



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 6 December 2022

**TIME:** 6.00pm

**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**

30 November 2022

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<b>DEVELOPMENT APPLICATIONS COMMITTEE</b> <b>6 December 2022</b>
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**NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER**

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 15 NOVEMBER 2022**

**RECOMMENDATION**

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

**ATTACHMENTS**

**Attachment A:** 221115 Development Applications Committee

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

**CITY OF NEWCASTLE**

**Minutes of the Development Applications Committee Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West on Tuesday 15 November 2022 at 7.20pm.**

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**PRESENT**

The Lord Mayor (Councillor N Nelmes), Councillors E Adamczyk, J Barrie, J Church, D Clausen, C Duncan, J Mackenzie, C McCabe, C Pull, D Richardson, K Wark, P Winney-Baartz and M Wood.

**IN ATTENDANCE**

J Bath (Chief Executive Officer), J Rigby (Executive Director City Infrastructure), D Clarke (Executive Director Corporate Services), L Duffy (Acting Executive Director Creative & Community Services), M Bisson (Interim Executive Director Planning & Environment), S Moore (Manager Finance, Property & Performance), E Kolatchew (Manager Legal & Governance), P Emmett (Development Assessment Section Manager), A Knowles (Councillor Services/Meeting Support), R Garcia (Information Technology and AV Support) and W Haddock (Information Technology).

**REQUEST TO ATTEND VIA AUDIO VISUAL LINK**

Nil.

**APOLOGIES**

Nil.

**DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS**

Nil.

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 18 OCTOBER 2022**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Barrie

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

**Carried  
unanimously**

**DEVELOPMENT APPLICATIONS**

**ITEM-19                    DAC 15/11/22 - 292 MAITLAND ROAD, MAYFIELD -  
DA2021/01338 - SHOP TOP HOUSING - INCLUDING  
DEMOLITION OF EXISTING STRUCTURES**

**MOTION**

Moved by Cr Clausen, seconded by Cr Winney-Baartz

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and
- B. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out,
- C. That DA2021/01338 for 'shop top housing – including demolition of existing structures' at 292 Maitland Road Mayfield, be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- D. That those persons who made a submission be advised of City of Newcastle's determination.

**For the Motion:**

Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Church, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Wark, Winney-Baartz and Wood.

**Against the Motion:**

Nil.

**Carried  
unanimously**

**ITEM-20                    DAC 15/11/22 - 53 RODGERS STREET CARRINGTON -  
DA2022/00587 - DWELLING HOUSE - ALTERATIONS AND  
ADDITIONS INCLUDING DEMOLITION**

**MOTION**

Moved by Cr Adamczyk, seconded by Cr Mackenzie

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the

## CITY OF NEWCASTLE

objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

- B. That DA2022/00587 for alterations and additions including demolition to the existing dwelling at 53 Rodgers Street Carrington be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Church, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Wark, Winney-Baartz and Wood.

**Against the Motion:** Nil.

**Carried**

**ITEM-21                    DAC 15/11/22 - 9 WILLIAM STREET, MAYFIELD -  
DA2022/00532 - DUAL OCCUPANCY - INCLUDING  
DEMOLITION OF EXISTING STRUCTURES**

### **MOTION**

Moved by Cr Clausen, seconded by Cr Mackenzie

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2022/00532 for construction of a dual occupancy, including demolition of existing structures at 9 William Street Mayfield be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Church, Clausen, Duncan, Mackenzie, McCabe, Pull, Richardson, Wark, Winney-Baartz and Wood.

**Against the Motion:** Nil.

**Carried**

**The meeting concluded at 7.31pm.**

**DEVELOPMENT APPLICATIONS**

**ITEM-22                    DAC 06/12/22 - 20 SUMMER PLACE MEREWETHER HEIGHTS - DA2021/01648 - DWELLING HOUSE - ALTERATIONS, ADDITIONS AND ANCILLARY DEVELOPMENT (POOL AND RETAINING WALLS) INCLUDING DEMOLITION**

**APPLICANT:                BLENCOWE DESIGN  
OWNER:                    J A VAZEY & R S VAZEY  
REPORT BY:                PLANNING & ENVIRONMENT  
CONTACT:                 INTERIM EXECUTIVE DIRECTOR, PLANNING & ENVIRONMENT / ACTING MANAGER, PLANNING, TRANSPORT & REGULATION**

**PART I**

**PURPOSE**

A development application (DA2021/01648) has been received seeking consent for dwelling house – alterations, additions and ancillary development (pool and retaining walls) including demolition at 20 Summer Place Merewether Heights.

The submitted application was assigned to Development Officer, Fiona Stewart, for assessment.

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



**Subject Land: 20 Summer Place Merewether Heights**

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

The proposed development was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP) and no submissions have been received in response.



This report assesses the proposal against relevant State legislation, Regional and Local Environmental Planning Instruments and Policies, in accordance with Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EPA&A1979).

### Issues

- 1) The proposed variation to the Height of Buildings development standard, under 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*

- 1) That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density zone in which the development is proposed to be carried out; and
- 2) That DA2021/01648 for dwelling house – alterations, additions and ancillary development (pool and retaining walls) including demolition at 20 Summer Place, Merewether Heights be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

### Political Donation / Gift Declaration

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject site is known as 20 Summer Place, Merewether Heights and has a legal description of Lot 343 in Deposited Plan 237590. The site is located on the northern side of Summer Place, Merewether Heights within an established residential area. The site is on the low side of the street, with vehicular accommodation on site provided by an existing double garage located adjacent to the street frontage. The site is generally regular in shape and slopes steeply, over approx. 15m, from the street towards the rear boundary. The site has a boundary of approximately 18.6m to Summer Place and a total area of 632.8m<sup>2</sup>.

The property is currently occupied by a two-storey dwelling which steps down to the rear in line with the site topography, occupying only the front half of the site with extensive tree cover and tiered landscaped gardens to the rear. Existing development on adjoining sites comprises dwelling houses of varying age and architectural style, designed to suit the steep topography of the locality. Opposite the site is the rear boundary of Merewether Heights Public School.

### 2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to the existing two-storey dwelling (divided into two stages of construction), including:

#### Stage 1

- I) New two-storey addition to the rear of the existing dwelling including internal alterations over the ground and lower ground levels;
- II) Provision of a new storage area excavated under the existing garage; and
- III) New deck and plunge pool to the rear at lower ground level.

#### Stage 2

- I) Addition atop the existing dwelling to comprise a new first floor level;
- II) Roof pitch of the existing garage amended and garage reclad; and
- III) Provision of a new deck to the front of the existing ground floor level.

Amended plans have been submitted during assessment of the application in response to clarification sought by CN officers regarding building heights proposed.

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

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

### **3.0 PUBLIC NOTIFICATION**

The original application was publicly notified for a period of 38 days between 13 December 2021 and 20 January 2022 in accordance with CN's Community Participation Plan (CPP). No submissions were received in response. It is noted, the amended plans submitted by the application did not require notification in accordance with the CPP.

### **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 (Resilience and Hazards) 2021**

Chapter 4 Remediation of Land, Clause 4.6 of the SEPP 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 (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 the NLEP 2012. The proposed development is defined as alterations and additions to a 'dwelling house' 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, which are:

- I) To provide for the housing needs of the community within a low-density residential environment.
- II) To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- III) To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.

#### Clause 2.7 - Demolition Requires Development Consent

The proposal includes partial demolition of existing structures on the site to facilitate the works proposed. 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

Under the NLEP 2012 the site has a maximum height of buildings development standard of 8.5m. The proposed development will result in a maximum building height of 9.497m, equating to an exceedance of 0.997m or 11.7% above the height of buildings development standard for the subject site.

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

#### Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 0.6:1. The submitted FSR is approximately 0.46:1 and complies with this requirement.

#### Clause 4.6 - Exceptions to Development Standards

The applicant has submitted a written request that seeks to vary the Height of Buildings (Clause 4.3) development standard in accordance with Clause 4.6 of the NLEP 2012.

Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard.

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 reaches a maximum height of 9.497m, which exceeds the maximum height of buildings development standard for the site by 11.7%. 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 'Clause 4.6 Variation: HOB', prepared by SWS Lawyers (dated 25 October 2022) **Attachment D** constitutes a written request for the purposes of Clause 4.6(3).

There are five circumstances established by *Wehbe v Pittwater Council* [2007] NSWLEC 827 in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary.

The applicant's clause 4.6 Variation Request written response seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable. The applicant's Variation Request addresses Clause 4.6 (3)(a), as follows:

*'Compliance with the development standard is unreasonable given the following circumstances of this proposal:*

- a) *The proposed heights area a natural response to the existing (steep) topography of the site, which provides a fall of approximately 10 meters across the development footprint. The topography has informed the location of height across the entire site.*
- b) *The proposal from the streetscape presents as a single storey dwelling.*
- c) *The Merewether Heights Public Primary School is located on the opposite side of Summer Place and there is no issue of view loss raised by the proposed development.*
- d) *The proposal follows the natural (steep) topography. Height controls applied to development on sites with relatively moderate slopes are fairly straight forward. A rigid application of height control on steep slopes is more fraught. The design is a pragmatic and holistic response to the natural topography of the site.*
- e) *The small existing excavation on site should be ignored with respect to the "existing ground level" baseline as it creates an anomaly that is not easily read in the context of the whole design. The height control for the proposed development should be read in relation to the overall topography [see Bettar v Council of the City of Sydney (2014) NSWLEC 1070] (Bettar). In Bettar, Commissioner O'Neil found that:
  - i) *"As one of the purposes of the development standard is to relate the proposal to its context, it follows that the determination of the existing ground level should bear some relationship to the overall topography that includes the site" [37].*
  - ii) *Council's expert proffered the preferred method of determining existing ground level, as the "level of the footpath at the boundary bears a relationship to the context and overall topography that includes the site and remains relevant once the existing building is demolished" [41]. The Bettar Case approach to defining the existing ground level has been relied on in a number of subsequent cases, where existing excavation or a localised anomaly would lead to absurd height-plane distortions.**
- f) *An overly rigid application of the height control on this steep topography could have resulted in an overly stratified and stepped building form that would not result in a reasonable internal amenity outcome for the occupants.*
- g) *The design provides for street-level access to the dwelling which will assist disabled access for visitors and occupants well into the future.*
- h) *Ostensibly the height exceedance is limited to the north-facing section of the proposed First Floor with all of the rest of the proposed built form being contained within the height envelope.*

- i) *The rear of the subject site has an established garden and provides a natural screening of the existing dwelling. That garden will be maintained as an important element of the whole amenity of the current use of the property.*
- j) *Although there is a public pedestrian access located at the eastern boundary of the property, the perception of the height exceedance from that pedestrian access or from Summer Place would be almost imperceptible.*

The First-Floor addition to the Western Elevation is also stepped to give the building better articulation and mitigate the appearance of bulk and scale massing to the adjoining property at 18 Summer Place.

- a) *The First Floor roof design also includes louvered windows to provide for cross-ventilation to reduce the need for air-conditioning.*
- b) *The combination of the steep topography and the existing and mature landscaping combine to prevent any real wide-field appreciation of the proposed built form from the public domain or from adjoining and nearby development.*
- c) *Additionally, the scale of the proposed development will be difficult to read from the public domain (public pedestrian path) because of the well-established landscaping.*
- d) *The bulk and scale will not be of the same stark magnitude as the existing development at 22 Summer Place (which presents as a 4-storey building).*
- e) *There remains a setback of 15+ metres to the lower adjoining dwelling at 10 Takari Place (which is also orientated to the north in any event).*
- f) *The contravention of the height standard does not raise any matter of State or Regional planning significance.*
- g) *There is no public benefit in maintaining a rigid application of the development standard in the circumstances in the context of this proposal. It would be both unreasonable and unnecessary.'*

#### 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 locality and streetscape. Furthermore, the proposal for a single dwelling house development is consistent with the low-density objectives of the land.

The proposed variation to the development standard does not result in any undue adverse environmental impacts, including impacts on adjacent properties in terms of bulk, scale, overshadowing or 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 in the circumstances of the case.

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

In Initial Action, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole. The applicant's response to Clause 4.6(3)(b) provides the following specific environmental planning grounds to justify the breach of the standard:

*'There are sufficient environmental planning grounds to justify contravening the development standard as the proposed development allows design improvements to the existing development in the following ways:*

- a) *The design is stepped and is a reasonable response to the very steep topography while still retaining reasonable internal building amenity;*
- b) *There is no compromise of the public interest as the proposed design is difficult to rear from any public, adjoining or nearby vantage points;*
- c) *The design represents an excellent design outcome for the area and is consistent with, and complements, nearby existing development;*
- d) *The design proposes a renovation of a fairly bland 80/90s dwelling and elevates the design outcomes for the whole property; and*
- e) *The north-south orientation of the site, means that there is no appreciable solar-impact on the adjoining property to the west.'*

CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the additional 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 relevant 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(4)(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 objectives 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 is of an appropriate scale which is consistent with the desired built form within the established centres hierarchy. The development for a single detached dwelling that steps down the site in line with the existing typography, provides for generous separation to adjacent dwellings, allowing for daylight access to all development in the locality and the public domain.

*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 dwelling form complementary to the low-density residential environment. The development type is also a permissible development within the land use 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 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 states of satisfaction required by 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 proposed building height is acceptable and therefore that strict compliance with the prescribed height of buildings would be unreasonable. The Clause 4.6 variation request is supported.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils and the proposed development is considered satisfactory in this regard, given only minor earthworks proposed.

Clause 6.2 - Earthworks

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

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

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

**Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect (EIE)**

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 and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.

### 5.3 Any development control plan

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

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted NDCP 2012 chapters include savings provisions to the following effect: 'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.'

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

The main planning requirements of relevance in the NDCP 2012, as it applied to the proposal at the time of lodgement, 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)*

There is no change proposed to the existing front setback to the existing dwelling. The proposed additions are to the rear and the new upper level would not present as dominant to the streetscape with the upper level generally at "street" level.

The streetscape presentation of the dwelling would become more contemporary as a result of the works proposed, which include upgrading of existing finishes/detailing to the dwelling and garage to street. The minimal impacts of the development to presenting to Summer Place are acceptable.

##### *Side / rear setbacks (building envelope) (3.02.04)*

Side setbacks are required to be a minimum of 900mm from each side boundary up to a height of 5.5m then at an angle of 4:1. Rear setbacks are required to be a minimum of 3m for walls up to 4.5m in height and 6m for walls greater than 4.5m high.

Due to the shape of the allotment and the siting of the existing dwelling, the application of side and rear setbacks has been assessed on merit. There is no change to existing side setbacks of the existing dwelling on site for the proposed additions to the lower and ground floor levels, which continue the line of the existing building to the rear, with setbacks of approximately 1m from the western side boundary and a minimum of 1.6m from the eastern side boundary.

The new first floor addition is set back from the lower level on the western side, however results in a minor encroachment of the southern side setback for the upper eastern portion, where the setback ranges from 1.78m to 2m owing to angled side boundary. The east of the site is an existing public thoroughfare through to Takari Place at the rear. Amenity impacts to adjacent sites would not result from this minor side setback non-compliance.

The additions to the rear of the dwelling would result in a new rear setback for the building of over 10m to the rear boundary, that would be compliant with the numeric control under this clause and consistent with the rear setbacks of adjacent development.

It is noted that NDCP 2012 allows variations to the acceptable solutions where it can be demonstrated that the performance criteria can be achieved. An assessment of the proposed development against the performance criteria of this control has been undertaken, as follows:

*Development is of a bulk and scale that:*

- a) *Is consistent with and complements the built form prevailing in the street and local area;*
- b) *Does not create overbearing development for adjoining dwelling houses and their private open space;*
- c) *Does not impact on the amenity and privacy of residents in adjoining dwelling houses;*
- d) *Does not result in the loss of significant views or outlook of adjoining residents;*
- e) *Provides for natural light, sunlight and breezes.*

The bulk and scale of the proposed development is consistent with and complementary to the built form in the street and the local area, as well as the desired future character. It is considered the proposed development is designed and sited to not unreasonably impact the amenity of adjoining dwellings or associated principal areas of private open space, having regard to privacy, solar access and prevailing breezes, and subsequently the minor non-compliances to side setbacks are acceptable.

*Landscaping (3.02.05)*

The subject site has an area of 632.8m<sup>2</sup> and therefore the acceptable solutions require 30% of the site (approximately 190m<sup>2</sup>) to be landscaped. The proposed development would result in retention of approximately 71% of the site as soft landscaped area, with all existing trees and a majority of landscaping on the site to be retained.

*Private open space (3.02.06)*

Private open space for the development is provided as a deck to the rear of the new lounge area at the lower ground floor level and also accessible via an external stair from the ground floor living area above, with the deck area in excess of the numeric controls under this clause and providing for generous and usable private open space.

*Privacy (3.02.07)*

The proposed extension to the existing ground floor level of the dwelling and new first floor level comprises a majority of windows and deck areas at each level oriented to the rear of the site. The design incorporates limited openings/high level windows to side elevations and a privacy screen to the eastern side of the new upper level rear deck. The development as proposed will not unreasonably overlook the living room windows or principal areas of open space of neighbouring dwellings, given the siting of the development, existing site typography, the relationship to dwellings on adjacent sites and substantial existing trees and vegetation.

*Solar access 3.02.08)*

Shadow diagrams submitted for the proposed development illustrate minimal resultant overshadowing impact to adjacent sites, with in excess of three hours of solar access retained to living room windows and private open space of adjacent dwellings, between 9am and 3pm at the winter solstice.

*View sharing (3.02.09)*

Notwithstanding the proposed development's exceedance of the maximum height of buildings development standard, the design that steps down the site in line with the typography results in a dwelling presenting as single storey to the street. There are no existing views or vistas to water, city skyline or iconic views that would be obscured by the proposed development. As such, the proposed development meets the acceptable solutions of this control.

*Car parking and vehicular access (3.02.10)*

There would be no change to existing car parking or vehicular access to the site resulting from the proposed development. The existing double garage and access arrangements for the site are retained and are satisfactory.

*Ancillary development (3.02.12)*

There is a new swimming pool proposed under the application. The pool comprises a round "tank" type plunge pool (2.5m diameter), proposed to be supported by a concrete slab and located at a lower level at the rear of the site, such that the top of the pool is accessible from the new lower ground floor deck at the rear of the dwelling.

The pool water line would be set back over 1m from all site boundaries and the decking adjacent to the pool would be located at ground level adjacent to the rear of the dwelling, however owing to the steep site topography, would reach approximately 2.7m above the ground level adjacent to the pool edge. Given the siting of the pool, distance to the site boundary of the adjacent site to the east (across an existing public pedestrian accessway) and relationship to existing development on adjacent sites, visual or acoustic impacts arising from the pool location are not envisaged.

The proposed development is considered acceptable in relation to the abovementioned DCP section and achieves relevant acceptable solutions and 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 provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

#### Bush Fire Protection - Section 4.02

The site is identified as bushfire prone land. A Bushfire Assessment Report (Newcastle Bushfire Consulting, 6 October 2021) has been submitted for the proposed development. The report identifies building construction of BAL-LOW and recommendations in accordance with the requirements of the NSW Rural Fire Service document, *Planning for Bushfire Protection 2019*. The proposed development is satisfactory in this regard subject to the imposition of relevant conditions recommended.

#### 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 in the locality. The development provides for increased housing choice within the area, which is considered a positive social outcome.

#### Soil Management - Section 5.01

Cut and fill will be completed in accordance with the relevant objectives of this section. A condition will ensure adequate sediment and erosion management will remain place for the construction period.

#### Land Contamination – Section 5.02

Land contamination has been considered in this assessment report under *State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land*. The site is not considered to have any contamination constraints that will impact on the development of the site.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Aboriginal Heritage - Section 5.04

The site is not an item of aboriginal heritage and is not known to contain an aboriginal object. Reference to the Aboriginal Heritage Information Management System (AHIMS) search has confirmed that there is no known Aboriginal cultural heritage in or within the vicinity of the allotment.

Traffic, Parking and Access - Section 7.03

The site is on the low side of the street, with vehicular access and accommodation on site provided by an existing double garage located adjacent to the Street frontage.

There is no change to existing car parking or vehicular access to the site resulting from the proposed development and it is not envisaged the development would result in increase in the level of traffic throughout the surrounding locality.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed development will result in a minor increase in impervious areas to the large site. Stormwater disposal can be addressed by way of recommended conditions of consent to direct overflows to the existing stormwater management system on the site.

Waste Management - Section 7.08

Demolition and waste management will be subject to recommended conditions of consent.

Development Contributions

The EP&A Act 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, and a 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 the NLEP 2012 and the 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 and broader locality. The proposal will not result in any negative social or economic impacts.

The development has been designed to generally satisfy the requirements of NDCP 2012 and as a result, the proposed development is unlikely to adversely impact upon the amenity of 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 proposed development is permissible within the zone. The proposed single dwelling development consists of residential alterations and additions, including a first-floor addition that is of a bulk and scale consistent with the existing and desired future character of the locality. Furthermore, the site is of sufficient land size to enable the proposed development, whilst minimising the impact to neighbouring properties.

The site is located within 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. The site is also bush fire prone, however risks can be sufficiently managed in this regard and the site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

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

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

The application was publicly notified to neighbouring properties in accordance with the CN's Community Participation Plan. No submissions objecting to the proposal were received.

**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 or 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 development is satisfactory having regard to the principles of ecologically sustainable development and will not result in any 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.

## **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 22 Attachment A:** Submitted Plans – 20 Summer Place, Merewether Heights

**Item 22 Attachment B:** Draft Schedule of Conditions – 20 Summer Place, Merewether Heights

**Item 22 Attachment C:** Processing Chronology – 20 Summer Place, Merewether Heights

**Item 22 Attachment D:** Clause 4.6 written exception to development standard – 20 Summer Place, Merewether Heights

**Item 22 - Attachments A-D distributed under separate cover**

**ITEM-23                      DAC 06/12/22 - 6 SCHOLEY STREET MAYFIELD -  
DA2022/00137 - SUBDIVISION - 1 INTO 2 LOTS**

**APPLICANT:**                **BARR PROPERTY AND PLANNING**  
**OWNER:**                    **R PULLIN & S R PULLIN**  
**NOTE BY:**                 **PLANNING & ENVIRONMENT**  
**CONTACT:**                **INTERIM EXECUTIVE DIRECTOR, PLANNING &  
ENVIRONMENT / ACTING MANAGER, PLANNING,  
TRANSPORT & REGULATION**

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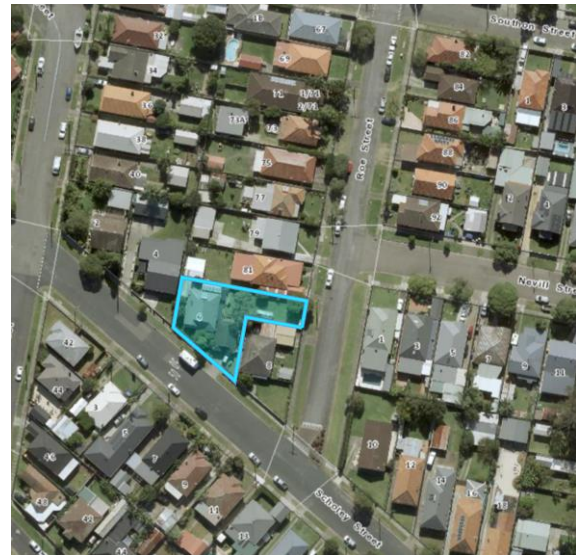
**PART I**

**PURPOSE**

A Development Application (DA2022/00137) has been received seeking consent to undertake a one into two lot Torrens Title subdivision at 6 Scholey Street, Mayfield.

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

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the *Minimum Subdivision Lot Size* (Clause 4.1) of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (i.e. 29.3%).



**Subject Land: 6 Scholey Street Mayfield**

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

The proposed subdivision was publicly notified from 23 February 2022 to 9 March 2022 in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and no submissions have been received in response.

**Issues**

- 1) Whether the proposed variation to the *Minimum Subdivision Lot Size*, under the NLEP 2012, is justified.

**Conclusion**

The proposed subdivision 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. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to the development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.1 *Minimum Subdivision Lot Size*, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA 2022/00137 for a one into two Torrens Title lot subdivision at 6 Scholey Street, Mayfield, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

## Political Donation / Gift Declaration

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject property comprises Lot 12 DP1176829 (6 Scholey Street, Mayfield) and is an irregular 'L Shaped' lot with two road frontages. The site has a 27m southern frontage to Scholey Street and a 9m eastern frontage to Roe Street, with an approximate area of 710m<sup>2</sup>.

The site currently contains a single storey dwelling house on the western side of the site and a single storey garage on the southern side of the site facing Scholey Street (see **Figure 1 & 2** below). The site also extends eastwards towards Roe Street and contains a number of trees and vegetation (see **Figure 3** below).

The general form of development in the immediate area consists of single and two storey detached residential dwellings.



**Figure 1:** Photo of existing dwelling and garage looking north from Scholey Street



**Figure 2:** Photo of existing dwelling and garage looking east from Scholey Street



**Figure 3:** Photo of access from Roe Street looking west (location of green fence).

There are no historic applications relevant to the subject site and the proposed development.

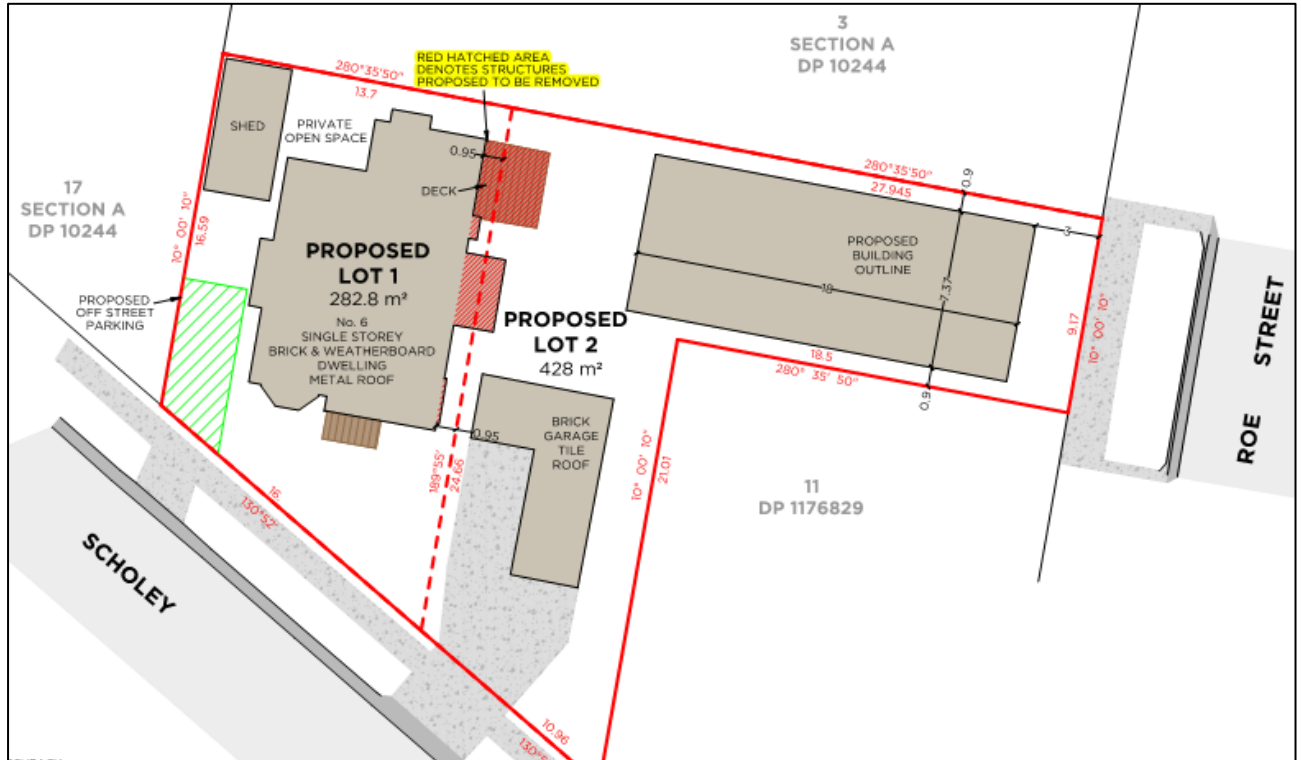
## 2.0 THE PROPOSAL

The applicant seeks consent for a one into two lot Torrens Title subdivision of the existing lot. The site currently contains a single dwelling and a detached garage both of which face Scholey Street.

The proposal is seeking to retain the existing buildings and structures on site including the retention of existing vegetation.

The proposal includes minor demolition works detailed within the applicants Statement of Environmental Effects as follows (and see **Figure 4** further below):

- i) *Demolition of a fence and landscaping to allow for access from an existing driveway crossing onto an off street car space on proposed Lot 1.*
- ii) *Demolition of structures and landscaping on proposed Lot 1 as indicated by the red hatching on the provided Detail Survey prepared by Delfs Lascelles"*



**Figure 4:** Plan showing demolition and minor works proposed to facilitate subdivision.

The proposal will result in the creation of two lots:

- 1) Proposed Lot 1: 282.8 m<sup>2</sup>
- 2) Proposed Lot 2: 428 m<sup>2</sup>

Proposed Lot 1 will retain the existing dwelling on site whilst Proposed Lot 2 will contain the existing garage and will have access from both Scholey Street and Roe Street.

Vehicular access will be maintained to the existing dwelling from Scholey Street. A new parking space is proposed at the southwest corner of proposed Lot 1 using an existing historic driveway crossing. This will require the removal of some minor shrubs.

A copy of the current amended subdivision plan is at **Attachment A**.

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

### 3.0 PUBLIC NOTIFICATION

The application was publicly notified from 23 February 2022 to 9 March 2022 in accordance with CN's Community Participation Plan.

No submissions were received as a result of the notification process.

#### 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 (Resilience and Hazards ((R&H))) 2021

##### Chapter 2 Coastal management

The Resilience and Hazards State Environmental Planning Policy (SEPP) came into effect on 2 December 2021. The SEPP seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the *Coastal Management Act 2016* (the Act) amongst other aims.

The 'coastal zone' is defined in the Act as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability. Note: the Newcastle Local Government Area (LGA) has no areas identified in the coastal vulnerability map.

The north-eastern corner of the site is located within the Coastal Environment Area as shown in **Figure 5** below.



**Figure 5:** Plan showing site with extent of Coastal Environment Area shown in light blue.

The proposal has been assessed against the following criteria as set out in Clause 2.10(1) of the SEPP (R&H):

- a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- b) *coastal environmental values and natural coastal processes,*
- c) *the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- f) *Aboriginal cultural heritage, practices and places,*
- g) *the use of the surf zone."*

The proposal does not adversely impact on any of the above criteria and is considered to be acceptable in terms of the provisions of the SEPP (R&H).

## **Chapter 4 Remediation of land**

Chapter 4 of this SEPP provides that prior to granting consent to the carrying out of any development on land the consent authority is required to consider whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the proposal 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 will continue the existing residential usage of the land. The development is considered to be acceptable having regard to this policy.

## **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

### **Chapter 2 Vegetation in non-rural areas**

The State Environmental Planning Policy (SEPP) is one of a suite of Land Management and Biodiversity Conservation (LMBC) reforms that commenced in New South Wales on 25 August 2017. Chapter 2 of the SEPP contains provisions similar to those contained in Clause 5.9 of the NLEP 2012 (now repealed) and



provides that NDCP 2012 can make declarations with regards to certain matters, and further that CN may issue a permit for tree removal.

The current application does not propose the removal of any vegetation in order to facilitate the subdivision beyond some small minor shrubs. Tree removal is likely to be required as part of any future development of either proposed lot. This tree removal will need to be justified by an Arborist Report prepared by a suitably qualified consultant and must be in accordance with CN's controls including the Urban Forest Technical Manual.

Should trees be removed, compensatory tree planting may be required to be provided by the applicant.

The current proposal is considered acceptable in terms of the SEPP whilst future development of either lot will be assessed in respect of tree removal.

### **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, within which zone, *residential accommodation* would be permitted, with consent, on the lots of the proposed subdivision.

#### Clause 2.6 - Subdivision—Consent Requirements

The development proposal is for a one into two lot Torrens Title subdivision of the existing site in accordance with Clause 2.6. Clause 2.6 provides that the subdivision of land may occur, with consent, on any land to which NLEP 2012 applies.

#### Clause 4.1 - Minimum Subdivision Lot Size

The proposed one into two lot Torrens Title subdivision does not comply with the 400 m<sup>2</sup> minimum lot size prescribed under Clause 4.1 of the NLEP 2012.

The proposed lots sizes are as follows:

- 1) Proposed Lot 1: 282.8 m<sup>2</sup> (variation of 117.2 m<sup>2</sup> or 29.3%)
- 2) Proposed Lot 2: 428 m<sup>2</sup>

However, an exception to the minimum lot size has been requested by the applicant under Clause 4.6 of the NLEP 2012 as discussed below.

Clause 4.6 - Exceptions to Development Standards

The applicant has submitted a written request that seeks to vary the *Minimum Subdivision Lot Size* (Clause 4.1) development standard in accordance with Clause 4.6 of the NLEP 2012.

Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard.

The Objectives of Clause 4.6 are:

- a) *To provide an appropriate degree of flexibility in applying certain development standards to a particular development,*
- b) *To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The proposed one into two lot Torrens Title subdivision will result in lots of 282.8 m<sup>2</sup> and 428m<sup>2</sup> in size respectively. The applicable minimum lot size for the site under Clause 4.1 is 400m<sup>2</sup>. The maximum variation is 117. m<sup>2</sup> or 29.3% and, 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 is included beneath.

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

The *Minimum Subdivision Lot Size* (Clause 4.1) development standard in the 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 *Minimum Subdivision Lot Size* (Clause 4.1) 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 applicant has prepared a written request for the purposes of Clause 4.6(3).

There are five circumstances established by *Wehbe v Pittwater Council [2007] NSWLEC 827* in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary.

The applicant's Clause 4.6 Variation Request written response seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unnecessary, stating that the objectives of the development standard are achieved notwithstanding non-compliance.

