



City of  
Newcastle



## CITY OF NEWCASTLE

# Development Applications Committee

Councillors,

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

**DATE:** Tuesday 3 December 2019

**TIME:** Following the Public Voice Committee Meeting

**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 26 November 2019

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<p><b>DEVELOPMENT APPLICATIONS COMMITTEE</b>  <b>03 December 2019</b></p>
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***NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER***

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING 19  
NOVEMBER 2019**

**RECOMMENDATION**

The draft minutes as circulated be taken as read and confirmed.

**ATTACHMENTS**

**Attachment A:** 191119 Development Applications Committee Meeting Minutes

*Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at [www.newcastle.nsw.gov.au](http://www.newcastle.nsw.gov.au)*

## CITY OF NEWCASTLE

Development Applications Committee Meeting 03 December 2019

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### Attachment A

## CITY OF NEWCASTLE

**Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on Tuesday 19 November 2019 at 7.42pm.**

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### PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, K Elliott, B Luke, J Mackenzie, A Robinson, A Rufo and P Winney-Baartz.

### IN ATTENDANCE

J Bath (Chief Executive Officer), K Liddell (Director Infrastructure and Property), D Clarke (Director Governance), B Smith (Director Strategy and Engagement), F Leatham (Director People and Culture), A Jones (Interim Director City Wide Services), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), Joe Vescio (Executive Officer, Chief Executive Office), M Murray (Chief of Staff, Lord Mayor's Office), A Knowles (Council Services/Minutes) and K Sullivan (Council Services/Webcasting).

### APOLOGIES

#### MOTION

Moved by Cr Luke, seconded by Cr Byrne

The apologies submitted on behalf of Councillors Dunn and White be received and leave of absence granted.

**Carried**

### DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

#### Councillor Church

Councillor Church declared a significant pecuniary interest in Item 17 - DA2018/00693 - 90-92 Brunner Road, Broadmeadow as the project manager for the development was a client of his. Councillor Church stated he would leave the Chamber for discussion on the item.

### CONFIRMATION OF PREVIOUS MINUTES

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING 8 OCTOBER 2019**

#### MOTION

The draft minutes as circulated be taken as read and confirmed.

**Carried**

**DEVELOPMENT APPLICATIONS**

**ITEM-17                    DAC 19/11/19 - DA2018/00693 - 90-92 BRUNKER ROAD  
BROADMEADOW - DEMOLITION OF EXISTING  
DWELLINGS AND OUTBUILDINGS, ERECTION OF FOUR  
STOREY MIXED USE DEVELOPMENT AND SIXTEEN LOT  
STRATA SUBDIVISION**

Councillor Church retired from the meeting.

**MOTION**

Moved by Cr Robinson, seconded by Cr Clausen

- A. That DA2018/00693 for the demolition of dwellings and outbuildings, erection of a four-storey mixed use development and 16 lot strata subdivision at 90-92 Bruncker Road Broadmeadow be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

**For the Motion:**

Lord Mayor, Cr Nelmes and Councillors Clausen, Duncan, Elliott, Luke, Robinson, Rufo and Winney-Baartz.

**Against the Motion:**

Councillors Byrne and Mackenzie.

**Carried**

**The meeting concluded at 7.52pm.**

**DEVELOPMENT APPLICATIONS**

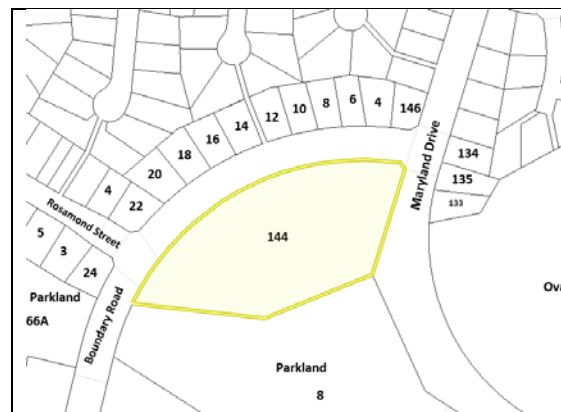
**ITEM-18**                    **DAC 03/12/19- DA2018/01191 - 144 MARYLAND DRIVE, MARYLAND - ALTERATIONS/ADDITIONS TO MARYLAND SHOPPING CENTRE AND NEW TAVERN**

**APPLICANT:**            **EXPONENTIAL HOLDINGS PTY LTD**  
**OWNER:**                **EXPONENTIAL HOLDINGS PTY LTD**  
**NOTE BY:**              **GOVERNANCE**  
**CONTACT:**             **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

**PART I**

**BACKGROUND**

An application has been received seeking consent for alterations and additions to the Maryland shopping centre, consisting of partial demolition works, construction of a new tavern to replace the current tavern, refurbishment of the shopping centre, change of use of two current shop tenancies to be commercial premises, carpark upgrade, landscaping and signage.



**Subject Land:** 144 Maryland Drive Maryland

The submitted application was assigned to Senior Development Officer, Amanda Gale, for assessment.

The application is referred to the Development Applications Committee for determination, due to the application being called in by Councillors Byrne and Dunn.

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

The original proposal was publicly notified in accordance with the City of Newcastle's (CN) public participation policy and fifteen submissions (inclusive of one late submission) objecting to the application were received. Three petitions were received, with two of the petitions objecting to the application, with 69 and 23 signatures respectively.

The third petition (44 signatures) was supportive of the application.

Some additional information and amended plans were received in response to matters raised during the assessment of the application. These changes did not warrant re-notification in accordance with CN's public participation policy.

The application was considered at the Public Voice Meeting held on 20 August 2019. The Committee heard from objectors raising their concerns over the location of the tavern, anti social behaviour, noise and security.

In response to the Public Voice Meeting feedback and assessment advice, the proposal was further amended, with respect to the redesign of the new (relocated) tavern building that forms part of the application.

The latest revised proposal was publicly notified in accordance with the CN Public Participation Policy and nine (9) submissions (7 objecting and 2 in support) to the application were received during the period. Two petitions were received in support of the proposal, with 310 and 69 signatures respectively. Four (4) late submissions in support were received outside of the period.

The objector's concerns included:

- i) Proximity of new tavern to residential properties
- ii) Visual and acoustic privacy impacts
- iii) Safety and security
- iv) Anti-social behaviour
- v) Odour emission – cigarette smoke and kitchen operations
- vi) Landscaping / tree removal
- vii) Effect on property values
- viii) Childcare centre is not appropriate and not needed (over-supply)

Details of the submissions received are summarised at Section 3.0 of Part II of this report and the concerns raised are addressed as part of the Planning Assessment at Section 5.0.

## **Issues**

- 1) Matters raised in submissions including the proximity of the proposed new tavern, closer to residential properties, resulting in the potential for unreasonable adverse amenity impacts - visual and acoustic privacy, odour emission and anti-social behaviour.

## **Conclusion**

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is considered to be acceptable subject to compliance with appropriate conditions.



**RECOMMENDATION**

- A. That DA2018/01191 for alterations and additions to Maryland shopping centre and a new tavern at 144 Maryland Drive Maryland be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

**Political Donation / Gift Declaration**

Section 10.4 of the *Environmental Planning and Assessment Act 1979* requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council; and
- b) all gifts made to any local Councillor or employee of that Council.

The applicant has answered **NO** to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

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**PART II**

**1.0 THE SUBJECT SITE**

The subject property comprises one allotment described as Lot 512 DP 717019, known as No.144 Maryland Drive Maryland. The lot is slightly irregular in shape, having three boundaries as it wraps around Boundary Road and Maryland Drive, with public recreation land adjoining the other boundaries. The site is located on the south side of Boundary Road and the west side of Maryland Drive. The lot has street frontages of 78 metres (Maryland Drive) and 231 metres (Boundary Road) and an area of 1.392 hectares.

The site is currently occupied by the Maryland shopping centre, bounded by public recreation land to the south. Properties to the north (across Boundary Road) and partially to the east (across Maryland Drive) are residential properties, while other public recreation land is located to the south-east (across Maryland Drive).

Vehicular access to the shopping centre site, for customers, is via Maryland Drive and, for deliveries, via loading dock facilities off Boundary Road, at the western end of the site frontage to Boundary Road.

The site is relatively flat and sits below the road within the north-eastern section of the site, around the intersection of Boundary Road and Maryland Drive.

The site is identified as flood prone land, though this constraint does not present any significant impacts on maintaining and upgrading the existing shopping centre facilities.

## **2.0 THE PROPOSAL**

The applicant seeks consent for alterations and additions to the Maryland shopping centre. A summary of works includes:

- a) Some demolition works.
- b) Construction of a building on the north eastern corner of the site for relocation of the existing tavern (characterised as a '*pub*' for planning purposes).
- c) Refurbishment of shopping centre.
- d) Change of use to Shop No.6, from a gym to a commercial premise, and Shop No.13, from a pub to a commercial premise.
- e) Upgrade / formalisation of the carpark (proposed 151 car parking spaces, 10 space bicycle rack and two motorbike spaces) and its entrance.
- f) New landscaping works and advertising signage.

The operational parameters of the existing shopping centre such as operating hours, main loading and unloading and waste management facilities and existing shop uses (excluding a change of use to commercial, for two current shops) will remain unchanged.

The new (relocated) tavern staff numbers will remain similar to the current tavern operation and will continue to employ approximately 30 staff, with 13 staff on the premises at any one time during peak periods. Proposed patron numbers are generally consistent with current operations with a maximum of 440 patrons.

The plans were amended in response to issues raised by CN staff during the development assessment process. The submitted information included amended acoustic reports, amendments and additional plan detail relative to the design of the development, floor plans, including the proposed tavern, amendments to the perimeter acoustic fencing to secure the site and assist in the mitigation of noise from the proposed tavern and amendments within the car parking area to address traffic, parking, access and safety requirements.

### **Public Voice Committee**

The proposal was considered at a meeting of the Public Voice Committee on 20 August 2019. Concerns were raised with regards to the proximity of the new tavern closer to residential properties and the potential for adverse amenity impacts.

Following on from the Public Voice Committee, Councillors requested the applicant consider the key concerns of objectors with a view to resolving these concerns by preferably relocating the new tavern further from residential properties or redesigning the tavern to resolve potential amenity concerns.

In response to concerns raised, the applicant consulted further with objectors and in addressing concerns raised during the process and submitted amended plans. The new tavern remains in the same location on site, but has been redesigned and below are the key changes in summary:

- i) Redesign of the tavern (now internalised and orientated away from the residents).
- ii) Removal of the outdoor beer garden in the north-eastern corner of the site.
- iii) Reduction in extent of acoustic perimeter fencing (2m portion of acoustic fence along the north-eastern corner of the site removed), with a small section of 1.8m high acoustic fence remaining as previously proposed.
- iv) Internal redesign has resulted in a more efficient use of space, resulting in an improved internal circulation, separation of the public bar from the restaurant / dining area and a slight increase in floor space from the tavern layout previously proposed (internal floor area now 750m<sup>2</sup> and reduced external area now 129m<sup>2</sup>).
- v) Outdoor dining area with access from the restaurant is now proposed fronting the internal carpark area.
- vi) Revised Noise assessment report.
- vii) Installation of a sound monitor.
- viii) Some variations in material finishes, colour and planting to contribute to an aesthetically pleasing finish to the tavern and improvement in the overall streetscape.

The applicant has outlined that the need to relocate the tavern from its current location is driven by the following:

- i) To provide a physical separation from the retail components of the centre allowing all retail to co-locate consistent with retail design principles.
- ii) To create a new identity for the tavern aimed at a more family orientated venue.

- iii) The tavern is an opportunity to provide a corner building element with improved visual interest in the streetscape.
- iv) The current taverns location is orientated north-east as it presents to the internal carpark. This orientation is currently facing directly towards the surrounding residences on the opposite side of Maryland Drive. The relocation and internalisation of the proposed tavern is considered a positive change, aimed at a reduction in the possibility of acoustic impacts.

The proposed tavern operating hours were previously amended to match the current approved trading hours of the existing tavern. The tavern operating hours consist of:

- 1) Trading hours - Monday to Saturday, 10:00am to 12:00 midnight, and Sunday, 10:00am to 10:00pm
- 2) Hours of live music and entertainment – Monday to Saturday, 10:00am to 11:00pm, and Sunday, 10:00am to 9:00pm

The potential for adverse noise impact was a key area of concern. An amended noise assessment report prepared by Spectrum Acoustics dated September 2019 was submitted to support the amended proposal. The applicant identified the below measures to be implemented to assist in minimising the potential for adverse noise impacts on residential properties:

- i) Locating the rear of the building along the Boundary Road frontage to ensure music noise levels at residences are well below the noise criteria in the existing licence.
- ii) The portion of 1.8m high acoustic fence along the Boundary Road frontage will remain as previously proposed.
- iii) The ceiling of the main bar area, where entertainment would be situated, would incorporate multiple layers of plasterboard and insulation to reduce noise transmission through the roof.
- iv) A noise limiting device would be installed to ensure music noise does not exceed a pre-set maximum level.
- v) There is no requested increase in the hours of operation.
- vi) Live music would cease one hour before end of trade. This will facilitate the gradual exit of patrons and ensure all noise generating activities cease before midnight.

The noise report confirms that there are no exceedances of the low frequency audibility criteria. An assessment of the report has been undertaken and the acoustic consultant has theoretically assessed noise sources from the relocation of

the tavern against nearby receivers. The Noise assessment theoretically modelled low frequency noise, patron noise and mechanical plant from the subject site and determined that with proposed mitigation measures the project noise goals for the site would be achieved.

It is anticipated that any significant acoustic impacts will be mitigated with the orientation of the premises whereby there are limited openings facing residential receivers, an acoustic barrier proposed along with the applicant stating that all live music will cease at 11:00pm all of which will be recommended as conditions of consent, contained within the Draft Schedule of Conditions (refer to **Attachment B**).

The proposal is considered to result in an updated shopping centre development with relocated tavern facilities that is unlikely to pose unreasonable noise amenity impacts on the surrounding residential properties in the locality.

While the proposed tavern remains within the same location on site as originally proposed, the redesign of the tavern building overall is considered a better design outcome in response to concerns raised.

The building is now more internalised and orientated away from residents with removal of the main outdoor beer garden seen as a positive outcome. The amendments to the building treatments and extent of acoustic fencing required along Maryland Drive and partially along Boundary Road is considered as an improved development and streetscape outcome. A building within this location on site will provide a connection or built form presence at this end of the shopping centre site creating an attractive integrated entry statement to the existing shopping centre precinct. The building will also screen the existing large open-air carpark area from these external property boundaries which will improve the overall aesthetics and amenity impacts resulting from the shopping centre and tavern facilities which currently exist on the site.

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

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

### **3.0 PUBLIC NOTIFICATION**

The original application was publicly notified in accordance with CN's Public Participation Policy. A total of 15 submissions were received objecting to the proposal, including one submission received after closing of the notification period.

Three petitions were received, with two of the petitions objecting to the application, with 69 and 23 signatures respectively. The third petition (44 signatures) was supportive of the application. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

- i) Visual and acoustic privacy
- ii) Safety and security

- iii) Anti-social behaviour
- iv) Smoking and food odours
- v) Design / placement of tavern outdoor beer garden areas
- vi) Economic and property values
- vii) Potential property damage
- viii) Future childcare centre inappropriate, due to existing over-supply and non-compliant

The latest amended plans were publicly notified in accordance with CN's Public Participation Policy. A total of 9 submissions were received (7 objecting and 2 in support) to the proposal with key areas of concern consistent with concerns raised during the original public participation period. Two petitions were received in support of the proposal, with 310 and 69 signatures respectively. Four (4) late submissions in support were received outside of the notification period.

The objector's concerns are addressed under the relevant matters for consideration in the following section of this report.

#### **4.0 INTEGRATED DEVELOPMENT**

The proposal is integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*, as approval is required from the Natural Resources Access Regulators (NRAR) (formerly known as Office of Water), as part of the proposed development requires a Controlled Activity approval under the *Water Management Act 2000*, due to the proximity of a watercourse. The NRAR granted their '*General Terms of Approval*', on 16 November 2018 (copy included at **Attachment D**).

#### **5.0 PLANNING ASSESSMENT**

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.

##### **5.1 Provisions of any environmental planning instrument**

###### **State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)**

This policy applies to the proposed development and contains planning controls for the remediation of contaminated land.

SEPP 55 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject land is currently being used for a shopping centre. The site is not identified as being contaminated and the site is not known to have historically

accommodated potentially contaminating activities. The proposal is acceptable having regard to this policy.

### **State Environmental Planning Policy (Coastal Management) 2018**

This policy establishes the strategic land use planning framework for coastal management and supports implementation of the management objectives set out in the *Coastal Management Act 2016*.

The site is identified as being located within the NSW Coastal Zone as it falls within the proximity area to coastal wetlands. It is not mapped as being within coastal wetlands or a littoral rainforest area.

The SEPP identifies specific considerations for development on land within the coastal zone. The proposal, as demonstrated within the submitted Water Cycle Management Plan, will not have an impact on the hydrological or ecological integrity of downstream areas mapped as coastal wetlands.

Appropriate sediment and erosion controls are to be implemented as part of the development and construction management processes. A condition in this respect has been included in the Draft Schedule of Conditions (refer to **Attachment B**).

### **State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)**

This policy facilitates the effective delivery of infrastructure across the State.

The proposal was required to be referred to Ausgrid, in accordance with the provisions of the ISEPP. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

### **State Environmental Planning Policy No 64—Advertising and Signage (SEPP 64)**

This policy aims to ensure that signage (including advertising) is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.

New external signage is proposed for the refurbished Maryland shopping centre and for the relocated tavern, with the proposed signs being defined as '*Business Identification*' signs. The proposal is aimed at providing a consistent signage theme throughout the centre.

The proposal includes ten signs with illumination, located on the frontage of each tenancy and directed internally towards the car park area. Illumination hours are likely to align with existing operating hours at the shopping centre. A condition is recommended to limit the hours for illumination and has been included in the Draft Schedule of Conditions (refer to **Attachment B**).

The proposed signage is considered acceptable having regard to SEPP 64 requirements, the nature of the development and surrounding lands.

### **Newcastle Local Environmental Plan 2012 (NLEP 2012)**

The following summarises an assessment of the proposal against the provisions of NLEP 2012 that are primarily relevant to the proposed development:

#### Clause 2.1 - Land Use Zones

The subject property is included within the B2 Local Centre zone under the provisions of the NLEP 2012, within which zone the proposed development is permissible with CN's consent.

The proposed development is consistent with the objectives of the B2 Local Centre zone, which are:

- i) To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local centre.
- ii) To encourage employment opportunities in accessible locations.
- iii) To maximise public transport patronage and encourage walking and cycling.
- iv) To provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.

To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of the Newcastle City Centre.

#### Clause 2.7 - Demolition Requires Development Consent

The proposal includes partial demolition of some elements of the structures on the site, to enable the proposed alterations and additions to the shopping centre. Conditions are recommended to require that demolition works and the disposal of material be managed appropriately and in accordance with relevant standards (refer to **Attachment B**).

#### Clause 4.3 - Height of Buildings

Under NLEP 2012 the site has a maximum height limit of 11 metres. The submitted height of the alterations and additions is 9.42m at the highest point of the 'pergola' entrance feature and complies with this requirement. This is an increase of 675mm above the centre's existing building height.



The proposal is considered to be acceptable with respect to the provisions of this clause.

Clause 4.4 - Floor Space Ratio

Under NLEP 2012 the site has a maximum 1.5:1 floor space ratio (FSR). The proposed FSR is 0.44:1 and complies with this requirement.

The proposal is considered to be acceptable with respect to the provisions of this clause.

Clause 4.5 - Calculation of Floor Space Ratio and Site Area

Under the NLEP 2012 the site has an area of 13,930m<sup>2</sup> and a proposed gross floor area of approximately 6,098m<sup>2</sup>.

The floor space ratio has been calculated having regard to this clause.

Clause 6.1 - Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils and the proposed development is considered satisfactory in this regard, as no significant excavation is proposed.

Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography and current site development.

Clause 6.5 Public Safety - Licensed Premises

Consideration of any impact on public safety is required under the provisions of this clause. A Social Impact Assessment (SIA) and Crime Prevention Through Environmental Design (CPTED) report has been submitted with the application.

The proposal was referred to the Liquor Licensing Reference Group and NSW Police. The NSW Police advice raised no objection to the proposal, provided consideration was given to various matters, including noise emissions and a number of recommended conditions.

Internal referral advice from CN's Community Planner (Community Safety) was provided on key CPTED principles of access control, surveillance, space management, lighting and plan of management. Additional information was submitted that addressed areas of initial concern.

The proposed tavern will continue to be accountable under their existing Liquor License provisions and Plan of Management that is associated with the licensed premises.

Public safety will be discussed further in this report under the provisions of NDCP 2012.

The proposal is considered to be acceptable in respect to this clause.

Recommended conditions are contained in the Draft Schedule of Conditions (refer to **Attachment B**).

## **5.2 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.

## **5.3 Any development control plan**

### **Newcastle Development Control Plan 2012 (NDCP 2012)**

The main planning requirements of relevance in the NDCP 2012 are discussed below:

#### Commercial Uses - Section 3.10

The aims of this section are to enhance the economic viability of commercial centres and to encourage commercial development that has a positive contribution to surrounding development.

The Statement of Environmental Effects submitted with the application, outlines how the proposal seeks to re-activate an existing commercial shopping centre, encourage new commercial uses within the centre and provide improved services to the community. The proposal facilitates increased and improved pedestrian access from the street frontage through the provision of a newer, safer pedestrian pathway from Maryland Drive through to the entrance of the shopping centre. The relocated tavern on the corner of the site contributes to the activation of the street frontages and presents a new contemporary building to the corner of Maryland Drive and Boundary Road.

The proposed tavern will maintain a setback along Boundary Road consistent with the already established centre. The amended plans included redesign of the tavern (now internalised and orientated away from the residents), removal of the outdoor beer garden and amendments to the treatment of both building and perimeter fencing treatments with reduction in the extent of acoustic barrier fencing required along Maryland Drive and Boundary Road. The carpark will also be screened when viewed from Boundary Road, given the location of the new tavern, perimeter acoustic fencing and landscaping treatments associated with the centre upgrade that are proposed along parts of the Boundary Road and Maryland Drive frontages.

While reducing street activation, the amended tavern design and reduction in the extent of acoustic privacy fencing around the boundaries of the new tavern continue

to assist in enhancing the built form presence at this end of the site and create an attractive integrated entry statement to the entire shopping centre precinct. The reduction in extent of acoustic perimeter fencing ensures that visual amenity and streetscape aesthetics are maintained and enhanced through this proposal.

The proposal is considered acceptable in the context of the existing shopping centre and its refurbishment to upgrade services and facilities within this B2 Local Centre zone.

#### Flood Management - Section 4.01

CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

*"The site is subject to flooding and the Flood information certificate has been obtained (FL2018/00234) dated 14 September 2018.*

*The site is affected by the ocean flooding in the PMF event and Hunter River flooding in both the PMF and 1% AEP events. The proposal involves partial redevelopment of the shopping centre including a new tavern building, change of layout and resurfacing of the carpark, minor alterations and change of tenancies. The primary use of the site will remain wholly commercial.*

*The existing floor spaces at the centre would not warrant reassessment for flooding insofar as they remain consistent with the approved uses. It is noted that the finished floor level (FFL) for the existing shops of 4.21m is marginally lower than the prescribed Flood Planning Level of 4.30m but would still achieve a freeboard of over 400mm.*

*The FFL for the proposed tavern has been set at the Flood Planning Level of 4.30m, achieving 500mm freeboard above the 1% AEP flood level.*

*The design levels for the resurfaced carpark will closely replicate the existing surface levels across the carparking which vary from 3.67m – 4.19m AHD. Although there are some low points internally which are lower than the 1% AEP level to allow for drainage, the perimeter of the carpark is higher than 3.80m AHD and would prevent the carpark from being affected by the 1% AEP Hunter River flooding event.*

*No on-site flood refuge is required as the site is not affected by flash flooding."*

Accordingly, the proposal is considered to be acceptable in relation to flooding risk.

#### Safety and Security - Section 4.04

The aims of this section are:

- i) To provide actual and perceived safe environments and minimise opportunities for criminal and anti-social behaviour.

- ii) To ensure features that contribute to safety and security are incorporated into new development.
- iii) To ensure the incorporation of Crime Prevention Through Environmental Design (CPTED) principles in new development.

A Social Impact Assessment (SIA) and CPTED report have been submitted with the application. The existing tavern, proposed to be relocated on site, will continue to operate under an existing Liquor License and Plan of Management.

The proposal was referred to the Liquor Licensing Reference Group (LLRG) and NSW Police. The NSW Police advice raised no objection to the proposal, provided consideration was given to various matters, including noise emissions and a number of recommended conditions.

Advice from the LLRG during the assessment was provided as follows:

- i) *“Need to clarify - proposed beer garden noise and mitigation measures to address car park screening safety issues caused by new tavern.*
- ii) *Childcare (shop 13) is proposed for the site, however not part of this DA. Concerns raised at LPRG of proposed childcare centre within same complex as two licence premises bottle shop and tavern. Not part of development application so comments reserved for any future development application if lodged.*
- iii) *Also concerns raised of noise impacts from beer garden area on residential to the North and East.*

*Further, safety concerns raised that tavern location will ‘block / screen’ the shopping centre carpark from Boundary Road significantly limiting surveillance opportunities from North.”*

CN's Community Planner (Community Safety) has considered the key CPTED principles of access control, surveillance, space management, lighting and plan of management. Additional information was requested regarding concerns outlined below and their responses.

*“Access Control*

- i) *Further clarification required whether any land uses are proposed to operate outside standard business hours (eg. tavern, gym, loading dock). If yes, the applicant is requested to submit details of access and security initiatives to aid safety of staff and patrons outside standard business hours.*
- ii) *Identify the access and security control measures intended to be used to ensure safety of users of the back of house area of the Shopping Centre*

*running along Boundary Road and the newly proposed Service Walkway between the Tavern Beer Garden and Shop 6.”*

The applicant provided additional information as follows:

*“Operating hours will depend on tenancy type and current hours of operation will remain consistent with approvals. Access and security initiatives to aid safety of staff and patrons outside of standard hours need to be considered. General safety principles would include:*

- i) Staff will be encouraged to park private vehicles close to their place of employment after hours.*
- ii) Minimum of two people at close, so no single person left to walk alone to vehicle / wait for third party transport (bus, taxi or private vehicle).*
- iii) As per CPTED, after hours security patrols are recommended and have specific roles / responsibilities that are outlined in the Plan of Management (POM submitted).*
- iv) Designated security street patrols for the tavern as outlined in POM.*

*Service walkway should be secure, lit and monitored via CCTV. All rear service doors to be lit and monitored via CCTV including internal monitor to ensure area is safe before staff leave the building.*

*“Surveillance*

- i) The applicant is requested to provide details of measures proposed to enhance the safety of users of the southern pedestrian pathway between the Shopping Centre and the creek, day and night.*
- ii) Replacing the entrance sign’s solid structure with an option that allows visibility at ground level and eye-height will assist with maintaining lines of sight and ensure it is not used as a concealment spot immediately adjacent the new footpath link and pedestrian walkway.*

*Low level shrubbery at the entrance to the car park from Maryland Drive, beneath the entrance signage and garden area adjacent the footpath link and pedestrian walkway is recommended to ensure lines of sight are not obstructed through to the Shopping Centre and not used as concealment spots.”*

The applicant provided additional information, suggesting there is no pedestrian pathway between the development site and creek along the southern boundary. The boundary in this area will be secure, meaning the public will not be able to access the boundary between the creek and development site.

The existing open pathway along the southern side of the carpark is outside the subject site (on adjoining Lot 513 DP 717019). No change is proposed to this portion of the path as it will provide pedestrian access to the site and prevents pedestrians from having to walk through the carpark. This pathway will terminate at the south eastern corner of Shop 13, with access along the southern boundary behind Shop 13 proposed to be restricted by the installation of a gate and security fencing, along the boundary of the site behind Shop 12 and Shop 13. Therefore, pedestrian access is not proposed to be provided or encouraged from the carpark along the southern boundary of the site around to the back of house / loading dock. If required, the remnant footpath can be removed. This will encourage pedestrians to access the shopping centre via the main access points from Maryland Drive or Boundary Road.

The available area within the site could potentially be used as a service walkway / emergency exit for Shop 12 and 13. If so, the area will be required to be lit and CCTV cameras installed as per any of the back of house areas.

Generally speaking, the line of sight guide for vegetation should also apply to other hard structures that may inhibit line of site where possible. This could include signage whereby the bottom of the sign should be greater than 1.8m from the ground.

As per CPTED, shrubs should not be greater than 1m in height and the canopy of tall trees should be higher than 1.8m.

*“Space Management*

- i) Clarification is required whether wayfinding signage will be provided throughout the site to enable users to locate key services and facilities, eg. amenities, bus stop, tavern, etc. For instance, providing directional signage for the bus stop will be particularly important as it will likely not be visible from the shopping centre or car park as visually obstructed by the relocated Tavern and will not be able to be accessed via the northern pedestrian ramp following its removal. People will require both information about the location of bus stop as well as what paths of travel to access the stop.*
- ii) The location of the public amenities in the Shopping Centre has limited opportunity for casual surveillance as located down a corridor at the rear of the Centre. Ideally these would be relocated to an area that has ‘high pedestrian and public activity’, otherwise identify the measures proposed to enhance the safety of users.*
- iii) Site plans are to detail location of ATMs, bicycle racks, mini-bus / taxi ranks and set down / pick up points. These uses are to be in areas that have ‘high pedestrian and public activity’ to promote safety and reduce opportunities for criminal behaviour.”*

The applicant considered that the proposal will be consistent with the provisions of CPTED in relation to appropriate directional signage, entry / exit points, pedestrian

access markings and overall orientation and wayfinding through the centre. Public amenities are existing within the current shopping centre and relocation of these do not form part of this application. Given their location, the existing centre operations would provide pedestrian traffic providing surveillance opportunities. It is recommended that CCTV is provided at the entry to the amenities corridor. A cleaners' store could also be incorporated to promote further surveillance opportunities. It is presumed that ATMs will be provided within the tavern and therefore monitored. ATMs as part of the shopping centre will be located so as to provide a reasonable level of security and surveillance as part of any normal shopping centre function. Bicycle racks are to be appropriately located to promote surveillance.

*"Lighting*

- i) The applicant is requested to provide details for lighting of the site, including but not limited to the back of house area to the north (behind shops 1A to Shop 6), the pathway along the southern boundary and the loading dock, the car park and vehicle entrance way."*

Lighting will be as per CPTED and the relevant Australian Standard. Back of house areas are to be secure and include CCTV to service entry points, loading docks and so on. CPTED states the 'back of house' area is concealed and therefore difficult to monitor, CCTV is recommended here and the entry should be secure after hours.

*"Plan of Management*

*Please provide a Plan of Management for the proposed Tavern which includes:*

- i) Hours of operation (recommended 10am to 12 midnight Mon-Sat and 10am-10pm Sundays), patron numbers and gaming machine numbers.*
- ii) The intended policies for removal of graffiti and rapid repair of vandalism.*
- iii) The intended policies for security management including but not limited to.*
- iv) Details of what security procedures will be incorporated to promote public safety, safe dispersal of patrons and reduce opportunities for criminal behaviour on the premises (eg. CCTV provision and maintenance, security of staff and late night security); procedures for reducing the opportunities for aggressive or criminal behaviours such as aggression toward staff and patrons and risk of robbery; procedures to reduce anti-social behaviour and congregation on-site, with specific regard to car parking area.*
- v) Southern pedestrian pathway between shopping centre and creek, day and night.*

*Applicant is required to recommend mitigation measures to enhance the safety of users of the pathway day and night. Note: the amended CPTED report states there is no southern pathway, which is not accurate."*

Plan of Management and Liquor License provided with the application. The CPTED report states removal of graffiti and any vandalism (including broken lights etc) should be removed / repaired within 24 hours. CCTV for the licensed premises can only be developed with a detailed floor plan as per NSW comments in relation to the proposal. The PoM and Liquor license outlines general safety principles for the tavern.

Internal referral advice from CN's Community Safety Officer was provided on re-referral and the following information was requested:

*Increased height of acoustic barrier along Boundary Road frontage.*

*Elevation 9-11: north elevation – Boundary Road – the information demonstrates the increased height of the acoustic barrier totally obscures any lines of sight into and out the car park from Boundary Road and Maryland Drive. In addition, the development's design engulfs three sides of the shopping centre site, creating a horseshoe effect, which further limits lines of sight into and out of the area.*

*The applicant is required to address this safety issue and recommend mitigation measures to enhance lines of sight into and out of the development. Further graffiti management and beautification measures are to be recommended for the acoustic barrier.*

The applicant in response advises that the physical design of the fence (materials used, painted finish etc) can be such to minimise visual impact.

As the site is proposed to be developed around the northern boundary, surveillance from Boundary Road into the site is not as critical. There will be a physical presence with the introduction of the new tenancies and relocated tavern which are orientated towards the carpark area, providing for ample surveillance opportunities.

It is not recommended that any installations, such as plants, be installed adjacent to the fence, as that can create a ladder to the roof.

The latest amended proposal has seen the extent of acoustic perimeter fencing reduced (2m portion along the north-eastern corner of the site has been removed, with a small section of 1.8m high acoustic fence remaining as previously proposed) due to redesign of the tavern building and to assist with visual streetscape concerns, and this will also contribute toward improved passive surveillance into and out of the site.

Additional information submitted to accompany the CPTED assessment lodged with the application and in response to assessment concerns provided the following:

- i) Service walkway to be secure, lit and monitored via CCTV.



- ii) All rear service doors to be lit and monitored via CCTV including internal monitor to ensure area is safe before staff leave the building.

The final assessment advice received from CN's Community Planner (Community Safety) advised that all previous issues and need for information has been addressed. The only remaining concern, not necessarily a CPTED matter, was the removal of the alternative pedestrian pathway down into the shopping centre site, directly from the bus stop located on Boundary Road (north-eastern end) of property.

It is considered that, whilst it is convenient to have multiple access points into a shopping centre site where possible, pedestrians will not have an unreasonable distance to walk around into Maryland Drive and into the main shopping centre entrance. This is also considered a safer option with full street surveillance rather than following a pathway that is currently at the back of house of the existing shopping centre, obscured by the topography and retained embankment as you walk down from street level and into the site.

The proposal is considered acceptable in relation to this section.

Relevant conditions have been included in the Draft Schedule of Conditions (refer to **Attachment B**).

#### Social Impact - Section 4.05

The aims of this section are:

- i) To provide clear guidelines as to the level of assessment required for a development application.
- ii) To consider both positive and negative social impacts in achieving socially sustainable development through an evidenced based approach.
- iii) To ensure consultation is undertaken with the community, stakeholders and relevant groups to identify public values and concerns.
- iv) To consider how potential social impacts of change can be best managed and mitigated.

Relevant reports were submitted with the application and additional information was received, addressing relevant comments provided by CN's Community Planner (Community Safety).

The Social Impact Assessment indicates that the proposed refurbishment of the centre will ensure continued use in its current form. From this perspective social impacts are expected to be largely neutral.

However, the refurbishment and anticipated increase in available services are expected to have a positive amenity effect for patrons of the centre and for the community in general, through the following:

- i) Improved aesthetics and practical amenity of the centre as a retail and community space encouraging increased patronage.
- ii) Relocation of the tavern may reduce noise effects as experienced by residents in relation to the existing tavern due to a number of factors – adjacent to retained embankment and realignment of building, with frontage facing away from residences.
- iii) Range of services, including a planned supermarket within the centre, proposed village-style configuration, all likely to increase general patronage for businesses and restore the centre as a retail and social hub within Maryland.
- iv) Increased patronage will improve security and territorial enforcement in the centre and its surrounds.
- v) Reconfiguration of the car park, including upgrade of traffic infrastructure, along with increased use, is likely to discourage misuse of vehicles and other misbehaviour in the carpark and its immediate vicinity.
- vi) The proposal will generate local employment opportunity during the construction and operational phases of the development.
- vii) The proposal is unlikely to be a high-risk development with respect to crime and public safety and will improve casual surveillance from the site, with an increased regular physical presence on the site.

The proposed alterations / additions to Maryland shopping centre is likely to result in positive socio-economic outcomes, particularly as the existing centre is currently in a state of disrepair. The local community and other patrons are likely to enjoy greater amenity, more services and the return of a local social hub to its former state.

In relation to the relocated tavern premises, it will continue to operate under the existing Liquor License and its requirements, together with the Plan of Management for the licensed premise.

#### Soil Management - Section 5.01

The application included engineering plans and a water cycle management plan which addressed relevant soil management matters. The stormwater management plan aims to minimise soil erosion and sedimentation. Conditions are recommended and have been included in the Draft Schedule of Conditions (refer to **Attachment B**).

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with the requirements of SEPP 55.

Vegetation Management - Section 5.03

To facilitate the proposed works, there will be an impact on some trees in the north eastern corner of the site.

In support of the proposed works, the applicant submitted additional information as follows:

*“The site contains some existing trees along the northern boundary and planted areas through the carpark. Some existing trees within the north-eastern corner of the site will be required to be removed to facilitate the relocation of the tavern. Trees will be retained where possible and at the landscaping phase of the development these trees will be replaced as shown on the landscaping plans submitted with the application.”*

The scale of tree removal and the extent of retention of Callistemon and Melealuca trees in the north eastern corner, along with compensatory planting as part of the broader landscaping scheme, is considered suitable for the site and will result in an improved landscaping and vegetation management outcome for the shopping centre site and surrounding lands. The amenity of the area will not be significantly impacted in respect of the local character and appearance and the proposal is acceptable with regard to this section.

Appropriate conditions have been included in the Draft Schedule of Conditions (refer to **Attachment B**).

Landscape Open Space and Visual Amenity - Section 7.02

The aims of this section that are relevant include creating public places that strengthen our social connections, ensure that public places provide for diverse leisure opportunities, ensure that landscaping is integrated into the design of the development, improve stormwater management and ensure buildings and structures do not detract from the character of the area.

The site is largely screened by trees on adjoining land along the southern and western external boundaries of the site, while the site itself currently contains very little formal landscaping.

As part of new works, new landscaping is proposed within garden beds throughout the car park and entrance driveway, along both street frontages and around the relocated tavern building. Detailed landscaping plans have been submitted originally with the application and amended, relative to the tavern design changes in the current revised architectural plan set. An appropriate condition has been included in the Draft Schedule of Conditions (refer to **Attachment B**).

Proposed landscaping works include:

- i) 10 garden beds throughout the car park area.
- ii) Proposed planter boxes at the entrance to the centre and as part of the relocated tavern.
- iii) Retention of street trees along the frontages of the site.
- iv) 16 new trees are proposed throughout the car park and driveway entrance.

The above landscaping works together with new awnings over the pedestrian walkway along the shopfronts and existing established trees will all contribute to the provision of shade, amenity and a more pleasing aesthetic within this shopping centre site and will contribute to the amenity of surrounding lands.

The proposal is considered to be acceptable in relation to this section.

Appropriate conditions have been included in the Draft Schedule of Conditions (refer to **Attachment B**).

