

ITEM-5

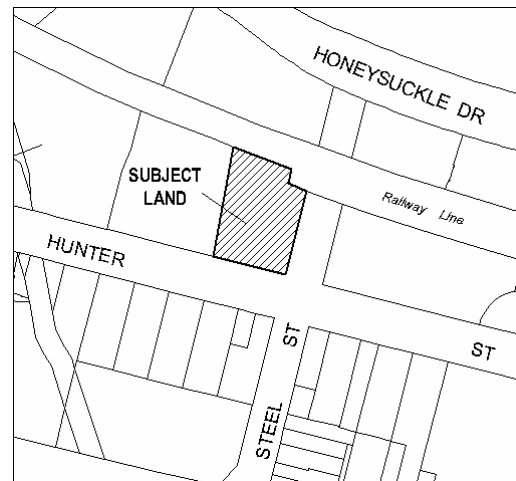
DA 05/0115 - 684 HUNTER STREET, NEWCASTLE WEST -  
SECTION 96 APPLICATION TO MODIFY THE TERMS OF  
CONSENT FOR THE ERECTION OF AN 8-STOREY MIXED  
COMMERCIAL/RESIDENTIAL BUILDING ON THE SITE OF  
THE PALAIS ROYALE

APPLICANT: NEWCASTLE PALAIS HOLDINGS PTY LTD  
OWNER: NEWCASTLE PALAIS HOLDINGS PTY LTD  
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PRÉCIS

*An application has been received pursuant to the provisions of Section 96(2) of the EP&A Act, seeking approval to modify the terms of the current consent in respect of the heritage listed Palais Royale building to allow the demolition and rebuilding of the Hunter Street façade. The historic façade was to have been retained as part of an 8-storey mixed commercial/residential development on the site (DA 05/0115 - approved by Council on 14 November 2005). The reason given for the proposed façade demolition is that the structure is not supported on substantial foundations and the shallow foundations have been substantially undermined as a result of the flooding which occurred during the severe storm event in June 2007.*



**Subject Land:** Map 2 – G5 as Gregory's Street Directory, 25<sup>th</sup> Edition

*The proposed replacement structure generally consists of a predominantly glass façade incorporating a curved masonry structure arcing over the proposed café entrance, extending above the line of the front parapet. A copy of the submitted plans incorporating the proposed facade is attached at **Appendix A**.*

*The submitted Statement of Environmental Effects is supported by a report from Geoff W Bubb, (Consulting Engineer), a letter by Archaeological & Heritage Management Solutions and a Statement of Heritage Impact by J Carr from the NSW Department of Commerce.*

*The proposed modification has been publicly notified in accordance with Council's Public Notification Policy and no submissions or objections have been received.*

*Council's Urban Design Consultative Group (UDCG) does not support the design of the replacement building façade and has suggested that, if the existing façade is unable to be salvaged and integrated into the design of the building then, in this instance, the façade should be reconstructed in a manner that retains its original character and appearance. This approach is not supported by the applicants' heritage consultant or by Council's Heritage Officer, both of whom consider that the design of the replacement façade is acceptable as proposed.*

## **Issues**

- *Whether demolition of the unique historic Hunter Street façade of the Palais Royale should be permitted having regard to the structural issues identified in the applicant's submission.*
- *Whether the architectural design of the replacement façade is appropriate in the context of the Heritage Conservation Area.*

## **Conclusion**

*The details of the Section 96(2) modification application has been assessed having regard to the relevant heads of consideration under Section 79C(1) of the Environmental Planning & Assessment Act, 1979 (as amended), including the advice of the applicant's consulting Structural Engineer. It is concluded that there is convincing evidence that the structural integrity of the existing building façade is poor and therefore its demolition should be agreed to, particularly having regard to the heritage advice that strongly opposes 'façadism' in principle.*

*The views of both the applicant's consulting heritage advisor and Council's Heritage Officer, that the replacement building façade should not be a replication of the façade to be demolished, are considered to be reasonable. Although this opinion is contrary to the advice of Council's UDCG, it is considered that attempting to rebuild the original façade would be problematic and would not be a satisfactory means of recognising heritage values, and also that there are other more appropriate ways in which the social history of the heritage item and its legacy to Newcastle can be acknowledged and celebrated.*

## **RECOMMENDATION**

The application to modify the development consent for the erection of an 8-storey mixed commercial / residential redevelopment of the site be approved on the basis of the submitted amended plans and subject to Conditions 1.1 and 3.6 being deleted and being replaced with the following amended conditions:

- 1.1 The proposed development being carried out strictly in accordance with the details set out on the amended plans, dated 21 July 2005, as further amended in drawings by Span Architects (Revision B, dated 23 May 2007); the submitted Statement of Environmental Effects, the supplementary Statement of

Environmental Effects, dated 17 August 2007, and on the Application form, except as otherwise provided by the conditions of this consent.