The objectives outlined in Clauses 4.1 (*Minimum Subdivision Lot Size*) are as follows:

- a) *to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,*
- b) *to facilitate greater diversity in housing choice,*
- c) *to ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form,*
- d) *to ensure that the subdivision of land in Zone E4 Environmental Living—*
  - i) *will not prejudice its possible future development for urban purposes or its environmental conservation, and*
  - ii) *will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land.*

A summary of the Clause 4.6 justification provided within the applicant's written request is provided below:

- a) *to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded.*

*The proposed development satisfies objective (a) as it addresses the community and economic needs identified in regional and local strategic plans for in-fill housing to be provided in an accessible and cost-effective manner. The Newcastle Housing Strategy 2020 identifies the community need for 18,250 new dwellings to be provided to address Newcastle's housing needs over the life of the strategy. Of this projected housing requirement, the Strategy identifies 92% of housing growth to occur via infill housing with almost half of this to occur through dual occupancy housing in R2 zoned areas. The proposed development addresses this community need to provide additional housing in a R2 zoned area. The economic rationale for the proposed lot size is that it will support housing affordability in the area through the facilitating additional residential infill development.*

*Environmental and social values will be safeguarded in respect to the proposed development as the subject lot in contravention of the minimum lot size already contains an existing dwelling which satisfies user requirements including setback, private open space, landscaping and carparking requirements. As such, no adverse environmental or social impacts are expected.*

- b) *to facilitate greater diversity in housing choice,*

*The proposed development satisfies objective (b) as it will facilitate a greater diversity of housing choice through the provision of a single storey dwelling on the proposed Lot 1 and will facilitate an additional lot for future residential development on proposed Lot 2.*

- c) *to ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form,*

*The proposed development satisfies objective (c) as the subject lot in contravention of the minimum lot size, already contains an existing dwelling which meets user requirements including required setbacks, landscaped areas, private open space and carparking. The proposed development will facilitate energy efficiency of future built form by supporting compact development and utilising existing services infrastructure.*

- d) *to ensure that the subdivision of land in Zone E4 Environmental Living—*

i) *will not prejudice its possible future development for urban purposes or its environmental conservation, and*

ii) *will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land.*

iii) *NA – not applicable as the subject site is not zoned E4 Environmental Living.*

CN Officer Comment

It is agreed that in this instance enforcing strict adherence to the minimum subdivision lot would be unnecessary as the proposed subdivision would meet the objectives of Clause 4.1 (*Minimum Subdivision Lot Size*) of NLEP 2012 despite the exceedance to the standard.

The proposed lots are considered to meet community and economic needs by providing for a variety of lot sizes in an accessible and cost-effective manner in close proximity to services and infrastructure.

The proposed undersized lot will contain an existing dwelling, demonstrating the lot is of a sufficient size to accommodate user requirements.

The proposed subdivision will also facilitate greater diversity in housing choice.

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 unnecessary in the circumstances of the case.

**Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?**

The applicant's Clause 4.6 justification to contravene the development standard on sufficient environmental planning grounds is as follows:

*Pursuant to object (c) of the Environmental Planning and Assessment Act 1979 ('the Act'), the development is consistent with orderly and economic development of land as Lot 1 already contains an existing dwelling which is well accommodated by proposed lot. The proposal also supports the creation of an additional lot which*

*facilitates the effective utilisation of existing services and infrastructure to provide residential infill development to address future housing demand.*

*Pursuant to object (g) of the Act, the development is consistent with the objective to promote good design and amenity of the built environment as Lot 1 already contains an existing dwelling capable of satisfying the setback, private open space and residential amenity requirements.*

*Guided by Section 4.15 of the EP&A Act, the development is subject to consent in accordance with NLEP. The aims of the NLEP are as follows:*

- 1) This Plan aims to make local environmental planning provisions for land in the City of Newcastle in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.*
- 2) The particular aims of this Plan are as follows—*
  - aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
  - a) to respect, protect and complement the natural and cultural heritage, the identity and image, and the sense of place of the City of Newcastle,*
  - b) to conserve and manage the natural and built resources of the City of Newcastle for present and future generations, and to apply the principles of ecologically sustainable development in the City of Newcastle,*
  - c) to contribute to the economic wellbeing of the community in a socially and environmentally responsible manner and to strengthen the regional position of the Newcastle city centre as a multi-functional and innovative centre that encourages employment and economic growth,*
  - d) to facilitate a diverse and compatible mix of land uses in and adjacent to the urban centres of the City of Newcastle, to support increased patronage of public transport and help reduce travel demand and private motor vehicle dependency,*
  - e) to encourage a diversity of housing types in locations that improve access to employment opportunities, public transport, community facilities and services, retail and commercial services,*
  - f) to facilitate the development of building design excellence appropriate to a regional city.*

*The proposed development addresses the aims of the plan, specifically items (b) and (e). Regarding item (b), the development will conserve and manage the built resources of the City of Newcastle by retaining the existing residential dwelling which will limit the creation of demolition waste. The proposal will also support ecologically sustainable development by promoting compact residential development utilising existing services infrastructure with the potential to demonstrate ecologically sustainable design.*

*Regarding item (e), the development will encourage diversity of housing in a location in close proximity to public transport, namely Waratah Train Station, with access to other goods and services along Maitland Road, Mayfield.*

CN Officer Comment

Following a detailed assessment, it is accepted that there are sufficient environmental planning grounds to support contravening the development standard. In addition to the applicant's justification, the following is considered relevant:

- i) The proposed subdivision is permitted with consent under cl2.6 of the NLEP 2012.
- ii) The proposed subdivision is compliant with the applicable acceptable solutions and performance criteria prescribed under the Newcastle Development Control Plan 2012.
- iii) The proposed subdivision does not create significant adverse impacts on neighbouring properties.
- iv) The proposed subdivision is considered to be a more orderly and economic use of the land given it appears more appropriate to the intended built form context of surrounding sites.

As such, the reasons outlined above are considered to provide sufficient justification to contravene the development standard. Accordingly, with the above considered, there are sufficient environmental planning grounds to support the variation.

***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. Clause 4.6(a)(i) is satisfied in this regard.

***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 objectives for development within the zone in which the development is proposed to be carried out.***

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 4.1 (Minimum Subdivision Lot Size)*

It is considered that the proposed development is consistent with the objectives of Clause 4.1 (*Minimum Subdivision Lot Size*) as the proposed subdivision will meet community and economic needs, facilitate greater diversity in housing choice and will ensure that the lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form.

*Objectives of the R2 Low Density Residential Zone*

The objectives of the R2 Zone are as follows:

- a) *To provide for the housing needs of the community within a low-density residential environment.*
- b) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- c) *To accommodate a diversity of housing forms that respect the amenity, heritage and character of surrounding development and the quality of the environment.*

The development is consistent with the objectives of the R2 zone as the proposed development provides the ability for additional housing to meet the needs of the community with a density appropriate to existing and intended built form context.

The proposal further diversifies housing form whilst respecting the amenity, heritage and character of surrounding development, reflected through consistency with the applicable planning controls and it is considered that there will be no likely significant adverse impacts on the amenity of any existing nearby development as a result of the subdivision. Further, the development type is a development permitted with consent within the R2 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 R2 Low Density residential zone. The proposal is satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

**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 concurrence to the exception to the development standard, as required by Clause 4.6(4)(b) of the NLEP 2012, is assumed, as per Department of Planning Circular PS20-00 of 5 May 2020.

Conclusion

It is considered that 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 minimum subdivision lot size development standard.

The Clause 4.6 variation request has demonstrated that the proposed lots are acceptable and therefore that strict compliance with the prescribed *Minimum Subdivision Lot Size* standard would be unnecessary in this instance. In this regard, the Clause 4.6 variation request is supported.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils. The proposal does not include any works that could affect the Class 4 soils and, therefore, is considered satisfactory in this regard.

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

There is no exhibited draft environmental planning instrument relevant to the application.

**5.3 Any development control plan**

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

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

Subdivision - Section 3.01

3.01.02 Subdivision Design

*A. Solar Access*

Both proposed lots have the ability to achieve sufficient solar access. Proposed Lot 1 contains an existing dwelling which does not have an unacceptable impact on neighbouring lots in respect of overshadowing and overlooking.

Proposed Lot 2 is orientated to ensure that any future dwelling on the site can be achieved without having an unacceptable impact on the amenity of surrounding properties.

*B. Services*

The proposed subdivided lots are located within an existing urban location and are fully serviced in respect of water supply, electricity, communication and sewerage infrastructure.



3.01.03 Lot layout, sizes and dimensions

Proposed Lot 1 is rectangular in shape. This lot contains an existing dwelling and has an existing vehicular access from Scholey Street to the south in addition to an existing car parking space on site. This car parking space is currently not in use however will be required to be reinstated as a condition of consent.

Whilst this lot is below the *Minimum Subdivision Lot Size* it has been demonstrated by the applicant that the proposal can sufficiently accommodate a dwelling house including open space, landscaping area and car parking.

Proposed Lot 2 is L shaped with a frontage to Scholey Street to the south and Roe Street to the east. The size of this lot is 428 m<sup>2</sup>, achieving the *Minimum Subdivision Lot Size*.

The lot has the ability to have vehicular access to both Scholey Street and Roe Street and is considered to be of a size that can accommodate a future dwelling on the site subject to development consent.

Flood Management - Section 4.01

The site is within an area of potential flooding. The subdivision does not increase risk for existing dwelling and proposed Lot 2 could be reasonably developed for residential uses in future having regard to the low-level flood risk.

Accordingly, the proposal is acceptable in respect of flooding impacts.

Vegetation Management - Section 5.03

The proposal is for subdivision only and includes the retention of the existing trees and vegetation on site (noting some small minor shrubs at the street front will be removed to allow the new parking space).

If any trees are proposed to be removed with a future development proposal for either proposed lot, an assessment of this removal will be undertaken. Any future tree removal must be justified in accordance with CN's controls including the Urban Forest Technical Manual and appropriate compensatory tree planting provided.

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.

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an '*Archaeological Site*'.

Stormwater – Section 7.06

Stormwater is currently discharged from the dwelling via an enclosed CN stormwater pipe located within the footway of Scholey Street to the south. The proposed subdivision will retain this arrangement.

In terms of proposed Lot 2, the site slopes towards the south of the site. Accordingly, it is considered that stormwater discharge can be acceptably managed from any future development on this lot. Stormwater management will be assessed as part of any future development proposal for either subdivided lot in accordance with CN's controls.

#### Development Contributions

The EP&A Act 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 and a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

#### **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 the NLEP 2012 and the NDCP 2012 considerations. The proposed subdivision will not have any undue adverse impact on the natural or built environment.

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

It is considered that the proposal will not have any negative social or economic impacts.

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

The site is suitable for the proposed subdivision as it is located in an urban location in close proximity to a range of services including public transport and community facilities. It is considered that adequate services and waste facilities are available to the proposed subdivided lots.

At grade access to the site will be available for pedestrians, from adjacent roads and public transport. Having regard for the City Centre location and the availability of public transport services, it is considered that the proposed use is satisfactory in respect of its accessibility.

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

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

The application was publicly notified and no submissions were received.

**5.9 The public interest**

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

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

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

The 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 23 Attachment A:** Subdivision Plan as amended – 6 Scholey Street, Mayfield

**Item 23 Attachment B:** Draft Schedule of Conditions – 6 Scholey Street, Mayfield

**Item 23 Attachment C:** Processing Chronology – 6 Scholey Street, Mayfield

**Item 23 Attachments A - C distributed under separate cover**

**ITEM-24                    DAC 06/12/22 - 37 STEVENSON PLACE NEWCASTLE EAST  
- DA2022/00611 - DWELLING HOUSE - ALTERATIONS AND  
ADDITIONS**

**APPLICANT:            P DONN  
OWNER:                A P DI NARDO & L H HOWARD  
REPORT BY:          PLANNING AND ENVIRONMENT  
CONTACT:            INTERIM EXECUTIVE DIRECTOR, PLANNING &  
ENVIRONMENT / ACTING MANAGER, PLANNING,  
TRANSPORT & REGULATION**

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**PART I**

**PURPOSE**

A development application (DA2022/00611) has been received seeking consent to carry out alterations and additions to the existing dwelling at 37 Stevenson Place Newcastle East.

The submitted application was assigned to Development Officer Isabelle Rowlatt for assessment.

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



**Subject Land: 37 Stevenson Place  
Newcastle East**

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and 11 submissions have been received in response.

The objectors' concerns included:

- i) Floor Space Ratio exceedance
- ii) Bulk and scale
- iii) Heritage impacts
- iv) Amenity impacts

- v) Privacy impacts
- vi) Inadequate parking

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) The proposed variation to the Floor Space Ratio development standard as prescribed under Clause 4.4 of the NLEP 2012.
- 2) Matters raised in the submissions including floor space ratio, bulk and scale, heritage, amenity, privacy, parking and other matters.

### 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. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2022/00611 for alterations and additions at 37 Stevenson Place Newcastle East 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?

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## **PART II**

### **1.0 THE SUBJECT SITE**

The subject property comprises Lot 1 DP 908106 and is a small rectangular allotment located on the southern side of Stevenson Place. The site has a frontage of 5.08m to Stevenson Place, an average depth of 22.15m and a total site area of 112.2m<sup>2</sup>. The site is relatively flat, with road frontage to Stevenson Place and rear frontage to a laneway that is connected to Telford Street and Zaara Street.

The subject property is occupied by a painted masonry and metal roof terrace style dwelling that is part of a row of 12 connected terrace houses. The general built form of the subject property and surrounding terrace houses comprise of painted masonry and weatherboard construction with elevated timber balconies and metal roof sheeting.

Development in the immediate area predominantly consists of two- to three-storey attached terraces, single storey cottages, detached villa residences, and warehouse conversions. Figures 1 to 4 show the locality.

The site, along with adjoining terrace houses on the southern side of Stevenson Place, is part of group listed heritage item 'Stevenson Place Precinct', Item 490 on Schedule 5 of the NLEP 2012. The site is also located in the Newcastle East Heritage Conservation Area (HCA).



**Figure 1** The lane frontage of the subject site.



**Figure 2** View of the laneway behind the subject site, looking east from Telford Street. The site is located approx. halfway down the lane on the left.



**Figure 3** The adjoining neighbour to the east (subject property indicated).



**Figure 4** The adjoining neighbour to the west (subject property indicated).

## 2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to a terrace dwelling house, consisting of:

- i) Demolition of the rear single-storey structure (existing laundry and bathroom).
- ii) Alterations and extension to an existing two-storey rear addition.
- iii) Alterations to the existing attic with access to a new roof terrace over the first-floor addition.
- iv) Restoration of the front facade facing Stevenson Place.
- v) Construction of a single storey ancillary structure on the western boundary (garden/bike storage).

Amended plans have been submitted during assessment of the application in response to issues raised within submissions and matters raised by CN officers, including deletion of the roof top spa, reduction in size of roof top terrace, reduction in height of the rear addition, and amendments to materials and finishes.

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

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

## 3.0 PUBLIC NOTIFICATION

The original application was publicly notified from 21 June to 12 July 2022, in accordance with CN's Community Participation Plan. A total of 21 submissions were received during the first notification period. The concerns raised by the objectors in respect of the original application are summarised as follows:

- i) Floor Space Ratio exceedance
- ii) Bulk and scale
- iii) Heritage impacts
- iv) Amenity impacts
- v) Privacy impacts
- vi) Inadequate landscaping area
- vii) Inadequate parking



viii) Stormwater management

Amendments and additional information were requested by CN on 28 July 2022. In response, the proposed development was amended, and additional information was provided in October 2022.

The amended plan set was publicly notified from 13 October to 27 October 2022. A total of 11 submissions were received during the re-notification period.

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

**a) Floor Space Ratio:**

- i) The proposal does not comply with the floor space ratio development standard of 1:1 under NLEP 2012.

**b) Buildings setbacks**

- i) The proposal does not comply with building setback requirements set out in Section 3.02 (Single Dwellings) of the Newcastle Development Control Plan 2012 (NDCP 2012).

**c) Heritage:**

- i) The scale of the development is not consistent with the local character.
- ii) The proposed development will impact the heritage significance of the subject property and its neighbour at 39 Stevenson Place as the floor plan arrangement of the terraces are similar.
- iii) The proposed development will impact the character of the rear lane.
- iv) The rooftop terrace will set a precedent for three-storey buildings in a two-storey area.

**d) Amenity:**

- i) Overbearing: the bulk and scale of the development will be overbearing to adjoining properties.
- ii) Light: the attic and rooftop terrace will result in light emission which will impact neighbouring properties.
- iii) Solar access: the proposed development will negatively impact the solar access to neighbouring properties.

iv) Acoustic: the proposed development will create excessive noise that will impact neighbouring properties.

**e) Privacy:**

- i) The rooftop terrace will overlook the private open space of adjoining residences.
- ii) The first-floor windows create visual privacy concerns for the rear of Alfred Street properties.

**f) Traffic and Parking:**

- i) The proposed development does not provide adequate parking.

**g) Other matters:**

- i) Notification issues
- ii) Fire safety
- iii) Future use of the building
- iv) Construction issues
- v) Encroachment on the rear lane
- vi) Objection to solid fuel heaters and air conditioning systems
- vii) Setback of the rooftop terrace

The concerns raised by objectors are addressed as part of the Planning Assessment at **Section 5.0**.

#### **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 (Resilience and Hazards) 2021**

Chapter 4 Remediation of Land Clause 4.6 of this SEPP provides that prior to granting consent to the carrying out of any development on land the consent authority is required to consider 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 (Coastal Management) 2018 (Coastal Management SEPP)**

The Coastal Management State Environmental Planning Policy (SEPP) came into effect on 3 April 2018. The SEPP seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the *Coastal Management Act 2016* (the Act).

The 'coastal zone' is defined in the Act as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability. Note: the Newcastle Local Government Area (LGA) has no areas identified in the coastal vulnerability map. The proposed development is not inconsistent with the SEPP.

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

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

### **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 R3 Medium Density Residential Zone under the provisions of NLEP 2012, within which zone the proposed development is permissible with CN's consent.

The proposed development is consistent with the objectives of the R3 Medium Density Residential Zone, which are:

- a) To provide for the housing needs of the community within a medium density residential environment.
- b) To provide a variety of housing types within a medium density residential environment.
- c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- d) To allow some diversity of activities and densities if:
  - (i) the scale and height of proposed buildings is compatible with the character of the locality, and
  - (ii) there will be no significant adverse impact on the amenity of any existing nearby development.
- e) To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development:
  - (i) has regard to the desired future character of residential streets, and
  - iii) does not significantly detract from the amenity of any existing nearby development.

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

Clause 2.7 - Demolition Requires Development Consent

The proposal includes partial demolition of some of the existing structures on the site. 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

Under NLEP 2012 the site has a maximum height of 10m. The existing dwelling has a ridge height of 9.65m, with the height of the proposed rear addition measuring 7.7m from the ground level to the top of the privacy screen. The proposed dormer (rooftop access) has a maximum height of 9.15m which is 0.5m below the existing ridge. The building complies with the height of buildings development standard.

Clause 4.4 - Floor Space Ratio (FSR)

Under NLEP 2012 the site has a maximum 1:1 floor space ratio. The existing dwelling has a total gross floor area (GFA) of 130.7m<sup>2</sup>. This equates to an existing FSR of 1.16:1, based on a site area of 112.5m<sup>2</sup>, which is a 16% FSR exceedance.

The proposed development seeks consent for an additional 11m<sup>2</sup> of floor area, resulting in a total GFA of 141.7m<sup>2</sup>. This equates to an FSR of 1.26:1, exceeding the prescribed maximum FSR by 26%.

The applicant has submitted a request for a variation to this development standard, as per Clause 4.6 of NLEP 2012. Refer to the discussion under Clause 4.6 - Exceptions to Development Standards below.

#### Clause 4.6 - Exceptions to Development Standards

The proposal seeks consent to vary Clause 4.4 Floor Space Ratio (FSR) of the NLEP 2012. The Floor Space Ratio Map of the NLEP 2012 provides for a maximum FSR of 1:1 on the subject site. The proposed development will result in a maximum FSR of 1.26:1, which exceeds the maximum FSR for the site by 26%. As such the application is supported by a formal request to vary the development standard under Clause 4.6 of the NLEP 2012.

Clause 4.6 of the NLEP 2012 enables consent to be granted to a development even through the development would contravene a development standard.

The objectives of this clause are:

- 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.

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 Floor Space Ratio (Clause 4.4) development standard in the 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 Floor Space Ratio (Clause 4.4) 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 applicant has prepared a written request for the purposes of Clause 4.6(3).

There are five circumstances established by *Wehbe v Pittwater Council* [2007] NSWLEC 827 in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary.

The submitted 'Request to Vary Development Standard (FSR)', prepared by Donn Architects, constitutes a written request for the purposes of Clause 4.6(3), and seeks to demonstrate that strict compliance would be unreasonable. The documentation provided by the applicant addresses Clause 4.6 (3)(a), as follows:

*There is sufficient justification to vary the development standard. Not only does the existing residence exceed the development standard by 16%, but several nearby residential properties exceed the development standard likely WELL beyond what is proposed (more than 26%) – such is the eclectic nature of the existing row-house formations which can be observed from the vantage point of the laneway that services all properties fronting Stevenson Place.*

*It is estimated that two storey residences occupying Nos. 33 & 41 Stevenson Place, as well as Nos. 49, 51, 53 and 55 Stevenson Place (positioned closer to Telford Street) all exceed their individual site FSR development standard which is the same as the subject site. On a broader scale – when considering the entire stretch of the heritage-listed properties fronting Stevenson Place (LEP Item 1490) – residential properties east of Zaara Street appear to be occupied by residences with greater density.*

*It would therefore be unreasonable to burden the applicant with the task of maintaining the current 16% FSR overrun or indeed reduce the site's FSR to comply with the 1.00:1.00 development standard. And, given the increased density of the surrounding context the 26% exceedance over the FSR development standard can be considered reasonable, provided neighbourhood amenity is not negatively impacted. The proposal has been designed to carefully consider neighbourhood amenity. Although the roof-top terrace is not counted as part of the GFA, it is recognised that the screened enclosure around the terrace will visually provide some level of perceived increase in density. It is for this reason that the roof-top terrace is kept below the existing ridge line of the pitched roof, and the privacy screen which encloses the terrace is kept to a maximum height of 1.8m; and its footprint occupies the same extent as the proposed two-storey building addition below.*

#### CN Officer Comment

The proposed development provides for a modernised residential dwelling in a medium-density, low impact form complementary to the existing and future desired character of the streetscape, noting that the proposed development is entirely hidden

from the primary public street and is not inconsistent with the established eclectic nature of the rear 'lanescape'.

Further, the proposal for a single dwelling development is consistent with the medium-density objectives of the land and consistent with other developments to similar terraced housing developments in the local area.

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. It is considered that strict compliance with the development standard would be unreasonable as the existing dwelling is not capable of strict compliance without significant demolition of existing GFA.

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 in the circumstances of the case.

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

In Initial Action, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole. The applicant's response to Clause 4.6(3)(b) is addressed, and provides the following specific environmental planning grounds to justify the breach of the standard:

*Approximately, 6m<sup>2</sup> of additional floor area relates to the creation of an infill ground floor section of the proposal which will occupy an un-built portion of the site where a narrow access aperture exists between the external wall of the building (existing kitchen wall) and the common wall shared with the neighbouring property to the east (No. 35). This particular area – although small – is already built out and largely enclosed by surrounding high walls and a hardstand paved surface which contributes to the density and impervious nature of the site. A further 5m<sup>2</sup> of additional floor area can be attributed to a small 2m<sup>2</sup> increase of the attic space to facilitate access onto a proposed roof-top terrace; and an additional 3m<sup>2</sup> increase in floor area shared over two levels as part of the proposed two storey rear yard addition, which follows a redistribution of site density areas after demolition and renovations.*

*Given the above minor increases in floor area (6 + 2 + 3)m<sup>2</sup> it is not anticipated that such increases create any significant impacts on the amenity of the neighbouring dwellings and surrounding context.*

*To offset the minor increase in site density, the proposal includes the creation of a small permeable garden space as part proposed alterations to the rear*

*courtyard space, which will have a total area of 8m<sup>2</sup>. No such soft landscaping is currently provided on the site, as it is completely impervious and built out. This part of the design not only provides enhanced amenity for the owner but also promotes a reduction in density of impervious surfaces...*

*Currently, the site has no permeable areas and is completely built out with established floor/roof areas and hardstand pavement at ground level. The proposed garden brings a level of 'softening' to the inner-city site and enhances usable private open space to recognise the importance of outdoor living space – a fundamental necessity and improvement to quality-of-life outcomes that COVID-19 lockdowns have taught recently us.*

*The proposal focuses its increase in floor area at the rear of the site, which follows a consistent approach that can be observed at neighbouring properties all of which most likely exceed the maximum permissible FSR development standard under the LEP. The proposal is therefore consistent with the objectives of the R3 zone and its specific locality, as it respects the heritage significance of a buildings as one form fronting Stevenson Place, promotes a diversity in densities, does not significantly impact on the neighbouring properties and is compatible with the eclectic composition of a variety of built forms across several rear yard spaces that adjoin the rear laneway.*

*There are sufficient grounds to justify continued contravention of the FSR development standard that are proposed to be slightly above existing FSR conditions. An FSR-compliant development would clearly be unworkable when considering the existing GFA for the site already exceeds the maximum FSR by 16%. And the increase of a further 9% in floor space can be considered as a minor change to the visual impact of the existing residence, which is within acceptable standards. It should also be noted that solar access to the outdoor rear courtyards of the immediately adjacent residential properties will closely match their current overshadowing conditions, given their south-facing aspect (winter solstice shadow-casting diagrams between the hours 9am and 3pm and summer solstice shadow-- casting diagrams between the hours 8am and 4pm are illustrated on Drawing DA040). Dominant view corridors from the adjoining properties will also not be diminished as a result of the proposal.*

CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular that the additional FSR does not result in inconsistency with the desired built form of the locality and is generally consistent with the performance criteria of the 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 FSR 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 4.4 'Floor space ratio'*

The development is consistent with the objectives of Clause 4.4 'Floor space ratio' as the proposed development is of an appropriate density which is consistent with the established centre's hierarchy. The development is of an acceptable bulk and scale, is consistent with nearby dwelling houses, and is consistent with the built form as identified by the centres hierarchy.

*Objectives of the R3 Medium Density Zone*

The development is consistent with the objectives of the R3 Medium Density Zone as the proposed development maximises residential amenity in an appropriate terraced dwelling form complementary to the medium-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 and Environment) concurrence to the exception to the FSR development standard as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 of 5 May 2020.

Conclusion

It is considered that 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 floor space ratio development standard.

The Clause 4.6 variation request has demonstrated that the proposed floor space ratio is acceptable and therefore that strict compliance with the prescribed floor space ratio standard would be unnecessary in this instance. In this regard, the Clause 4.6 variation request is supported.

Clause 5.10 - Heritage Conservation

The site is part of a local heritage item, 'Stevenson Place Precinct', which is listed as item 490 on Schedule 5 of the NLEP 2012, together with 1-55 Stevenson Place. The State Heritage Inventory provides the following Statement of Significance for the group listing:

*An important precinct which forms part of inner residential core and contributes significantly to the streetscape. National Trust – Most important precinct in Newcastle. Considered to be historically, architecturally and environmentally significant.*

The application is supported by a Statement of Heritage Impact (SOHI), prepared by Placemark Consultants.

The proposed development is considered to satisfy the objectives of Clause 5.10 for the following reasons:

- a) The heritage significance of the dwelling has been assessed as relating to its position in the group listed item, 'Stevenson Place Precinct'. The precinct is a rare and intact Victorian residential streetscape. Within the group heritage item there are a range of dwellings, including elaborate Victorian architectural styles, as well as more modest example such as the subject site. As such it is considered that the rear of the heritage item has a greater tolerance for change and the proposed addition will not detract from its Victorian character as it presents to Stevenson Place, or the overall significance of the group listing.
- b) The proposed internal alterations retain significant original fabric associated with the heritage item including fireplaces, mantels and hearths; timber flooring; decorative plasterwork; windows and doors; timber boarded ceilings. A more contemporary character is proposed to the rear addition which does not compete with the historical character of the main dwelling.
- c) The application includes restoration works to the front facade which will improve the presentation of the dwelling to Stevenson Place and complement its neighbour at no. 35.
- d) The proposed addition is acceptable with regards to the provisions for development in heritage conservation areas. The site has a secondary frontage to a rear pedestrian laneway which is an important aspect of the urban pattern in Newcastle East. There are a variety of additions

presenting to the laneway of many forms, ages, scale and materiality. The proposed development is generally consistent with that eclectic character. The height of the bulk of the addition maintains the height of the existing two-storey addition, with a proposed privacy screen demonstrating a suitably integrated and simplified design.

- e) Significant views to the heritage item (being the whole of Stevenson Place Precinct) will not be impacted. The proposed addition will not be visible from Stevenson Place or from key heritage sites in the vicinity, including Foreshore Park, Fort Scratchley, and the Boatmans' Terrace Group.
- f) The property is not identified as containing an Aboriginal site or as a potential European archaeological site.
- g) Subject to conditions, the proposal is considered satisfactory in respect to heritage conservation objectives of Clause 5.10 of NLEP 2012. Further assessment is provided below in Section 5.3 of this report.

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils and the proposed development is considered satisfactory in this regard.

#### Clause 6.2 - Earthworks

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

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

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

#### **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 and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.

### **5.3 Any development control plan**

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

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: 'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.'

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

The main planning requirements of relevance in the NDCP 2012, as it applied to the proposal at the time of lodgement, 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 does not alter the existing front setback to Stevenson Place. The existing verandah overhanging the Stevenson Place footpath currently features hardi-plank cladding and is missing the typical decorative features associated with architecture of this period. The proposed development involves reinstating the decorative lacework with detailing to match the neighbouring verandah of 35 Stevenson Place. The proposed development is considered satisfactory in this regard.

##### *Side/rear setbacks (building envelope) (3.02.04)*

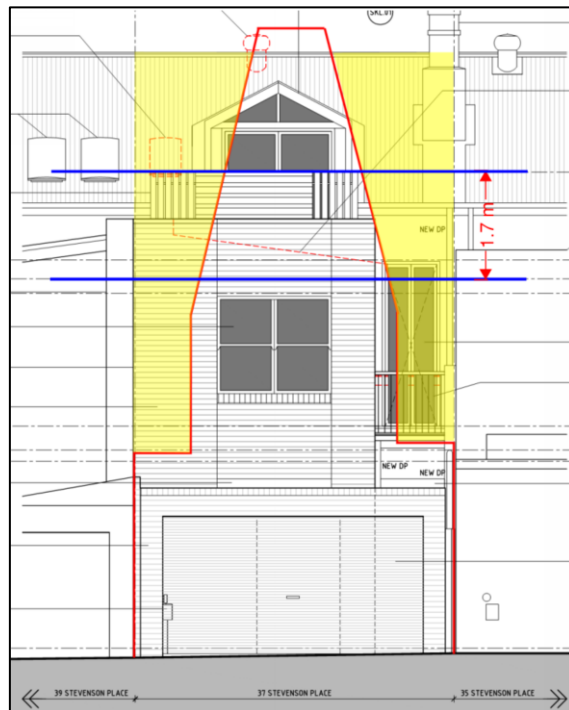
The built form of the locality is predominantly boundary to boundary terrace housing. As such, the proposed design was considered against the performance criteria of this section of the NDCP 2012.

The existing two-storey terrace dwelling is built to both side boundaries, with the existing single storey laundry and bath structure built to the western side boundary only.

The proposed addition proposes a matching zero setback to the western side boundary. An eastern side courtyard is provided between the proposed addition and the eastern neighbour, providing a setback of 1.3m. The western boundary wall will remain as existing, with the height of this being increased to two storeys.

The typical pattern of development along Stevenson Place does not comply with the permissible building envelope described by NDCP 2012, being characterised by two storey boundary walls. Therefore, the proposed development similarly does not comply with the permissible building envelope when measured from side boundaries.

The proposed addition reflects the established method of extending terrace form housing in this area. At the ground level, the addition is built to both side boundaries, which is consistent with both adjoining neighbours and is acceptable. At the first floor, the addition is built to one side boundary with an offset to the opposite boundary to maintain light and ventilation. The proposed new two storey wall built to the western boundary has a length of approximately 3m.



**Figure 5** - the NDCP 2012 - building envelope variation from side boundaries (shaded yellow); the blue line indicates the proposed floor level of the roof terrace and the top of the privacy screen, ensuring views at a 1.5m eye level when standing on the terrace are suitably screened.

The proposed two storey rear setback is 5.5m, which is less than the nominated 6m setback as stated in the NDCP 2012 for development over 4.5m in height. The proposed two storey addition partly encroaches within the rear setback building envelope by 0.5m as depicted below.

Building forms of nearby properties in the block between Telford and Zaara Streets have variable rear setbacks ranging from approximately 10m to 4m. There are several examples in the vicinity of rear boundary encroachments similar to what is proposed. Given the north-south orientation of the allotment, it is considered the building envelope departure will not adversely impact adjoining development with respect to overshadowing, view loss or privacy. With consideration to the local context, the proposed rear setback is not considered to be unreasonable.