#### Traffic, Parking and Access - Section 7.03

CN's Development Officer (Engineering) has provided the following comments in relation to the proposal:

*"The subject site has road frontages to Maryland Drive and Boundary Road. Both Maryland Drive and Boundary Road are unclassified collector roads under the care and control of CN, approximately 13m wide with a legal speed limit of 50km/h. There is an existing driveway on Boundary Road for loading operations which will remain with this development.*

#### *Traffic Generation*

*The proposed application has been supported by a Traffic and parking report prepared by McLaren Traffic ('the report'). A comparison of the pre-development and post-development uses for trip generation has been conducted to analyse the likely impact of the proposal on the local road network.*

*The approach adopted for the calculations is supportable by CN. The proposed development (assuming all tenancies are occupied) is estimated to generate an additional 13 vph (vehicle trips per hour) during the PM peak. The traffic generation of the proposed development was assessed with the application for the current shopping centre. The scale of this development is in-line with that modelled for the design of the surrounding road network catering for the shopping centre. It is therefore concluded that the local road network can adequately cater*

*for the minor additional vehicle trips generated by the proposed development and the traffic impact is supportable by CN.*

#### *Public Domain*

*No further public domain works are required to facilitate the proposed development. A condition is recommended to ensure that the developer is responsible for any repair or transition works to existing public infrastructure on Maryland Drive associated with the driveway widening.*

#### *Vehicular access, driveway design and crossing location*

*All vehicular access to the existing customer carpark is provided off Maryland Drive. The proposed works affecting access to the carpark are limited to minor reconfiguration of the existing shared entry / exit driveway which will be widened to 15m (22m including splays). A localised median will be provided to separate entry and exit vehicle movements. The layout of the existing 180 space carparking area will be reconfigured into 156 spaces (including 4 disabled parking spaces) in order to accommodate the new tavern at the north-east corner of the site. The carpark design is generally compliant with NDCP 2012 and AS 2890.1 specification for Class 3A carparks, providing 5.4m by 2.7m spaces for 90 degree parking and a 6.2m circulation aisle width.*

*A turning path diagram has been provided to demonstrate that an 8.8m long Medium Rigid (MRV) service truck may adequately manoeuvre around the circulation driveway. A new shared loading bay has also been provided adjacent to the exit driveway for the commercial tenancies (dedicated loading bay provided for supermarket on Boundary Road). The turning path diagram shows that the location of the loading bay next to the exit driveway requires an additional reversing manoeuvre that is likely to interfere with circulation traffic. It is recommended that the load bay be relocated away from the exist such that service vehicles may egress from the loading bay in one vehicle movement. It is also recommended that the loading bay is located closer to the majority of tenancies so it may be more conveniently accessible.*

*A revised carpark layout plan was submitted showing relocated loading bay designed for up to the medium rigid vehicle (MRV). There is an existing loading bay on Boundary Road servicing larger service vehicles for the major supermarket at the shopping centre. The new loading bay is located closer to the majority of tenancies it will service and away from the carpark's exit driveway. The turning paths provided demonstrate satisfactory manoeuvring in and out of the proposed loading bay. It is noted that the provision of this new loading bay has resulted in the loss of five car parking spaces. The level of on-site parking provided by the overall development has therefore been reassessed. The proposed development now provides a total of 151 car parking spaces. Based on the calculations provided and supported in the Traffic impact assessment the revised carpark design will remain adequate in meeting peak overall parking demand generated by the proposed development. Peak demand was previously calculated to be 150 spaces in the Traffic impact assessment report.*

*The revised carpark design plans have provided parking facilities for ten bicycles (bike rack located at entrance to supermarket building) and two motorcycle spaces. The revised carpark design complies with CN's current NDCP 2012 requirements for on-site parking."*

The proposal is acceptable having regard to this section. Conditions relating to traffic, access and parking have been included in the Draft Schedule of Conditions (refer to **Attachment B**).

Section 7.05 - Energy efficiency

The application proposes a design to promote best practice energy use with a more efficient layout, materials, fittings and fixtures applied to the centre and new tavern which will improve energy efficiency of the overall shopping centre.

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

An internal referral to CN's Development Officer (Engineering) has provided the following comments in relation to the proposal:

*"The subject site has a total area of 13,930m<sup>2</sup>, with the proposed development affecting approximately 7,300m<sup>2</sup> of site. However, there is no net increase in impervious area resulting from the development. A new internal pit and pipe drainage system will be constructed to facilitate the reconfiguration of the carpark layout. The existing stormwater drainage philosophy for the site will not be altered and continue to drain to the street system. The outlet pipe will be connected directly to a new kerb inlet pit on Maryland Drive at the south-east corner of the property, which will be constructed as part of the development. There is a second order watercourse directly downstream of the site which means the provision of any new on-site detention would likely have minimal benefit for the overall catchment.*

*The modified carpark will provide a number of on-site water quality devices prior to discharge from the development, including pit screens, litter baskets and a proprietary GPT system. A MUSIC model has been undertaken to successfully demonstrate the proposed treatment trains comply with CN's pollutant reduction targets for stormwater."*

Accordingly, the proposal is acceptable in relation to water management. Conditions relating to stormwater management have been included in the Draft Schedule of Conditions (refer to **Attachment B**).

Waste Management - Section 7.08

A waste management plan has been lodged with the application, addressing waste minimisation and litter management strategies regarding demolition, construction and operational waste management.

The existing shopping centre has a designated 'on-site' waste storage area for both the supermarket, speciality tenants and the tavern. Waste and recycling will be stored in the designated area collection. Separate bin areas are provided for each of the tenancies, with the waste storage and collection area located within the existing loading dock area off Boundary Road. Waste storage and collection times will be in accordance with DCP requirements and the shopping centre's existing private contractor arrangements will be utilised in the waste management process.

Based on the existing shopping centre operations and the submitted information the proposal is considered to be acceptable in relation to waste management. Conditions relating to waste management have been included in the Draft Schedule of Conditions (refer to **Attachment B**).

Advertising and Signage - Section 7.09

The application proposes signage to provide new external (business identification) signage to refurbished Maryland shopping centre and new tavern. The proposal aims to provide a consistent signage theme throughout the centre.

The proposal includes a total of 17 business identification signs throughout the centre and on the new tavern building. Ten of these signs will be illuminated and are to be located on the front of each tenancy, facing internally towards the carpark area. Illumination hours have not been confirmed though it is anticipated that these will align with existing operating hours at the shopping centre.

A breakdown of signs proposed include:

- i) One new centre pylon sign
- ii) Two tavern flush wall signs
- iii) One supermarket retailer flush wall sign
- iv) Nine tenancy flush wall signs
- v) Four tavern A1 poster signs – lockable interchangeable displays

The proposal is consistent with the requirements of the DCP for specific signage types and the general controls and is compatible with the existing and desired amenity and visual character of the area. The signage proposal will provide a consistent signage theme for the centre and will be integrated within the design and fabric of the refurbished shopping centre and new tavern building.

The proposed signage is consistent with this section.

Conditions relating to signage have been included in the Draft Schedule of Conditions (refer to **Attachment B**).

Public Participation - Section 8.0

The original proposal was notified to neighbouring properties in accordance with CN's public participation policy and the provisions of the DCP. A total of 15 submissions (inclusive of one late submission) objecting to the proposal were received.

Three petitions were received, with two of the petitions objecting to the application, with 69 and 23 signatures respectively. The third petition (44 signatures) was supportive of the application.

The latest amended plans submitted relative to the redesign of the tavern aspect of the proposal has been re-notified in accordance with CN's public participation policy and the provisions of the DCP. A total of 9 submissions (7 objecting and 2 in support) of the proposal were received during the period. Two petitions were received in support of the proposal, with 310 and 69 signatures respectively. Four (4) late submissions in support were received outside of the period.

Comments are provided in Section 5.8 of this report, below.

Development Contributions

The *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans.

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions (refer to **Attachment B**).

**5.4 Planning Agreements**

No planning agreements are relevant to the proposal.

**5.5 The Regulations (and other plans and policies)**

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*. In addition, compliance with AS2601 – Demolition of Structures will be included in the conditions of consent, in relation to any demolition work.

The site is identified as being within the coastal zone and this is discussed under the provisions of the relevant policy State Environmental Planning Policy (Coastal Management) 2018.

The proposal is considered acceptable in the context of the provisions of the policy.



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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and DCP considerations. In addition, the following social and economic impacts are further considered below.

Acoustic privacy

Advice from CN's Environment Services Team, in relation to acoustic privacy impacts, is as follows:

*"The ESU has reviewed the Noise Assessment prepared by Spectrum Acoustic dated September 2018 in conjunction with the plans prepared by Murray James Building Design and Planning also dated September 2018. The ESU has concerns that the design of the tavern has not been finalised.*

*While its acknowledged that a tavern may potentially operate in the proposed location, no detailed plans have been provided at the time of assessment. An approximate location of live music has been included to assist with the theoretical propagation of noise (Figure 2). The ESU notes statements such as doors are likely to be closed whilst the building is occupied to provide effective control for noise emissions for indoor areas (Section 4.1) and achieving the CN's music noise (low frequency) guideline will require specialist acoustic input during the architectural design stage (Section 5). However, no detail is provided as to the openings or any supporting acoustic data for the construction to support the adequacy or feasibility of these statements.*

*Recommended noise levels have been suggested for mechanical plant however no locations have been nominated. The ESU has experience in dealing with complaints arising from mechanical plant location and mitigation measures being required due to offensive noise impacts. While it is acknowledged that plant selection can be addressed at construction stage, the ESU requires the location of all plant to be included on the plan to make an informed assessment.*

*An acoustic barrier is proposed for north eastern beer garden, yet no barrier is proposed for the northern beer garden. The ESU notes a gaming area adjoins the northern beer garden, where again no acoustic comment is provided regarding noise mitigation.*

*Conditions of consent need to be clear and unambiguous to enable certifiers to interpret and enforce conditions. As such, the ESU requires a detailed site plan that reflects a site-specific acoustic assessment that incorporates any potential recommendations made by the consultant demonstrating the tavern can practically operate meeting the project noise goals.*

As outlined above additional information was provided by the applicant and CN's Environmental Services Team advised as follows:

*The ESU has reviewed the acoustic assessment prepared by Spectrum Acoustics dated May 2019 to support the proposal and notes the following:*

*Section 4.2.3 of the acoustic assessment demonstrates the calculated music noise level at Receiver 1 (which is adjacent to the subject site) exceeds the CN's Low Frequency Noise Guideline by 5- 13dB. Given the level of exceedance, the ESU is of the opinion that will result in adverse impacts upon the receiver.*

*The ESU will require the applicant to address the exceedances and recommend mitigation measures demonstrating compliance with the guideline."*

Additional information and revised Noise Assessment dated June 2019 was provided in response by the applicant and CN's Environmental Services Team advised as follows:

*"A review of the Noise Assessment prepared by Spectrum Acoustics dated June 2019 to support this application. The acoustic consultant has theoretically assessed noise sources from the relocation of the tavern against nearby receivers.*

*The Noise Assessment theoretically modelled low frequency noise, patron noise and mechanical plant from the subject site and determined that with several mitigation measures the project noise goals for the site would be achieved.*

*An acoustic barrier is proposed at the subject site along with a requirement to keep all doors and windows closed during all live music performances, the applicant has stated that all live music will cease at 11pm all of which will be covered by relevant conditions of consent."*

A further revised noise assessment report was submitted to support the application, as a result of a one metre reduction in the height of acoustic barrier fencing proposed along the frontage of the tavern, to address visual streetscape amenity raised as an issue during the assessment of the application. Further advice from CN's Environment Services Team, regarding the revised Noise assessment report, is as follows:

*"Revised acoustic report theoretically demonstrates the one metre reduction in acoustic fencing height is unlikely to result in any adverse acoustic impacts for surrounding receivers. As such, no adjustment to previous assessment commentary and recommended conditions of consent."*

Following consideration of the application at the Public Voice meeting held in August 2019 amended plans and revised acoustic report were submitted. In response to concerns raised the applicant has advised that the following measures are proposed to be implemented to minimise noise impacts:

- i) Locating the rear of the building along the Boundary Road frontage to ensure music noise levels at residences are well below the noise criteria in the existing licence.

- ii) The portion of 1.8m high acoustic fence along the Boundary Road frontage will remain as previously proposed.
- iii) The ceiling of the main bar area, where entertainment would be situated, would incorporate multiple layers of plasterboard and insulation to reduce noise transmission through the roof.
- iv) A noise limiting device would be installed to ensure music noise does not exceed a pre-set maximum level.
- v) There is no requested increase in the hours of operation.
- vi) Live music would cease one hour before end of trade. This will facilitate the gradual exit of patrons and ensure all noise generating activities cease before midnight.

The amended Acoustic assessment report confirms that there are no exceedance of the low frequency audibility criteria.

Further advice from CN's Environment Services Team, regarding the redesigned tavern building and accompanying revised Noise assessment report, is as follows:

*The RSU has reviewed the Noise Assessment prepared by Spectrum Acoustics dated September 2019 to support this application. The acoustic consultant has theoretically assessed noise sources from the relocation of the tavern against nearby receivers.*

*The Noise Assessment theoretically modelled low frequency noise, patron noise and mechanical plant from the subject site and determined that with several mitigation measures the project noise goals for the site would be achieved.*

*It is anticipated that any significant acoustic impacts will be mitigated with the orientation of the premises whereby there are limited openings facing residential receivers, an acoustic barrier proposed along with the applicant stating that all live music will cease at 11pm all of which will be covered by relevant conditions of consent.*

The proposal is considered to result in an updated shopping centre development with relocated tavern facilities that is unlikely to pose unreasonable noise amenity impacts on the surrounding residential properties in the locality.

The proposed development will not have any undue adverse impact on the natural or built environment.

The development is compatible with the existing character, bulk, scale and massing of development in the immediate area.

The alterations and additions to the existing shopping centre and overall refurbishment will have both social and economic benefits through updated commercial shopping facilities for the community. Whilst the relocated tavern is closer to residential properties, further amendments made to the design / configuration of the tavern building has further reduced the potential for adverse amenity impacts, particularly noise impacts reduced through the following:

- i) The location of the new tavern, being adjacent to the embankment/retaining wall in this corner of the site.
- ii) The tavern has been internalised and now presents to the central car park area.
- iii) The beer garden in the north-eastern corner of the site has been removed.
- iv) Retention of some portion of acoustic perimeter fencing where required along Boundary Road frontage but removed along the Maryland Drive and part Boundary Road corner frontages which improves streetscape.
- v) Operational management (ie. operating hours, hours for live music which will also see music cease one hour prior to closing, a noise limiting device to ensure music noise does not exceed a pre-set maximum level, all doors and windows to be closed during entertainment), the Plan of Management for the tavern and existing Liquor License provisions will assist in managing and mitigating the potential for unreasonable impact on the amenity of nearby residences.

Recommended conditions are contained with the draft condition set (refer to **Attachment B**).

#### Odour emissions

It is proposed to update the tavern's Plan of Management and Operation Safety Plan to address the amenity of the neighbourhood. The issue of cigarette smoke will be managed within the overall Plan of Management and relevant State regulations in relation to smoking in license premises.

It is proposed (subject to a condition of consent) to include a section within the revised Plan of Management and Operation Safety Plan to address the amenity of the neighbourhood. It is proposed to include such matters as follows:

- i) At all times the licensee of the venue shall consider the amenity of its neighbours, taking all reasonable measures to ensure that impacts, adverse to the surrounding environment, do not occur.
- ii) The licensee will take all reasonable measures to ensure that the behaviour of staff and patrons, when entering or departing the premises does not detrimentally affect the amenity of the neighbourhood.

- iii) The venue operations shall be conducted in such a manner as not to interfere with, or materially affect the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, vapor, steam, soot, ash, dust, waste water, waste products, grit, oil or otherwise.

Patrons who smoke will be required to be limited to designated smoking areas of the licensed premise, in accordance with current requirements.

In relation to food odours, the existing tavern, in its proposed relocated position, will be housed within a new purpose-built building, with kitchen facilities provided with improved ventilation and exhaust fans systems, compared to the existing tavern, in accordance with current Australian Standards. This should assist in limiting odour emissions to neighbouring residences from the kitchen facilities.

Conditions are recommended within the draft condition set (refer to **Attachment B**).

#### Social impact

Social impact and safety and security have previously been considered in this report in relation to DCP provisions.

It is considered that the proposed alterations / additions to Maryland shopping centre is likely to result in positive socioeconomic outcomes.

Relevant conditions of consent are included in the recommended draft condition set (refer to **Attachment B**), as previously referenced in this report.

### **5.7 The suitability of the site for the development**

The site is serviced by Ausgrid and existing infrastructure in proximity to the site required consideration. A referral under the provisions of State Environmental Planning Policy (Infrastructure) 2007 was undertaken and advice was received from Ausgrid.

The site is in or adjacent to a watercourse (drain or watercourse located off site along the southern boundary in adjoining open space parkland) and a referral was undertaken to the Department of Primary Industries – Water (Water Regulation Group) and General Terms of Approval have been received in response.

The site is suitable for the proposed refurbishment, as the shopping centre is an existing development within the B2 Local Centre zone and consistent with the B2 Local Centre zone objectives under NLEP 2012. The proposed alterations and additions will see the revitalisation of an aging centre. The close proximity of the site to existing services and amenities, public transport and other surrounding suburbs and centres, makes this an ideal site for the ongoing operation as a commercial centre, in turn benefiting the community, both socially and economically.

The existing alternative pedestrian access pathway from Boundary Road, in proximity to the existing public bus stop into the shopping centre site, is removed as part of this application, to make way for the new tavern location. However, the existing footpath areas external to the site, within both Boundary Road and Maryland Drive, will remain.

The main entry / exit to the shopping centre site will remain located within Maryland Drive, in addition to a new pedestrian entry at this point directly into the shopping centre. Vehicular access for loading and unloading within Boundary Road will remain unchanged.

The constraints of the site have been considered in the proposed development, which includes flooding and acid sulfate soils.

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

**5.8 Any submissions made in accordance with this Act or the regulations**

The original proposal was notified to neighbouring properties in accordance with CN’s Public Participation Policy. A total of 15 submissions (inclusive of one late submission) objecting to the proposal were received.

Three petitions were received, with two of the petitions objecting to the application, with 69 and 23 signatures respectively. The third petition (44 signatures) was supportive of the application.

In response to Public Voice Meeting feedback and assessment advice, the proposal was further amended, with respect to the redesign of the new (relocated) tavern building that forms part of the application.

The latest revised proposal was publicly notified in accordance with the CN Public Participation Policy and 9 submissions (7 objecting and 2 in support) to the application were received. Two petitions were received in support of the proposal, with 310 and 69 signatures respectively. Four (4) late submissions in support were received outside of the period.

The key issues raised within the submissions have been discussed previously in this report. The following table provides a summary of the issues raised and further comments on those issues.

Issue	Comment
Proximity of new tavern to residential properties	<p>The new tavern is proposed to be closer to residential properties opposite, in both Boundary Road and Maryland Drive, on the north eastern extremity of the shopping centre site.</p> <p>The new tavern is inward facing to the car park and centre facilities. Site topography results in the site sitting</p>

	<p>lower than surrounding residential development, partially behind a retained embankment and the adjoining Boundary Road and Maryland Drive frontages.</p> <p>The tavern originally proposed new trading hours, however, this was subsequently amended, so that existing hours would be retained.</p> <p>To an extent, the streetscape within both Boundary Road and Maryland Drive will be improved, through built form located within the north eastern corner of the site, to provide an element of integration and streetscape appeal, rather than the existence of an open and somewhat barren carparking area. This built form, with acoustic fencing along the perimeter in this location will also contribute to the provision of a buffer to the activities within the shopping centre site.</p> <p>Recommended conditions are contained within the draft condition set to also manage site operations, within the existing shopping centre site.</p>
<p>Visual and acoustic privacy impacts</p>	<p>The proposed relocated tavern will include a range of construction methods, materials and design elements that are intended to mitigate the potential effects raised by submissions. An Acoustic assessment report was submitted and further revised and the additional measures as intended above are summarised and to be incorporated into design, construction and operation of the tavern.</p> <p>Other key points of consideration include:</p> <ul style="list-style-type: none"> <li>• The tavern and outdoor areas are set down below the street level given the topography of the site and the existing retained embankment at the north eastern corner of the site.</li> <li>• The tavern building is orientated inward facing and away from Maryland Drive and Boundary Road frontages.</li> <li>• An acoustic perimeter fencing treatment along the Boundary Road and Maryland Drive frontage is proposed.</li> <li>• Landscaping will provide additional soft screening for both acoustic and visual amenity.</li> <li>• The ceiling of the tavern will incorporate multiple layers of plasterboard to reduce noise transmission through the roof.</li> <li>• No increase in hours of operation for the relocated</li> </ul>

	<p>tavern is proposed.</p> <ul style="list-style-type: none"> <li>Any live music will cease one hour before end of trade.</li> </ul> <p>NSW Police also recommended conditions that are included in the draft condition set, that will assist with reducing any adverse acoustic privacy impacts. These recommended conditions include:</p> <ul style="list-style-type: none"> <li>Operational management during amplified entertainment or music be kept indoors and with windows / doors closed.</li> <li>CCTV conditions.</li> <li>A limit on patron numbers and no trading past midnight.</li> </ul> <p>The tavern will continue to operate under the existing Liquor License and its requirements, together with the Plan of Management for the licensed premise.</p>
<p>Anti-social behaviour</p>	<p>Social impact and safety and security have previously been considered in this report in relation to DCP provisions. The proposal is considered acceptable in relation to these matters.</p> <p>A Social impact assessment (SIA) and Crime Prevention Through Environmental Design (CPTED) was submitted with the application.</p> <p>Additional information was received addressing relevant comments provided by CN's Community Planner (Community Safety).</p> <p>Relevant conditions of consent are included in the recommended draft condition set (refer to <b>Attachment B</b>), as previously referenced in this report.</p>
<p>Odour emission – cigarette smoke and kitchen operations</p>	<p>Odour emissions have been previously discussed at Section 5.6 of this report.</p> <p>It is proposed to update the tavern's Plan of Management and Operation Safety Plan to address the amenity of the neighbourhood. The issue of cigarette smoke will be managed within the overall Plan of Management and relevant State regulations in relation to smoking in license premises.</p> <p>In relation to food odours, the existing tavern, in its proposed relocated position, will be housed within a new</p>



	<p>purpose-built building, with kitchen facilities provided with improved ventilation and exhaust fans systems, compared to the existing tavern, in accordance with current Australian Standards. This should assist in limiting odour emissions to neighbouring residences from the kitchen facilities.</p> <p>Relevant conditions are recommended within the draft condition set (refer to <b>Attachment B</b>).</p>
<p>Landscaping / tree removal</p>	<p>The proposal will require both retention and removal of existing trees within the north eastern corner of the site.</p> <p>A number of existing Callistemon and Melaleuca trees are being retained in this location, which will assist in maintaining a reasonable level of mature trees for landscaping of the site.</p> <p>The submitted landscaping plans demonstrate upgraded landscaping commensurate with a shopping centre use and will provide a consistent theme of landscaping within the site. Compensatory planting will adequately address any tree loss within the north eastern section of the site.</p> <p>Conditions are recommended within the draft condition set (refer to <b>Attachment B</b>).</p>
<p>Childcare centre is not appropriate and not needed (over-supply).</p>	<p>Concerns relating to the potential for Shop 13 to be used for a childcare centre and being an inappropriate use in proximity to a tavern, along with issues of compliance with relevant requirements / standards for childcare centres, have been raised.</p> <p>These concerns are noted, though the current application does not include a proposal for use of Shop No.13 as a childcare centre.</p> <p>Any future proposal to use the tenancy as a childcare centre would require a separate development application.</p>
<p>Impacts on property values.</p>	<p>This concern is not a matter of consideration pursuant to Section 4.15(1) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>

**5.9 The public interest**

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development.

The proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services and upgrading of an existing local shopping centre.

The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise have a significant adverse impact on the natural environment.

The development is in the public interest and will allow for the orderly and economic development of the land through continued use of the site for a shopping centre.

## **6.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

## **ATTACHMENTS**

**Item 18 Attachment A:** Submitted Plans - 144 Maryland Drive Maryland – Distributed Under Separate Cover

**Item 18 Attachment B:** Draft Schedule of Conditions - 144 Maryland Drive Maryland – Distributed Under Separate Cover

**Item 18 Attachment C:** Processing Chronology - 144 Maryland Drive Maryland – Distributed Under Separate Cover

**Item 18 Attachment D:** General Terms of Approval – Natural Resources Access Regulatory – Formerly known as Department of Primary Industries (Water) and Ausgrid advice – 144 Maryland Drive Maryland – Distributed Under Separate Cover

**Attachments A – D – Distributed Under separate cover**

**ITEM-19**                    **DAC 03/12/19 - DA2017/00789 - 9 BELFORD STREET, BROADMEADOW - ALTERATIONS TO BUILDING FOR CHANGE OF USE TO DWELLING, ERECTION OF FIVE X THREE-STOREY ATTACHED DWELLINGS, ASSOCIATED SITE WORKS AND ONE LOT INTO SIX LOT SUBDIVISION**

**APPLICANT:**                **STOCKTON STREET PTY LTD**  
**OWNER:**                    **STOCKTON STREET PTY LTD**  
**NOTE BY:**                  **GOVERNANCE**  
**CONTACT:**                 **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

**PART I**

**BACKGROUND**

An application has been received seeking consent for alterations to the former Hamilton Fire Station for a change of use to a dwelling, erection of five attached three-storey dwellings, tree removal and subdivision of the land into six lots.

The original proposal sought approval for six attached three-storey dwellings (fronting Dixon Street) and was notified to neighbouring properties on 15 June 2017 in accordance with City of Newcastle's (CN) public participation policy. A total of 59 submissions objecting to the proposal were received, including three Public Voice requests.



**Subject Land: 9 Belford Street Broadmeadow**

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

The application will be referred to the Development Applications Committee (DAC) for determination, due to the number of public submissions received, in addition to the application being called in by two Councillors being Cr Clausen and Cr Duncan.

The proposal was amended by deleting a dwelling and the amended plans were re-notified. The amended proposal generated 93 submissions objecting to the proposal, including three Public Voice requests. The main categories of objection include:

- i) Density
- ii) Design and character
- iii) Heritage
- iv) Traffic impacts and parking issues

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

**Issues**

- 1) The proposed development does not comply with the floor space ratio (FSR) development standard of 0.9:1 under Newcastle Local Environment Plan 2012 (NLEP 2012). The proposed development has a FSR of 0.98:1, which equates to an 8.5% variation to the FSR development standard.
- 2) The subject site is listed (*'138 former Broadmeadow Fire Station'*) for its local heritage significance in NLEP 2012. The adaptive re-use of the heritage building, and infill development responds well to the existing built form and is sufficiently setback to preserve the appearance of the heritage building from the public domain, minimising the impact on the streetscape.
- 3) Two off-street parking spaces are provided per dwelling, which exceeds the recommended DCP parking rate of 1.4 spaces per dwelling. The proposed development was amended during the assessment process to provide two on-street parking spaces between the driveways. The proposal will generate minimal traffic movements and it is unlikely that those traffic movements would coincide with the school traffic peak.
- 4) The site is contaminated as a result of its former use as a Fire Station. A Detailed Site Investigation and Remediation Action Plan (RAP) have been submitted in support of the application. A NSW EPA accredited site auditor has reviewed the RAP and concludes that the site can be made suitable for residential use.
- 5) Matters raised in submissions including local character, density, traffic, carparking and heritage.

**Conclusion**

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is considered to be acceptable subject to compliance with appropriate conditions.

**RECOMMENDATION**

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R4 High Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2017/00789 for alterations to the former Hamilton Fire Station for a change of use to a dwelling, erection of five attached three-storey dwellings, tree removal and subdivision at 9 Belford Street, Broadmeadow be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of Council's determination.

**Political Donation / Gift Declaration**

Section 10.4 of the *Environmental Planning and Assessment Act 1979* requires a person to disclose "reportable political donations and gifts made by any person with a financial interest" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council; and
- b) all gifts made to any local Councillor or employee of that Council.

The applicant has answered **NO** to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the application, made a 'reportable political donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

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**PART II**

**1.0 THE SUBJECT SITE**

The subject site is located at 9 Belford Street Broadmeadow (Lot 1 DP 77912) and has an area of 911.8m<sup>2</sup>.

The site has road frontages to Belford Street (north), Samdon Street (west) and Dixon Street (south). The land slopes upward from Belford Street toward Dixon Street.

The site contains the former Hamilton Fire Station and is listed as a local heritage item. The site is not within a Heritage Conservation Area, however it is located in the vicinity of other local heritage items, including St. Peters Anglican Church and Hamilton Public School.

## 2.0 THE PROPOSAL

The proposal has been amended in response to concerns raised by CN officers and in public submissions.

The application currently seeks consent for:

- i. Alterations to the former Hamilton Fire Station and change of use to a dwelling
- ii. Erection of five attached, three-storey dwellings (accessed from Dixon Street)
- iii. Torrens Title subdivision of one lot into six lots
- iv. Tree removal

The proposed dwellings have driveway entrances from Dixon Street. Existing vehicular access to the former Hamilton Fire Station building is to be retained from Belford Street.

### Public Voice Committee

The proposal was considered at a meeting of the Public Voice Committee held on 8 October 2019. Residents raised concerns with regards to traffic movements, carparking, density and heritage. The applicant has provided the following response to these issues.

#### Traffic

*“Changes to traffic movements associated with the school were raised. These were expected to increase the school traffic on Dixon Street. If the school is proposing changes to its entry / exit arrangements that will have an impact in shifting traffic distribution in the surrounding network, I believe that is an issue that the school should be responsible to address and not the responsibility of this development. With regard to the proposal, there are only five new dwellings proposed. These will generate minimal traffic movements and unless all future residents have school age children, it is unlikely that those traffic movements would coincide with the school traffic peak, which is typically different to commuter traffic patterns. If they do have school age children attending the local school it could be reasonably expected the children would walk and not generate additional traffic movements on Dixon Street. Having regard to these factors, and the traffic that would have been associated with staff and operational movements from the former Fire Station, I believe traffic impacts are acceptable and will not generate any significant or adverse impacts.”*

Parking

*“All dwellings have a minimum of two off street parking spaces, which exceeds the planning requirements. The design was previously amended and one dwelling deleted to relocate a driveway and maximise the on-street parking opportunities. There is one driveway in Samdon Street being removed and only two new driveways in Dixon Street (one is already existing in Dixon Street). The minor loss of on street parking is considered acceptable and is partially offset by the gains in on-site parking in excess of the planning controls.”*

Heritage

*“The project architect has worked closely with the heritage consultant to ensure the heritage values of the site are maintained. With the exception of the drying pole, the remaining architectural features associated with the former use and architectural style are able to be retained (arched windows, signage etc.).*

*The sandstone gutters can also be retained with the exception of the section where additional driveway crossovers are to be provided. Any works in the street are also subject to a separate Section 138 approval from CN. As depicted on the landscape plans, the northwest boundary corner is to be landscaped with low planting and no fencing to expose the arch window on that elevation. The impacts on heritage values are assessed in the heritage report and are considered acceptable.”*

Density

*“It is noted that the proposal was originally for six dwellings fronting Dixon Street but was reduced to five dwellings, following a review of the application having regard to Council and community feedback.”*

Remediation

*“Site remediation proposes removal of leachable contaminated material above adopted guideline levels, and disposal at an off-site approved location. The development itself will then largely cap, or cover the site, with hardstand surfaces and include design measures to limit access to soils to further mitigate groundwater leaching. The remediation process will be overseen by an EPA accredited site auditor.”*

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 included at **Attachment C**.

**3.0 PUBLIC NOTIFICATION**

The application was publicly notified in accordance with CN's public participation policy on three separate occasions.

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

1) Statutory and policy issues

- i) Density - excessive number of dwellings resulting in an overdevelopment of the site.
- ii) Building height - building height is not compatible with the residential context of the neighbourhood which largely consists of one-storey and two-storey dwellings.
- iii) Land zoning - the site is zoned R4 High Density Residential. This is an inappropriate classification for this site.

2) Amenity issues

- i) Overshadowing - additional overshadowing on Dixon Street.
- ii) Privacy - overlooking of properties located opposite in Dixon Street.
- iii) View loss - obstruction of views and loss of outlook to neighbouring properties.
- iv) Landscaping and open space - lack of open space and landscaping provided within the development; loss of trees and limited opportunity for compensatory planting.

3) Design and aesthetic issues

- i) Bulk and scale - scale and massing is unsympathetic with the streetscape and existing heritage building.
- ii) Visual impact - visual dominance of western wall facing Samdon Street.
- iii) Heritage impacts - proposed development will have an adverse impact on the heritage value of the Fire Station building.

4) Traffic and infrastructure issues

- i) Traffic - increased traffic movements; Dixon Street is a residential cul-de-sac with a primary school at one end.
- ii) Parking - increased pressure for on street parking; there is not enough parking for future residents with three bedrooms and only single garages provided for each dwelling.
- iii) Pedestrian safety - five additional driveways are proposed on a heavily trafficked footpath used by primary school children, parents with prams and people using wheelchairs.
- iv) Stormwater and sewerage - increased pressure on existing infrastructure.

5) Miscellaneous

- i) Construction impacts - concern regarding the impacts on neighbours arising from the construction process.



- ii) Property Values - the proposal will result in devaluation of surrounding properties.
- iii) Public interest - there is no public benefit afforded to the community.

#### **4.0 INTEGRATED DEVELOPMENT**

The proposal is not 'integrated development' pursuant to Section 4.46 of the Act.

#### **5.0 PLANNING ASSESSMENT**

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

##### **5.1 Provisions of any environmental planning instrument**

###### **State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)**

SEPP 55 requires that where land is contaminated, CN 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 contaminated as a result of its former use as a Fire Station. The application was referred to the NSW EPA, to seek guidance and comment to inform CN's assessment of the contamination of the site. The remediation strategy was amended in accordance with the advice received from NSW EPA and CN's Senior Environmental Protection Officer.

A Detailed Site Investigation and Remediation Action Plan (RAP) have been submitted in support of the application. A NSW EPA accredited site auditor has reviewed the RAP and the Auditor concludes that "*the site can be made suitable for residential development subject to the implementation and validation of the RAP*". A long-term Site Management Plan is to be prepared and approved by the Site Auditor to address potential remaining site contamination.

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

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) is one of a suite of Land Management and Biodiversity Conservation 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 previously contained in cl.5.9 of NLEP 2012 (clause now repealed) and provides that CN's Development Control Plan can make declarations with regard to certain matters, and further that CN may issue a permit for tree removal.

The proposal has been assessed in accordance with NDCP 2012 and is considered to be satisfactory.

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

A BASIX Certificate was lodged with the application, demonstrating that the development can achieve the required water and energy reduction targets. A condition of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate.

**Newcastle Local Environmental Plan 2012 (NLEP 2012)**

Clause 2.1 Land Use Zones

The subject property is located within the R4 High Density Residential zone under the provisions of the NLEP 2012. The development is permissible with development consent as 'multi dwelling housing'.

The proposed development is consistent with the objectives of the R4 High Density Residential zone, which are:

- i) To provide for the housing needs of the community within a high-density residential environment.

The proposed development represents an infill development that will contribute to housing supply within a high-density environment.

- ii) *To provide a variety of housing types within a high-density residential environment.*

Adaptive reuse of the fire station and the provision of modern, three storey attached dwellings, provides variety within the site, as well as contributing to housing variety within the surrounding area.

- iii) *To promote a denser urban form along transport corridors while respecting the residential character of adjoining streets.*

The proposal delivers increased urban density in the Broadmeadow Renewal Corridor. The retention of the heritage building, and the form and scale of attached dwellings is respectful of the residential character of surrounding streets and will deliver a positive urban design outcome.

- iv) *To maximise redevelopment and infill opportunities for high density housing within walking distance of centres.*

The development seeks to deliver high density housing within walking distance of both Broadmeadow and Hamilton town centres and is near open space and community facilities including schools and churches.

Clause 2.7 Demolition Requires Development Consent

Conditions are recommended to ensure demolition works and disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.1 Minimum subdivision lot size

There is no minimum subdivision lot size that applies to the site.

Clause 4.3 Height of Buildings

Under NLEP 2012 the site has a maximum height of 11m.

There is a minor variation to the overall building height for two units. The height non-compliance is limited to a small part of the architectural roof forms of units 3 and 4. These proposed units have an overall height of 11.4m. However, the roof elements are considered to constitute an *architectural roof feature* under clause 5.6 of NLEP 2012, which is not included for the purpose of determining the building height and compliance with the height development standard under NLEP 2012.

With the exception of the minor roof intrusion into the building height plane caused by the architectural roof feature, the proposed development complies with the 11m building height control and delivers appropriate massing, scale and boundary setbacks to provide an acceptable built form outcome.

Clause 4.4 Floor Space Ratio

The proposed development does not comply with the floor space ratio (FSR) development standard of 0.9:1 under NLEP 2012. The proposed development has an FSR of 0.98:1, which equates to an 8.5% variation to the FSR development standard.

The applicant has submitted a clause 4.6 variation request to this standard. Refer to discussion under Clause 4.6 Exceptions to Development Standards below.

Clause 4.6 Exceptions to development standards

Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard. In assessing the proposal against the provisions of clause 4.6, it is noted that:

1. Clause 4.4 (Floor Space Ratio) is not excluded from the operation of this clause; and
2. The applicant has prepared a written request (as per Clause 4.6(3)), requesting that CN vary the development standard and demonstrating that:
  - a) *Compliance with the development standards is unreasonable or unnecessary in the circumstances of the case, and*
  - b) *There are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant's written submission contends that enforcing compliance with the 0.9:1 FSR development standard is unreasonable or unnecessary in the circumstances. An extract of the applicant's request to vary the Development Standards is provided below.

*What are the objectives of the development standard?*

*The objectives of Clause 4.4 – Floor Space Ratio are as follows:*

- a) *To provide an appropriate density of development consistent with the established centres hierarchy.*
- b) *To ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.*

*What is the proposed numeric value of the development standards in your development application?*

*“The proposed development has an FSR of 0.98:1, which equates to an 8.5% variation to the FSR development standard.”*

*Are there Sufficient Environmental Planning Grounds*

*“The attached dwelling design utilises what would otherwise be a void on the ground floor, to provide additional storage adjoining the garage. This is done without adverse environmental impact in that it is not visible in the streetscape, it does not contribute to the height or massing of the buildings and does not increase any impacts on the natural environment. The efficient use of this space, albeit creating additional floor space, improves residential amenity by providing storage for items such recreational equipment (bikes, sporting equipment etc.). While the design could be amended to remove this space, it would not improve the built form outcome and in all likelihood would be detrimental in that it would require a more complex and expensive structural design, increasing the cost for the delivery of this housing.*

*The floor space contributing to non-compliance is largely contained within the ground floor. As the building is generally compliant with the nominated setbacks and*

*envelope controls, it can be surmised that the additional gross floor area is not contributing to any adverse environmental outcomes such as adverse built form or streetscape outcomes, overshadowing, privacy, visual impact etc.*

*The proposal is appropriate for the nature and context of the site. Variation to the floor space ratio will facilitate a positive planning and urban design outcome than might otherwise be achieved if strict compliance to the standard is maintained. The variation allows a site-specific design response to retain the heritage values of the site and deliver valuable infill housing, with no significant adverse environmental impacts. The proposed development is considered to pass the preconditions for the granting of consent being:*

- i. The proposal is consistent with the relevant objectives of the zone;*
- ii. The proposal is consistent with the relevant objectives of the floor space ratio standard;*
- iii. Compliance with the standard is unnecessary as this statement has demonstrated that compliance with the objectives is achieved notwithstanding the non-compliance; and*
- iv. There are sufficient environmental planning grounds to warrant an approval for the variation to floor space ratio, in particular being the positive heritage outcome achieved through adaptive re-use of the fire station and the high quality of architectural design that contributes to the built environment.”*

Officer's comment

An assessment of the request has been undertaken and it is considered that:

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of NLEP 2012.
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standards and the objectives for development within the R4 High Density Residential zone in which the development is proposed to be carried out.
- c) The Secretary's (ie, of the Department of Planning, Industry and Environment) concurrence to the exception to the floor space ratio development standards as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS18-003 of 21 February 2018.
- d) The applicant has demonstrated that the standard is unnecessary in this instance, that the proposed height, scale and density of development is consistent with the character of surrounding developments in the area and is in accordance with the relevant zone objectives. The proposed variation would not result in any significant impacts and therefore the proposal has planning merit.

The proposed exceptions to the floor space ratio Development Standard of NLEP 2012 is an acceptable planning outcome and in this instance strict compliance would be unnecessary. The proposed variations to the development standards in this instance do not cause any undue adverse environmental impacts, including impacts on neighbouring properties in terms of overshadowing and visual privacy.

