



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 15 February 2022

TIME: Following the Public Voice Committee

VENUE: Council Chambers
Level 1
City Administration Centre
12 Stewart Avenue
Newcastle West NSW 2302

J Bath
Chief Executive Officer

**City Administration Centre
12 Stewart Avenue
NEWCASTLE WEST NSW 2302**

9 February 2022

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DEVELOPMENT APPLICATIONS COMMITTEE
15 February 2022

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NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 16 NOVEMBER 2021

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 211116 Development Applications Committee 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

CITY OF NEWCASTLE

Development Applications Committee Meeting 15 February 2022

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CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West on Tuesday 16 November 2021 at 6.30pm.

PRESENT

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

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance and Chief Financial Officer), F Leatham (Director People and Culture), J Rigby (Acting Director Infrastructure and Property), A Jones (Director City Wide Services), K Hyland (Interim Director Strategy and Engagement), H Sexton (Acting Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), J Baird (Museum Director), S Moore (Manager Finance), M Murray (Chief of Staff), K Sullivan (Councillor Services/Minutes), A Knowles (Councillor Services/Meeting Support), L Stanhope (Councillor Services/Meeting Support), G Axelsson (Information Technology Support) and U Bansal (Information Technology Support).

REQUEST TO ATTEND BY AUDIO VISUAL LINK / APOLOGIES

MOTION

Moved by Cr Rufo, seconded by Cr Mackenzie

The requests submitted by Councillor Church, Elliott and White to attend by audio visual link be received and leave granted.

The apology submitted on behalf of Councillor Luke be received and leave of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Mackenzie

Councillor Mackenzie declared a non-pecuniary conflict of interest in Item 22 - 57A Henry Street Tighes Hill - DA2020/01328 - Multi Dwelling Housing - Demolition of Three Storey Dwellings and 1 into 3 Lot Subdivision, stating that he lived in the vicinity and would manage the conflict by leaving the Chamber for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 19 OCTOBER 2021

MOTION

Moved by Cr Mackenzie, seconded by Cr Clausen

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

Carried

DEVELOPMENT APPLICATIONS

ITEM-22 DAC 16/11/21 - 57A HENRY STREET TIGHES HILL - DA2020/01328 - MULTI DWELLING HOUSING - DEMOLITION OF EXISTING STRUCTURES, ERECTION OF THREE STOREY DWELLINGS AND 1 INTO 3 LOT SUBDIVISION

Councillor Mackenzie left the Chamber for discussion on the item.

MOTION

Moved by Cr Clausen, seconded by Cr Duncan

- A. That DA2020/01328 for multi-dwelling housing, including the demolition of existing structures, erection of three two-storey dwellings, and one into three lot Torrens Title subdivision at 57A Henry Street, Tighes Hill 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, Councillor Nelmes and Councillors Church, Clausen, Dunn, Duncan, Elliott, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion:

Nil.

Carried

As this was the final meeting of the Development Applications Committee for the current Council, the Lord Mayor thanked Councillors for their efforts over the past term of office.

Councillor Mackenzie did not return to the Chamber prior to close of the meeting.

The meeting concluded at 6.38pm.

DEVELOPMENT APPLICATIONS

ITEM-1 **DAC 15/02/22 - DA2021/01360 - 51 MACQUARIE STREET
MEREWETHER DWELLING HOUSE - ALTERATIONS AND
ADDITIONS**

APPLICANT: **PIPER PLANNING**
OWNER: **S A MARSHALL & K E L MARSHALL**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE AND CHIEF FINANCIAL
OFFICER / MANAGER REGULATORY, PLANNING AND
ASSESSMENT**

PART I

PURPOSE

A Development Application (DA2021/01360) has been received seeking consent for alterations and additions to a dwelling house at 51 Macquarie Street, Merewether.

The submitted application was assigned to Development Officer, Thomas Howell, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the height of buildings development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.



**Subject Land: 51 Macquarie Street
Merewether**

The proposed development was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP) and one submission has been received in response.

The concerns raised by the objector in respect of the proposed development include bulk and scale, solar access, loss to amenity and view loss.

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. Height of buildings – The proposed development has a maximum building height of 9.502m and does not comply with the height of buildings development standard of 8.5m as prescribed under Clause 4.3 of Newcastle Local Environmental Plan 2012 (NLEP 2012). The variation equates to an exceedance of 1.02m or 11.79%.
2. Matters raised in the submissions including bulk and scale, solar access, loss to amenity and view loss.

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* (EP&A Act) and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

Vote by division

- A. The objection under clause 4.6 Exceptions to development standards of Newcastle Local Environmental Plan 2012, relating to Clause 4.3 (Height of buildings) is noted. In this regard, it is considered that the objection adequately addresses the matters required to be demonstrated by subclause 4.6 (3) of the NLEP 2012, is well founded and consistent with the specific aims of the relevant clause and the overarching aims of the Plan. The proposed development will be in the public interest because it is consistent with the objectives of the Clause 4.3 (Height of buildings) and the objectives of the R2 Low Density Residential zone; and
- B. That DA2021/01360 for alterations and additions to a dwelling house at 51 Macquarie Street Merewether 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 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?*

PART II

1.0 THE SUBJECT SITE

The site is known as 51 Macquarie Street Merewether and has a legal description of Lot 41 Section 11 in Deposited Plan 111240. The site is regular in shape and has a total site area of 541.18m². The site is located on the southern side of Macquarie Street with pedestrian and vehicle access gained via the 17.42m wide frontage to Macquarie Street. The site is located within a prescribed mines subsidence district.

The site falls from the Macquarie Street frontage down towards the southern (rear) part of the site. The site has a cross-fall of approximately 17.2% and is devoid of any significant vegetation. Existing improvements on the site include a detached single-storey weatherboard dwelling house located towards the Macquarie Street frontage with an above ground swimming pool located at the rear. The surrounding area predominantly consists of low and medium density residential dwellings, single dwellings adjoin the property to the south, east, and west.

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to a dwelling house.

The proposed works include:

- i) Erection of a first-floor addition containing: one bedroom, one bathroom, wardrobe and study.
- ii) Internal alterations to the existing ground level to facilitate the first-floor addition: internal stairs, demolition of internal walls, and new sliding glass doors.
- iii) The proposed materials and finishes consist of light-weight cladding and metal roofing.

A copy of the submitted plans is 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 for a period of 14 days between 20 October 2021 and 3 November 2021 in accordance with CN's Community Participation Plan (CPP). During the notification period one submission was received.

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

a) Statutory and Policy Issues

- i) Height of building objectives – inconsistent with the objectives of Clause 4.3 Height of Buildings of the NLEP 2012

b) Amenity Issues:

- i) Solar access – the proposed development creates unreasonable overshadowing and loss of light to adjoining properties.
- ii) View sharing – the loss of views currently enjoyed by adjoining properties.

c) Design and Aesthetic Issues:

- i) Bulk and scale – non-compliant height of development is inconsistent with the surrounding development and creates unreasonable impact to amenity.

4.0 INTEGRATED DEVELOPMENT

The proposal is not '*integrated development*' pursuant to Section 4.46 of the EP&A 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(1) of the EP&A Act, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

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

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 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 residential purposes and 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 (Vegetation SEPP)

The applicant does not propose the removal of any vegetation in order to facilitate the development.

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)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of NLEP 2012. The proposed development is defined as alterations and additions to a 'dwelling housing' which is a type of 'residential accommodation' and is permissible with consent within the R2 Low Density Residential zone under NLEP 2012.

The proposed development is consistent with the objectives of the R2 Low Density Residential zone, as follows:

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

Comment: The provision of additional floor space maximises residential amenity in an appropriate single two-storey dwelling form complementary to the low-density residential environment.

- ii) *To enable other land uses that provide facilities or services to meet the day to day needs of residents*

Comment: The proposed single dwelling development does not impede on other land uses.

- iii) *To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

Comment: The proposed development provides for a modernised single two-storey dwelling in a low-density, low impact form complementary to the existing and future desired character of the streetscape.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes internal demolition works. Conditions are recommended to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

The maximum building height for the subject site is 8.5m. The proposed development has a maximum building of height of 9.502m as a vertical distance from ground level (existing) to the highest point of the building. The equates to an exceedance of 1.02m or 11.79% above the prescribed maximum height for the subject land.

The applicant has submitted a clause 4.6 variation request to this standard. A detailed assessment of this request is provided under the Clause 4.6 Exceptions to Development Standards section discussed below.

