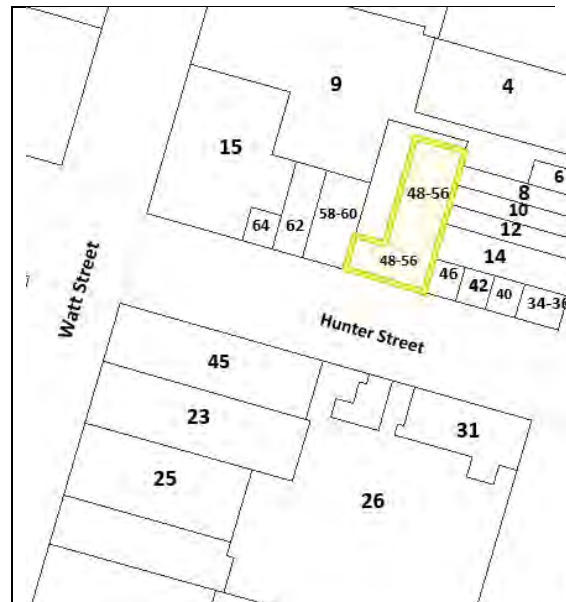
The application will be referred to the Development Applications Committee for determination, due to:

1. The proposed variation to the height of buildings development standard of Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (14% variation proposed).
2. The proposed variation to the floor space ratio development standard of NLEP 2012 being more than a 10% variation (85% variation proposed).

The proposed development was publicly notified in accordance with City of Newcastle’s (CN) public participation policy and 17 submissions have been received in response.

The objectors’ concerns included:

- i) View loss
- ii) Overdevelopment – exceedance of height, FSR and street wall height
- iii) Visual impact



Subject Land: 48-56 Hunter Street Newcastle

- iv) Privacy
- v) Landscaping
- vi) Loss of property value
- vii) Location of air conditioning units
- viii) Misleading information

1.0 THE SITE

The subject site is identified as 48-56 Hunter Street and is legally described as Lot 1 in DP 304766, Lot 4 in DP 76454 and Lot 1 in DP 1099255. The site is located on the northern side of Hunter Street, with a 16.7m road frontage. Existing access to the basement car park is from Pacific Street via a right-of-way.

The site is located within the East End Precinct of the Newcastle City Centre Character Area. The site has access to a range of services and retail premises. The surrounding area comprises a mixture of high-density housing and commercial premises, including offices, retail, and food and drink premises.

The site is identified as a heritage item '*Sun Building (facade only)*' of local cultural heritage significance under NLEP 2012 and is located within the Newcastle City Centre Heritage Conservation Area. The site is also located within the vicinity of other heritage items, including the Former National Bank at 68 Hunter Street and the T&G Mutual Life Assurance Building at 45 Hunter Street.

The existing five storey commercial building occupying the site includes a basement car park and is tenanted by a number of commercial operators across the five levels.

2.0 THE PROPOSAL

The development application seeks approval for alterations and additions to a heritage listed building for a shop top housing development, consisting of:

1. Alterations to fifth floor, including demolition of spa, storerooms and stairs, refurbishment of a pool, fit out for a gym, cellar and storage, replacement of stairs and windows and provision of a new planter landscaping along the eastern elevation.
2. Demolition of the roof and addition of a sixth floor, comprising a four-bedroom dwelling with a gross floor area of 390m.

A copy of the submitted plans is included at **Attachment A**.

The various steps in the processing of the application to date are outlined in the Processing Chronology (refer to **Attachment B**).

3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days from 15 April 2019 to 2 May 2019 in accordance with CN's Public Notification Policy and no submissions

were received. The application was then renotified on 4 September 2019 to 19 September 2019 to include additional properties that were not notified originally in the first round of notifications. A total of 17 submissions were received objecting to the development.

The concerns raised by the objectors in respect of the proposed development are summarised as follows:

a) Statutory and Policy Issues

- i) Exceedance of Floor Space Ratio
- ii) Exceedance of height control
- iii) Non-compliance with street wall height requirement

b) Amenity Issues

- i) View loss of the Harbour, Nobby's Head and the coastline
- ii) Reasonableness of view loss as a result of noncompliance with planning controls
- iii) Visual impact
- iv) Lack of landscaping and potential for greening of the facades and roof spaces
- v) Loss of privacy

c) Design and Aesthetic Issues

- i) Impact on the streetscape

d) Miscellaneous

- i) False and misleading diagrams and plans
- ii) Location of future air conditioning systems on the roof and existing condensers
- iii) Loss of property value

4.0 DEVELOPMENT OFFICER PLANNING ASSESSMENT

The submitted application has been assigned to Senior Development Officer, William Toose for assessment.

The following comments are provided regarding key issues raised in submissions:

- 1) The site has a floor space ratio (FSR) development standard of 3:1. The proposal includes the addition of an additional level to the building, which results in an overall floor space ratio of 5.56:1, exceeding the development standard by 2.56:1 (ie. 85% variation). It is noted that the existing building already exceeds the FSR development standard by 63%. The proposed additional level increases the FSR from 4.8:1 to 5.56:1, which is a 22% increase.

- 2) The site has a height of building development standard of 24m. The proposed development has a maximum height of 27.4m as stated in the applicant's Clause 4.6 Exception Report. The height of the proposed development exceeds the NLEP 2012 development standard by 14%. It is noted that there are varying heights stated in the application and clarification has been sought from the applicant to ascertain the correct height of the proposal and the variation.
- 3) The applicant has submitted a View Impact Statement. This assessment has considered the planning principles for view sharing outlined within Tenacity Consulting v Warringah (2004) NSWLEC 140.

ATTACHMENTS

- Attachment A:** Submitted Plans - 48-56 Hunter Street Newcastle – Under separate cover
- Attachment B:** Processing Chronology - 48-56 Hunter Street Newcastle – Under separate cover