The building mass and density is a function of the R4 High Density zoning that is prescribed for this site. The proposal is consistent with the intended future urban form within the area, having regard to the combination of controls under NLEP 2012 and NDCP 2012 (notably Section 6.07 Broadmeadow Renewal Corridor).

The request for the proposed building to exceed the 0.9:1 FSR development standard is supported.

Clause 5.6 Architectural roof feature

The extent and nature of the height variation is justified as an '*Architectural roof feature*' and is consistent with the objectives of provision in that:

- i. The roof feature provides variation and interest to what would otherwise be an unrelieved roofline to the built form; and
- ii. The majority of the roofline is contained within the maximum building height.

Further to the objectives of this clause:

- i. The material, height and pitch variation afforded by this roof element, which results in only a minor breach to the height of building control, is situated on the uppermost portion of the building;
- ii. The space exceeding the height of building plane is not and cannot be reasonably capable of being used as floor space area for the building; and
- iii. The minor exceedance in height is on the northern elevation of the building and will cause minimal additional overshadowing

It is acknowledged that the minor exceedance to the height plane could be addressed through amendment to the pitch of the roof to bring it under the height plane. However, a lower, less distinct variation in the roof form is considered to provide less visual interest and architectural merit.

Clause 5.10 - Heritage Conservation

The subject site is listed (I138 former Broadmeadow Fire Station) for its local heritage significance in NLEP 2012.

The site is also within the vicinity of two heritage items; St Peter's Anglican Church and Hamilton Public School. These items are substantially removed from the

subject site and are not impacted by the proposed development. The subject site is not located within a Conservation Area.

A Statement of Heritage Impact, detailing the history of the subject site and the 'former Broadmeadow Fire Station, built in 1898, has been submitted with the application. The Heritage Impact Statement found:

*“The building has historical association with the local community since commencing its operation. The building is held in high regard for its links with the local community especially the families of volunteers / retained firemen. Neither of these criteria relate to the aesthetic nor technical aspects of the building, but its place in the community as an essential service.”*

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 proposal is considered to be of an extremely high quality of design and uniqueness that is rarely witnessed in suburban development and particularly where there is intervention with heritage items. This is bold design, executed with strong awareness of the heritage values and character enshrined in the extant building.*

*There are minimal changes needed to the former Fire Station building to successfully provide a contemporary residential unit with onsite parking and Home Office. The adaptive reuse provides a positive conservation outcome.”*

*The new dwellings fronting Dixon Street is separated by distance as well as height to permit the Fire Station building to be read as a standalone item and thus retain its interpretability.”*

The aesthetics of the proposed development responds to the future desired character of the area and preserves a significant heritage element within the streetscape. The materiality and form of the addition is modern but is recessive to the heritage building. The bulk and scale of the development, together with the facade, complements both the period architecture and other infill contemporary designs.

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils. A requirement for an assessment of acid sulfate soils is to be undertaken during excavation and construction works is included as a recommended condition. The proposed development is considered satisfactory in this regard.

#### Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is considered acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

**5.2 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.

**5.3 Any development control plan**

**Newcastle Development Control Plan (NDCP 2012)**

Subdivision – Section 3.1

The proposed lots are rectangular in shape with frontage that provides pedestrian and vehicular access to a public street. Roof and gutter systems are independent and capture roof water for reuse by individual dwellings. Each lot can be individually serviced in accordance with utility service requirements.

The re-development and subdivision of the site will add to the variety of housing stock in the local area while preserving the heritage characteristics and values of the locality.

Attached Dwellings and Multi Dwelling Housing - Section 3.04

There are no specific controls in this section however the proposed development is consistent with the aims in that it:

- i) Delivers compact and sustainable urban housing.
- ii) Has access to a range of infrastructure and services to support future residents.
- iii) Is in close proximity to public transport options (bus and rail).
- iv) Represents a high quality, architectural design that will deliver a high level of amenity for the compact form of housing being proposed.
- v) Broadens the variety of housing in Broadmeadow, which traditionally comprises older style detached dwellings or lower density attached housing.

Flood Management - Section 4.01

CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

*“The second storey of fire station building is required as flood refuge. The building is to be structurally certified to withstand flood flows from a Probable Maximum Flood*



*event. Full details are to be included in documentation for a Construction Certificate application.”*

Accordingly, the proposal is acceptable in relation to flooding.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District, and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

Safety and Security - Section 4.04

The overall building design and functionality, with frontage to three streets, allows increased casual surveillance of the surrounding area.

The proposal achieves good surveillance by providing clear sight lines between private and public spaces, suitable landscaping and activation of street frontages.

The proposed development is considered to be acceptable and a further crime risk assessment is not required as the proposal is for less than 10 dwellings.

Social Impact - Section 4.05

The development proposes residential dwellings within a residential area. It is considered unlikely that a development of this nature would result in increased anti-social behaviour.

The development provides for increased housing choice in the locality, which is considered to be a positive social outcome.

Soil Management - Section 5.01

Earthworks are proposed as part of the development. Details of sediment control have been provided by the applicant and are considered to be acceptable. The proposed development achieves the objectives and controls within this section of the NDCP 2012.

Land Contamination - Section 5.02

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

Vegetation Management - Section 5.03

An arborist report has been prepared for twelve trees within the footprint of development and within 5m of the site. The report identified:

- i) Six trees are able to be removed under exemption provisions in the DCP.

- ii) A low retention and a medium retention value tree will be removed from within the proposed development footprint.
- iii) Three trees on adjoining sites will be unaffected.
- iv) One tree on adjoining land will require arborist's advice during demolition and construction to confirm what, if any requirements are necessary to ensure its retention.

The amenity of the area will not be significantly impacted in respect of the local character and appearance. Compensatory planting is proposed, and appropriate conditions have been recommended.

The submitted report has been prepared in accordance with CN's tree assessment requirements and it is considered that the proposed tree removal is acceptable.

#### Aboriginal Heritage - Section 5.04

A search of the Aboriginal Heritage Information Management System indicates that no Aboriginal sites are recorded on the subject land and no Aboriginal places have been declared on the subject land.

#### Heritage Items - Section 5.05

This issue is discussed under Clause 5.10 Heritage of NLEP 2012.

#### Archaeological Management - Section 5.06

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an 'Archaeological Site'. A condition has been included in the consent that references the recommendations of the Statement of Heritage Impact.

#### Broadmeadow Renewal Corridor - Section 6.07

The density of development is consistent with the centres hierarchy and desired future character of the area as identified by CN in the NDCP 2012 controls for the Broadmeadow Renewal Corridor. The site is identified as being within the Gregson Park (residential focus) precinct which is aimed at delivering higher density residential development that respects the scale and character of the existing built form.

The proposal contributes to this increase in housing supply while appropriately respecting the character of the area by:

- i. Adaptive reuse of the Fire Station that preserves the Belford Street facade and exposes key elements of the eastern and western elevations to ensure it remains readily identifiable within the local community.

- ii. Designing new attached housing that contrasts the style of the Fire Station and surrounding homes, reinforces the height and scale of development along the Belford Street renewal corridor and Dixon Street, and provides appropriate articulation and material variation to deliver an attractive, interesting, and high quality facade.

The development is located in a prominent location and with its modern style and built to the boundary elements, will present as a gateway development for this precinct.

### 7.01 Building Design Criteria

A superseded version of NDCP 2012 has been used for the assessment of the application, due to the lodgement date of the application and the savings provisions of the DCP.

#### *Streetscape and front setbacks*

The design maintains a narrow, multi storey form with vertical bays incorporated into the street facade. Each new dwelling is provided with a clearly defined, ground floor pedestrian entry with recessed garage to reduce its visual impact, while the fire station building retains its existing facade to Belford Street.

#### *Side and rear setbacks*

Side and rear setbacks are considered acceptable in terms of separation and building envelope provisions.

#### *Open space*

Ground floor private open space is provided at the rear of the dwellings. First floor balconies are also proposed as supplementary private open space area as these are contiguous with first floor living areas and provide excellent solar access and amenity.

#### *Solar access*

The dwellings are orientated with courtyards and living areas to the north all achieving excellent solar access.

The site adjoins public roads on three of its frontages and surrounding properties are not significantly or adversely affected because of this orientation.

Adjoining the eastern boundary (Belford Street frontage) is a commercial space with carpark immediately adjacent to the subject site, which will not be impacted by the redevelopment of the fire station site.

Along the eastern boundary (Dixon Street frontage) is an existing residence that will

be overshadowed by the new dwellings from 1.00pm onwards. However, there are only limited openings in the elevation adjoining the boundary and the primary area of private open space will remain largely unaffected.

Overall, the proposed development is considered acceptable in relation to Section 7.01 (Building Design Criteria) of the NDCP 2012 and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The development establishes a scale and built form appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining a reasonable standard of privacy and solar access for adjoining neighbours.

#### Landscape Open Space and Visual Amenity - Section 7.02

A landscape plan has been provided with the development application in accordance with this section of the NDCP 2012.

The density of development and configuration of the existing fire station has restricted the amount of landscaping that can be reasonably established on this site. A landscape design has been developed that provides low maintenance planting to private open space that will deliver suitable amenity.

The streetscape contains replacement street trees and compact, mass planting of the south facing front setbacks that provides softening of the built form and also delineates the property boundaries.

#### Traffic, Parking and Access - Section 7.03

Two off-street parking spaces are provided per dwelling, which exceeds the recommended DCP parking rate of 1.4 spaces per dwelling. The driveways along Dixon Street have been designed to allow for on-street parking and street tree planting. The proposed garages along Dixon Street have been set back approximately 5.5m to allow for stacked parking, which will also act as visitor parking. Bicycle parking can be accommodated within the garages.

The existing driveway on Belford Street for the Fire Station will continue to be used. It is considered that the frequency of cars from the proposed unit at the Fire Station will be of lesser impact when compared to the former use as a Fire Station. It is recommended that a signal be installed to alert pedestrians that a vehicle is about to approach / exit upon opening of the garage door.

The existing school zone sign will need to be relocated to allow for the new driveway on Dixon Street. The applicant will be required to liaise with RMS for the relocation of the sign. A condition is recommended to ensure that the signage relocation is approved by RMS prior to Construction stage and any works are carried out prior to issue of Occupation Certificate.

The proposal will generate minimal traffic movements and it is unlikely that those traffic movements would coincide with the school traffic peak. Car parking access

has been assessed by CN's Development Officer (Traffic) and is considered acceptable subject to relevant conditions.

Section 7.05 - Energy efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012. CN's Development Officer (Engineering) has assessed the proposal and has confirmed it is acceptable subject to the inclusion of specific conditions of consent. Accordingly, the proposal is acceptable in relation to water management.

Waste Management - Section 7.08

The applicant has prepared a detailed waste management plan, which addresses waste minimisation and litter management strategies. Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

The proposal provides for adequate bin storage within the garage of each dwelling. Waste collection vehicles will be able to stop along the site frontage for pick-up at the driveway location without affecting traffic.

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable. Based on the submitted information, the proposal is considered to be acceptable.

Development Contributions

Sections 7.11 and 7.12 of the *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans.

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions (refer to **Attachment B**).

**5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and Regulation 2000. In addition, compliance

with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

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

There are no significant external impacts associated with the proposal. The application has demonstrated that there will be no significant adverse traffic impacts and it is considered that the development does not cause any significant overshadowing, privacy impacts or view loss for nearby properties.

**a) Character, Streetscape, External Appearance, Urban Design, Height, Bulk and Scale**

The proposed development is acceptable having regard to the proposed height, external appearance, character, bulk and scale.

**b) Traffic, Access and Parking**

The proposal has been assessed by CN's Senior Development Officer (Traffic) and found to be acceptable, subject to draft conditions included in **Attachment B**. CN's Senior Development Officer (Traffic) provided the following comments:

*Loss of on-street parking is the only real concern with a very low trip generation associated with the units. Noted in the SEE are the increased number of pedestrian conflicts due to providing three common driveways in Dixon Street, however the school peaks generating the bulk of pedestrian traffic do not necessarily overlap with the times that residents enter or leave their garages / driveways, which again are low (0.5-0.65 weekdays peak hour trips).*

*Traffic queues extend out of Dixon Street for a short period in the afternoon school peak as the cul-de-sac of Dixon Street forms the main Pick-Up / Drop-Off point for Hamilton Public School parents, however this proposal has a low impact on this event. Loss of on-street parking will have an effect on parents at these times but for the rest of the day and in general this effect is mitigated by the provision of two off-street spaces per dwelling in excess of DCP parking provision requirements and maintaining two on-street spaces between the three driveways for visitors.*

Comment: The proposed development is considered to be acceptable with regard to its impacts on local traffic conditions, pedestrian safety and traffic management measures.

It is considered that the traffic, parking and access aspects of the proposed development are acceptable. Furthermore, it is also acknowledged that an additional on street parking spaces has now been provided in accordance with the recommendations of CN officers.

**c) Amenity (Privacy, Overshadowing and Views)**

Privacy

The proposal achieves adequate visual and acoustic privacy for the proposed residential development and for the surrounding properties. The use of articulated building design, as well as screening devices provide for a building that will not adversely impact on the privacy of nearby properties and will afford a high level of amenity for occupants.

Overshadowing

Due to the orientation of the site and siting of the proposed dwellings, overshadowing analysis is relevant to the adjoining neighbour properties to the east only. The proposed development will not result in undue overshadowing of existing residential properties. The overshadowing of adjoining buildings and the surrounding area is considered to meet CN's controls and is acceptable in this regard.

View Loss

The development does not result in an unreasonable impact on views or outlook. There are no significant views that will be impacted in this location. The proposed development will alter the general outlook due to a change to the size and scale of buildings on the site, but this is considered to be acceptable.

**d) Environmental**

Contamination

The proposal has been assessed by CN's Senior Environmental Protection Officer and found to be acceptable, subject to draft conditions included in **Attachment B**.

CN's Senior Environmental Protection Officer provided the following comments:

*"State Environmental Planning Policy 55 – Remediation of Land states that contamination must be considered when a land use changes to residential. Given the proposal involves a change of use from a fire station to residential, the application has been supported with a contamination assessment. As such, the ESU reviewed the Detailed Contamination Assessment prepared by ESP dated May 2018 which was submitted to CN to support the proposal. The Detailed Assessment identified PFAS contamination at the subject site with a hotspot located in south eastern corner that exceeded the adopted human health criteria. As a result, the site would require remediation to render it suitable. However, the ESU had concerns that the contaminated area had not been fully delineated as areas under the existing buildings had not been addressed and the full extent of the hotspot remained unknown. Accordingly, additional information was requested from the applicant to address this issue.*

*A Remediation Action Plan (RAP) was prepared by ESP dated November 2018 and submitted to CN which nominated the PFAS hotspot contamination would be excavated and disposed to a licenced landfill site lawfully able to accept the waste. Onsite containment was also proposed for the site which would incorporate the existing and proposed dwellings along with a capping layer for remainder of the site for areas with access to soils. The RAP did not vertically delineate the contamination at the site and as such, the ESU was still not confident the full extent of contamination was known when preparing the RAP.*

*Given the technical nature of the contaminant and the proposed remedial strategy not being a preferred method as per CN's Contaminated Land policy, the ESU requested that all contamination information be submitted for an independent review by an accredited NSW Site Auditor with the view of providing a Site Audit Statement certifying the land can be made suitable for the proposed residential use. Interim Audit Advice #1 was prepared by Fiona Robinson (Accredited NSW Site Auditor) of Ramboll Australia dated December 2018 which identified data gaps on site and as a result required further testing to be carried out to delineate the site. In accordance with the recommendations of the auditor, the ESU sought further sampling at the subject site to establish the level (if any) of offsite impacts associated with the contamination and to be confident the contamination would satisfactorily be remediated.*

*The applicant responded to the ESU's request for offsite sampling by stating they were not the polluter and questioning then whether they should be responsible for any offsite impacts.*

*The NSW EPA in conjunction with the Office of Environment and Heritage (OEH) have established a taskforce to address PFAS contamination. CN's seeking guidance and comment may refer matters to this taskforce for assessment. At this point, the subject application was referred to the taskforce.*

*The ESU did not participate in the subsequent discussions between the representative of the taskforce and the applicant when assessing the RAP. However, the ESU understand the decision reached between the taskforce and the applicant was that any offsite impacts would be addressed by the NSW Fire Brigade independently of the current application. Contamination at the subject site was to be addressed by the applicant to ensure the site is suitable for the proposed residential use.*

*A letter from the taskforce outlined the RAP had been reviewed whereby both agencies agreed that "The full extent of the impact is to be delineated as a part of the works proposed in the RAP. The EPA considers this an adequate approach however, the EPA requires that ESP and SNL include vertical delineation of PRAF within the bedrock as part of these works and must address any contaminated bedrock in their remedial plans".*

*The above advice confirmed the ESU's initial request for further information requiring the site contamination to be fully delineated (including vertically) to be confident in making an informed planning decision. In an email dated 20 June 2019 the*



*taskforce required the final necessary changes that would delineate the contamination at the site which were to be included in the RAP which would satisfy the requirements of the taskforce that the RAP was suitable subject to CN review.*

*Finally, the delineation was addressed in the amended RAP prepared by ESP dated June 2019 and was submitted to CN for review where it is noted that Section 3.2 states "The impact should be delineated to below the criteria indicated in Section 5.1. To this end delineation will extend 4m horizontally in all directions from TP05 / GW03 (the hotspot location) and vertically until all parameters are below the adopted criteria and that may include bedrock sampling below the water table (not just the bedrock surface). Full details are described in Section 4.3".*

*Section 4.3 states that the preferred remediation strategy is Option 5 – Excavation and Offsite Disposal. This will incorporate the proposed development being largely covered / sealed by hardstand surfaces and includes design measures to limit access the soils. It is understood that garden areas will be excavated to 1m BGL, a marker layer placed down and then back filled with clean soil (VENM). Any non-landscaped areas will also be subject to the marker layer prior to be being grassed to prevent any access to soils. It is understood the consultant has recommended that all groundwater use be restricted on site (which will be addressed by an appropriate condition of consent).*

*The site will require validation in accordance with relevant NSW Guidelines, given the remediation includes potential onsite containment, a Long-Term Site Management Plan will also be required. The ESU will recommend conditions of consent whereby Site Auditor sign off will be required, and as such will condition a Site Audit Statement being issued certifying the site is suitable for the proposed residential land use to be submitted to CN. The Site Auditor will also be required to sign off on the Validation Report along with the Long-Term Site Management Plan.*

*Based on the contaminated land information now submitted, the Environmental Services Unit has no objections to the proposed development."*

## **5.7 The suitability of the site for the development**

The site is located within an R4 High Density Residential zone and is suitable for the development. The proposed development comprises the erection of attached dwellings, consistent with the scale and type of housing stock in the locality. The additional housing will offer a range of suitable housing options in an established suburb, close to suitable infrastructure and facilities.

The site is an appropriate size to accommodate the proposed development while ensuring the heritage significance of the heritage item and site is retained. The proposed development is considered to minimise the impact on the amenity of neighbouring properties and the site is not affected by significant environmental constraints that would preclude development.

## **5.8 Any submissions made in accordance with this Act or the regulations**

The proposal was amended by deleting a dwelling and the amended plans were re-notified. The amended proposal generated 93 submissions objecting to the proposal, including three Public Voice requests.

In response to concerns raised by CN officers, a contamination assessment was undertaken, which identified levels of PFAS contamination at the site. As a result, the site required remediation to render it suitable for residential use. The application was amended to include remediation as part of the proposed scope of works and was re-notified to all previous submitters. Five further submissions were received in response to that process.

The key issues raised within the submissions have been discussed previously in this report. The following table provides a summary of the other issues raised and a response to those issues.

<b>Issue</b>	<b>Comment</b>
Density - excessive number of dwellings resulting in an overdevelopment of the site.	<p>The building mass and density is a function of the R4 High density zoning that is prescribed for this site. The proposal is consistent with the intended future urban form within the area.</p> <p>A high-quality standard of housing will be created to offer a range of suitable housing options in an established suburb close to suitable infrastructure and facilities.</p>
Building height, bulk and scale	With the exception of the architectural roof features, the proposed dwellings comply with the 11-metre building height control. The proposed development is acceptable having regard to the proposed height, external appearance, character, bulk and scale.
Overshadowing - additional overshadowing on Dixon Street.	The overshadowing of adjoining buildings and the surrounding area is considered to meet CN's controls and is acceptable in this regard.
Privacy - overlooking of properties located opposite in Dixon Street.	The proposal achieves adequate visual and acoustic privacy for the proposed residential development and for the surrounding properties, including those located opposite.
View loss - obstruction of views and loss of outlook to neighbouring properties.	The development does not result in an unreasonable impact on views or outlook. There are no significant views that will be impacted in this location.
Landscaping and open space - lack of open	None of the trees to be removed are identified as being of high retention value and are not identified as

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<p>space and landscaping provided within the development; loss of trees and limited opportunity for compensatory planting.</p>	<p>contributing to the heritage value. Sufficient compensatory planting is proposed relative to the type of the development, and the amenity of the area will not be significantly impacted.</p>
<p>Visual impact - dominance of western wall facing Samdon Street.</p>	<p>This western elevation of the fire station has been improved by reducing the length and height of the western wall to expose more of the facade. This includes the two front windows, including lower arch window, roofline and gutter of the western elevation. This increased building exposure improves interpretation and acknowledgement of the heritage value.</p>
<p>Heritage impacts - proposed development will have an adverse impact on the heritage value of the Fire Station building.</p>	<p>A Heritage Impact Statement has been prepared addressing the suitability of the proposed development. It identified that while the new buildings represent an architectural contrast to the materials, massing and style of the Fire Station, it retains a strong presence to Belford Street that is not adversely affected by the new development. This presence has been further improved by design modifications to the western elevation.</p>
<p>Retention of drying pole</p>	<p>The removal of the drying pole in the rear yard was not assessed as a significant issue in terms of heritage. The applicant has not formally proposed to retain the drying pole on site, however, has acknowledged that it will be considered during the detailed design phase prior to construction.</p> <p>The architect, in combination with the advice of the heritage consultant has ensured that all significant architectural elements and features of the fire station are to be retained and interpreted.</p>
<p>Traffic - increased traffic movements; Dixon Street is a residential cul-de-sac with a primary school at one end.</p>	<p>The proposed development exceeds the parking requirements of the DCP. The additional traffic generated will not significantly impact on the road network and is considered sustainable in the long term.</p>
<p>Parking and pedestrian safety - five additional driveways are proposed on a heavily trafficked footpath used by primary school</p>	<p>The number of driveways has been reduced to three, instead of five. Parking is provided in excess of NDCP 2012 requirements with each new dwelling having two spaces. Several objections erroneously stated that stack parking would preclude use of the pedestrian footpath. The garages are set back to allow a vehicle to be parked wholly within the property boundary and not</p>

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children, parents with prams and people using wheelchairs.	preclude the use of the pedestrian footpath. It is also noted that any vehicle parked across the footpath could be subject to compliance action if an ongoing issue were to arise.
Construction impacts - concern regarding the impacts on neighbours arising from the construction process.	Conditions of consent have been included in relation to hours of works, demolition, construction and traffic management measures. Prior to commencing works, the developer is required to submit a Construction Traffic Management Plan to CN for approval. The plan is required to address traffic control measures and ensure safe, continuous movement of traffic and pedestrians within the road reserve.
Property Values - the proposal will result in devaluation of surrounding properties.	This concern is not a matter of consideration pursuant to Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .

The proposal was considered at a meeting of the Public Voice Committee on 8 October 2019. Residents raised concerns with regards to traffic movements, carparking, density and heritage.

Issue	Comment
Traffic and carparking	See response to public notification above. It is considered that the traffic, parking and access aspects of the proposed development are acceptable.  Furthermore, it is also acknowledged that an additional on street parking spaces has now been provided in accordance with the recommendations of CN officers.
Density	See response to public notification above.
Heritage	See response to public notification above.

It is concluded that there are no significant external impacts associated with the proposal. The application has demonstrated that there will be no significant adverse traffic impacts and it is considered that the development does not cause any significant overshadowing, privacy impacts or view loss for adjacent properties.

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 as discussed within this report.

### **5.9 The public interest**

This report has addressed the various concerns raised in the submissions received in response to the public notification and relevant referral procedures.

The proposed development will not have any undue adverse impact on the natural or built environment and is compatible with the existing character, bulk, scale and massing of development in the immediate area. It is considered that the proposal will not have any negative social or economic impacts.

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development.

The proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services.

The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

The proposed development provides for the orderly economic development of the site for purposes for which it is zoned and will not have any negative social or economic impacts.

The proposal is considered an acceptable form of development for the site, as discussed within this report.

### **6.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under section 4.15 of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

### **ATTACHMENTS**

**Item 19 Attachment A:** Submitted Plans - 9 Belford Street Broadmeadow - Under separate cover

**Item 19 Attachment B:** Draft Schedule of Conditions 9 Belford Street Broadmeadow -Under separate cover

**Item 19 Attachment C:** Processing Chronology - 9 Belford Street Broadmeadow - Under separate cover

**Item 19 Attachments A-C distributed under separate cover**

**ITEM-20**                    **DAC 03/12/19 - DA2018/01248 - 64 BRUNKER ROAD BROADMEADOW - RETAIL PREMISES (NEIGHBOURHOOD SUPERMARKET), FOUR SIGNS AND MINOR BUILDING ALTERATIONS**

**APPLICANT:**            **KS INVESTMENTS GROUP PTY LTD**  
**OWNER:**                **KS INVESTMENT GROUP PTY LIMITED**  
**CONTACT:**             **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

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**PART I**

**BACKGROUND**

An application has been received seeking consent for a retail premises (neighbourhood supermarket), four signs, minor building alterations and reconfiguration of the existing car park on the site.

The submitted application was assigned to Gareth Simpson for assessment.

The application is referred to the Development Applications Committee for determination, due to the number of public submissions received.

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Public Notification policy and 29 submissions have been received in response.

The objectors' concerns include:

- i) Impact on traffic in the locality
- ii) Non-permissible uses
- iii) Congestion in the laneway
- iv) Noise impacts
- v) Anti-social impact from sale of alcohol
- vi) Impact from delivery trucks on laneway
- vii) Security concerns
- viii) Poor quality design



**Subject Land:** 64 Brunker Road Broadmeadow

- ix) On-site car parking provision
- x) Proximity of bus stop and pedestrian crossing to proposed driveway access
- xi) Lack of community consultation

Details of the submissions received are summarised at **Section 3.0** of Part II of this report and the concerns raised are addressed as part of the Planning Assessment at **Section 5.0**.

### Issues

- 1) Public submissions.

### Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is acceptable subject to compliance with appropriate conditions.

### RECOMMENDATION

- A. That DA2018/10248 for a retail premises (neighbourhood supermarket), four signs, minor building alterations and reconfiguration of the existing car park at 64 Brunner Road, Broadmeadow be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of Council's determination.

### Political Donation / Gift Declaration

Section 10.4 of the *Environmental Planning and Assessment Act 1979* requires a person to disclose "reportable political donations and gifts made by any person with a financial interest" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council; and
- b) all gifts made to any local Councillor or employee of that Council.

The applicant has answered **NO** to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the application, made a 'reportable political donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

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**PART II**

**1.0 THE SUBJECT SITE**

The subject site comprises Lot 183 in DP 1045853. The lot is rectangular in shape and is located to the north of Bruncker Road and to the west of Coolah Road. A laneway runs along the northern boundary of the site. The lot has a frontage of 77m to Bruncker Road and 49.7m to Coolah Road and a total area of 3,873 m<sup>2</sup>.

The site is currently occupied by a two-storey building which contains industrial and commercial tenancies. Car parking for the tenancies is provided in the south-western portion of the site with vehicular access provided from the laneway to the north and pedestrian access provided from Bruncker Road.

The site is bounded by residential accommodation to the north-east and an industrial building to the north-west of the site. A dwelling and pre-school are located to the south-west of the site, and a residential flat building is located to the south-east of the site on the opposite side of Bruncker Road. The site is located within a R4 High Density Residential Zone and within the Adamstown Renewal Corridor (Precinct 1 – Bruncker Road).

**2.0 THE PROPOSAL**

The applicant seeks consent for retail premises (neighbourhood supermarket), four signs, minor building alterations and reconfiguration of the existing car park on the site. The building is currently being used as a light industrial use and is proposed to change the use to an IGA supermarket, which is prohibited in the zone. The application has been considered under the existing use rights provisions of the *Environmental Planning and Assessment Regulations 2000*.

The proposal involves:

- i. Demolition of the existing shed located within the existing car park to accommodate additional parking spaces.
- ii. Removal of the existing driveway and driveway crossover off Bruncker Road.
- iii. Fit out of the supermarket tenancy (870m<sup>2</sup>) to include accessible bathroom, deli, freezers, cool room, fresh produce displays, trolley bays, liquor area, store and manager's office and mezzanine level staff amenities.
- iv. Future tenancy space – 560m<sup>2</sup>.
- v. Reconfiguration of the existing car park to create an additional six spaces, with a total of 36 spaces (including one accessible parking space).



- vi. Delivery loading bay and bin enclosure.
- vii. Four business identification signs including one above the entry, and three flush wall signs facing the car park.

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 C**).

### **3.0 PUBLIC NOTIFICATION**

The application was publicly notified in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*, the associated Regulation and the Newcastle Development Control Plan 2012 (NDCP 2012). Twenty-nine submissions were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

#### **1. Car parking / Access**

- i) Insufficient car parking on site.
- ii) Use of rear laneway for illegal parking.
- iii) The proposed access to Bruncker Road is near a bus stop and pedestrian crossing.

#### **2. Traffic**

- i) Cumulative impact of proposal on traffic in locality.
- ii) Use of laneway at rear of site for access.
- iii) Impact of delivery trucks reversing down laneway.

#### **3. Permissible uses**

- i) Impact of allowing non-permissible uses in a residential area outside of the Adamstown Commercial Precinct.
- ii) Existing use rights and the intensification of the site - changing from an existing prohibited use to another prohibited use.

#### **4. Contamination**

- i) Potential for contamination due to previous use of the site.

#### **5. Crime Prevention Through Environmental Design**

- i) A Crime Prevention Through Environmental Design (CPTED) Report should be provided for the development.
- ii) Concern about the potential negative impact of sale of alcohol on site.
- iii) Late opening of the supermarket will pose a potential security risk.

**6. Building Design**

- i) The design of the proposal will not enhance the area.

**7. Amenity**

- i) Noise from delivery vehicles on the site and surrounding road network will increase as a result of the proposal.

**8. Lack of community consultation**

- i) There was insufficient community consultation for the proposal.

The objectors' concerns are addressed under the relevant matters for consideration in the following section of this report.

**4.0 PLANNING ASSESSMENT**

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

**5.0 Provisions of any environmental planning instrument**

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

This policy applies to the proposed development and contains planning controls for the remediation of contaminated land.

Clause 7 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

CN's records do not identify any past contaminating activities on the site. The proposal is acceptable having regard to this policy.

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) is one of a suite of Land Management and Biodiversity Conservation 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 previously contained in cl.5.9 of NLEP 2012 (clause now repealed) and provides that CN's Development Control Plan can make

declarations with regard to certain matters, and further that CN may issue a permit for tree removal.

The proposal has been assessed in accordance with NDCP 2012 and is considered to be satisfactory.

### **State Environmental Planning Policy No 64—Advertising and Signage**

The proposed signage is acceptable having regard to SEPP 64 requirements and the nature of the development.

### **Newcastle Local Environmental Plan 2012 (NLEP 2012)**

The following summarises an assessment of the proposal against the provisions of NLEP 2012 that are relevant to the proposed development.

#### Clause 2.1 Land Use Zones

The subject property is included within the R4 High Density Residential zone under the provisions of the NLEP 2012, within which zone the proposed development is not permissible with Council's consent.

The applicant is seeking approval for a change of use of part of the premises from light industrial use (wardrobe manufacturer) to retail use (neighbourhood supermarket) under Clause 41(f) of the *Environmental Planning and Assessment Regulation 2000* (EP&A Reg. 2000).

This Clause is paraphrased as follows:

*(1) An existing use may, subject to this Division*

*(f) if it is a light industrial use—be changed to another light industrial use or a commercial use (including a light industrial use or commercial use that would otherwise be prohibited under the Act).*

The last known use on the site was a manufacturer of wardrobes and home storage products (Oz Robes). This use was lawfully established via development consent in 2002 (DA 02/0765). Evidence has been provided by the applicant demonstrating this use ceased less than 12 months prior to the submission of this development application. Existing use rights have been suitably demonstrated by the applicant.

Light industry is defined as follows within the LEP 2012:

***light industry*** means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following:

- a) high technology industry

- b) home industry
- c) artisan food and drink industry.

***industrial activity** means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles for commercial purposes, and includes any storage or transportation associated with any such activity.*

Oz robes meets the definition of light industrial use. Accordingly, the provisions within EP&E Reg. 200 Clause 41(f) are applicable.

#### Clause 2.7 Demolition Requires Development Consent

The proposal includes the demolition of part of the internal area of the premises on the site. Conditions are recommended to ensure demolition works and disposal of material is managed appropriately and in accordance with relevant standards.

#### Clause 4.3 Height of Buildings

Under NLEP 2012 the site has a maximum height of 17m. The proposal does not alter the existing building height and complies with this requirement.

#### Clause 4.4 Floor Space Ratio

Under NLEP 2012 the site has a maximum 1.5:1 floor space ratio. The proposal does not alter the existing floor space ratio on the site and complies with this requirement.

#### Clause 5.4

This clause restricts the size of neighbourhood supermarket to 1000m<sup>2</sup>. The proposed supermarket is 870m<sup>2</sup>. However, this clause does not apply as the use is not permissible and the application is relying on existing use rights.

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils and the proposed development is considered satisfactory in this regard.

#### Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause.

### **5.1 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.

## **5.2 Any development control plan**

### **Newcastle Development Control Plan (NDCP 2012)**

The main planning requirements of relevance in the NDCP 2012 are discussed below.

#### Commercial Uses - Section 3.10

##### *Height of buildings (3.10.01)*

The proposal does not alter the existing building height and complies with this control.

##### *Density – floor space ratio (3.10.02)*

The proposal does not alter the building footprint and therefore the FSR will not change on the site.

##### *Streetscape and front setbacks (3.10.03)*

The proposal does not alter the front setback of the existing building. The proposal will enhance the streetscape through the creation of a new pedestrian entrance from Bruncker Road and by the regeneration of the existing car parking area.

##### *Side and rear setback (3.10.04)*

No changes are proposed to the side and rear setbacks.

##### *Street activation (3.10.05)*

The proposal will result in increased pedestrian accesses to the tenancies in the building and will provide for a use that is likely to activate the building frontage further. No covered glazing is proposed as part of this application. The proposal is considered to meet this control.

##### *Building design and appearance (3.10.06)*

The proposal uses the existing building on site, ensuring the existing street rhythm and character is maintained in accordance with this control.

##### *Views and privacy (3.10.07)*

The proposal will result in an increase in glazing to the southern corner of the site with no other changes proposed to the windows in the building. The proposal is not considered to impact on the privacy of surrounding properties.

*Fencing and walls (3.10.08)*

The proposal does not include any fencing or walls.

*Utilities and services (3.10.09)*

The proposal ensures site facilities are in accordance with this control.

Flood Management – Section 4.01

A portion of the site is flood prone land. The proposal has been assessed by CN's Engineer (Stormwater). The engineer provided the following assessment of the proposal:

*“The subject site is predominantly flood-free. A very small portion of the southwestern corner of the existing carpark is affected by the probable maximum flood (PMF). However, there are no works proposed within this area. The proposed change of use from industrial to commercial is acceptable from a flood management perspective.”*

The proposal is considered to be acceptable in respect of flooding impacts.

Mine Subsidence - Section 4.03

The site is not within a proclaimed mine subsidence district.

Safety and Security - Section 4.04

*Crime Prevention through Environmental Design (CPTED) Principles (4.04.01)*

The applicant has provided an assessment of the proposal against the CPTED principles. The proposal incorporates the principles and accords with this control.

*General principles (4.04.02)*

The applicant has provided a crime risk comment in accordance with this control. The proposal will enhance passive surveillance of the street and car park by providing an active use (supermarket) within the existing building. Furthermore, the existing car parking area will be upgraded and enhanced, thereby reducing the potential for crime. The proposal meets the safety requirements of the DCP.

*Principles for specific uses (4.04.03)*

The proposal includes alterations to an existing car park on site. The proposed alterations will enhance the appearance of the car park thereby reducing the potential for anti-social behaviour in addition to damage to the car park. The proposal also includes the provision of an active use which will enhance passive surveillance of the car park. The proposal is considered to comply with this control.

The application has also been referred to the NSW Police for comment in relation to the proposed off-licence sales area on site. The Police have confirmed the off-licence is acceptable providing a number of conditions are included with the consent. These conditions relate to the hours of off-licence sales, a restriction in the sale of alcohol to non-refrigerated liquor products only, the erection of a clear barrier to define the off-licence area and the installation of a CCTV system on site as a security measure. These conditions are included in the draft condition list in **Attachment B**.

Social Impact - Section 4.05

*Social impact (4.05.01)*

The applicant submitted comments on the social impacts of the proposal. It is recognised the proposal will have a social impact on the locality however the impact is not considered to be negative. The proposal will enhance the shopping options for the locality and will provide for local employment opportunities through both the construction period and operation of the supermarket. Access for people with a disability is also provided for the supermarket. The proposal is likely to support local businesses and will not increase crime or safety issues as assessed in Section 4.04 of this section. The proposal is considered to comply with this control.

Adamstown Renewal Corridor - Section 6.08

*Land use and development (6.08.01)*

A. *Land use*

The subject site is located within Precinct 1 of the renewal corridor. This Precinct is defined as follows within Section 6.08:

*Precinct 1 includes land either side of Brunner Road south of 'Nineways' Broadmeadow to Onley Road, Adamstown. The precinct is predominantly residential but also includes a mixture of other uses, resulting in a lack of cohesive street character. Brunner Road follows the ridgeline, hence offering potential views either side of the corridor.*

The following controls apply to this precinct;

*Provide a range of compatible uses including higher density residential and low intensity employment.*

The proposal is consistent with the land use principles in this section. The proposal will provide for a neighbourhood supermarket which will complement the existing and future residential dwellings in the locality. The proposal will also provide for a range of low intensity employment opportunities. The proposal is considered to comply with this section.

*B. Activation of street frontages*

The proposal will enhance the existing building on site through the creation of an active retail frontage. In addition, the proposal includes the creation of a new pedestrian entrance from Bruncker Road to the premises in accordance with this control.

*Building form (6.08.02)*

*A. Floor space ratios*

The proposal will not alter the existing floor space ratio on site.

*B. Height*

The proposal will not alter the height of the existing building on site.

*C. Building setbacks*

The proposal does not alter the existing building setbacks.

*D. Upper building setbacks*

The proposal does not alter the existing building setbacks.

*E. Building design elements*

The proposal does not significantly alter the existing building design. However, changes are proposed including an increase in glazing to the ground floor of the proposed supermarket tenancy and the addition of signage on the site. The proposed building changes are considered to comply with the criteria set out in this control.

*Public Domain (6.08.03)*

*A. Traffic and transport*

The proposal utilises the existing at grade car park. However, vehicular access to the site is provided by a laneway to the rear of the site and not via Bruncker Road. The existing car park will also be visually enhanced through planting and refurbishment.

*B. Pedestrian amenity*

The proposal provides an enhanced pedestrian access from Bruncker Road through the existing car park on site in accordance with this control.

*C. Open space and landscaping*



As the proposal is for alterations and additions to an existing building, a number of the criteria within this control are not applicable. However, the proposal will enhance the level of landscaping through the car park area and will provide lighting and passive surveillance to the street and the existing front setback of the building on Bruncker Road. The proposal is considered to comply with this control.

Traffic, Parking and Access - Section 7.03

Applying the parking rates specified in DCP Section 7.03, the total car parking requirement for the proposed development is 56 car parking spaces, 11 bicycle spaces and 3 motorbike spaces. Applying a historical deficiency to the proposal, the proposed development is required to provide parking facilities for a minimum of 6 bikes (one bike rack) and one motorbike space.