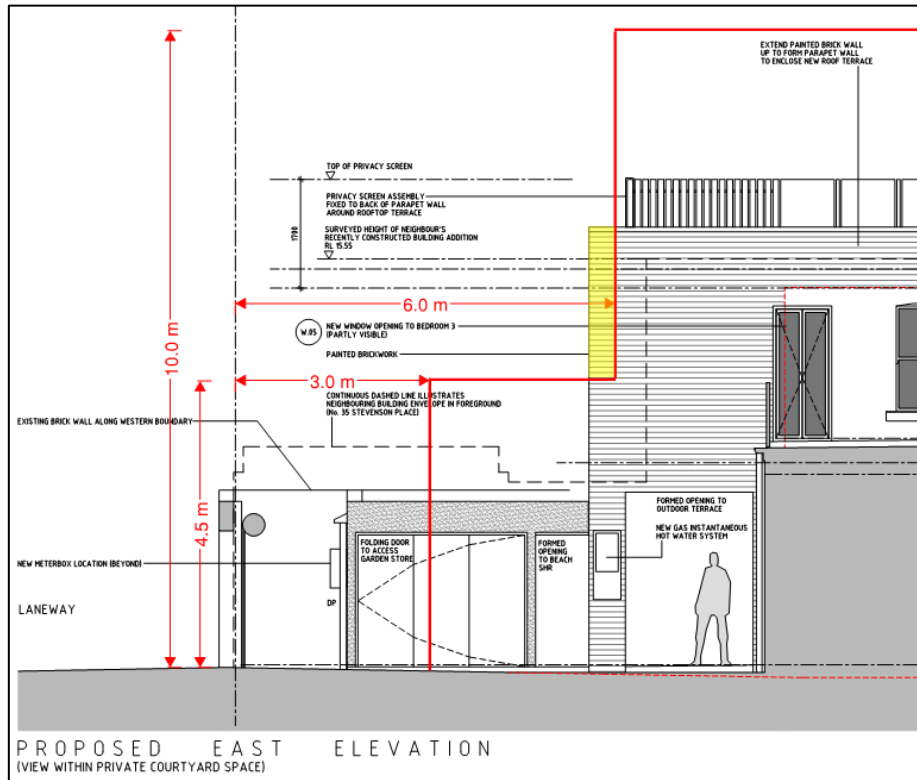
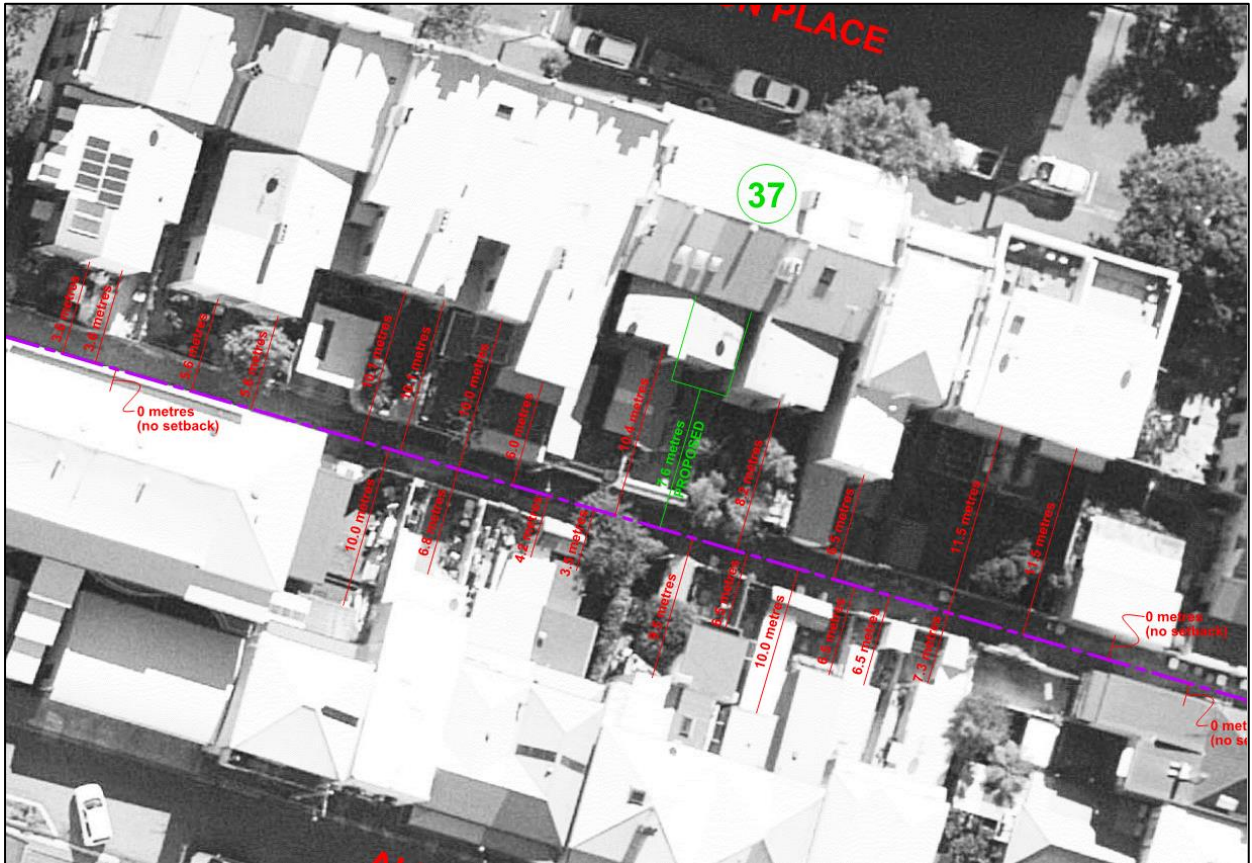


Figure 6 - the NDCP 2012 building envelope variation towards rear boundary (shaded yellow).



**Figure 7** - Existing rear setback conditions measured to the centre line of the rear lane (excluding sheds/outhouses). The average setback of all properties is 7.5m to the centre of the lane. The proposed setback of the subject property is consistent with this average at 7.6m. Refer dwg DA80.



**Figure 8** Existing rear setback conditions in the context of 37 Stevenson Place (indicated by red arrow). The rear setback of the proposed development will be approximately the average of no.33 (far right) and no.35. There are examples of further reduced setbacks in the lane including no. 41 (far left).

The variation is satisfactory on its merits to the relevant Performance Criteria of Section 3.02.04 of the NDCP 2012.

*Landscaping (3.02.05)*

The site area is 112.2m<sup>2</sup>, generating a requirement for 10% of the site to be provided with landscaping (11.2m<sup>2</sup>). The application proposes approximately 9m<sup>2</sup> of landscaped area, which equates to 8% of the site. The proposed development also incorporates a green roof which has not been included in the landscaping calculation. The existing site has no permeable area and is completely built out with established roof areas and hardstand pavement at the ground level. With consideration to the restricted nature of the site, the provision of 8% landscaped area is considered acceptable. It is noted that many small allotments within the Newcastle East Heritage Conservation Area have limited or zero landscaping opportunities on the site.

The proposed development will improve the amenity of the subject site and its contribution to the area and is satisfactory in this regard.

*Private open space (3.02.06)*

The existing site has a paved private open space area of 8.5m x 3m at the rear of the site, where it is not adjacent to any living area. The proposed development includes a rear paved terrace directly adjacent to the new kitchen/living area, measuring 3.1m x 2.8m. Although this is less than the NDCP 2012 required private open space area of 3 x 4m, it represents a much more usable space as compared to the existing rear yard (being visible and accessible from the living area). Private open space is also available in the rear courtyard beyond the paved terrace, which meets the minimum NDCP 2012 - private open space requirement.





**Figure 9** Private open space areas of the proposed development.

The proposed areas of private open space are considered satisfactory with regard to the performance criteria of this section.

#### *Privacy (3.02.07)*

The proposed development locates all living areas on the ground floor, while the first floor contains only bedrooms and bathrooms. Given the limited use of such rooms, this is not expected to have a significant impact on privacy.

Any privacy impacts resulting from the proposed roof terrace (3m x 4.8m) to the following aspects have been addressed as follows:

- a) North: views are obscured by the existing roof form of the dwelling and its attached neighbours.
- b) East, west and south: Views are obscured given the two-storey form of adjoining properties, the elevation of the proposed terrace, and the setback of the usable floor area from the perimeter parapet of the proposed development. Additionally, a timber privacy screen has been incorporated to the perimeter of the terrace which will suitably screen any potential direct views towards the principal area of private open space of nearby properties described by a 12m radius.

Refer to Figure 5 which indicates the roof terrace floor level and top of the privacy screen.

A condition of consent is recommended requiring the privacy screen to be constructed of one material (timber battens) to replace the proposed glazed balustrade sections to further mitigate privacy concern.

Also, a condition of consent is recommended to ensure the whole of the roof over the first-floor addition is a non-trafficable roof garden which will eliminate any potential for overlooking into neighbour's yards.

Having regard to the relevant provisions of this section, the proposed development as amended is considered satisfactory with respect to privacy and overlooking impacts.

As such, the current amended proposal is considered acceptable in this regard. The proposal complies with Council's policy in terms of maintaining a reasonable standard of visual privacy.

*Solar access (3.02.08)*

The proposed alterations and additions will not overshadow north facing living area windows due to the orientation of the allotment. The current amended plans included an analysis of overshadowing set out in shadow diagrams for 21 June and 21 December. Section 3.02 of the NDCP 2012 requires that at least two hours of sunlight is maintained to the private open space (POS) of adjoining properties on 21 June. The submitted diagrams indicate that the POS of adjoining properties is currently completely in shadow on 21 June in the existing situation.

The application demonstrates that the proposed development will not create any additional overshadowing on 21 June and complies with the Acceptable Solutions of the NDCP 2012.

Additional shadow diagrams have been submitted for spring and autumn which indicate some additional overshadowing to both adjoining neighbours. Due to the north-south orientation of the allotment and the established urban density, some additional overshadowing is not considered to result in unreasonable impacts.

*View sharing (3.02.09)*

The height of the proposed development exceeds 5m. However, it is not anticipated to block any views from adjoining properties to water due to the existing form and bulk of the existing terrace row. The proposed development will have minimal impact on views from neighbouring properties and meets the DCP's requirements.

*Car parking and vehicular access (3.02.10)*

There is no provision for on-site car parking. On-site car parking is considered a historical deficiency and the proposal is satisfactory as proposed.

*Development within Heritage Conservation Areas (3.02.11)*

The proposed alterations and additions to the dwelling will not adversely impact upon the established streetscape in this section of the Newcastle East Heritage

Conservation Area (HCA) or diminish its cultural heritage significance. The design respects the heritage context of the site and locality and results in an improvement to the functionality, liveability and amenity for building occupants. Further discussion is provided below under Heritage Conservation Areas – Section 6.02.

*Ancillary development (3.02.12)*

The NDCP 2012 provides performance criteria and acceptable criteria for ancillary development including, carports and garages, detached studios, fences, secondary dwellings, swimming pools.

The development proposes a garden shed at the rear of the property built to the western boundary. There are no specific provisions for garden sheds in the Ancillary Development section of the NDCP 2012. However, the proposed shed is of a form that is consistent with recent ancillary development of adjoining properties and is not considered to have an adverse impact on the amenity of neighbours. It considered that the development meets the performance criteria of the NDCP 2012.

Soil Management - Section 5.01

The earthworks proposed as part of this application are minimal and consistent with the requirements of the NDCP 2012. The proposed development is satisfactory with respect to the relevant soil management objectives.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report under *State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land*. The site is not considered to have any contamination constraints that will impact on the development of the site.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal cultural heritage significance recorded on the site.

Heritage Items - Section 5.05

The site is part of a local heritage item, 'Stevenson Place Precinct', which is listed as item 490 on Schedule 5 of the NLEP 2012, together with 1-55 Stevenson Place. The State Heritage Inventory provides the following Statement of Significance for the group listing:

*An important precinct which forms part of inner residential core and contributes significantly to the streetscape. National Trust – Most important precinct in Newcastle. Considered to be historically, architecturally and environmentally significant.*



**Figure 10** Heritage context of the local area, with subject site outlined in yellow, and the group listed item 'Stevenson Place Precinct' (Item 490) outlined in red.

The application is supported by a Statement of Heritage Impact (SOHI), prepared by Placemark Consultants. The SOHI notes the following with regard to the property's established heritage significance and potential impact on the heritage building:

*[The terrace] is not one of the substantial Victorian and Edwardian terraces once constructed for the wealthy, following stabilisation of the sand dunes with chitter. It is a simple Victorian terrace. On its own, it would not be a listed heritage item.*

*The [group] item is made up of a range of architectural styles, a variety of decades, form, scale and decoration from little to elaborate.*

*The proposed changes will retain a building within the group listing; will contribute positively to presenting a relatively intact group of three terraces; will make a positive contribution to the appearance of the street and the HCA, which is also an objective of the Item 490 listing. It will retain the scale and character of this terrace in the streetscape. The colour scheme to the street should include the chimneys with an emphasis on their detailing and should be sympathetic to the group Item 490.*

*The proposed design retains the door and window fenestrations of the front elevation; restored the verandah and the minor character elements (eg stone threshold, sills, wall vents). For the inward glimpses, the scope will retain the ceilings of the hallway and front rooms, the front rooms' fireplaces, hallway*

*timber flooring and the original staircase. Internally fireplaces, walls, window and door joinery, mouldings, the few existing decorative elements and some boarded ceilings are all shown and noted as being retained.*

*The proposal includes adding one bedroom but retains the existing lightwell, with separation from the neighbour's wall. This will maintain a similar external massing for the back rooms. The proposed dormer (roof deck access) on the south side will read as a contemporary element. It will be inconspicuous from the laneway. The south facing, centred window is a contemporary insertion at the rear of the building. It will not impact on a principal or significant façade.*

*The proposal will improve the amenity that can be offered by this small, late [19<sup>th</sup>] century terrace house and extend its viable longevity with little or no impact on the significance of the HCA or the listed item.*

The SOHI provides a grading of significance of elements of the heritage item, from 'high' to 'intrusive'. To summarise, elements including the street-facing elevation, chimneys, roof form, ground floor fireplaces, timber elements including boarded ceilings, plaster archway, and timber staircase are graded as being of 'high significance'. Elements including the lightwell between nos. 35 and 37 Stevenson Place, the upper floor fireplaces, and rear roof are graded as 'moderate significance'. The existing single storey bathroom and laundry addition and rear roller door are 'little' and 'intrusive'. This grading provides a framework for assessing the impact of the proposed development on building fabric and spaces that contribute to the heritage significance of the group heritage item.

The subject terrace is a modest example of a Victorian terrace by comparison to other buildings within the terrace group, and it is the collective nature of the terrace group that is the most significant element. The heritage value of this collective nature will be enhanced by the proposal which includes restoration of heritage features to the facade. The significance of the single storey bathroom and laundry would appear to be a later addition and the demolition of this element is considered to have a negligible impact on the heritage building.

Although the proposal incorporates some demolition works to the rear of the dwelling, it is considered that the design respects the heritage context of the site and locality and results in an improvement to the functionality, liveability and amenity for the building occupants. The extension and adaptation of the existing two-storey rear addition continues the pattern of extending the terraces in this row, evident from the rear lane where additions of many forms, ages and styles are represented. The two-storey rear addition of adjoining neighbour at 35 Stevenson Place has recently been adapted and extended in a contemporary manner and as such it is considered to be an appropriate outcome for the subject building.

The SOHI has provided a grading of significance for internal and external elements. The proposed development is generally consistent with the recommendations in the SOHI, and includes retention/restoration of all elements identified as being of high significance. Elements identified as being of moderate significance are generally retained or proposed for some level of alteration, including the proposed dormer/rooftop access in the rear roof plane of the original dwelling and the ground floor offset side wall.

The development does not propose facadism, with the whole of the building retained and adapted as a single dwelling. The scheme avoids introduction of faux heritage fabric which would detract from the integrity of the heritage item.

The development removes previous alterations that are unsympathetic to the heritage significance of the heritage item, including reinstatement of a cast iron balustrade to the front facade. Works to the original building use materials and finishes that are appropriate to the architecture of the heritage item, with a simple contemporary interpretation of traditional materials for the rear addition that are consistent with the existing materials of the subject site (painted brick and timber). Original window and door openings of the dwelling are retained. New windows to the addition are vertically proportioned to be consistent with the existing.

The removal of a significant portion of floor structure of the first floor to facilitate a glazed floor is an unreasonable impact to the original section of the terrace and a condition is recommended to ensure this is retained.

It is noted that skylights are generally not permitted to the main front roof plane of heritage items or buildings in heritage conservation areas. The current amended plans have deleted one skylight (one still proposed). It is noted the adjoining property (part of the same terrace group) has one existing skylight facing the street. Notwithstanding this, it is considered that approving skylights on the main elevation of roofs facing Stevenson Place will establish an undesirable precedent. A condition of consent is recommended in this regard to remove the skylight.

The development is consistent with maintaining and repairing building elements to retain the heritage item in a serviceable condition. Continued occupation and use of all individual properties that make up the group listing is imperative to maintaining the significance of this important precinct, to preserve the integrity of the group as a whole.

Significant views to the heritage item (being the entire terrace row between Parnell Place and Telford Street) are achieved from a wide range of vantage points in the HCA, including along Stevenson Place, from Foreshore Park, Parnell Place, Nobbys Road and Fort Scratchley. The proposed development does not intrude into any of these significant views.

During the assessment concern was raised regarding the impact of views to the heritage item from the lane, noting that this is a secondary view but still an integral part of the group listing and subdivision pattern of the local precinct. In response to CN's RFI, the height of the addition to the roof has been reduced to maintain the existing height of the first floor. The height to the top of the privacy screen has also been reduced and the design of the screen amended to be more effectively integrated into the built form of the addition.

The proposed access to the rooftop terrace from the attic has been revised to a dormer form, referencing the pitched dormers prevalent in the surrounding residential roof forms, examples of which can be observed at the residential properties fronting Scott Street further to the south. The proposed glazed dormer roof is unusual in this context and use of traditional roof sheeting would be a more appropriate intervention. A condition of consent is recommended in this regard.

The proposed additions will be highly visible from the rear lane adjoining the site and, in this respect, it is noted that there is considerable variation and in the laneway presentation of dwellings in the locality. The rear of the site is considered to have greater tolerance for change noting the eclectic nature of previous additions to other properties that make up the group listing, which vary significantly in form, age and materiality. Further assessment in this regard is provided under the following section 6.02 – Heritage Conservation Areas.

On balance it is considered that the application proposes an acceptable level of intervention with regard to the heritage significance of the group item. Subject to conditions of consent, the proposed development as amended is an acceptable response.

While rooftop terraces are not common in the Newcastle East HCA, it is considered that the terrace has been suitably integrated into the built form of the addition and presents as a more recessive and modest design than some of those examples noted above. The proposed terrace will not be immediately apparent from the pedestrian level at the laneway. The location of the rooftop terrace, behind the pitched roof form of the original dwelling, effectively mitigate any potential impact of this area to Stevenson Place, which is in contrast to other built examples of rooftop terraces which face the main street and disrupt the established building form.

### Archaeological Management - Section 5.06

The site is not identified in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an '*Archaeological Site*'.

### Heritage Conservation Areas - Section 6.02

The existing terrace building is a *contributory* building in the Newcastle East Heritage Conservation Area. It is located in a dense urban core of two- to three-storey terrace housing, and detached villa residences and cottages.

### *Alterations and additions in HCAs (6.02.01)*

The scheme ensures the prevailing Victorian character of the residential precinct is maintained with facade conservation works that will positively contribute to interpretation of the terrace row and streetscape. Rectification works to the balcony and reinstatement of the missing lacework balustrade are particularly positive and will enhance the integrity of the terrace as it presents to Stevenson Place. The defining architectural qualities of the existing building are deemed to the general terrace form, specifically the front facade, decorative detailing, materiality, fenestration, pitched roof form, and chimneys. The current proposal does not negatively impact on those values. The siting of the addition behind and below the ridge of the dwelling ensures that potential visual impact of the proposal to Stevenson Place is entirely mitigated.

The addition will be highly visible from the laneway. Although this will mean a change to the 'lanescape', it is noted that for a property with more than one street frontage it is generally impossible for an addition to be completely concealed from the public

domain. The context of rear yards within Stevenson Place/Alfred Street/Scott Street is characterised by additions, of varying forms, age and materiality.

Following a preliminary assessment and notification of the proposal, the bulk and scale of the extension was reduced. The built form of the addition as amended maintains the height of the existing two-storey addition. The privacy screen has been integrated more successfully into the overall design. The simple form of the extension responds to the allotment shape and maintains the existing setback from the eastern boundary, referencing the way in which terrace-row housing is typically extended in this area.

The proposal respects the lanescape but is also aligned with historical alterations and additions within this area, notably 10 and 24 Parnell Place, 10 and 23 Alfred Street, 15 Zaara Street, 34 Scott Street and 3 Stevenson Place. The new extension responds subordinately to the host building, ensuring the high-pitched gabled roof of the host dwelling and the roofs of its neighbours remain distinct. The single level garden storage shed proposed to the courtyard is screened from the laneway by the existing masonry wall and roller door.

The extension will contribute to the established eclectic nature of built forms in the laneway, while preserving and enhancing the consistent and historical architecture that presents to the main public streets.

*Materials and details in HCAs (6.02.02)*

Following a preliminary assessment and notification of the proposal, the materials palette of the addition was modified from compressed fibre-cement sheet cladding and aluminium to a simplified interpretation of traditional materials prevalent in the local area.

The style of the addition as amended references the characteristic materials of heritage buildings in the precinct (painted brickwork, weatherboard and timber framed fenestration). The simple and contemporary detailing distinguishes the extension as new work, consistent with Burra Charter principles, and also maintains the simplified character of built forms presenting to the 'lanescape' compared to the more finely detailed character presenting to Stevenson Place. External brick walls with painted finish, timber fenestration and timber screening is considered to be sympathetic within the heritage nature of both the residential precinct and broader conservation area.

The proposed works will see the restoration of the front facade which will enhance the street frontage and contribute positively to the conservation area. New works are restricted to the rear of the terrace, while retaining the historical setback character of the terrace form at the eastern and southern boundaries.

The proposed development is considered to be an appropriate outcome with regard to maintaining and restoring the heritage character of the façade and ensuring that the addition is completely concealed from the significant Stevenson Place frontage. The scale of the addition is similar to the scale of previous additions presenting to the lane. The character of the lane demonstrates numerous ad hoc additions of a variety of forms, age, scale, and materiality, including recent contemporary additions.



A contemporary addition in this location is appropriate with regard to the eclectic nature of the lane.

It is considered that, on balance, the proposed alterations and additions will not detrimentally affect the existing or desired amenity, streetscape and character of the Newcastle East Heritage Conservation Area. The proposed development is consistent with the principles for development in a heritage conservation area, in accordance with the provided Statement of Heritage Impact and the relevant objectives of this section.

Traffic, Parking & Access - Section 7.03

Given the historical subdivision pattern, no onsite car parking is available. In this instance, car parking is considered a historical deficiency in accordance with this section.

Stormwater- Section 7.06 & Water Efficiency - Section 7.07

Stormwater will drain to Council's infrastructure located in the rear laneway; the proposed stormwater management plan is considered to be acceptable.

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 Adjoining Laneways - Section 7.11

The site adjoins a Type B laneway (vehicular – light vehicle only) as specified in this section. The lane is approximately 3.4m wide.

The proposed drainage to the laneway is acceptable as there is existing infrastructure in the laneway.

The proposed addition is set back greater than the minimum required three metres where a lane forms the rear boundary. The elevation addressing the lane does not contain the main entrance and is legible as a secondary frontage.

Development Contributions

The EP&A Act 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**

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

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

It is considered that the proposal will not have any negative social or economic impacts.

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

The site is suitable for the proposed development as it is located in the City Centre, which is well serviced by public transport and community facilities. It is considered that adequate services and waste facilities are available to the development.

At-grade access to the site will be available for pedestrians, from adjacent roads and public transport. Having regard for its central location and the availability of public transport services, it is considered that the proposed use is satisfactory in respect of its accessibility.

The constraints of the site have been considered in the proposed development, which includes heritage.

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

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

The application was notified in accordance with CN's Community Consultation Plan. A total of 11 submissions were received during the notification period.

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

**Table 1** Matters raised in submissions objecting to the proposed development.

Matter	Officer Comment
<b>Statutory and Policy Issues</b>	
<p><b>Floor Space Ratio:</b> The proposal does not comply with floor space ratio development standard of 1:1 under NLEP 2012</p>	<p>The existing dwelling has a total GFA of 130.7m<sup>2</sup>. This equates to an existing FSR of 1.16:1, based on a site area of 112.5m<sup>2</sup>, which is a 16% FSR exceedance.</p> <p>The proposed development seeks consent for an additional 11m<sup>2</sup> of floor area, resulting in a total GFA of 141.7m<sup>2</sup>. This equates to an FSR of 1.26:1, exceeding the prescribed maximum FSR by 26%.</p> <p>In accordance with the requirements of Clause 4.6, the applicant has submitted a written request to vary the development standard imposed by Clause 4.4 of the NLEP 2012.</p> <p>As discussed under 'Clause 4.6 – Exception to Development Standards' of the NLEP 2012 assessment in Section 5.1 of this report above, an assessment of the written request has been undertaken. The request is well founded.</p>
<p><b>Building setbacks:</b> The proposal does not comply with side and rear boundary setback controls under NDCP 2012 Section 3.02 Single Dwellings.</p>	<p>The front, side and rear boundary setback controls in Section 3.02 Residential Development under NDCP 2012 are not applicable to the development application as they are for residential development where there are no locality specific controls.</p> <p>The subject site is located within the Newcastle East HCA, and as such the building envelope is to be assessed on merit regarding Section 6.02 Heritage Conservation Areas of the NDCP 2012.</p> <p>The current amended proposal is considered acceptable in regard to building setbacks as discussed in Section 5.3 of this report.</p>
<b>Heritage Issues</b>	
<p>The development is not consistent with the character of the rear lane in relation to bulk and scale, shape and materiality.</p> <p>The development will conceal the roof of the original terraces from</p>	<p>In response to CN's RFI, the overall height and bulk of the addition was reduced. The top of the brick parapet is now consistent with the height of the existing addition (7 metres). The privacy screen is 700mm above the parapet and is set back from the external face of the addition, which assists in providing a more recessive and integrated design.</p> <p>The rear setback of the addition is not inconsistent with</p>

the lane.	<p>the lane. Neighbouring properties demonstrate a variety of setbacks ranging from approximately 10m to 4m. The proposed rear setback of 5.5m is roughly the average of the rear setback of adjoining premises at 33, 35, and 41 Stevenson Place.</p> <p>The calculated average height of adjoining premises facing the lane between 31 and 45 Stevenson Place is approximately 6.9m. The height of the addition to the parapet (7.0m) is generally consistent with the height of adjoining and nearby two-storey properties. This maintains the height of the existing addition and matches the height of the adjoining neighbour's two-storey addition.</p> <p>The height to the top of the privacy screen is 0.7m above the parapet, bringing the total overall height of the addition to 7.7m, 0.1m taller than the highest rear addition in the lane (43 Stevenson Place, 7.6m).</p> <p>The proposed development, and all other additions presenting to the lane, are all significantly lower than the principal roof ridge line of 9.5 - 9.9m above ground level in the lane.</p> <p>The width of the addition is the same as the width of the existing two-storey addition in this location (3.9m). The proposed bulk and scale of the development is therefore considered to be reasonable.</p> <p>The rear addition is a roughly rectangular shape. This is consistent with most additions in this area facing the lane. There is a splayed brickwork element provided to the rear elevation as an architectural feature which is not considered to be visually intrusive. It is noted that the adjoining property also has a contemporary addition that is rectangular with an angled balcony. The shape of the proposed addition is not considered to have a detracting impact on the character of the lane.</p> <p>The original proposal included a schedule of materials and finishes for the rear addition, indicating fibre cement exterior cladding and aluminium louvres. In response to CN's RFI, the proposed materials for the addition were revised to reflect the traditional materials used in the precinct – painted brick, natural timber, and timber fenestration. The amended proposal is considered to present a more neutral appearance and is acceptable in this regard, subject to conditions of consent. Further comment is provided above in Section 5.3 of this report.</p>
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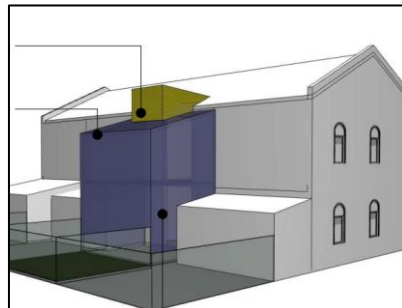
	<p>At the pedestrian level in the lane, views to the back of the roof of the original terraces are generally blocked by existing alterations and additions at the rear of the terraces. The proposed development is consistent with this pattern. The proposed development will maintain views to the rear wall of the existing terrace via the proposed offset from the eastern boundary, which is consistent with the manner in which terraces in this area are extended.</p>
<p>The proposed development will impact the heritage significance of the subject property and its neighbour at 39 Stevenson Place as the floor plan arrangement of the terraces are similar.</p>	<p>As discussed in Section 5.3 of this report, the potential impact of the development on the heritage significance of the heritage item is acceptable.</p> <p>The SOHI submitted with the application provides an analysis of the heritage significance of the heritage item and concludes that the key heritage values of the subject property and the group item is in the presentation of the buildings as a rare and highly intact Victorian streetscape. The interiors of the group heritage item vary from building to building. The lane frontages of the heritage item are highly eclectic, having been extended and adapted in an ad hoc fashion over the last century.</p> <p>Internal renovations include retention of historical internal elements including timber boarded ceilings, decorative ceiling roses and plasterwork, timber floorboards, fireplaces, mantels and hearths, windows, and the original staircase.</p> <p>The relationship between the subject property and its neighbour will be readily appreciated from the principal frontage and will be legible from the lane through retention of the roof forms and back wall of the original dwellings.</p> <p>Subject to conditions of consent, the proposed development is considered to be acceptable in this regard.</p>
<p>The rooftop terrace will set a precedent for three-storey buildings in a two-storey area.</p>	<p>The following extract from the Statement of Significance for the Newcastle East Heritage Conservation Area is noted:</p> <p><i>'...The residential area is significant for its consistent streetscapes of two- and three-storey terrace housing dating from mid-19<sup>th</sup> to early 20<sup>th</sup> centuries and its housing for workers. There are also examples of single storey detached houses.'</i></p> <p>The surrounding area is not exclusively two storeys and</p>

there are many examples of three storey dwelling houses in the area, just as there are examples of other building typologies including warehouses, apartment buildings, single storey cottages, and detached villas.

The immediate context of the subject site is exclusively attached terrace dwelling houses between 33 and 55 Stevenson Place. All terraces in this row present to Stevenson Place as two-storeys.

There are other existing three-storey dwellings in the street, including buildings that clearly present as three storeys and others that have had attic levels converted to habitable space, including one of the adjoining dwellings. Therefore, it is not considered unreasonable for the subject property to have a third level in principle.

The rooftop terrace does not add unacceptable bulk and scale to the rear addition as it is uncovered. The proposed privacy screen has been suitably integrated into the built form so that it does not appear 'tacked on' or create unnecessary bulk, subject to conditions of consent. The proposed addition will be perceived as a two-storey structure, from the pedestrian level in the lane. The proposed dormer/roof access will physically impact the rear roof plane, however this is considered to be an acceptable outcome to gain roof access being invisible from the street, and is not dissimilar to design guidelines in CN's Heritage Technical Manual (indicating a dormer style insertion for a lightwell):



There are some other examples of approved and built rooftop terraces in the Newcastle East HCA, notably 31 and 31A Stevenson Place, 2 and 7 Fort Drive, 3 and 9 Beach Street, and 29 Parnell Place.

While rooftop terraces are not a common feature in the Newcastle East HCA, it is considered that the terrace has been suitably integrated into the built form of the addition and presents as a more recessive and modest design than some of those examples noted above.