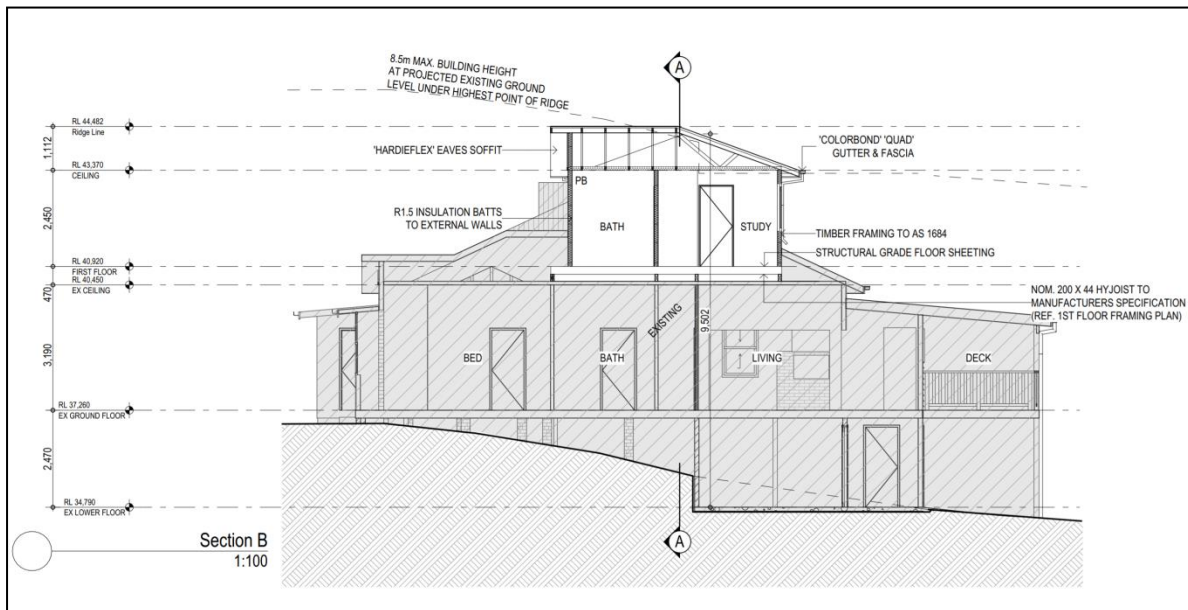


Figure 1: Section plan indicating exceedance to the maximum building height (source: Dwg. No. 1007, Ad-built, 22/09/2021)

Clause 4.4 - Floor Space Ratio

The maximum floor space ratio (FSR) for the site is 0.6:1. The proposed development has a *Gross Floor Area* (GFA) of approximately 185.39m² equating to an FSR of 0.34:1, which has been calculated in accordance with the *Gross Floor Area* definition. Having regard to the objectives of this clause, the proposed development is satisfactory in this regard.

Clause 4.6 - Exceptions to Development Standards

The objectives of Clause 4.6 ‘Exceptions to development standards’, are (subclause (1):

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The proposed development contravenes Clause 4.3 'Height of Buildings' of NLEP 2012. The Height of Buildings Map provides for a maximum building height of 8.5m. The proposed development provides a maximum building height of 9.502m, which exceeds the maximum building height for the site by 1.02m or 11.79%. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

An assessment of the Clause 4.6 variation request has been undertaken below, in undertaking the assessment consideration has been given to both the provisions of Clause 4.6 and the relevant Land and Environment Court judgements including: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (and appeal at NSWLEC 90)(*Four2Five*), *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), and *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), namely that the objection is well founded, that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(2) – is the provision to be varied a development standard? And is the development standard excluded from the operation of the Clause?

The height of buildings development standard in NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act.

The 'height of buildings' development standard is not expressly excluded from the operation of Clause 4.6.

Clause 4.6 (3)(a) – has the applicant submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

The submitted 'Application to Vary a Development Standard' document, prepared by Piper Planning (dated 28 September 2021) constitutes a written request for the purposes of Clause 4.6(3). The documentation provided by the applicant addresses Clause 4.6 (3)(a), as follows:

The extent of the contravention with the development standard is negligible and occurs as a centrally located projection of the roof form. As such, the proposal can be seen to cause minor environmental constraints. Spatial separation to boundaries exceeds Council's requirements and the lot orientation is such that impacts from the additional elevation will occur within the premise itself.

It should also be noted that the proposed first floor addition displays a generous setback to the street, and as such despite being in contravention to the development standard, the proposed scheme presents a diminished and conservative two-storey form to the streetscape.

Further to this, other two-storey developments (for example the premise immediately adjoining to the west), displays a direct correlation to this proposal in terms of elevation. This immediate adjoining premise is a good point of reference, as it has taken a similar design approach, retaining the existing cottage and its character, whilst adding addition area by way of a first floor addition. The overall elevation will correlate to that structure.

As such, based on the negligible environmental impacts, diminished presentation to the street and consistency to its setting, strict compliance with the development standard is unnecessary.

The addition is a cohesive outcome, that forms as a logical and orderly projection of the existing architectural form. In this manner, there is nothing distinct or inappropriate and the minor localised exceedance will not appear disparate.

The existing ground level is obscured below the existing flooring and so there is no point of reference giving indication of a non-compliance. The building therefore presents as an orderly and reasonable two storey form externally, with no indication to the noncompliance externally.

We therefore consider the development to be consistent to the objectives underpinning the LEP 2012 height standard. Strict adherence to the development standard considered unreasonable in this instance.

CN Officer Comment

The proposed development provides for a modernised residential dwelling in a low-density, low impact form complementary to the existing and future desired character of the streetscape. Further, the proposal for a single dwelling development is consistent with the low-density objectives of the land.

The proposed variation to the development standard does not cause any undue adverse environmental impacts, including impacts on neighbouring properties in terms of bulk, scale, overshadowing and privacy, indicating the proposed development is suitable for the site. The non-compliance does not result in any additional unreasonable impacts compared to a compliant design as the proposal is generally compliant with the relevant planning controls.

As such, the applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

Clause 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the development standard.

The documentation provided by the applicant addresses Clause 4.6 (3)(b), as follows:

In the given context, the proposal is consistent and therefore seen as reasonable. The proposal will not impact adversely on solar access to adjoining development. The resultant development will ensure the scale of the proposal continues to make a positive contribution to the established context. The proposal does not raise any matter of significance for State or regional environmental planning and should be supported.

CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the additional building height does not result in any inconsistency with the desired built form of the locality and is generally consistent having regard to the combination of controls under NLEP 2012 and NDCP 2012. The written request provides sufficient justification to contravene the development standard.

Clause 4.6(4)(a)(i) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).

As outlined above the applicant’s written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012. It follows that the test of Clause 4.6(a)(i) is satisfied.

Clause 4.6(4)(a)(ii) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objects for development within the zone in which the development is proposed to be carried out.

The applicant’s response to the satisfaction of the objectives of the height of buildings standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, ‘the proposed development will be in the public interest because it is consistent’, with the relevant objectives.

Objectives of Clause 4.3 ‘Height of buildings’

The development is consistent with the objectives of Clause 4.3 ‘Height of buildings’ as the proposed development for single detached two-storey dwelling is of a low-density bulk and scale and are consistent with the built form as identified by the centres hierarchy.

Objectives of the R2 Low Density Zone

The development is consistent with the objectives of the R2 Low Density Zone as the proposed development maximises residential amenity in an appropriate single two-storey dwelling form complementary to the low-density residential environment. Further, the development type is a permissible development within the land zone.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of Clause 4.6(4)(a)(ii) of NLEP 2012 is satisfied.

Clause 4.6(4)(b) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained.

The Secretary's (i.e. of the Department of Planning, Industry and Environment) 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 PS20-00 of 5 May 2020.

Conclusion

The requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the height of buildings development standard.

The Clause 4.6 variation request has demonstrated that the standard is unreasonable in this instance and that the proposed scale of the development is in character with the existing building and surrounding locality.

It is considered the proposal facilitates the ongoing use of the existing residential site in a modernised residential dwelling compacity, providing for the housing needs of the community within a low-density residential environment whilst suitably respecting the amenity, privacy and solar access of adjoining development. The request to exceed the prescribed maximum building height of 8.5m is supported.

Clause 5.10 - Heritage Conservation

The proposed development is not within a heritage conservation area nor is within the vicinity of a heritage item. The proposed development is considered satisfactory in this regard.

Clause 6.1 – Acid Sulfate Soils

The subject site is not identified as containing Acid Sulfate Soils (ASS).

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

Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines those amendments to Clause 4.6 will include new criteria for consideration.

The proposed change would require applicants to demonstrate that a variation to a development standard “is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.” For the purposes of CN’s assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome.

The proposed development includes a Clause 4.6 variation request. As discussed above under Clause 4.6 of this report above, the proposal achieves the objectives of the R2 Low Density Residential zone and the objectives of Clause 4.3 notwithstanding noncompliance.

There is also a second test proposed for development for when “the contravention is minor and relates to a small portion of the site, and therefore the environmental impacts of the contravention are minimal or negligible.” This test would require a less rigorous assessment when the impact of the contravention is demonstrated to be minor. It is unclear if this second test would be applicable to the subject application, as there is insufficient detail in the EIE to confirm what a ‘minor’ contravention is.

Considering the aims of the EIE and the above considerations, the proposed development and Clause 4.6 Variation Request is not considered to be inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and NLEP 2012.

Proposed Design and Place State Environmental Planning Policy (Design & Place SEPP)

The proposed Design and Place SEPP will bring together a range of considerations that impact the design of places in NSW and will give effect to the objectives of the EP&A Act 1979 and the Premier’s Priorities for building a better environment. The Explanation of Intended Effect (EIE) was exhibited from 26 February to 28 April 2021. The EIE is broad and indicates that the proposed Design and Place SEPP applies to all scales of development including residential dwellings.

Assessment of the proposal has considered character, context, and overall design principles in accordance with current policy. This assessment has determined that on merit the proposal is consistent with the sites context, character, and design principles. The proposal is consistent with the intent of the proposed Design and Place SEPP.

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.

Single Dwellings and Ancillary Development - Section 3.02

The following comments are made concerning the proposed development and the relevant provisions of Section 3.02:

Street frontage appearance (3.02.03)

The proposed development retains the established building line, with the proposed additions sited behind the Macquarie Street façade of the original dwelling. Due to the two-storey nature of the addition, the development will be visible from the Macquarie Street frontage. The additions are compatible with the streetscape and will complement and harmonise with the positive elements of existing development in the street. Passive surveillance of the street has suitably been achieved in the proposed development. As such, the proposed development is able to achieve the acceptable solutions of this control.