The development plans indicate provision of 36 on-site car parking spaces, 10 bicycle spaces and one motorbike space. The development therefore has a car parking deficiency of 20 spaces.

The applicant has justified the under-provision of car parking on a number of factors:

*Historic parking deficiency*

The proposal has been assessed by CN's Development Officer (Engineering). The Officer commented on the proposed deficiency as follows:

*Investigation of the existing DA consents for the site, DA1998/1711 and DA2002/0765, has revealed that the existing industrial use was originally approved with zero on-site parking and the existing carpark was later constructed as part of DA2002/0765. Without access to the original engineering assessment reports, it may be deduced that the current industrial use was once approved with a significant historical parking deficiency in the vicinity of 20 spaces (at 1 space per 100m<sup>2</sup> GFA for industrial). This historic deficiency was later reduced when the existing 30 space carpark was constructed. Although it would mean that no historic deficiency would technical exist for the current approved use of the site, some weight may be given to the previous historic deficiency of the site. Consideration has also been given to the availability of on-street parking across the 2 street frontages of the site (approximately 12 spaces) which is utilised by customers of the existing third tenancy (Ansteys), the likely level of cross-use anticipated and the nature of the proposed supermarket as a local neighbourhood shop with a more localised catchment of customers, all of which are factors that will serve to reduce the prima facie parking deficiency of 20 spaces. It is noted that Ansteys tenancy is likely operating outside of the current consent of an industrial use. A significant portion of the GFA is currently used for storage and not as a shop, which would attract a lower parking rate than was calculated in the previous referral and further reduce the 20 space parking deficiency. It is recommended that the proposed parking deficiency be supported by Council for the reasons discussed above.*

Based on the above assessment, the car parking variation proposed on the site is considered acceptable.

Energy efficiency - Section 7.05

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

CN's Development Officer (Engineering) has provided the following comments in relation to the proposal:

*The only external works involve demolition of an existing shed (approximately 100m<sup>2</sup>) within the existing carpark to accommodate additional parking spaces. There is no net increase in impervious area. A condition will be placed on the consent to ensure that the new section of the carpark is constructed of suitable pavement and is graded towards the existing surface inlet pits within the carpark. Minor guttering works associated with the building alterations may also be conditioned in the consent. The existing stormwater drainage arrangements for the site will not be altered and continue to drain to the street system.*

Accordingly, the proposal is acceptable in relation to stormwater management.

Waste Management - Section 7.08

Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued. Waste is to be stored in the designated bin storage area in the carpark as shown on the submitted plans and brought to Coolah Road for kerbside collection. The bins are then to be immediately moved back to the bin storage area in the car park.

Based on the submitted information, the proposal is considered to be acceptable.

Advertising and Signage - Section 7.09

The proposal includes the erection of four business identification signs. One sign will be located above the proposed pedestrian entrance on Brunner Road and the remaining three signs will be located on facade of the premises facing the car park.

The proposed signage is consistent with the criteria in this section in respect of size and location and is appropriate in this instance. The signage has also been assessed against the criteria provided in State Environmental Planning Policy 64 (SEPP 64) and complies with these criteria. Suitable conditions in relation to signage are included in the draft conditions.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the provisions of NDCP 2012. A total of 29 submissions objecting to the proposal were received.

Comments are provided in Section 5.7 below.

### Development Contributions

Sections 7.11 and 7.12 of the *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans.

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions (refer to **Attachment B**).

### **5.3 Planning agreements**

No planning agreements are relevant to the proposal.

### **5.4 The regulations (and other plans and policies)**

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and Regulation 2000. In addition, compliance with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and NDCP 2012 considerations. In addition, the following impacts are considered relevant.

#### Traffic and Parking

The proposal has been assessed by CN's Development Officer (Traffic), and found to be acceptable, subject to draft conditions included in **Attachment B**.

The proposed development will not have any undue adverse impacts on the natural or built environment. The development is compatible with the existing character, bulk, scale and massing of development in the immediate area. It is considered that the proposal will not have any negative social or economic impacts.

### **5.6 The suitability of the site for the development**

The site is suitable for the proposed development as it will provide a complementary service to the existing commercial and industrial premises in the locality. Furthermore, the proposal will provide for ongoing local employment opportunities.

The design of the proposal will enhance the existing premises and improve safety and security, particularly for pedestrians.

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

**5.7 Any submissions made in accordance with this Act or the regulations**

The application was notified in accordance with CN’s NDCP 2012 for a period of 14 days. 29 submissions were received during the notification period.

The following table provides a summary of the issues raised and a response to those issues.

Issue	Comment
<i>The proposal will result in a significant increase in traffic on the local road network</i>	The existing businesses on site have been operating for some time and all result in generating traffic in the local network. The proposed supermarket will service the local area only and is not of a large scale. Given the existing mix of residential / commercial and industrial uses along Bruncker Road and the traffic associated with these uses, the works proposed as part of this application will not result in a significant change to existing local traffic levels.
<i>The proposal will impact on the access arrangements in the laneway to the north of the site</i>	<p>The proposal includes the retention of an access to the existing car park from the laneway to the north. This arrangement is supported by the relevant controls in the DCP.</p> <p>The applicant has demonstrated that service vehicles can acceptably manoeuvre in and out of the site. Furthermore, the proposed loading bay is considered an improvement to the current loading bay arrangement.</p> <p>The proposal is not considered to impact on the existing access arrangements in the laneway to the north of the site.</p>
<i>The acceptance of a non-permissible use will impact on existing businesses in the area</i>	<p>The applicant has suitably demonstrated the permissibility of the proposed change of use via existing use rights. This is discussed in detail in Section 5.2 of this report.</p> <p>The proposal will result in the provision of a neighbourhood supermarket which is considered to complement the existing commercial and industrial</p>

**CITY OF NEWCASTLE**

	<p>businesses and residential premises in the area. The supermarket is of a size that will cater for local needs only and is not likely to challenge the services offered by existing businesses.</p>
<p><i>The proposed development, in particular the servicing of the proposed supermarket, will lead to congestion in the laneway</i></p>	<p>The access arrangements for the proposed supermarket have been assessed by CN's Development Officer (Engineering) and are considered acceptable. Vehicular access from the laneway to the site occurs at present. The applicant has demonstrated that servicing vehicles will be able to ingress and egress the site via the laneway without any impacts and the proposed loading bay area is considered a better solution than currently exists. Overall, the proposed access arrangement is acceptable and is not considered to lead to congestion in the laneway.</p>
<p><i>Noise from delivery vehicles on the site and surrounding road network will increase as a result of the proposal</i></p>	<p>The proposal involves minor changes to the existing car park and access and is not considered to result in a substantial increase in traffic on site or in the surrounding road network. The proposal has been fully assessed by CN's Development Officer (Engineering).</p>
<p><i>The sale of alcohol in the supermarket will result in increased anti-social behaviour in the locality</i></p>	<p>The proposal includes an area for off-licence sales within the supermarket. The operator will be required to obtain approval from Liquor and Gaming for off-licence sales with the potential impact of this being assessed at that time.</p> <p>The applicant has demonstrated how the proposal will meet the CPTED principles and will not result in social impacts to the surrounding area. The sale of alcohol is not likely to result in an increase in anti-social behaviour and is required to be approved by Liquor and Gaming and is acceptable.</p> <p>The application has also been referred to the NSW police for comment in relation to the proposed off-licence. The police have confirmed the off-licence is acceptable providing a number of conditions are included with the consent. These conditions relate to the hours of off-licence sales, a restriction in the sale of alcohol to non-refrigerated liquor products only, the erection of a clear barrier to define the off-licence area and the installation of a CCTV system on site as a security measure. These conditions are included in the draft condition list.</p>
<p><i>The laneway is too narrow to deal with the delivery trucks proposed to use it</i></p>	<p>The applicant provided swept path diagrams demonstrating that delivery trucks will be able to enter and exit the site via the laneway safely. The proposal has been fully assessed by CN's Development Officer</p>

	(Engineering) and is considered acceptable in respect of the proposed delivery vehicle access arrangements.
<i>Late opening of the supermarket will pose a potential security risk</i>	The proposal has been assessed against the CPTED principles and is considered to comply with those principles. The proposal will provide for increased passive surveillance for the car park and surrounding locality. In addition, security features will be provided for in the proposed supermarket including CCTV and lighting. The proposal is not considered to result in a security risk to the surrounding area.
<i>The proposed development is of a poor quality design and will detract from the streetscape</i>	The proposal retains much of the existing building on site. The changes to the existing building are considered to enhance the streetscape by increasing pedestrian access to the building and improving the existing poor-quality car park area. The proposed development is considered to enhance the existing building design.
<i>There is insufficient car parking provided on site</i>	The proposal has been assessed by CN's Development Officer (Engineering) in respect of car parking provision. Due to a historic shortage of car parking on site and the likely local catchment of the supermarket, the proposed car parking provision is deemed acceptable and is supported.
<i>The proposed access to Bruncker Road is in close proximity to a bus stop and pedestrian crossing</i>	Following an assessment of the proposed access arrangements for the site, the applicant was required to remove the vehicular access to Bruncker Road. The amended proposal now includes a pedestrian access only from Bruncker Road.
<i>There was insufficient community consultation for the proposal</i>	The proposal was notified in accordance with CN's public consultation requirements. Submissions were invited from neighbouring properties in addition to the proposal being notified online. Sufficient community consultation has taken place.

### 5.8 The public interest

The development is in the public interest as it will allow for the orderly and economic development of the site and it is providing additional local services to the community.

### 6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15 of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

**ATTACHMENTS**

**Item 20 Attachment A:** Plans and elevations of proposed development / as amended – 64 Brunner Road, Broadmeadow - Under separate cover

**Item 20 Attachment B:** Draft Schedule of Conditions – 64 Brunner Road, Broadmeadow - Under separate cover

**Item 20 Attachment C:** Processing Chronology – 64 Brunner Road, Broadmeadow – Under separate cover

**Item 20 Attachments A-C distributed under separate cover**

**ITEM-21**                    **DAC 03/12/19 - DA2019/00339 - 48/56 HUNTER STREET, NEWCASTLE - ALTERATIONS AND ADDITIONS TO A HERITAGE LISTED BUILDING, INCLUDING AN ADDITIONAL STOREY FOR USE AS A SINGLE RESIDENTIAL DWELLING**

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

**PART I**

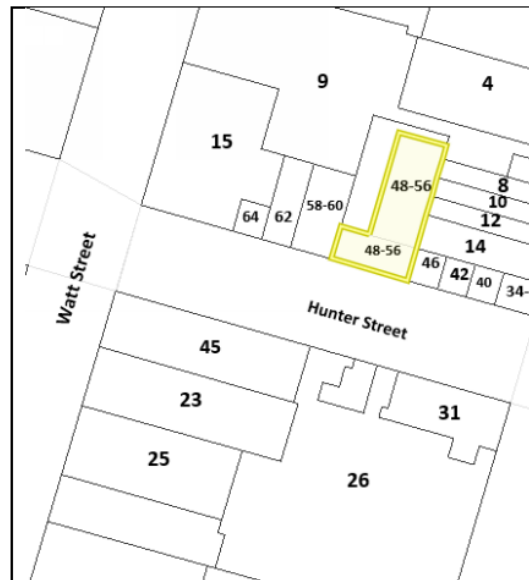
**BACKGROUND**

An application has been received seeking consent for alterations and additions to a heritage listed building, including an additional storey for use as a single residential dwelling.

The submitted application was assigned to Development Officer, Gareth Simpson, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to:

1. The proposed variation to the building height development standard of Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (15.5% variation) proposed to rear laneway elevation.
2. The proposed variation to the floor space ratio development standard of NLEP 2012 being more than a 10% variation (85% variation proposed).



**Subject Land:** 48-56 Hunter Street Newcastle

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



The application was publicly notified in accordance with City of Newcastle's (CN) public participation policy and seventeen (17) submissions were received in response.

The objector's concerns included:

- i. View Loss
- ii. Visual impact
- iii. Overdevelopment of the site
- iv. Exceedance to the maximum floor space ratio for the site
- v. Exceedance to the maximum building height for the site
- vi. Privacy
- vii. Landscaping
- viii. Location of air conditioning units
- ix. Street wall height
- x. Loss of property value

The proposal was considered at a meeting of the Public Voice Committee held on 19 November 2019.

The Public Voice Committee heard from 1 objector raising their concerns regarding the loss of views to the Harbour and Stockton, height exceedance, Floor Space Ratio exceedance, exceedance of the building wall height, the accuracy of the visual analysis and the loss of value to surrounding properties. The applicant also presented a response to the issues raised.

The concerns discussed at the Public Voice Committee are addressed as part of the Planning Assessment at **Section 5.0**.

### Issues

- 1) The proposed development does not comply with the height of buildings provision of 24m under NLEP 2012. The proposed height of the building is 25.8m along the Hunter Street elevation (to the south) and 27.72m along the rear laneway (to the north), including lift overrun and skylight windows. This equates to a 7.5% variation and a 15.5% variation to the height of buildings development standard, respectively, if considered in the context of the two main street frontages. Furthermore, it is noted that the existing building currently has a building height of 29.8m in parts, due to existing rooftop equipment, which does not comply with the development standard.
- 2) The proposed development does not comply with the Floor Space Ratio (FSR) provision of 3:1 under NLEP 2012. The proposed development has an FSR of 5.56:1, which equates to an 85% variation to the FSR development standard. It is noted that the existing building has an FSR of 4.9:1 which does not comply with the development standard, which equates to a 63% variation.
- 3) The subject site is listed (*'1392 Sun Building*) for its local heritage significance in NLEP 2012. The rooftop additions respond well to the existing built form

and are setback to preserve the appearance of the building from the public domain, minimising the impact on the streetscape.

- 4) The proposed development will result in a partial loss of views from surrounding properties to the Harbour and Nobby's Lighthouse. The surrounding properties generally have a partially obstructed view of these local features and these views will be mostly maintained but with some minimally reduced as a result of the proposed development.

### **Conclusion**

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is considered to be acceptable subject to compliance with appropriate conditions.

### **RECOMMENDATION**

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and
- B. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and
- C. That DA2019/00339 for alterations and additions to a heritage listed building, including an additional storey for use as a single residential dwelling at 48-56 Hunter Street, Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.
- D. That those persons who made submissions be advised of CN's determination.

### **Political Donation / Gift Declaration**

Section 10.4 of the *Environmental Planning and Assessment Act 1979* requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council; and

- b) all gifts made to any local Councillor or employee of that Council.

The applicant has answered **NO** to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

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## PART II

### 1.0 THE SUBJECT 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 C**).

### **3.0 PUBLIC NOTIFICATION**

The original application was publicly notified in accordance with the requirements of the EP&A Act 1979, the associated Regulation and the Newcastle Development Control Plan 2012 (NDCP 2012). In response 31 submissions were received.

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

i) View Loss

- a) The proposal will result in a loss of views of the harbour from neighbouring residential properties.

ii) Unacceptable exceedance to the maximum floor space ratio for the site

- a) The proposed development has an unacceptably large variation to the maximum floor space ratio development standard for the site.

iii) Unacceptable exceedance to the maximum building height for the site

- a) The proposed development has an unacceptably large variation to the maximum building height for the site.

iv) Overdevelopment of the site

- a) The proposed development is over development of the site as demonstrated by the variations to building height and floor space ratio.

v) Visual impact

- a) The proposed development will have a visual impact on neighbouring properties.

vi) Privacy

- a) The proposed development will impact on the privacy of neighbouring properties.

vii) Landscaping

- a) Request for further landscaping on the Hunter Street side of the proposed development.

viii) Loss of property value

- a) The proposed development will result in a loss to property value of neighbouring properties.

ix) Location of air conditioning units

- a) The inclusion of air conditioning units on the roof of the proposed development will further increase the height of the addition.

x) Misleading information in the Development Application pack

- a) The application pack does not fully describe the impact of the proposed development on neighbouring properties.

xi) Street wall height

- a) The proposed development exceeds the maximum street wall height as defined in the DCP 2012.

The current amended plans have been publicly notified and 17 submissions have been received expressing continued concerns regarding the proposal.

The objectors' concerns are addressed under the relevant matters for consideration in the following section of this report.

#### 4.0 INTEGRATED DEVELOPMENT

Separate approval is required from Subsidence Advisory NSW under the *Coal Mine Subsidence Compensation Act 2017*, due to the site being located within a proclaimed mine subsidence district.

The applicant had the opportunity to have the application processed as integrated development, pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*, invoking a process whereby CN refers the application to relevant State agencies to seek their '*General Terms of Approval*'. The submitted application form does not nominate Subsidence Advisory NSW as a relevant agency.

The applicant applied for a separate approval from the Mine Subsidence Board and approval was issued on 24 April 2019. A condition of consent is recommended in the draft conditions (**Attachment B**), requiring that the development meet Subsidence Advisory NSW requirements.

#### 5.0 PLANNING ASSESSMENT

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.

##### 5.1 Provisions of any environmental planning instrument

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

This policy applies to the proposed development and contains planning controls for the remediation of contaminated land.

SEPP 55 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject land is currently being used for commercial purposes and CN's records do not identify any past contaminating activities on the site. The proposal is considered to be acceptable having regard to this policy.

**State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP)**

The subject site falls within the coastal environment area identified under the Coastal Management SEPP.

As the proposal involves alterations and additions to a building on a site that is located in a developed urban area that is well removed from any immediate coastal or foreshore location, and with no excavation proposed, it is considered that the proposed development does not create any significant concerns in relation to the provisions of the Coastal Management SEPP.

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

A BASIX Certificate was lodged with the application, demonstrating that the development can achieve the required water and energy reduction targets. A condition of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate.

**State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65)**

SEPP 65 applies to certain residential flat buildings and aims to improve the quality of residential flat development. SEPP 65 requires the consent authority to take into consideration the advice of a Design Review Panel, the design quality of the development when evaluated in accordance with the design quality principles and the Apartment Design Guide.

A SEPP 65 Statement that addresses the design quality of the proposed development has been submitted with the application. However, as the proposal is for a single dwelling and the building does not contain any other dwellings, the proposed development falls outside of the threshold for SEPP 65 to be applicable.

**Newcastle Local Environmental Plan 2012 (NLEP 2012)**

The following summarises an assessment of the proposal against the provisions of NLEP 2012 that are primarily relevant to the proposed development:

Clause 2.1 - Land Use Zones

The subject property is located within the B4 Mixed Use zone under the provisions of NLEP 2012, where the proposed development is permissible with CN's consent. The proposal is defined as shop top housing, as it is a dwelling located above ground floor retail or business premises. The ground floor is currently used as a business premise for an accounting firm.

The proposed development is also consistent with the zone objectives, which are as follows:

- a) *To provide a mixture of compatible land uses.*
- b) *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- c) *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

Clause 4.3 - Height of Buildings

The site has a height of building development standard of 24m. The proposed development has a maximum height of 27.72m. The proposed building height was clarified by the applicant on 1 November 2019 following the identification of discrepancies in the building height identified in the application.

The height of the proposed development exceeds the NLEP 2012 development standard by 15.5%.

There is a slight fall across the site from south to north. The height exceedance therefore varies across the site. The overall height also takes into consideration the lift overrun and plant shelter and the clerestory windows, which projects slightly above the lift overrun at 26.5m. It is noted that the overall height of the current structure will decrease with the removal of the existing pool tower.

The applicant has submitted a Clause 4.6 variation request with respect to this development standard. Refer to discussions under Clause 4.6 - Exceptions to Development Standards below.

Clause 4.4 - Floor Space Ratio

The site has a floor space ratio (FSR) development standard of 3:1. The proposal includes the addition of a 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. The overall exceedance of the FSR control with the proposed development will be 85%.

While the variation to the FSR development standard appears to be significant, in the context of the surrounding area, the built form and the design of the additional storey is considered to be acceptable and compatible with the surrounding streetscape.

The applicant has submitted a Clause 4.6 variation request with respect to this standard. Refer to discussions under Clause 4.6 - Exceptions to Development Standards below.

#### Clause 4.6 - Exceptions to Development Standards

#### **The proposal includes a building that exceeds the floor space ratio development standard under Clause 4.3 of NLEP 2012**

Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard. In assessing the proposal against the provisions of clause 4.6, it is noted that:

1. Clauses 4.3 (Height of Buildings) is not excluded from the operation of this clause; and
2. The applicant has prepared a written request, requesting that CN vary the development standard and demonstrating that:
  - a) *Compliance with the development standards is unreasonable or unnecessary in the circumstances of the case, and*
  - b) *There are sufficient environmental planning grounds to justify contravening the development standard.*

An extract of the applicant's request to vary the Development Standards is provided below:

*“Clause 4.3 has two objectives; to ensure that the scale of development makes a positive contribution towards the desired built form; and to allow reasonable daylight access to all developments including the public domain.*

*The proposed height variation of 3.72m is considered acceptable given the proposed height achieves both objectives of the clause. The design of the new level and roof is sympathetic to the existing building and heritage facade with complementary window widths and inward sloping walls. The new level is stepped back from the front facade and includes a mansard roof with clad in metal that will appear similar to traditional folded seam copper and lead roofing. The resulting level will be a subtle addition, and not dominate the skyline.*

*The proposed height will not limit daylight access to the existing development, surrounding sites or public domain.”*



“What are the objectives of the development standard?”

The objectives of clause 4.3 of NLEP 2012 are:

- (a) *To ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy.*
- (b) *To allow reasonable daylight access to all developments and the public domain.*

What is the proposed numeric value of the development standards in your development application?

The numeric value of the proposed development and percentage variation are detailed in the following table:

Height

<b>LEP Clause</b>	<b>Control</b>	<b>Proposal</b>	<b>Variation</b>
Clause 4.3 – Building Height	24m	27.72m (Rear Laneway – Northern Façade)	3.72m (15.5%)
		25.8m (Hunter Street elevation)	5m (7.5%)

An assessment of the request has been undertaken and it is considered that:

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3); and
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out; and
- c) The Secretary's concurrence to the exception to the height of buildings development standard, as required by clause 4.6(4) (b) of NLEP 2012, is assumed, as per Department of Planning circular PS 18-003 of 21 February 2018; and
- d) The proposed height and scale of the development is in character with existing surrounding development. In particular, the proposed building height matches that of the more substantial building that adjoins the eastern boundary of the site and consists of a minor addition to the existing building only. The proposed building height exceedance is considered to have only minor impacts on neighbouring properties in

terms of privacy, overshadowing and view loss as assessed within this report.

- e) The proposed exception to the height of buildings development standard of NLEP 2012 is considered to be a relatively minor variation in the context of the site and its locality, and strict compliance would be unnecessary.

**The proposal includes a building that exceeds the floor space ratio development standard under Clause 4.4 of NLEP 2012**

Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard. In assessing the proposal against the provisions of clause 4.6, it is noted that:

1. Clause 4.4 is not expressly excluded from the operation of this clause; and
2. The applicant has prepared a written request, requesting that CN vary the development standard and demonstrating:
  - a. *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - b. *that there are sufficient environmental planning grounds to justify contravening the development standard.*

An extract of the applicant's request to vary the Development Standards is provided below:

*"The site is located within the East End of the Newcastle CBD, where larger buildings are to be expected. The subject site is opposite land within the R4 zone where a greater floor space ratio and height allowance is permitted. Therefore, the subject site may be developed in excess of the FSR control without resulting in inappropriate bulk or scale given the built form established in the immediate area. This is particularly relevant considering the existing building exceeds the FSR controls, sitting at 4.9:1 but it is not considered an overdevelopment.*

*Overall, the proposal remains consistent with the streetscape and setting, and the additional level presents a sympathetic design which does not result in a bulk and scale inappropriate for the area.*

*Based on the consistency of the proposed height and FSR with the objectives of each Clause, and the lack of impact created to both the public domain and existing / future residents by the proposed building height and FSR, it is considered that strict compliance in this instance is unnecessary.*

*The proposed penthouse addition is compliant with applicable Planning Policies and is generally compliant with the DCP 2012. The proposed height and FSR*

*exceedance will not cause any unreasonable impact on adjoining properties or the natural or built environments. Solar access will not be negatively impacted; loss of views or vistas will not be significantly diminished; and the proposal does not dominate the streetscape of the heritage conservation area in which it is located.*

*Particular consideration has been made during the design stage to ensure the proposal will not result in any privacy impacts to the adjoining properties. The chosen materials and design is sensitive to the existing building and character of the area therefore not considered to result in a 'bulky' development. Alongside the chosen materials, the setback of the addition ensures visibility from the street level is minimal. Furthermore, it is emphasized that while the proposed height does not comply, the proposal in effect reduces the overall height of the existing development."*

What are the objectives of the development standard?

The objectives of clause 4.4 of NLEP 2012 are:

- (a) *To provide an appropriate density of development consistent with the established centres hierarchy.*
- (b) *To ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.*

What is the proposed numeric value of the development standards in your development application?

Floor Space Ratio

<b>LEP Clause</b>	<b>Control</b>	<b>Proposal</b>	<b>Variation</b>
Clause 4.4 – Floor Space Ratio	3:1	5.56:1	85%

An assessment of the request has been undertaken and it is considered that:

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3); and
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out; and
- c) The Secretary's concurrence to the exception to the floor space ratio development standard, as required by clause 4.6(4) (b) of the NLEP 2012, is assumed, as per Department of Planning circular PS 18-003 of 21 February 2018; and

- d) The proposed FSR exceedance will have minimal impact on neighbouring properties in terms of privacy, overshadowing and view loss. The proposed scale of the development is in character with existing development in the surrounding area. The proposed exception to the floor space ratio development standard of NLEP 2012 is considered to be acceptable and strict compliance would be unnecessary.

In summary, it's considered that the applicant's written request to vary development standards, which includes Urban Design Assessment Reports, has adequately justified that compliance with the height of buildings and FSR development standards is unnecessary in the circumstances and has demonstrated that the requirements relating to streetscape, daylight, sunlight and privacy are satisfied. The applicant has demonstrated that the objectives are achieved, in particular that the height relates to the existing built form and that the privacy and overshadowing of adjoining properties is satisfactory.

A full copy of the submitted request for variations to NLEP 2012 development standards is appended at **Attachment D**.

#### Clause 5.10 - Heritage Conservation

The subject site is listed ('*I392 Sun Building (façade only)*') for its local heritage significance in NLEP 2012.

The subject site is also located within the Newcastle City Centre Heritage Conservation Area and a number of other sites in the vicinity are also listed for their cultural heritage significance including:

- 1) I391 – the T & G Mutual Life Assurance Building;
- 2) I395 – the Former national Bank;

A Statement of Heritage Impact (SoHI) has been submitted in support of the proposed works. The SoHI has been undertaken generally in accordance with the NSW Heritage Office publications, *Assessing Heritage Significance and Statements of Heritage Impact*, together with the Australia ICOMOS, *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance 2013*.

The submitted Statement of Heritage Impact indicates that the building has Historical Significant for the following reasons:

*'48-56 Hunter Street is a record of the development of Newcastle in the Inter-War period and one of a group of commercial buildings from this period in the Hunter Street.*

#### *Aesthetic Significance*

*The facade contributes to the streetscape of Hunter Street and the axis of Hunter Street through to Pacific Park.*

*Scientific*

*The construction type has the potential to reveal the use of steel construction in multi-level buildings, though it has been altered with new work.*

*Social*

*This building is likely to be valued by the local community of Newcastle.*

*Representative*

*A good example of the Inter-War Free Classical style with characteristic elements including unconventional architectural order, attenuated pilasters and unconventional proportions. The representative values of this building have been diminished by the removal of original internal fabric including stairs and internal fabric’.*

The subject site is also located in the vicinity of the two heritage items as follows:

T&G Mutual Life Assurance Building	45 Hunter Street	State significance	I391
Former National Bank	68 Hunter Street	Local significance	I395

The submitted Statement of Heritage Impact indicates that:

*‘The upper level has been designed as a traditional attic level with a mansard roof form (walls sloping inwards) and appears as an extension to the roof cladding. It has been set back from the street and behind the fifth floor balcony and street façade parapet. The windows are vertically proportioned and the whole is clad in metal that will appear similar to traditional folded seam copper and lead roofing’.*

Having regard for the submitted Statement of Heritage Impact, it is considered that the proposed development will have minimal negative impact on the heritage significance of the building, the heritage significance of the Newcastle City Centre Heritage Conservation Area or the heritage significance of the heritage items located in the vicinity of the site.

It is considered that the rooftop additions respond well to the existing built form of Hunter and are setback to preserve the appearance of the building from the public domain, minimising the impact on the streetscape.

The proposal is considered to be acceptable with respect to heritage impacts.

Part 7 Additional local provisions - Newcastle City Centre

The proposed development is consistent with the objectives of this part of NLEP 2012, particularly as an example of the economic revitalisation of the Newcastle City Centre.

Clause 7.5 - Design Excellence

The development meets the design excellence criteria of NLEP 2012 and is of a high standard of architectural quality.

An Architectural Design Statement, that addresses the design principles that have been used to formulate the proposal, has been submitted with the application.

The proposal does not generate a requirement to undertake an architectural design competition in accordance with this clause, as the height of the proposed building is not greater than 48m and the site is not identified as a key site.

Overall, the proposed development responds well to the existing streetscape and the schedule of finishes is considered acceptable. The development has adequately addressed heritage issues and has an acceptable bulk, mass and articulation. It is considered that the plans and supporting documentation have demonstrated that the proposed development is of a high-quality design and responds well to the surrounding context.

Clause 7.10A - Floor Space Ratio for certain other development

The site has an area of less than 1,500 square metres and, accordingly, this clause applies. The FSR development standard for the site is 3:1.

FSR issues have previously been considered under clause 4.4.

**5.2 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.

**5.3 Any development control plan**

**Newcastle Development Control Plan 2012 (DCP)**

The following provisions of the NDCP 2012 are relevant to the proposal:

Section 3.03 Residential Development

The objective of this section of the NDCP 2012 is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form, maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form.

The proposed development is considered acceptable in relation to this section of the DCP and relevant acceptable solutions and performance criteria for building form, building separation and residential amenity.

The development establishes a scale and built form appropriate for its location within the east end precinct. The proposal provides good residential amenity while maintaining privacy for adjoining neighbours. The proposal is considered acceptable under the above control.

Section 4.03 Mine Subsidence

The site is located within a proclaimed Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

Section 4.04 Safety and Security

The building has been designed with safety and security being a consideration for future occupants. The application is considered to be consistent with this section.

Section 4.05 Social Impact

The proposed development is likely to have a positive social impact in that it will provide additional housing accommodation within the CBD and employment during construction.

Section 5.05 Heritage Items

Refer to Clause 5.10 Heritage Conservation.

Section 6.01 Newcastle City Centre

The existing building setbacks will remain unchanged and the existing street wall height is not proposed to be altered. The proposed additions on the upper levels are set back from the historic facade and protruding structures have been limited, to ensure that visual impacts on the streetscape and potential for impacts from overshadowing are minimised.

The proposed additional level to the existing building is largely screened by other nearby buildings and recently approved developments within the broader area.

The building is not a public or civic building and does not exceed a height of 45m, therefore a public art requirement is not applicable. The proposal respects the historic and built qualities of the building while increasing the residential population of the city centre.

The proposed development retains the public views to key public spaces, the waterfront, prominent heritage items and landmarks, notably the view from the harbor to the Cathedral.

A visual impact assessment has been provided with the development application. The assessment considers the impact of the proposed development on the views from the adjoining Essington Apartment building in compliance with this control. In particular, apartments 608, 707, 708 and 808 are considered in the analysis.

The assessment, which compares the view from relevant windows before and after the proposed development, demonstrates that the proposal will not adversely impact on the views from the Essington Apartment building. The relevant apartments in the building currently have obscured views of the Harbour and Nobbys' Lighthouse and these views will be predominantly maintained. Some view loss will occur as a result of the proposal however the amount of loss is considered minor and reasonable.

In addition, an assessment of the proposal against the Planning Principle for view sharing (Tenacity Consulting v Waringah [2004] NSWLEC 140) has been prepared by the applicant. The assessment demonstrates that the proposed development is reasonable given the heights of surrounding buildings and the retention of views from the Essington Apartment Building to the Harbour and Nobbys' Lighthouse.

The visual assessment is enclosed in **Attachment E** of this report.

#### Section 6.02 Heritage Conservation Area

The site is identified as a local heritage item and is located within the City Centre Heritage Conservation Area.

The DCP includes the following Summary Statement of Heritage Significance:

*'The Newcastle City Centre Heritage Conservation Area is significant on many levels. The mix of commercial, retail and civic buildings is a powerful reminder of the city's past, its economic and social history. Historic buildings provide the backdrop to a city of dramatic topography on the edge of the sea and the mouth of a harbour.'*

*The pre-1840s buildings in the city are of state significance (Rose Cottage, c1830, Newcomen Club, 1830, parts of James Fletcher Hospital) and share associations with the city's convict origins. Newcastle has a rich archaeological record of national significance, with the potential to yield information about the early convict settlement and early industrial activities. The city area is known to have been a place of contact between colonists and the indigenous population. This evidence is available in historical accounts and in the archaeological record surviving beneath the modern city.*

*The high numbers of commercial and civic buildings of the 19th and 20th centuries gives the city a rich historic character which is notable and allows an understanding of the importance of the city as a place of commerce, governance and city building. The historical foundation of the city was the discovery and exploitation of coal with good shipping access via a safe and navigable harbour. The town's layout by Surveyor General Henry Dangar in 1828 is still visible in the city's streets, and is an*



*element of historical value, particularly in the vicinity of Thorn, Keightley, Hunter and Market Streets’.*

Key Period of Significance – circa 1801 to 1940

The submitted Statement of Heritage Impact indicates that the building *‘will retain and or have the potential to enhance and respect the former Sun Building, heritage items in the vicinity and the conservation area for the following reasons:*

*The Hunter Street façade below the upper parapet is proposed to be retained without alteration. This will conserve the architectural significance of the façade of the former Sun building within Hunter Street and retain the important vistas along Hunter Street.*

*The removal of the plant tower and loft windows and replacement with a traditional style attic upper level will enhance views within the conservation area’.*

The bulk of the proposed additions are broken up by sensitive design coupled with the use of complimentary materials and colours. The proposal will also assist in ensuring the building contributes positively to the character of the area, whilst at the same time respecting the cultural heritage significance of the building and the Newcastle City Centre Heritage Conservation Area.

Overall, it is considered that the proposal is an appropriate design response within the context of the Heritage Conservation Area and the existing heritage facade.

#### Section 7.02 Landscape Open Space and Visual Amenity

As the proposed development involves a building that is built to the full extent of the site, there is limited opportunity for the provision of landscaping. The site currently contains no landscaping.

New planting is proposed to be provided within planter boxes on Level 5 and level 6 of the building. The provision of landscaping on this level will assist with softening the building's form and further break up the built elements.

#### Section 7.03 Traffic, Parking and Access

Access to the site will be maintained via a right of way from Pacific Street. The existing basement car park contains 16 car parking spaces with none of these spaces allocated to any particular tenancy in the building. The proposal is seeking to re-allocate two of the existing parking spaces for the proposed apartment resulting in the remaining 14 spaces available for the commercial tenancies in the building. The inclusion of one residential apartment is not expected to have a significant impact on car parking within the local area. The site is located in close proximity to public transport and as there are no changes proposed to the parking layout, the development is considered to be acceptable with regard to the objectives of this section of the DCP.

Section 7.05 Energy Efficiency

A BASIX Certificate has been submitted with the application, which meets the requirements for energy efficiency.

Section 7.6 and 7.7 Stormwater and Water Efficiency

The proposal will utilise existing stormwater infrastructure which will be upgraded as necessary. There is no increase in the catchment area as a result of the proposed changes to the building.

Accordingly, the proposal is acceptable in relation to water management.

Section 7.08 Waste Management

The waste generated by the proposed development will be stored at basement level and will be picked up by CN's kerbside collection service. Relevant conditions have been included in the Draft Schedule of Conditions in respect of waste management.

Section 7.10 Street Awnings Balconies

There is an existing awning along Hunter Street.

Section 8.0 Public Participation

The proposal was notified in accordance with the requirements of this section and seventeen (17) submissions were received in response. The key issues raised in the submission are discussed further in Section 5.8 of this report.

Development Contributions

Sections 7.11 and 7.12 of the EP&A Act 1979 enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans. A condition requiring this contribution to be paid has been included in the Schedule of Conditions (refer to **Attachment B**).

**5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. In addition, compliance with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

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

The design of the development has considered the cultural significance of the heritage listed building and of the Newcastle City Centre Heritage Conservation Area. The proposed additional storey has been designed to be sympathetic with the existing facade, to minimise any impacts on the significance of the heritage item and the heritage conservation area.

The development will have positive social and economic benefits, by facilitating additional housing within walking distance to public transport and local services, as well as providing employment during the construction period. The proposed additions to the building do not have any significant overshadowing or privacy impacts and will provide a high level of amenity for future occupants.

**5.7 The suitability of the site for the development**

The site is within a proclaimed Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

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

**5.8 Any submissions made in accordance with this Act or the regulations**

The application was originally notified on 15 April 2019 in accordance with the NDCP 2012 for a period of 14 days. A further notification on 5 September 2019 for a period of 14 days was undertaken. Seventeen (17) submissions were received during the second notification period. One (1) supplementary submission was received after the notification period ended. This submission has been considered as part of this assessment.

The proposed development was publicly advertised in the newspaper as demolition within a heritage conservation area is proposed. This advertisement occurred on 3 April 2019.

The key issues raised within the submissions have been discussed previously in this report.

The following provides a summary of the issues raised and a response to those issues.

Issue	Comment
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<p>The proposal will result in a loss of views of the harbour from neighbouring residential properties.</p>	<p>A visual assessment has been submitted by the applicant in relation to potential view loss. The assessment considers the impact of the proposed development on the Essington Apartment Building in respect of the DCP 2012 controls and the Planning Principle. The proposed development results in a partial loss of view from some apartments within the Essington Apartment Building. However, the existing views from the building to the harbour and Nobbys' Lighthouse are obscured and the loss is minimal as a result of the proposal. Accordingly, when the view loss has been assessed and also considered against Planning Principle for view sharing (Tenacity Consulting v Waringah [2004] NSWLEC 140) the view loss is considered acceptable in this instance.</p>
<p>The proposed development has an unacceptably large variation to the maximum floor space ratio development standard for the site.</p>	<p>A Clause 4.6 request has been provided in respect of the floor space ratio (FSR) variation. The proposed variation is considered acceptable given the existing building exceeds the maximum FSR for the site and the proposed development comprises an addition to the roof of the existing building only. A detailed assessment of the variation is set out in Section 5.0 of this report.</p>
<p>The proposed development has an unacceptably large variation to the maximum building height for the site.</p>	<p>A Clause 4.6 request has been provided in respect of the building height variation. The proposed variation is considered acceptable as the proposed height reflects the height of surrounding buildings and the addition will have a minor impact on the amenity of neighbouring properties. A detailed assessment of the variation is set out in Section 5.0 of this report.</p>
<p>The proposed development will have a visual impact on neighbouring properties</p>	<p>It is recognised the proposed development will have a visual impact on neighbouring properties. A detailed assessment of this impact has been undertaken and the impact is considered minor in the context of the number of tall building in proximity to the application site and the level of impact from the addition.</p>
<p>The proposed development will impact on the privacy of neighbouring properties.</p>	<p>The proposed development has been designed to minimise potential overlooking to neighbouring properties and is considered to have an acceptable impact in respect of overlooking.</p>
<p>A request for further landscaping on the Hunter Street side of the proposed development.</p>	<p>The proposed development includes generous landscaping in appropriate locations throughout the addition. The proposed landscaping treatment is considered acceptable with no further landscaping required.</p>

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The proposed development will result in a loss to property value of neighbouring properties.	The potential loss of property value is not a planning issue and is not able to be considered as part of the development application.
The inclusion of air conditioning units on the roof of the proposed development will further increase the height of the addition.	The architectural plans include an area of screening for air conditioning units at roof level, ensuring the units will not result in a further increase in the height of the proposed development.
The application pack does not fully describe the impact of the proposed development on neighbouring properties.	An assessment of the impact of the proposal on the amenity of adjoining properties was provided by the applicant and has been reviewed and fully assessed by the development officer.
The proposed development exceeds the maximum street wall height as defined in the DCP 2012.	The existing street wall height (22m) is not changed as part of this proposed development.