	<p>A condition is recommended to further reduce the size of the roof terrace in response to concerns regarding the size of the terrace.</p>
<p>The proposed development will have a negative impact on Alfred Street.</p>	<p>The proposed development will not be visible from Alfred Street. It will be visible from the pedestrian rear lane between Alfred St and Stevenson Place. The visual impact of the proposed development to the lane is discussed under Section 5.3 of this report.</p>
<p><b>Amenity Issues</b></p>	
<p><b>Light:</b> The attic and rooftop terrace will result in light emission which will detrimentally affect adjoining properties.</p>	<p>Anticipated levels of light emission from the attic are what would be reasonably expected in a residential area. There is no additional lighting proposed in the application beyond the scope of what would be associated with a single dwelling.</p> <p>Some submissions noted concern regarding potential reflectivity of the glass balustrade. A condition is recommended that the glass is deleted and the privacy screen is constructed of one material to promote a more cohesive appearance and address light and privacy concerns.</p>
<p><b>Solar access:</b> the proposed development will negatively impact the solar access to adjoining properties.</p>	<p>The current amended plans included an analysis of overshadowing set out in shadow diagrams for 21 June. Section 3.02 of the NDCP 2012 requires that at least two hours of sunlight is maintained to the private open space (POS) of adjoining properties on 21 June.</p> <p>The submitted diagrams indicate that the POS of adjoining properties is currently completely in shadow on 21 June in the existing situation.</p> <p>The application demonstrates that the proposed development will not create any additional overshadowing on 21 June and complies with the Acceptable Solutions of the DCP.</p> <p>The application includes additional shadow diagrams for spring and autumn, which indicate some additional overshadowing. This impact is not considered unreasonable given the context of the site and the north-south orientation of the allotments.</p>
<p><b>Acoustic:</b> The proposed development will create excessive noise that will impact adjoining properties.</p>	<p>The original application proposed a 24m<sup>2</sup> rooftop terrace, including a rooftop spa and access to an attic kitchenette. In response to CN's Request for Information, the rooftop spa and kitchenette were deleted from the proposal and the size of the terrace was reduced from 24m<sup>2</sup> to 14m<sup>2</sup>.</p>

<p>Particularly, the rooftop terrace will be used for parties/gatherings.</p>	<p>A condition of consent is recommended to ensure the whole of the roof over the first-floor addition is non-trafficable roof garden which will eliminate any potential for overlooking into neighbour's yards and further reduce the roof terrace size to 11.8 m<sup>2</sup>. This has been discussed with the applicant who is accepting of the change.</p> <p>Residential use of outdoor areas is expected to generate levels of noise consistent with the use of the site as a single dwelling. This is considered reasonable given the location of the site within a medium-density residential area and the prevalence of elevated terraces and balconies in the local area. It is noted that the proposed rooftop terrace is larger than the typical balcony of adjoining neighbours, however the application does not propose an intensification of the use of the site, which remains as a single dwelling.</p> <p>To assist with this assessment, Section 3.03 Residential Development of the NDCP 2012 has been reviewed. This section <u>does not apply</u> to the proposed development, it applies to dual occupancies and multi-dwelling housing, and excludes single dwellings. However due to the dense urban context, Section 3.03.03 'Amenity' has been reviewed as a guide for assessment of any potential acoustic impacts of this development. Notwithstanding that this section does not apply to the application, the proposed development would comply with the Acceptable Solutions for Acoustic Privacy (Section 3.03.03 I) and Noise and Pollution (Section 3.03.03 J).</p> <p>Should there be unreasonable or unacceptable noise impacts arising from occupants of the site, that would be addressed via other means.</p>
<p><b>Privacy</b></p>	
<p>The rooftop terrace will overlook the private open space of adjoining residences.</p>	<p>The original application proposed a 24m<sup>2</sup> rooftop terrace. This has been revised down to 14m<sup>2</sup>. A condition of consent is recommended to ensure the whole of the roof over the first floor addition is non-trafficable roof garden which will further reduce the roof terrace size to 11.8 m<sup>2</sup>. This has been discussed with the applicant who is accepting of the change.</p> <p>A green roof and privacy screen is proposed between the usable area of the rooftop terrace and the edges of the roof.</p> <p>The privacy measures incorporated into the proposed development will not unreasonably overlook adjoining</p>



	<p>residences.</p> <p>Any privacy impacts resulting from the proposed roof terrace (3m x 4.8m) to the following aspects have been addressed as follows:</p> <ul style="list-style-type: none"> <li>a) East, west and south: 1700mm privacy screening has been incorporated to prevent privacy and overlooking impacts. Views are also obscured given the form of adjoining properties, the elevation of the proposed terrace, and the setback of the balustrade from the perimeter parapet of the proposed development. Further, it is noted that the floor level of the terrace is 1m lower than the parapet level of the roof, with the privacy screen protruding 400mm above the parapet to reduce the perceived bulk of the addition.</li> <li>b) North: views are obscured by the existing roof form of the dwelling and its attached neighbours.</li> </ul> <p>Some submissions noted an objection to the provision of glass privacy screen sections on the eastern and western sides of the rooftop terrace. A condition is recommended that the glass is deleted and the privacy screen is constructed of one material to promote a more cohesive appearance and address light and privacy concerns.</p> <p>Having regard to the relevant provisions of this section, the proposed development as amended is considered satisfactory with respect to privacy and overlooking impacts. As such, the current amended proposal is considered acceptable subject to conditions.</p>
<p>The first floor windows create privacy concerns for the rear of the Alfred Street properties.</p>	<p>The first floor windows facing the rear lane are located within a bedroom. Due to the limited use of such rooms this is not considered to be a privacy concern.</p>
<p>People on the rooftop terrace will be able to look over the privacy screen / the openings in the screen between the battens will allow for overlooking.</p>	<p>The privacy screen is 1.7m taller than the floor level of the terrace. The floor of the terrace is set back from the perimeter of the addition with a roof garden incorporated. It will not be possible for the average person to look over the top of the screen.</p> <p>The proposed screen consists of 90mm battens with 30mm spacings which equates to a maximum open area of 25%.</p> <p>The design of the screen complies with the relevant requirements set out in Section 3.02 (Single Dwellings) of the NDCP 2012.</p>

	It is therefore considered that the privacy screen is adequate for its intended purpose.
Views from the converted attic room into nearby properties are a privacy concern.	Views from the attic room will not be possible as they will be blocked by the built form of the addition itself and the roofs of neighbouring properties. Additionally, any views to the backs of properties are outside of the 12m exclusion zone defined in the NDCP.
<b>Traffic and Parking</b>	
The proposed development does not include a parking space.	The site is considered to have a historical parking deficiency as discussed in Section 5.3 above. The development is considered acceptable as proposed, with regard to the configuration of the allotment and the constrained nature of the rear lane.
<b>Other matters</b>	
Redaction of plans makes it difficult to understand the potential impacts of the development.	Internal floor plans were redacted prior to being made available on the DA Tracker in accordance with the Information and Privacy Commission's (IPC) guidelines and the Community Participation Plan. This is standard practice for all single dwelling applications that are made publicly available.
The proposed development will create fire safety issues between the attic spaces of adjoining terraces. Details of fireproofing measures has not been provided.	This level of detail is assessed at Construction Certificate stage and is not a matter for consideration under this assessment. Prior to construction commencing the applicant will be required to obtain a Construction Certificate at which point fire separation and other BCA matters will be addressed.
The building may be used as short-term rental accommodation.	The existing building is used as a dwelling house and the application does not propose a change of use. It is noted that future short term rental accommodation (STRA) would require registration on the STRA Register and comply with the associated Code of Conduct and is not a matter for consideration under this assessment. Any future unauthorised use of the site would become a compliance matter.
The construction of the development may cause damage to adjoining properties.	Normal construction practices and civil liabilities for any damage to adjoining premises will apply to this development as it would for any development.
The brick wall on the	The existing brick boundary wall and roller door

southern boundary encroaches on the public lane.	encroaches approximately <300mm into the rear lane. No work is proposed to the wall and roller door which are to be retained in the proposal. A condition of consent is recommended to ensure the proposed development is set out by a registered surveyor and is within the property boundaries.
Objection to solid fuel heaters	The original fireplaces in the front of the dwelling are to be retained. No additional solid fuel heaters are proposed.
The roof terrace will be prone to water ingress.	Waterproofing of the proposed development is a construction matter.
The rooftop terrace should be set to the alignment of 35 Stevenson Place.	The amended plans show that the deck is set back further than the alignment of the adjoining property at 35 Stevenson Place. Additionally, a condition of consent is recommended to ensure the whole of the roof over the first floor addition is non-trafficable roof garden which will eliminate any potential for overlooking into neighbour's yards. This setback is aligned with the other neighbouring dwelling at 39 Stevenson Place (approx. 2m further back than no.35).
Objection to skylights facing the street	A condition of consent is recommended to delete the proposed skylight.
The cost of works is inaccurate.	The applicant has submitted a cost estimate report prepared in accordance with CN's <i>'Guide to estimating the cost of works'</i> .
Objection to metal flashing against the adjoining property	A condition of consent will be included to ensure the development is set out by a registered surveyor and is contained within the property boundary. Technical details such as resolving flashing is a matter for Construction Certificate stage.
Objection to air conditioning systems	An air conditioning system does not form part of this application.

**5.9 The public interest**

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

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

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

The 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 24 Attachment A:** Submitted Plans – 37 Stevenson Place Newcastle East

**Item 24 Attachment B:** Draft Schedule of Conditions - 37 Stevenson Place Newcastle East

**Item 24 Attachment C:** Processing Chronology - 37 Stevenson Place Newcastle East

**Item 24 Attachments A-C distributed under separate cover**

## CITY OF NEWCASTLE

Development Applications Committee Meeting 6 December 2022

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**ITEM-25**                    **DAC 06/12/22 - 26 WOODWARD STREET MEREWETHER - DA2022/00382 - DUAL OCCUPANCY – INCLUDES DEMOLITION AND SUBDIVISION (2 LOTS) TORRENS TITLE**

**APPLICANT:**            **LAND DEVELOPMENT SOLUTIONS**  
**OWNER:**                **A S BURNS & N C BURNS**  
**NOTE BY:**              **PLANNING AND ENVIRONMENT**  
**CONTACT:**             **INTERIM EXECUTIVE DIRECTOR, PLANNING & ENVIRONMENT / ACTING MANAGER, PLANNING, TRANSPORT & REGULATION**

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### PART I

A development application (DA2022/00382) has been received seeking consent for demolition of existing dwelling and associated structures, erection of dual occupancy development (two x three-storey dwellings), two lot Torrens title subdivision and associated earthworks at 26 Woodward Street, Merewether.

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and no submissions have been received in response.

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

This report assesses the proposal against relevant State legislation, Regional and Local Environmental Planning Instruments and Policies, in accordance with Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EPA&A1979).



**Subject Land: 26 Woodward Street Merewether**

## Issues

The proposed variation to the Height of Buildings development standard under the NLEP 2012.

## Conclusion

The proposed development and subdivision have 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. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That Development Application DA2022/00382 for demolition of existing dwelling and associated structures, erection of dual occupancy development Torrens title subdivision (2 lots) and associated earthworks at 26 Woodward Street, Merewether be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

## Political Donation / Gift Declaration

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject property comprises Lot 48 DP 39230, 26 Woodward Street Merewether and is a slightly wedge-shaped allotment with a street frontage of 32.145m and a total area of 646.7m<sup>2</sup>. The site has a steep northerly slope as do all the allotments along the northern side of Woodward Street, with a substantial downhill slope towards the northwest (rear) corner with a range in grade of RL 51.29 AHD – RL 37.34 AHD, representing an overall general site grade of approximately 33.01%.

The site has a south-easterly aspect and is occupied by a single storey weatherboard dwelling with a metal roof. The site along with the adjoining sites have various treated pine retaining walls along the side boundaries and throughout the site.

The general form of development in the immediate area consists of well-established residential properties, predominately of single and two-storey construction. The adjoining dwelling to the north-east at 24 Woodward Street contains a single storey weatherboard dwelling with tile roof and to the south-west at 2 Lorraine Street contains a split-level rendered dwelling with metal roof. The western side of Woodward Street is dominated by carports built close to the boundary.

### 2.0 THE PROPOSAL

The applicant seeks consent for the demolition of existing dwelling and associated structures including shed, carport, deck and alfresco area and construction of a dual occupancy, development comprising two x three-storey dwellings with associated site works, retaining walls and Subdivision – Torrens Title (one into two lots).

The earthworks and retaining walls associated with this proposal through the design have been kept to a minimum and will assist with providing this site with comparable levels with adjoining properties. The majority of the earthworks are within the built form of the proposed dwellings and are in response to the existing steep topography.

The design utilises the slope through a tiered approach incorporating decks, pools, and lawn space.

Amended plans have been submitted during assessment of the application. A copy of the current amended plans is at **Attachment A**.

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

### 3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Participation Plan (CPP). No submission/s were received in response.

#### **4.0 INTEGRATED DEVELOPMENT**

The proposal is not integrated development pursuant to Section 4.46 of the EP&A Act.

The site is located within an area affected by mines subsidence. The applicant obtained approval subject to conditions from Subsidence Advisory NSW.

A copy of their correspondence and stamped plans issued directly to the applicant under section 22 of the *Coal Mine Subsidence Compensation Act 2017* was submitted with the development application. A copy of Subsidence Advisory NSW approval subject to conditions dated 30 March 2022 is provided at **Attachment D**.

#### **5.0 PLANNING ASSESSMENT**

The application has been assessed having regard to the relevant matters for consideration under the provisions of section 4.15(1) of the EP&A Act, as detailed hereunder.

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

###### **State Environmental Planning Policy (Resilience and Hazards) 2021**

Chapter 4 Remediation of Land, clause 4.6 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, and 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 (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 proposal is permissible within this zone subject to CN's consent.



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

- i) To provide for the housing needs of the community within a low-density residential environment.
- ii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- iii) To accommodate a diversity of housing forms that respect the amenity, heritage and character of surrounding development and the quality of the environment.

#### Clause 2.6 - Subdivision—Consent Requirements

The proposal includes a Torrens title subdivision of one lot into two allotments and requires consent under this clause. Conditions are recommended to require the lodgement of a Subdivision Certificate application to enable the registration and creation of new land parcels, if approved under this development application, as contained within **Attachment B**.

#### Clause 2.7 - Demolition Requires Development Consent

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

#### Clause 4.1 - Minimum Subdivision Lot Size

Under the NLEP 2012 the site has a minimum lot size requirement of 400m<sup>2</sup>. The proposed subdivision (one into two lots) does not comply with the minimum lot size development standard. An exception to the minimum lot size applies under Clause 4.1A of NLEP 2012.

#### Clause 4.1A - Exceptions to Minimum Lot Sizes for Certain Residential Development

The proposed plan of subdivision includes:

- 1) Lot 1 = 341m<sup>2</sup>; and
- 2) Lot 2 = 305.4m<sup>2</sup>.

The proposal seeks to utilise the provisions of this clause by lodging a development application for both development of the site and Torrens title subdivision (one into two lots), with both lots proposed exceeding the minimum 200m<sup>2</sup> per lot requirement under this clause.

A condition is recommended to require the dual occupancy to be built to at minimum lock-up stage, prior to issue of any Subdivision Certificate.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of buildings development standard of 8.5m. Proposed Dwelling 1 results in a maximum building height of 9.571m, which equates to a 12.6% variation to the height of buildings development standard. In addition, there is a 920mm departure at the rear of Dwelling 1, equating to a 10.8% variation. Further, proposed Dwelling 2 results in a maximum building height 8.827m, which equates to a 3.8% variation to the height of buildings development standard.

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

Clause 4.4 – Floor Space Ratio

Under the NLEP 2012 the site has a maximum floor space ratio limit of 0.6:1. The development will result in a maximum floor space ratio of 0.57:1, or 371m<sup>2</sup> of combined floor space complying with the provisions of the clause.

Clause 4.6 - Exceptions to Development Standards

The applicant has submitted a written request that seeks to vary the Height of Buildings (Clause 4.3) development standard in accordance with Clause 4.6 of the NLEP 2012. Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard.

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 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 reaches a maximum height of 9.571m, which equates to a 12.6% variation to the height of buildings development standard. 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 applicant has prepared a written request, prepared by Land Development Solutions (dated March 2022) at **Attachment E** constitutes a written request for the purposes of Clause 4.6(3).

There are five circumstances established by *Wehbe v Pittwater Council* [2007] NSWLEC 827 in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary.

The applicant's clause 4.6 Variation Request written response seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable and unnecessary. The applicant's Variation Request addresses Clause 4.6 (3)(a), is summarised as follows:

- i) *The overall building mass of the dual occupancy dwelling is well within the LEP maximum height limit. The extent of the height non-compliance is limited centrally to the site and does not impose any overshadowing or privacy issues as demonstrated in the Statement of Environmental Effects. The height departure will not affect adjoining development or the development itself in terms of excessive bulk as the departure is minor in scale compared to the overall site. As viewed from Woodward Street the proposed dwellings are meters under the LEP height limit.*
- ii) *The proposed departure is central to the site and is not visible from Woodward Street. Due to the orientation the departure does not cause any additional solar impacts on adjoining dwellings.*
- iii) *As displayed on the shadow diagrams included in the Architectural plans there is no additional impact on shadowing due to the departure.*
- iv) *Strict compliance to the HOB would hinder the functionality of the proposed dwelling one in that the overall development application proposes to provide an infill housing opportunity that creates two moderately sized detached dwellings on Torrens Title lots close to the city*

*CBD. The objective of the residential zoning is to encourage greater inner-city density where possible without compromising the amenity and functionality to the dwellings or the surrounds. As these objectives are achieved within the proposal by allowing the slight departure to ensure amenity and functionality for proposed dwelling one is achieved whilst providing the desired density for the area.*

- v) The proposal is as a majority well within the 8.5m maximum height limited however the site is located within a steep area of Merewether where Council has taken the practical approach over the years to consider these minor departures in order to utilise steeper sloping sites to achieve the zoning density objectives desired by Council.*
- vi) In Moskovich v Waverley Council, the LEC accepted that compliance with the standard (HOB in that case) was unreasonable and unnecessary because the design achieved the objectives of the standard and the respective zone, in a way that addressed the particular circumstances of the site and resulted in a better streetscape and internal and external amenity outcome than a complying development.*
- vii) The proposal for the subject site achieves a similar outcome in that it responds appropriately to surrounding & existing built form; provides an architectural design which strengthens the buildings presentation and appropriately promotes the desired future residential character.*
- viii) The development scheme has been designed with due consideration to existing site context and surrounding built form. In particular, the built form has been improved without increasing the buildings bulk and maintains a respectful interface with adjoining residences.*
- ix) Overall, the design approach to the subject site is consistent with those considerations in Moskovich v Waverley Council, and strict compliance with the HOB control over this site is considered unreasonable and unnecessary in this instance.*

CN Officer Comment

The proposed development provides for a built form which is compatible with the existing and desired built form in the area and deals appropriately with the steep topography of the site. The proposal provides reasonable daylight access to adjoining sites and the public domain.

The proposed variation to the development standard does not result in any undue adverse environmental impacts, including impacts on adjacent properties in terms of bulk, scale, overshadowing or 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 in the circumstances of the case.

**Clause 4.6(3)(b). Are there sufficient environmental planning grounds to justify contravening the development standards?**

In Initial Action, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole. The applicant's response to Clause 4.6(3)(b) provides the following specific environmental planning grounds to justify the breach of the standard:

*"Strict compliance would require the loss of residential density on a site that is centrally located and well serviced. This does not represent the proper management of resources or the orderly and economic use of land. The proposed residential housing will each have its own Torrens title lot and be within the character of the area.*

*Further, it would be a poor planning outcome as it would place more pressure on peripheral locations to supply housing to meet the requirements of the city. As such, the proposed development is consistent with the provisions of orderly and economic development. A development that is in the public interest and demonstrates that it is consistent with the objectives of development standards within that zoning should be supported given that strict compliance would merely result in a built form that is inconsistent with its surrounds due to the resulting smaller compacted nature of the resultant design. Given the minor nature of the non-compliance, there are no material impacts that result from the non-compliance, then a fully compliant development would present. In addition, there are no detrimental amenity impacts resulting from the development when considered in its entirety."*

CN Officer Comment

The written request outlines environmental planning grounds which justify the contravention. In particular, that the proposed height exceedance relates to such a small area of the building that it will not be perceivable. In addition, the development will not result in unreasonable impacts upon adjoining properties or the public domain. The reasons outlined above are considered to provide 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. Clause 4.6(a)(i) is satisfied in this regard.

**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 is of an appropriate density, consistent with the established centres hierarchy. Moreover, the proposed development's density, bulk and scale is consistent with the built form as identified by the centre's hierarchy.

*Objectives of the R2 Low Density Residential Zone*

The objectives of the R2 Low Density Residential Zone are as follows:

- i) To provide for the housing needs of the community within a low-density residential environment.*
- ii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- iii) To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

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 R2 Low Density Residential zone. The proposal is satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

**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 concurrence to the exception to the development standard, as required by Clause 4.6(4)(b) of the NLEP 2012, is assumed, as per Department of Planning Circular PS20-00 of 5 May 2020.

Conclusion

The states of satisfaction required by 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 request expressed that the design relates sensibly and responsibly to the site context and existing conditions regarding the amenity of the occupants and the surrounding neighbours. The proposal seeks to maximise the legitimate redevelopment opportunities of the site without denying or reducing the amenity of the area.

The departure to maximum building height is relatively minor in nature given the overall site massing proposed, central location of the exceedance and the design of the proposal. It is considered that the variation sought raises no significant issues and the height of building control under NLEP 2012 allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

The Clause 4.6 variation request has demonstrated that the proposed building height is acceptable and therefore that strict compliance with the prescribed height of buildings would be unreasonable. The Clause 4.6 variation request is supported.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils and the proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, and the majority of the earthworks are within the built form of the proposed dwellings and in response to the existing steep topography.

The design utilises the slope through a tiered approach incorporating decks, pools and lawn space. The design allows for a two-storey appearance from the street and minimises earthworks. The design has intentionally sought to achieve maximum solar access to the living areas and private open space areas.

Privacy is maintained between both proposed dwellings and adjoining neighbours by ensuring areas such as bedrooms face forward or to the rear of the site, and bathrooms utilise high set windows or opaque windows when they face the neighbouring lots. Currently the street's dwellings on the western side either have no off-street parking or have carports built close to the street which dominate the streetscape. The proposal will improve the parking by creating off-street parking of a more standard form of garaging. Each dwelling's driveway is accessible off Woodward Street and the driveway grades have been designed to work with the site's natural grade where possible.

The earthworks associated with this proposal is considered acceptable and through design has been kept to a minimum and will assist with providing this site with comparable levels with adjoining properties.

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

There is no exhibited draft environmental planning instrument relevant to the application.

**5.3 Any development control plan  
Newcastle Development Control Plan 2012 (NDCP 2012)**

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted NDCP 2012 chapters include savings provisions to the following effect: 'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.'

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

The main planning requirements of relevance in the NDCP 2012, as it applied to the proposal at the time of lodgement, are discussed below.

Subdivision - Section 3.01

The proposal includes a Torrens title subdivision (one into two lots) and is considered to meet the main aims and objectives of creating lots of suitable size, shape and orientation, sufficient for appropriate development and with utilities and service provision.

Recommended conditions are to be imposed that requires lodgement of a Subdivision Certificate application for CN endorsement, to enable registration of the new land titles.

A condition is recommended requiring the development to be built to lock-up stage, given the lots are proposed under Clause 4.1A Exemption to Development Standards, namely Clause 4.1 Minimum lot size of 400m<sup>2</sup> for this site.

Residential Development - Section 3.03

The objective of this section of the NDCP 2012 is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form, maximising the amenity and safety on the site



and creating a vibrant place for people to live in a compact and sustainable urban form.

The following comments are made concerning the proposed development and the relevant provisions of Section 3.03:

*Principal controls (3.03.01)*

A. *Frontage widths*

The site has a width of frontage to Woodward Street of 32.145m which complies with the 12m requirement.

B. *Front setbacks*

Proposed setbacks of minimum 2.4m & 4.41m are considered consistent with the requirement of being within 40m either side of the lot and surrounding future setbacks and redevelopment within the area. Proposed garages are further setback 6.16m and 6.0m respectively.

C. *Side and rear setbacks*

The proposed development complies with relevant building envelope provisions, except for a minor portion of the buildings relating to height of building departure. In relation to the rear boundary, dwellings have setbacks exceeding 9.63m, 10.678m and 13.568m at the closet points with additional floors being stepped back even further.

D. *Landscaped Area*

The proposal is a Category 1 development and did not require the submission of a landscaping plan. The proposal requires minimum landscaped area of 30% and deep soil area of 15%. The proposal provides for a landscaped area of 40% and deep soil area of 23% therefore complying with the requirements.

*Siting the development (3.03.02)*

A. *Local character and context*

The proposal is acceptable in relation to built form, articulation, and scale relevant to the desired local character of the area and the context within it is located. It also does not unreasonably impact on the amenity or privacy of adjoining dwellings and their private open space.

A. *Public domain Interface*

The proposed development provides areas of private open space behind each dwelling, and balconies are provided at second storey facing the street which provides good passive surveillance and streetscape presentation. The design provides for clear delineation between private and public domain space, with front fencing of appropriate material and scale to complement the residential neighbourhood. Direct visibility to the front door and garage of each dwelling,

along paths and driveways from the public domain are achieved. Site facilities such as letterboxes and a bin storage area have been provided.

A. *Pedestrian and vehicle access*

The proposed development provides an individual driveway to each dwelling / garage with scope for landscaping areas along with strip plantings provided adjacent to the driveways to soften the area and proposed fencing treatments to create an acceptable streetscape.

A. *Orientation and siting*

The proposed development has been suitably laid out having due regard for the orientation and aspect. Its siting is appropriate for the nature of the surrounding built environment and responds to the existing landform of the site and neighbouring properties. Solar access is available either directly or passively to the private open spaces and living areas. All private open space areas receive the minimum two hours of direct sunlight under the requirements.

A. *Building Separation*

Minimum separation between two or more buildings on the same lot is 3m where a wall height is less than 7.5m. The proposed development does not strictly comply with this 3m requirements on the parent lot.

The proposal provides for articulation along side walls, with approximately 7m between dwellings at north-western - street front end, then reducing to below 1m for garages and increases up to approx. 2.1m for the remainder of building along this elevation. The proposed development has been designed to ensure a reasonable setback is provided between the two dwellings.

In addition, consideration is given to the application which includes a Torrens Title subdivision and the proposed separation of the two houses complies with the requirements of residential housing setbacks relative to each future Torrens Title allotment. Building separation is considered appropriate and is acceptable in this instance.

*Amenity (3.03.03)*

A. *Solar and daylight access*

Sufficient solar access is available to habitable rooms and private open space areas within the development in line with relevant requirements.

A. *Natural ventilation*

All habitable rooms are naturally ventilated and meet the ventilation requirements of this section.

A. *Ceiling heights*

The proposal achieves the ceiling height requirements of this section with all ceiling heights achieving 2.7m.

A. *Dwelling size and layout*

The proposal exceeds the minimum requirement for internal areas of 115m<sup>2</sup> for 3-bedroom dwellings and an additional 12m<sup>2</sup> for any additional bedrooms. The internal layout and spatial arrangement of the development provides appropriate levels of amenity for future occupants.

A. *Private open space*

Each dwelling is provided with private open space area of 16m<sup>2</sup> and 3m in width, located adjacent to living areas and 50% of the minimum 16m<sup>2</sup> is covered area. The private open space areas provided are considered appropriate having regard to the nature of the development and their intended purpose, have reasonable levels of solar access and connectivity, which are conducive to passive and active private recreational pursuits.

A. *Storage*

The proposal exceeds the minimum requirement of 10m<sup>3</sup> and is acceptable.

A. *Car and bicycle parking*

The development has been designed to include one car space per dwelling as required, through provision of a single garage and sufficient area is available on site for an additional vehicle on the driveways and secure bicycle storage and parking.

A. *Visual privacy*

The development does not adversely impact on the privacy of adjoining or adjacent neighbours, and the development has been designed to ensure adequate visual privacy between the two dwellings.

Adequate separation exists between dwellings with no upper storey decks proposed orientated towards neighbours. Window type and location has been considered throughout the development to ensure privacy of neighbours and within the site between the two dwellings.

A. *Acoustic privacy*

The dwellings will be constructed to Australian Standards and are separate detached dwellings ensuring acoustic privacy. Air conditioning units may be located with adequate distance from boundaries or within subfloor areas to ensure acoustic privacy for neighbours.

A. *Noise and pollution*

Woodward Street is a local road and there is no development or infrastructure within proximity that generates noise levels that will detrimentally impact upon the use of the dwellings.

*Configuration (3.03.04)*

A. *Universal design*

The proposed development is consistent with the objectives of achieving universal design features and there is scope to achieve flexibility in the design.

B. *Communal area and open space*

The proposal is for a dual occupancy and therefore below the 10 dwellings or more requirement, this control does not apply.

C. *Architectural design and roof form*

The development includes articulation within the built form and the roof forms are typical to the area and not considered to unreasonably impact on the privacy of adjoining dwellings or their private open spaces.

D. *Visual appearance and articulation*

Dwelling facades integrate with the character and adjacent built form whilst helping to establish a built form suitable for the western side of the street as future buildings are proposed in the area. Articulation is achieved through the provision of entrances to the frontage of each dwelling and balconies at second storey for improved streetscape presence and passive surveillance in this residential area.

A. *Pools and ancillary development*

Both dwellings include an inground pool to be installed at the rear of each dwelling with decking no more than 0.6m above existing ground level, in accordance with CN requirements. Conditions of consent have been included in the recommended conditions at **Attachment B**.

*Environment (3.03.05)*

A. *Energy efficiency*

A valid BASIX certificate has been submitted with the application. Conditions requiring compliance with BASIX requirements ensures that the development will incorporate passive environmental design.

A. *Water management and conservation*

A Stormwater Management Plan has been submitted with the application. Subject to inclusion of conditions of consent the proposed development achieves compliance with water management and conservation requirements.

C *Waste management*

A Waste Management Plan has been submitted with the application. Bin storage will be secured along each dwelling's side boundary obscured from the street. There is sufficient frontage existing to utilise the existing Council kerbside collection service.

The proposed development is considered acceptable in relation to the abovementioned NDCP 2012 section and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The development establishes a scale and built form appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District. Prior to lodging the development application, the applicant obtained conditional approval from Subsidence Advisory NSW. A copy of Subsidence Advisory NSW approval dated 30 March 2022 lodged with the application is provided at **Attachment D**.

Soil Management - Section 5.01

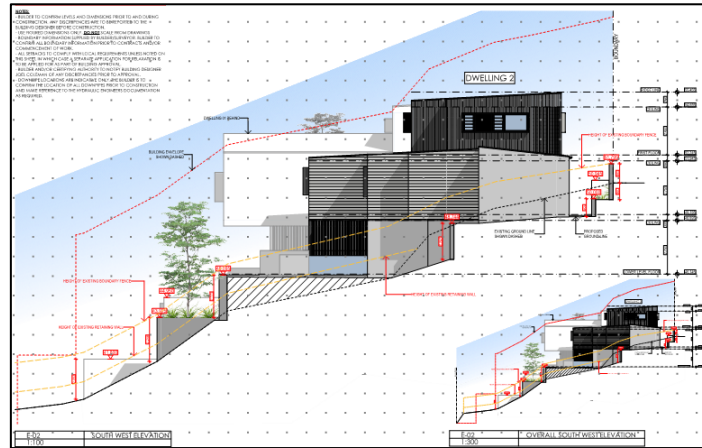
A Sediment and erosion control plan has been provided with the application, with measures to be implemented in accordance with CN's requirements through the construction period of the development. Ongoing stormwater, sediment and silt management systems are to be installed to operate for the duration of the construction period.

*Cut and Fill*

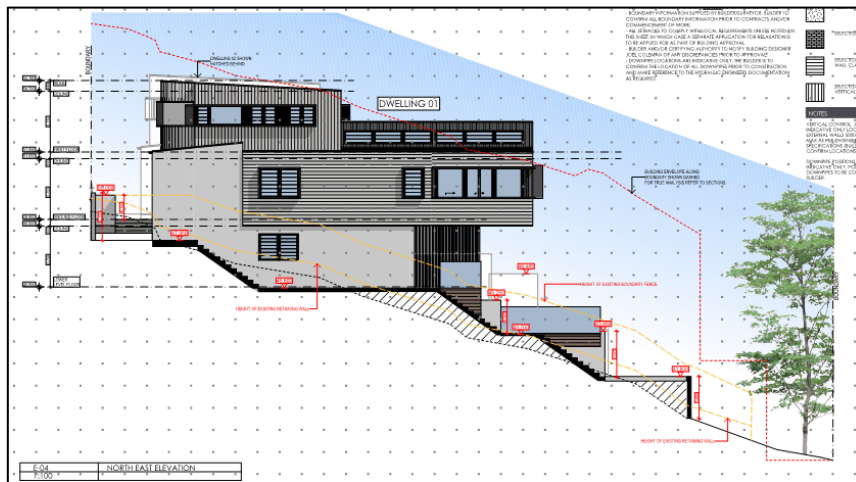
The numerical requirements in relation to maximum cut and fill are proposed to be varied with this proposal. There are some aspects of cut and fill that exceed the one metre requirement, particularly external to the building envelope to enable the site to be developed as proposed but also to help raise the site to have a more consistent relationship with the adjoining site levels and comparable grade with both adjoining side neighbours.

The proposed cut and fill is in response to the lot being occupied by an older style of housing that maintained a smaller footprint and pole home such as bearers and joist construction method common in the 1950s era. Adjoining dwellings have been subject to several modifications and site works resulting with filling of their yards. The proposed design will help raise the site to have a more coherent interface with the adjoining site levels. Site filling is maintained central to the site with an area of the rear yard being left at natural levels.

The proposal allows for cut material to be reused on site within the fill areas, minimising removal of site material. Extracts of plans provided below in Figure 1 and Figure 2 demonstrate that the development is being stepped down the site, with cut and fill primarily within the building footprint, however given the topography of the site and grades on both adjoining side neighbours, the subject site is currently lower than both side neighbours and some retaining is required within and along boundaries.



**Figure 1:** Extract from plans DA-301 – Elevations - Dwelling 2 (Source: Plans, Shade)



**Figure 2:** Extract from plans DA-304 – Elevations - Dwelling 1 (Source: Plans, Shade)

The proposal is considered acceptable in the circumstances of the site, existing topography and relationship to ground levels on adjoining side properties. The proposal is also not considered to present any impacts to the rear neighbour, given the distance of the development from both the neighbour's dwelling and also vegetated and landscaped area which assists in also providing a natural vegetated buffer between the properties.

On balance, the proposal has adequately considered the objectives and requirements of the NDCP 2012 and achieves a development on this site not considered to pose an unreasonable impact on the amenity of adjoining properties or the character of the area.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report under *State Environmental Planning Policy (Resilience and Hazards) 2021* – Chapter 4 Remediation of Land. The site is not considered to have any contamination constraints that will impact on the development of the site.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

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*'.

Landscape Open Space and Visual Amenity - Section 7.02

The proposal is a Category 1 development and did not require the submission of a landscaping plan. The proposal requires minimum landscaped area of 30% and deep soil area of 15%. The proposal provides for a landscaped area of 40% and deep soil area of 23% therefore complying with the requirements

Compliance with the requirements for overall landscaped area and deep soil planting area, demonstrates that the development will achieve appropriate soft landscape appropriate for the site, its residential context and within the surrounding area.

Traffic, Parking and Access - Section 7.03

The proposal is not considered to adversely affect traffic conditions within this area. Access is to be provided for each dwelling separately via a single width driveway crossing off Woodward Street. Individual driveways will assist to ensure vehicular access points for the development do not dominate the streetscape.

The proposal includes a single garage space per dwelling, with additional stacked parking within the driveway and complies with this section. Conditions are recommended relating to access, driveway and parking provision for the development in accordance with relevant standards.

Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed stormwater, driveways, and subdivision as proposed are considered acceptable, subject to the recommended conditions of consent.

No easements burden or benefit the site, however there are Newcastle City Council (CN) assets (stormwater pipes) running through the allotment, providing a connection for the site. Consultation with CN officers during preparation of the proposal / application confirmed that the stormwater infrastructure traversing the site was CN's assets and private drainage connection into the pipe network at the rear of the site was acceptable.

Conditions are recommended relating to stormwater management and the requirement for minimum 4,000L water tank to be provided per dwelling and access / driveway provisions in accordance with relevant standards. Accordingly, the proposal is acceptable in relation to water management.

Waste Management - Section 7.08

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

Development Contributions

The EP&A Act 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 Section 7.11 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 and a 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 the NLEP 2012 and the NDCP 2012



considerations. On balance, the proposed development is unlikely to have any undue adverse impact on the natural or built environment.

The development is compatible with the existing character, bulk, scale, and massing of development in the immediate area, located on a site suitably zoned for residential development and which is clear of any native trees or vegetation.

The development has been designed to generally satisfy the NLEP 2012 and NDCP 2012 requirements, and where variations are sought, these are considered a reasonable response to the site and surrounding properties.

It is considered that the proposal will not have any negative social or economic impacts.

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

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

The site is suitable for the proposed development as it is located in an existing established residential area, within reasonable distance to access the City Centre and public transport and services and facilities. It is considered that adequate services and waste facilities are available to the development.

At-grade access to the site will be available for pedestrians, from adjacent roads and public transport. The constraints of the site have been considered in the proposed development, which includes mine subsidence and acid sulfate soils.

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

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

The application was publicly notified, and no submissions were received.

### **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 or 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 development is satisfactory having regard to the principles of ecologically sustainable development and will not result in any 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.

**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 25 Attachment A:** Submitted Plans – 26 Woodward Street Merewether
- Item 25 Attachment B:** Draft Schedule of Conditions – 26 Woodward Street Merewether
- Item 25 Attachment C:** Processing Chronology – 26 Woodward Street Merewether
- Item 25 Attachment D:** Subsidence Advisory NSW approval subject to conditions dated 30 March 2022 – 26 Woodward Street Merewether
- Item 25 Attachment E:** Clause 4.6 Variation Request prepared by Land Development Solutions dated March 2022 – 26 Woodward Street Merewether

**Item 25 Attachments A-D distributed under separate cover**

**ITEM-26**                    **DAC 06/12/22 - 7 GWYDIR ROAD NEW LAMBTON - DA2022/00513 - DUAL OCCUPANCY - INCLUDING ONE INTO TWO LOT SUBDIVISION AND DEMOLITION OF EXISTING STRUCTURES**

**APPLICANT:**            **ANTHONY JOHN COLLINS**  
**OWNER:**                **J D ZVICER, V ZVICER, R M GOODWIN**  
**REPORT BY:**           **PLANNING & ENVIRONMENT**  
**CONTACT:**            **INTERIM EXECUTIVE DIRECTOR, PLANNING & ENVIRONMENT / ACTING MANAGER, PLANNING, TRANSPORT & REGULATION**

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**PART I**

**PURPOSE**

A development application (DA2022/00513) has been received seeking consent for a dual occupancy, Torrens Title subdivision and demolition of existing structures at 7 Gwydir Road New Lambton.