Side / rear setbacks (building envelope) (3.02.04)

Side setbacks are a minimum of 900mm from each boundary up to a height of 4.5m then at an angle of 4:1; rear setbacks are a minimum of 3m for walls up to 4.5m in height and 6m for walls greater than 4.5m high.

The proposed first-floor addition is provided with a 3.07m setback to the eastern side boundary and a 2.99m setback to the western side boundary. The proposed additions are provided with an 18.34m rear setback. The dwelling is also sited within all building envelope planes. As such, the proposed development meets all acceptable solutions of this control.

Landscaping (3.02.05)

The subject site has an area of 541.18m² and therefore the acceptable solutions require 20% of the site or 108.24m² to be landscaped. Landscaped areas are retained within the front, side, and rear setbacks. The total landscaping provided is approximately 210m² or 38% of the total site area.

Private open space (3.02.06)

The proposed development retains the existing private open space area to the ground level which is accessible via the primary ground floor living areas. The covered deck meets the minimum dimension requirements of 4m x 3m. The site also maintains a landscaped rear yard. It has been assessed that the proposed development will provide an adequate area of private open space that will be usable and meet the needs of the occupants.

Privacy (3.02.07)

The proposed dwelling is orientated to minimise any potential privacy impact to adjoining properties. Large glazing elements either face internally into the site or out towards the street frontage. The glazing elements along the side and rear elevations to the first-floor are associated with bedrooms and bathrooms only. No further privacy attenuation measures are required.

Solar access (3.02.08)

The proposed development has considered orientation and siting, with the proposed addition orientated to optimise solar access. The requirements of NDCP 2012 specifies that a minimum of three hours of sunlight to windows of living areas that face north and two hours of sunlight to private open space areas of adjacent dwellings is to be provided. Shadow diagrams prepared by Ad-built demonstrate that whilst there is some additional overshadowing caused by the proposed development, the principal area of private open space and any north facing windows associated with living rooms of adjoining properties can retain three hours of direct solar access between 9am and 3pm during the winter solstice.

An objection received from the adjoining property to the west raises concern with potential overshadowing of their north-east facing living room window as caused by the proposed development in conjunction with overshadowing caused by a carport approved under a separate development consent DA2020/01021. It is to be noted that the carport has not yet been constructed nor a Construction Certificate been issued or filed with CN. As assessed above, the proposed development allows all north facing windows associated with living rooms of adjoining properties to retain three hours of direct solar access between 9am and 3pm during the winter solstice.

Whilst the documentation submitted with DA2020/01021 did not include shadow diagrams it is likely, due to the siting of the proposed carport, that additional shadowing to the north-east facing living room window may be cast. Notwithstanding this, DA2020/01021 has been approved and does not form part of the assessment of this subject Development Application. It is demonstrated that the proposed first-floor addition does not unreasonably reduce the access to sunlight from this north-east facing window. As such, the proposed development achieves the acceptable solutions within this section of the NDCP 2012.

View sharing (3.02.09)

The proposed development is over 5m in height with a total proposed building height of 9.502m. Notwithstanding, adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development.

An objection from the western adjoining property has been received raising concern with potential view loss as caused by the first-floor addition. It is noted that properties along this section of Macquarie Street enjoy distant views of the Pacific Ocean looking south-eastward. The positioning of the first-floor addition allows the neighbouring properties to retain this view corridor from rear windows and decks. Further concern was also raised from the western adjoining property regarding loss of very distant views towards the Newcastle Harbour eastward.

This existing outlook is made partial and vulnerable particularly as the outlook is achieved across side boundaries and as noted within *Tenacity Consulting v Waringah [2004] NSW LEC 140* 'the expectation to retain side views and sitting views is often unrealistic'. The proposed development is not considered unreasonable and conserving the distant side outlooks would limit development potential on the subject site. As such, the proposed development meets to acceptable solutions of this control.

Car parking and vehicular access (3.02.10)

The proposed development retains an existing driveway providing off-street parking for two vehicles which meets the numerical requirements of the NDCP 2012. Vehicular access arrangements at the site are retained and are satisfactory.

In conclusion, when assessed against the relevant provisions of the *Single Dwellings and Ancillary Development* section of the NDCP 2012, the proposed development is considered acceptable and achieves compliance with relevant acceptable solutions and the performance criteria for building form, building separation, and residential amenity.

The development establishes a scale and built form that is appropriate for its location. The proposal retains the low-density form of the streetscape with good residential amenity, while maintaining privacy for adjoining neighbours.

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.

Social Impact - Section 4.05

It is considered unlikely that a development of the nature proposed would result in increased anti-social behaviour. The development provides for increased housing choice within the area, which is considered a positive social outcome.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55. The site is not considered to have any contamination constraints that will impact on the development of the site.

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.

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*'.

Traffic, Parking and Access - Section 7.03

Existing parking and access arrangements at the subject site are retained through this development application. The proposal includes alterations and additions to an existing dwelling house with no additional occupancy proposed and accordingly the development is not considered likely to increase the level of traffic throughout the surrounding locality.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed development does not increase the amount of hard surface on the site. Accordingly, a stormwater management plan is not required to be submitted with the application. Stormwater disposal can be addressed by way of conditions of consent directing overflows to the existing system and have been included in the Draft Schedule of Conditions (refer **Attachment B**).

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.

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 at **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 EP&A Act requirement to comply 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. The proposed development will not result in any undue adverse impact on the natural or built environment.

The development is located within a site suitably zoned for residential development and of a size able to cater for such development. The development is compatible with the existing character, bulk, scale, and massing of the existing built form in the immediate area. The proposal will not have any negative social or economic impacts.

The development has been designed to generally satisfy the requirements of NDCP 2012 and as a result the development is unlikely to adversely impact upon adjoining properties.

5.7 The suitability of the site for the development

The site is located within an R2 Low Density Residential zone and the proposal is permissible. The proposed single dwelling development consists of a first-floor addition which is of a bulk and scale consistent with the existing and desired future character of the locality. Furthermore, the site is of a sufficient land size to enable the proposed development, whilst minimising the impact to neighbouring properties.

The site is located in an established residential area with good connectivity to a range of services and facilities. The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW. Further, the site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

As such, the proposed development is suitable to the site.

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

The application was notified in accordance with CN's Community Participation Policy, between 20 October 2021 and 3 November 2021, during which time a total of one submission was received.

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.

Issue	Comment
<p>Building height non-compliance</p>	<p>Whilst the proposal results in a building height of 9.502m, which exceeds the maximum building height for the site by 11.79%, the proposed variation to the development standard does not result in any undue adverse environmental impacts.</p> <p>A detailed assessment of the Clause 4.6 request is provided under the Clause 4.6 Exceptions to Development Standards section discussed above. The assessment concludes that the requirements of Clause 4.6 of the NLEP 2012 have been achieved and that there is power to grant development consent to the proposed development. The clause 4.6 variation request has demonstrated that the proposed building height is acceptable and that strict compliance with the prescribed height of buildings in this case would be unreasonable and unnecessary.</p> <p>The assessment demonstrates that the building height noncompliance does not result in any additional unreasonable impacts compared to a compliant design as the proposal is generally compliant with the relevant planning controls prescribed by both the NLEP 2012 and the NDCP 2012.</p> <p>A building height compliant design may not specifically alter the positioning of the addition on the site as the proposal in its current form, remains compliant with all building envelope controls. As such, a compliant design may achieve no additional environmental benefit.</p> <p>The proposed development is therefore considered to be of an acceptable bulk and scale and is satisfactory with regards to Clause 4.3 'Height of Buildings'.</p>
<p>Overshadowing</p>	<p>As discussed within Section 5.3 of this report the proposed development is considered acceptable having regard to the acceptable solutions of Section 3.02.08 of the NDCP 2012 as it does not significantly overshadow living area windows and principal areas of private open space of adjacent dwellings.</p> <p>While concern was raised in the objection from the western adjoining property (53 Macquarie Street Merewether) with regards to a carport on the subject site</p>

	<p>approved under a separate development application, the proposed additions do not unreasonably reduce the access to sunlight from any north facing windows of properties to the west. This is acceptable.</p>
<p>Bulk and scale, and loss of outlook</p>	<p>As discussed within Section 5.3 of this report the proposed development is considered acceptable having regard to the performance criteria of Section 3.02.04 of the NDCP 2012.</p> <p>The side and rear boundary setbacks have been assessed to meet the acceptable solutions of the control. The arrangement of the first-floor addition wholly located over the existing footprint of the dwelling on site is compatible with the existing low-density form of the streetscape.</p> <p>Adequate separation is provided between adjacent properties to allow outlook and view corridors to be retained. Noting, the surrounding locality is heavily urbanised the outlook onto roofs and built form is an expected outcome within a residential area.</p> <p>As such, it is considered that the proposed bulk and scale allow Occupants on adjoining properties to retain a reasonable level of amenity, privacy and solar access. This is acceptable.</p>

5.9 The public interest

The proposed development is consistent with the aims and design parameters contained in the NLEP 2012 and the NDCP 2012 and other relevant Environmental Planning Instruments discussed within this report. The development is consistent with the objectives of the R2 Low Density Residential zone.

The proposed development will not have an adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjacent properties and the streetscape. The proposed development is in the public interest as it provides for modernised low-impact residential accommodation within an established residential area.

The proposed development is satisfactory having regard to the principles of ecologically sustainable development. Furthermore, the proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment. Further, the development is in the public interest and will allow for the orderly and economic development of the site.