The proposal was considered at a meeting of the Public Voice Committee on 19 November 2019.

The Public Voice Committee heard from 1 objector about their concerns regarding the proposal. The following table provides a summary of the issues raised and a response to those issues:

Issue	Comment
Impact of the proposal on views to the Harbour and Stockton from the Essington Apartments	A visual assessment has been submitted by the applicant in relation to potential view loss. The assessment considers the impact of the proposed development on the Essington Apartment Building in respect of the DCP 2012 controls and the Planning Principle (Tenacity Consulting v Waringah [2004] NSWLEC 140). The proposed development results in a partial loss of view from some apartments within the Essington Apartment Building. However, the existing views from the building to the harbour and Stockton are obscured and the loss is minimal as a result of the proposal. Accordingly, when the view loss has been

	assessed and also considered against Planning Principle for view sharing (Tenacity Consulting v Waringah [2004] NSWLEC 140) the view loss is considered acceptable in this instance.
The location and accuracy of the analysed views was taken i.e. what height are the views taken from in adjoining properties?	The applicant has confirmed that the latest modelled viewpoints from the Essington Apartments have been derived from floor plans and elevation plans of the Essington Apartments sought from Council through a GIPA application (attached). The elevation plans dated 4 June 1996 include the RL of each floor level. A height of 1.6m (average eye level height) has been added to the relevant RLs to create the perspective and model the view of the proposed development. The views are considered to be accurate.
The exceedance of the maximum building height as a result of the proposal.	A Clause 4.6 request has been provided in respect of the building height variation. The proposed variation is considered acceptable as the proposed height reflects the height of surrounding buildings and the addition will have a minor impact on the amenity of neighbouring properties. A detailed assessment of the variation is set out in Section 5.0 of this report.
The exceedance of the wall height as a result of the proposal.	The proposed addition is noticeably setback from the Hunter Street façade and will therefore not result in an increase to the existing building wall height.
The exceedance of the Floor Space Ratio (FSR) as a result of the proposal.	A Clause 4.6 request has been provided in respect of the floor space ratio (FSR) variation. The proposed variation is considered acceptable given the existing building exceeds the maximum FSR for the site and the proposed development comprises an addition to the roof of the existing building only. A detailed assessment of the variation is set out in <b>Section 5.0</b> of this report.
Why can't the applicant refurbish the existing top floor instead of adding another floor to the building	The applicant confirmed that the current proposal was the most economically viable option and therefore no other development options have been considered.
The proposal will result in a loss of value to surrounding properties as a result of the loss of view	The potential loss of property value is not a planning issue and is not able to be considered as part of the development application.

### 5.9 The public interest

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development.

The proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services.

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

## **6.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

## **ATTACHMENTS**

**Item 21 Attachment A:** Submitted Plans - 48-56 Hunter Street Newcastle - Under separate cover

**Item 21 Attachment B:** Draft Schedule of Conditions - 48-56 Hunter Street Newcastle - Under separate cover

**Item 21 Attachment C:** Processing Chronology - 48-56 Hunter Street Newcastle - Under separate cover

**Item 21 Attachment D:** Clause 4.6 variation -48-56 Hunter Street Newcastle - Under separate cover

**Item 21 Attachment E:** Visual Assessment - 48-56 Hunter Street Newcastle - Under separate cover

**Item 21 Attachments A-E Distributed under separate cover**

**ITEM-22**                    **DAC 03/12/19 - DA2015/0876.02 - 29 LAMAN STREET, COOKS HILL - MODIFICATION - CHANGES TO FLOOR PLAN LAYOUT, WINDOWS AND ELEVATIONS**

**APPLICANT:**            **OCEANIA CLARKE PTY LTD**  
**OWNER:**                **LGST PTY LTD**  
**REPORT BY:**           **GOVERNANCE**  
**CONTACT:**            **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

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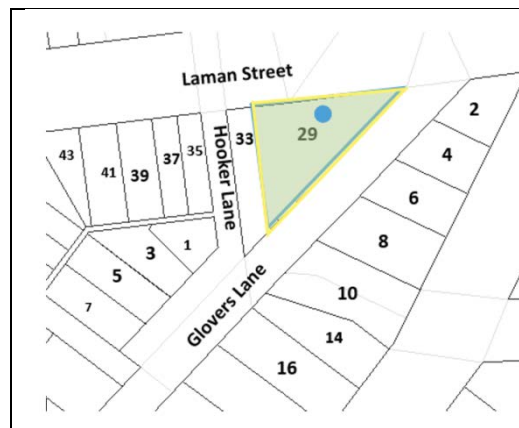
**PART I**

**BACKGROUND**

A modification application has been received seeking approval for alterations to the approved and constructed building on the site.

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

Development Consent (DA2015/0876) was granted on 24 May 2016 for a three-storey building (plus basement), comprising of 11 serviced apartments, and strata subdivision. This development consent has been subsequently modified on one prior occasion.



**Subject Land:** 29 Laman Street Cooks Hill

A modification to the development consent (DA2015/0876.01) was approved on 27 November 2017, for a number of internal changes to apartment layouts, basement car park and building elevations. Notably, the western elevation (facing the neighbouring property at No.33 Laman Street) was amended by deleting several windows and all balconies on that elevation.

A further development consent (DA2017/00750) for the subject site was approved on 6 December 2017, to change the use of the serviced apartments to residential apartments.

No building works were proposed as part of this application.

An Interim Occupation Certificate has been issued for the majority of the units within the development. The inconsistencies between the currently built structure and the approved plans are the subject of the current modification application.



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

The application is referred to the Development Applications Committee for determination, due to the number of objections received. The application was publicly notified in accordance with City of Newcastle's (CN) public participation policy, with all previous submitters also being notified. 59 submissions and 5 public voice applications have been received.

The concerns raised by the objectors in respect of the proposed development are discussed in Part 2 of this report and include privacy, landscaping, noise, overshadowing, bulk, scale, use of the site and compliance with planning instruments.

The proposal was considered at a meeting of the Public Voice Committee held on 20 August 2019. A suitable design solution acceptable to the neighbour at 33 Laman Street and the applicant was agreed to on 20 September 2019.

### Issues

- 1) The submitted modification application seeks retrospective planning consent for works that have been completed.

### Conclusion

The proposed modification to the approved development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is considered to be acceptable subject to compliance with appropriate conditions.

### RECOMMENDATION

- A. That DA2015/0876.02 to modify the development for works that have been completed at 29 Laman Street, Cooks Hill be approved, and a modified consent be granted, subject to compliance with the conditions set out in the Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of Council's determination.

### Political Donation / Gift Declaration

Section 10.4 of the *Environmental Planning and Assessment Act 1979* requires a person to disclose "reportable political donations and gifts made by any person with a financial interest" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council;  
and
- b) all gifts made to any local Councillor or employee of that Council.

The applicant has answered **NO** to the following question on the application form:  
*Have you, or are you aware of any person having a financial interest in the application, made a 'reportable political donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

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## **PART II**

### **1.0 THE SUBJECT SITE**

The site is zoned R3 Medium Density Residential under the Newcastle Local Environmental Plan 2012. The use of the site is approved as a residential flat building which is a permissible use in the zone, with consent.

The subject site is a triangular parcel of land that has frontages to both Laman Street to the north and Glovers Lane to the south-east. The current development provides level access to both street frontages, maintaining pedestrian only access to and from Laman Street.

### **2.0 THE PROPOSAL**

The applicant seeks retrospective consent for the following works:

- i) Alteration to lobby windows fronting Glovers Lane, to each level;
- ii) Extension of ground level deck at north-western corner unit;
- iii) Installation of maintenance deck to breezeway on ground and first floors, on western elevation;
- iv) Re-orientation of layout of second floor unit including new bedroom and bathroom windows to west elevation;
- v) Extension of south facing deck for second floor unit;
- vi) Change to roof slope and increase in roof height (550mm);
- vii) Installation of air conditioning units along the western elevation at ground level;
- viii) Installation of ventilation to west wall of basement; and
- ix) Minor changes to internal unit layouts.

A copy of the current amended 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 C**).

## **Public Voice**

Following the Public Voice meeting held on 20 August 2019, it was requested by the Councillors that the applicant was to liaise with the neighbouring property owners at 33 Laman Street the Cooks Hill Residents Group to continue discussion to resolve a suitable design solution to the modified built form.

The applicant held regular meetings with Mr and Mrs Aitken at 33 Laman Street. A suitable design solution accepting of both Mr and Mrs Aitken and the applicant was agreed to on 20 September 2019. Appended to this report is detailed correspondence between the applicant to Mr and Mrs Aitken confirming suitable design changes and amendments that are proposed to be implemented. Correspondence from John Aitken confirms their acceptance (refer to **Attachment D**).

The final proposed modified plans detail these specific changes and are described in the assessment section below.

### **3.0 PUBLIC NOTIFICATION**

The application was publicly notified in accordance with CN's public participation policy, with all previous submitters also being notified. 59 submissions and 5 public voice applications have been received.

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

#### **a) Statutory and Policy Issue**

- i) Application seeking retrospective approval for building works
- ii) Compliance with State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development
- iii) Compliance with Newcastle Development Control Plan 2012

#### **b) Amenity Issues**

- i) Increased privacy impacts (overlooking) from unauthorised windows on the western elevation and upper floor balcony
- ii) Increased overshadowing as a result of increased roof height
- iii) Noise impacts from air conditioning units
- iv) Noise impacts from unauthorised balcony
- v) Reduced landscaping on site

**c) Design and Aesthetic Issues**

- i) Bulk and scale of development and impact on the heritage character of neighbourhood
- ii) Increase in floor area

**d) Miscellaneous**

- i) Removal of trees in road reserve along Glovers Lane
- ii) Use of residential units
- iii) Potential use of the site as a hotel or serviced apartments and associated noise and anti-social behaviour

The objectors' concerns are addressed under the relevant matters for consideration in the following section of this report.

**4.0 PLANNING ASSESSMENT**

The submitted modification application seeks retrospective planning consent for works that have been completed. A modification application, under the provisions of Section 4.55 of the *Environmental Planning & Assessment Act 1979*, is able to lawfully seek planning approval for works that have already been completed.

Under Section 4.55(1A), the consent authority must be satisfied that the modification results in “minimal” environmental impact. The proposed modification meets this test, as the works are minor and will result in no notable additional impact compared to the approved development.

Under Section 4.55(1A), the consent authority must also be satisfied that the modification result in “substantially the same development” as that approved. The proposed modification meets this test, as it is minor in nature and does not change the land use, number of residential apartments and bedrooms, or building footprint.

In terms of visual impact, the slight change to roof slope (and the overall increase in height (+550mm) is negligible and will not be noticeable, nor will it result in any notable overshadowing. In terms of privacy impact, the amended plans are considered an acceptable solution in resolving privacy impacts and overlooking between properties.

In the consideration of the current Section 4.55 modification application, the assessment is limited to only those matters that are relevant to the proposed changes to the approved development. Other aspects of the approved development, which do not form a part of the proposed modification were considered as part of the original assessment. The changes to the approved development are listed and discussed below.

PROPOSED MODIFICATION	ASSESSMENT
Realignment and alteration to lobby windows fronting Glovers	The proposed modification realigns the boundary wall along Glovers Lane and re-

<p>Lane, to each level.</p>	<p>orientates the lobby windows (to each level), which now face a south - east direction. These windows service the corridor where people wait for the lift.</p> <p>Upon inspection of the site, these windows were found to provide viewing opportunities to the rear yards of those properties (located opposite) backing onto Glovers Lane.</p> <p>Amended Plans include the installation of full-length obscure glass in all lift lobby windows on the rear (Glovers Lane) elevation.</p>
<p>Extension of ground level deck at north-western corner unit.</p>	<p>The deck area of the ground level unit adjacent to 33 Laman Street has been extended by 300mm. The deck area, as modified, does not impact on the neighbour in terms of acoustic or visual privacy.</p> <p>Considered satisfactory, no further amendments required.</p>
<p>Installation of maintenance deck to breezeway / lightwell at ground and first floor level, on western elevation.</p>	<p>Access to this area is via a window only, not a doorway and remains accessible for maintenance purposes only.</p> <p>Amended plans include the removal of brickwork and the lowering of parapets to make this space unusable as a balcony. The whole window pane will be of obscure glazing and the lower window panel will be fixed and not openable.</p> <p>At the request of the neighbour, the light-well will be repainted to a 'natural stone' colour, the same light colour that exists on the front facade of the building.</p>
<p>Re-orientation of layout of second floor unit including new living room, bedroom and bathroom windows to west elevation.</p>	<p>The rearrangement of the unit on the second floor has resulted in three new windows on the western elevation, facing number 33 Laman Street. One window services the living room and the remainder are bedroom windows.</p> <p>The living room window will be removed, and the space will be returned to a wall to match existing.</p>

	<p>A privacy screen will be installed on the outer parapet to screen the lower half of the bedroom windows. The screen will be 5.4m in length and cover to a height of 1.7m as measured from the finished floor level on the inside of the bedroom. It will be made of aluminium panels, in a horizontal pattern with spacing 15mm apart. The screen will be painted the colour monument which is the same colour as the cladding on the wall immediately behind.</p> <p>In addition to the privacy screen, the lower half of the bedroom windows will consist of obscure glazing, at the request of the neighbours.</p>
<p>South facing balcony for second floor unit.</p>	<p>Upon inspection of the site, the balcony was identified as offering views into the rear yards of 33 Laman Street (adjoining) and 8 Dawson Street (located opposite).</p> <p>The sliding doors currently providing access to the balcony will be removed. The space will be made into a solid wall up to a height of 750mm from the finished floor level to create a new window sill. The remainder of the space will form a window. The centre pane will comprise a fixed glass panel window and two openable panels on the sides.</p> <p>The roof space will remain inaccessible and unable to be used as a balcony. No balustrade will be installed. Access will only be obtained for maintenance purposes. The roof area will remain as common property in the Strata Plan.</p> <p>Acoustic and visual privacy impacts have now been adequately resolved.</p>
<p>Change to roof slope and increase in roof height (550mm);</p>	<p>The increase in roof height has resulted in a roof form which now incorporates the lift overrun. An additional 1-degree pitch and an increase of 515mm in overall height results in a minimal perceived impact to the neighbouring properties.</p> <p>It is noted that there is no height limit in the LEP for this site, as it is located within the</p>

	<p>Cooks Hill Heritage Conservation Area. However, the height of the existing building is generally consistent with neighbouring buildings.</p> <p>The roof slope and overall height increase are considered minor and negligible in the context of the whole development and its overshadowing impacts to neighbouring properties.</p>
<p>Installation of air conditioning units along the western elevation at ground level.</p>	<p>The applicant submits that the air conditioning units were installed as exempt development and the additional ventilation openings were also introduced for light and ventilation to the basement car park. Neighboring objections raise concerns regarding the acoustic impacts from these arrangements.</p> <p>At the request of the neighbour, the air conditioning units have been deleted from the plans and will be relocated into the basement. It is a recommendation of this report that a condition of consent be imposed requiring the relocation of the air conditioning units prior to issue of a Final Occupation Certificate</p>
<p>Installation of ventilation to west wall of basement.</p>	<p>Additional ventilation openings were also introduced for light and ventilation to the basement car park.</p> <p>The vents are to be removed and restored to a wall. These will be made permanent and in accordance with structural and BCA requirements and be finished in a suitable and permanent material.</p>
<p>Minor changes to internal unit layouts.</p>	<p>The increased living space location and reorientation of the units results in better amenity within the units.</p> <p>This is considered satisfactory, subject to the implementation of measures discussed in the above report</p>

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

(1) *Matters for consideration—general*

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

(a) *The provision of:*

(i) *Any environmental planning instrument, and*

The proposal has been assessed against Newcastle LEP 2012, and has been found to be consistent with the LEP.

(ii) *Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

There are no relevant proposed instruments that have been subject of public consultation under the EP&A Act or have been notified to the consent authority.

(iii) *Any development control plan, and*

The proposal has been assessed against the relevant objectives and controls of the Newcastle DCP 2012, and has been found to be generally consistent with the controls.

(iv) *The regulations (to the extent that they prescribe matters for the purposes of this paragraph)*

There are no prescribed additional matters pursuant to the *Environmental Planning and Assessment Regulation 2000* that relate to this application.

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

The environmental impacts of the proposal have been considered, and it has been found that the proposal will have no unacceptable environmental impacts.

(c) *The suitability of the site for the development*



The site is suitable for the development in that the site has no notable constraints and the use as approved is permitted in the zone.

*(d) Any submissions made in accordance with this Act or the Regulations*

The application was notified in accordance with the Regulations and CN's policy. The submissions received have been considered in this report.

*(e) The public interest*

The proposal is within the public interest in that it provides for minor design changes to an already approved development and is consistent with the relevant planning provisions.

#### **4.1 Provisions of any environmental planning instrument**

##### **State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development**

CN's Urban Design Consultative Group (UDCG) has previously reviewed the approved development on a number of occasions and it is considered that the amended proposal is acceptable.

##### **Newcastle Local Environmental Plan 2012 (NLEP 2012)**

The proposed development in its modified form is permissible in the zone pursuant to the Newcastle LEP and is consistent with the objectives of the Newcastle LEP 2012. The following summarises an assessment of the proposal against the provisions of NLEP 2012 that are primarily relevant to the proposed development.

##### Clause 2.1 Land Use Zones

The subject property is included within the R3 Medium Density Residential zone under the provisions of the NLEP 2012. A change of use from serviced apartments to a residential flat building was approved under DA2017/00750 and that approved use remains unaltered by the proposed modification and a permissible form of development.

##### Clause 4.3 Height of Buildings

The subject site is identified on the NLEP 2012 'Maximum Building Height Map' as not having a prescribed maximum building height. The roof slope and overall building height increase of 515mm are considered minor and negligible in the context of the whole development and its overshadowing impacts to neighbouring properties. Accordingly, it is considered that the modified proposal remains acceptable with regard to building height.

Clause 4.4 Floor Space Ratio

The subject site is identified on the NLEP 2012 'Floor Space Ratio Map' as not having a prescribed floor space ratio. There is a slight and minor increase in floor area of 3m<sup>2</sup> created by extending out the living room wall of the unit located on the second level. This is considered minor in the context of the whole development. Accordingly, it is considered that the modified proposal remains acceptable with regard to floor space.

Clause 5.10 - Heritage Conservation

The site is located within the Cooks Hill Heritage Conservation Area. The external alterations are minor and do not adversely impact upon the design and appearance compared to that already approved. It is considered that the proposed development will not have a significant impact on nearby heritage items or the Conservation Area.

Clause 6.1 Acid Sulfate Soils

The proposed modifications do not result in any additional impacts. Accordingly, it is considered that the modified proposal remains acceptable.

Clause 6.2 Earthworks

The proposed modifications do not result in any additional impacts. Accordingly, it is considered that the modified proposal remains acceptable.

**4.2 Any development control plan**

**Newcastle Development Control Plan (NDCP 2012)**

The main planning requirements of relevance in the NDCP 2012 are discussed below.

Residential Development - Section 3.03

The proposed development is considered acceptable in relation to Section 3.0.3 of the DCP and achieves relevant acceptable solutions and performance criteria for residential amenity and privacy.

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

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and Regulation 2000. The modified application was notified in accordance with the Regulations. This report has addressed the various concerns raised in the submissions received in response to the public notification and referral procedures under the Act and Regulation.

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and NDCP 2012 considerations. In addition, the following impacts are considered relevant.

The proposed modification application does not change the number of residential apartments or bedrooms within the building. The roof slope and overall height increase are considered minor and negligible in the context of the whole development and its overshadowing impacts to neighbouring properties.

The modifications do not impact upon the approved traffic or pedestrian access arrangements.

An acoustic assessment has been undertaken for the air conditioning units whereby it was determined that the equipment is operating within acceptable noise levels.

It is considered that the proposal will not have any negative social or economic impacts. The proposed development will have a positive economic impact on the locality in that it will provide additional housing options in the locality, which is close to educational facilities, employment opportunities, public transport, local business centres and the Newcastle CBD.

**4.5 The suitability of the site for the development**

The constraints of the site have been assessed in the proposed development, which includes flooding and acid sulfate soils. The proposal is satisfactory subject to conditions that were included in the original development consent.

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

**4.6 Any submissions made in accordance with this Act or the regulations**

The following table provides a summary of the issues raised in the submissions.

Issue	Comment
Retrospective approval	The submitted modification application seeks retrospective planning consent for works that have been completed. A modification application, under the provisions of Section 4.55 of the <i>Environmental Planning &amp; Assessment Act 1979</i> , is able to lawfully seek planning approval for works that have already been completed.
Increase in floor area	There is a slight and minor increase in floor area (+3m <sup>2</sup> ) created by extending out the living room wall of the unit located on the second level. This is considered minor in

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	the context of the whole development.
Increased privacy impact and overlooking from balcony	The roof space will remain inaccessible and unable to be used as a balcony. This space will be recorded on the strata plan as common property for roof and maintenance access only. Under no circumstances is the roof space to be used for residential purposes. The agreed final solution is acceptable to all parties.
Increased overshadowing	The roof slope and overall height increase are considered minor and negligible in the context of the whole development and its overshadowing impacts to neighbouring properties.
Noise impact from air conditioning units	At the request of the neighbour, the air conditioning units have been deleted from the plans and will be relocated into the basement.
Reduced landscaping	The modification application does not result in reduced landscaping for the site.
Unlawful removal of trees within Glovers Lane road reserve	Trees that have been removed within Glovers Lane reserve were required to be removed as part of the <i>Roads Act 1993</i> approval issued by CN, to facilitate required infrastructure for the development.
Use of the site as a Hotel or serviced apartments	A change of use from serviced apartments to a residential flat building was approved under DA2017/00750 and that approved use remains unaltered by the proposed modification.
Noise and anti-social behaviour	The approved use of the site as residential apartments remains unchanged. It is considered unlikely that a residential development of this nature would result in increased anti-social behaviour. The development provides for increased housing choice within the area which is considered a positive social outcome.
Non-compliance with SEPP 65 and DCP	The proposal remains satisfactory having regard to the relevant planning policies including SEPP65, LEP 2012 and DCP 2012.
Bulk and scale, setbacks	The bulk and scale of the development, including setbacks remains largely unchanged as per the existing approval.
Impact on heritage character of neighbourhood	The external alterations are minor and do not adversely impact upon the design and appearance of the approved building.

The proposal was considered at a meeting of the Public Voice Committee on 20 August 2019. Following the Public Voice meeting, a range of suitable design solutions accepting of both Mr and Mrs Aitken at 33 Laman Street and the applicant were agreed to on 20 September 2019. The final proposed modified plans detail these specific changes and are described in the assessment section above.

#### **4.7 The public interest**

As discussed in the above report, it is considered that the issues and concerns raised in the submissions have been adequately resolved by submission of amended plans and do not 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 proposed modifications do not significantly alter the development for which the development consent was granted and will not result in any significant changes to the overall development previously approved by Council. The changes will not create unreasonable impacts on the surrounding locality.

#### **5.0 CONCLUSION**

The proposed modifications are found to be acceptable. It has been determined that the modifications are substantially the same, they are of minimal environmental impact when having regard to S4.55 of the Act and result in acceptable impacts to the area and the neighbouring properties.

The proposal remains satisfactory having regard to the relevant planning policies including SEPP65, LEP 2012 and NDCP 2012.

The proposal is acceptable against the relevant heads of consideration under section 4.15 of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

#### **ATTACHMENTS**

**Item 22 Attachment A:** Submitted Plans - 29 Laman Street Cooks Hill - Under Separate Cover

**Item 22 Attachment B:** Draft Schedule of Conditions - 29 Laman Street Cooks Hill - Under Separate Cover

**Item 22 Attachment C:** Processing Chronology - 29 Laman Street Cooks Hill - Under Separate Cover

**Item 22 Attachment D:** Agreement between the applicant and Mr and Mrs Aitken (33 Laman Street) - Under Separate Cover

**Item 22 Attachment A-D distributed under separate cover**

**ITEM-23**                    **DAC 03/12/19 - DA2019/00588 - 6 BAVIN ROAD BROADMEADOW - RECREATION FACILITY (INDOOR), CARPARKING AND AMENITIES BUILDING**

**APPLICANT:**            **WESTERN SUBURBS (NEWCASTLE) LEAGUES CLUB LTD**  
**OWNER:**                **VENUES NSW**  
**NOTE BY:**              **GOVERNANCE**  
**CONTACT:**             **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

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**PART I**

**BACKGROUND**

An application has been received seeking consent for a recreational facility (indoor), car parking and amenities building at 6 Bavin Road Broadmeadow NSW 2292.

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

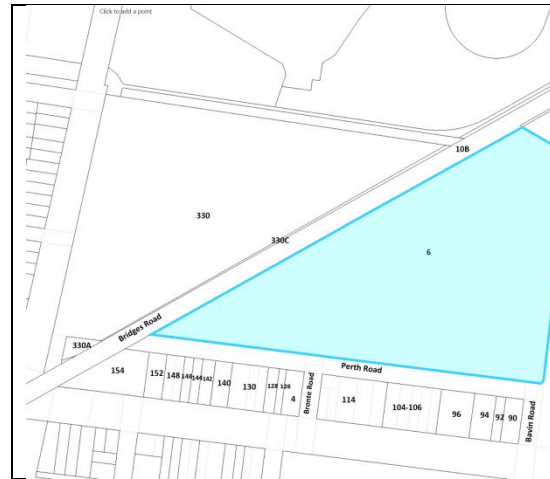
The application is referred to City of Newcastle’s (CN) Development Applications Committee for determination as the construction value of the proposed development (\$18,453,600) exceeds the staff delegation limit of \$10M.

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

The proposed development was publicly notified in accordance with CN’s Public Notification policy and 2 submissions have been received in response.

The concerns raised by the objectors’ in respect of the proposed development are discussed in Part 2 of this report and relate to the potential impacts of the proposed development on the Westpac Rescue Helicopter Service’s operations.

In response to concerns raised in the submissions, amended plans were provided which included changes to the northern-eastern car park layout and positioning, altered servicing arrangements and some minor design changes to the proposed



**Subject Land:** 6 Bavin Road Broadmeadow

building. These changes were specifically undertaken to assist in minimising any potential adverse impact on the service's current operational requirements.

Additionally, the applicant has now removed field lighting previously proposed at the northern end of the training field.

At the time of preparing this report, a response from the service had not been received on the amended proposal.

### Issues

- 1) Potential impacts of the proposed development on the Westpac Rescue Helicopter Service's operations. The proposed development was amended to assist in minimising potential adverse impacts on the service's operations.
- 2) Traffic and Carparking. The proposed development will provide a total of 139 car parking spaces on site, resulting in a surplus of 26 car spaces above the recommended rate of the Newcastle Development Control Plan 2012 (NDCP 2012). The proposed development is considered to be acceptable with regard to its impacts on local traffic conditions, pedestrian safety and traffic management measures.

### Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is considered to be acceptable subject to compliance with appropriate conditions.

### RECOMMENDATION

- A. That DA2019/00588 for a recreational facility (indoor), car parking and amenities at 6 Bavin Road Broadmeadow be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of Council's determination.

### Political Donation / Gift Declaration

Section 10.4 of the Environmental Planning and Assessment Act 1979 requires a person to disclose "reportable political donations and gifts made by any person with a financial interest" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council; and
- b) all gifts made to any local Councillor or employee of that Council.

The applicant has answered **NO** to the following question on the application form:  
*Have you, or are you aware of any person having a financial interest in the application, made a 'reportable political donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

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## PART II

### 1.0 THE SUBJECT SITE

The subject site is Crown Land managed by Venues NSW and forms a recreation area known as 'District Park', located within a wider area identified as the 'Hunter Sports and Entertainment Precinct'. The Precinct includes the Newcastle International Hockey Centre, Hunter Stadium, tennis and basketball courts and the Newcastle International Paceway.

The subject site is legally described as Lot 3284 in DP 1049501. It comprises a triangular shaped parcel of land with an overall area of approximately 7.02ha. The site has a frontage to Bavin Road (to the east) of approximately 247m and to Perth Road (to the south) of approximately 437.16m. The site is bound by the Styx Creek open drainage channel to the north-west.

Existing development within the site is limited to a small single-storey brick building used as a public toilet, located along the site's southern boundary; a concrete cricket pitch in the south-western portion of the site; part of two pedestrian footbridges located along the north-western boundary, providing access over the adjoining Styx Creek drainage channel; and an at-grade hardstand car park and fencing located in the north-east of the site, associated with the Westpac Rescue Helicopter Base.

With the exception of the existing car park access from Bavin Road, servicing the Westpac Base, no formal vehicle access is currently available to the subject site.

The site is devoid of significant vegetation, with the exception of tree plantings along the boundaries. These fig tree plantings form part of a local heritage-listed item, 'Remnant Plantings, District Park', however are not located within the development site.

### 2.0 THE PROPOSAL

The application seeks consent for:

- i) Construction of a 2-storey indoor recreational facility, built in 2 stages, for use by the Newcastle Knights, including a range of athlete training and ancillary injury management and rehabilitation facilities, associated administration and support services, as well as ancillary public facilities.
- ii) Construction of a single-storey public amenities building as part of stage 1.



- iii) Construction of a 28 space at-grade car park in the south-east of the site, on the southern side of the Centre of Excellence (CoE) building as part of stage 1.
- iv) Construction of a 68 space at-grade car park in the south-west of the site, accessible from Perth Road as part of stage 1. These spaces will be available for users of the playing fields on an unrestricted basis.
- v) Construction of a 43 space carpark in the north-east of the site for use exclusively by players and team managers as part of stage 1.
- vi) Ancillary landscaping and drainage infrastructure.

The remainder of the works associated with the broader redevelopment of the site are being undertaken separate to this proposal as exempt development under *State Environmental Planning Policy (Infrastructure) 2007*.

The proposed facility will generally be operating between 6:00am and 10:00pm, daily. The typical operating hours of the individual users and / or components of the facility include:

- i) Playing Group and Coaching Staff: 8:00am – 5:00pm (Mon-Sun)
- ii) Administration staff (including sports science): 8:30am – 5:30pm (Mon-Fri)
- iii) Café: 7:00am – 7:00pm (Mon-Sun)
- iv) Other squads: 5:00pm – 9:00pm (Mon-Sun)
- v) Waste Collection and Deliveries: 6:00am – 8:00am (Mon-Fri)

Amended plans have been provided to address the Westpac Rescue Helicopter Service's operational requirements. These amendments include:

- i) Removal of 27 spaces from the north-eastern car park and the provision of a dedicated garbage vehicle collection bay along Bavin Road, to ensure that the northern end of Bavin Road remains unobstructed at all times by vehicles associated with the CoE development.
- ii) Removal of the four light towers to illuminate the northern training field.

A copy of the current amended plans is appended at **Attachment A**.

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

### 3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with the requirements of the Environmental Planning and Assessment Act 1979, the associated Regulation and the NDCP 2012. Two submissions were received in response and primarily relate to the potential impacts to the Westpac Rescue Helicopter Service's operations at the Broadmeadow base, including:

- i) Aircraft Test Flying
- ii) Aircraft Movements and Flying
- iii) Access to and from the Broadmeadow Base
- iv) The Service's Northern Carpark
- v) Lighting
- vi) Dust and Foreign Object Debris
- vii) Aircraft Downwash and Noise
- viii) Car parking and traffic movements
- ix) Characterisation of proposed development
- x) Inconsistencies with the objective of the RE1 Public Recreation zone
- xi) Suitability of site
- xii) Public interest

The objector's concerns are addressed under the relevant matters for consideration in the following section of this report.

#### **4.0 INTEGRATED DEVELOPMENT**

The proposal is not 'integrated development' pursuant to Section 4.46 of the Act.

#### **5.0 PLANNING ASSESSMENT**

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

##### **5.1 Provisions of any environmental planning instrument**

##### **State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)**

SEPP 55 requires that where land is contaminated, CN 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.

A Detailed Site Investigation (DSI) has been submitted in support of the application which concludes that the land is suitable for the proposed use.

CN's Senior Environmental Protection Officer considers the proposal to be acceptable and has recommended a number of conditions be imposed on a consent (refer to **Attachment B**). On this basis the provisions of SEPP 55 have been met.

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) is one of a suite of Land Management and Biodiversity Conservation 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 previously contained in cl.5.9 of the Newcastle Local Environment Plan 2012 (NLEP 2012) (clause now repealed) and provides that CN's Development Control Plan can make declarations with regard to certain matters, and further that CN may issue a permit for tree removal.

The proposal has been assessed in accordance with NDCP 2012 and is considered to be satisfactory.

### **State Environmental Planning Policy No 64—Advertising and Signage**

The proposed signage is acceptable having regard to SEPP 64 requirements and the nature of the development.

### **Newcastle Local Environmental Plan 2012 (NLEP 2012)**

#### Clause 2.1 Land Use Zones

The subject property is included within the zoned RE1 - Public Recreation zone under the provisions of the NLEP 2012. The development is permissible with development consent as a Recreation facility (indoor) including ancillary administration and retail areas. While the proposed café is intended to function as an ancillary component of the recreation facility (indoor), it is also permissible with consent as a 'restaurant or cafe'.

The proposed development is consistent with the objectives of the RE1 - Public Recreation zone, which are:

- i) *To enable land to be used for public open space or recreational purposes.*

- ii) *To provide a range of recreational settings and activities and compatible land uses.*
- iii) *To protect and enhance the natural environment for recreational purposes.*

Consistent with the objectives of the RE1 zone, the proposed development involves the use of part of the site for indoor recreational purposes. It also seeks to revitalise the broader site to facilitate and encourage its use for organised sport and recreational activities, including the provision of enhanced public amenities and additional car parking.

The recreational activities associated with the proposal and future redevelopment of District Park are also compatible with, and complementary to nearby existing and future development within the Broadmeadow sports precinct.

The following summarises an assessment of the proposal against the provisions of NLEP 2012 that are primarily relevant to the proposed development:

Clause 2.7 Demolition Requires Development Consent

Conditions are recommended to ensure demolition works and disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 Height of Buildings

The site is not subject to a maximum height of buildings requirement.

Clause 4.4 Floor Space Ratio

The site is not subject to a maximum Floor Space Ratio requirement.

Clause 5.10 - Heritage Conservation

The site immediately adjoins a heritage item of local significance, known as 'Remnant Plantings, District Park' (Item No. 37) located within the road reserve of Bavin Road.

A Statement of Heritage Impact has been submitted with the application. The Heritage Impact Statement found:

*"The Remnant Plantings of District Park, previously an established avenue have been reduced to a piecemeal collection of individual trees though there remains some evidence of where previous trees were located within the avenue. The aesthetic quality of the plantings within the curtilage has been severely impaired through tree loss and over pruning for the sake of traffic along Bavin Road. The aesthetic significance of the avenue within the curtilage has been reduced to little".*

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:

*“With the exception of the proposed driveway crossing and minor repair works to the pavement, the existing road surface will remain unchanged. The entrance to the proposed car park at the northern corner of the site has been configured to avoid the existing heritage trees. Works to provide the new car park entrance have been assessed by the Consulting Arborist to be acceptable for the ongoing survival of the adjacent heritage trees.*

*New tree planting outside the Centre of Excellence will assist in the reestablishment of the former avenue of trees which existed on the site, though are of a species and location selected and designed to be better manageable into the future thus respecting the Heritage Item and working with the new building.*

*‘The proposed works are respectful of the significance of the Remnant Plantings, District Park heritage item and will have a positive impact upon the item.’*

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils. A site-specific Acid Sulfate Soil Management Plan has been submitted with the application. Compliance with the Plan is included as a recommended condition. The proposed development is considered satisfactory in this regard.

#### Clause 6.2 - Earthworks

Minor filling is proposed to raise the building above the required flood level. Minor excavation is required for the installation of infrastructure and services. The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause.

### **5.2 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.

### **5.3 Any development control plan**

#### **Newcastle Development Control Plan (NDCP 2012)**

The main planning requirements of relevance in the NDCP2012 are discussed below.

#### Flood Management - Section 4.01

CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

*“A detailed flood model has been developed to assess potential flood impacts associated with the proposed works.*

*Part of the site where the Centre of Excellence building is proposed to be located is identified as a floodway during a Probable Maximum Flood event. Additional modelling was undertaken which shows that the works will result in a relocation of an identified floodway within the site and a slight increase in the floodway around the intersection of Perth and Bavin Roads. The modelling provided demonstrates that there will be no adverse flood impacts as a result of the proposed development works.*

*The architectural plans provided show a ground floor level of 8.1m AHD satisfying the minimum floor level requirement. CN's DCP guidelines recommend that for this level of risk, new buildings have a flood refuge designed to resist the flood forces of a Probable Maximum Flood event. The first-floor level of the COE building is 12.1m AHD providing a refuge for building users. “*

Accordingly, the proposal is acceptable in relation to flooding.

#### Safety and Security - Section 4.04

The proposal involves the establishment of a new indoor recreational facility on the site, offering a high level of activity, casual surveillance and patron and community safety within the site and surrounding area. It will also provide appropriate lighting and security measures to protect the safety of players, staff and the local community.

#### Social Impact - Section 4.05

The proposed development is likely to result in a number of positive social and economic impacts, including the following:

- i) The proposal will support the growth of the broader Hunter Sports and Entertainment Precinct.
- ii) The proposal will provide training facility to serve the needs of one of a professional sporting team. It will also provide ancillary public spaces.
- iii) The proposed amenities building will provide a facility for referees and necessary storage areas for future users.
- iv) The proposal will provide increased activity and surveillance to a currently under-utilised area.
- v) The creation of jobs during the construction and operational phases.

No negative social impacts of the proposal are anticipated.

Soil Management - Section 5.01

Details of sediment control have been provided by the applicant and are considered to be acceptable. The proposed development achieves the objectives and controls within this section of the NDCP 2012.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55.

Vegetation Management - Section 5.03

In support of the proposed works, the applicant has submitted an arborist's report that details species, location, size, health and value. The report is prepared in accordance with CN's tree assessment requirements and provides advice and recommendations regarding tree retention and protection.

There will be five trees removed during the works, all of which are shown to be recent plantings and in reduced health. All the trees belonging to the heritage listing will not be affected by the works.

The submitted report has been prepared in accordance with CN's tree assessment requirements and it is considered that the proposed tree removal is acceptable. The amenity of the area will not be significantly impacted in respect of the local character and appearance.

Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site.

Heritage Items - Section 5.05

This issue is discussed under Clause 5.10 Heritage of NLEP 2012.

Archaeological Management - Section 5.06

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an 'Archaeological Site'. A condition has been included in the consent that references the recommendations of the Statement of Heritage Impact.

Landscape Open Space and Visual Amenity - Section 7.02

A landscape plan has been provided with the development application in accordance with this section of the NDCP 2012.

Appropriate plant species have been selected with due consideration to safety and security, maintenance requirements and to maximise amenity for site users and the public. Importantly, the proposal allows for the protection and retention of the heritage-listed street trees along Bavin Road.

Traffic, Parking and Access - Section 7.03

A revised parking assessment of the likely parking demand for the proposed development based on the NDCP 2012 and operational demands associated with the facility, is detailed below:

<b>Use</b>	<b>Capacity</b>	<b>Car Parking Demand</b>
Office	150m <sup>2</sup>	31.4 (32)
Retail	61m <sup>2</sup>	1.4 (2)
Café / Kitchen	4 staff	4
Players Facilities	30 players	30
Stage 2 office	1,227m <sup>2</sup>	24.5(25)
Stage 2 Players	20 players	20
<b>Total</b>		113 spaces

The development has been amended to provide three separate car parking areas for the users of the CoE and District Park, including:

<b>Car park</b>	<b>Stage</b>	<b>No. of spaces</b>	<b>Users</b>
Northern	1	43	Players and coaches
Southern	1	28	Support staff, management and administration
South-western	1	68	Overflow for Stage 2, park users and the general public
<b>Total</b>		139	

This equates to a total parking provision for this development of 139 spaces, resulting in a surplus of 26 spaces above the recommended rate of NDCP 2012. Car parking access has been assessed by CN's Development Officer (Traffic) and is considered acceptable subject to relevant conditions.