The submitted application was assigned to Development Officer Bianca Fyvie for assessment.

The application has been referred to the Development Applications Committee (DAC) for determination due to the application being called in by Councillor Wood and Councillor Clausen.



**Subject Land: 7 Gwydir Road New Lambton**

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

The proposed development was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP) and seven submissions were received in response. An additional four late submissions were received in relation to the amended plans.

The objectors' concerns included:

- i) Bulk and scale
- ii) Privacy
- iii) Density

- iv) Minimum lot size
- v) View loss
- vi) Local character
- vii) Car parking
- viii) Solar access and overshadowing
- ix) Impact on property values
- x) Impact on heritage
- xi) Fencing
- xii) Impact of construction

Details of the submissions and the concerns raised are addressed as part of the Planning Assessment at Section 5.0.

The proposal was considered at the Public Voice Committee Meeting held on 15 November 2022.

This report assesses the proposal against relevant State legislation, Regional and Local Environmental Planning Instruments and Policies, in accordance with Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EPA&A1979).

### Issues

- 1) Matters raised by objectors during the public exhibition process.

### 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. That development application DA2022/00513 for a dual occupancy and Torrens title subdivision at 7 Gwydir Road, New Lambton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

### Political Donation / Gift Declaration

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The site is known as 7 Gwydir Road, New Lambton and has a legal description of Lot B DP 367917. The site consists of a single allotment with a 20.1m wide street frontage. The subject site has a total area of 548.6m<sup>2</sup>. The site is rectangular in shape with a gentle slope towards the northern boundary.

The site contains an older style single storey weatherboard dwelling house. The site contains no declared vegetation or street trees at the front of the property. The surrounding allotments consist of predominantly single dwelling houses with several dual occupancy, multi-dwelling housing and residential flat building developments in the broader area.

### 2.0 THE PROPOSAL

The applicant seeks consent to demolish the existing dwelling house and erect a two-storey dual occupancy development with integrated car parking and Torrens Title subdivision.

Further details are as follows:

- i) Two detached dwelling houses comprising four bedrooms, two bathrooms, open plan living, kitchen, dining, and single garages with carport.
- ii) A driveway crossing in each lot to Gwydir Road.
- iii) Associated landscaping and stormwater system.
- iv) One into two lot Torrens Title subdivision, and

- v) Demolition of existing structures.

Amended plans were received 8 August 2022 in response to concerns from CN regarding Floor Space Ratio (FSR), local character, side setbacks, garage door widths and streetscape, privacy, landscaping, and response to objections received. The following assessment is based on the amended plans.

As the amendments were relatively minor and did not result in any additional impacts, the plans were not formally publicly re-notified, however, they were uploaded to CN's website for public viewing.

### **Public Voice Committee**

The proposal was considered at a meeting of the Public Voice Committee held on 15 November 2022. Residents raised concerns with regards to:

- i) Overbearing, identical, box like, not an improvement
- ii) Conflict with amenity, heritage and character of the street
- iii) Unsympathetic, unsuitable and dishonour existing streetscape
- iv) Inconsistent with R2 zone objectives
- v) Proposed lot size contravenes LEP
- vi) Non-compliant setbacks – side and rear
- vii) Potential impact to future development of adjoining properties
- viii) Privacy

The applicant has provided the following response to these issues:

- a. Proposal complies with DCP with exception to one minor non-compliant to the upper floor level on the east side. The proposed development has no further impacts compared to a compliant development in relation to overshadowing and privacy.
- b. New Lambton is noted as a renewal corridor and future urban renewal corridor. The suburb expects significant amounts of infill development to occur to provide housing opportunities for the growing population.
- c. The proposal is consistent with the desired future housing outcomes of the area and the intent of the works is to increase residential housing diversity within the area.
- d. A dual occupancy on the site will ensure housing diversity and the scale, type and built form is compatible with the future direction of the locality. The surrounding locality is undergoing change with significant amount of construction works recently completed and currently being undertaken.

- e. There isn't a true defined character as the suburb is undergoing change in line with the directives of the renewal corridors and implementation of the LEP and DCP.
- f. Various examples of contemporary two storey development demonstrated within the surrounding area.
- g. FSR complies with LEP
- h. The proposal is consistent with front setbacks. The setbacks referred to in the objectors presentation are not relevant to the subject development as they relate to the provisions of complying development.
- i. Misinterpretation of minimum lot size. Proposed lot size complies with Clause 4.1A
- j. Privacy has been addressed – first floor windows on east and west elevations have a sill height of 1.5m and additional privacy screening has been provided on the rear first floor windows to address privacy concerns raised in public voice.
- k. Solar access – shadow diagrams demonstrate adequate solar access to adjoining properties in accordance with DCP.
- l. Amended plans were submitted to Council on 23 November 2022 which include additional privacy screens to the first floor rear windows.

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

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

### **3.0 PUBLIC NOTIFICATION**

The original application was publicly notified in accordance with CN's Community Participation Plan (CPP) for a period of 14 days from 18 May to 16 June 2022. Seven submissions were received in response to the public exhibition.

The current amended plans were not publicly notified as the amended development was considered a lesser impact to the original development that was publicly notified. However, the plans were placed on CN's DA tracker and four submissions (from previous objectors) were received in response to the amended plans. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

- i) Bulk and scale
- ii) Privacy
- iii) Density

- iv) Minimum lot size
- v) View loss
- vi) Local character
- vii) Car parking
- viii) Solar access and overshadowing
- ix) Impact on property values
- x) Impact on heritage
- xi) Fencing
- xii) Impact of construction

The objectors' concerns are addressed under the relevant matters for consideration in the following section of this report and Section 5.8.

#### **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 \(Biodiversity and Conservation\) 2021](#)**

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

###### **[State Environmental Planning Policy \(Building and Sustainability Index: BASIX\) 2004](#)**

The applicant submitted a valid BASIX Certificate which lists the commitments to achieve appropriate building sustainability. A condition is recommended to be included in the development consent requiring such commitments to be fulfilled.

###### **[State Environmental Planning Policy \(Resilience and Hazards\) 2021](#)**

###### **Coastal Management**

The development is not located within the coastal zone and SEPP Coastal Management does not apply to the subject site.



Remediation of Land

Chapter 4 Remediation of Land, Clause 4.6 of the SEPP provides that prior to granting consent to the carrying out of any development on land the consent authority is required to consider 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 site has been subdivided and prepared for residential development in the past. Additionally, the site is not listed on City of Newcastle's land contamination register. The site is considered suitable for to the proposed development and contaminated land investigation is not warranted in this instance. The proposal is acceptable having regard to this policy.

State Environmental Planning Policy (Transport and Infrastructure) 2021

In accordance with Clause 2.48 (Determination of development applications – other development) of this SEPP, the proposed development is located within 5m of an exposed overhead electricity power line and a referral to Ausgrid was completed. A referral response has indicated that the proposed development is satisfactory.

**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 a dual occupancy which is a type of residential accommodation which is permissible with CN's consent.

The proposed development is consistent with the objectives of the R2 zone, which are:

- i) To provide for the housing needs of the community within a low density residential environment.*
- ii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- iii) To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

The proposed development will provide a contemporary style detached dual occupancy development and Torrens Title subdivision to create two lots. Each dwelling house will have a single garage and carport with new landscaping and alfresco area.

The dwelling houses are consistent with the objectives of the low-density residential zone by providing additional housing options for the community that meet the needs of residents without compromising the amenity, character and quality of the surrounding environment. Furthermore, the bulk and scale of the development is consistent with the intended future character of the locality as it complies with the objectives and controls of the NLEP 2012 and NDCP 2012.

Clause 2.6 - Subdivision—Consent Requirements

The development proposal includes one into two lot Torrens title subdivision of the existing site. Clause 2.6 provides that the subdivision of land, other than exempt or complying subdivision, requires development consent. The applicant has sought development consent for the proposed subdivision under the subject development application.

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.1 - Minimum Subdivision Lot Size

The lots resulting from the proposed one into two lot Torrens Title subdivision do not comply with the minimum lot size prescribed under the NLEP 2012. However, an exception to the minimum lot size applies under clause 4.1A as discussed below.

Clause 4.1A - Exceptions to Minimum Lot Sizes for Certain Residential Development

The applicant proposes the construction of a dual occupancy development and associated one into two lot Torrens Title subdivision. The proposal meets the requirements of this clause as there will be a dual occupancy built on the site prior to the subdivision of the land.

The proposed lots will be over 200m<sup>2</sup> and a condition has been included in the recommended conditions on the consent to ensure that the dwellings are constructed prior to the release of subdivision certificate.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 8.5m. The submitted height is approximately 7.59m and complies with this requirement.

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 0.6:1. The submitted FSR is approximately 0.57:1 and complies with this requirement.

Clause 4.6 - Exceptions to Development Standards

There are no proposed variations to development standards.

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 site is affected by Class 5 acid sulphate soils and the proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

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

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

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. There are no exhibited draft environmental planning instrument relevant to the application.

**5.3 Any development control plan**

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

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: 'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.'

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

The main planning requirements of relevance in the NDCP 2012, as it applied to the proposal at the time of lodgement, are discussed below.

Subdivision - Section 3.01

The subject site is rectangular in shape, as such, each lot resulting from the proposed one lot to two lot Torrens Title subdivision retains a rectangular shape. Each of the proposed lots can achieve adequate solar access with dedicated private open space areas large enough to capture direct sunlight. The siting of the building form also minimises internal overshadowing. The proposed lots have access to essential services such as water, sewer, and electricity.

The resultant two lots do not maintain a minimum 15m wide frontage. However, each lot provides adequate open space and recreation areas with direct vehicle access to Gwydir Road, a public road. The proposed subdivision benefits from the regular shaped allotments creating opportunity to facilitate greater housing diversity. As such, the proposal is satisfactory having regard to the requirements of this section.

Residential Development - Section 3.03

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

The following comments are made concerning the proposed development and the relevant provisions of Section 3.03:

*Principal controls (3.03.01)*

*A. Frontage widths*

The minimum site width for a dual occupancy development is 12m. The existing frontage to Gwydir Road is 20m and therefore complies.

*B. Front setbacks*

Each proposed dwelling has a 6.4m setback from the front boundary, with the front porch areas and first floor balconies to both dwellings extending into the articulation zone. The ground floor setback allows adequate provision of landscaping and off-street parking as well as creating an acceptable level of privacy and amenity for future occupation. The garages and carports are also well integrated into the built form and setback 5.5m from the front boundary to allow a secondary stacked carparking spaces.

*C. Side and rear setbacks*

Side setbacks are a minimum of 900mm from each boundary up to a height of 4.5m, then at an angle of 4:1 up to a compliant height of 7.49m with exception of the eastern setback. Rear setbacks are a minimum of 3m for walls up to 4.5m in height and over 6m for walls greater than 4.5m height.

A portion of the first-floor wall above 4.5m falls out of the prescribed building envelope along the eastern wall by 0.5m for a length of 15m. It is noted that NDCP allows for acceptable solutions to be varied when it can be demonstrated the performance criteria can be achieved.

Although the proposed development along the eastern boundary does not meet all acceptable solutions, it is considered that the minor variation does not result in any additional adverse impacts to the adjoining property and meets the performance criteria, as it is of a bulk and scale that:

- i) is consistent with and complements the built form prevailing in the local area
- ii) does not create overbearing development for adjoining dwelling houses and their private open space as adequately setbacks proposed from site boundaries
- iii) does not impact on the amenity and privacy of residents in adjoining dwelling houses due to setbacks and privacy screening
- iv) does not result in unreasonable loss of significant views or outlook of adjoining residents
- v) provides for natural light, sunlight and breezes.

For the reasons above, a variation to the acceptable solutions of this control is accepted.

*D. Landscaped Area*

The minimum landscaped area for land zoned R2 Low Density Residential is 30% and minimum deep soil zone is 15%.

The total landscape area provided in the proposal is approximately 163m<sup>2</sup> or 30%. The site contains sufficient deep soil zone to include planting for a medium canopy tree. This is acceptable.

*Siting the development (3.03.02)*

*A. Local character and context*

It is acknowledged that the proposed development will be the first two storey development in the street, however, other similar developments are within and being constructed in the New Lambton area, and represents a design that is compatible with the future desired character based on CN's strategic policies and controls.

The built form, articulation and scale relates to the emerging local character and context of the area. The development does not unreasonably impact on the amenity and privacy of adjoining dwellings. As such, the proposed development is considered to achieve the objectives and controls within this section of the NDCP 2012 and is acceptable.

A. *Public domain Interface*

The proposed development provides an appropriate interface with the public domain and allows for clear delineation between the private and public space. The entrance to each dwelling is clearly defined through the use of private pathways and openings. Casual surveillance is achieved with window openings to a habitable room and balcony overlooking the street.

A. *Pedestrian and vehicle access*

Each proposed dwelling presents to a street frontage with access to a driveway fronting a public road. The proposed carparking arrangement provides an appropriate area for vehicular manoeuvrability. Sufficient and safe pedestrian access has also been provided. As such, the proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

A. *Orientation and siting*

The proposed development has been suitably laid out having due regard for orientation and aspect. Its siting is appropriate for the nature of the surrounding built environment.

Shadow diagrams demonstrate that the principal area of private open space and the windows to any north facing living rooms of the adjoining properties can retain in excess of two hours of direct solar access between 9am and 3pm during the winter solstice.

The site falls away slightly from Gwydir Road towards the rear. The proposed development responds to the natural topography of the site with a maximum 0.5m of fill within the building footprint.

A. *Building Separation*

The proposed dual occupancy has a separation of 1.8m. which meets requirements of the NDCP 2012. The proposal includes subdivision and the dwelling will not be on the same lot. The proposed separation distance meets performance criteria as it is adequate to allow for landscaping, daylight access between building and visual separation.

*Amenity (3.03.03)*

A. *Solar and daylight access*

Sufficient solar access is available to habitable rooms and private open space areas within the development to generally satisfy the relevant NDCP 2012 objectives and is considered adequate with respect to the orientation of the site.

A. *Natural ventilation*

All habitable rooms meet the ventilation requirements of the NDCP 2012.

A. *Ceiling heights*

The application proposes ceiling heights of 2.7m to all habitable rooms. The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

A. *Dwelling size and layout*

Both proposed dwelling meets the dwelling size and layout requirements of NDCP 2012. The internal layout of each dwelling provides a functional layout to accommodate an appropriate level of amenity for future occupation.

A. *Private open space*

The proposed development provides ground floor patios to both dwellings directly accessible from the internal principal living areas. Each nominated private open space area exceeds the required 16m<sup>2</sup> dimension and is well sited to capture adequate sunlight. As such, the proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

A. *Storage*

The proposed development achieves the storage requirements within this section of the NDCP 2012.

A. *Car and bicycle parking*

The proposed development achieves the minimum garage setback distance required within this section of the NDCP 2012.

The proposal was amended to remove a double garage which exceeded the aggregate door width of 3.2m per lot. The amended design provides a single garage door with a maximum width of 2.7m and a single open carport for each dwelling to reduce visual dominance to the streetscape.

Car and bicycle parking provision is further assessed within the NDCP 2012 Section 7.03 Traffic, Parking and Access.

A. *Visual privacy*

Privacy screens have been provided to the first-floor habitable windows on the northern elevation and are considered satisfactory to reduce privacy impacts to adjoining neighbours.

Due to fill along the eastern boundary and fall of the adjoining site, the raised alfresco area is considered to result in unreasonable amenity impacts to the adjoining neighbour. A condition has been imposed requiring a privacy screen to be provided on the eastern elevation to mitigate potential privacy impacts.

The proposed development has otherwise been sited and orientated to retain existing visual privacy as currently enjoyed by the adjoining properties. The arrangement of the dwelling and associated fenestration has been appropriately sited to allow visual privacy between the proposed dwellings on site.

During the notification period, concern was raised by objectors with regard to overlooking. In addition to the matters raised above, the following aspects are specifically addressed as follows:

- i) Unit 2 first floor balcony in the front setback has been provided with a privacy screen along the western elevation and meets acceptable solutions.
- ii) All first-floor windows to habitable rooms area less than 2sqm in size are to have minimum sill heights of 1.5m (except as noted above) and meet acceptable solutions.
- iii) The proposed development is acceptable with regards to visual privacy.

A. *Acoustic privacy*

The development has been designed to ensure the potential transfer of noise between dwellings is minimised by mirroring the building and private open space areas.

J. *Noise and pollution*

The site is not located in proximity to any known sources of noise or pollution.  
*Configuration (3.03.04)*

A. *Universal design*

All units are capable of compliance with the Liveable Housing Design Guidelines Silver Level.

A. *Communal area and open space*

Communal open space is not required as less than 10 dwellings are proposed.

A. *Architectural design and roof form*

The contemporary roof design is integrated into the overall building form and provides a positive contribution to the streetscape.

A. *Visual appearance and articulation*

The modern, articulated two-storey dwelling utilises a variety of external building materials and colours sympathetic to the existing residential character of the area. The development does not unreasonably impact on the amenity and privacy of



adjoining dwellings. The proposed development achieves the objectives and controls within this section of the NDCP 2012.

*E. Pools and ancillary development*

The proposed development does not include the provision of swimming pools or other ancillary development. As such, the acceptable solutions of this section do not apply.

*Environment (3.03.05)*

*A. Energy efficiency*

A valid BASIX certificate has been submitted for the development. Conditions requiring compliance with BASIX requirements ensures that the development will incorporate passive environmental design. The proposed development achieves the energy efficiency requirements within this section of the NDCP 2012 and is acceptable.

*A. Water management and conservation*

Stormwater treatment and disposal has been addressed in accordance with Section 7.06 of the NDCP 2012. As such, the proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

*C. Waste management*

Adequate and screened bin storage for two residential waste bins are provided for each dwelling. Each proposed dwelling also maintains adequate site frontage to utilise CN's public collection service. As such, the proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

The proposed development is acceptable in relation to the abovementioned NDCP 2012 section and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The development establishes a scale and built form appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

Soil Management - Section 5.01

Cut and fill will be completed in accordance with the relevant objectives of this section. Soil management will be achieved in accordance with the relevant objectives of this section. A condition of consent has been recommended and will ensure adequate sediment and erosion management will remain place for the construction period.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report under *State Environmental Planning Policy (Resilience and Hazards) 2021* – Chapter 4 Remediation of Land. The site is not considered to have any contamination constraints that will impact on the development of the site.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees. No vegetation on the adjoining properties or street trees will be adversely impacted by the development.

Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site.

Heritage Items - Section 5.05

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

Archaeological Management - Section 5.06

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an '*Archaeological Site*'.

Landscape Open Space and Visual Amenity - Section 7.02

The proposed development provides adequate and useable landscaped area with two new medium trees on each lot. The development is a Category 1 development which does not require a landscaped plan, however, a site coverage plan detailing landscaped area and tree location was provided and considered satisfactory.

Traffic, Parking and Access - Section 7.03

The parking rate requirements have been met on the site which requires that two parking spaces be provided. Two parking spaces and stacked parking spaces for each dwelling has been provided. The car parking provision to the site is satisfactory.

The two parking garages will be required to install adequate EV Ready infrastructure and is subject to conditions recommended to be included in any development consent to be issued.

Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

A 4000L stormwater tank is required for each dwelling house. The stormwater will terminate to the street gutter. Relevant conditions will be included in the development consent in this regard. The proposed stormwater management is satisfactory in accordance with the relevant aims and objectives of this section.

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.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the NDCP 2012. A total of seven submissions objecting to the proposal were received. A further four submissions (from the same submitters to the original application) were received in response to the amended plans. Comments are provided in Section 5.8 below.

Development Contributions

The EP&A Act 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 and a 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 the NLEP 2012 and the NDCP 2012 considerations.

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

The development is consistent with the intended future character, bulk, scale and massing of development in the immediate area in accordance with the objectives and controls of the NDCP 2012.

It is considered that the proposal will not have any negative social or economic impacts.

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

The site is suitable for the development as it is zoned R2 Low Density Residential, and the proposal is permissible within the zone. Furthermore, the site is of a sufficient land size to enable the proposed development, as per the requirements of the NLEP 2012 and NDCP 2012.

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

The application was notified in accordance with CN's Community Participation Plan (CPP) for a period of 14 days between 18 May to 16 June 2022. Seven submissions were received during the notification period, and a further four submissions from the same submitters were received in response to the amended plans which were not formally notified due to the changes resulting in lesser impacts to adjoining properties, however the amended plans were placed on CN's DA tracker for viewing.

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
<i>Bulk and scale/Building Envelope</i>	<p>Concern was raised with the zero setback to the western boundary. This setback was not supported by CN's officers and amended plans were submitted by the applicant amending the development to provide a 0.9m setback in accordance with NDCP 2012 acceptable solutions.</p> <p>The proposed development's setback to side and rear boundaries (including building envelopes) has been assessed as satisfactory with respect to the relevant performance requirements of Section 3.03.01. of the NDCP 2012. The proposed development will not unreasonably impact the amenity of adjoining dwellings and the associated principal area of private open space, having regard to available views, solar access, and prevailing breezes.</p>
<i>Privacy</i>	<p>The orientation and siting of the development and the inclusion of additional privacy attenuation measures (raised sill heights, privacy screens, small window sizes, setback more than 6m from rear boundary on first floor levels) allows the neighbouring properties to</p>

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	retain a reasonable level of privacy.
<i>Density – over development of the site</i>	The proposal does not exceed the permissible height and FSR. Dual occupancies are a permissible use in the R2 Zone. The proposal generally meets NDCP 2012 requirements regarding landscaping, with minor encroachments to side setbacks, which meet the objectives of the NDCP 2012.
<i>Minimum Lot Size/Subdivision</i>	The development meets the requirements of NLEP 2012 Clause 4.1A as there will be a dual occupancy built on the site prior to the subdivision of the land and the lots are larger than 200sqm. The proposed development is considered satisfactory.
<i>View Loss</i>	The proposal does not result in the loss of significant views or outlooks and does not exceed the permissible height limit.
<i>Local character/visual impact</i>	<p>The proposed development is permissible with consent within the applicable land use zone and does not seek to contravene the principal development standards afforded to the allotment under NLEP 2012. The impacts of the development have been assessed against the relevant provisions NDCP 2012 and the development results in minimal environmental impact.</p> <p>The proposed development provides additional infill housing opportunities that will cater for a range of housing needs, as identified in the Newcastle Local Housing Strategy (2021).</p> <p>The subject site is in the vicinity of the Greater Newcastle Metropolitan Plan 2036 Urban Renewal Corridor, however, does not have any significant bearing on the assessment of this application, as the proposal is permitted within the zone and does not seek to contravene any principal development standards as mentioned above.</p>
<i>Parking and garages</i>	The proposed design was amended to remove the double garages and provide a single garage and single carport to reduce the overall dominance of the garages and better integrate into the overall design. Parking provisions in accordance with NDCP 2012 have been provided.
<i>Solar access and overshadowing</i>	<p>The proposed development has suitably addressed the relevant acceptable solutions of Section 3.03.02 &amp; Section 3.03.03 of NDCP 2012. Due to the north-south orientation of the site and the placement of the first-floor portion of the development towards the front of the lot, the impact of any overshadowing to adjoining properties is minimal.</p> <p>Shadow diagrams submitted demonstrate that the principal area of private open space and the north facing windows to any living room of all adjoining properties can retain at least two hours of solar access between 9am and 3pm during the winter solstice in accordance with</p>

	<p>requirements of NDCP 2012. The impact of the development on the existing solar panels at 9 Gwydir Street has also been assessed, with shadow diagrams indicating the proposal will not overshadow the solar panels at any time between 9am and 3pm on winter solstice.</p> <p>The proposal will not unreasonably overshadow adjoining solar panels, living room windows or private open space.</p>
<i>Impact on property values</i>	This is not a relevant head of consideration pursuant to Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .
<i>Impact on heritage</i>	The subject site is not located in a heritage conservation area nor within proximity to a heritage item. Assessment of heritage impacts are therefore not relevant to this application.
<i>Fencing</i>	Fencing is a civil matter dealt with under the <i>Dividing Fences Act</i> by affected landowners. The colour and type of fencing shown in the rendered elevations are indicative only and are not specifically approved as part of the development application.
<i>Impact during construction process</i>	Impacts during the demolition and construction process are considered temporary. Conditions of consent will be imposed to limit potential impacts experienced during the construction phase.

**5.9 The public interest**

The development is considered consistent with the aims and design parameters contained in the NLEP 2012 and NDCP 2012 and other relevant Environmental Planning Instruments.

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 26 Attachment A:** Submitted Plans - 7 Gwydir Road New Lambton

**Item 26 Attachment B:** Draft Schedule of Conditions - 7 Gwydir Road New Lambton

**Item 26 Attachment C:** Processing Chronology - 7 Gwydir Road New Lambton

**Item 26 Attachments A-C distributed under separate cover**

**ITEM-27**                    **DAC 06/12/22 - 42 GEORGETOWN ROAD GEORGETOWN - DA2022/00524 - SHOP TOP HOUSING - INCLUDING 25 LOT STRATA SUBDIVISION, REMEDIATION AND DEMOLITION**

**APPLICANT:**            **GWH BUILD PTY LTD**  
**OWNER:**                **GWH GEORGETOWN PTY LTD**  
**NOTE BY:**              **PLANNING & ENVIRONMENT**  
**CONTACT:**             **INTERIM EXECUTIVE DIRECTOR, PLANNING & ENVIRONMENT / ACTING MANAGER, PLANNING, TRANSPORT & REGULATION**

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**PART I**

**PURPOSE**

An application (DA2022/00524) has been received seeking consent for demolition of existing structures, site remediation, shop top housing, commercial premises and 25 lot strata subdivision at 42 Georgetown Road Georgetown.

The site is known as 42 Georgetown Road, Georgetown and is occupied by an existing brick and metal roof building with extensive hard stand area. The existing building has a history of retail use, having previously been occupied by a fruit and vegetable store and butchers. The building is currently vacant. It is understood that prior to the 1980's the site was occupied by a service station.



**Subject Land:** 42 Georgetown Road  
Georgetown NSW 2298

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed 24.5% variation to the Height of Buildings development standard under Clause 4.3 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.

In addition, the proposal includes a proposed 4.5% variation to the Floor Space Ratio development standard under Clause 4.4 of the Newcastle Local Environmental Plan 2012 (NLEP 2012).

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

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Public Participation Plan (CPP) and three submissions have been received in response.

The objectors' concerns include:

- i) Character
- ii) Privacy
- iii) Visual impacts
- iv) Overshadowing
- v) Car parking
- vi) Building separation
- vii) Bulk and scale
- viii) Building height
- ix) Floor space ratio

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) The proposed variation to the Height of Buildings development standard under the NLEP 2012.
- 2) The proposed variation to the Floor Space Ratio Development Standard under the NLEP 2012.
- 3) The urban design quality regarding the Design Quality Principles.

**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. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B2 Local Centre zone in which the development is proposed to be carried out; and
- B. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the B2 Local Centre zone in which the development is proposed to be carried out; and
- C. That DA2022/00524 for demolition of existing structures, site remediation, shop top housing, commercial and 25 lot strata subdivision at 42 Georgetown Road, Georgetown be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- D. That those persons who made submissions be advised of CN's determination.

**Political Donation / Gift Declaration**

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

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

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

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**PART II**

**1.0 THE SUBJECT SITE**

The subject property comprises Lot 1, DP 121068, 44 Georgetown Road, Georgetown and is an irregular corner site and has an area of approximately 1,636m<sup>2</sup>. The site has frontages to Georgetown Road (52m) and Turner Street (24m)

(see **Figure 1** below). The site is relatively level with approximately a one metre fall, from west to east towards Turner Street.

The existing brick and metal building on site is currently vacant, having previously been utilised for retail premises, most recently being a fruit and vegetable store and butchers. The existing premises is covered by an awning. The site is largely covered by buildings and hardstand. Limited vegetation exists towards the north eastern and southern boundaries consisting of small to medium trees and shrubs.

The site has three existing separate driveways, two onto Georgetown Road and a single driveway to the south eastern corner at Turner Street. There is existing line-marking onsite providing for 13 on-site car parking spaces.

The subject site is identified in CN's records to be potentially contaminated as one of the previous uses was a service station including vehicle repair. The site is mapped as containing Acid Sulfate Soils (Class 5). The site is not identified as flood prone or bushfire prone land. The site is not identified as a heritage item, is not located within a heritage conservation area, and is not located within proximity to any other listed heritage items.

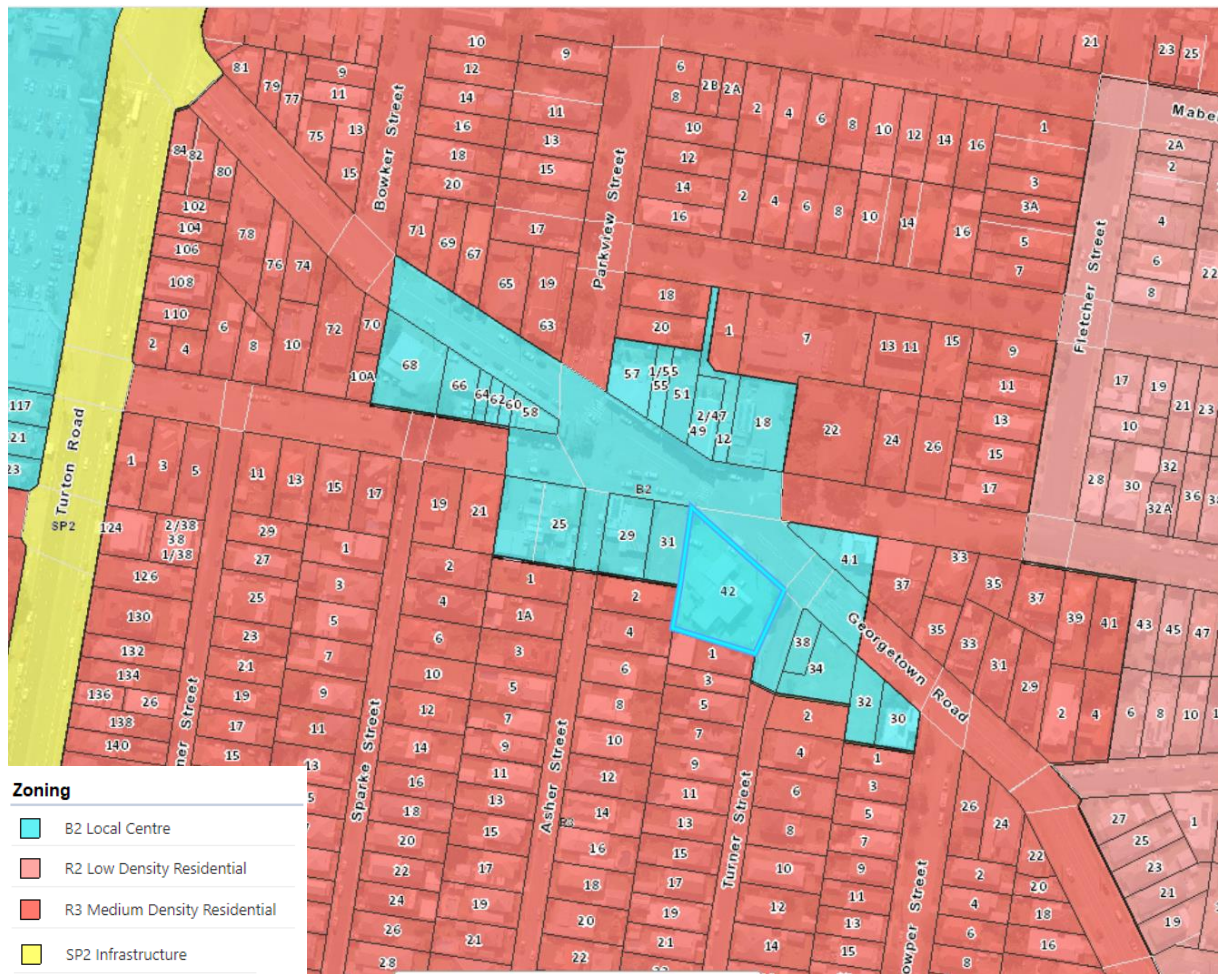
**Figure 1:** Aerial view of site



### Surrounding Development

The subject site is zoned 'B2 Local Centre' under the Newcastle Local Environmental Plan (NLEP) 2012 and is located towards the centre of the existing Georgetown commercial centre (see **Figure 2** below). It is noted that the commercial area along each side of Georgetown Road is also B2 zoned land.

**Figure 2: Land Zoning – Newcastle LEP 2012**



Directly to the southern side of the subject site the land is zoned 'R2 Low Density Residential' and this zoning surrounds all of the Georgetown commercial centre. There is a mix of residential development located to the south and east of the site. The existing commercial and retail development is predominately located to the north and west of the site and consists of a varied mix of single and two storey commercial buildings with smaller shops and business including several food offerings and local services.

To the south of the site adjoins a single storey dwelling. Land to the east of the site is currently vacant, however has a development consent, dated 02 November 2015, for a three storey mixed use development including commercial, retail and shop top housing including twenty-two units.

**2.0 THE PROPOSAL**

The Applicant seeks consent for the demolition of existing structures and the construction of mixed-use development (shop top housing) including demolition, tree removal, remediation and strata subdivision. Details of the proposal are as follows:

- i) Demolition of existing structures.

- ii) Removal of existing trees and vegetation.
- iii) Remediation of the site.
- iv) Construction of four storey mixed use building incorporating:
  - a) Ground floor car parking (33 spaces) and two commercial units (103.71m<sup>2</sup> and 137.95m<sup>2</sup>).
  - b) First floor 9 x residential units (2 x 1 bed, 5 x 2 bed and 1 x 3 bed).
  - c) First floor landscaped communal area.
  - d) Second floor 8 x residential units (1 x 1 bed, 5 x 2 bed and 2 x 3 bed).
  - e) Third floor 6 x residential units (1 x 1 bed, 3 x 2 bed and 2 x 3 bed).
- v) Installation of signage.
- vi) Landscaping and associated site works including stormwater infrastructure.
- vii) Strata subdivision.

The proposed hours of operation of the commercial units are as follows:

- i) 7am to 10pm – Monday to Saturday.
- ii) 7am to 8pm – Sunday and public holidays.