6.0 CONCLUSION

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

ATTACHMENTS

Item 1 Attachment A: Submitted Plans – 51 Macquarie Street Merewether

Item 1 Attachment B: Draft Schedule of Conditions – 51 Macquarie Street Merewether

Item 1 Attachment C: Processing Chronology – 51 Macquarie Street Merewether

Item 1 Attachments A - C distributed under separate cover

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ITEM-2 **DAC 15/02/22 - 147, 151, 154 HUNTER STREET; 98, 100, 104, 110 KING STREET; 15, 21, 31, 33 WOLFE STREET; 14 THORN STREET NEWCASTLE - MA2021/00295 147 HUNTER STREET NEWCASTLE S4.55(1A) MODIFICATION TO DA2018/00354 - MIXED-USE DEVELOPMENT - CHANGES TO FLOOR PLANS, ELEVATIONS AND CONDITIONS OF CONSENT**

APPLICANT: **HAMPTONS PROPERTY SERVICES PTY LTD**
OWNER: **EAST END STAGE 2 PTY LTD**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE & CHIEF FINANCIAL OFFICER /
MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

PURPOSE

A Modification Application (MA2021/00295) has been received seeking to modify DA2018/00354 which gave consent for *'mixed-use development, incorporating retail premises, shop top housing, car parking, associated works and demolition'* on 15 March 2019. The Section 4.55(1A) modification proposes changes to floor plans, elevations, and conditions of consent.

The submitted application was assigned to Development Officer, Thomas Howell, for assessment.

The application was not required to be publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) due to minimal impact.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the height of buildings development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.



Subject Land: 147, 151, 154 Hunter Street; 98, 100, 104, 110 King Street; 15, 21, 31, 33 Wolfe Street; 14 Thorn Street Newcastle NSW 2300

Issues

1. Height of buildings – The proposed development has a maximum building height of reduced level (RL) 33.80m for the Soul Building (northern) and RL31.24m for the Lyrique Building (southern) which does not comply with the height of buildings development standard of RL26m (northern), RL30m (central), RL24m (southern) as prescribed under Clause 4.3 of the NLEP 2012. The maximum variation equates to an exceedance of 7.8m or 20.2% inclusive of the 10% height bonus under Clause 7.5(6) of the NLEP 2012.

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* (EP&A Act) and is acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

Vote by division

- A. The variation relating to Clause 4.3 (Height of buildings) is noted. In this regard, it is considered that the amended development remains consistent with the specific aims of Clause 4.3 and the overarching aims of the Plan. The proposed development will be in the public interest because it is consistent with the objectives of the Clause 4.3 (Height of buildings) and the objectives of the B4 Mixed Use zone; and
- B. That MA2021/00295 for changes to floor plans, elevations, and conditions of consent to DA2018/00354 which approved *'mixed-use development, incorporating retail premises, shop top housing, car parking, associated works and demolition'* at 147 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 & Attachment C**.

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?*

PART II

1.0 THE SUBJECT SITE

The land applying to the overall approved 'Newcastle East End' Concept Plan site is located between the Hunter Street Mall and the Christ Church Cathedral and is bounded by Perkins and Newcomen Streets. The Concept Plan site comprises the majority of the buildings across four city blocks, between Perkins, Hunter, Newcomen and King Streets.

The total area of the site is 1.66ha and stretches approximately 280m in length east to west along Hunter Street and approximately 90m in depth along Thorn Street. The current development application (MA2021/00295) pertains only to part of this land being Block 2 only of the Concept Plan (referred to as 'Stage 2'), which is bounded by Hunter Street (north), Wolfe Street (west), Thorn Street (east) and King Street (south). Site preparation works for Stage 2/Block 2 are underway.

2.0 THE PROPOSAL

The Modification Applications consists of changes to the approved floor plans and elevations, as follows:

Lift overruns

- i) Increased height of lift shaft and stair overrun (1 & 4) from RL31.45 to RL31.80.
- ii) Increased height of lift shaft and stair overrun (3) from RL33.60 to RL33.80.
- iii) Increased height of lift shaft and stair overrun (5) from RL30.10 to RL30.40.

Change to roof form (Lyrique Building)

- i) Alteration to roof profile from metal hipped roof (RL29.35) to concrete roof allowing additional area for mechanical plant and solar collectors (RL29.28).
- ii) Addition of mechanical screening to RL31.25.

Change to roof layout (Soul Building)

- i) Increased height of mechanical screening from RL31.25 to RL31.40, however, overall extent of mechanical screening reduced.
- ii) Amendment to the pergola structure from operable to open roofed.

- iii) Reconfiguration of rooftop landscaping layout and design.
- iv) Reconfiguration and expansion of rooftop mechanical plant zone.

Change in materials

- i) Additional textured precast concrete panels surrounding lift shafts servicing the Soul Building.
- ii) Additional textured precast concrete panels added to the southern elevation of the Soul Building.
- iii) Face brick balustrades added to balconies servicing levels 1, 2 and 3 at the corner of Hunter and Thorn Streets replacing painted concrete balustrades.
- iv) Additional glazing along the Thorn Street elevation servicing the ground floor retail premises.

Basement layout

- i) Additional excavation to the north-western corner of basement levels 1 and 2 to provide additional carparking and storage.
- ii) Reconfiguration of storage and carparking layouts to provide an additional 21 carparking spaces.
- iii) Accessible parking spaces relocated.
- iv) Hydrant room added to basement level 1.
- v) Grease arrestor room added to basement level 2.

Ground floor layout (Soul Building)

- i) Amended finished floor levels to ground floor to coincide with associated footpath levels.
- ii) Recessing of external retail entrances and change to door swing directions.
- iii) Reconfiguration of internal waste services and amenities.
- iv) Deletion of service corridor servicing the southern elevation.
- v) Reconfiguration of the basement and loading entrance including deletion of the platform lifter.
- vi) Foyer 4 entrance extended via deletion of secured glass mail room.

Level 7 terraces (Soul Building)

- i) Landscaped terraces divided into two private open space areas servicing apartments N703 and N704.

2.1 RELATIONSHIP WITH CONCEPT DEVELOPMENT CONSENT (DA2017/00701)

Section 4.24 of the *Environmental Planning & Assessment Regulations 2000* (EP&A Regs) (Status of staged development applications and consents) confirms that "while any consent granted on the determination of a staged development application for a site remains in force, the determination of any further development application in respect of that site cannot be inconsistent with that consent."

Effectively, MA2021/00295 cannot be considered in isolation to the concept development consent. Section 4.24 requires applications for each stage of the development to remain consistent with the approved concept development under DA2017/00701 (including building height). As such, the applicant has requested to amend Condition 6 of DA2017/00701 through the determination of MA2021/00295 (refer to **Attachment B**).

Pursuant to Section 4.17(b) and 4.17(5) of the EP&A Act and Clause 97 of the EP&A Regs a development consent can impose conditions requiring the modification of a development consent.

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

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

3.0 PUBLIC NOTIFICATION

The application was not required to be publicly notified and no submissions were received in relation to the proposal.

4.0 INTEGRATED DEVELOPMENT

There are no concurrence requirements from agencies for the proposal and the application being a modification is not integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act').

However, as the original application required integrated approval from the Subsidence Advisory NSW, the modification application was referred to Subsidence Advisory NSW for comment, revised General Terms of Approval were provided.

4.1 CONSENT AUTHORITY

The Hunter and Central Coast Regional Planning Panel, formally the Joint Regional Planning Panel, was the consent authority for development application DA2018/00354.

Section 123BA of EP&A Regs, allows Council (i.e. City of Newcastle) to exercise certain functions on behalf of a Regional Planning Panel, including the determination of applications to modify a development consent under Section 4.55 (1) or Section 4.55(1A) of the EP&A Act1979. As such, Council is the consent authority for the subject Section 4.55(1A) application to modify development consent.

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) and Section 4.55 of the EP&A Act, as detailed below.

In the consideration of the subject 4.55(1A) application to modify consent DA2018/00354, 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.

Section 4.55(1A) states a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

- a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- c) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

s.4.55(1A)(a) - Minimal environmental impact

The proposed modification has been assessed to be of minimal environmental impact in accordance with subclause 'a'. The proposed modification retains the use of the site as a mixed-use development consisting of retail premises and shop top housing, with the proposed amendments restricted to floor plan alterations, increase to lift overrun heights, roof layout amendments and changes to external materiality. Except for an increase to the basement footprint, which is obscured below existing ground floor, there are no significant changes to the building footprint. The additional floor area to basement levels '1' and '2' provide an overall surplus to residential carparking which is considered an improved outcome for the development.

The proposed modification is not considered to create any additional environmental impact to which is already approved and regulated under the conditions of consent. The proposed modification, including a minor increase to the overall height, will not significantly alter the approved development or create an altered environmental impact. The additional building height, which results in a maximum increase of 1.15m to the approved plans, will not result in substantial impacts associated with shadowing or privacy of adjoining residences to that which is already approved. As such, the significance of the impacts of the development are minimal.

s.4.55(1A)(b) – Substantially the same development

With regards to subclause 'b', the development to which the consent as modified relates is substantially the same development for which consent was originally granted. The proposed modifications are in response to further design development during preparation of construction works, including rationalising and improving the building basement, ensuring improved relationships at the street level between footpaths and retail spaces, and an increase in plant and equipment to ensure that the building is adequately serviced. There is no change to the approved use, nor general configuration of the site that would otherwise challenge the aspect that the proposed modifications are anything other than substantially the same development.

As the significance of the impacts of the development, as discussed below, are essentially the same, the modified development is deemed substantially the same as the previously approved in terms of form and function.

s.4.55(1A)(b) – Notification and submissions

The modification application was not required to be placed on public exhibition, in accordance with the EP&A Act, EP&A Regs and CN's Community Participation Plan (CPP) due to the changes being minor in nature and not resulting in any increased environmental impacts.