Section 7.05 - Energy efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012. CN's Senior Development Officer (Engineering) has assessed the proposal and has confirmed it is acceptable subject to the



inclusion of specific conditions of consent. Accordingly, the proposal is acceptable in relation to water management.

Waste Management - Section 7.08

The applicant has prepared a detailed Waste Management Plan, which addresses waste minimisation and litter management strategies. Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

Waste collection vehicles will be able to stop along the Bavin Road frontage for pick-up at the driveway location without affecting traffic. After waste collection, the waste contractor will continue north along Bavin Road and be afforded access to the car park to turn around and return southwards in a forward direction. Restrictions will be applied to the spaces required to facilitate manoeuvring to prevent parking between 6am and 9am. As the car park is a private car park utilised by staff and players, this arrangement can be effectively managed through workplace inductions, appropriate line marking and the like.

Based on the submitted information, the proposal is considered to be acceptable.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the provisions of NDCP 2012. Two submissions objecting to the proposal were received.

Comments are provided in Section 4.2.6 below.

Development Contributions

Sections 7.11 and 7.12 of the Environmental Planning and Assessment Act 1979 enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans. A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions (refer to **Attachment B**).

**5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

The application has been considered pursuant to the provisions of the Environmental Planning and Assessment Act 1979 and Regulation 2000. In addition, compliance with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

## 5.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and NDCP 2012 considerations. In addition, the following impacts are considered relevant:

### a) Character, Streetscape, External Appearance, Urban Design, Height, Bulk and Scale

The proposed development is acceptable having regard to the proposed height, external appearance, character, bulk and scale.

### b) Traffic, Access and Parking

The proposal has been assessed by CN's Senior Development Officer (Traffic) and found to be acceptable, subject to draft conditions included in **Attachment B**. CN's Senior Development Officer (Traffic) provided the following comments:

#### Traffic Generation

*"The traffic consultant has analysed the traffic generating impacts of this development on the operation of the existing intersections of Lambton Road / Bavin Road and Lambton Road / Bronte Road – key intersections for access to the site. The sidra modelling coupled with site observations has confirmed that pre development Lambton Road operates with acceptable levels of service for all through traffic, however the right turn movements both into and out of Bavin and Bronte Roads experience excessive delays during peak periods.*

*The RMS's 'Guide to Traffic Generating Developments' estimates that the development will generate in the order of 259 daily vehicle trips with 64 trips in the am peak and 58 trips in the pm peak periods*

*The distribution of this generated traffic with 80% of vehicles egressing the site via the Bavin / Lambton Road intersection translates to a doubling of existing traffic numbers exiting Bavin Road during peak periods. This traffic increase however only represents a small percentage of total traffic utilising this intersection and therefore insufficient nexus exists with this development for possible upgrade works at this intersection. Discussions with the Roads and Maritime Services and CN's Traffic Section and have confirmed that there are no immediate plans for upgrades to this intersection.*

*While a conservative approach has been adopted for traffic distribution in reality one would see a more equal distribution of traffic across the Bavin and Bronte intersections subject to queue lengths and waiting times with a further option of the left turn movement being utilised should delays become excessive."*

Road network

*“The operation of the existing Perth / Bavin Road intersection raises a number of safety concerns centring around intersection priorities, driver sight lines and the location of parked kerbside vehicles. In order to address these issues, it is recommended that the applicant extend Perth Road through to the eastern boundary of the unformed Bavin Road and therefore create a t-intersection at Perth / Bavin Roads. An appropriate condition has been recommended for this application in relation to this matter. Furthermore vehicular access to the site is via the existing intersection of Perth / Bavin Roads and an existing 4.0m wide sealed access road that also services the Westpac Rescue Helicopter Site. It is acknowledged that this development proposal has the potential to increase informal parking along Bavin Road raising concern given the proximity of the existing stormwater channel and the absence of any vehicle barrier. It is therefore considered appropriate that the developer formalise this area along Bavin Road through the installation of appropriate bollards and /or fencing associated regulatory signage to prevent parking.”*

Comment: The proposed development is considered to be acceptable with regard to its impacts on local traffic conditions, pedestrian safety and traffic management measures.

**c) Amenity (Privacy, Overshadowing and Views)**

View Loss

The development does not result in an unreasonable impact on views or outlook. There are no significant views that will be impacted in this location. The proposed development will alter the general outlook due to a change to the size and scale of buildings on the site, but this is considered to be acceptable.

Overshadowing

No overshadowing will occur to surrounding development. Overshadowing of public domain areas (both within and beyond the site) from the new building is minor in the context of the large and expansive nature of District Park and its surrounds. It is also noted that the shadows extending across Bavin Road will predominately occur in areas that are currently shaded by existing mature trees.

**d) Environmental**

Contamination

The proposal has been assessed by CN's Senior Environmental Protection Officer and found to be acceptable, subject to draft conditions included in **Attachment B**.

CN's Senior Environmental Protection Officer provided the following comments:

*“A detailed contamination assessment has been submitted with the application: Douglas Partners Pty Ltd, Targeted Detailed Site Investigation for Contamination, December 2018 (DSI).*

*The DSI outlined the results of soil sampling at 20 locations and four groundwater monitoring wells. The significant majority of soil samples met the appropriate landuse criteria excluding one location at the south west of the site which indicated a moderate exceedance of Benzo (a) pyrene against open space / recreational criteria (the results however were below industrial / commercial criteria). The report indicated the possible cause for this contamination may be related to buried asphalt / building materials in fill identified in this area. The report indicated that a suitable Remedial Action Plan should be developed for this area of the site which could include offsite disposal or onsite management. The ESU understands this part of the site is not currently subject to DA 2019/00588 and development of this land is being undertaken via an alternative planning pathway. It is noted that any required remediation of this part of the site will be required to be undertaken in accordance with SEPP 55 as either category 1 or category 2 remediation.*

*Sampling of soil within and adjacent to the area of the site subject to DA 2019/00588 did not indicate any exceedances of the appropriate land use criteria.*

*Groundwater assessment indicated minor heavy metal concentrations which are typically identified in groundwater testing within Newcastle.*

*Based on the lack of significant contamination identified, the DSI concludes that the land is suitable for the proposed landuse, however due to the areas of the site which were historically filled, the DSI recommends that site works should be undertaken with reference to a construction and environmental management plan (CEMP) prepared by the contractor which outlines procedures for soil handling, segregation and an unexpected finds protocol due to the presence of fill materials across the site, which may include hazardous building materials.”*

## **5.7 The suitability of the site for the development**

The site is considered suitable for the proposed development. The suitability of the land to accommodate recreational facilities is established by the site's RE1 zoning under the NLEP 2012. The site is an appropriate size to accommodate the proposed development, including adequate space for vehicular access and car parking. The site is within an area well serviced by infrastructure and public transport.

Given the current condition of the site and the current and historical land use activities, it is considered that the site is suitable for the proposed development.

## **5.8 Any submissions made in accordance with this Act or the regulations**

The application was notified in accordance with CN's NDCP 2012 for a period of 14 days. Two submissions were received during the notification period.

## CITY OF NEWCASTLE

The key issues raised within the submissions have been discussed previously in this report.

The following table itemises the potential impacts to the service's operations at the Broadmeadow base, as identified in the service's submission, and a response to each matter raised.

<b>Issue</b>	<b>Applicant's response</b>
Aircraft Test Flying	<p><i>The proposed CoE Building is located at the perimeter of the 7.02ha District Park. It occupies only a small area of the wider parkland (approximately 7%). As such, subject to suitable arrangements being implemented, we see no reason why construction of the building in its current location would physically impede the Service's test flight operations.</i></p> <p><i>This is confirmed by the findings of a specialist report prepared for Venues NSW by JJ Ryan Consulting which provides an assessment of the Westpac Rescue Helicopter Service's operations associated with the proposed Newcastle Knights' CoE development proposal.</i></p> <p>Specialist report provided. The applicant's response is supported and considered acceptable.</p>
Access to and from the Broadmeadow Base	<p><i>"The proposed design changes, including the removal of 27 spaces from the north-eastern car park and the provision of a dedicated garbage truck collection bay along the Bavin Road alignment, will ensure that the northern reaches of Bavin Road remain unrestricted at all times by vehicles associated with the CoE development.</i></p> <p><i>The new 28 space south-eastern car park will also have access off Bavin Road, but its ingress and egress point will be closer to the intersection of Bavin and Perth Roads, well clear of the Service's Base at the northern end of Bavin Road.</i></p> <p><i>Additionally, Wests has no objections should CN consider it necessary to enforce parking restrictions along Bavin Road to ensure that vehicular movements along the thoroughfare are not inhibited."</i></p> <p>Clear access to Bavin Road will be achieved. The applicant's response is supported and considered acceptable.</p>
Encroachment of Northern Carpark on Land	<p><i>Existing Service development, including the fenced compound and formal car park areas, currently encroach within the subject site boundaries. We are not aware of</i></p>

**CITY OF NEWCASTLE**

	<p><i>any development consent, lease, license or other arrangement with the landowner (Venues NSW) which authorises the use of the fenced compound. Notwithstanding, we have proposed to reduce the overall size of the north-eastern car park such that it now does not impact upon the Service's current operations in this area, and most particularly the fenced compound and car park. The western edge of this car park now aligns with an existing chain-wire fence on the site.</i></p> <p>The applicant's response is supported and considered acceptable.</p>
<p>Lighting</p>	<p><i>It was originally proposed to install four light towers to illuminate the northern high- performance training field. The towers were to be located at each corner of the field and installed in accordance with relevant Australian Standards.</i></p> <p><i>Following consideration of the concerns expressed by the Rescue Helicopter Service regarding the impact of these light towers on its operations, the installation of the light towers is now no longer proposed.</i></p> <p>Lighting proposed has been removed and as such the applicant's response is supported and considered acceptable.</p>
<p>Dust and Foreign Object Debris (FOD)</p>	<p><i>The Service has raised specific concern with impacts arising from concrete dust on helicopter engines. Consulting engineers GHD advise there will be no requirement for the mass storage of cement as a result of using ready mixed concrete (produced off site) and therefore no potential source of cement dust from such activities will occur.</i></p> <p><i>Dust generation from construction and excavation will be managed through measures such as wetting down work areas / stockpiles, stabilising exposed areas, covering loads on all departing trucks and working to weather conditions.</i></p> <p><i>Following approval, a Construction Management Plan will be prepared for the site which will include a range of measures and protocols to manage air quality for the duration of the construction period.</i></p> <p>The applicant's response is supported and considered acceptable. Adequate conditions are proposed in this regard.</p>

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<p>Aircraft Movements and Flying</p>	<p><i>It is important that the Service's operations are effectively managed to enable the use and enjoyment of adjoining areas of RE1 zoned land located beyond the Service's boundaries. Should the Service's operations impose a safety risk to the use of District Park, and their activities become more restricted through an increase in the number of people utilising District Park and the Precinct for sporting / recreational pursuits, this is a matter for the Service to address. We note that JJ Ryan Consulting opine that other options are available to the Service to perform activities associated with routine maintenance, including but not limited to hover checks and test flights.</i></p> <p>The applicant's response is supported and considered acceptable.</p>
<p>Aircraft Downwash and Noise</p>	<p><i>As noted above, District Park is currently open to public use 24/7. As such, impacts from aircraft downwash and noise impacts upon current park users should already be a key consideration of the Service, with signage installed where appropriate. As detailed on the amended plans it is evident that the proposed northern car park is no closer to the fenced compound than the existing car park. While the existing car park is used predominantly by staff of, and visitors to the WHRS facility, there is no restriction on access. As such the impact of the proposed carpark on WHRS operations will be no greater than that resulting from the presence of the existing car park.</i></p> <p>Applicant response is noted and considered acceptable.</p>
<p>Government Services Impact</p>	<p><i>Approval of the proposed development will not impact on activities undertaken on or above the Broadmeadow Base. This is confirmed by the findings of the specialist report prepared for Venues NSW by JJ Ryan Consulting referred to above.</i></p> <p>Specialist report provided and applicant response is considered acceptable.</p>
<p>Car parking and traffic movements</p>	<p><i>It is observed that if the Service is currently experiencing a deficiency in on-site car parking associated with its current usage, then the Service should be exploring ways to increase its own on-site car parking provision within the boundaries of its own leased land. It would be unreasonable for the Service to expect that it can unilaterally utilise another leaseholder's land to meet their car parking needs.</i></p>

	<p>Noted and the proposal is considered acceptable in this regard.</p>
<p>Traffic and parking</p>	<p><i>A revised assessment of the likely parking demand for the proposed development, as amended, based on the NDCP 2012 and operational demands associated with the facility, is detailed below:</i></p> <p><i>Having regard to the DCP provisions, the provision of 139 spaces within the car parks will result in a surplus of 26 spaces which, overall, is likely to have a significant positive impact on on-street parking availability in the locality. Most importantly, during Stage 1, the 68 parking spaces in the south-western corner of the site will be available to the general public at all times. This additional car parking area will effectively reduce demand for on street parking in the area.</i></p> <p><i>Having regard to the above findings, no impact on existing Service's car parking and traffic movements are anticipated as result of the proposed CoE Building and the broader redevelopment of District Park.</i></p> <p>Car parking and traffic impacts have been considered and the proposal is considered to provide sufficient and adequate arrangements in this regard.</p>
<p>Characterisation of development</p>	<p><i>The CoE building is characterised as a 'recreation facility (indoor)'.</i></p> <p><i>While the training, playing and mini fields could be characterised as a 'recreation facility (outdoor)', this does not preclude them from being undertaken as exempt development under SEPP (Infrastructure).</i></p> <p><i>The ISEPP aims to allow for the efficient redevelopment of surplus government owned land. This is achieved, by enabling certain development for particular purposes to be carried out either as exempt or complying development. As provided below, Division 12 of the ISEPP includes criteria which specifically relate to 'Parks and Other Public Reserves' such as District Park which forms part of Reserve No. D84753.</i></p> <p><i>Having regard to clause 66(1)(a), the redevelopment of District Park and associated public recreation facilities and CoE training and field components of the project are considered to be development for the following purposes:</i></p>



	<p><i>Construction or maintenance of:</i></p> <ul style="list-style-type: none"> <li><i>a) Walking tracks [clause 66(2)(d)(i)]</i></li> <li><i>b) Construction of sporting facilities [clause 66(2)(d)(ii)]</i></li> <li><i>c) Play equipment [clause 66(2)(d)(vii)]</i></li> </ul> <p><i>The proposed works will be undertaken by the Wests Group on behalf of Venues NSW (Crown Land Manager), and thus satisfy the 'prescribed circumstances' set down in Clause 66(2).</i></p> <p><i>Having regard to land tenure, scope of works and statutory context under which the works will be undertaken, we are of the view that the proposed redevelopment of District Park can be undertaken as exempt development, as set out in clause 66(1) of the ISEPP, and that those works are being carried out in prescribed circumstances as set out in clause 66(2) of the ISEPP.</i></p> <p>Noted and the proposal is considered acceptable in this regard.</p>
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It is considered that 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 as discussed within this report.

**5.9 The public interest**

This report has addressed the various concerns raised in the submissions received in response to the public notification and relevant referral procedures.

Forming part of the broader redevelopment of District Park, the proposal will facilitate the provision of sporting and recreational facilities in Newcastle.

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development.

The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

The proposed development provides for the orderly economic development of the site for purposes for which it is zoned and will not have any negative social or economic impacts.

No adverse impacts on nearby development, the environment, traffic, parking, heritage, flooding, drainage are anticipated as a result of the development.

The proposal is considered a quality design development that will provide an indoor recreation facility that is in the public interest.

## **6.0 CONCLUSION**

The proposal is a permissible form of development and meets the objectives of the RE1 Public Recreation zone.

The proposal is acceptable against the relevant heads of consideration under section 4.15 of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

## **ATTACHMENTS**

**Item 23 Attachment A:** Submitted Plans - 6 Bavin Road Broadmeadow - Under separate cover

**Item 23 Attachment B:** Draft Schedule of Conditions - 6 Bavin Road Broadmeadow - Under separate cover

**Item 23 Attachment C:** Processing Chronology - 6 Bavin Road Broadmeadow - Under separate cover

**Item 23 Attachments A-C are distributed under separate cover**

**ITEM-24                    DAC 03/12/19 - DA2018/01301 - 59 DARBY STREET COOKS HILL - DEMOLITION OF STRUCTURE, ERECTION OF 6 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**

**PART I**

**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.

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

The application is referred to City of Newcastle's (CN) Development Applications Committee for determination, due to:

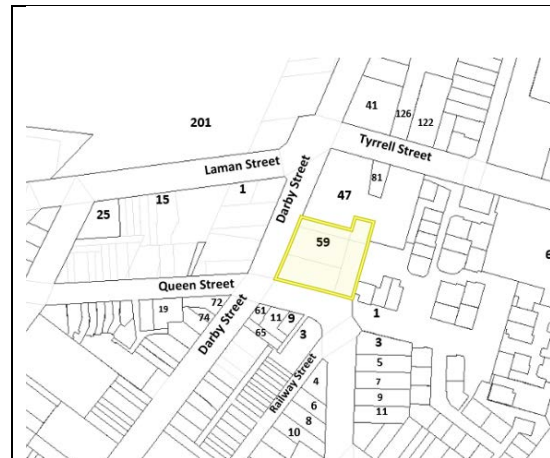
1. number of public submissions received.

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

The proposed development was publicly notified in accordance with CN's Public Notification policy and 27 submissions have been received in response.

The objectors' concerns include:

- i) Character / visual appearance
- ii) Overdevelopment
- iii) Building setbacks
- iv) Overshadowing
- v) Privacy impacts
- vi) Acoustic impacts



**Subject Land: 59 Darby Street Cooks Hill**

- vii) Visual impacts
- viii) Parking impacts
- ix) Traffic impacts
- x) Drainage
- xi) Waste management
- xii) Dust pollution
- xiii) Height exceedance
- xiv) Negative impacts on the Heritage Conservation Area
- xv) Street trees will impact existing powerlines

Details of the submissions received are summarised at **Section 3.0** of Part II of this report and the concerns raised are addressed as part of the Planning Assessment at **Section 5.0**.

The proposal was considered at a meeting of the Public Voice Committee on 19 November 2019.

The Public Voice Committee heard from one objector raise their concerns regarding exceedance of height, no public benefit, not in character, view impacts, visual and acoustic impacts, precedent for area, loss of amenity, increase in anti-social behaviour, privacy impacts, loss in property values, construction impacts and traffic and parking impacts. The applicant also presented a response to the issues raised.

Post the Public Voice Committee meeting it was recommended to the applicant via email communication to positively move forward with the proposal further discussion with Council and Urban Design Consultative Group would be required. The further discussions were to address significant not compliant matters and other minor elements of non-compliance. The applicant at the time of writing this report has not responded to the recommendation to further resolve outstanding issues in the proposal.

### **Issues**

- 1) The proposed development does not comply with the height of buildings development standard of 14m under NLEP 2012. The maximum height of the proposed building is 19.4m and this equates to a 38.5% variation to the height of buildings development standard.
- 2) Heritage impacts of the proposal on the City Centre Heritage Conservation Area and nearby heritage items.
- 3) Built form design, noting the CN's Urban Design Consultative Group (UDCG) have raised concerns with the proposal.
- 4) Commercial, serviced apartment and residential flat building designated loading and servicing area location.
- 5) Character.
- 6) Bulk and scale.

## Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is considered to be unacceptable.

## RECOMMENDATION

- A) That DA2019/01301 for demolition of the buildings on the site, erection of a six-storey mixed use development, including commercial premises, serviced apartments and residential apartments at 59 Darby Street Cooks Hill be refused for the reasons in **Attachment B**.
- B) That those persons who made submissions be advised of Council's determination.

## Political Donation / Gift Declaration

Section 10.4 of the *Environmental Planning and Assessment Act 1979* requires a person to disclose "reportable political donations and gifts made by any person with a financial interest" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council; and
- b) all gifts made to any local Councillor or employee of that Council.

The applicant has answered **No** to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the application, made a 'reportable political donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

## PART II

### 1.0 THE SUBJECT SITE

The land is identified as Lot 63 & 64 in DP 1109172, Lot 53 in DP 151167, Lot 27 in DP 150134 and Lot 44 in DP 150066, No. 59 Darby Street Cooks Hill. The consolidated site has a Darby Street frontage of 48m and Queen Street frontage of 57m and a total area of 2,142m<sup>2</sup>.

The site contains a two-storey building and car parking area (formerly used by the Roads and Maritime Services). Ancillary structures within the site include a single-storey brick amenity building in the north-eastern corner of the site, a small single-storey chemical storage brick building in the south-eastern corner and a temporary / moveable container on the east of the site for lockers and bike storage.

The subject site is located on the corner of Darby and Queen Street, on the edge of the City Centre. The adjacent site to the north contains a three storey commercial building. Further north of the site includes the City Civic precinct including civic buildings and Civic Park.

The adjacent site to the east is a community title multi dwelling housing development known as Regency Park. Further east is a single dwelling and several low rise residential flat buildings.

To the south of the site is the Darby Street precinct, which is predominantly two storeys in height. Darby Street contains a mix of restaurants, small bars, retail premises and residential uses. To the west is a mixture of civic buildings and local heritage items. These include Newcastle Art Gallery, Newcastle Regional Library, Baptist Tabernacle and St Andrews Presbyterian Church.

## 2.0 THE PROPOSAL

The application seeks consent for a six-storey mixed use development which includes:

- i) Demolition and associated site works.
- ii) Basement level - 67 car parking spaces and lift access.
- iii) Ground floor level – Restaurant / Bar (245m<sup>2</sup>), Gallery '*commercial premises*' (192m<sup>2</sup>), Food Store '*neighbourhood supermarket*' (221m<sup>2</sup>), 13 car parking spaces, lobby and associated facilities, club lounge, lifts and plant and other service rooms.
- iv) 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.
- v) Second floor level – Serviced apartments (building 'A') and residential flats (building 'B').
- vi) Third floor level – Serviced apartments (building 'A') and residential flats (building 'B').
- vii) 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 current amended plans is included at **Attachment A**.

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

### **3.0 PUBLIC NOTIFICATION**

The original application was publicly notified in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*, the associated Regulation and the Newcastle Development Control Plan 2012 (NDCP 2012). 27 submissions were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

- 1) Character / visual appearance
- 2) Overdevelopment
- 3) Building setbacks
- 4) Overshadowing impacts
- 5) Privacy impacts
- 6) Acoustic impacts
- 7) Visual impacts
- 8) Parking impacts
- 9) Traffic impacts
- 10) Drainage impacts
- 11) Waste management
- 12) Dust pollution
- 13) Height exceedance impacts
- 14) Negative impacts on the City Centre Heritage Conservation Area
- 15) Street trees will impact existing powerlines

### **4.0 INTEGRATED DEVELOPMENT**

The proposal is integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*, as approval is required from Subsidence Advisory NSW under the *Mine Subsidence Compensation Act 1961*. A response was not received and the applicant in has not submitted plans with approval from Subsidence Advisory NSW.

### **5.0 PLANNING ASSESSMENT**

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

#### **5.1 Provisions of any environmental planning instrument**

##### **State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)**

This policy applies to the proposed development and contains planning controls for the remediation of contaminated land.

Clause 7 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required. A consent authority must not consent to the carrying out of any development on land unless:

- a) *It has considered whether the land is contaminated and*
- b) *If the land is contaminated, it is 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 to be carried out, and*
- c) *If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

A Preliminary Site Investigation was prepared by EP Risk dated 10 September 2018. CN's Environmental Protection Officer considered the information submitted and provided the following response:

*"The Remediation of Land SEPP 55 (Section 7) requires consent authorities to consider contamination when determining a development application which proposes a change to a more sensitive land use. The application proposes a change in land use from a commercial facility to a more sensitive commercial and residential apartment building.*

*The Department of Main Roads owned the site after 1950 (prior to this the site was used for residential purposes). "Environmental Advice Regarding Preliminary Site Investigation and Underground Petroleum Storage System Assessment " was prepared by EP Risk dated 10 September 2018. The report assessed the likelihood that soil and groundwater area have been contaminated in the area immediately surrounding former UPSS and chemical storage shed (ie. from potential leaks / spills).*

*Four boreholes and two groundwater monitoring wells were advanced on the site. The investigation identified potential for hydrocarbon impacts in the soil and groundwater.*

*The results of the report demonstrated that the concentrations of hydrocarbons within soil and groundwater did not pose an unacceptable risk to human health or the environment surrounding the former UPSS area on the site. There was no evidence in the report to suggest that the proposed mixed use is not allowable under the current zoning.*

*The Tier 1 assessment considered the potential vapour intrusion relating to the depth of the basement carpark. EP Risk report concluded that the site is suitable for ongoing commercial / industrial mixed use as defined in The*



*National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013).*

*The site is mostly sealed. It is expected that most of the contaminated fill will be removed during the excavation of the underground basement carpark (which extends over most of the site footprint and caters for 69 vehicles) and disposed of at an appropriately licensed waste management facility.*

*Therefore, the ESU considers that the proposed development does not require further consideration of contamination providing the following recommendations are implemented:*

- a) Waste classification sampling of the soil to be excavated for the basement carpark in accordance with the NSW EPA (2014) Waste Classification Guidelines, Part 1: Classifying Waste (Waste Classification Guidelines) to determine the appropriate disposal of the excavated soil.*
- b) Preparation and implementation of an unexpected finds protocol during the development works (this can be incorporated into the Environmental Management Plan to be developed prior to the commencement of any site development work).*
- c) ASS management on site according the ASS management plan provided.*

The subject land is currently being used for commercial purposes and CN's records do not identify any past contaminating activities on the site. The response from CN's Environmental Protection Officer concluded that the proposal is satisfactory in this regard. On this basis, the provisions of the SEPP have been met.

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) is one of a suite of Land Management and Biodiversity Conservation 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 previously contained in cl.5.9 of NLEP 2012 (clause now repealed) and provides that CN's Development Control Plan can make declarations with regard to certain matters, and further that CN may issue a permit for tree removal.

The proposal has been assessed in accordance with NDCP 2012 and is considered to be satisfactory.

### **State Environmental Planning Policy (Coastal Management) 2018**

The aim of the policy is to promote an integrated and coordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act 2016*. The policy is supported by mapping of the following coastal management areas that comprise the coastal zone:

- i) Coastal wetlands and littoral rainforests area
- ii) Coastal vulnerability area
- iii) Coastal environmental area
- iv) Coastal use area

The SEPP includes development controls that are applicable to development on land in each of the above areas, as well as development in the coastal zone generally.

The Coastal Management SEPP requires that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

The proposed development is located in the Coastal Environment Area as mapped under the Coastal Management SEPP.

It is considered that the proposed development will not have a significant impact on the coastal zone. Access to public areas within the coastal use area will not be adversely impacted by the proposed development and the proposal is consistent with the aims of the SEPP.

### **State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)**

This policy facilitates the effective delivery of infrastructure across the State. The development is subject to the following requirements of the policy.

The proposal was required to be referred to Ausgrid in accordance with Clause 45(2) of the ISEPP. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

Schedule 3 of the ISEPP relates to traffic generating development and requires certain applications to be referred to Roads and Maritime Services (RMS). The development is considered to be 'traffic generating'. The application was referred to the RMS and written advice was received raising no objection to the proposal. As detailed in this assessment report, it is considered that the proposal is satisfactory in relation to traffic.

### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

A BASIX Certificate was lodged with the application, demonstrating that the development can achieve the required water and energy reduction targets.

**State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development**

This policy applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. The SEPP requires the consent authority to take into consideration the advice of a Design Review Panel and the design quality of the development when evaluated in accordance with the design quality principles and the Apartment Design Guide (ADG). An assessment of the development under the design principles is provided below.

CN’s Urban Design Consultative Group (UDCG) reviewed the application on 21 March 2019. A summary of UDCG’s advice in relation to the ten design principles is provided in the table below.

Design Quality Principles	Assessment
<p><b>Principle 1: Context and Neighbourhood Character</b></p> <p><u>UDCG comments:</u></p> <p><u>21 May 2018 - (pre development application advice)</u></p> <p><i>“The site is at the junction of Darby and Queen Streets, on the north-eastern side. It is immediately opposite the rear corner of the Art Gallery and its carpark and adjoins the ‘Southern Cross Ten’ building to the north. To the east it adjoins a 2-3 storey residential flat block with a tennis court. The existing building on the site is unremarkable and was used by the NSW Government Roads and Maritime Services.</i></p> <p><i>Due to its location at the interface between residential / commercial development to the south in Darby Street, and civic buildings and the park to the north and west, it will be relatively prominent and from some angles viewed as a backdrop to the civic centre.”</i></p> <p><u>21 March 2019</u></p> <p>No change</p>	<p><u>Applicant response</u></p> <p><i>“Noting the significant location of the site, being on the corner of three precincts (East End Precinct, Civic Precinct and the Darby Street / Cooks Hill Precinct) and a potential ‘prominent’ backdrop to the civic centre, considerable design solutions have been integrated into the scheme to ensure the development results in a landmark design that integrates the artistic culture of the Darby Street Precinct with the Newcastle Art Gallery and Civic Park.</i></p> <p><i>The proposal features a structural ‘web’ like design that purposely reflects with the surrounding road networks of Darby Street, Queen Street, King Street and Hunter Street.</i></p> <p><i>The overall development has been designed to reflect and contribute to the neighbourhood context.”</i></p> <p><u>Officer comments</u></p> <p>The proposal is located within the East End Precinct within the City Centre, and not within three precincts as stated by the applicant.</p>

<b>Principle 2: Built Form and Scale</b>	<u>Applicant response</u>
<p><u>UDCG comments:</u></p> <p><u>21 May 2018 (Pre-development application advice)</u></p> <p><i>“Two options were presented in relation to the character of the buildings, but with the same basic form and scale, as discussed below under “Aesthetics”.</i></p> <p><i>A four-storey block containing 24 residential apartments above ground and basement-floor parking is proposed on the eastern part of the site, and a six-storey block containing 35 serviced apartments is located above an art gallery and other commercial spaces on the western part. Overall the building forms, separation and setbacks, and internal planning are of good quality and satisfactory, with one primary exception in relation to height.</i></p> <p><i>The LEP statutory height control is 14 metres, but the western block as proposed would be two full levels or approximately 6 metres above this height and cannot be supported. The top residential floor of the eastern block also would slightly exceed the height control and could be accepted. Both blocks also have communal areas at rooftop level, and although further exceeding the height limit, these could be accepted provided it is demonstrated that neither would have any adverse impacts in relation to overshadowing or view loss for nearby properties.</i></p> <p><i>It is considered that if at least one residential level were to be deleted from the western serviced apartment block the resulting height could potentially be supported on the basis that:</i></p> <ul style="list-style-type: none"> <li><i>The development would be well within the L.E.P. density control of</i></li> </ul>	<p><i>“Taking into consideration the comments made by the UDCG panel, a complete level from Building A was removed. This resulted in the proposed built form (excluding the rooftop communal areas) standing at approximately 18.5m for Building A and 15.4m for Building B. The amendments made have reduced the FSR to well within the 2.5:1 provision.</i></p> <p><i>As described in Section 5.2 of this SEE, the proposed development including rooftop communal areas are not expected to result in any amenity impacts to neighbouring properties.</i></p> <p><i>The design of the structural ‘web’ along the frontage of Building A stands at approximately 12.6m high and creates a visual disconnection between the structure itself and the built form behind, through the use of materials and finishes. The design seeks to enhance the street façade / front element whilst applying soft / neutral tones to the built form which significantly reduces the overall scale of the development.</i></p> <p><i>The proposed development is considered of an appropriate scale, with design articulation to reduce bulk of the development.”</i></p> <p><u>Officer comments</u></p> <p>The applicant reduced the size and setbacks of the rooftop communal room for building A. Additionally, the amended proposal included the removal of a landscaped communal space and common room on building B, which was supported.</p> <p>The height variation percentage noted by the UDCG is not 48% and is 38.5% as stated by the applicant. UDCG did not support the proposed height regarding</p>

<p><i>2.5:1 FSR.</i></p> <ul style="list-style-type: none"> <li>• <i>The roof-top communal facilities would be well set back from all frontages.</i></li> <li>• <i>The street facades would be articulated so the predominant facade height was approximately 14.5m possibly with some additional height emphasizing the corner.</i></li> <li>• <i>The provision of gallery, restaurant etc at street level, along with inviting undercover landscaped areas would be of public benefit.</i></li> </ul> <p><i>A revised scheme removing one complete level, and more strongly articulating the street wall control, would still need to be carefully reviewed by the UDCG and the Council, to assess its potential impacts.”</i></p> <p><u>21 March 2019</u></p> <p><i>“The application retains the overall form previously proposed with some amendments addressing previous recommendations.</i></p> <p><i>Despite deletion of one floor the proposed maximum height remains at 20.4 metres this being some 48% in excess of the maximum height limit of 14m. The applicant continues to argue that this height is justified by the DCP notation of a 16m street wall height (in spite of the 14m overall height limit); the prevailing height limits further to the north: the subject site being a ‘gateway’ site to the central urban area of Newcastle: the site being adjacent to a conservation area with no height limit and the top floor being setback.</i></p> <p><i>The UDCG remains unable to support such an exceedance of the height control. It had previously suggested that the height needed to be lowered by “at</i></p>	<p>the built form and scale.</p> <p>The proposed height and bulk and scale of the development is not supported by CN.</p>
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<p><i>least one floor” and other measures taken to reduce the apparent height of the development. In spite of one full floor having been deleted from the Darby Street building, it remains visually dominant in the area. Its relationship with the Heritage Conservation Area and with Civic Park are particularly relevant. Further consideration is required of this impact. This might usefully involve the significant reduction of the enclosed communal recreation area on the upper level and setting the upper floors substantially further back from the street wall below.</i></p>	
<p><b>Principle 3: Density</b></p> <p><u>UDCG comments:</u> <u>21 March 2019</u></p> <p><i>“Stated by applicant to be 2.19:1 which is well within the 2.5:1 FSR control, and acceptable.”</i></p>	<p><u>Applicant response</u></p> <p><i>“The proposed FSR is 2.19:1, well within the provisions of the applicable 2.5:1 FSR.”</i></p> <p><u>Officers’ comments</u></p> <p>The proposal is considered acceptable in this regard.</p>
<p><b>Principle 4: Sustainability</b></p> <p><u>UDCG comments:</u> <u>21 May 2018 (Pre-development application advice)</u></p> <p><i>“Initiatives beyond BASIX requirements such as solar collection, rainwater recycling etc. should be investigated at next stage.”</i></p> <p><u>21 March 2019</u></p> <p><i>“The application identifies passive design features aimed at sustainability including passive solar design, water saving devices, water detention in the basement, insulation and high performance glazing.</i></p> <ul style="list-style-type: none"> <li>• <i>Further sustainability provisions</i></li> </ul>	<p><u>Applicant response</u></p> <p><i>“Further discussion of BASIX and ESD is provided in SOE.”</i></p> <p><i>“A BASIX Certificate has been obtained for the proposed development. All relevant BASIX commitments are indicated on the architectural drawings. The proposed development aims to promote a high standard of environmental performance incorporating the use of ecologically sustainable development principles including:</i></p> <ul style="list-style-type: none"> <li>• <i>Orientation of apartments to maximise access to natural light, natural cross ventilation and aspect;</i></li> <li>• <i>Use of construction materials that contribute to thermal mass such as concrete slabs, concrete</i></li> </ul>

<p><i>are recommended including: Harvesting of rainwater in substantial storage tanks for watering of landscape.</i></p> <ul style="list-style-type: none"> <li><i>Provision of ventilated skylights to internal rooms on the top floor of both buildings. These would need to be integrated with proposed roof decks and common rooms.</i></li> <li><i>Provision of photovoltaic panels over the common room roofs."</i></li> </ul>	<p><i>prefabricated panels and double-glazing;</i></p> <ul style="list-style-type: none"> <li><i>Native and drought tolerant vegetation will form part of the soft and hard landscaping plan. Landscape spaces laid out for maximum solar access, natural ventilation, water and planting management. Vegetation is designed to modify the external wind direction to enhance ventilation and cool incoming air;</i></li> <li><i>Use of solar screening devices as required to minimise use of high energy consumption cooling systems;</i></li> <li><i>Reuse of water runoff stored in the detention tank for toilet flushing and laundries; and</i></li> <li><i>Low energy fixtures and fittings implemented in the building."</i></li> </ul> <p><u>Officer Comments</u></p> <p>Appropriate design changes and refinements have been achieved, as recommended by the UDCG.</p>
<p><b>Principle 5: Landscape</b></p> <p><u>UDCG comments:</u></p> <p><u>21 May 2018 (Pre-development application advice)</u></p> <p>"On this prominent site the inclusion of significant street trees and other planting, footpath paving etc. is important, and should be developed in consultation with CN."</p> <p><u>21 March 2019</u></p> <p>"The UDCG considered more work is required to landscape design including:</p> <ul style="list-style-type: none"> <li><i>Buffering and securing of separated areas for serviced and residential apartments at podium</i></li> </ul>	<p><u>Applicant response</u></p> <p>"A detailed landscape design plan has been prepared by Terras."</p> <p><u>Officer comments</u></p> <p>The proposal was modified to include internal screening as a separation buffer between short stay users (service apartments) and residents (residential flat building) at the podium level. The inclusion of soft landscaping was not included as suggested by UDCG. No further comment was provided regarding soil volumes and automatic watering systems.</p>

<p><i>level. This needs to be a combination of secure screening and soft landscaping.</i></p> <ul style="list-style-type: none"> <li>• <i>Soil volumes for landscaping are to meet or exceed the volumes nominated in the ADG. Automatic watering systems are to be provided.</i></li> <li>• <i>Clarification of maintenance by the body corporate and / or apartment operator. Access to all major landscape beds needs to be available for maintenance crews.</i></li> <li>• <i>Mounding of deep soil garden beds rather than enclosure by dwarf walls.</i></li> <li>• <i>Clarification of the seasonality or perennial nature of ornamental garden beds at roof level.”</i></li> </ul>	
<p><b>Principle 6: Amenity</b></p> <p><u>UDCG comments:</u></p> <p><u>21 May 2018 (Pre-development application advice)</u></p> <p><i>“The residential flats should generally have good amenity subject to:</i></p> <ul style="list-style-type: none"> <li>• <i>Demonstration that ADG standards in relation to solar access and cross-ventilation would be achieved.</i></li> <li>• <i>Provision of clear entrance lobby distinct from serviced apartments.</i></li> <li>• <i>Provision of enclosed area with kitchenette facilities within roof-top communal space.</i></li> <li>• <i>Design of balconies including adequate privacy and screening.</i></li> <li>• <i>Clear separation of podium-level landscaped area from serviced apartments.</i></li> </ul> <p><i>The serviced apartments also should be attractive, with good afternoon sunlight, outlook etc. The following should be addressed:</i></p>	<p><u>Applicant response</u></p> <ul style="list-style-type: none"> <li>• Compliance with the ADG standards in relation to solar access and cross-ventilation is detailed within the ADG guideline assessment.</li> <li>• Clear entrance lobby provided.</li> <li>• Enclosed area with kitchenette facilities has been provided within the roof-top communal spaces.</li> <li>• The proposed balconies have been designed to include screening for each apartment.</li> <li>• A clear separation of podium level landscape area has been provided.</li> <li>• The proposed access walkway will not be enclosed but rather open to the podium level communal area to enhance amenity.</li> <li>• The proposed serviced apartments have been designed in accordance with SEPP65, therefore achieve the appropriate apartment design guidelines.</li> <li>• Excessive use of clear balustrade glass has been avoided.</li> </ul>