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

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

### **3.0 PUBLIC NOTIFICATION**

The original application was publicly notified in accordance with CN's Community Participation Plan. Three submissions of objection were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

- i) Character impacts
- ii) Privacy impacts
- iii) Visual impacts
- iv) Overshadowing impacts
- v) Car parking impacts
- vi) Building separation impacts
- vii) Bulk and scale

- viii) Building height
- ix) Floor space ratio

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

#### **4.0 INTEGRATED DEVELOPMENT**

The proposal is not '*integrated development*' pursuant to Section 4.46 of the 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 (Resilience and Hazards) 2021**

###### Chapter 4 Remediation of land

Chapter 4 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to consider whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the proposed development or whether remediation is required.

The subject land is currently being used for retail premises and was a former service station, CN's records identify the site as being potentially contaminated. The applicant submitted a Remediation Action Plan prepared by Hunter Civil. CN's Senior Environmental Protection Officer assessed the submitted report and provided the following comments:

*'The subject site is potentially contaminated because of its past use as a service station. It has been subject to a detailed contamination investigation which did not identify significant contamination however it was identified that residual service station buried infrastructure and localised contamination may remain on site.*

*A remediation action plan (RAP) has been prepared for this application:*

- a) *Remediation Action Plan, 42 Georgetown Road, Georgetown. Report Ref: C1053-RAP-001-Rev5. Hunter Civilab, 17/05/2022.*

*This RAP considered existing soil investigation data and concluded the site was suitable for the proposed land use (Health Investigation Level B, residential land with minimal opportunity for soil access) provided the RAP was implemented during construction and a validation report prepared prior to occupation.*

*The RAP essentially requires that any encountered service station infrastructure and potential contamination encountered during construction is to be removed offsite and backfilled with appropriate clean material.*

*Environmental Health considers this remedial approach suitable and considers that the proposed commercial ground floor and carpark use would significantly minimise any potential contamination pathways for residents living above.'*

Based on the assessment by CN's Senior Environment Protection Officer, the proposal is considered satisfactory and meets the provisions of Chapter 4 of the SEPP, subject to conditions of consent.

### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

#### Chapter 2 Vegetation in non-rural areas

This chapter of the SEPP works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW. Part 2.2 of the Vegetation SEPP contains provisions similar to those contained in Clause (cl).5.9 of NLEP 2012 (now repealed) and provides that the Newcastle Development Control Plan (NDCP) 2012 can make declarations with regards to certain matters, and further that Council may issue a permit for tree removal.

The proposed development proposes the removal of six trees that, in accordance with the SEPP assessment is required to be completed against the provisions of the NDCP 2012.

### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

This policy facilitates the effective delivery of infrastructure across the State. The development is subject to the following relevant chapters of the SEPP (T&I).

#### Chapter 2 Infrastructure

The proposal was required to be referred to Ausgrid in accordance with Clause 2.48 of Transport and Infrastructure SEPP. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

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

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

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

This policy applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. SEPP 65 requires the consent authority to take into consideration the advice of a Design Review Panel and the design quality of the development when evaluated in accordance with the design quality principles and the Apartment Design Guide (ADG). An assessment of the development under the design principles is provided below.

CN's Urban Design Review Panel (UDRP) reviewed the application on three occasions on the 25 May, 31 August and 28 September 2022.

In response to matters raised by CN and the UDRP at the meetings, the applicant submitted amended architectural documentation in October 2022, which resulted in the following amendments:

- i) Built form extended to the northwest boundary at Level 1 and Level 2 to create a continuous street wall.
- ii) Brick element 'returned' on the Georgetown Road facade – allows this to be read as a solid brick element.
- iii) Full height glazing in the Georgetown Road facade – incorporating insulated coloured glass to the lower position to reduce heat loading.
- iv) Timber panelling treatment is wrapped around towards the ground floor entry door in the Georgetown Road facade.
- v) Lift core and adjacent fire stair moved south moderately increasing the lobby area and providing a slightly wider access to the communal open space to the south.
- vi) Level 1 (podium) – access door from residential lobby to communal open space, push 'in' towards the lobby which improves CPTED aspects.
- vii) Level 2 - increased width of south landscape planter.
- viii) Modified elements of the landscaping including the accessibility to landscape elements to the west.
- ix) Amendment to the balustrades in terms of materials and forms such as 850mm high solid upturn with open balustrade/ handrail above is proposed for corner balconies.

The final plans were reviewed by the Panel in October and advice was provided to confirm that the design as amended is satisfactory. CN officers were also supportive of the amendments to the proposal as an improved acceptable design outcome was achieved with the refinements to the design.

The current amended proposal has sufficiently incorporated the recommendations and resolved the concerns raised by the UDRP. As such, the development application has now satisfied the UDRP advice and is considered an appropriate design response for the site.

Apartment Design Guide (ADG) - Key 'Rule of Thumb' Numerical Compliances

The ADG provides benchmarks for designing and assessing a residential apartment development. The following section contains an assessment of the development against key aspects of the ADG.

<b>3B Orientation</b>		
<b>Objective 3B-2</b> Overshadowing of neighbouring properties is minimised during mid-winter		
<b>Comment:</b>		<b>Compliance:</b>
<p>Solar access to living rooms, private open spaces and communal open space of the proposal and neighbouring properties has been considered. The overshadowing plans demonstrate the proposal satisfies a minimum two hours solar access during mid-winter.</p> <p>Neighbouring properties to the south and west of the site contain existing low scale residential dwellings. The impacts have been considered and are acceptable to the site directly to the south. The multi dwelling development to the west demonstrated over 75% of the units will receive satisfactory solar access at mid-winter.</p> <p>The proposed development has suitable orientation, massing and setbacks to help minimise overshadowing impacts to adjoining properties and is considered to be acceptable within the tight urban context.</p> <p>As indicated above, the development proposal was referred to CN's UDRP during the assessment process. The UDRP noted the overshadowing impacts as acceptable.</p>		Complies
<b>3D Communal and public open space</b>		
<b>Objective 3D-1</b> An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
1. Communal open space has a minimum area equal to 25% of the site.	The total site area equals 1,636sqm and 25% of the total site area equals 409sqm. A total of 330sqm of communal open space is provided at Level 1 (podium), equating to approximately 20% of the site area.	Satisfactory (Merit based assessment) The provision of communal open spaces is satisfactory given the minor numerical variation, quality of communal open space proposed and provision of



		suitable private open space for each unit.
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	The Level 1 (podium) communal open space is orientated north and achieves a minimum of two hours sunlight between 9am and 3pm in mid-winter to over 50% of the area.	Satisfactory

**3E Deep soil zones**

**Objective 3E-1**  
 Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.

<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>						
1. Deep soil zones are to meet the following minimum requirements:	The total site area equals 1,636sqm with 7% of the total site area being deep soil planting, with 118.5sqm.	Satisfactory						
<table border="1"> <thead> <tr> <th>Site area</th> <th>Minimum dimensions</th> <th>Deep soil zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td>greater than 1500m<sup>2</sup></td> <td>6m</td> <td>7%</td> </tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	greater than 1500m <sup>2</sup>	6m	7%		
Site area	Minimum dimensions	Deep soil zone (% of site area)						
greater than 1500m <sup>2</sup>	6m	7%						

**3F Visual privacy**

**Objective 3F-1**  
 Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.

Design Criteria:	Comment:	Compliance:												
<p>1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p>	<p>The site is irregular in shape, with two street frontages: Georgetown Road (north) and Turner Street (east).</p> <p>As such, the site has one 'side boundary' (west) – for which the minimum separation distances are applicable and are discussed below.</p>	<p>Satisfactory</p>												
<table border="1"> <thead> <tr> <th data-bbox="188 622 347 853">Building height</th> <th data-bbox="347 622 480 853">Habitable rooms &amp; balconies</th> <th data-bbox="480 622 612 853">Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td data-bbox="188 853 347 1025">up to 12m (4 storeys)</td> <td data-bbox="347 853 480 1025">6m</td> <td data-bbox="480 853 612 1025">3m</td> </tr> <tr> <td data-bbox="188 1025 347 1198">up to 25m (5-8 storeys)</td> <td data-bbox="347 1025 480 1198">9m</td> <td data-bbox="480 1025 612 1198">4.5m</td> </tr> <tr> <td data-bbox="188 1198 347 1330">over 25m (9+ storeys)</td> <td data-bbox="347 1198 480 1330">12m</td> <td data-bbox="480 1198 612 1330">6m</td> </tr> </tbody> </table>	Building height	Habitable rooms & balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	<p><b>Separation distance to east boundary</b></p> <p><u>Up to 12m (Ground Level to Level 3)</u></p> <p>No apartments are proposed on Ground Level. As such the minimum separation distances for buildings to the side and rear boundaries described in this part of the ADG are not applicable to this level.</p> <p>At Level 2 and Level 3, a blank wall with nil setback is proposed for the full extent of the western boundary. The remainder of the separation at level 1 and level 2 is satisfactory on the western setback.</p>	<p>Satisfactory</p> <p>Satisfactory</p>
Building height	Habitable rooms & balconies	Non-habitable rooms												
up to 12m (4 storeys)	6m	3m												
up to 25m (5-8 storeys)	9m	4.5m												
over 25m (9+ storeys)	12m	6m												
<p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2).</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	<p><b>Separation distance to south boundary</b></p> <p><u>Up to 12m (Ground Level to Level 3)</u></p> <p>No apartments are proposed on Ground Level. As such the minimum separation distances for buildings to the side and rear boundaries described in this part of the ADG are not applicable at this level.</p> <p>At Level 2, a minimum 3.210m separation distance is provided between the south facing apartment windows and balconies. This complies with the minimum distance.</p> <p>At Level 3, a minimum 7.275m separation distance is provided between the south facing apartment windows and balconies. This complies with the minimum</p>	<p>Satisfactory</p> <p>Satisfactory</p> <p>Satisfactory</p>												

	distance.	
<b>Objective 4A-1</b>		
To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.	<b>Solar access to apartment living rooms</b> The living rooms of 19 of the 23 apartments proposed, or 86%, will achieve a minimum of 2hrs sunlight during 9am and 3pm at mid-winter.	Satisfactory
	<b>Solar access to apartment private open space</b> The private open space of 20 of the 23 apartments proposed, or 87%, will achieve a minimum of 2hrs sunlight during 9am and 3pm at mid-winter.	Satisfactory
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
2. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	Three of the 23 apartments proposed, or 13%, will not receive direct sunlight between 9am and 3pm at mid-winter.	Complies
<b>4B Natural ventilation</b>		
<b>Objective 4B-3</b>		
The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	A total of 15 of the 23 apartments proposed on the first nine storeys of the proposal or 65%, are naturally cross ventilated. No enclosed balconies are proposed. For the single aspect apartments, the layout and design maximise natural ventilation; apartment depths have been minimised and frontages maximised to increase ventilation and airflow.	Satisfactory

	All habitable rooms are naturally ventilated via adjustable windows with suitable effective operable areas.									
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>								
2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	N/A	N/A								
<b>4C Ceiling heights</b>										
<b>Objective 4C-1</b> Ceiling height achieves sufficient natural ventilation and daylight access.										
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>								
1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:  <table border="1" data-bbox="193 999 617 1507"> <tr> <td colspan="2"><b>Minimum ceiling height for apartment and mixed-use buildings</b></td> </tr> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use</td> </tr> </table> <p>These minimums do not preclude higher ceilings if desired.</p>	<b>Minimum ceiling height for apartment and mixed-use buildings</b>		Habitable rooms	2.7m	Non-habitable	2.4m	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p><b>Commercial premises</b></p> <p>The site is not located within the B4 Mixed Use zone as such the increased ceiling heights for ground and first floor described in this part of the ADG are not applicable. Notwithstanding the above, it is noted that Ground Level has an increased floor-to-floor height of 2.9-3.25m.</p> <p><b>Apartments</b></p> <p>All storeys containing apartments (Level 1 to Level 3) have a floor-to-floor height of at least 2.7m. As such, a minimum ceiling height from finished floor level to finished ceiling level of 2.7m to habitable rooms and 2.4m to non-habitable rooms can be achieved for all apartments. No two storey apartments or attic spaces are proposed.</p>	<p>N/A</p> <p>Complies</p>
<b>Minimum ceiling height for apartment and mixed-use buildings</b>										
Habitable rooms	2.7m									
Non-habitable	2.4m									
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use									
<b>4D Apartment size and layout</b>										
<b>Objective 4D-1</b> The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.										
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>								
1. Apartments are required to have the following minimum internal areas:	All apartments proposed comply with the minimum internal areas.	Satisfactory								

Apartment type	Minimum internal area		
studio	35m <sup>2</sup>		
1 bedroom	50m <sup>2</sup>		
2 bedroom	70m <sup>2</sup>		
3 bedroom	90m <sup>2</sup>		
<p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>			
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>	
<p>2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	<p>All habitable rooms within the apartments are provided with a window within an external wall.</p>	<p>Complies</p>	
<p><b>Objective 4D-2</b> Environmental performance of the apartment is maximised.</p>			
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>	
<p>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	<p>Open plan design for all apartments.</p>	<p>Satisfactory</p>	
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>	
<p>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p>All apartments proposed have a maximum habitable room depth of 8m from a window for open plan living, dining and kitchen area.</p>	<p>Complies</p>	
<p><b>Objective 4D-3</b> Apartment layouts are designed to accommodate a variety of household activities and</p>			

needs.		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
1. Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space)	All master bedrooms have a minimum area of 10m <sup>2</sup> and all other bedrooms have a minimum area of 9m <sup>2</sup> (excluding wardrobe space).	Complies
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Complies
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
3. Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> <li>• 3.6m for studio and 1-bedroom apartments.</li> <li>• 4m for 2- and 3-bedroom apartments.</li> </ul>	All bedroom type apartments meet the minimum requirements.	Satisfactory
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	The width exceeds 4m.	Satisfactory
<b>4E Private open space and balconies</b>		
<b>Objective 4E-1</b>		
Apartments provide appropriately sized private open space and balconies to enhance residential amenity.		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>

<p>1. All apartments are required to have primary balconies as follows:</p> <table border="1" data-bbox="193 344 616 763"> <thead> <tr> <th>Dwelling type</th> <th>Min. area</th> <th>Min. depth</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4m<sup>2</sup></td> <td>-</td> </tr> <tr> <td>1 bedroom</td> <td>8m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>2 bedroom</td> <td>10m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>3+ bedroom</td> <td>12m<sup>2</sup></td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Min. area	Min. depth	Studio	4m <sup>2</sup>	-	1 bedroom	8m <sup>2</sup>	2m	2 bedroom	10m <sup>2</sup>	2m	3+ bedroom	12m <sup>2</sup>	2.4m	<p>All apartments meet the minimum requirements.</p>	<p>Satisfactory</p>
Dwelling type	Min. area	Min. depth															
Studio	4m <sup>2</sup>	-															
1 bedroom	8m <sup>2</sup>	2m															
2 bedroom	10m <sup>2</sup>	2m															
3+ bedroom	12m <sup>2</sup>	2.4m															
<p><b>Design Criteria:</b></p> <p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m.</p>	<p>N/A</p>	<p>N/A</p>															
<p><b>4F Common circulation and spaces</b></p>																	
<p><b>Objective 4F-1</b></p>																	
<p>Common circulation spaces achieve good amenity and properly service the number of apartments.</p>																	
<p><b>Design Criteria:</b></p> <p>1. The maximum number of apartments off a circulation core on a single level is eight.</p>	<p><b>Comment:</b></p> <p>Level 1 – 9 Level 2 – 8 Level 3 - 6</p> <p>The maximum number of apartments off a circulation core is achieved on levels 2 and 3. Level 1 has nine apartments, which</p>	<p><b>Compliance:</b></p> <p>Satisfactory</p>															

	<p>is an acceptable variation as; this is a minor variation (one additional unit only at one level only), the development only contains a total of 23 units and on average the number of units per lift core complies noting that only 6 units access the core from Level 3. Further, alternative access to the ground floor can be achieved via on flight of stairs from this level. It is also noted that Level 3 is below the maximum of a circulation core with only 6 units accessing the lift core.</p>									
<p><b>4G Storage</b></p>										
<p><b>Objective 4G-1</b> Adequate, well-designed storage is provided in each apartment.</p>										
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>								
<p>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p>	<p><b>Storage located within the apartments</b> All apartments are provided with adequate storage.</p>	<p>Satisfactory</p>								
<table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>1 bedroom</td> <td>6m<sup>3</sup></td> </tr> <tr> <td>2 bedroom</td> <td>8m<sup>3</sup></td> </tr> <tr> <td>3+ bedroom</td> <td>10m<sup>3</sup></td> </tr> </tbody> </table>	Dwelling type	Storage size volume	1 bedroom	6m <sup>3</sup>	2 bedroom	8m <sup>3</sup>	3+ bedroom	10m <sup>3</sup>	<p><b>Storage located external to the apartments</b> Adequate storage is provided for each apartment within the car park area on the ground floor.</p>	<p>Complies</p>
Dwelling type	Storage size volume									
1 bedroom	6m <sup>3</sup>									
2 bedroom	8m <sup>3</sup>									
3+ bedroom	10m <sup>3</sup>									
<p>At least 50% of the required storage is to be located within the apartment.</p>										

**State Environmental Planning Policy (Transport and Infrastructure) 2021**

This policy facilitates the effective delivery of infrastructure across the State. The development is subject to the following relevant chapters of the SEPP (T&I).

Chapter 2 Infrastructure

The proposal was required to be referred to Ausgrid in accordance with Clause 2.48 of the policy. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.



## **State Environmental Planning Policy (Industry and Employment)(I&E) 2021**

### Chapter 3 Advertising and signage

The SEPP (I&E) sets out planning controls for advertising and signage in NSW. The policy requires signage to be compatible with:

- the future character of an area
- provide effective communication in suitable locations
- be of high-quality design and finish.

The policy applies to all signage that:

- a) can be displayed with or without development consent under another environmental planning instrument that applies to the signage, and
- b) is visible from any public place or public reserve.

Schedule 5 of the SEPP sets out Assessment Criteria for the assessment of applications for advertising signs.

### **Schedule 5 Assessment Criteria**

#### ***Character of the area***

The proposal is for business identification signage and under awning signage. The signage is compatible with existing signs in the Georgetown area. The development is consistent with the NDCP 2012 and as such, meets the requirements for the future character of the area.

#### ***Special areas***

There are no specific visually important areas that the sign will detract from.

#### ***Views and vistas***

The development does not detract from any important views.

#### ***Streetscape, setting or landscape***

The scale and proportion of the sign is consistent with existing signage on-site and on the adjacent site. The development will not unreasonably dominate the streetscape or detract from other signage within the area.

#### ***Site and building***

The proposed sign is compatible with the scale, proportion and other characteristics of the site. The proposed sign will not detract from any important features of the site or any buildings.

#### ***Associated devices and logos with advertisements and advertising structures***

No ancillary devices are proposed to be installed on the sign structures.

#### ***Illumination***

No internal or external illumination is proposed.

#### ***Safety***

The location of the sign is consistent with other signage in the area and is not considered to have any major safety implications for the area.

**Heritage**

The site is not within a heritage conservation area.

The proposed signage is acceptable having regard to SEPP (I&E) requirements and the nature of the development.

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

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

Clause 2.1 - Land Use Zones

The subject property is included within the B2 Local Zone under the provisions of NLEP 2012. The proposed development is defined as shop top housing and commercial premises, which are permitted with consent.

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

- i) *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- ii) *To encourage employment opportunities in accessible locations.*
- iii) *To maximise public transport patronage and encourage walking and cycling.*
- iv) *To provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.*
- v) *To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of the Newcastle City Centre.*

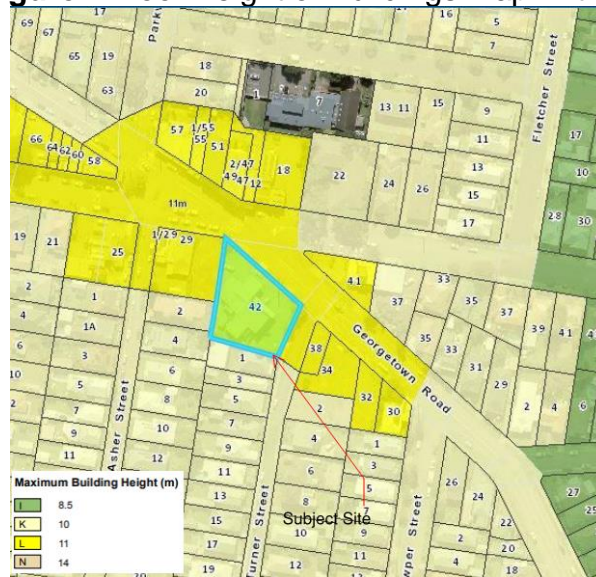
Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the structures on the site. 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

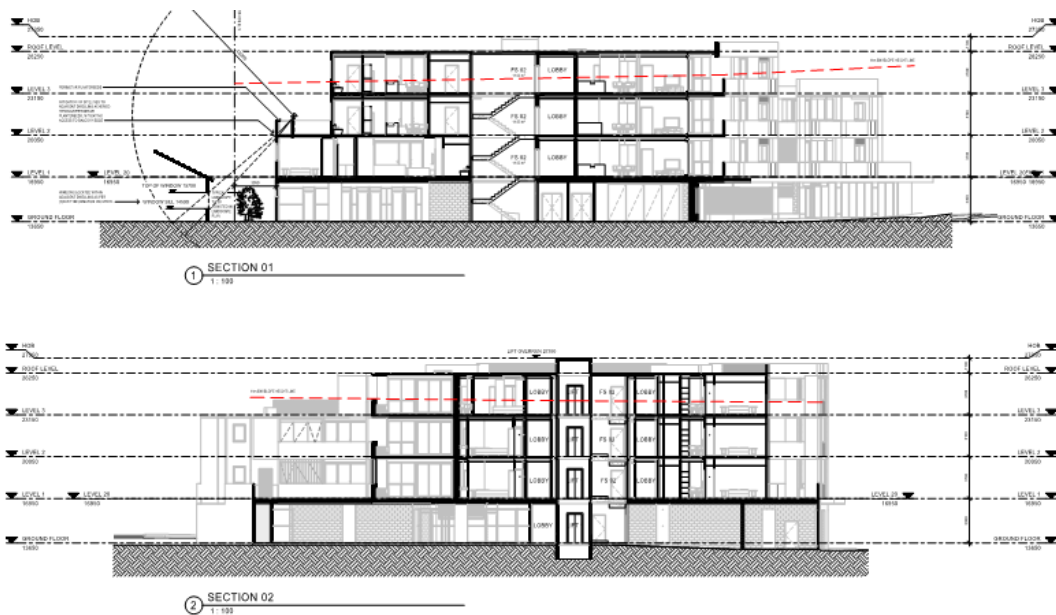
Under the NLEP 2012 the site has a maximum height of 11m as shown in Figure 3 below.

Figure Three: Height of Buildings Map Extract



The proposed development will result in a maximum height of 13.7m, equating to an exceedance of 2.7m or 24.5% above the height of buildings development standard for the subject land.

Figure Four: Proposed height of development (red dotted line)

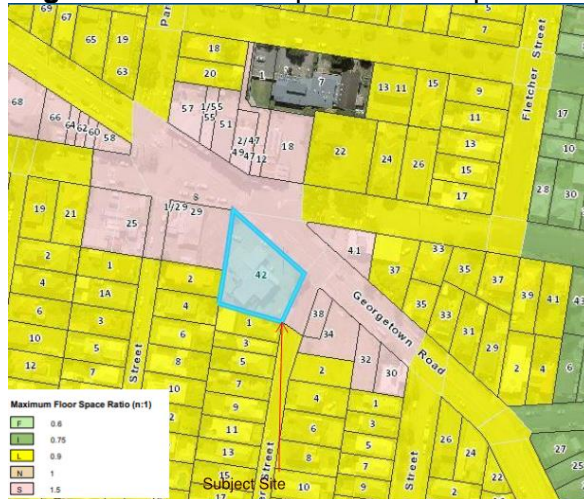


The Applicant has submitted a clause 4.6 variation request to this standard. Refer to discussion under Clause 4.6 Exceptions to Development Standards below.

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 1.5:1.

**Figure Five – Floor space ratio map extract**



The proposed development will result in a total FSR of 1.54:1, equating to an exceedance of 74m<sup>2</sup> or 4.5% above the prescribed maximum FSR for the subject land.

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

Clause 4.6 Exception to Development Standards

Two ‘Clause 4.6 Variation Request Reports’ (**Appendix C and D**) have been prepared by GWH, seeking a variation to the standards set out in Clause 4.3 Height of buildings and Clause 4.4 Floor Space Ratio and the provisions of these clauses.

The Clause 4.6 request to vary the height and floor space ratio standards, as it applies to the current design, is supported and a detailed assessment is included below.

The provisions of Clause 4.6 relevant to the assessment of the applicant’s variation request are as follows:

- i. *The objectives of this clause are as follows:*
  - (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.*

Height of Buildings Variation Assessment

The applicable maximum building height is 11m. The proposal has a maximum building height of 13.7m which represents a 4.5% variation to this development standard. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

**Figure Six - Extent of Exceedances**



An assessment of the Applicant's Clause 4.6 Variation Request (**Appendix C**) to the maximum building height development standard is provided below:

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

The maximum building height 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 *Environmental Planning & Assessment Act, 1979* ('EPA Act').

**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 applicant has prepared a written request for the purposes of Clause 4.6(3), prepared by GWH Build.

There are five circumstances established by *Wehbe v Pittwater Council* [2007] NSWLEC 827 in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary. The applicant's

clause 4.6 Variation Request written response seeks consideration to demonstrate that compliance with the development standard is unreasonable and unnecessary, stating that the objectives of the development standard are achieved notwithstanding non-compliance.

The objectives of Clause 4.3 (Height of Building) are as follows:

*'(a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*

*(b) to allow reasonable daylight access to all developments and the public domain.'*

The Applicant's response to the objectives are as follows:

First Objective

*'The bulk, height and scale represent a design response that addresses the specific site conditions and is considered appropriate for the context and character of the area. Georgetown is identified in the GNMP 3026 as a Stage 2 growth corridor, with the planning controls, both existing and future, to encourage higher density development and urban renewal.*

*The proposed building responds to the restraints of the site, primarily being the residential zoned land surrounding the site to the south and west, incorporating a mix of single storey dwellings and a multi-storey unit block. The proposal pushes the bulk of the development away from the boundaries with the residential properties, with the bulk of the building located on the corner or towards the front of the site. This enables the residential properties to the rear and side to maintain appropriate solar access and privacy. The impacts on solar access have been demonstrated in the submitted shadow diagrams. As can be deduced from the shadow diagrams, the proposed building has less impact than a fully compliant building, built in accordance with DCP and SEPP setbacks. The reduction in bulk away from residential land, is the main reason for the non-compliant height, however, this has been demonstrated, results in an improved outcome for neighbouring residential land.*

*The proposal in its current form does not negatively impact on surrounding development in regard to overshadowing, as a result of bulk and scale, nor does the departure result in privacy impact. The increased height adjacent to Georgetown Road reduces the impact of the development on the neighbouring detached housing and is in keeping with the existing streetscape in the locality.*

*The proposed development is also considered to respond the prevailing character within the Georgetown Road area. The development is consistent with the approved development to the East of the site at 32-36 Georgetown Road, which has an overall height of 13.3m, which is very similar to the proposed building. This building is also very similar in bulk, scale and sizing, with the proposed building maintaining the pattern and spacing of the adjoining development, whilst providing contrast and differentiation, particularly at the corner. The proposed building is also considered to align with the prevailing character of the Georgetown commercial which is characterised by buildings of*

*varying height and frontage widths. The pattern of the commercial area has been continued in the proposed development, as can be seen in the submitted contextual analysis.*

*Further to this, the UDRP has supported the development in relation to how it responds to the prevailing character of Georgetown and how the proposal is meeting the desired future character enabled by the planning controls.*

*The proposal will not result in any adverse or overbearing visual impact, will barely be perceptible (if at all) from a pedestrian perspective, and will have minimal impact on surrounding development or the public domain. As has been demonstrated by the submitted perspectives, the development has limited impact visually when viewed from various locations within the public domain. The building is completely obscured when viewed from distance to the East by the adjoining building at 32-36 Georgetown Road. Only a portion of the building is visible when viewed from the west, with the visual impact considered appropriate in relation the B2 zoning and the continuation of the Georgetown commercial area. When viewed from the south it will have very similar impact to the adjoining approved development. The setbacks of the 2nd and 3rd floor, and the pushing of the bulk to the corner reduce overbearing and visual impacts. All other views to the site are considered appropriate for a commercial area. The key design elements, materials and colour palette have been chosen to maximise the visual amenity of the building when viewed from the public domain and adjoining properties. Importantly, the scheme is consistent with Councils desired future character for the area.*

*The following measures will ensure a contributory street presence:*

- a) Zero setbacks below street wall height to define the street and a continuous street awning along Georgetown Road to improve amenity and maintain a pedestrian scale at street level.*
- b) Commercial uses with zero setback and extensive glazing on the ground floor to promote street activation that enhances the centre.*
- c) Upper-level residential balconies and windows that overlook the street to improve activation and promote passive surveillance for improved safety and security*

*As stated in Initial Action (2018), there is no requirement that the impacts be neutral or non-existent.*

*The test is whether the objectives of the development standard are met. The design responds to the local centre zone and its location toward the edge of the centre, by providing a modest, but functional amount of commercial space that is consistent with the centres hierarchy. The residential use contributes to an increased population within the walkable catchment of the centre. In this way the project represents a compatible development that is consistent with the vision for Georgetown to function as a growth corridor that supports the economic success of the Newcastle City.'*

### Second Objective

*'The increase in height and distribution of the building massing, including the stepping of the southern elevation, causes no significant, adverse impact on the streetscape, landscape setting, or on adjoining properties. As depicted on the shadowing plans, the adjoining dwelling house on the southern boundary will*

*retain a minimum three (3) hours sunlight access to the rear private open space between midday and 3:00pm. Georgetown Road is on the northern elevation and so public domain is not overshadowed by the development and ground floor commercial spaces will receive good solar access to improve the level of amenity along the streetscape. The variation in height and positioning of massing on the eastern elevation causes some increased overshadowing of the street, but there is no commercial activation on Turner Street so the overshadowing would only affect people transiting along the street.*

*As has been demonstrated in the submitted shadow diagrams, the proposed building has less impact than a fully compliant building, built in accordance with DCP and SEPP setbacks. The reduction in bulk away from residential land, is the main reason for the non-compliant height, however, as has been demonstrated, results in an improved outcome for neighbouring residential land. It should be noted that the adjoining property to the south experience over shadowing of north facing windows from the existing vegetation and fence on the site. Due to the location of the dwelling to the south of the site, it is likely that it would be impacted by overshadowing by any development on 42 Georgetown Road. Given the allowable zero lot setbacks in the B2 zone, the proposed developments approach in pushing the bulk to the corner is considered sympathetic to the dwelling.*

*The proposed building does not increase overshadowing impacts on this dwelling, with solar access maintained to the private open space, with the north facing windows currently experiencing overshadowing from existing vegetation.*

*The proposed development achieves the objective notwithstanding the non-compliance. Strict compliance with the height standard is considered unreasonable and unnecessary and would not improve the planning or urban design outcome. As stated in Wehbe, the numerical development standards a means of achieving the end outcome and should not be rigidly adhered with when the objectives are otherwise achieved. As stated in Initial Action (2018) there is no requirement that the impacts be neutral or non-existent but that the objectives of the development standard are met.'*

### Assessment Comment

The proposal is considered to promote a suitable residential mix within an appropriate zone (B2 Local Centre zone) and local centre. In addition, employment opportunities by providing for commercial premises for a range of businesses whilst also providing for an active street frontage.

It is agreed that the extent of variation is acceptable in this proportion of the site and, from assessment, the proposed variation does not result in unacceptable impacts on the amenity of neighbouring properties. Furthermore, the proposed variation will not adversely impact on the character of the streetscape or on the overall design of the development given the extent of variation proposed. The development is considered to be of a high-quality design and is supported by the UDRP.

The proposal will also help to create a mixed-use place within the redeveloping Georgetown local centre and the proposed variation have no impact on this.



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.**

In 'Initial Action', Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole. The Applicant's response to Clause 4.6(3)(b) provides the following specific environmental planning grounds to justify the breach of the standard

*The 'sufficient environmental planning grounds' include those matters identified and commented upon earlier in this clause 4.6 written submission.*

*'Whilst exceeding the building height standard, the proposed development contributes to the locality through an activated streetscape with retail tenancies on the ground floor and a massing and scale that is compatible with the existing context and reflective of the future development in densities within this identified growth corridor. Georgetown contains a mix of height, massing and material within the existing built form in the town centre and the proposed development will contribute to this setting. The height exceedance does not cause an unreasonable amount of shadowing, and adjoining residential development retain an appropriate level of solar access. The area does not contain any significant view corridors and the development itself will not unreasonably affect any public or private views.*

*A significant numerical amount of the proposed variation relates to the provision of the lift overrun. This represents only a very small footprint and are not contributing to the overall GFA of the development. Most of the floor area above the height standard is at a lower height and represent a half storey of additional residential development. As has been discussed, efforts have been made to reduce impacts on the residential land to the south and west by pushing the bulk of the building toward the corner and achieving 18m and 7m setback to the top storey from the southern and western boundaries. The massing of the bulk towards the corner reinforces the commercial centre and the street corner, while reducing potential overshadowing, and visual amenity impacts on adjacent properties to the south.*

*This request for variation demonstrates that the proposed height variation sought does not result in adverse environmental impacts, and that there are sufficient environmental planning grounds to justify a contravention to this height control.*

*Below is an outline of how the development meets the objectives of the B2 Local Centre:*

- i. To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

*As detailed on the architectural plans, the development proposes ground floor commercial tenancies that provide the opportunity for a range of potential businesses to establish on site and serve the needs of people who live in, work*

*in and visit the local area, complementing the range of existing businesses operating within the local centre.*

*ii. To encourage employment opportunities in accessible locations.*

*Employment opportunities will be provided through the establishment of new businesses in the ground floor tenancies. The greater potential demand for services and infrastructure from the increase in residential population will generate demand and opportunities for the growth in existing businesses or for new businesses to establish. The site is accessible as it is within the local centre which is serviced by good pedestrian/cycle connections and has access to public transport.*

*iii. To maximise public transport patronage and encourage walking and cycling.*

*The site is fronted by a bus stop serviced by regular public bus services and is within a walkable catchment of Mayfield rail station. The local topography is conducive to easy walking and cycling and the area is supported by pedestrian and cycling infrastructure that is increasingly creating connections to surrounding suburbs and the broader Newcastle area.*

*iv. To provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.*

*The ground floor contains commercial spaces with active frontages, with only the residential lobby at ground level. Residential development in the upper levels contains street facing balconies that will provide passive surveillance to improve safety and security of the local centre. The development proposes a continuous street awning to the Georgetown frontage and a small return to Turner Street that promotes an attractive and friendly environment. The development will also complement Newcastle Council's ongoing public domain plan being prepared for Georgetown. This will see investment to improving the public domain and infrastructure in Georgetown local centre.*

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

*The ground floor tenancies are modest GFA and reflect Georgetown's role as a local centre. These spaces will not facilitate a type or scale of use that would prejudice the viability of Newcastle City Centre.*

*The granting of development consent will enable construction of a high quality, architecturally designed shop top housing development that will contribute to the regeneration of Georgetown. The objectives of Clause 4.3 have been met and there are sufficient environmental planning grounds to justify varying the height of building standard in this instance.'*

### Assessment Comment

It is accepted that the written request outlines environmental planning grounds which adequately justify the contravention. The detailed assessment results in support contravening the development standard. In addition to the applicant's justification, the following is considered relevant:

- v) The design of the proposed development facilitates amenity and functionality to future occupants of the mixed-use development, the residential component is formed through a combination of internal ceiling heights and appropriate floor areas.
- vi) The proposed development (shop top housing) is permitted with consent in the B2 Local centre zone.
- vii) The proposed development is compliant State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65).
- viii) The proposed development is compliant with the applicable acceptable solutions and performance criteria prescribed under the Newcastle Development Control Plan 2012.
- ix) The proposed development does not create significant adverse impacts on neighbouring properties by way of overshadowing or privacy despite the exceedance of the building height standard.
- x) The proposed development is considered to be a more orderly and economic use (mixed uses development) of the land given it appears more appropriate to the intended built form context of surrounding sites.