5.1 SECTION 4.15(1) EVALUATION

Section 4.15(1) EP&A Act outlines the matters a consent authority is to take into consideration that are of relevance to the development the subject of the development application. The provisions of s.4.15(1) EP&A Act apply to modification applications pursuant to s.4.55(3) EP&A Act. A full assessment of this is undertaken under below.

5.1.1 The provision of any environmental planning instrument

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

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

The original development application identified that the site contained potentially contaminated materials. The Preliminary Site Investigation (PSI) prepared by Douglas Partners confirms that the investigations conducted were limited to accessible areas of the site prior to demolition and accordingly the report recommends that further investigation be conducted following demolition. However, the level of investigation was sufficient to enable Douglas Partners to conclude that *“the site is considered to be suitable for the proposed residential / commercial development from a contamination perspective, subject to additional confirmation investigation and appropriate remediation and validation (where required) once buildings have been demolished.”*

To satisfy SEPP 55 the applicant submitted to Council for assessment and approval a Remediation Action Plan (RAP) prepared by Douglas Partners dated May 2018. The RAP proposed to address the onsite contamination by excavating and disposing the contaminated material to a facility that could lawfully receive the waste. Following this, validation would take place to ensure site suitability.

Under the proposed modifications to the basement carpark levels, excavation remains at a maximum depth of RL -2.8 m AHD in the central and northern portions of the site (south of Hunter Street) and cuts <1m to 6m below ground levels. Whilst the overall extent of excavation is slightly increased, the proposed amended development is consistent with the approved RAP. Conditions of consent imposed on the development with regards remediation, transportation of excavated materials and site validation remain unchanged.

As such, the proposal satisfies the requirements and SEPP 55, in particular clause 7 *‘contamination and remediation to be considered in determining development application’*, which requires the consent authority is satisfied that the development site will be suitable for the proposed development following remediation works.

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

SEPP 65 aims to improve the design quality of residential flat buildings across NSW by providing an assessment framework, the Apartment Design Guidelines (ADG's), for assessing 'good design'. To support these aims the SEPP introduces nine design quality principles. These principles do not generate design solutions but provide a guide to achieving good design and the means of evaluating the merits of proposed solutions.

No changes are proposed to the approved residential component including the quantity, size, or design of the apartments. It is noted that the floor to ceiling height of the ground level will slightly change as a result of the amended finished floor levels to ground floor to coincide with associated public domain levels. However, the proposal does not alter the overall approved residences of the development and is considered satisfactory.

Therefore, an assessment against the provisions of the ADG is not required as the residential apartment component of the development will remain unchanged.

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

Clause 7 of the Vegetation SEPP provides that a person must not clear vegetation in any nonrural area of the State without the authority confirmed by a permit granted by the council. No trees or vegetation were required to be removed as a part of this development application. The provisions of the Vegetation SEPP are not applicable to the proposed development.

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

CM SEPP aims to protect and manage the New South Wales coast and foreshores and requires the consideration of specific criteria based on the type of coastal area affected.

Clause 5 Land to which the policy applies - The CM SEPP applies to land the whole or any part of which is within the 'coastal zone'. The site is mapped as being within the 'coastal use area' and 'coastal environment area'.

As such, Clause 13 - *Development on land within the coastal environment area* and Clause 14 - *Development on land within the coastal use area* of the SEPP need to be taken into consideration in determining the development application. Considering the extent of the proposed works the proposal is not deemed to have any adverse impact on the access, overshadowing, amenity, or heritage values of the foreshore. The proposal is acceptable having regard to this policy.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

Clause 2.1 - Land Use Zones

The site is located in the B4 Mixed Use zone NLEP 2012, and the proposed development is permissible with development consent as 'retail premises' which is a type of 'commercial premises' and 'shop top housing'. The approved 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 proposed uses for the Stage 2 development accord with the zone objectives as it will provide a range of compatible commercial and residential land uses in a highly accessible location, which will support the revitalisation of the Newcastle City Centre.

The slight increase in building height and basement floor area as proposed by the modification is not likely to affect viability of the centre. Further the modification does not result in any change of use of the approved development.

Clause 4.3 - Height of Buildings

The 'Height of Buildings' Map specifies permissible building heights across the four-block site, using a range of site-specific building heights (to Australian Height Datum) ranging from RL24m to RL30m (refer to **Figure 1**).

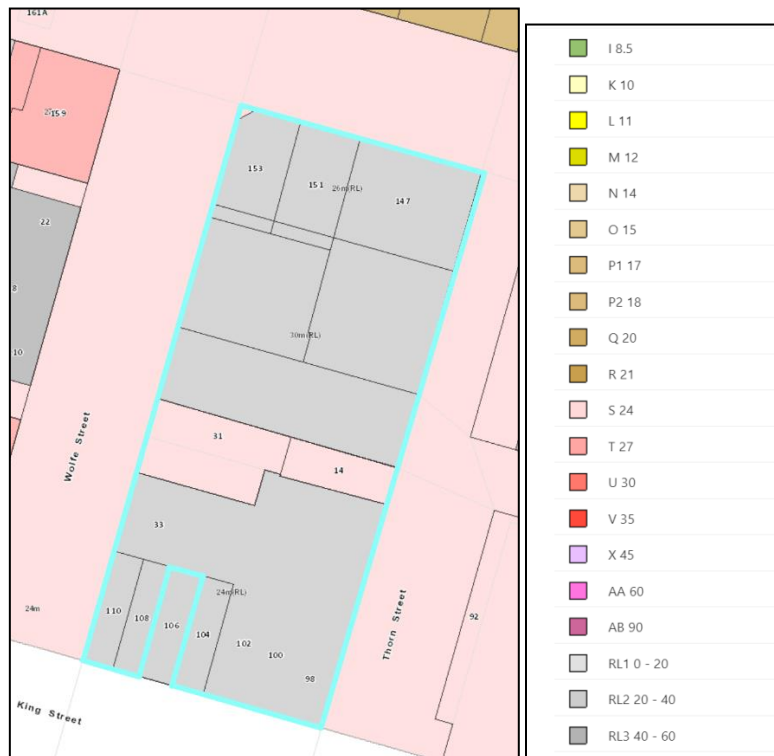


Figure 1: Extract of Height of Buildings Map showing permissible heights applying to the subject site (HOB_004K) effective 9/11/2018

As indicated in **Figure 1**, there are three different NLEP 2012 height controls applicable to Block 2 (northern, central, and southern). Except for the King Street terrace dwellings, the original development approved maximum building heights exceeding the NLEP 2012 height controls across the whole site. The original development was approved with a building height of RL33.6m (northern), RL31.4m (central) and RL30.1m (southern). Clause 7.5(6) of NLEP 2012 applies to the development and provides a 10% bonus to both building height and FSR. The original application was subject to a design excellence waiver granted by the NSW Government Architect and review by the then UDCG (Urban Design Consultative Group) and accordingly benefited from the 10% bonus provisions under Clause 7.5(6) NLEP. Subject to the provisions of Clause 7.5(6) the approved development exceeded the maximum building height limit by 19.2%, complies and 15.4% respectively.

The modification application proposes further increases to the proposed maximum building height, being RL33.8m (northern), RL31.8m (central) and RL31.25m (southern). The total amended height represents a maximum of 20.2% variation from the maximum height permitted under the NLEP 2012 (inclusive of the 10% height bonus applied under Clause 7.5(6) of the NLEP 2012), and a maximum increase of 1.15m above the approved height under DA2018/00354. The additional height stems from modifications sought to the overall height of lift overruns and mechanical screening.

Whilst there is no requirement to submit a request to vary a development standard for modifications to development consent, the objectives of development standard and controls remain relevant in the assessment of the proposed modification. Having regard to the objectives of Clause 4.3 and the relevant zone objectives contained in NLEP 2012, the scale of the development will continue to contribute towards the desired character in presenting a mixed-use development that provides both high density residential living and further opportunities for commercial and retail development in proximity to public transport.

The additional height will not result in unreasonable shadowing to adjoining development or to the public domain, allowing for continued amenity and solar access to these areas. The building will continue to make a positive contribution and will not result in excessive height or scale.

For these reasons, the proposal as modified remains consistent with the objectives of Clause 4.3.

Clause 4.4 - Floor Space Ratio

The 'FSR' Map confirms that a maximum FSR of 4:1 is permissible on the site. This permits a maximum *Gross Floor Area* (GFA) of 14,592m², based on a site area of 3,648m² for Block 2.

The approved building footprint is proposed to be increased under this modification, however, restricted within basement carpark levels '1' and '2'. GFA, as defined under NLEP 2012, excludes the floor area of car parking to meet any requirements of the consent authority including access to that car parking. The proposed additional floor area to basement carpark levels '1' and '2' accommodates surplus residential car parking, vehicle access, storage, and services.

Section 7.03 of NDCP 2012 requires a development of this nature to provide a total of 163 car parking spaces. The proposed enlargement and reconfiguration of the two basement levels have allowed an additional 21 car parking spaces to be provided. All 21 of these car parking spaces have been dedicated to the residential component of the development. This represents an overall increase from a total of 137 spaces to 158 spaces. As this figure is below the NDCP 2012 requirements, there is no additional FSR proposed.

Clause 4.6 - Exception to Development Standards

There is no requirement to submit a request to vary a development standard for a modification application. Clause 4.6 does not apply to the subject modification application.