<ul style="list-style-type: none"> <li>• <i>Enclosure of access walkway for reasons of both privacy of residential apartments, and protection from exposure to unpleasant weather.</i></li> <li>• <i>Internal planning, having in mind the precedent of owners not infrequently seeking approval to convert serviced apartments into residential units. As proposed the two-bedroom plan would not be acceptable for this purpose both in relation to natural light and ventilation as well as accessibility. Even as serviced apartments the need to traverse the full length of the dining and living areas to reach the door of the second bedroom is far from ideal.</i></li> <li>• <i>Avoid excessive use of clear glass for balcony balustrades to ensure good amenity and privacy for residents.”</i></li> </ul> <p><u>21 March 2019</u></p> <p><i>“Enclosure of most access hallways to the eastern side of the serviced apartments has improved acoustic separation of serviced and residential apartments, with the exception of the podium level serviced apartments.</i></p> <p><i>The UDCG recommends further measures to ensure the separation of courtyard areas allocated to residential apartments and areas accessed by occupants of serviced apartments.</i></p> <p><i>Enclosed common rooms and associated open areas at roof level should be reduced to a minimum functional requirements to limit visual impact of bulk and scale.</i></p> <p><i>The very limited flexibility of enclosed bedrooms to the serviced apartments should be further considered in view of any subsequent adaption to residential</i></p>	<p><u>Officer comments</u></p> <p>The applicant amended the common rooms for the serviced apartments (building A) and the residential flat building (building B).</p> <p>The Building A common room was reduced in size from 206m<sup>2</sup> to 121m<sup>2</sup> and the setbacks were increased. The reduction in floor area of the common room for building A is supported. However, the height of the common room at approximately 18.65 metres (33% variation to the height development standard) is not supported.</p> <p>The common room and landscaped area were removed from Building B. A common room for Building B was relocated to the podium level over the barbeque area.</p> <p>The removal of the common room and landscape areas on Building B and the relocation to a common room at podium level is supported. The height of building B is noted by the applicant to be 16.2 metres for lift overrun, 15.8 metres fire stairs and 13.2 - 17 metres for the main roof line. The height on building B is not supported.</p>
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<p><i>apartments. Either an ADG compliant setback should be provided to the Darby Street Units and their decks from the northern boundary, or other design changes made to adequately ameliorate privacy issues arising in respect to any future development to the adjacent site to the north. The small window to the northern end of the western building and the balcony outside this, are within 6m of the northern side boundary and are unsatisfactory as proposed.”</i></p>	
<p><b>Principle 7: Safety</b></p> <p><u>UDCG comments:</u></p> <p><u>21 May 2018 (Pre-development application advice)</u></p> <p><i>“Safety of the undercover area at ground level after dark must be considered. It is likely that the proposed activities would activate the space, but these could well change over time, and at least good security lighting will be critical.”</i></p> <p><u>21 March 2019</u></p> <p><i>“When retail / gallery areas are closed, doors or security screens should secure public areas at ground floor.</i></p> <p><i>The common lobby for serviced and residential apartments adjacent to a bar / restaurant is considered a security risk to permanent residents if the reception desk is unattended. This needs further consideration, and at a minimum, access to the residential lifts should be capable of being separated by doors at night from the main lobby.”</i></p>	<p><u>Applicant response</u></p> <p><i>“A Crime Risk Assessment has been prepared.</i></p> <p><i>The assessment assesses the proposed development against the Crime Prevention Through Environmental Design (CPTED) guidelines as well as details proposed crime risk mitigations measures.”</i></p> <p><u>Officers’ comments</u></p> <p>The proposal was reviewed by the Licensed Premises Reference Group (LPRG) in respect of the proposed bar / restaurant. The group required information regarding patron numbers, details of type of music and smoking areas to be clarified. The proposal was also considered by CN’s Environmental Protection Officer and no concerns were raised.</p> <p>The management of security within public accessible spaces and interaction with public would be required to be included within a plan of management if the application was to be supported.</p>
<p><b>Principle 8: Housing Diversity and Social Interaction</b></p> <p><u>UDCG comments:</u></p>	<p><u>Applicant response</u></p> <p><i>“Noted”</i></p> <p><u>Officer comments</u></p>

<p><u>21 May 2018 (Pre-development application advice)</u></p> <p><i>“There appears to be a good apartment mix appropriate for this area, and the communal spaces would potentially be of excellent quality.”</i></p> <p><u>21 March 2019</u></p> <p><i>“No change”</i></p>	<p>Satisfactory</p>
<p><b>Principle 9: Aesthetics</b></p> <p><u>UDCG comments:</u></p> <p><u>21 May 2018 (Pre-development application advice)</u></p> <p><i>“The two options presented could in principle both be acceptable. The more conventional approach when developed in relation to materials and detailed form could readily and appropriately relate to the context of the nearby Gallery and park.</i></p> <p><i>The alternative in which a screen supporting climbing plants embraces the lower part of the Darby Street building elevation would provide a more challenging task, and requires refinement in relation to selection of material and patterns to ensure an urbane and sophisticated outcome, and one which is not over-assertive in relation to this context.”</i></p> <p><u>21 March 2019</u></p> <p><i>“The proposed option combining curvilinear balconies to the upper floors of the western building rising above an open screen to the street front and a more orthogonal form to the apartment building to the eastern side of the site provides a level of visual complexity that lacks cohesion. The very dark tones suggested for the blocks were</i></p>	<p><u>Applicant response</u></p> <p><i>“The proposed design approach has since been further progressed, resulting in a development that provides contrasting elements to enable visual interest in the Precinct whilst integrating materials / finishes and features that tie into the context of the neighbourhood. This is largely expressed through the design of the web like structure that wraps around the Darby Street and Queen Street frontage of Building A. The vision behind this chosen design is to incorporate a reflection on the local street network whilst adding visual interest to the aesthetics of the development and streetscape.”</i></p> <p><u>Officer comments</u></p> <p>Appropriate design changes and refinements have been achieved, as recommended.</p>

<p><i>considered to be excessively visually heavy. While a recessive treatment behind the main Darby Street screen was considered appropriate, this element could utilise warmer greys and natural materials like face brick and oxidised concrete.</i></p> <p><i>The assembly would benefit from expression as two distinct elements / buildings rather or, alternately, two buildings of common detail with the screen defining the streetscape of the western building.</i></p> <p><i>Consideration should be given to the night-time appearance of the western building both in terms of appearance from Civic Park and as a continuation of the restaurant strip along Darby Street.</i></p> <p><i>Provisions for signage viewed within or beneath the overlay screen should be part of the submission.”</i></p>	
<p><b>Amendments Required to Achieve Design Quality</b></p> <p><u>UDCG comments:</u></p> <p><i>“The following are the critical issues to be addressed:-</i></p> <ul style="list-style-type: none"> <li>• <i>Height of the Darby Street block.</i></li> <li>• <i>Resolution of the facade design and articulation of setback controls.</i></li> <li>• <i>Resolution of interior layout of Darby Street serviced apartments to provide ADG compliant light and natural ventilation to bedrooms.</i></li> <li>• <i>Further consideration to providing greater privacy and acoustic, and where needed, physical separation between short term guests and residents.</i></li> <li>• <i>Landscape refinements as recommended.</i></li> </ul>	<p><u>Applicant response</u></p> <p><i>“One level from Building A has been removed as required by the UDCG panel. Improvements have been made to the faced design.”</i></p> <p><u>Officer comments</u></p> <p>The amended proposal is not considered to adequately address several key areas raised by the UDCG specifically in relation to scale, built form and height of the proposal. The proposal is considered unsatisfactory.</p>

<ul style="list-style-type: none"> <li>• <i>Other matters as outlined under the headings above.</i></li> </ul>	
<p><b>Summary</b></p> <p><u>UDCG comments:</u></p> <p><i>“The submission is conditionally supported subject to the development of the design in response to the issues raised.”</i></p>	<p><u>Applicants response</u></p> <p>No response provided.</p> <p><u>Officers’ comments</u></p> <p>The applicant has not provided satisfactory response to the design in response to the issues raised.</p>

Apartment Design Guide (ADG) - Key "Rule of Thumb" Numerical Compliances

The ADG provides benchmarks and guidelines for the design and assessment of a residential apartment development. The following section contains an assessment of the development against key controls of the ADG.

3B Orientation

The orientation of the building and floor plans respond to the specific site conditions to allow for available views, optimising solar access to units and creating a high level of cross ventilation to all residential apartments. As highlighted by the UDCG, cross ventilation and solar access to the serviced apartments is unacceptable and does not meet the provisions of the ADG.

Overshadowing to neighbouring buildings has been minimised. Any additional overshadowing caused by the proposal impacts the low rise multi dwelling development to the rear. The proposal includes shadowing diagram plans and additional detail within the Clause 4.6 Application to Vary Development Standard. The details provided demonstrate the impacts to adjacent sites are acceptable.

3C Public Domain interface

Ground level access to the commercial premises (Neighbourhood Supermarket, Art Gallery and Restaurant / Bar) is directly addressing the street and with a forecourt connecting the three premises. The new building replaces a former RMS commercial building in a city centre location and is connected to other precincts (Darby Street and traditional residential areas). The ground level commercial tenancies are supported by good quality public accessible spaces to the street and provide a good interface to the public domain.

The proposal includes a number of additional street trees along Queen Street to improve the public domain.

3D Communal and Public open space

The proposal provides communal open spaces throughout all the residential levels, podium and service apartments on the roof top. The communal roof top space achieves direct sunlight in mid-winter throughout the day. All communal open spaces are supported by generous landscaping and have been designed to offer a high-quality amenity for a variety of uses.

All communal open space is designed to be accessible to all residents, with good passive surveillance. Publicly accessible ground level areas support the commercial spaces.

### 3E Deep Soil Zones

The SEPP acknowledges that deep soil zones may not be possible on some sites, due to their CBD location, and the fact that there are non-residential uses at ground floor level. Both of these conditions are relevant to this site.

Non-residential uses on the ground floor, with zero setbacks to address the urban built form, have several elements of deep soil planting within the forecourt area.

Substantial landscaping has been provided on the podium roof level and roof top terrace of the service apartment within Building A. Additional street trees are proposed outside the boundary, along Queen Street, to improve the overall streetscape.

### 3F Visual Privacy

The setbacks on the northern and eastern elevations are not consistent with the minimum 6 metres. Additionally, there is no transitional setbacks proposed in regard to the adjacent sites to the east, which changes in zoning and thereby a decrease in height and density. This is considered a significant element to overcome to ensure visual privacy is maintained. Future development on neighbouring sites to the north and east would be considered to be constrained due to the proposed setback encroachments.

It is considered the setback variations should not be varied in this development proposal given a height variation is also proposed. The cumulative effect of bulk and scale in the built form is not considered acceptable with regard to visual privacy.

### 3G Pedestrian Access and Entries

The main building entry is accessed from Darby Street and Queen Street. Darby Street maintains the access for the three commercial premises including the art gallery. The Queen Street access provides a lobby area, with two separate lifts, one to the serviced apartments and the other to the residential flat building.

### 3H Vehicle Access

Vehicle access is from Queen Street, in a similar location as the former driveway crossover. The car park entry allows for vehicles to safely enter and exit from the

site. Waste collection is to occur privately utilising a waste trailer arrangement via the driveway. However other designated loading areas for the commercial premises have been identified in the proposal.

3J Bicycle and Car Parking

Parking facilities have been provided at basement and ground level to accommodate the number of apartments in the building, as well as the commercial tenancy. The visual impact of the parking has been minimised through the use of materials, screening and landscaping. Adequate off-street parking has been provided for each apartment.

4A Solar and Daylight Access

The proposal is designed to optimise sunlight to all residential units. Generously sized windows to living rooms optimise sun access in mid-winter, while balcony projections in front of the glazing offer shading in the summer months.

Over 73% of the apartments receive a minimum of two hours direct sunlight between 9am and 3pm at mid-winter, with only 14% receiving no direct sunlight.

The serviced apartments do not receive adequate sunlight.

4B Natural Ventilation

78% of the apartments are naturally cross ventilated and do not exceed 18m in depth. The serviced apartments do not receive adequate cross ventilation.

4C Ceiling Height

2.7m minimum floor to ceilings for habitable rooms and 2.4m minimum for non-habitable rooms has been achieved while the floor plate depths allow for maximum penetration of natural light into the space.

4D Apartment Size and Layout

All apartment sizes are greater than the minimum required under SEPP 65, to provide a better level of amenity and an alternative to other apartments currently on the market.

Each apartment layout provides a high level of residential amenity and exceeds the minimum standards for habitable room sizes. All kitchens are no more than 8m from a window. The width of each apartment type is greater than 4m.

4E Private Open Space and Balconies

All apartments have a balcony with a minimum depth of 2m or greater. The configuration of balconies and apartments will provide a good level of surveillance to public and private areas.

4F Common Circulation and Spaces

Each residential storey has eight apartments which are serviced by one core, consisting of two lifts and one fire egress stair.

4H Acoustic Privacy

The building layout has been designed to achieve minimal noise transfer to and from apartments. Acoustic treatments to walls, floors and ceilings further reduce noise transfer.

**SEPP 65 Concluding Comment**

The Apartment Design Guidelines have not been adequately satisfied. The UDCG concluded with the following comments:

***Amendments Required to Achieve Design Quality***

*The following are the critical issues to be addressed:*

- a) *Height of the Darby Street block*
- b) *Resolution of the facade design and articulation of setback controls*
- c) *Resolution of interior layout of Darby Street serviced apartments to provide ADG compliant light and natural ventilation to bedrooms*
- d) *Further consideration to providing greater privacy and acoustic, and where needed, physical separation between short term guests and residents*
- e) *Landscape refinements as recommended*
- f) *Other matters as outlined under the headings above*

***Summary Recommendation***

*The submission is conditionally supported subject to the development of the design in response to the issues raised.*

The proposal is unsatisfactory having regard to SEPP65 as the critical issues requested to be resolved by the UDCG have not been met. The development has not demonstrated that adequate regard has been given to the ten design quality principles of the SEPP.

**Newcastle Local Environmental Plan 2012 (NLEP 2012)**

Clause 2.1 Land Use Zones

The subject property is included within the B4 Mixed Use zone under the provisions of the NLEP 2012, within which zone the proposed development is permissible with CN's consent.



The proposed development is consistent with the objectives of the B4 Mixed Use zone, which are:

- i) To provide a mixture of compatible land uses.*
- ii) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- iii) To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

The proposal for a mixed-use development comprises the following uses:

- i) Residential Flat Building;
- ii) Serviced Apartments;
- iii) Retail Premises (specifically a shop and food and drink premises); and
- iv) Information and Education Facility (specifically an art gallery)

The proposed uses are considered to meet the zone objectives.

The following summarises an assessment of the proposal against the provisions of NLEP 2012 that are primarily relevant to the proposed development.

#### Clause 2.7 Demolition Requires Development Consent

The proposal includes the demolition of the existing structures on the site. If the application is to be supported conditions are recommended to ensure demolition works and disposal of material is managed appropriately and in accordance with relevant standards.

#### Clause 4.3 Height of Buildings

Under NLEP 2012 the site has a maximum height of 14m. The proposed development will result in a total height of 19.4 m, equating to an exceedance of 5.5m or 38.5% above the prescribed maximum height for the subject land.

The applicant has submitted a clause 4.6 variation request to this standard. Refer to discussion under Clause 4.6 Exceptions to Development Standards below.

It is considered that the proposal is not acceptable having regard to the proposed variation to the development standard, the objectives of the standard and the objectives of the zone.

Furthermore, it is considered that the proposal is not in keeping with the desired future character of the area and the public interest. This is discussed further within the assessment of the Clause 4.6 variation request below.

#### Clause 4.4 Floor Space Ratio

Under NLEP 2012 the site has a maximum 2.5:1 floor space ratio. The submitted FSR is approximately 2.19:1 and complies with this requirement.

Clause 4.6 Exceptions to development standards

The objective of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development. For proposed variations to development standards under NLEP 2012, the applicant must make a formal request under Clause 4.6 that specifically addresses the terms of Clause 4.6, particularly Clause 4.6(3).

The applicant has submitted a detailed Clause 4.6 variation request titled 'Clause 4.6 Variation' by KDC Planning Development Property (Revised September 2019) which is attached at **Appendix D**.

In assessing the proposal against the provisions of clause 4.6, it is noted that:

1. Clause 4.3 Height of buildings is not expressly excluded from the operation of this clause;
2. The applicant has prepared a written request, requesting that CN vary the development standard and to demonstrate that:
  - a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case - Clause 4.6(3)(a), and
  - b) There are sufficient environmental planning grounds to justify contravening the development standard - Clause 4.6(3)(b).
3. Development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out – Clause 4.6(4A)(ii), and
4. Concurrence of the Secretary 4.6(4)(b).

The applicant's Clause 4.6 variation request relies on Land and Environment Court judgements including the following:

*Winten Property Group Limited V North Sydney Council [2011] NSW LEC 46;*  
*Wehbe V Pittwater [2007] NSW LEC 827;*  
*Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC 1009 (Four2Five No 1);*  
*Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC 1009 (Four2Five No 2); and*  
*Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC 1009 (Four2Five No 3)*

The applicant's written submission states in part:

B4 Mixed Use Zone objectives

- a) To provide a mixture of compatible land uses.
- b) To integrate suitable business, office, residential, retail and other development in accessible locations to maximise public transport patronage and encourage walking and cycling.
- c) To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.

What are the objectives of the development standard?

The objectives of Clause 4.3 – Height of Buildings are as follows:

- a) To ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy.
- b) To allow reasonable daylight access to all developments and the public domain.

What is the proposed numeric value of the development standard in your development application?

The extent of the proposed height variation is outlined in detail in the table below:

The numerical value of the proposed height and percentage variation are detailed below.

<b>Build Form</b>	<b>Reduced Level (AHD)</b>	<b>Maximum Proposed Height</b>	<b>Variation</b>	<b>Area of site affected</b>	<b>Comment (applicant)</b>
<i>Building A Lift overruns</i>	<i>29.4 metres</i>	<i>19.4 metres</i>	<i>5.4 metres (38.5%)</i>	<i>0.5%</i>	<i>The extent of this maximum variation relates to a very small area of the site, well set back from the site boundaries. The need for the higher lift over-run directly relates to the provision of the roof top terrace, which is discussed below.</i>
<i>Building A common room and fire stairs</i>	<i>28.65 metres</i>	<i>18.65 metres</i>	<i>4.65 metres (33.2%)</i>	<i>7.5%</i>	<i>The extent of this variation relates only to the provision of a communal roof top</i>

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					<i>terrace, which provides a higher level of amenity to the future occupants of the building. It is noted that generally the UDCG actively encourage the provision of these roof top spaces, and that it does not provide any additional yield to the development, rather just a higher quality outcome.</i>
<i>Building A balustrade of terrace</i>	<i>26.5 metres</i>	<i>Ranging from approximately 16.2-18.2 metres</i>	<i>2.2-4.2 metres (15.7-30%)</i>	<i>29.2%</i>	<i>As above, the extent of this variation relates only to the provision of the roof top terrace.</i>
<i>Building A - Ceiling height of Level 4</i>	<i>25.5 metres</i>	<i>Ranging from approximately 15-17.2 metres</i>	<i>1-3.2 metres (7-22.8%)</i>	<i>17.2%</i>	<i>The extent of this variation is exacerbated by the variation to the site levels across the site. The overall height to the ceiling of Level 4 is the result of providing a high quality design outcome in relation to floor to ceiling heights. Reduction to the floor to ceiling heights would result in internal bulkheads or external air conditioning plant on the building or balconies, resulting in a less attractive building.</i>
<i>Building B Lift overrun</i>	<i>2634 metres</i>	<i>16 metres</i>	<i>2.2 metres (15.7%)</i>	<i>0.5%</i>	<i>The extent of this maximum variation relates to a very</i>

					<i>small area of the site, well set back from the site boundaries.</i>
<i>Building B fire stair</i>	<i>25.9 metres</i>	<i>15.8 metres</i>	<i>1.8 metres (12.8%)</i>		<i>As above.</i>
<i>Building B main roof line</i>	<i>25.9 metres</i>	<i>Ranging from approximately 13.2 – 17 metres</i>	<i>0-3 metres (0-21.4%)</i>	<i>26.2%</i>	<i>The extent of this variation is exacerbated by the variation to the site levels across the site. The overall height to the main roof line is the result of providing a high-quality design outcome in relation to floor to ceiling heights. Reduction to the floor to ceiling heights would result in internal bulkheads or external air conditioning plant on the building or balconies, resulting in a less attractive building.</i>

**Note:**

*Newcastle LEP 2012 defines building height as the following:*

***Building height (or height of building) means:***

- a) In relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- b) In relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*

*The numerical values in the table above in relation to building height are noted as vertical distance from ground level (existing) to the highest point of the building, as opposed to the reduced level (RL) of the building.”*

Comment

The applicant has indicated that the maximum proposed height for the site is 19.4 metres based on an existing ground level of 10 metres AHD. However, concerns are raised over the exact height in relation to the submitted survey plan in determining the proposed heights. For the purpose of this report, we have used the applicant's height data. It is also noted that the clause 4.6 referenced in part below, is also inconsistent with the maximum height referenced for the proposal.

**Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

The applicant's written submission states in part:

*“As mentioned above, compliance with a development standard might be shown as unreasonable or unnecessary if the objectives of the standard are achieved notwithstanding noncompliance with the standard.*

*Having regard to numerical compliance, as demonstrated in Table 1, the greatest extent of the non-compliance relates to the Building A lift overruns, which comprise a very small proportion of the site (approximately 0.5%), as demonstrated by Figure 4. The location of the lift overrun ensures that this aspect of the building will not have any unreasonable impacts in relation to visual bulk and scale, overshadowing or view loss.*

*Further the height exceedance, resulting from the provision of a roof top terrace, has been designed to enhance the appearance of the development, as well as to provide a high level of amenity for the future occupants. The proposed rooftop level has also incorporated cascading landscaping to create visual interest. The provision of this terrace and associated communal room results in positive social and amenity outcomes for future users, without resulting in any unreasonable impacts.”*

*The extent of the height variation from the areas of the building associated with the provision of the residential and serviced apartments are in part reflective of the change in levels across the site and street frontage, and in part generated from the increased floor to ceiling height at the podium and lower levels to maximise solar access, outlook, ventilation, activation, all of which contribute to the overall public amenity when utilising ground level tenancies. It should be acknowledged the height variation is not seeking additional development yield, given the proposal is well below the permitted FSR for the site, but rather aims to maximise amenity.*

*The following design measures have been implemented to ensure a contributory street presence:*

- i) Zero setback to the street edge is relevant to the street character of the immediate vicinity and the prominent corner site. The proposal introduces a frieze which will define the street edge as appropriate.*

- ii) *Proposed Building A (fronting Darby Street) contains base, middle and top articulation in the form of providing an open plan ground floor, standard rectangular shaped balconies with glazed balustrades from the First Floor to the Third Floor and a curved balcony design for the Fourth Floor and rooftop level.*
- iii) *The podium levels and precast concrete screen consist of three storeys, are generally consistent with the adjacent office building to the north. The top of the screen aligns with the parapet level of that building unifying the two buildings in the Darby Street streetscape and in views from the direction of Civic Park. At the rear of the site on Queen Street, similar to the existing building, the proposal steps down to a single storey adjacent to the residential area.*
- iv) *The proposed development draws not only on the forms of the buildings within the civic precinct of the Heritage Conservation Area such as the Cultural Centre, Art Gallery, Council and University buildings, it also takes inspiration from the trees of Civic Park, and the topography of 'The Hill' which is the proposal's backdrop. The proposal respects the other buildings within the Newcastle City Centre Heritage Conservation Area by providing the appropriate prominence required of the corner site without overpowering the buildings of the Civic precinct of the city.*
- v) *Inclusion of high-quality design measures were the predominant driver of this development, with the aim of providing the public with a unique and complementary development aesthetic, positively contributing to the streetscape.*

*Acknowledging the UDCG's recommendation and overall planning merit of the proposal, compliance with Clause 4.3 of the NLEP 2012 is considered unreasonable for the following reasons:*

- i) *The proposed built form has been purposely designed to ensure design excellence and to contribute to the artistic atmosphere of the Darby Street precinct and nearby Art Gallery, which is considered to be of public interest.*
- ii) *The height breach does not result in an overdevelopment of the site given the proposed FSR (2.10:1) is well under the applicable 2.5:1.*
- iii) *The proposed height of the development integrates with building height transition that occurs from The Hill towards the adjacent Newcastle Art Gallery (refer to Figure 8).*
- iv) *The proposed height exceedance does not result in any unreasonable amenity impacts in relation to overshadowing, privacy or view loss, to neighbouring properties.*

- v) *The proposed overall development offers a variety of uses including the provision for residential apartments and high-quality serviced apartments with communal open space and amenities, and a mix of ground floor uses including a food shop for surrounding locals / tourists and an integrated public art gallery and a bar / restaurant with an abundance of open space to support pedestrian flows, landscaping and seating arrangements.*
- vi) *The proposed satisfies the objectives of the B4 Mixed Use Zone; and*
- vii) *The proposal satisfies the objectives of Clause 4.3 (further detailed below).*

*As outlined in point 3, the height was guided by the slope of the land and the heights of the surrounding buildings. Figures 8, 9 and 10 below demonstrates that having regard to height, that the proposed design successfully responds to the surrounding streetscape.*

*The SEPP65 guidelines have been considered as part of the design, and the building achieves adequate building separation, ensuring that no unreasonable impacts result from the proposal. It is noted that the SEPP65 guidelines require that at the boundary between a change in zone from apartment buildings to a lower density area, the building setback is to be increased by 3m. In this regard, the site is at the transition between a B4 Mixed Use zone, and an R3 Medium Density Zone, wherein residential flat buildings are permissible in both zones. Accordingly, it is not considered that there is a 'blunt' transition between zones. Notwithstanding, the eastern facade of Building B has been amended to provide high level windows where the building interfaces Unit 16 of the 'Regency Park' estate. Incorporation of high-level windows enables the subject unit to maintain natural light whilst also addressing any privacy impacts on the adjoining resident. Based on these amendments, alongside the provided setback and separation distance to the medium density area, the proposed development is considered to result in an adequate separation to the residential development east of the site.*

*In relation to the northern boundary, the ADG bases appropriate building separation on building height, meaning that a separation distance between 6m and 12m is required. Noting that the site to the north is currently utilised as a commercial land use it is considered the proposed development achieves appropriate separation distances. It is acknowledged that the site may redevelop, however the area of potential non-compliance relates specifically to the fire stairs and a service apartment within Building A, adjacent to the northern boundary. The setback of the fire stairs and serviced apartments would not result in any privacy impacts, as the area of encroachment does not include windows. Being to the south of the neighbouring land, the encroachment also does not result in solar access impacts to potential future development. Any future development within the site to the north would be able to readily comply with the ADG controls as part of a future development application.*



**Clause 4.3 – Height of Buildings**

*The proposed development achieves the objectives of Clause 4.3:*

- a) *To ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy.*

*The proposed development has been designed by EJE Architecture and consists of a high quality, architecturally designed building that makes a positive contribution to the street frontage of Darby Street and importantly to the prominent corner of the three adjoining precincts, being the Civic Precinct, the East End Precinct and the Darby Street / Cooks Hill Precinct.*

*The proposal reflects the transition of building heights from The Hill and the associated downslope towards the Darby Street Precinct, as presented in Figure 8 above. Whilst not strictly adhering to the building height standards for the site, the design response is suitable for the site and enables the achievement of a high-quality development at such a unique location. The intention of the proposed built form is to provide a type of landmark development which will make a positive contribution the prominent corner location and to the evolving nature of the Newcastle City and the Darby Street precinct. The proposed façade treatment and articulation is to a high standard, and the proposal is well within the floor space ratio applicable to the site. Details of the façade treatment and articulation are provided in the Architectural plans provided.*

*The proposed built form will reflect the emerging contemporary character of the Darby Street precinct. The projection of the building above the height limit will not result in a bulky or overbearing visual impact. Further, the exceedance in height will not result in any significant overshadowing impacts on adjoining properties. This is further discussed in the below sections.*

*In this instance, strict application of the development standard for maximum height is unreasonable, unnecessary, and would not achieve a greater planning or urban design outcome.*

*For further context please see below Figures 9 and 10 which illustrates the proposed development in the current context of the site versus the proposed development in the future context of the locality.*

- b) To allow reasonable daylight access to all developments and the public domain**

*Reasonable daylight access is provided to all surrounding developments. The proposed height variation will not result in any detrimental impact to any sensitive land uses, as illustrated in the shadow diagram analysis provided. The development will not unreasonably overshadow either of the private property to the north or east nor cause unreasonable shadowing of the public domain.*

*Unit 16 at the 'Regency Park' estate will maintain solar access between 9am and 2pm, it is considered that the proposed overshadowing will not adversely reduce solar access below 3 hours and therefore is considered acceptable. The solar access provision is consistent with the CN's Development Control Plan 2012 and SEPP 65 requirements.*

*The proposed development is acceptable having regard to the objective of Clause 4.3 and therefore strict compliance with the 14 metre height standard of the site would be unreasonable, unnecessary, and would not achieve a greater planning or urban design outcome.*

*Accordingly, the proposal is considered to be consistent with Clause 4.3."*

**Sufficient environmental planning grounds to justify contravening the development standard**

In regard of the above mention section of clause 4.6 the following extract from the applicant:

*This request for variation demonstrates that the proposed height variation sought does not result in adverse environmental impacts, and that there are sufficient environmental planning grounds to justify a contravention to the height control.*

*In this regard, the objectives of the B4 Mixed Use zone are responded to below:*

- i) To provide a mixture of compatible land uses*

*As demonstrated in the SEE, the proposal contains a range of compatible uses, including retail, an art gallery, short stay apartments and residential components. Appropriate design measures, including acoustic attenuation, building setbacks and high-quality public domain spaces ensure that the proposal will be a cohesive and attractive development for the local area.*

- i) To integrate suitable business, office, residential, retail and other development in accessible locations to maximise public transport patronage and encourage walking and cycling*

*The range of uses are appropriate for the site, which is a highly accessible location. As demonstrated in the SEE and Traffic Impact Assessment, there are a range of transport options, services and facilities in close proximity to the site.*

- i) To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres*

*The proposal provides a level of non-residential uses that are appropriately scaled to respond to the key location at the junction of three inner city precincts, being the Civic Precinct, the East End Precinct and the Darby Street / Cooks Hill Precinct. The provision of smaller scale retail, bar / restaurant and gallery tenancies would not have any significant impacts on the viability of areas of the City Centre, seeking to*

*provide larger format non-residential uses. The serviced apartments will provide an alternative to larger tourist and visitor accommodation options in the City Centre and are an appropriate scale to support the nature of the Darby Street area.*

*Further to the consideration of the zone objectives, it is noted that while exceeding the building height standard for the site, the proposal contributes positively to the locality incorporating pedestrian connectivity along the Darby Street front with seating areas, an art gallery open to the public and built form relief through high quality façade treatment and articulation. The rooftop communal room lift overruns and fire stair exceedances will be visibly difficult to detect given the setback as demonstrated in Figures 9 and 10 above. Further, shadow diagrams as shown in Figure 11 illustrate that the proposed development does not cause an unreasonable amount of shadowing.*

*The podium levels and precast concrete screen consist of three storeys and is generally consistent with the adjacent office building to the north. The top of the screen aligns with the parapet level of that building unifying the two buildings in the Darby Street streetscape and in views from the direction of Civic Park. At the rear of the site on Queen Street, similar to the existing building, the proposal steps down to a single storey adjacent to the residential area. If made to strictly comply with Clause 4.3, there would be no additional benefit to the streetscape or public domain in the local area.*

*The proposed development draws not only on the forms of the buildings within the civic precinct of the Heritage Conservation Area such as the Cultural Centre, Art Gallery, Council and University buildings, it also takes inspiration from the trees of Civic Park, and the topography of 'The Hill' which is the proposal's backdrop. The proposal respects the other buildings within the Newcastle City Centre Heritage Conservation Area by providing the appropriate prominence required of the corner site without overpowering the buildings of the Civic precinct of the city.*

*A significant proportion of additional height is generated from the increased floor to ceiling height at the podium and lower levels to maximise solar access, outlook, ventilation, activation, all of which contribute to the overall public benefit. The roof top terrace results in a high-quality facility for the future use of occupants, which will have associated amenity and social benefits. It should be acknowledged the height variation is not seeking additional development yield given the proposal is well below the permitted FSR for the site, but rather aiming to maximise amenity.*

*The granting of development consent will enable a high quality, architecturally designed mixed use commercial and residential building to be constructed with an active ground floor presence for the benefit of the community and high amenity apartment living / short stay opportunity. The objectives of Clause 4.3 and the B4 Mixed Use zone have been met by the proposed development. In light of this, there is considered to be sufficient environmental planning grounds to justify varying the height development standard in this instance."*

**Comment**

It is considered that while the proposal's architecture is generally acceptable, this does not negate the issues of the height exceedance and the additional bulk and scale it contributes in this instance. Further, it is considered that the proposed development should have acceptable impacts in terms of architectural design, as a basic prerequisite to being approved. The UDCG do not support the proposal as stated:

*“Despite deletion of one floor the proposed maximum height remains at 20.4 metres this being some 48% in excess of the maximum height limit of 14m. The applicant continues to argue that this height is justified by the DCP notation of a 16m street wall height (in spite of the 14m overall height limit); the prevailing height limits further to the north: the subject site being a ‘gateway’ site to the central urban area of Newcastle: the site being adjacent to a conservation area with no height limit and the top floor being setback.*

*The UDCG remains unable to support such an exceedance of the height control. It had previously suggested that the height needed to be lowered by “at least one floor” and other measures taken to reduce the apparent height of the development. In spite of one full floor having been deleted from the Darby Street building, it remains visually dominant in the area. Its relationship with the Heritage Conservation Area and with Civic Park are particularly relevant. Further consideration is required of this impact. This might usefully involve the significant reduction of the enclosed communal recreation area on the upper level and setting the upper floors substantially further back from the street wall below.”*

There has been no view loss analysis provided as part of the development application to state there will be no view loss impacts.

Additionally, Newcastle Local Planning Strategy identifies the B4 Mixed Use zones provide a transition or buffer between the traditional residential areas adjoining the Newcastle City Centre. This transition may not only occur with respect to land use but also building height and design character. The significant height variation proposed as part of this development is not consistent with the intent of the zone in this location.

A variation to the required Apartment Design Guide setback controls is not considered to support a variation height. It is considered this will contribute to the bulk and scale of the proposal. Particularly the scale of the development viewed from Darby Street and from the northern elevation.

Additionally, it is not accepted that the street wall height of approximately 16.5 metres is a reason to increase the height of the building. The applicant noted:

*“The proposal introduces a frieze which will define the street edge as appropriate”*

The general street wall height for city centre developments is 16 metres in Newcastle. Given the maximum building height for the site is 14 metres the

proposed street wall height of approximately 16.5 metres is not an acceptable solution. The Newcastle Development Control Plan 2012 – City Centre A1.1 performance criteria states:

*“Street wall heights of new buildings define and enclose the street, are appropriately scaled and respond to adjacent development.”*

The proposal is not a similar scale to the adjacent development and does not respond to Darby Street. This further supports that the proposal is not justified to significantly vary the development standard as unreasonable or unnecessary.

It is not accepted that the height variation is only at the location of the Building A lift overrun. The submitted plans and written 4.6 application clearly indicate the most significant element of the height variation, is closer to the floor level of level four on both Building A and B. The visible bulk of the fourth floor, roof top terrace, roof top common room and significant street wall have a cumulative impact and add to the unsatisfactory visible bulk and scale of the building.

This submission is not accepted as an argument to justify the height standard exceedance. It does not follow that the proposal, at more than 5.5 metres above the height standard (ie. 38.5% variation), is acceptable and that the standard is unreasonable or unnecessary on this basis.

The height of the proposal is well beyond the "scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy" under the Clause 4.3 height objective.

Finally, it is considered that the applicant has not demonstrated "that there are sufficient environmental planning grounds to justify contravening the development standard" in this instance. Particular regard has not been placed on the precincts of Darby Street and Cooks Hill Conservation Area which are in close proximity to the site.

### **The public benefit of maintaining the development standard**

In regard of the above mention section of clause 4.6 the following extract from the applicant:

*“As demonstrated in this assessment, the proposed development will be in the public interest as it is consistent with the objectives of the height standard and the objectives of the B4 Mixed Use Zone.*

*The intent of the Mixed-Use Zone is to provide a wide range of retail, business, office, entertainment, community, and other suitable and compatible land uses within a mixed-use development. The proposal is a mixed-use development which incorporates retail, an art gallery, short stay apartments and residential components. These uses are compatible with the objectives of the zone, will complement surrounding uses and strengthen the Newcastle City Centre, particularly in the vicinity of the active Darby Street Precinct.*

*The character of the Newcastle City Centre Heritage Conservation area is quite diverse which is also reflective of the long history of growth, change and development within the area. The character of the proposed building demonstrates the continuing diversity in character of the area. The nature of the subject site with its high visibility means that any building in this location will be dominant in the streetscape. The success of the existing building is its landmark qualities which accentuate the gateway between the Civic precinct and the Darby Street precinct. These successes need to be continued within the new design in order to respect the character of the area. The design of the proposal will be prominent and modern, and these characteristics are both viewed as highly appropriate for the subject site and in the public interest.*

*Contributory buildings have not been mapped for the Newcastle City Centre Heritage Conservation Area. The buildings to which the proposal will relate include the Art Gallery, and the Town. The Newcastle Cultural Centre is also in the immediate vicinity and is five stories at the top of Laman Street. The proposed building will not be out of scale with these nearby buildings.*

*The proposed height exceedance is in the public interest, as detailed below:*

- i) The site, being located on the corner of three precincts creates a focal point for the locality. The proposal is a statement design, utilising high quality materials and finishes. The overall project vision was to provide the Newcastle community with a building that is both unique and complementary to the locality. EJE Architecture have achieved the project vision, tying in the history of the surrounding road network via a contemporary design outcome for the precinct.*
- ii) Should strict compliance be required, it is likely that the features of the building that contribute to the public realm would not be achieved, thereby reducing the notable contributions to the community.*
- iii) The elements, not likely to be achievable, should serviced apartments need to be relocated throughout the building including at ground floor, include the generous public plaza, gallery, food store, public art features and internal courtyard.*
- iv) The height encroachment largely relates to the inclusion of a communal space, which provides for a higher level of amenity for future occupants.*
- v) The proposal is compliant with the floor space ratio control, and the proposed design has sought to maximize building articulation and amenity. Should the proposal be amended to strictly comply with the height requirement, the bulk and scale of the buildings would become 'flatter' and this would likely result in additional visual impacts to the adjoining properties and the streetscape. This 'flattened' outcome would also necessitate reduced public domain outcomes at the ground floor, as*

*well as compromised outcomes for solar access and ventilation to the future occupants.*

- vi) The proposed height variation is in part generated from the generous floor to ceiling height of the ground floor, which provides a superior commercial public space in conjunction with the public courtyard. Reduction to floor to ceiling heights are likely to result in a poorer design outcome to the public spaces at ground floor, and necessitate bulkheads within the apartments, as well as external air conditioning plant on balcony areas.*
- vii) The design of the ground floor will contribute to the vibrant streetscape of Darby Street, and will strengthen the pedestrian experiences at the corner of three inner city precincts.*
- viii) The development provides for additional dwellings / serviced apartments in a central location that will both increase population to the precinct. The proposal will deliver a range of dwelling sizes, thereby providing a variety of housing choices for future long-term residents and short stay residents. The additional residential population, as well as tourist, will result in positive economic and social impacts.*
- ix) The proposal contributes a mix of land uses to the locality, creating employment opportunities during construction and operational stages, whilst also providing opportunities for sustainable living. Further, the Section 94A development contributions are likely to exceed \$1,000,000, which will have a significant benefit to the community.*

*The proposed development represents a high-quality urban design, which seeks to continue to redevelop and enhance the East End / Civic Precinct of Newcastle City Centre and the Darby Street/Cooks Hill Precinct. The height exceedance does not outweigh the merits of the proposal and its contribution to the social fabric and built form of Newcastle / Cooks Hill.*

*It should be acknowledged the height variation is not seeking additional development yield, given the proposal is well below the permitted FSR for the site, but rather aiming to maximise design outcomes and amenity.”*

### Comment

The height standard has two objectives firstly, regarding the scale of development making a positive contribution towards the desired built form, consistent with the established centres hierarchy and, secondly, allowing reasonable daylight access to all developments and the public domain.