(Note: Any proposal to further modify the terms or conditions of this consent whilst still maintaining substantially the same development to that approved, will require the submission of a formal application for Council's consideration in accordance with the provisions of Section 96 of the Environmental Planning and Assessment Act, 1979.)

**Reason:** To confirm and clarify the terms of Council's approval.

3.6 Examples of the decorative 1920's ceramic wall tiling incorporated into the historic façade being recovered and included in the comprehensive display required to be provided within the ground floor commercial area (café), in accordance with Condition 1.4 of this consent, full details of such interpretive display to be submitted for Council's approval prior to the issue of an Occupation Certificate.

**Reason:** To ensure the provision of an appropriate accessible public record of a significant heritage item.

## **PART II**

### **1.0 THE SUBJECT SITE**

The subject property comprises Lot 11, in DP 872463, and is located on the northern side of Hunter Street, on the corner of the proposed northern extension to Steel Street. The Ibis Hotel is on the adjacent site to the west and the approved Newcastle Polyclinic development is to the east, with the Newcastle Rail corridor to the north. The site is generally flat and has an irregular shape with a street frontage to Hunter Street of 42.055m and an overall area of 2,524m<sup>2</sup>.

Two-storey commercial developments typify the urban form on the southern side of Hunter Street opposite the subject site, although redevelopment on the south-western corner of Hunter and Steel Streets (Empire Hotel site), to provide a multi-storey mixed commercial/residential building, has been approved by Council.

The site is occupied by the derelict and partially demolished 'Palais Royale', a former retail market and Dance Hall that has until recently been utilised as a youth centre. The building is listed in the Newcastle LEP 2003 as a heritage item of local significance and the subject site falls within the Newcastle City Centre Heritage Conservation Area.

#### **1.1 Background**

At its meeting on 18 October 2005 (Item 71) the Development Applications Committee resolved to approve an application to demolish the Palais Royal (while retaining the façade) and construct an eight-storey mixed commercial and residential building on the subject site. A copy of the report on the application to the DAC and the recommended Schedule of Conditions is attached at **Appendix B**.

A condition of the development consent requires that the existing signage on the raised archway of the Hunter Street building façade be retained and the colour finishes of the façade maintaining an 'articulated' colour scheme which emphasises the character of the historic building rather than the new development (Condition 3.6).

The Statement of Environmental Effects which accompanied the s96 modification application provides the following rationale for demolition of the façade, as well as detailing the design process undertaken for the selection of a replacement Hunter Street façade for the development:

*"Consent No DA05/0115 provides for the owner to demolish the existing building (except the Hunter Street façade) and erect an eight-storey mixed commercial / residential building.*

*Condition 3.6 of the Consent requires the existing signage on the raised archway on Hunter Street façade to be retained.*

*The Statement of Environmental Effects that forms part of the original submission noted that the Heritage Consultant had concluded that the retention of the façade in the new building, along with recording of the building, will not have a negative impact upon the heritage conservation area.*

*The Consent requires the applicant to carry out the following testing and assessment:*

- 1. An archaeological testing programme approved by the Heritage Council under Section 141 of the Heritage Act; and*
- 2. An assessment of the likelihood of the presence of any Aboriginal sites or relics to comply with the requirements of the NSW Department of Environment and Conservation under the provisions of Part 6 of the National Parks and Wildlife Act 1974.*

*An archaeological testing programme has been carried out by Archaeological & Heritage Management Solutions on the portion of the site that has been demolished and cleared. It was also intended that further excavation and testing would be carried out within the existing portion of the building retained to support the façade. Following the storms and flooding in June of this year (2007) it was revealed that the façade is not supported on substantial foundations and the shallow foundations have been significantly undermined. This has resulted in the building being considered structurally unsound to carry out further excavation works as confirmed in Archaeological & Heritage management Solutions Pty Ltd's letter dated 17 August 2007.*

*A detailed survey of the structure has been carried out by Geoff W. Bubb Consulting Engineer to assess options to stabilise and cross brace the façade during demolition of the existing building and construction of the new building. The survey has revealed that the brickwork is in poor condition and is supported on the first floor concrete slab and concrete encased beams. The wall itself*

*appears to be supported on a mass concrete slab approximately 250mm thick. The report concludes that "...it is not possible to maintain the existing façade..." during the extended demolition and construction process and recommends that it... should be demolished".*

A copy of the report by Geoff W. Bubb Consulting Engineer, dated 24 July 2007 is attached at **Appendix C**. The letter from Archaeological & Heritage Management Solutions, dated 17 August 2007, is also attached at **Appendix D**.