As such, the reasons outlined above are considered to provide sufficient justification to contravene the development standard. Accordingly, with the above considered, there are sufficient environmental planning grounds to support the variation as a high level of amenity is afforded to the future occupants through a design reliant upon additional floor space and absent of resultant significant adverse environmental impacts.

**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. Clause 4.6(a)(i) is satisfied in this regard.

**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.***

This provision does not require consideration of whether the objectives have been adequately addressed, rather than ‘the proposed development will be in the public interest because it is consistent’ with the relevant objectives.

*Objectives of Clause 4.3 (height of building)*

It is considered that the proposed development is consistent with the objectives of Clause 4.3 (height of buildings) as the proposed development is of an appropriate height, consistent with the established centres hierarchy. Moreover, the proposed development's bulk and scale is consistent with the built form as identified by the center hierarchy.

*Objectives of the B2 Local Centre zone*

The objectives of the B2 zone are as follows:

- a) *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- b) *To encourage employment opportunities in accessible locations.*
- c) *To maximise public transport patronage and encourage walking and cycling.*
- d) *To provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.*
- e) *To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of the Newcastle City Centre.*

The development is consistent with the objectives of the B2 zone as the proposed development provides mixed uses with additional housing to meet the needs of the community with a height and density appropriate to existing and intended built form context.

The proposal further diversifies housing form whilst respecting the amenity, heritage and character of surrounding development, reflected through consistency with the applicable planning controls and it is considered that there will be no significant adverse impacts on the amenity of any existing nearby development. Further, the development type is a development permitted with consent within the B2 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 B2 zone. The proposal is satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

***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 concurrence to the exception to the development standard, as required by Clause 4.6(4)(b) of the NLEP 2012, is assumed, as per Department of Planning Circular PS20-00 of 5 May 2020.

Conclusion

It is considered that 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 building development standard.

The height variation is demonstrated (refer to **Figure Four**) to intersect through the centre of the proposed third level. This indicates that the height is required to achieve appropriate urban form for the use. The variation at 24.5% of the development standard and the Clause 4.6 variation request has demonstrated that the proposed height of building is acceptable and therefore that strict compliance with the prescribed Building Height standard would be unreasonable and unnecessary in this instance. In this regard, the Clause 4.6 variation request is supported.

Floor space Ratio Variation Assessment

The applicable maximum floor space ratio (FSR) is 1.5:1. The proposal has a maximum FSR of 1.54:1 (exceedance of 74m<sup>2</sup>) which represents a 4.5% variation to this development standard. 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 Applicant's Clause 4.6 Variation Request (**Appendix D**) to the maximum FSR development standard is provided below:

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

The maximum FSR 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 *Environmental Planning & Assessment Act, 1979* ('EPA Act').

**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 applicant has prepared a written request for the purposes of Clause 4.6(3), prepared by GWH Build.

There are five circumstances established by *Wehbe v Pittwater Council* [2007] NSWLEC 827 in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary. The applicant's clause 4.6 Variation Request written response seeks consideration to demonstrate that compliance with the development standard is unreasonable and unnecessary, stating that the objectives of the development standard are achieved notwithstanding non-compliance.

The objectives of Clause 4.4 (Floor Space Ratio) are as follows:

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

The Applicant response to the objectives are as follows:

First Objective

*' The density and scale of the proposed building represent a design response that addresses the specific site conditions and is considered appropriate for the context and character of the area. Georgetown is identified in the GNMP 3026 as a Stage 2 growth corridor, with the planning controls, both existing and future, to encourage higher density development and urban renewal.*

*The subject site is within the B2 Local Centre zone, and forms part of the Georgetown Commercial area, which is identified as Local Centre in the Newcastle Local Planning Strategy. The Georgetown local centre is envisioned to be a centre that meets the daily and weekly needs of local residents with a range of retail, community, and service facilities. Georgetown is also identified in the Hunter Regional Plan 2036 as a centre that investment should be made in urban renewal to facilitate housing and strengthen the commercial precinct. The proposed development is consistent with both of the goals identified in these documents, as the development contributes to the strengthening of the commercial area by providing further commercial tenancies, and will facilitate the renewal of an old, abandoned commercial site.*

*The proposed density is consistent with the future desired character for the Georgetown commercial area and enables the activation and invigoration of the existing precinct. The exceedance of the FSR is a direct response to the comments of Councils Urban Design Review Panel, who expressed the desire to see a continuous street wall for the commercial precinct, with the street wall to align with the proposed building to the north at 29-31 Moate Street. This UDRP advice has resulted in the development pushing to and abutting the northern boundary, which has result in an increase in overall GFA.'*

Second Objective

*'The bulk, density and scale represent a design response that addresses the specific site conditions and is considered appropriate for the context and character of the area. Georgetown is identified in the GNMP 3026 as a Stage 2 growth corridor, with the planning controls, both existing and future, to encourage higher density development and urban renewal.*

*The proposed building responds to the restraints of the site, primarily being the residential zoned land surrounding the site to the south and west, incorporating a mix of single storey dwellings and a multi-storey unit block. The proposal pushes the bulk of the development away from the boundaries with the residential properties, with the bulk of the building located on the corner or towards the front of the site. This enables the residential properties to the rear and side to maintain appropriate solar access and privacy. The impacts on solar access have been*

*demonstrated in the submitted shadow diagrams. As can be deduced from the shadow diagrams, the proposed building has less impact than a fully compliant building, built in accordance with DCP and SEPP setbacks. The reduction in bulk away from residential land, results in an improved outcome for neighbouring residential land.*

*The proposed development is also considered to respond the prevailing character within the Georgetown Road area. The development is consistent with the approved development to the East of the site at 32-36 Georgetown Road, which has an overall height of 13.3m and an FSR of 1.56:1. This building is also very similar in bulk, scale, and sizing, with the proposed building maintaining the pattern and spacing of the adjoining development, whilst providing contrast and differentiation, particularly at the corner. The proposed building is also considered to align with the prevailing character of the Georgetown commercial which is characterised by buildings of varying height, densities, and frontage widths. The pattern of the commercial area has been continued in the proposed development, as can be seen in the submitted contextual analysis.*

*Further to this, the UDRP has supported the development in relation to how it responds to the prevailing character of Georgetown and how the proposal is meeting the desired future character enabled by the planning controls.*

*As stated in Initial Action (2018), there is no requirement that the impacts be neutral or non-existent. The test is whether the objectives of the development standard are met. The design responds to the local centre zone and its location toward the edge of the centre, by providing a modest, but functional amount of commercial space that is consistent with the centre's hierarchy. The residential use contributes to an increased population within the walkable catchment of the centre. In this way the project represents a compatible development that is consistent with the vision for Georgetown to function as a growth corridor that supports the economic success of the Newcastle City.*

*The proposed development achieves the objective notwithstanding the non-compliance. Strict compliance with the height standard is considered unreasonable and unnecessary and would not improve the planning or urban design outcome. As stated in Wehbe, the numerical development standards a means of achieving the end outcome and should not be rigidly adhered with when the objectives are otherwise achieved. As stated in Initial Action (2018) there is no requirement that the impacts be neutral or non-existent but that the objectives of the development standard are met.'*

### Assessment Comment

It is agreed that in this instance enforcing adherence to the maximum 1.5:1 FSR development standard would be unreasonable and unnecessary. The proposal is considered to promote a suitable residential mix within an appropriate zone (B2 Local Centre zone) and local centre. In addition, the development provides employment opportunities and an active street frontage along Georgetown Rd.

It is agreed that the extent of variation is acceptable on the site and from the assessment, the proposed variation does not result in unacceptable impacts on the amenity of neighbouring properties. Furthermore, the proposed variation will not

adversely impact on the character of the streetscape or on the overall design of the development given the extent of variation proposed. The development is considered to be of a high-quality design and was supported by the UDRP and the design was amended to consider future development along Moate Street.

The proposal will also help to create a mixed-use precinct within the Georgetown local centre and the proposed variation have no impact on the vision for the area. As such, the Applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) and has demonstrated 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.**

In Initial Action, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole. The applicant's response to Clause 4.6(3)(b) provides the following specific environmental planning grounds to justify the breach of the standard:

*The 'sufficient environmental planning grounds' include those matters identified and commented upon earlier in this clause 4.6 written submission.*

*'Whilst exceeding the floor space ratio standard, the proposed development contributes to the locality through an activated streetscape with retail tenancies on the ground floor and a massing and scale that is compatible with the existing context and reflective of the future development in densities within this identified growth corridor. Georgetown contains a mix of height, massing, and material within the existing built form in the town centre and the proposed development will contribute to this setting. The FSR exceedance does not cause an unreasonable number of impacts on adjoining residential development, with the bulk and scale considered suitable in relation to overshadowing and privacy impacts. The area does not contain any significant view corridors and the development itself will not unreasonably affect any public or private views.*

*The FSR exceedance is directly related to the advice received from Councils UDRP in relation to achieving the desired future outcome of the Georgetown by providing a continuous street wall for the commercial zoned area. This has result in the development moving toward and abutting the north- western boundary with 29-31 Moate Street. The continuous street wall provides improved amenity and activation for the commercial zone, achieving the desired outcomes of the relevant strategic documents and the council development controls.*

*This request for variation demonstrates that the proposed FSR variation sought does not result in adverse environmental impacts, and that there are sufficient environmental planning grounds to justify a contravention to this FSR control.*

*Below is an outline of how the development meets the objectives of the B2 Local Centre:*



- i. *To provide a range of retail, business, entertainment, and community uses that serve the needs of people who live in, work in, and visit the local area.*

*As detailed on the architectural plans, the development proposes ground floor commercial tenancies that provide the opportunity for a range of potential businesses to establish on site and serve the needs of people who live in, work in, and visit the local area, complementing the range of existing businesses operating within the local centre. The proposal also has the potential to invigorate the existing commercial area and encourage further growth and opportunities. The development will result in considerable urban renewal of an old, abandoned site that benefit the overall commercial precinct and the residents/users.*

- ii. *To encourage employment opportunities in accessible locations.*

*Employment opportunities will be provided through the establishment of new businesses in the ground floor tenancies. The greater potential demand for services and infrastructure from the increase in residential population will generate demand and opportunities for the growth in existing businesses or for new businesses to establish. The site is accessible as it is within the local centre which is serviced by good pedestrian/cycle connections and has access to public transport.*

- iii. *To maximise public transport patronage and encourage walking and cycling.*

*The site is fronted by a bus stop serviced by regular public bus services and is within a walkable catchment of Mayfield rail station. The local topography is conducive to easy walking and cycling and the area is supported by pedestrian and cycling infrastructure that is increasingly creating connections to surrounding suburbs and the broader Newcastle area.*

- iv. *To provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible, and efficient pedestrian environment.*

*The ground floor contains commercial spaces with active frontages, with only the residential lobby at ground level. Residential development in the upper levels contains street facing balconies that will provide passive surveillance to improve safety and security of the local centre. The development proposes a continuous street awning to the Georgetown frontage and a small return to Turner Street that promotes an attractive and friendly environment. The development will also complement Newcastle Council's ongoing public domain plan being prepared for Georgetown. This will see investment to improving the public domain and infrastructure in Georgetown local centre.*

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

*The ground floor tenancies are modest GFA and reflect Georgetown's role as a local centre. These spaces will not facilitate a type or scale of use that would prejudice the viability of Newcastle City Centre.*

*The granting of development consent will enable construction of a high quality, architecturally designed shop top housing development that will contribute to the*

*regeneration of Georgetown. The objectives of Clause 4.3 have been met and there are sufficient environmental planning grounds to justify varying the height of building standard in this instance.*

Assessment Comment

It is accepted that the written request outlines environmental planning grounds which adequately justify the contravention. The detailed assessment results in support contravening the development standard. In addition to the applicant's justification, the following is considered relevant:

- i) The design of the proposed development facilitates amenity and functionality to future occupants of the mixed-use development, the residential component is formed through a combination of internal ceiling heights and appropriate floor areas.
- ii) The proposed development (commercial premises and shop top housing) is permitted with consent in the B2 Local centre zone.
- iii) The proposed development is compliant State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65).
- iv) The proposed development is compliant with the applicable acceptable solutions and performance criteria prescribed under the NDCP 2012.
- v) The proposed development does not create significant adverse impacts on neighbouring properties by way of overshadowing or privacy despite the exceedance of the building height standard.
- vi) The proposed development is considered to be a more orderly and economic use (mixed uses development) of the land given it appears more appropriate to the intended built form context of surrounding sites.

As such, the reasons outlined above are considered to provide sufficient justification to contravene the development standard. Accordingly, with the above considered, there are sufficient environmental planning grounds to support the variation as a high level of amenity is afforded to the future occupants through a design reliant upon additional floor space and absent of resultant significant adverse environmental impacts.

***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. Clause 4.6(a)(i) is satisfied in this regard.

**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.***

This provision does not require consideration of whether the objectives have been adequately addressed, rather than ‘the proposed development will be in the public interest because it is consistent’ with the relevant objectives.

*Objectives of Clause 4.4 (Floor space ratio)*

It is considered that the proposed development is consistent with the objectives of Clause 4.4 (Floor space ratio) as the proposed development is of an appropriate density, consistent with the established centres hierarchy. Moreover, the proposed development's density, bulk and scale is consistent with the built form as identified by the centre hierarchy.

*Objectives of the B2 Local Centre zone*

The objectives of the B2 zone are as follows:

- a) *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- b) *To encourage employment opportunities in accessible locations.*
- c) *To maximise public transport patronage and encourage walking and cycling.*
- d) *To provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.*
- e) *To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of the Newcastle City Centre.*

The development is consistent with the objectives of the B2 zone as the proposed development provides mixed uses with additional housing to meet the needs of the community with a height and density appropriate to existing and intended built form context.

The proposal further diversifies housing form whilst respecting the amenity, heritage and character of surrounding development, reflected through consistency with the applicable planning controls and it is considered that there will be no significant adverse impacts on the amenity of any existing nearby development. Further, the development type is a development permitted with consent within the B2 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 B2 zone. The proposal is satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

**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 concurrence to the exception to the development standard, as required by Clause 4.6(4)(b) of the NLEP 2012, is assumed, as per Department of Planning Circular PS20-00 of 5 May 2020.

Conclusion

It is considered that 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 floor space ratio development standard.

The variation is minor at 4.5% and the Clause 4.6 variation request has demonstrated that the proposed floor space ratio is acceptable and therefore, strict compliance with the prescribed floor space ratio standard would be unreasonable and unnecessary in this instance. In this regard, the Clause 4.6 variation request is supported.

Clause 5.10 - Heritage Conservation

The site is not in a heritage conservation area or close to any heritage items and is acceptable with regards to heritage conservation.

An AHIMS search has been completed and is satisfactory.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulfate soils and the proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

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

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

There is no exhibited draft environmental planning instrument relevant to the application.

**5.3 Any development control plan**

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

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

Section 3.01 Subdivision

The proposal includes strata subdivision and is satisfactory. Solar access has been designed for the residential units in accordance with the Apartment Design Guidelines in SEPP 65. The site will be serviced adequately, and common property has been noted on the submitted Strata Subdivision plans. A condition of consent will include an application for a strata subdivision certificate to be required prior to obtaining an occupation certificate.

Residential Development - Section 3.03

The objective of this section of the NDCP 2012 is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form, maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form. It is noted this section does not apply to shop top housing; however, the application is consistent with this part of the DCP.

The following comments are made concerning the proposed development and the relevant provisions of Section 3.03.

Principal controls (3.03.01)

A. Frontage widths

The proposal is required to have a minimum frontage of 15m. The proposal is satisfactory.

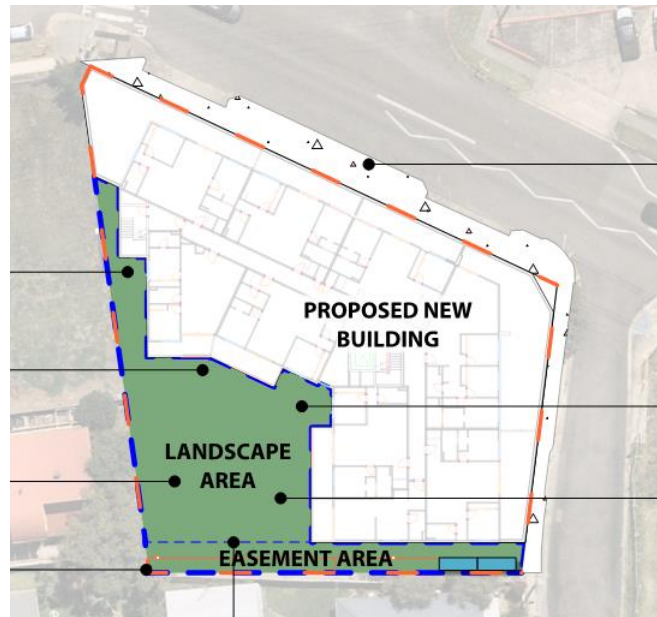
B Front setbacks and C. Side and rear setbacks

The controls under the ADG prevail over these controls.

D. Landscaped Area

The proposed landscaping is just over 27% of the site area (1,636m<sup>2</sup>) excluding the planters. A total of 7% of the site area is deep soil planting along southern boundary setback (existing easement).

The proposal is considered satisfactory in this regard.



**Figure 7:** Proposed landscape areas

*Siting the development (3.03.02)*

*A. Local character and context*

The built form, articulation and scale of the proposal relates to the local character and context of the locality through the presentation of a modern contemporary design consistent to existing examples of redevelopment within relative proximity to the site.

The development does not unreasonably impact on the amenity and privacy of adjoining dwellings through considered site placement with due consideration to boundary setbacks, locating living areas on the ground floor and adequate design treatment to areas of the dwellings capable of impacting upon visual privacy through overlooking.

The proposed development is acceptable having regard to this section of the NDCP 2012.

*B. Public domain Interface*

The proposed development provides an appropriate interface with the public domain (Georgetown Road) and allows for clear delineation between the private and public space. The development is in keeping with the form and scale of buildings envisaged for the locality. The first and second floor balcony elements are oriented to the street with the main foyer entry and windows of several habitable rooms providing surveillance over the public domain.

The design and orientation of the dwellings living and communal area ensures the development is not likely to unreasonably impact upon the amenity or privacy of adjoining dwellings. The internal amenity is also considered to be satisfactory through raised ceiling heights and highly functional floor spaces and layout.

Landscaping is proposed along the southern boundary and will provide a visual buffer to the neighbouring property.

The proposed development is acceptable having regard to this section of the NDCP 2012.

*C. Pedestrian and vehicle access*

The proposed development provides an appropriate area for vehicular circulation/manoeuvrability within the ground floor car parking area. Sufficient and safe pedestrian access has been provided around the frontages of the site within the public domain. The proposed development is acceptable having regard to this section of the NDCP 2012.

*D. Orientation and siting*

The proposed development has been suitably laid out having due regard for orientation and aspect. The siting of the development is appropriate for the nature of the surrounding built environment, with an analysis of the submitted shadow diagrams indicating that the proposal is sited to ensure that the designated principal private open space areas and living room windows facing north of adjoining residential premises would receive a minimum of two hours solar access between 9am and 3pm at the winter solstice (June 21).

An adequate percentage of the balconies and living areas of the residential units receive an ideal northerly aspect, with a minimum two hours achieved to the rear placed open space at the winter solstice.

The proposed development is acceptable having regard to this section of the NDCP 2012.

*E. Building Separation*

The proposal satisfies the separation provisions of the ADG and is considered satisfactory. Further detailed discussion is within 5.1 of this report.

The proposed development is acceptable having regard to this section of the NDCP 2012.

*Amenity (3.03.03)*

*A. Solar and daylight access*

As a result of the orientation of the allotment, sufficient solar access is available to balconies, habitable rooms and communal open space area within the development to satisfy the relevant NDCP 2012 objectives and is considered adequate.

An analysis of the overshadowing found that the residential units are provided two hours direct sunlight between 9am and 3pm at the winter solstice to the designated balconies and living rooms.

Further, the open space and living space of neighbouring properties achieve minimum solar access requirements. The proposed development is acceptable having regard to this section of the NDCP 2012.

*B. Natural ventilation*

The proposal satisfies the ADG in terms of cross ventilation.

The proposed development is acceptable having regard to this section of the NDCP 2012.

*C. Ceiling heights*

A recommended ceiling height of 2.7m is proposed within the NDCP 2012. The applicant proposes ceiling heights of 2.7m to both the ground and first floor habitable rooms to satisfy the acceptable solutions and provide sufficient internal amenity.

*D. Dwelling size and layout*

The proposal satisfies the provisions of the ADG and is considered satisfactory in terms of dwelling size and layout. Further detailed discussion is within 5.1 of this report.

The proposed development is acceptable having regard to this section of the NDCP 2012.

*E. Private open space*

The proposal satisfies the private open space provisions of the ADG. Further detailed discussion is within 5.1 of this report.

The proposed development is acceptable having regard to this section of the NDCP 2012.

*F. Storage*

The proposal satisfies the storage provisions of the ADG and is considered satisfactory.

The proposed development is acceptable having regard to this section of the NDCP 2012.



*G. Car and bicycle parking*

The development has been designed to include one car space per residential unit, through provision of a single garage. The design of the car parking area meets the requirements of the NDCP 2012. Further discussion is included in the Traffic, Parking and Access - Section 7.03.

*H. Visual privacy*

The development does not adversely impact on the privacy of adjoining or adjacent neighbours or between proposed residential units, as the design predominantly orients towards the street. Units facing the south and southwest have mitigation measures in place such as screens, landscaping and less habitable rooms orientated to the south and south-west. The communal open space has been designed to mitigate visual privacy. In addition, the design incorporates adequate separation and mitigation through design to ensure privacy in sensitive spaces.

The proposal is acceptable having regard to visual privacy and the ADG and is considered satisfactory by UDRP.

*I. Acoustic privacy*

The development has been designed to ensure the potential transfer of noise between commercial premises, residential units and neighbouring properties is minimised. The location of openings and recreational areas have been suitably positioned on site.

Further, any consent issued will be conditioned having regard to the placement of any air conditioning units with consideration to neighbouring properties.

The proposed development is acceptable having regard to this section of the NDCP 2012.

*J. Noise and pollution*

There is no infrastructure within proximity of the site that generates noise levels likely to detrimentally impact upon the use of the proposed development. CN's Senior Environmental Health Officer considers that potential unreasonable noise impacts from the proposal are low. The proposed development is acceptable having regard to this section of the NDCP 2012.

*Configuration (3.03.04)*

*A. Universal design*

The proposal satisfies the universal design provision with prevailing consideration of the ADG. Further detail discussion is within 5.1 of this report.

The proposed development is acceptable having regard to this section of the NDCP 2012.

*B. Communal area and open space*

The proposal satisfies the communal open spaces and open spaces (balconies) provisions of the ADG. Further detail discussion is within 5.1 of this report.

The proposed development is acceptable having regard to this section of the NDCP 2012.

*C. Architectural design and roof form*

The proposal satisfies the ADG in terms of design and is considered satisfactory by UDRP. Further detail discussion is within 5.1 of this report.

The proposed development is acceptable having regard to this section of the NDCP 2012.

*D. Visual appearance and articulation*

The proposed development is acceptable having regard to this section of the NDCP 2012 and provides a suitable design that has been articulated and has been supported by the UDRP.

*Environment (3.03.05)*

*A. Energy efficiency*

A valid BASIX certificate has been submitted for the development. Conditions requiring compliance with BASIX requirements ensures that the development will incorporate passive environmental design.

The submitted plans display suitable space for clothes drying purposes. The proposed development is acceptable having regard to this section of the NDCP 2012.

*B. Water management and conservation*

Subject to the inclusion of conditions on any consent issued the proposed development achieves compliance with water management and conservation requirements.

*C Waste management*

Suitable waste storage and collection can be achieved for the ground floor commercial premises and the shop top housing above. Bin storage is located in the ground floor parking area, as indicated upon the submitted plans.

The proposed method of waste storage and collection is discussed further in Waste Management - Section 7.08 of this report.

The proposed development is considered acceptable in relation to the abovementioned NDCP 2012 section and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The development establishes a scale and built form appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

Commercial Uses - Section 3.10

The development provides for a design that is acceptable having regard to the provisions of this section, in terms of appearance, streetscape and street activation of Georgetown Road.

Safety and Security - Section 4.04

This section applies to the proposal given the nature and scale of development, with components of common space (pedestrian areas, car parking, entry foyers, lift and stair wells and communal open space areas).

The development is acceptable in relation to aspects of safety and security providing for good natural surveillance from active frontages to balconies and maintains clear sightlines between private and public spaces. Lighting external areas and limiting places to hide have been considered within the design. Access to the building and car parks is controlled and is safe for residents 24 hours per day. CCTV provides a level of additional security.

The proposal is supported by a Crime Prevention Through Environmental Design (CPTED) assessment report. The development is consistent with the principles of CPTED as appropriate measures are in place with regard to allowing for casual surveillance, access control, territorial reinforcement and space management.

Social Impact - Section 4.05

The proposed development does not require the submission of a Social Impact Assessment. The proposed development is in keeping with the existing urban context of Georgetown and is not likely to result in any increase risks to public safety. Notwithstanding, the Applicant has provided commentary regarding social impact within the submitted Statement of Environmental Effects. It is identified that the development will result in the provision of additional housing within a well-serviced area with access to public transport and accessibility to local centres.

Soil Management - Section 5.01

A Sediment and Erosion Management Plan has been submitted with the application to minimise sediments being removed from the site during the construction period. A condition has been recommended to require that such measures be in place for the entire construction period.

Land Contamination - Section 5.02

As addressed in Section 5.1 of this report, within the SEPP (Resilience and Hazards) 2021 discussion, CN's information currently indicates that the subject site may be affected by land contamination.

The Applicant submitted a Remediation Action Plan. As stated in the SEPP consideration, CN's Senior Environmental Health Officer has considered the RAP and relevant draft conditions have been included.

Land contamination has been considered in this assessment report, in accordance with SEPP (Resilience and Hazards) 2021.

Vegetation Management - Section 5.03

In support of the proposed works, the Applicant has submitted an arborist's report that details species, location, size, health and value. The report is prepared generally in accordance with CN tree assessment requirements, and it is considered that the proposed tree removal of six small to medium trees is acceptable.

The amenity of the area will not be significantly impacted in respect of the local character and appearance.

All trees proposed to be removed are of low retention value. Notwithstanding, compensatory planting of nine tree/shrubs (*Syzygium 'Cascade'* – Lilly Pilly) is proposed along the southern boundary setback and appropriate conditions have been recommended. A detailed landscape plan submitted with the proposal outlines the landscape planning on the site including species selection.

Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site.

Heritage Items - Section 5.05

The site is not a listed heritage item and there are no heritage items within the near vicinity of the proposal. However, the design of the proposal has considered the broader context of the suburb (Georgetown) and has utilised specific elements within the material selection to reflect local context and history.

Landscape Open Space and Visual Amenity - Section 7.02

The proposal is a category 3 development, and an appropriately qualified professional has produced the submitted landscape plan. The detail provided in the landscape plan (including species selection) is acceptable and will be conditioned in the consent.

Traffic, Parking and Access - Section 7.03

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

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*Proposed development Car parking breakdown has been provided in the Project Summary as below:*

<b>Use</b>	<b>DCP Rate</b>	<b>Car Parking Required</b>	<b>Proposed Parking</b>
<b>Retail/Commercial - Ground Floor Unit 1-104m<sup>2</sup> &amp; Unit 2 - 138m<sup>2</sup></b>	Car: 1 space per 60m <sup>2</sup>	Car: 4	4 <i>Note: submitted GWH letter dated 20 Sept 2022 indicates 4 commercial parking.</i>
	Bicycle: 1 space per 20 staff	Bicycle: 2 (Class 2)	Adequate Informal area provided if required
<b>Residential Units</b>	Car: 1 Space per Dwelling	Car: 23	27 <i>Note: submitted GWH letter dated 20 Sept 2022 indicates 4 commercial parking. Thus, 27 residential parking spaces is available.</i>
	Bicycle: 1 space per dwelling	Bicycle: 23 (Class 2)	23
	Motorbike: 1 space per 20 cars	Motorbike: 2	2
<b>Visitor Parking for Residential</b>	Car: 1 space for first 5 dwelling and 1 space for every 5 thereafter	Car: 4.6	2 and 4 commercial spaces to be multi-used after business hours
	Bicycle: 1 space per 10 dwellings	Bicycle: 2 (Class 3)	on-street bicycle parking will be provided as part of public domain works
<b>Accessible Car Parking</b>	Not Specified (BCA Requirement)	1 Car Space (Included with total car parking numbers)	1 (included as visitor parking space)
<b>Total Off-Street parking</b>	Total Cars:	32	33
	Total Bicycles:	27	25
	Total Motorbikes:	2	2

The amended architectural plans have provision for two commercial parking spaces, which is a deficiency of two spaces under the current DCP requirements. However, GWH response letter dated 20 Sept 2022 states that four commercial spaces will be provided. The provision of four commercial spaces as per the GWH letter will achieve compliance with CN DCP and is supported.

Amended architectural plans indicate two visitor parking spaces, out of which one space is an accessible parking bay. Although the development lacks two visitor spaces, applicants have proposed to utilise the four commercial/retail spaces as

visitor parking, which will be after business hours (this is expected to be generally between 6pm – 7am and potentially weekends).

Multi-use of the four commercial parking spaces as visitor parking after business is supported.

The two visitor parking spaces are recommended to be managed by strata as common property at all times.

Plugin Electric Vehicle Charging (EVC)

CN has recently adopted a new policy to enforce EVC within new developments. Under this policy, future provisions are to be included to enable all car parking spaces to be converted to EVC. The Applicant has also confirmed that two commercial car parking bays will be installed with EVC stations, which is supported.

It is also considered appropriate that a condition of consent be included to require the provision for charging infrastructure facilities on site to future proof the building and cater for drivers of electric vehicles to ensure that all spaces are EV ready, in line with CN Policy.

Motorbike

Two motorbike parking spaces are proposed which complies with the DCP.

Bicycle Parking

The amended proposal has increased nominated bicycle storage cages with 16 residential bicycle spaces. Additional storage area has been provided for residential units, which can be used as bike spaces. Overall, 23 bicycle spaces for residential use can be catered for within the development at ground floor.

The Applicant has indicated that proposed commercial units will likely not generate much bicycle usage and demand, raising the argument that end user facilities are generally not necessary in their experience. However, a new toilet facility is proposed on the revised plans and can be used as a change room facility if needed.

The proposed car parking area has additional storage area and is secured, therefore bicycle parking for commercial use can be provided if required.

Further to this, CN will require installation of new on-street bicycle parking as part of the public domain works, which can be used by commercial and residential visitors.

The submitted Traffic Report and subsequent responses have demonstrated that the proposed development can achieve compliance with the CN DCP and relevant Australian Standards for off-street parking. The four additional car parking spaces for residential units (27 spaces in total) and multi-use of retail/commercial is supported.

The submitted traffic report prepared by SECA Solutions has demonstrated that the proposed traffic generation will not impact on local road network. When compared with the former Service Station use and existing commercial use, the shop top housing will likely generate slightly lesser traffic on Turner St.

Removal of existing driveways from Georgetown Rd will assist in the traffic management at the pedestrian crossing and with the traffic flows on Georgetown Rd.

No additional traffic works is imposed besides the changes required to manage the provision of a loading zone for servicing activity (see comments below).

The internal traffic movement must be appropriately managed with signs, line markings and safety features such as give way to pedestrian signs at the driveway exit and adequate lights at the parking entry/exit. Mirrors, line markings and speed signs are to be installed in appropriate locations within the site. Conditions are recommended to ensure that detailed design is managed at the construction certificate stage.

#### Loading Zone Proposal on Georgetown Road

The Applicant has proposed to utilise the on-street kerbside spaces, subsequent to removing the redundant driveways, on Georgetown as a loading zone. The loading zone could potentially assist with commercial and residential loading purposes.

Consultation has occurred with CN's Traffic and Transport Section. The potential for a loading zone can only be to the east of the existing bus stop on Georgetown Rd, this location can achieve compliance with the current traffic and parking regulations.

Further consultation on the changes to on-street parking and streetscape works will occur with CN's Project Strategy team. This is to ensure that any changes to on-street parking *and* streetscape will be appropriately coordinated with Georgetown Local Centre Public Domain works.

A revised proposal will be required to manage the on-street parking changes. Such matters can be resolved as part of the Section 138 Roads Act application process and adequate conditions are imposed.

The proposed changes to on-street parking must also be approved by the Newcastle City Traffic Committee (NCTC).

Conditions are recommended to ensure that the mandatory NCTC processes to amend on-street parking is appropriately managed at the Construction Certificate stage via the Section 138 Roads Act application process and satisfactory public domain works is provided consistent with Local Centre Public Domain works for Georgetown.