It is considered that the proposal is acceptable in terms of the second objective in regard to daylight access.

It is not accepted that the proposed variation is in the public interest as the proposal does not meet the height standard objectives in terms of the desired built form and it

is considered that the proposal is inconsistent with the "established centres hierarchy".

It is not accepted that a variation to the development standard is required to provide a building with quality urban design to contribute to the public realm. The site is of significant area hence the satisfaction of floor space ratio controls. It is considered quality urban design can be achieved with a building that meets the development standards on this site.

Finally, it is considered that the applicant has not demonstrated the proposal to be "in the public interest" in this instance.

*Height & FSR Standard Variation Cl 4.6(4)(b)*

The Department of Planning advised via Planning Circular PS018-003 (21 February 2018) that concurrence of the Secretary could be assumed by a Regional Planning Panel for Clause 4.6 variations.

*Height & FSR Standard Variation Cl 4.6(5)*

As discussed above, the Secretary is not required to provide concurrence for a variation of the development standard.

*Height & FSR Standard Variation Cl 4.6(6)*

The development does not propose a subdivision and / or is within a zone excluded from the operation of Clause 4.6 (ie. rural or environmental zones).

Clause 5.10 - Heritage Conservation

Clause 5.10 is applicable to the site given its location within the Newcastle City Centre Heritage Conservation Area and the presence of four listed heritage items nearby, as follows:

- i) Item 186: Former railway overpass located on Laman Street; and
- ii) Item 187: Newcastle War Memorial Cultural Centre, located on Laman Street currently housing Newcastle Regional Art Gallery;
- iii) Item 1430: Civic Park encompassed by Laman, Auckland, King and Darby Street; and
- iv) Item 1608: Newcastle Synagogue located on Laman Street.

The submitted Heritage Impact Statement concludes the following:

*The building has been designed to respond sensitively to the Heritage Conservation Area and its neighbouring buildings. The proposal addresses the objectives and controls of the Heritage Conservation Area in the Newcastle LEP and DCP and*



*complies with those clauses unless it is inappropriate to do so. The prime case being that the controls within the DCP say that infill development is not to be prominent. This would be inappropriate on this corner / gateway site where a prominent structure is needed to mark the boundary between the two precincts effectively.*

The abovementioned conclusion is not agreed with in terms of 'prominence' of the proposal and resultant bulk and scale impacts. The conclusion summarises the location of the development as a corner lot between two precincts rather than its 'prominence' in respect of the heritage conservation area and nearby heritage items. As considered in abovementioned clauses the proposal is not considered satisfactory with regard to the variation of height development standard and the resultant bulk and scale impacts associated with the proposed built form. The proposal is considered to have a negative impact on the immediate area in terms of amenity, streetscape and character.

The proposal may potentially impact on the heritage significance of nearby listed heritage buildings and may detract from their setting or obstruct view of these heritage items from public places. A view analysis has not been submitted as part of the application to consider this element. It is considered the proposal is not satisfactory with regard to potential heritage impacts.

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils. A site specific acid sulfate soils management plan (ASSMP) has been prepared for the development.

#### Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

#### Clause 6.5 Public safety—licensed premises

The proposed restaurant and bar are located in an area that is suitable for a licenced premises. A submitted Crime Prevention Through Environmental Design report adequately addresses the proposed uses and is satisfactory. In addition, the Police and the Licensed Premises Reference Group did not raise any concerns with the proposal.

#### Part 7 Additional local provisions—Newcastle City Centre

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The proposal is inconsistent with the objectives of Part 7 of NLEP 2012.

Clause 7.5 Design excellence

An Architectural Design Statement has been submitted with the application as part of the SEPP 65 requirement that addresses the design principles that have been used to formulate the proposal.

The proposal does not generate a requirement to undertake an architectural design competition in accordance with this clause, as the height of the proposed building is not greater than 48m and the site is not identified as a key site.

The application was referred to CN's Urban Design Consultative Group as part of the assessment of the application under SEPP 65. As previously discussed under SEPP 65 the proposal is unsatisfactory as the critical issues requested to be resolved by the UDCG have not been met. The development has not demonstrated that adequate regard has been given to the ten design quality principles of the SEPP.

The development does not meet the design excellence criteria of the LEP, as the form and external appearance of the development will not improve the amenity and quality of the public domain.

The bulk, massing and modulation of the development is not supported as it is not consistent with the existing and desired future character of the locality. The street frontage height is also inconsistent with the surrounding area and the intent of the Darby Street precinct. In addition, the loading and access requirements are not sufficient for the development and will impact on the public domain.

Clause 7.9 Height of buildings

The subject site is not identified as being within 'Area A' or 'Area B' on the Height of Buildings Map. Accordingly, the provisions of this clause do not apply to the proposal.

Clause 7.10 Floor space ratio for certain development in Area A

The subject site is not identified as being within 'Area A' on the Floor Space Ratio Map. Accordingly, the provisions of this clause do not apply to the proposal.

The floor space ratio of the proposal is addressed under Clauses 4.4 of NLEP 2012 in this report.

Clause 7.10A Floor space ratio for certain other development

The proposed development has a site area of greater than 1,500m<sup>2</sup>. Accordingly, the provisions of this clause do not apply to the proposal.

**5.2 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.

**5.3 Any development control plan**

**Newcastle Development Control Plan (NDCP 2012)**

The main planning requirements of relevance in the NDCP2012 are discussed below.

Commercial Uses - Section 3.10

The development is consistent with the aims and objectives of this section of the NDCP 2012. The subject site is in an ideal location for the proposed commercial premises due to proximity to public transport, services, retail and recreational areas.

The proposal has been architecturally designed and will provide an active street frontage, with visual connection into retail uses at ground level. An art gallery is proposed to be located off a private plaza space to encourage use and activation of the space. However, the proposed development is not of an appropriate scale and form in the context of the site's location within the City Centre in terms of height and setback provisions. The site has a 14 metre height limit and the proposed variation is not supported as previously discussed within this report.

Residential Development - Section 3.03

The objective of this section of the NDCP 2012 is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form, maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form.

The following comments are made concerning the proposed development and the relevant provisions of Section 3.03:

*Principal controls (3.03.01)*

*A. Frontage widths*

The NDCP 2012 requires a site frontage width of 15m for a residential flat building in the B4 mixed use zone. The proposal exceeds this requirement, with the site having a frontage dual frontage on Darby Street (20.49 metres) and Queen Street (43.33 metres).

*B. Front setbacks and side and rear setbacks*

The proposal has been considered within Part 6.00 Locality Specific Provisions (6.01.03 A1 and A2). The proposal is considered unsatisfactory with regard to the proposed street wall height and ADG setbacks on the northern and eastern elevations.

C. *Landscaped Area*

The NDCP 2012 requires that developments in the B4 zone incorporate a minimum of 20% landscaped areas, including a 10% deep soil zone.

The site is considered satisfactory with regard to the landscaping areas provided at podium level and on the rooftop of Building A. Additionally, street tree planning in the public domain along Queen Street is proposed. The proposed landscaping is considered to be acceptable.

*Siting the development (3.03.01)*

A. *Local character and context*

A detailed site analysis was submitted with the application. The proposed development does not reflect the desired future character of the area.

B. *Public domain Interface*

Street access and the building entries are clearly defined. The proposed development is in accordance with this control and is acceptable.

C. *Pedestrian and vehicle access*

Parking spaces, the driveway and circulation spaces generally comply with AS 2890.1. However, CN's Development Engineer notes the following:

*"However, it is noted that 2.4m wide spaces are provided beside walls / columns in the basement and ground floor car park which does not comply with Clause 2.4.1 (b) (ii) of AS2890.1. The latter requires such spaces to be widened by additional 300mm to enable door opening."*

The above-mentioned car parking space would be required to be redesigned. Appropriate lighting will be provided within the carpark areas. Pedestrian access is considered satisfactory.

The two levels of car parking are within a basement carpark and do not protrude above ground level. There is also an above-ground car parking area which is not visible from the street or any public areas. The carpark entry has a height of 2.7m. The proposed development is generally in accordance with this control and is acceptable.

*D. Orientation and siting*

The apartments have been orientated and designed to optimise solar access to living areas and areas of private open space. The proposal achieves the ADG minimum solar access control. Further, the proposed development will not result in an unacceptable level of overshadowing to surrounding properties. The proposed development is considered to meet this control.

*E. Building Separation*

The proposal is satisfactory with regard to the ADG controls for separation and considered acceptable.

*Amenity (3.03.03)*

*A. Solar and daylight access*

The proposal has addressed the solar access requirement for the residential units and meets the ADG in respect of solar access to the proposed units. However, it does not meet the requirements for the serviced apartments.

*B. Natural ventilation*

The proposal complies with the ADG natural ventilation requirements and is considered acceptable. However, it does not meet the requirements for the serviced apartments.

*C. Ceiling heights*

The proposal complies with the ADG ceiling height requirements and is considered acceptable.

*D. Dwelling size and layout*

The proposal complies with the ADG dwelling size and layout requirements and is considered acceptable.

*E. Private Open Space*

The proposal complies with the ADG private open space requirements and is considered acceptable.

*F. Storage*

The proposal complies with the ADG storage requirements and is considered acceptable.

*G. Car and bicycle parking*

The proposal is considered to satisfy the parking and bicycle space provisions within 'NDCP Section 7.03 - Traffic, Parking and Access'.

*H. Visual privacy*

The proposal complies with the ADG visual privacy requirements and is considered acceptable.

*I. Acoustic privacy*

The proposal was considered by CN's Environmental Protection Officer as satisfactory with regard to the acoustic impacts of the residential, serviced apartments and commercial premises.

*J. Noise and pollution*

As noted above the proposal is considered satisfactory regarding acoustics noise from the site.

*Configuration (3.03.04)*

*A. Universal design*

The proposal is considered to meet the provisions of this part and is satisfactory.

*B. Communal area and open space*

Approximately 16% of the site area is dedicated communal open space. The communal open space area is north-facing and receives satisfactory solar access. The communal open space is directly overlooked by the common room at the podium level for the residential apartments. The common room for the serviced apartments looks over part of the communal open space which is separated into two roof terraces. There would be adequate daylight and natural ventilation to all common circulation spaces above ground and appropriate lighting will be provided to each space. The proposed development accords with this control.

*C. Architectural design and roof form*

The roof design integrates well with the overall building design. Plant and other systems would be appropriately screened via features integrated into the roof design. However, the height variation for the development is not supported.

*D. Visual appearance and articulation*

The proposed building is significantly articulated. The commercial entries are from Darby Street and the main building entry for the Service apartment and

residential flat building is from Queen Street. An attractive variety of materials and colours are proposed in accordance with this control.

*Environment (3.03.05)*

*A. Energy efficiency*

Given the density of the proposed development, dedicated outdoor drying areas are not possible, however, each proposed unit will have access to a private balcony or terrace.

*B. Water management and conservation*

Each unit will be fitted with appropriate water meters, while stormwater treatment is discussed below in '*NDCP 2012 – Section 7.06 Stormwater and Section 7.07 - Water Efficiency*'.

*C. Waste management*

The proposal is considered satisfactory and is further discussed below in '*NDCP 2012 Section 7.08 - Waste Management*'.

Commercial Uses - Section 3.10

*Street activation (3.10.05)*

The provision of ground level retail space will activate this part of Darby Street by promoting increased activity within the locality. Separate pedestrian accesses are proposed to the commercial tenancies from the street. The pedestrian access to the serviced apartments (Building A) and residential flat building (Building B) is separate to the commercial premises and is located off Queen Street. The proposed development complies with this control.

*Utilities and services (3.10.09)*

Mailboxes are provided in the building's lobby at ground floor level, located off Queen Street. The shared waste storage area is concealed within an enclosed room within the ground level car park. The proposed development complies with this control.

Flood Management - Section 4.01

CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

*The first Engineering Assessment Team referral supported a reduction of the freeboard to 300mm (above the revised 1% AEP flood level) following a merit-based assessment. All areas on the ground floor, except for the Food Store (8.3m AHD), were considered to be compliant with the DCP. It was*

*recommended that the finished floor level of Food Store is raised to 8.4m AHD to make it compliant with the DCP.*

*The revised ground floor plan (11970, Rev E, 20 September 2019) shows the finished floor level of 8.4m AHD for the Food Store which is considered compliant and acceptable.*

Accordingly, the proposal is acceptable in relation to flooding.

#### Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District, and conditional approval for the proposed development has been granted by Subsidence Advisory NSW. The applicant has not forwarded a response as advised from Subsidence Advisory NSW.

#### Safety and Security - Section 4.04

The proposed landscaping increases the aesthetics of the overall development and the development is designed to allow casual surveillance of all public accessible areas. Adequate lighting will be provided to the parking area, building entries and plaza space.

#### Social Impact - Section 4.05

The proposed development will have a positive impact within the community as it will provide additional well-designed and varied housing and retail opportunities within the City Centre.

It is considered unlikely that a development of this nature would result in increased anti-social behaviour. The development provides for increased housing choice within the area, which is considered a positive social outcome. The proposed development will positively contribute to the diversity of the Civic Precinct and will not result in any negative social impacts on the community.

#### Soil Management - Section 5.01

Appropriate sediment control measures have been included in the scheme in accordance with this control.

Due to the large scale of the development, earthworks are required to locate car parking and other services below ground. The proposed earthworks will be informed by the geotechnical investigation prepared for the site. Minimal filling is proposed, and no excavation is proposed external to the building footprint. Excavation to a maximum depth of 3.7 metres is proposed within the building footprint. The proposal is considered satisfactory with regard to soil management.

#### Land Contamination - Section 5.02



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

Section 5.03 - Vegetation Management

In support of the proposed works, the applicant has submitted an arborist's report that details species, location, size, health and value. The report has been prepared generally in accordance with CN's tree assessment requirements and it is considered that the proposed tree removal is acceptable.

The proposal will impact a row of existing *Casuarina* species trees close to the northern boundary. The trees are planted within close proximity to each other and not considered appropriate species for the city centre. Additionally, the *Casuarina* species trees on site are not considered to adapt acceptably within the proposal and removal is the only option.

Removal is considered satisfactory. All landscaping proposed at ground level and podium level is considered to satisfactorily compensate the loss of vegetation in corporation of the proposal.

Other trees impact on the site include existing street trees and a neighbouring row of *Cupressus torulosa* – Bhutan Cypress. The existing street trees along Darby street identified as CN Tree Asset - 15797 and 15798, as well as the tree vacancies locations along Queens Street were considered by CN's City Green Tree Inspection Officers. The following comments provided:

*"Tree ID 15797 and 15798 both exhibit fair health and structure, although the proposed development excavations will cause an encroachment of greater than 40% into the trees TPZs, with no available space to make suitable allowances. Both trees are to be removed and replaced with advanced sized specimens of no less than 200L root ball. Species selection to be advised by City Greening.*

*Five (5) proposed planting locations currently exist along the Swan St frontage of the proposed development (Asset IDs 6781309 - 6781313). These locations shall be planted with advanced specimens of no less than 200L root ball. Species shall be advised by City Greening."*

Street tree removal and street tree planting along Queens Street is considered satisfactory.

The neighbour row of Bhutan Cypress within the multi dwelling development at to the east was considered in an Arborist report (*Terras Landscape Architects*) submitted with the proposal. The following comments provided:

*"It is considered that the proposed development will not have a significant impact on any of the trees covered by this report.*

*All trees on neighbouring properties should be adequately protected during the works to ensure they are not subjected to further impacts. Normally it would be*

*adequate to cite the tree protection measures as called up in AS4970 Protection of trees on development sites. However, on this occasion, the building contractor will need to install a barrier that protects both the root system and canopy of trees. It is recommended that the building contractor supplies details on how this is to be done based on an understanding of construction sequencing as part of the CC approval process."*

Neighbouring trees are considered to be satisfactory impacted by the proposal and measures can be put into place protect neighbouring trees. The amenity of the area will not be significantly impacted in respect of the local character and appearance.

#### Section 5.04 - Aboriginal Heritage

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site.

#### Section 5.05 - Heritage Items

This issue is discussed under Clause 5.10 Heritage of NLEP 2012.

#### Section 5.06 - Archaeological Management

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an 'Archaeological Site'.

#### Section 5.07 - Heritage Conservation Areas

The City Centre Heritage Conservation Area is discussed under Clause 5.10 Heritage of NLEP 2012.

### Part 6.00 Locality Specific Provisions

#### Section 6.01 - Newcastle City Centre

##### *Character Areas (6.01.02)*

The subject site is within the 'Character Areas (6.01.02) 'East End'. The proposal has been designed with regard to the NDCP 2012's principles for this area. In particular, the proposal would provide an inviting building entry and active frontages that allow visual permeability from the street to within the building.

##### *Street wall heights (6.01.03 A1)*

The proposed street wall height is 18.6 metres as stated within the SOE and appears to be inconsistent with the architectural plans. The maximum street wall height for the city centre is 16 metres. However, the site has a maximum height control of 14 metres. The proposal must consider the performance criteria:

*“A1.1 Street wall heights of new buildings define and enclose the street, are appropriately scaled and respond to adjacent development.”*

The existing development along Darby Street and Queen Street are below the 14 metre height limit. The applicant states the following:

*“The majority of the built form is below the 16m street wall height, excluding parts of the fire stairs located at the northern and eastern boundary on the fifth floor. The fire staircases located at the northern and eastern boundaries encroach the side and rear boundaries by 2-6m. The areas that encroach the setback are minimal and are not considered to impact the public domain or result in amenity impacts to abutting properties. The overall development setbacks are generally consistent with the setback controls and will suitably reduce impacts to surrounding properties.”*

The adjacent precinct and the character of this precinct must be taken into consideration with regard to street wall heights. The Darby Street precinct has a maximum street wall height of 2 storeys in the existing built form. It is not agreed that the setbacks are consistent with the setback controls and will reduce impacts to surrounding properties. The performance criteria require consideration to be made to the scale of adjacent development and any future development in the area. It is considered the proposal is unsatisfactory in this regard.

*Building setbacks (6.01.03 A2)*

The proposal generally meets the NDCP 2012 minimum setback requirements, except for the northern and eastern boundary setbacks. Specifically, the floor levels associated with the podium level in Building A, Building A fire stairs and Building B fire stairs. In addition, the proposal varies the ADG minimum setbacks.

The variation to the setbacks is not supported. The setback variations contribute to the bulk and scale impacts of the proposal as well as the additional height of the building.

*Building separation (6.01.03 A3)*

The proposal is consistent with ADG requirements of 12 metres. The proposal is acceptable in this regard.

*Building depth and bulk (6.01.03 A4)*

The proposal includes a variation to the building depth of 21 metres (Building B). This is 3 metres over the maximum and a variation of 17%. This variation when added to the height variation proposed is considered to contribute to the bulk and scale impacts of the development. This is not a minor variation and is unsatisfactory regarding cumulative bulk and scale impacts.

*Building exteriors (6.01.03 A5)*

The exterior of the development has been discussed in section 5.1 of this report under 'State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development' and is considered satisfactory.

*Heritage buildings (6.01.03 A6)*

There are no heritage buildings located on site.

*Awnings (6.01.03 A7)*

The site is not within an area required to have an awning.

*Design of car parking structures (6.01.03 A8)*

The design of the proposed basement and above ground-floor car parking area is considered to comply with this control.

*Landscaping (6.01.03 A9)*

Significant areas of landscaping and communal open space are proposed at podium level and on the rooftop for Building A and is satisfactory.

*Access network (6.01.03 B1)*

The NDCP2012 map does not identify any existing or desired new connections through the site. Nevertheless, the proposal includes active uses at ground level, promoting access and public use of the public footpath fronting the site.

*Views and vistas (6.01.03 B2)*

A view analysis has not been included with the proposal. Given a height variation is proposed, the proposal has not satisfied this control.

*Active Street Frontages (6.01.03 B3)*

The NDCP 2012 maps do not identify the site as requiring an active frontage to the streets, nor is it within an identified 'activity node'. However, it is considered that the proposed development includes an active street frontage.

*Addressing the street (6.01.03 B4)*

The proposal contributes to the safety, amenity and quality of the public domain through the provision of ground level commercial space. Separate pedestrian accesses are proposed to the commercial tenancies from the street, as well as to the residential lobby.

*Public artwork (6.01.03 B5)*

The proposal is below 45 metres. Therefore, public art is not applicable to the proposal.

*Sun access to public spaces (6.01.03 B6)*

The proposal will not create significant overshadowing impacts on public spaces.

*Infrastructure (6.01.03 B7)*

The proposed stormwater system has been designed to comply with Section 7.06 of the NDCP2012. The proposal will otherwise connect to the existing water and sewer network servicing the site.

*Site Amalgamation (6.01.03 B8)*

The site is not located on former rail corridor land.

Section 7.02 - Landscape Open Space and Visual Amenity

*General controls (7.02.02)*

The proposal involves a high level of landscaping for a multi-storey development within a CBD location. Approximately 30% of the site area is proposed for landscape planting with 26% proposed for 1m deep mass planting. Retention of the London Plane street tree and the proposed landscaping at podium level would help to soften the built form, maximise the amenity of the public domain, and provide visual integration with the street.

*Green walls and roof space (7.02.06)*

The planting proposed on structures is considered to be of an appropriate soil and species type.

Section 7.03 - Traffic, Parking and Access

CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

*Vehicular Access, Driveway Design and Crossing Location*

*Loading Zone*

*The first EAT referral recommended providing an on-site loading bay to cater for waste collection and deliveries. KDC instead opted to seek in-principle support for an on-street part-time loading zone on Queen Street at the Newcastle City Traffic Committee (NCTC) meeting held on 17 June 2019 to facilitate both waste collection and deliveries. The NCTC did not support the proposal on road safety grounds*

*raising concerns regarding potential conflict between large bins (up to 440 kgs) and pedestrians / cyclists on footpath.*

*KDC later sought in-principle support for an on-street part-time loading zone on Darby Street at the NCTC meeting held on 21 October 2019 to facilitate only deliveries. Waste collection was proposed on-site by using bins mounted on trailer and carried by a light vehicle (ute or similar). KDC submitted an Operational Waste Management Plan and a letter from Trailer Trash Pty Ltd in support of the proposed on-site waste collection.*

*The proposed loading zone on Darby Street between existing BZ / NST signpost and the southern edge of the driveway of 47 Darby Street (adjoining property) is approximately 11m which was 1m short of the standard 12m length for a loading zone. The NCTC was recommended to relocate existing BZ/NST signpost approximately 2m south to increase the loading zone length and to avoid the adjoining tree. The NCTC did not support this proposal as it would result in the reduction of pull-in distance for buses (approach distance from J-post) to 21m and would not comply with the 24m requirement of TfNSW guideline. The NCTC also did not support potential minor relocation of the J-post towards traffic signals as it was already within the statutory 20m No Stopping zone as per the road rule.*

#### *Driveway and Car Park Design*

*Further information to demonstrate that the minimum sight lines for pedestrian safety can be achieved at the driveway entrance on Queen Street as per AS 2890.1 Figure 3.3, either by way of further setback or splays from the pedestrian footpath. It is noted that 2.5m x 2.0m sight triangle is not required on the western side of proposed driveway as it is two-lane two-way. The building is set back 1.5m from the property boundary at the proposed driveway and adequate sight lines are available on the eastern side as the existing 1.2m wide footpath is vertically aligned with the driveway. It is therefore considered that the sight line requirement for the proposed driveway has been achieved.*

*Concern was raised with the location of the roller door at the Queen Street driveway entrance and its likely traffic impact causing queueing on Queen Street. Clarification was sought as to how short-term parking will be provided for patrons of the commercial tenancies and guests of the serviced apartments. The roller door is set back approximately 9.8m from the property boundary which allows storage of one entering vehicle on the driveway. With the anticipated traffic generation of 43 vtpm in AM and 37 vtpm in PM peak hours, likelihood of more than one vehicle arriving at the site simultaneously (within one minute) is low. Queuing of entering vehicles is therefore unlikely and traffic impact on Queen Street is anticipated to be negligible. The applicant has however not provided clarification on how access will be maintained for short-term parking through the roller door.*

*The basement car park would be used by residents and patrons of service apartments and therefore can be classified as a User Class 1A car park. The car park design is generally compliant to AS2890.1 as it provides for 2.4m x 5.4m parking spaces, 5.8m wide aisles and 1m extensions at blind aisles.*

*The ground floor car park is anticipated to be used by residential visitors, serviced apartment staff and patrons of commercial tenancies and therefore can be classified as a User Class 2 car park. The car park design complies with parking space length (5.4m) requirement however does not comply with 2.5m parking space width requirement of AS2890.1. The car park proposes varying aisle widths, minimum being 6.5m, which exceeds the AS2890.1 requirement of 5.8m aisle width.*

*However, it is noted that 2.4m wide spaces are provided beside walls / columns in the basement and ground floor car park which does not comply with Clause 2.4.1 (b) (ii) of AS2890.1. The latter requires such spaces to be widened by additional 300mm to enable door opening.*

### Parking Demand

*The first EAT referral calculated the overall parking requirement of 76 spaces for the development, including 11 spaces for the commercial component. The development provides for a total of 80 spaces, comprising of 67 spaces in the basement car park and 13 spaces on the ground floor car park. The 13 spaces on the ground floor car park include 3 disabled parking spaces and is considered acceptable. The development provides 4 spaces in excess of the DCP requirement. These excess spaces should be included in the floor space ratio calculation in accordance with Clause 4 of Section 7.03.02 of the DCP.*

*The first EAT referral calculated total bike parking requirement of 31 spaces for the overall development. The development has provided a total of 32 spaces out of which 8 spaces are located on the ground floor car park and would be accessible to residential visitors and patrons of commercial tenancies. The provision of minimum 7 bike parking in the ground floor car park addresses the outstanding requirement raised.*

*The first EAT referral calculated total motorbike parking requirement of 4 spaces for the overall development. The development has provided 5 motorbike parking spaces, out of which 2 spaces are located on the ground floor car park which addresses the outstanding requirement raised in the first EAT referral.*

### Traffic Generation

*The first EAT referral assessed the traffic generation from the development and concluded that it would not adversely impact on the operation of the adjoining road network. The traffic impacts of the proposed development are acceptable to CN.*

The proposed parking, traffic and access is not supported in this instance with regard to service vehicular for onsite or offsite arrangements and not in accordance with the relevant aims, objectives or provisions of the NDCP 2012.

Section 7.05 - Energy efficiency

*Business development (7.05.01)*

The proposed commercial units incorporate measures to maximise natural / passive climate control, including glazed frontages to allow for sunlight penetration. The proposal is considered to meet this control.

Section 7.06 Stormwater and Section 7.07 - Water Efficiency

CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

*"The first EAT referral identified that "The existing CN stormwater pipe traversing the north eastern corner of the property has not been accurately located. There is an indicative proposed easement shown with no information regarding the size and location of the pipe. Further information is required to locate this existing CN pipe by survey and ensure that any proposed development does not damage or restrict access to it. A drainage easement minimum 3m wide shall be created over the existing stormwater pipe benefitting CN for future maintenance."*

*KDC provided an email response dated 12 July 2019 advising that Delfs Lascelles Consulting Engineers conducted a site inspection on 3 July 2019 and were unable to locate the stormwater structure under the ground using Ground-Penetrating Radar (GPR). It is understood that the surveyor gained access to both adjoining properties to see if they could locate anything that resembled the structure leaving or entering the property. The surveyor advised that they climbed down and under the old Southern Cross Ten building to investigate where their water was collected and ran to. It was observed that there is an open pipe (1.6m long x 200mm Diameter) that funnels all the stormwater runoff from the building into a big void that they could see at the end of the pipe. Based on the surveyor's inspection, KDC advised that there is a chance the pipe is no longer existing. KDC advised that the development has been designed with due consideration made to the stormwater easement as per the title plan and it would be more appropriate to include a condition of consent that requires further investigation of the pipe during initial site preparation stage. Since the initial survey has been unable to locate the pipe, an appropriate DA condition will be provided to maintain existing easement and undertake further investigation before the issuance of construction certificate."*

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012.

Section 7.08 - Waste Management

A Waste Management Plan has been provided with the application. The proposal provides for bulk storage bins. It is proposed regular servicing is required for the site, which would mostly be completed by vans or small commercial vehicles collecting trailer waste bins. These vehicles will be able to access the site via the driveway from Queen Street and use the available parking for servicing the site.



Based on the submitted information, the proposal is considered to be acceptable.

### Section 8.0 - Public Participation

The proposal was notified to neighbouring properties for 14 days in accordance with the provisions of NDCP 2012. A total of 27 submissions objecting to the proposal were received.

Comments are provided in part 4.8 of this report.

### Development Contributions

Sections 7.11 and 7.12 of the *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans.

#### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

#### **5.5 The regulations (and other plans and policies)**

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and Regulation 2000. In addition, compliance with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and NDCP 2012 considerations. In addition, the following impacts are considered relevant:

- i) Traffic and Parking
- ii) Bulk and Scale
- iii) View Loss
- iv) Acoustics

The development is not compatible with the bulk, scale and massing of development in the immediate area. It is considered that the proposal will have negative social impacts regarding the amenity effects of the excessive bulk and scale.

CN's Environmental Protection Officer considered a submitted Acoustic Report prepared by Muller Acoustic Consulting, November 2018 (MAC180658RP1V1). The following comments provided:

"Acoustics

*The development is expected to generate noise in relation to demolition, construction, mechanical plant / equipment and commercial activities which have the potential to impact receivers on Queen Street. The site is also positioned on a busy street (Darby Street) so there is potential for traffic noise to impact the internal habitable spaces of the apartments.*

*Therefore, a Noise Assessment was prepared by Muller Acoustic Consulting dated November 2018 in accordance with the following:*

- i) Environment Protection Authority (EPA) 2017, NSW Noise Policy for Industry (NPI);*
- ii) Department of Planning (DPI) 2008, Development Near Rail Corridors and Busy Roads -Interim Guideline;*
- iii) Environment Protection Authority (EPA) 2011, NSW Road Noise Policy (RNP);*
- iv) Environment Protection Authority (EPA) 2013, Rail Infrastructure Noise Guideline (RING);*
- v) The Office of Liquor, Gaming and Racing (OLGR) criteria related to licensed premises;*
- vi) Newcastle City Council (NCC) Technical Guideline for the Assessment and Control of Low; and*
- vii) Frequency Noise from the Development of Musical Entertainment Venues (NCC) (2006).*

*The Noise Assessment identified that the bedrooms and living rooms on the west façade of "Building A" (along Darby Street), will require 6mm glass with full perimeter acoustic seals or equivalent to Category 2 of the Development Near Rail Corridors and Busy Roads - Interim Guideline to help ensure the internal acoustic amenity standards are met.*

*The Noise Assessment also determined that:*

- i) Operational noise and deliveries shall be between 7:00am and 10:00pm and are expected to remain below project noise levels.*
- ii) Amplified music and patron noise from the proposed ground level commercial area is unlikely to negatively impact the nearest sensitive receiver in relation to the Office of Liquor and Gaming assessment criteria and the CN Technical Guidelines provided that amplified entertainment consists of low level background sound only.*
- iii) Potential noise impacts from the rooftop terrace were assessed against EPA NPI screening levels and remained below sleep disturbance criteria.*

*In summary, the report concluded that noises emitted from the project are theoretically demonstrated to remain below relevant criteria for all assessed receivers, providing the noise controls and management strategies recommended in Section 5 (including the construction noise management recommendations in Section 5.1) of the Noise Assessment are implemented.*

*Furthermore, RSU notes the following noise mitigating requirements:*

- i) The Newcastle Development Control Plan requires shared walls and floors between dwellings to be designed and constructed to limit noise transmission (also refer to BCA requirements).*
- ii) Alternative ventilation will need to be considered prior to the issue of a construction certificate (the Noise Report refers to a windows closed scenario).*
- iii) Internal sound transmission and insulation requirements.”*

The proposal is considered that theoretically acoustics can be mitigated on the site satisfactorily. However, the applicant has not provided details of mitigation measures to insulated acoustic impacts from the bar/restaurant on residential units.

## **5.7 The suitability of the site for the development**

The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

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.

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.

The constraints of the site have been considered in the proposed development, which includes flooding, acid sulfate soils and heritage.

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

## **5.8 Any submissions made in accordance with this Act or the regulations**

The application was notified in accordance with CN's NDCP 2012 for a period of fourteen days. 27 submissions were received during the notification period.

## CITY OF NEWCASTLE

The key issues raised within the submissions have been discussed previously in this report. The following table provides a summary of the other issues raised and a response to those issues.

<b>Issue</b>	<b>Comment</b>
<b>Height variations / Character / visual appearance impacts</b> - concern regarding the extent of exceedances, specifically height, bulk and scale.	The proposed height variations are considered to be unsatisfactory.
<b>Streetscape</b> - concern that the design of the overall proposal is not consistent with the existing streetscape.	The character and architectural appearance of the building at a lower height and scale would likely be acceptable. It is considered that the development, having regard to the B4 mixed use zone, would broadly be acceptable in terms of the architectural design / style proposed, subject to the height and bulk and scale aspects of the proposal being resolved.
<b>Traffic and Parking</b> – increase in traffic and parking impacts	This concern is discussed in section 5.3 of this report under ‘Traffic, Parking and Access – Section 7.03’ of the NDCP 2012 assessment. CN’s engineers have assessed the submitted proposal and do not raise concerns in terms of its traffic impacts, accepting that suitable road capacity exists within the nearby streets. However, concerns remain with respect to the loading services required for the site and CN Traffic Committee has not supported the proposed arrangements on Darby Street.
<b>Overdevelopment</b> of the site.	The proposal is satisfactory in terms of the floor space ratio of the site. The types of uses proposed are permissible on the site. Notwithstanding these elements, the height and scale of the proposal is unsatisfactory.
<b>Building setbacks</b>	The northern and eastern setback does not comply with the Apartment Design Guideline requirements and considered unsatisfactory. The variation contributes to the bulk and scale of the development.
<b>Overshadowing</b>	This concern is discussed in section 5.1 of this report under ‘Provisions of any environmental planning instrument – SEPP 65 - Design Quality of Residential Apartments assessment. The proposal is considered satisfactory in terms of overshadowing.
<b>Privacy Impacts</b>	This concern is discussed in section 5.3 of this report under ‘ADG or Residential Development – Section 7.03’ of

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	the NDCP 2012 assessment.
<b>Heritage Conservation Area impacts</b>	This concern is discussed in section 5.1 of this report under 'Provisions of any environmental planning instrument'. Particular regard to impacts of bulk and scale to City Centre and Cooks Hill Conservation Area.
<b>Acoustic Impacts</b>	This concern is discussed in section 5.6 of this report under ' <i>Environmental Impacts.</i> '
<b>Stormwater Impacts</b>	This concern is discussed in section 5.3 of this report under 'Stormwater – Section 7.06' of the NDCP 2012 assessment.
<b>Waste Management</b> - The proposal will impact the street for waste collection arrangements.	The proposal includes a private waste collection arrangement. The company Trailer Trash prepared documentation to inform arrangements for waste collection from the site for the commercial premise including the Art Gallery, serviced apartments and residential units. The proposal will include servicing five days a week and this is considered acceptable.
<b>Dust Pollution</b> – during the construction phase.	A construction management plan would be required to ensure dust pollution is managed to the appropriate level required.
<b>Street trees</b> - will impact existing powerlines	The proposal is considered to impact the existing London Plane trees located along Darby Street. CN's City Greening Officers have considered the impact and support removal and compensatory planting of the trees along Darby Street. In addition, there are tree vacancies identified along the Queen street frontage. Planting of appropriate tree species with regard of the powerlines along Queen Street vacancy locations is acceptable.

The proposal was considered at a meeting on the Public Voice Committee on 19 November 2019.

The Public Voice Committee heard from one objector about their concerns regarding the proposal. The following table provides a summary of the issues raised and a response to those issues.

Issue	Comment
<b>Height variations / Character / visual appearance impacts –</b>	<p>The proposed height variations are considered to be unsatisfactory.</p> <p>The submitted clause 4.6 application to vary development standard was considered unsatisfactory with regard to</p>

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	<p>public benefit. This concern is discussed within Section 5.1 of this report under 'Newcastle Local Environmental Plan 2012' assessment.</p> <p>Additionally, this concern is discussed in section 5.3 of this report under 'Residential Development – Section 3.03' of the NDCP 2012 assessment.</p>
<b>Public benefit</b>	<p>The submitted clause 4.6 application to vary development standard was considered unsatisfactory with regard to public benefit. This concern is discussed within Section 5.1 of this report under 'Newcastle Local Environmental Plan 2012' assessment.</p>
<b>View impacts</b>	<p>The submitted clause 4.6 application to vary development standard was considered unsatisfactory with regard to view impacts . This concern is discussed within Section 5.1 of this report under 'Newcastle Local Environmental Plan 2012' assessment.</p> <p>Additionally, this concern is discussed in section 5.3 of this report under 'Residential Development – Section 3.03' of the NDCP 2012 assessment.</p>
<b>Precedent for area</b>	<p>There is a potential for this development to establish a trend of variation. However, the proposal has considered mainly the environmental impacts associated with non-compliances.</p>
<b>Privacy Impacts</b>	<p>This concern is discussed in section 5.3 of this report under 'ADG or Residential Development – Section 7.03' of the NDCP 2012 assessment.</p>
<b>Amenity impacts</b>	<p>This concern is discussed in section 5.1 of this report under 'Provisions of any environmental planning instrument – SEPP 65 - Design Quality of Residential Apartments assessment. The proposal is considered satisfactory in terms of overshadowing.</p>
<b>Privacy Impacts</b>	<p>This concern is discussed in section 5.3 of this report under 'ADG or Residential Development – Section 7.03' of the NDCP 2012 assessment.</p>
<b>Acoustic Impacts</b>	<p>This concern is discussed in section 5.6 of this report under '<i>Environmental Impacts.</i>'</p>
<b>Noise and Dust Pollution</b> – during the construction phase.	<p>A construction management plan would be required to ensure dust pollution is managed to the appropriate level required.</p>

<p><b>Traffic and Parking – increase in traffic and parking impacts</b></p>	<p>This concern is discussed in section 5.3 of this report under ‘Traffic, Parking and Access – Section 7.03’ of the NDCP 2012 assessment. CN's engineers have assessed the submitted proposal and do not raise concerns in terms of its traffic impacts, accepting that suitable road capacity exists within the nearby streets.</p> <p>However, concerns remain with respect to the loading services required for the site and CN Traffic Committee has not supported the proposed arrangements on Darby Street.</p>
<p><b>Anti-Social Behaviour</b></p>	<p>Anti-social behaviour would be managed by a plan of management for any future first use applications for the proposed bar/restaurant. The plan of management would be required to ensure mitigation measures are in place to manage people onsite during operation and leaving the site.</p>
<p><b>Loss of property values</b></p>	<p>The consideration of property values is outside the scope of development assessment with regard to Clause 4.15 of the <i>Environmental Planning and Assessment Act 1979</i>.</p>

**5.9 The public interest**

The proposed mixed-use development is in the public interest, offering additional housing, retail and commercial uses that will service the Newcastle area. However, the overall size, bulk and scale of the proposed development as submitted is not in the public interest.

**6.0 CONCLUSION**

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

**ATTACHMENTS**

**Item 24 Attachment A:** Submitted Plans – 59 Darby Street Cooks Hill - Under separate cover

**Item 24 Attachment B:** Draft Schedule of Conditions - 59 Darby Street Cooks Hill - Under separate cover

**Item 24 Attachment C:** Processing Chronology - 59 Darby Street Cooks Hill - Under separate cover

**Item 24 Attachment D:** Clause 4.6 Variation - 59 Darby Street Cooks Hill - Under separate cover

**Item 24 Attachment A-D distributed under separate cover**