Clause 5.10 - Heritage Conservation

Schedule 5, Part 1 of NLEP 2012 lists that the Stage 2 site is located within the Newcastle City Centre Heritage Conservation Area (Item C4). Block 2 also contains the former Lyrique Theatre on Wolfe Street (incorporating the former Masonic Hall and house at 98 King Street) as locally significant Item I423. The subject site is not State heritage listed. Several heritage items are located in the vicinity of the site, including the Christ Church Cathedral to the immediate south, which is listed on the State Heritage Register.

The approved development includes the following works:

- i) Conservation and adaptive reuse of the former Lyrique Theatre/Masonic Hall;
- ii) Conservation, adaptive reuse and alterations/additions to the terrace houses at 98-100, 102, 104, 108 and 110 King Street;
- iii) Retention of the facade of the former Royal Exchange (at 153 Hunter Street) and the Soul Pattinson Chemist building (at 151 Hunter Street) with vertical additions for residential use.

The original application was accompanied by a Heritage Impact Assessment and Conservation Management Plan prepared by City Plan, dated May 2018.

Under the proposed modifications, the existing footprints of the buildings are retained with the exception of additional floor area to basement car park levels '1' and '2', which is obscured below existing ground floor. The additional heights of buildings are minor and restricted to providing critical building infrastructure including lift overruns, plant equipment and mechanical screening. The additional built form will not detract any further from the existing heritage amenity of the surrounding area other than what has already been approved under the original application. Further, there are no changes to the already-assessed aspects with respect to historical archaeology and Aboriginal archaeology. The proposed modifications remain consistent with the objectives of this clause.

Clause 6.1 - Acid Sulphate Soils

The subject site is not identified as containing Acid Sulphate Soils (ASS). However, the subject site and proposed excavation area is within 500m of land containing Class 4 ASS with excavation within the subject site extending greater than 5m from ground level. The original application was supported by an Acid Sulphate Soils Management Plan prepared by Douglas Partners dated May 2018. The proposed modifications do not seek to extend the depth of excavation as already approved. Conditions of consent pertaining to the implementation of appropriate ASS management are to remain.

Clause 6.2 - Earthworks

It is noted that the site will require some minor additional earthworks, the level of earthworks proposed to facilitate the modified development is considered acceptable having regard to this clause and subject to the existing conditions of consent.

Part 7 Additional Local Provisions - Newcastle City Centre

The development is proposed on land located within the Newcastle City Centre and as such the controls of Part 7 apply. There are several requirements and objectives for development within the Newcastle City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence, and protecting the natural and cultural heritage of Newcastle. Noting that *Clause 7.5 Design Excellence (Newcastle City Centre)* is the only relevant Clause within this Part.

The Modification Application was considered at CN's Urban Design Review Panel (UDRP) on 29 September 2021. No objections from the panel members were raised and the Panel were generally supportive of all proposed amendments to the original design. As such, the proposal is consistent with the objectives of Part 7 of the NLEP 2012.

5.1.2 any draft environmental planning instrument that is or has been placed on public exhibition

Proposed Design and Place State Environmental Planning Policy (Design & Place SEPP)

The proposed Design and Place SEPP will bring together a range of considerations that impact the design of places in NSW and will give effect to the objectives of the EP&A Act 1979 and the Premier's Priorities for building a better environment. The Explanation of Intended Effect (EIE) was exhibited from 26 February to 28 April 2021. The EIE is broad and indicates that the proposed Design and Place SEPP applies to all scales of development including residential flat buildings.

Assessment of the proposal has considered character, context, and overall design principles in accordance with current policy. This assessment has determined that on merit the proposal is consistent with the sites context, character, and design principles. The proposal is consistent with the intent of the proposed Design and Place SEPP.

5.1.3 any development control plan

The main planning requirements of relevance in the Newcastle Development Control Plan 2012 (NDCP 2012) are discussed in detail below. An assessment has been undertaken of those matters relevant to the subject site and proposed land use having regard to S4.55(3) of the EP&A Act.

Residential Development - Section 3.03

The proposed modification does not include any amendments to the residential section of the approved development.

Commercial Uses - Section 3.10

The minor internal floor plan amendments to the ground floor retail premises including an increase to the Finished Floor Levels improve accessibility and enhance the relationship between the private and public domain. The retention of retail uses on the ground level of the development will provide an active street frontage to Hunter, Wolfe and Thorn Streets.

Flood Management - Section 4.01

The site is identified as being flood prone land. Flood management was considered under the original application. As the existing property risk is not increased or altered as a result of the modification and the application is acceptable with regards to flood management.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District. As the original application required integrated approval from the Subsidence Advisory NSW, the modification application was referred to Subsidence Advisory NSW for comment, revised General Terms of Approval were provided (refer to **Attachment C**).

Safety and Security - Section 4.04

The proposed development provides for passive surveillance of the street and communal areas from balconies, living areas and ground floor commercial space. The internal driveway design should ensure low speed traffic movements to facilitate pedestrian safety. Direct, secure access is available between the front entry, car parking areas, lifts, and stairs to the upper level of the buildings.

Social Impact - Section 4.05

The residential component remains unchanged, therefore continuing to support a diversity in housing options. The ground floorplate containing the commercial premises has been altered slightly reconfiguring the services, improving relationships at the street level between footpaths and retail spaces which is considered to be a positive social impact.

Soil Management - Section 5.01

Conditions of consent ensuring erosion and sediment control measures are in place for the entire construction period are to remain on the development consent (refer to **Attachment B**).

Land Contamination - Section 5.02

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

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Aboriginal Heritage - Section 5.04

An Aboriginal Cultural Heritage Assessment Report (ACHAR) prepared by Umwelt, dated April 2018, was submitted with the documentation for the original application. The ACHAR provides advice regarding the likely key Aboriginal and historical archaeological requirements and associated processes which will apply to any proposed future redevelopment of the subject site, in addition to key risks. As part of the assessment of the original application, an appropriate condition of consent was included requiring an Aboriginal Heritage Impact Permit (AHIP) be obtained from the Office of Environment and Heritage (OEH) under Part 6 of the *National Parks and Wildlife Act 1974* prior to the commencement of ground disturbance works, this condition is to remain under this modification (refer to **Attachment C**).

Heritage Items - Section 5.05

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

Archaeological Management - Section 5.06

The subject sites are identified as indicative archaeological sites as prescribed by *Newcastle Archaeological Management Plan 1997*. Appropriate conditions of consent are retained outlining the process and advice of the Heritage Council of NSW in the event an archaeological relic is found during site works. Further, the condition of consent required the obtention of a s.140 application under the Heritage Act 1977 prior to any ground disturbance works (refer to **Attachment C**).

Newcastle City Centre - Section 6.01

The subject site is located within the Newcastle City Centre within the 'East End' precinct. Limited controls under Section 6.01 are of direct relevance as requirements relating to the scale and position of new development have already been assessed as part of the original application. Considering the minor scale of physical works proposed, the application is consistent with the relevant performance criteria of this control.

Heritage Conservation Areas - Section 6.02

The subject site is located within the Newcastle City Centre Heritage Conservation Area (Item C4). Limited controls under Section 6.02 are of direct relevance as requirements relating to the scale and position of new development have already been assessed as part of the original application.

Landscape, Open Space and Visual Amenity - Section 7.02

All landscaped areas have been retained as part of the proposed modifications. The roof top communal space has been reconfigured, however, retaining appropriate space for soft planting.

Traffic, Parking and Access - Section 7.03

Parking

An additional 20 stacked parking spaces are proposed under this modification comprising 10 spaces on basement levels '1' and '2', respectively. The accessible car parking spaces have also been relocated to be in better proximity to lifts, this results in an additional car parking space. This represents an overall increase of 21 car parking spaces from a total of 137 spaces to 158 spaces. All 21 additional car parking spaces have been dedicated to the residential component of the development.

An additional condition of consent will require that the stacked car parking spaces be assigned to common units to facilitate efficient and convenient operation of these spaces. These stacked spaces are located clear of the car park entry / exit driveway and therefore all vehicle manoeuvring associated with the operation of these spaces should be confined to the site.

While CN's strategic direction discourages the oversupply of car parking above the NDCP 2012 rates to promote alternate modes of transport to the private motor vehicle, the parking increase is considered relatively minor and therefore no objection is raised to the provision of the additional 21 spaces.

Access

Amendments are also proposed to the driveway entry/exit comprising separation of the basement entry/exit from the loading dock area via the erection of a block wall at street level and removal of the central median for the light vehicle entry/exit driveway.

Under *AS 2890.1 – Parking Facilities* a concrete central median for the driveway is required to separate vehicles entering and exiting the underground carpark. It is to be noted that the standard considers the potential for vehicle conflict and therefore recommends a central median for car parks in excess of 100 spaces. While it is acknowledged that the car park exceeds 100 spaces the potential for vehicle conflict is considered to be relatively low on the basis that the car park is private facility and predominantly used by residents and staff associated with the premise. Occupants of the car park would therefore be considered to be relatively familiar with the constraints of the site thereby reducing the potential for vehicle conflict and permitting the option of the provision of central line marking to separate entry/exit traffic flows rather than the installation of a concrete central median.

Conditions C19, C27 and E22 are required to be amended under this modification to refer to the updated car parking calculations. An additional condition is also recommended, as mentioned above, requiring the stacked car parking spaces to be assigned to common units (refer to **Attachment C**).

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 works do not increase the roof area and the amount of hard surface on site is to remain unchanged. Stormwater management requirements remain consistent with the assessment of the original development.

Waste Management - Section 7.08

Demolition and waste management are subject to conditions of consent and are not proposed to be amended under this application (refer to **Attachment C**).