Mr J Carr of the NSW Department of Commerce was subsequently engaged by the applicant to provide a Statement of Heritage Impact (SHI) in respect of the proposed demolition, as well as to examine various replacement options for the façade. Four alternative design options for a replacement facade were subsequently considered, viz;

- Reconstruct the façade in brickwork to the original detail;
- Reconstruct the façade in brickwork and tiles to the present detail;
- Construct a stylised version of the façade;
- Construct a modern façade to complement the new building.

The SHI report by Mr Carr makes the following comments concerning each façade replacement option:

***“Original Façade Reconstruction***

*Reconstruction of the façade to its 1929 style is extremely difficult as there does not appear to be any documentary evidence of the detail required for accurate reconstruction work.*

***Replica Façade Reconstruction***

*Reconstruction of the existing façade is questionable given the alterations that have occurred over the decades, including the ceramic wall tiles, patch render repairs and replacement windows and doors.*

***Stylised Façade***

*A stylised façade is possible for the site, however is questionable from an interpretation aspect. The stylised façade is based on the original, but it is not a copy and eventually will lose its basis as the original façade is gone. These designs are better when the original remains on site. An example is the modern terrace housing opposite The Junction Public School which has a stylised design to the gables reflecting the dominant two storey school building. The school building was severely damaged and demolished following the 1989 earthquake and the basis for the stylised design was lost.*

***Modern Façade***

*The construction of a modern façade is an acceptable option, given that the original 1929 façade is required to be demolished on structural safety grounds.”*

Hunter Street elevational and perspective drawings (prepared by Span Architects), illustrating two alternative replacement ‘stylised’ form design options for a new building façade, are attached at **Appendix E**.

## **2.0 THE PROPOSAL**

The applicant seeks consent to modify the approved development by demolishing the Hunter Street building façade and, in keeping with the conclusions of the SHI proposes to replace it with a modern contemporary building element consisting of a predominantly glass façade with a curved solid masonry structure extending above the front parapet and arcing over the commercial entry to the building.

A copy of the plans showing the design of the proposed replacement building façade is attached at **Appendix A**.

The various steps in the processing of the modification application to date are outlined in the Processing Chronology attached at **Appendix F**.

## **3.0 PUBLIC NOTIFICATION**

The application was publicly notified in accordance with Council's Public Notification policy for a period of 14 days and no submissions have been received in response.

## **4.0 ENVIRONMENTAL PLANNING ASSESSMENT**

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 79C(1) of the Environmental Planning & Assessment Act, 1979, as detailed hereunder.

### **4.1 Statutory Considerations [Section 79C(1)(a)(i)&(ii)]**

The subject property is included within the 3(c) City Centre zone under the provisions of the Newcastle Local Environmental Plan, 2003. The modification does not alter the nature of the development proposed within the site and therefore the development will remain consistent with the statutory provisions and objectives of the zone.

The amended proposal is not contrary to the provisions of the Hunter Regional Environmental Plan or any relevant State Environmental Planning Policy.

### **4.2 Merit Considerations**

#### **4.2.1 Relevant Strategic Policies**

The proposed modification is not influenced by any strategic policies of the Council.

#### **4.2.2 Newcastle Development Control Plan [Section 79C(1)(a)(iii)]**

Council's adopted DCP does not include any specific provisions that relate to the proposed modification.

#### 4.2.3 Impacts on the Natural and Built Environment [Section 79C(1)(b)]

##### a) Urban Design

The architect's design statement for the proposed replacement Hunter Street building façade states:

*"The sweeping shape arcing over the café entrance, as well as the curved end profile to the battens on either side of the entrance, are intended to draw to mind the dance hall which previously stood on the site. This is achieved in two ways: firstly, the curving shape is reflective of the previous façade; secondly, the shapes are intended to invoke the notion of the path taken by a pair of ballroom dancers sweeping across a dance floor. This idea will be reinforced by the use of evocative and historical photographs in the interior of the building."*

The design of the proposed replacement building façade has been considered by Council's Urban Design Consultative Group (UDCG) who formed the view that, *"if it is not possible to retain the historic façade for structural reasons, this is a rare instance where it would be more appropriate to simply reconstruct the wall using the original bricks and other elements, rather than to attempt to weakly reference it in a contemporary form. This is for the reason that the façade is the only historic building element that has particular heritage significance."* A copy of the UDCG minutes is attached at **Appendix G**.

The applicants have subsequently advised that, in consideration of the advice of the UDCG, they are prepared to *"replicate the façade of the Palais"*. However, having regard to the views of both the applicant's Heritage Consultant and Council's Heritage Officer, as set out below, the applicant's preference would be to erect a new contemporary street façade as per the submitted plans.

##### b) Heritage

In consideration of the various options for a replacement building façade, the Statement of Heritage Impact by Mr Carr concludes that the reconstruction of a replica façade or a 'stylised' form thereof is inappropriate having regard to heritage considerations. Furthermore, the HIS makes the following point in regard to any redevelopment of the site:

*"The use of façadism has been frowned upon by heritage authorities and experts for decades as a shallow means of keeping the external aesthetics of a building while sacrificing the three dimensional aspects."*

*The alterations that have taken place to the original façade calls into question the value of the element when considered in the light of the removal of the other ninety percent of the building. The removal of the large dance hall and the construction of a multi storey residential block immediately behind the façade limits its value from an interpretation aspect, particularly for future generations."*

In considering the contemporary replacement building façade, as detailed in the drawings at **Appendix A**, the HIS states that the following aspects will respect and enhance the Heritage Conservation Area:

- *"The proposal maintains the existing commercial use of the site.*
- *The design is modern and does not foster a 'façadism' approach to the heritage significance of the site.*
- *The proposal does not use a replica version of the former façade within the Heritage Conservation area.*
- *The proposal does not use a 'stylised' version of the former building within the Heritage Conservation area.*
- *The proposed design provides its own modern character within the Heritage Conservation Area."*

The HIS makes the following conclusion and recommendations:

*"The removal of the Palais façade will have an initial impact on the remains of the item and on the Heritage Conservation Area. In the longer term the avoidance of the use of façadism to represent heritage items will be of greater benefit to the community. The memory of the Palais is strongly associated with its Social Heritage significance rather than the aesthetic value of the 1929 masonry façade which has had a number of alterations over the last five decades.*

*The following recommendations are suggested:*

- *The façade remains be photographically recorded, including the Entry area and stair;*
- *Examples of the decorative 1920's ceramic wall tiling be recovered for display purposes."*

The first of Mr Carr's recommendations is already addressed under the current conditions of consent. His second recommendation is covered in the amended Condition 3.6.

Council's Heritage Officer has examined details of the application, including the accompanying SHI, and has expressed opposition in principle to the retention of the historic façade and also recommends that *"the design presented as the preferred design be accepted as the final design of the Hunter Street frontage"*. A copy of Council's Heritage Officer's advice is attached at **Appendix H**.

#### **4.2.4 Social & Economic Impacts in the Locality [Section 79C(1)(b)]**

The proposed modification is unlikely to generate any adverse social or economic impacts in the locality.

#### **4.2.5 Suitability of the Site for the Development [Section 79C(1)(c)]**

The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

#### **4.2.6 Submissions made in accordance with the Act or Regulations [Section 79C(1)(d)]**

No submissions have been received as a result of Public Notification and/or referral procedures under the Act and Regulation.

#### **4.2.7 Public Interest [Section 79C(1)(e)]**

The proposed development does not raise any significant general public interest issues beyond matters already addressed in this report.

#### **Appendix**

**Appendix A:** Plans, elevations and perspectives of proposed Section 96 modification to the Hunter Street building façade of the former Palais Royale – 684 Hunter Street Newcastle West.

**Appendix B:** Copy of previous Report to Development Applications Committee Meeting (Item 71) on 18 October 2005 in respect of DA05/0115 – 684 Hunter Street Newcastle West.

**Appendix C:** Copy of submitted report by Geoff W. Bubb Consulting Engineer, dated 24 July 2007 – 684 Hunter Street Newcastle West.

**Appendix D:** Copy of submitted advice from Archaeological & Heritage Management Solutions, dated 17 August 2007 – 684 Hunter Street Newcastle West,

**Appendix E:** Elevations and perspective drawings of alternative design options by Span Architects for Hunter Street building façade – 684 Hunter Street Newcastle West.

**Appendix F:** Processing Chronology for Section 96 modification application – DA05/0115

**Appendix G:** Minutes of the meeting of Council's Urban Design Consultative Group on 21 November 2007 – 684 Hunter Street Newcastle West.

**Appendix H:** Advice of Council's Heritage Officer, dated 21 December 2007 – 684 Hunter Street, Newcastle West.