A ventilated waste storage room is to be retained as part of the proposed ground floorplate amendments. Conditions of consent require occupational waste collection arrangements to be submitted to CN prior to the issue of an Occupation Certificate. (refer to **Attachment C**).

Development Contributions

The *EP&A Act* enables CN to levy contributions for public amenities and services. The development attracts a development contribution to CN, as detailed in CN's Development Contributions Plans.

A condition of consent was included in the original application requiring this contribution to be paid prior to the issue of a Construction Certificate (refer **Attachment C**).

5.1.4 any planning agreement

No planning agreements are relevant to the proposal.

5.1.5 the regulations

The application has been considered pursuant to the provisions of the EP&A Act requirement to comply 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.

5.1.6 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 proposed modification will not result in any significant impacts to the surrounding environment. The proposed modification facilitates appropriate development of the site with the modification justified on the basis of supplying critical infrastructure, greater accessibility and interaction with public domain to an existing approved development.

The minor increase in height has been carefully designed to balance functionality with minimising potential visual impacts and impacts on view sharing and overshadowing.

The proposed modification will not impact the use of the building as 'retail premises' and 'shop top housing'. The modified development would maintain consistency with the B4 Mixed Use zone objectives as it proposes to integrate suitable business development with high density residential development.

The modified development will result in the orderly economic development of the site for purposes for which it is zoned. The development, as approved and modified, will benefit the community through provision of tourist and visitor accommodation in a city-central location and develop the site to its full potential with a high-quality design.

5.1.7 the suitability of the site for the development

The site is suitable for the proposed development as it is consistent with the objectives of the B4 Mixed Use zone under the NLEP 2012 and generally compliant with relevant controls of NDCP 2012. This site can facilitate development that is in keeping with the mixed-use characteristics of Newcastle.

The proposed development is located in the City Centre. The proximity of the site to existing services and amenities, public transport makes this a suitable site for a mixed-use development consisting of retail premises and shop top housing, in turn benefiting the community, both socially and economically.

The constraints of the site have been considered in the proposed development, which includes flooding, mine subsidence and land contamination. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development. The redevelopment of the site is therefore considered to result in an improved outcome for the site.

5.1.8 any submissions made in accordance with this Act or the regulations – as discussed above.

The modification application was not required to be placed on public exhibition, in accordance with the EP&A Act, *Environmental Planning & Assessment Regulations 2000* (EP&A Regs) and CN's CPP.

5.1.9 the public interest

The proposed modification is a suitable and planned use of the site, will not result in any unacceptable adverse impacts upon the natural or built environments, and its approval is within the public interest.

The proposed development is consistent with the aims and controls contained in NLEP 2012 and the NDCP 2012 and other relevant environmental planning instruments discussed within this report. The development is consistent with the objectives of the B4 Mixed Use zone.

The proposed development will not have a significant impact on the natural and built environment, allowing the amenity of adjoining commercial and residential premises to be retained. The development is in the public interest as it provides additional housing diversity, employment and recreation within the established City Centre precinct and encourages greater viability to the existing night-time economy.

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 development is in the public interest and will allow for the orderly and economic development of the site.

Further, the modifications to the concept development consent (DA2017/00701) facilitated by this application are in the public interest.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under Section 4.15(1) of the EP&A Act and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Item 2 Attachment A: Submitted Plans - 147, 151, 154 Hunter Street; 98, 100, 104, 110 King Street; 15, 21, 31, 33 Wolfe Street; 14 Thorn Street Newcastle

Item 2 Attachment B: Draft Schedule of Conditions (Modified Conditions for DA2017/00701) - 147, 151, 154 Hunter Street; 98, 100, 104, 110 King Street; 15, 21, 31, 33 Wolfe Street; 14 Thorn Street Newcastle

Item 2 Attachment C: Draft Schedule of Conditions - 147, 151, 154 Hunter Street; 98, 100, 104, 110 King Street; 15, 21, 31, 33 Wolfe Street; 14 Thorn Street Newcastle

Item 2 Attachment D: Processing Chronology - 147, 151, 154 Hunter Street; 98, 100, 104, 110 King Street; 15, 21, 31, 33 Wolfe Street; 14 Thorn Street Newcastle

Item 2 Attachments A - D distributed under separate cover

ITEM-3 DAC 15/02/22 - STATEMENT OF EXPECTATION - MINISTERIAL DIRECTION

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE AND CHIEF FINANCIAL OFFICER / MANAGER REGULATORY, PLANNING AND ASSESSMENT

PURPOSE

To report on the Ministerial Order issued on the 26 November 2021, Environmental Planning and Assessment (Statement of Expectations) Order 2021.

RECOMMENDATION

Vote by division

That the Development Applications Committee:

- 1 Receives the report on the Ministerial Order Environmental Planning and Assessment (Statement of Expectations) Order 2021 at **Attachment A**.

KEY ISSUES

- 2 On the 26 November 2021, the Minister for Planning and Public Spaces issued a Ministerial Order, Environmental Planning and Assessment (Statement of Expectations) Order 2021 at Attachment A, to all Councils in NSW. The Order commenced on the day it was published on the NSW Planning Portal, 26 November 2021.
- 3 The object of the Order is to set expectations for all councils in relation to their performance on a range of planning and development functions under the Environmental Planning and Assessment Act 1979 (EP&A Act).
- 4 Table One summarises the Minister's expectations and provides commentary on City of Newcastle's (CN) performance against the criteria in the 21/22 financial year (FY).

Table One

Expectation	Performance Measurement	Commentary on CN's performance in 21/22 FY
1. Development Assessment	a) Assessment Reports for regionally significant Development Applications (DAs) are to be referred to the Regional Panel for	Four DAs have been referred to the Regional Panel, the net assessment time for the applications was

CITY OF NEWCASTLE

Expectation	Performance Measurement	Commentary on CN's performance in 21/22 FY
	determination 'as soon as practical' (ASAP) and no more than 250 days from the date of lodgment.	154 days.
	b) Determine DAs ASAP and no longer than 180 days from lodgment date.	CN has no DAs that are currently undetermined that exceed 180 net days.
	c) Report a DA when required to the Local Planning Panel for determination within 4 weeks of a request from the panel chair.	CN is not required to have a Local Planning Panel.
2.Planning Proposal (PP)	a) Make a decision to support (or not) a proponent led rezoning ASAP or within 90 days.	CN currently has no proponent led rezoning's that have not had a decision made on them.
	b) Submit a proponent led PP for a Gateway determination ASAP and no longer than 90 days after indicating support for the PP.	The proponent led PP for Lingard Hospital was submitted to the DPIE on the 13 January 2022, within the required 90 days of Council support. There are no PP's awaiting submission for Gateway determination
	c) Exhibit a PP or hold a public hearing in line with the conditions of the Gateway determination	All PPs are exhibited, or a hearing held in accordance with any Gateway determination.
	d) Consider or respond to submissions on a draft Local Environmental Plan (LEP) in accordance with their Community Participation Plan (CPP).	All submissions on PPs are considered and responded to in accordance with CN's CPP.
	e) Make a LEP, that has been delegated to Council, in the timeframes in the Gateway Determination.	All LEP amendments are made within the timeframes specified in the Gateway Determination.
3.Strategic Planning	a) Prepare a Local Strategic Planning Statement (LSPS)	CN's updated LSPS meets the requirements of the Act

Expectation	Performance Measurement	Commentary on CN's performance in 21/22 FY
Obligations	that meets the requirements of the Act.	and was published in March 2021.
	b) Undertake the required review of the LSPS.	The LSPS is scheduled to be reviewed every 5 years. (The required review is every 7 years under the EP&A Act, which we believe will be amended to 5 years. We will likely align with CSP reviews, being every 4 years).
	c) Give effect to a regional plan applying to CN, including carry out a review of the LEP under the EP&A Act.	The Hunter Regional Plan is considered in all strategic planning decisions. When the draft Hunter Regional Plan 2041 is made, the LEP will be reviewed to ensure it gives effect to the updated Hunter Regional Plan 2041.
	d) Give effect to adopted local planning strategy any approval requirements issued by the Department.	The LSPS is considered in all strategic planning decisions. The Newcastle LEP gives effect to the LSPS.
	e) Consider State Environmental Planning Policies, or other strategies, policies of the Government, the Minister or the DPIE concerning planning and development matters.	All State Environmental Planning Policies, or other strategies, policies of the Government, the Minister or the DPIE are considered in planning and development matters.

- 5 Under Clause 9.6 (1)(b) of the EP&A Act, the Minister for Planning and Public Spaces (Minister) may appoint a planning administrator or confer functions on a regional panel to exercise the functions of a council, *"if the Minister is of the opinion that the performance of a council in dealing with planning and development matters (or any particular class of such matters) is unsatisfactory because of the manner in which the council has dealt with those matters, the time taken or in any other respect"*.

- 6 The appointment of a planning administrator or the transfer of functions to a regional panel can be made under Clause 9.6(9) of the EPA & Act, if the Minister has provided heads of consideration, by order published on the NSW planning portal or on the NSW legislation website, provided heads of consideration for the exercise of power and has taken any of those heads of consideration that are relevant into account.
- 7 Clause 4 of the Order contains the heads of consideration that the Minister must consider if enacting clause 9.6 (9) and appointing an administrator or conferring to a regional panel. As evidenced in Table One CN is considered to be performing satisfactorily against the Ministerial expectations, so this Clause is not expected to be applied to Council.

FINANCIAL IMPACT

- 8 Nil.

COMMUNITY STRATEGIC PLAN ALIGNMENT

- 9 This report aligns with the following strategic directions of the Newcastle Community Strategic Plan:

Liveable Built Environment

- 5.1b Ensure our suburbs are preserved, enhanced and promoted, while also creating opportunities for growth.
- 5.1c Facilitate well designed and appropriate scale development that complements Newcastle's unique character.
- 5.2b Plan for an urban environment that promotes active and healthy communities.
- 5.4b Plan, provide and manage infrastructure that continues to meet community needs

Open and Collaborative Leadership

- 7.2a Conduct Council business in an open, transparent and accountable manner.
- 7.3b Provide clear, consistent, accessible and relevant information to the community.

IMPLEMENTATION PLAN / IMPLICATIONS

- 10 CN's Regulatory, Planning and Assessment (RPA) team currently monitors the performance against the Minister's expectations in undertaking its daily operations.

- 11 Application data (for example relating to Development Applications) can be obtained by the Department of Planning, Industry and Environment (DPIE), via the Planning Portal.

RISK ASSESSMENT AND MITIGATION

- 12 Performance against the expectations outlined in the Minister's order is reviewed on a monthly basis by the Manager of RPA, reducing the risk of the expectations of the Minister not being met.
- 13 In the unlikely event that the Minister exercised their power under section 9.6 (1)(b) it would have an adverse impact on CN's reputation.

RELATED PREVIOUS DECISIONS

- 14 Nil

CONSULTATION

- 15 No consultation occurred between the DPIE and CN about the introduction of the Ministerial Order.

BACKGROUND

- 16 In the letter dated 15 December 2021 the Secretary of the DPIE, in **Attachment B**, outlines the reasons for the order and the importance of an efficient and effective planning system in supporting a strong economy and delivering better places.
- 17 Similar performance expectations, as those outlined in the Order have been placed on the DPIE and other agencies with approval roles in the planning system.
- 18 CN is currently participating in a Pilot Program for the assessment of Regional Significant DAs, where similar performance expectations have been set and being met for the assessment of regional significant DAs.
- 19 The Pilot Program has identified difficulties to some performance expectations and recommendations to the DPIE has been provided as to how these can be overcome.

OPTIONS

Option 1

- 20 The recommendation as at Paragraph 1. This is the recommended option.

Option 2

- 21 Council resolves not to receive this report. This is not the recommended option.

REFERENCES

ATTACHMENTS

Item 3 Attachment A: Ministerial Order Environmental Planning and Assessment (Statement of Expectations) Order 2021

Item 3 Attachment B: Department of Planning, Industry and Environment Secretary – Notification of Ministerial Order

Item 3 Attachment A Ministerial Order Environmental Planning and Assessment (Statement of Expectations) Order 2021

Attachment A

Environmental Planning and Assessment (Statement of Expectations) Order 2021

I, Rob Stokes, the Minister for Planning and Public Spaces, make this Order under section 9.6(9) of the *Environmental Planning and Assessment Act 1979*.



The Hon. Rob Stokes MP
Minister for Planning and Public Spaces

Dated: 26th November, 2021.

Explanatory note

The object of this Order is to set expectation for councils in relation to their performance of a range of planning and development functions under the *Environmental Planning and Assessment Act 1979*. If a council is found not to be meeting these expectations, the Minister can take these matters into consideration as part of determining if it is appropriate to appoint a planning administrator or regional panel to exercise a council's functions. It is made under section 9.6(9) of the Act.

Environmental Planning and Assessment (Statement of Expectations) Order 2021

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Environmental Planning and Assessment (Statement of Expectations) Order 2021

Environmental Planning and Assessment (Statement of Expectations) Order 2021

under the

Environmental Planning and Assessment Act 1979

Part 1 Preliminary

1 Name of Order

This Order is the *Environmental Planning and Assessment (Statement of Expectations) Order 2021*.

2 Commencement

This Order commences on the day it is published on the NSW Planning Portal.

3 Definitions

(1) In this Order—

the Act means the *Environmental Planning and Assessment Act 1979*

Department means the Department of Planning, Industry and Environment.

Gateway determination means a determination made by the Minister (or delegate) under section 3.34 of the Act.

LEP means a local environmental plan.

LSPS means a local strategic planning statement.

Minister means the Minister for Planning and Public Spaces.

Minister's expectations means the expectations of the Minister in relation to the performance of a council in dealing with planning and development matters, as set out in clause 5 of this Order.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Order.

(2) Words used in this Order have the same meaning as words used in the Act.

(3) Notes included in this Order do not form part of this Order.

Part 2 Planning and development matters

4 Heads of consideration

The heads of consideration to be taken into consideration in exercising the power under s.9.6(1)(b) of the Act are:

- (a) Whether or not the Council has failed to meet the Minister's expectations in relation to council performance.
- (b) The frequency and degree to which the council has performed, or failed to perform, in accordance with the Minister's expectations.
- (c) The range and type of planning and development matters in respect of which the council has performed, or failed to perform, in accordance with the Minister's expectations.
- (d) Whether or not an appointment under s.9.6(1)(b) should be made in relation to one or more of a particular class of planning and development matter, or all planning and development matters dealt with by the council.
- (e) The effect of any caretaker period preventing a council's performance in dealing with the planning and development matters (or any particular class of such matters) as set out in clause 5.
- (f) The public interest.

5 Minister's Expectations

(1) Development assessment

A council should:

- (a) prepare assessment reports for a regionally significant development application and refer it to the relevant Regional Panel as soon as practical and no longer than 250 days from lodgement.
- (b) determine a development application for which it is the consent authority as soon as practical and no longer than 180 days from lodgement.
- (c) report a development application for which its functions as a consent authority are exercisable by the local planning panel to the panel for determination within 4 weeks of a request from the panel chair.

(2) Planning proposals

A council should:

- (a) Make a decision as to whether to support or not a proponent led planning proposal (rezoning) as soon as practical and no longer than 90 days, or
- (b) submit a proponent led planning proposal for a Gateway determination as soon as practical and no longer than 90 days after having indicated its support for the planning proposal,
- (c) publicly exhibit a planning proposal or hold a public hearing in line with the conditions of a Gateway determination,

Environmental Planning and Assessment (Statement of Expectations) Order 2021

- (d) consider or respond to public submissions on a draft LEP in accordance with their community participation plan,
 - (e) make a LEP, which has been delegated to the Council, in the timeframes specified in a Gateway determination.
- (3) **Strategic planning obligations**
A council should :
- (a) prepare a LSPS for its local government area that meets the requirements for these statements under the Act,
 - (b) undertake the required review of its LSPS,
 - (c) give effect to a regional and/or district strategic plan applying to the LGA, including carry out a review of the LEP under section 3.8(3) of the Act,
 - (d) give effect to an adopted local planning strategy (such as a Local Housing Strategy), and any approval requirements issued by the Department,
 - (e) consider State Environmental Planning Policies or other strategies and policies of the Government, the Minister or the Department concerning planning and development matters.

Item 3 Attachment B Department of Planning, Industry and Environment – Notification of Ministerial Order

Attachment B



Planning,
Industry &
Environment

Office of the Secretary

15 December 2021

Dear General Manager

I am writing to advise you that the Hon. Rob Stokes, Minister for Planning and Public Spaces and Minister for Transport and Roads has recently made the Environmental Planning and Assessment (Statement of Expectations) Order 2021.

The Order sets out clear expectations as to what constitutes an efficient and effective planning system and one that business and the community can have confidence in. It sets benchmarks for council performance in the areas of development assessment, planning proposals and strategic planning. A copy of this Order is attached.

You will also be aware that the Government has placed similar performance expectations on the Department of Planning, Industry and Environment (the Department) and other agencies with approval roles in the planning system. There are also new requirements on industry to improve the timeliness and quality of development applications. More information about these performance expectations and recent planning system reforms is available at www.planning.nsw.gov.au/Policy-and-Legislation/Planning-reforms/Planning-Reform-Action-Plan.

During the last two years, councils and government agencies have been working hard to ensure we have an efficient and effective planning system that is able to support the state in its economic recovery from the COVID-19 pandemic. It is the planning system that has allowed businesses to adapt and thrive, that has given people the confidence to invest in New South Wales and that has supported jobs across the economy.

I wish to acknowledge how hard councils have worked during the pandemic to ensure timely decision-making and in supporting the significant amount of planning reform that has occurred. New South Wales now has a planning system that is managed digitally through ePlanning, which makes consent authorities and Government agencies more accountable for their performance. We also have a planning system that is increasingly strategically led and where the community can have confidence in the planning decisions that are being made.

As you are aware, slow decision-making, whether by Government agencies or a council, is the enemy of public confidence in the planning system and leads to bad economic, social and environmental outcomes. The work that we have all done over the last two years has put the planning system in good stead and has allowed for new performance indicators to be set. The performance indicators outlined in the Minister's Order should not be seen as aspirational but as achievable and critical to the effective functioning of the planning system.

The Minister has decided to outline his clear expectations for the planning system in the attached Order so that incoming councillors are aware of the importance of an efficient and effective planning system in supporting a strong economy and delivering better places. It is also important to note that for the first time incoming councillors will be provided an induction on the planning and their role in ensuring the planning system as efficiently as possible. Accordingly, I would encourage you to table this letter and Order at your first available council meeting.

I look forward to continuing to work productively with you in meeting these performance indicators. As always, the Department is here to assist you if you feel you have any issues in meeting any of these expectations. As always, feel free to reach out to the Planning Delivery Unit or the Department's regional planning teams if your council needs further support or guidance. By continuing to work together, I am sure we will be able to build a stronger, more resilient economy and a planning system that meets the expectations of business and the community.

Yours sincerely



Kiersten Fishburn
Secretary

Encl. Environmental Planning and Assessment (Statement of Expectations) Order 2021