#### Construction Traffic

The site has two street frontages to accommodate for on-street construction deliveries and to manage construction activity. The Applicants could seek approval for a temporary works zones during construction, which will require a separate application to be lodged with CN's Transport and Traffic Section.

The development will be required to address how the construction traffic will be managed including staff parking and trades parking management at the construction stage. Appropriate conditions of consent are recommended.

It is anticipated that the proposed development will likely not cause major or long-term traffic delays or impact traffic flows. The development can be sustained in terms of construction traffic management.

The proposed car parking and traffic impact considerations is in accordance with the relevant aims and objectives of the NDCP 2012.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

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

'Submitted response to the latest request for information has been reviewed. I do not concur with GWH's comments that Stormwater reuse cannot be provided to the residential units and the issue raised with appliances warranty being affected by stormwater reuse. CN have been implementing stormwater reuse in numerous multi-unit developments including various projects being done by GWH. Moreover, NSW State Government is also considering further implementation for the sustainable use of stormwater and we believe that the option to reuse should always be considered. In this regard, the revised development plans have considered the sustainable reuse of stormwater.

Stormwater Reuse

BG&E have been engaged by the applicants to undertake the stormwater design for the development. Stormwater management plans have been provided with the Development Application.

The stormwater plan has indicated a 5KL rainwater tank for reuse to the podium landscape level only. It seems that approx. 50% of the roof area (approx. 380m<sup>2</sup>) is draining to the proposed rainwater tank.

As discussed above, there is opportunity to include additional rainwater storage and reuse such as ground level toilet facility, landscape and for washing purposes.

An additional 5KL rainwater tank (that is, total 10KL rainwater tanks) should be sufficient to provide for the additional reuse and will also assist in reducing the discharge run-off to Turner St. There is adequate space available to install this additional tank.

Stormwater Retention/Detention & Treatment

A 35 KL below ground retention tank is provided. Overflows from the roof areas and car parking will discharge to the retention tank.

The below ground tank has been designed with a 10m<sup>2</sup> sand filter system, which will provide stormwater treatment before discharging to the existing kerb inlet pit (KIP) on Georgetown Rd.



The submitted stormwater management plan is within the deemed to comply provisions and should achieve the stormwater control and treatment targets set by City's Stormwater DCP.

#### Drainage Connection

Stormwater design allows the discharge from the retention system to be connected to the existing kerb inlet pit (KIP) on Georgetown Rd. The proposed connection is generally acceptable.

Discharge from the rainwater tanks will be connected to Turner St via a kerb outlet. There is a kerb inlet pit approx. 27m downstream of Turner St, which will direct the stormwater flows from the site to CN's underground drainage network.

Generally, the proposed stormwater discharge locations are acceptable, and details of the connection can be resolved at Section 138 Roads Act application stage.

To prevent backflows from the on-road drainage system on Georgetown Rd, the proposed stormwater outlet connection system must be designed with a no-return valve, which must be located within the site.

#### Maintenance & Monitoring and Safety

The proposed stormwater structures will require regular monitoring and maintenance to ensure the system is functional. A detailed monitoring and maintenance plan will need to be provided with the Construction Certificate application.

#### Conclusion

The principles of WSUD and the requirements of the DCP have generally been applied to the development subject to the provision of an additional rainwater tank. The submitted stormwater plans and supporting documents have demonstrated that the development can be sustained. Accordingly, the proposal is acceptable in relation to water management.'

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012.

#### Waste Management - Section 7.08

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

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

'Separate enclosed bin storage areas for residential, recycling and commercial waste have been provided within the ground floor at different locations.

Residential and recycling bin storage areas are in close proximity to Turner St and access is via the proposed driveway. Therefore, CN Waste Management Services could service the residential component of the development from the Turner St site frontage via garbage pick-up on waste collection day. Waste collection is not supported to be via kerb side collection and as such conditions in this regard is recommended to be included in any development consent to be issued.

Commercial bin storage is located along the Georgetown Rd frontage. It is anticipated that commercial waste collection would be managed via private waste pick-up. Commercial waste collection is also not supported via kerb side collection and as such conditions in this regard is recommended to be included in any development consent to be issued.

#### Shop 2 Commercial Bin Access

Shop 2 does not have any direct connection internally to the commercial bin storage area. A condition of consent has been imposed to ensure that waste shall be transferred from 'Shop 2' to the commercial bin store through the internal corridors and car park provided on site. At no times shall waste be transferred from 'Shop 2' to the commercial bin store via the public domain.

#### Loading and Servicing

RTI by GWH indicated that the retail development would be generally serviced by smaller type vehicles. The commercial car parking spaces can be used to serve the retail units. Further to this and as noted above, a loading zone is proposed on Georgetown Rd east of the existing bus stop. The proposed loading zone can also be used for commercial and residential mail and servicing by SRV or MRV if required.

#### Conclusion

Subject to the recommended conditions of consent at Attachment B satisfactory arrangements for waste collection and servicing are available to the proposed development.

#### Advertising and Signage - Section 7.09

The application proposes an under awning business identification signage. The application meets the controls in NDCP. The sign does not detract the building, streetscape and vistas, nor does the design, size and position create a safety risk.

#### Street Awnings and Balconies - Section 7.10

The proposed street awning incorporated in the design is satisfactory and is a good outcome for the public domain, considering the renewal project for the Georgetown local centre is underway. The inclusion of an awning at this location is a desired outcome and the proposal is considered acceptable with regard to this section of the DCP.

There are several residential balconies overhanging public land. The proposal was forwarded to CN's Property Services Manager for consideration. The referral response states the total encroachments over the road reserve consist of 20m<sup>2</sup> of

useable floor space. The one-off fee will be required to be included as a condition of consent and is included below.

*Balcony/terrace encroachments are calculated in line with NDCP Section 7.10 using the statutory land value at the time of entering into the agreement, currently land value however this may change depending on when they enter into the consent.*

*Total encroachment 20m<sup>2</sup>*

*Land Value currently - \$900-\$1,000/m<sup>2</sup>*

*Calc: 20 x \$1000 = \$20,000.*

*Total occupation fee at this stage = \$20,000 (+/- 20% at this point in time) GST Exempt (based on current land value).*

The requirement to pay a fee will be included in a condition of consent and is considered satisfactory.

#### Development Contributions

The EP&A Act 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 and a condition will be included in the conditions of consent relating to 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 the NLEP 2012 and the NDCP 2012 considerations. In addition, the following impacts are considered relevant.

#### Acoustic Impacts

No acoustic assessment has been submitted with this application. The Applicant's Statement of Environmental Effects states that any plant and equipment will be located within an enclosure on the roof.

The carpark is essentially enclosed within a masonry building with metal louvres for ventilation which should significantly reduce potential noise impacts for nearby residents, particularly located on Turner Street.

Hours of operation of the speculative commercial tenancies are: 7.00 am to 10.00 pm Monday to Saturday and 7.00 am to 8.00 pm on a Sunday or a public holiday.

Public Domain

The proposal was forwarded to CN's Senior Project Planner within CN Infrastructure and Property for review in relation to the renewal project underway for the Georgetown Town Centre and in response they raised no objection to the proposal, noting that the removal of the two existing driveways from the road frontage was an improvement to the public domain,

In addition, CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal.

The following public domain works are required in connection with the development and will be subject to separate approval under Section 138 of Roads Act.

Works	Reason
Reconstruct new pedestrian footpath and streetscape across site frontages on Georgetown Rd and Turner St.	To enhance pedestrian amenity and safety due to increased pedestrian demand from the development, footpath shall be designed and constructed to CN Standards and in accordance with Georgetown Local Centre Public Domain Plan. Conditions recommended.
Remove redundant driveways and reconstruct kerb and gutter and associated road works	To improve street drainage, streetscape, safety, and facilitate compliant footway grades.
Service & stormwater connections	To establish services and stormwater connections
Traffic and parking sign design and installation	Install any proposed parking and loading zone signage, generally as per the concept proposal and as required by CN.
Bus Stop upgrade to comply with DDA requirements and street lighting upgrade (does this include with shelter?)	To ensure that the future residents have a compliant bus stop, including shelter, and street lighting for safety and security is appropriately designed
Repair any damages to footpath and road reserve	To ensure that the footway, road reserve and pavement is repaired to Council standards and satisfaction and any damages due to construction related activity is repaired.
Street furniture	Install bicycle racks and upgrade bus stop furniture

Relevant conditions with regard to public domain requirements has been included in the draft conditions of consent.

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

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

The proposal will not have negative social or economic impacts.

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

At-grade access to the site will be available for pedestrians, from adjacent roads and public transport. The site has excellent access to public transport services, and the proposed use is satisfactory in respect of its accessibility.

The constraints of the site have been considered in the proposed development, which include contamination.

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

The application was notified in accordance with the CN's Community Participation Plan. Three submissions were received during the notification period.

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

<b>ISSUE</b>	<b>COMMENT</b>
Character impacts	<p>The proposal is considered to be adequate in terms of local character as detailed within the report above.</p> <p>The Applicant provided a contextual analysis of the Georgetown commercial area which was submitted with the application. The Applicant noted that the design responds to the desired future character and is consistent with existing planning controls. The Applicant emphasised that local centres provide mixed uses and the proposal will add services that don't currently exist in the Georgetown local centre.</p> <p>On balance the proposal is consistent with the existing and emerging character of the Georgetown local centre.</p>
Privacy impacts	<p>The proposed development addresses the relevant Acceptable Solutions of Section 3.02.07 of the NDCP 2012 having regard to privacy and overlooking.</p> <p>The living rooms and communal spaces of the residential apartments have been designed to ensure adequate separation between properties and adjacent properties is provided. UDRP considered the proposal satisfactory and further discussion can be found under State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65).</p>

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Visual impacts	<p>The proposal includes perspectives/montages and elevations that provide a consideration of the design and visual impact of the proposal. In addition, the proposal was required to be considered independently by Urban Design Review Panel. The Panels review occurred three occasions in response to initial concerns raised. The proposal was amended to improve the visual impact, amenity, and design of the development. The final consideration of the proposal's design quality by the UDRP on 28 September 2022 indicated support for the proposal and the design.</p>
Overshadowing impacts	<p>An analysis of the overshadowing found that the neighbouring dwellings are provided a minimum two hours direct sunlight between 9am and 3pm at the winter solstice to the designated principal private open space and living room. The exception is a multi-dwellings housing development to the southwest. The property maintains 75% of all the dwellings achieving adequate solar access. The impact to the subject unit cannot be avoided with any development proposed on the site given the orientation of the subject site and the existing development.</p> <p>The redesign of the proposal considered overshadowing impacts, with the final design supported by the UDRP. Further consideration of the solar access is within the assessment under State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65).</p>
Car parking impacts	<p>The provision of car parking for residents and visitors is above the required parking provisions by two spaces for the site and is acceptable.</p> <p>The number of car parks provided on site is considered a satisfactory outcome. Further discussion is within Section 7.03 - Traffic, Parking and Access of NDCP 2012.</p>
Building separation impacts	<p>The proposal is satisfactory with regard to building separation and responds to the requirements of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guideline. The UDRP have considered the proposal on three occasions and is satisfied with the amended design. In addition, the Applicant's response to the UDRP with regard to privacy mitigation in terms of locating planter boxes and screening IS satisfactory. Further discussion of design quality and visual impact is within assessment under State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65).</p>
Bulk and scale	<p>The proposal has been considered satisfactory with regard to proposed height and FSR variations, elements that contribute to bulk and scale. In addition, the discussion of design quality is located within assessment under State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65).</p>

Building height	A clause 4.6 variation request has been submitted in support of proposal and this has been assessed in detail in this report under NLEP2012 assessment. The clause 4.6 variation request is considered to be well founded. Consequently, the proposed density of the subject development is acceptable.
Floor space ratio	A clause 4.6 variation request has been submitted in support of proposal and this is assessed in detail in this report under NLEP2012 assessment. The clause 4.6 variation request is considered to be well founded. Consequently, the proposed density of the subject development is acceptable.

**5.9 The public interest**

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

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

The proposed development 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. The development will also allow for the activation of the Georgetown Rd streetscape, which is a positive outcome.

**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 27 Attachment A:** Submitted Plans – 42 Georgetown Road, Georgetown
- Item 27 Attachment B:** Draft Schedule of Conditions– 42 Georgetown Road, Georgetown
- Item 27 Attachment C:** Clause 4.6 Variation Request (Height) – 42 Georgetown Road, Georgetown
- Item 27 Attachment D:** Clause 4.6 Variation Request (Floor Space Ratio)– 42 Georgetown Road, Georgetown
- Item 27 Attachment E:** Processing Chronology - 42 Georgetown Road, Georgetown

**Item 27 Attachments A-E distributed under separate cover**

**ITEM-28**                    **DAC 06/12/22 - 10 DANGAR STREET WICKHAM - DA2022/00448 - ALTERATIONS AND ADDITIONS TO APPROVED MIXED-USE DEVELOPMENT (COMMERCIAL, RETAIL & SHOP TOP HOUSING) – ALTERATIONS TO APPROVED FLOOR PLANS AND THREE ADDITIONAL FLOORS OF SHOP TOP HOUSING ACCOMMODATION ABOVE THE APPROVED STRUCTURE**

**APPLICANT:**            **THE TRUSTEE FOR DANGAR ST WICKHAM UNIT TRUST**  
**OWNER:**                **DANGAR ST WICKHAM PTY LTD**  
**NOTE BY:**               **PLANNING AND ENVIRONMENT**  
**CONTACT:**              **INTERIM EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING MANAGER PLANNING, TRANSPORT AND REGULATION**

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**PART I**

**PURPOSE**

A development application (DA2022/00448) has been received seeking development consent for alterations and additions to an approved mixed-use development (commercial, retail and shop top housing) comprising alterations to approved floor plans and three additional floors of shop top housing above the approved structure at 10 Dangar Street Wickham.

The submitted application was assigned to Senior Development Officer, Elle Durrant for assessment.



**Subject Land: 10 Dangar Street Wickham**

The application is referred to the Development Applications Committee (DAC) for determination for the following reasons

- i) The proposed variation to the height of buildings development standard of Newcastle Local Environmental Plan 2012 ('NLEP 2012') being more than a 10% variation. A 26.5% variation is proposed.
- ii) The proposed variation to the building separation development standard of NLEP 2012 being more than a 10% variation. A 22.2% variation is proposed.
- iii) The proposed variation to the floor space ratio development standard of NLEP 2012 being more than a 10% variation. A 38.66% variation is proposed.



The subject site does not contain an existing building however, the proposed development seeks development consent to facilitate alterations and additions to the approved, but not yet constructed, mixed use development approved under DA2018/01197 ('the Original Development Consent'), and subsequently modified under DA2018/01197.02 ('the Modified Development Consent').

The Modified Development Consent approved the demolition of all structures on site, and the erection of a 14 storey mix use development comprising three basement levels, ground floor retail premises, three levels of commercial premises, with ten levels of shop top housing above (97 residential apartments).

As a result of the proposed alteration and additions, the development in its entirety, comprising the Modified Development Consent and the Subject Application, will provide for a 17-storey mix-use development (commercial, retail, and shop top housing) consisting of three basement carparking levels, ground floor retail premises, three levels of commercial premises, with 13 levels of shop top housing above (118 apartments).

It is noted that should development consent be granted for the Subject Application, two development consents would apply to the subject site, the consent relating to the current proposal and the Modified Development Consent will continue to apply to the site. In this regard, conditions of consent have been included in the recommended Draft Schedule of Conditions at **Attachment C** amending the Modified Development Consent to ensure consistency between the two consents.

The Subject Application was notified for a period of 14 days, between 26 May 2022 and 9 June 2022 in accordance with CN's Community Participation Plan (CPP). One submission was received during the first notification period.

A draft Planning Agreement in connection with the Subject Application has been separately assessed and reported to Council. At the Ordinary Council meeting held on 27 September 2022, Council resolved to place the draft Planning Agreement on public exhibition for 28 days.

Public exhibition of the Planning Agreement occurred between 30 September 2022 and 28 October 2022. The Subject Application was also publicly exhibited between 30 September 2022 and 28 October 2022, in accordance with Section 204(1) of the *Environmental Planning and Assessment Regulation 2021* ('EP&A Reg 2021') which requires that public notification of a proposed planning agreement is undertaken contemporaneously with the public notification of the related development application. A total of four submissions were received objecting to the Subject Application during the second notification period.

The Planning Agreement was endorsed at the Ordinary Council meeting held 22 November 2022.

Notwithstanding the above, it is noted that under the provisions of the *Environmental Planning and Assessment Act 1979* ('EP&A Act 1979') the Planning Agreement and Subject Application require separate assessment processes and pathways.

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**.

A copy of the endorsed Planning Agreement is appended at **Attachment A**.

A copy of the current amended plans for the proposed development is appended at **Attachment B**.

### Issues

- 1) Height of buildings – The proposed development has a building height of 56.9m and does not comply with the building height of 45m as prescribed under Clause 4.3 of the NLEP 2012. The variation is 26.5%. The applicant has submitted a written request in accordance with Clause 4.6 of the NLEP 2012 to vary the height of building development standard.
- 2) Building separation – The proposed development has a minimum building separation of 18.68m at 45m or higher above ground level and does not comply with the building separation of 24m at 45m or higher above ground level as prescribed under Clause 7.4 of the NLEP 2012. The variation is 22.2%. The applicant has submitted a written request in accordance with Clause 4.6 of the NLEP 2012 to vary the building separation development standard.
- 3) Floor space ratio – The proposed development has a floor space ratio of 6.9:1 and does not comply with the maximum floor space ratio of 5:1 as prescribed under Clause 7.10 of the NLEP 2012. The variation is 38.66%. The applicant has submitted a written request in accordance with Clause 4.6 of the NLEP 2012 to vary the floor space ratio development standard.
- 4) Matters raised in the submissions including height, development application assessment process and procedures, views, privacy, built form and scale, car parking provisions, purchasers of apartments within the approved development will be adversely impacted, profit margin vs public interest, and impacts on property values.

### 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 1979') and is acceptable subject to compliance with appropriate conditions.

**RECOMMENDATION**

***Vote by division***

- A. That the DAC as the consent authority note the objection under Clause 4.6 Exceptions to development standards of the NLEP 2012, against the development standard at Clause 4.3 'Height of buildings', and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B3 Commercial Core zone in which the development is proposed to be carried out; and
- B. That the DAC as the consent authority note the objection under Clause 4.6 Exceptions to development standards of the NLEP 2012, against the development standard at Clause 7.4 'Building separation', and considers the objection to be justified in the circumstances and to be consistent with the intent of Clause 7.4 and the objectives for development within B3 Commercial Core zone in which the development is proposed to be carried out; and
- C. That the DAC as the consent authority note the objection under Clause 4.6 Exceptions to development standards of the NLEP 2012, against the development standard at Clause 7.10 'Floor space ratio for certain development in Area A', and considers the objection to be justified in the circumstances and to be consistent with the intent of Clause 7.10 and the objectives for development within B3 Commercial Core zone in which the development is proposed to be carried out; and
- D. That DA2022/00448 for alterations and additions to approved mixed-use development (commercial, retail and shop top housing) comprising alterations to approved floor plans and three additional floors of shop top housing above the approved structure at 10 Dangar Street Wickham be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
- E. That those persons who made submissions be advised of CN's determination.

**Political Donation / Gift Declaration**

Section 10.4 of the EP&A Act1979 requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

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

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

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## PART II

### 1.0 THE SUBJECT SITE AND HISTORY

#### 1.1 Site details

The subject site consists of a single allotment (Lot 1 DP 1197377) known as 10 Dangar Street Wickham. The total area of the site is 2,904sqm. The site's surface slopes from the northeast corner down to the south-west by approximately 500mm. The site is irregular in shape and maintains three street frontages: a northern frontage to Dangar Street, an eastern frontage to Hannell Street, and a western frontage to Charles Street. The southern boundary of the site is shared with the Newcastle Interchange site.

At the time of lodgement, the site was vacant of any permanent structures or vegetation as a result of demolition works being completed and initial site preparation works commencing in accordance with the current Modified Development Consent.

The immediate vicinity of the subject site is characterised by medium to high density development presenting as a mix of commercial, residential, retail, and office use.

North of the subject site, on the corner of Dangar and Hannell Streets (No. 38 Hannell Street) is the 'Stella Apartments' development; a 15 storey mix use development comprising ground level commercial with shop top housing above. Also opposite the subject site to the north are three residential properties each displaying as single storey dwelling houses (No.15, 17, and 19 Dangar Street).

Further north, on the corner of Bishopsgate and Charles Streets (No.12 Bishopsgate Street) is the 'Bishopsgate Apartments' development; a nine storey mix use development comprising ground level commercial and residential apartments above.

The 'West End Apartments' development (No.3 Charles Street) is located to the northwest of the site and is a 10-storey mixed use development comprising ground floor commercial and residential apartments above. Directly west of the subject site, on the opposite side of Charles Street, is a single storey residential dwelling house and commercial premises (No.15 Charles Street and No.17 Charles Street respectively).

Adjoining the subject site to the south is the Newcastle Transport Interchange that incorporates the Sydney to Newcastle heavy rail terminus, light rail connection to Newcastle East, and bus connection to other centres and suburbs within the Greater Newcastle Metropolitan Area. Further south, on the opposite side of the rail corridor, is a 12-storey commercial office building (No. 6 Stewart Avenue).

Further southwest of the site is a five-storey open car parking structure containing the Newcastle Bus Interchange at ground level and development consent has been granted for a mixed-use development on the site. Site preparation works have commenced for the approved mixed-use development which will be integrated with the multi-storey car parking structure and comprises ground floor retail premises, commercial podium, with shop top housing (352 apartments) split into a two-tower form above (105.45m and 100.58m high respectively).

East of the subject site on the opposite side of Stewart Avenue, are single and two storey retail and commercial buildings, while further to the east are several more recently developed sites containing multi-storey mixed-use buildings.

Accordingly, the subject site, and Wickham generally, is located at the interface of the emerging commercial core of the Newcastle City Centre (in Newcastle West). The area has evolved into a mixed-use urban neighbourhood and has seen a significant and rapid increase in development.

## 1.2 Relevant development history

### DA2018/01197 – the Original Development Consent

Development Consent DA2018/01197 was granted by way of deferred commencement by the (then) Joint Regional Planning Panel ('JRPP') on 24 April 2019 for '*Demolition of existing structure and erection of 14 storey mixed use development*' at the subject site: Lot 1 DP 1197377, 10 Dangar Street Wickham ('the Original Development Consent').

The Original Development Consent comprised the following works, full details of which are recorded in the relevant assessment report for DA2018/01197.

- i) Demolition of all structures on the site.
- ii) Erection of 14 storey mix use development comprising two basement levels, ground floor retail premises, three levels of commercial premises, with ten levels of shop top housing above (97 residential apartments).

The Original Development Consent provided 198 car parking spaces located within the two basement levels and the four podium levels.

Assessment of the Original Development Consent considered, and supported, a maximum building height of 46.7m. This resulted in a 1.7m exceedance, or 3.7% variation, to the 45m height of building development standard prescribed for the subject site under Clause 4.3 of the NLEP 2012.

The Original Development Consent approved a gross floor area of 14,520sqm. This equates to a floor space ratio of 5:1 (based on a site area of 2,904sqm), complying with the 5:1 floor space ratio development standard prescribed under Clause 7.10 of the NLEP 2012.

The deferred commencement condition imposed on the consent required written approval/certification from Transport for NSW and Sydney Trains satisfying the matters contained in their concurrence letter.

DA2018/01197.01

Modification Application DA2018/01197.01 to modify the Original Development Consent was approved under delegation on 26 November 2019.

This modification extended the deferred commencement period imposed on the Original Development Consent for an additional 12 months. The deferred commencement requirements were subsequently satisfied on the 22 September 2020 and a formal letter was issued by City of Newcastle ('CN') to the applicant.

DA2018/01197.02 – the Modified Development Consent

Application DA2018/01197.02 to modify the Original Development Consent was approved by the Hunter Central Coast Regional Planning Panel ('HCCRPP') on 26 May 2021 (**'the Modified Development Consent'**).

The Modified Development Consent comprised the following changes, full details of which are recorded in the relevant assessment report for DA2018/01197.02:

- i) One additional basement level (Basement 3) to facilitate relocation of parking approved on Level 1, Level 2, and Level 3. The relocation of parking resulted in an increase to the commercial gross floor area on Level 1, Level 2, and Level 3 and changes to the approved layout of circulation areas, storage, service, and toilet facility on these levels.
- ii) Increase to approved building footprint to provide additional space for services on the basement levels.
- iii) Reconfigure the ground floor car parking area, ramp location, and provision of end of trip facilities.
- iv) Minor changes to the ground floor landscape design.
- v) Reconfiguration of ground floor retail premises, from two larger tenancies into four smaller tenancies.
- vi) Increase to the floor-to-floor heights of Level 1, Level 2, and Level 3, resulting in an increase to the overall building height.
- vii) Changes to the facade treatments and materials for Ground Floor, Level 1, Level 2, and Level 3.
- viii) Changes to the residential lobby spaces, including orientation of the residential lift core (all levels) and configuration of servicing cupboards (Levels 4 to Level 13).
- ix) Additional solar panels located on the roof top.

Assessment of the Modified Development Consent considered, and supported, a maximum building height of 47.65m. This resulted in an exceedance of 2.65m, or a 5.9% variation, to the 45m height of building development standard prescribed under Clause 4.3 of the NLEP 2012.

Additionally, the Modified Development Consent considered and supported a gross floor area of 17,069sqm calculated in accordance with the 'gross floor area' definition under the NLEP 2012. This equates to a floor space ratio of 5.87:1 (based on a site area of 2,904sqm), resulting in an exceedance of 0.87:1, or a 17.55% variation, to the 5:1 floor space ratio development standard prescribed under Clause 7.10 of the NLEP 2012.

## 2.0 THE PROPOSAL

### DA2022/00448 – the Subject Application

Development Application (DA2022/00448) seeks development consent for alterations and additions to the approved mixed-use development (commercial, retail & shop top housing) and consists of alterations to approved floor plans and three additional floors of shop top housing above the approved structure (**'the Subject Application'**).

Particulars of the proposed development are listed below.

#### Basement 3, Basement 2, Basement 1, and Ground Floor:

- i) Alterations to the car parking provisions, including the removal of three car parking spaces and reconfiguration of car parking allocations.
- ii) Alterations to the motorbike parking provisions, including the provision of three additional motorbike spaces, and reconfiguration to location of motorbike spaces.
- iii) Alterations to the bicycle parking provisions, including the provision of 31 additional bicycle spaces, and reconfiguration of the location of bicycle spaces.
- iv) Alterations to the residential storage cage provisions, including reconfiguration of the layout and location of storage cages.
- v) Alterations to the basement services areas, including
  - a) Basement 3 'Services' area adjacent north boundary replaced with 'Fire Tank'.
  - b) Basement 2 'Fire Tank' adjacent north boundary replaced with 'Services' area.
  - c) 'Fire Pump Room' relocated from Basement 2 to Basement 3.
  - d) Basement 1 'Main Switch Room' reduced in size.

- vi) Alterations to Ground Floor fire stair exit and addition of 'Substation 2'.
- vii) Alterations to Ground Floor retail tenancies, including:
  - a) Location of dividing wall between 'Retail 3' and 'Retail 4', and provision for future wet area for each retail tenancies - moved north and glazing amended accordingly.
  - b) Location of dividing wall between 'Retail 1' and 'Retail 2' moved east, and glazing amended accordingly.
  - c) Size of 'Retail 2' reduced to accommodate relocated bicycle parking, and provision for future wet area amended accordingly.
- viii) Alterations to waste storage facilities, including an increase to the size of the 'Residential Bin Room' and 'Commercial Bin Room'.
- ix) Alterations to the Ground Floor building setback from the southern boundary, including provision of 3m setback and relocation of 'End of Trip' facilities and bicycle parking.

Level 1:

- x) Alterations to the commercial amenities to facilitate relocation of 'End of Trip' facilities to Level 1 from Ground Floor.
- xi) Alterations to street awning as a result of increased setback from southern boundary at Ground Level.

Level 2 and Level 3:

- xii) Alterations to the layout of commercial amenities.

Level 4 and Level 9:

- xiii) Alterations to the residential lobby, being removal of lobby seating and void above.
- xiv) Alterations to balcony screening to increase density in accordance with recommendations of Sydney Trains and Wind Tunnelling report.

Level 10 and Level 12:

- xv) Alterations to the residential lobby, being removal of lobby seating and void above.
- xvi) Alterations to internal layout of apartments 1004, 1005, 1104, 1105, 1204, and 1205.
- xvii) Alterations to balcony screening to increase density in accordance with recommendations of Sydney Trains and Wind Tunnelling report.



Level 13:

- xviii) Alterations to the residential lobby, being removal of void to Level 12 below.
- xix) Alteration to mix and layout of apartments (noting the number of apartments remains unchanged).
- xx) Alterations to balcony screening to increase density in accordance with recommendations of Sydney Trains and Wind Tunnelling report.

Level 14 and Level 15:

- xxi) Additional floor of residential apartments (seven apartments per floor) comprising:
  - a) Three x 2 bedroom apartments
  - b) Three x 3 bedroom apartments
  - c) One x 4 bedroom apartment

Level 16:

- xxii) Additional floor of residential apartments (seven apartments, layout consistent with approved level 13) comprising:
  - a) Six x 2 bedroom apartments
  - b) One x 3 bedroom apartments

Roof:

- xxiii) Consistent with approved roof plan, the only changes being to the approved RL's to facilitate the three additional floors proposed above the approved structure. Additional floor of residential apartments (seven apartments, layout consistent with approved level 13).

As a result of the proposed alteration and additions, the development in its entirety, comprising the Modified Development Consent and the Subject Application, will provide for a 17 storey mix-use development (commercial, retail, and shop top housing) consisting of three basement carparking levels, ground floor retail premises, three levels of commercial premises, with 13 levels of shop top housing above (118 apartments).

Table 1 below provides a summary of the key development statistics of the Modified Development Consent and the proposed development in its entirety (comprising the Modified Development Consent and the Subject Application).

**Table 1: Summary of the key development statistics**

	Modified Development Consent	Modified Development Consent, and Subject Application	Change
1-bed apartments	19	19	no change
2-bed apartments	68	77	+9
3-bed apartments	10	19	+9
4-bed apartments	0	3	+3
Total apartments	97	118	+21
Car spaces	198	195	-3
Motorbike spaces	19	22	+3
Bicycle spaces	179	210	+31
Retail GFA (Ground Floor)	1,362 sqm	1,172 sqm	-190 sqm
Commercial GFA (Level 1 to Level 3)	6,894 sqm	6,881 sqm	-13 sqm
Residential GFA	8,813 sqm	12,081 sqm	+3,268 sqm
Total GFA	17,069 sqm	20,134 sqm	+3,065 sqm
Floor space ratio	5.87:1	6.9:1	1.03:1
Number of storeys (excluding basement)	14 storeys	17 storeys	3 storeys
Maximum RL	49.45 AHD	58.75 AHD	9.3m
Maximum building height	47.65m	56.95m	9.3m

The plans originally submitted with the Subject Application have been amended during the assessment, specifically to provide clarity and address drafting inconsistencies within the architectural drawings that were identified during the detailed assessment. The current amended plans relied upon for this assessment were submitted on 10 November 2022.

A copy of the current amended plans for the proposed development is appended at **Attachment B**.

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

### Approval pathway

The Subject Application was accompanied by advice confirming that the proposed development sits comfortably within the definition of 'alterations and additions' to an approved development rather than a 'new building' when assessed in accordance with the planning principle set out in *Coorey v Municipality of Hunter Hill* [2013] NSWLEC 1187 ('Coorey').

The test as to what constitutes 'alterations and additions' to the approved structure is informed by the planning principle in *Coorey* which sets out the considerations that permit an evaluation to 'be made as to whether or not a proposal would correctly be characterised as additions and/or alterations to an existing structure or whether the proposal should be characterised as an application for an entirely new structure'.

The subject site does not contain an existing building however, the proposed development seeks consent to facilitate alterations to the approved building and the addition of three floors above the approved structure. The Land and Environment Court (LEC) has on numerous occasions approved additional levels on top of an approved, but not yet constructed building (see *Bureau SRH Pty Ltd v Waverley Council (No. 2)* [2017] NSWLEC 1383; *Lateral Estate Pty Ltd v Council of the City of Sydney* [2020] NSWLEC 1381).

An assessment of the approved development (the Modified Development Consent) and the development in its entirety (comprising the Modified Development Consent and Subject Application) has been undertaken and found the proposed development can be lawfully characterised as 'alterations and additions' when considered against the terms of the planning principle contained in *Coorey*. This view is formed on the basis that:

- i) There is minimal alterations or change proposed within the approved building.
- ii) The extent of changes proposed to the approved building primarily consists of the 'addition' of three floors above the approved structure.
- iii) The 'addition' relies wholly on the approved building.
- iv) The approved building setbacks, landscaping provisions, street activation and mix of use remains the same.

It is noted that should development consent be granted for the Subject Application, two development consents would apply to the subject site, the consent relating to the current proposal and the Modified Development Consent will continue to apply to the site.

In order to avoid inconsistency between consents which apply to the subject site, suitable conditions of consent have been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) which have the effect of modifying the relevant conditions of the Modified Development Consent pursuant to s.4.17(1)(b) and s.4.17(5) of the EP&A Act 1979 and s.67 of the *Environmental*

*Planning and Assessment Regulation 2021* ('EP&A Reg 2021'). This is an approach often adopted by the Land and Environment Court.

### 3.0 PUBLIC NOTIFICATION

The proposed development was first publicly notified for a period of 14 days, between 26 May 2022 and 9 June 2022 in accordance with CN's Community Participation Plan (CPP). One submission was received during the first notification period.

Section 204(1) of the EP&A Reg 2021 requires that public notification of a proposed planning agreement is undertaken contemporaneously with the public notification of the related development application. At the Ordinary Council meeting held on 27 September 2022, Council resolved to place the proposed planning agreement that is related to the subject development application on public exhibition for a period of 28 days. The proposed planning agreement was publicly notified between 30 September 2022 and 28 October 2022.

Consequently, the Subject Application was also publicly notified between 30 September 2022 and 28 September 2022. A total of four submissions were received during the second notification period.

The plans originally submitted with the Subject Application have been amended during the assessment, specifically to address several drafting inconsistencies within the architectural drawings that were identified during the detailed assessment. The current amended plans relied upon for this assessment were submitted on 10 November 2022. The current amended plans were not required to be renotified as no changes were made to the nature of alteration and additions proposed under the Subject Application.

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

#### **h) Statutory and Policy Issues:**

- i) Height of building: as a result of the three additional floors proposed above the approved structure, the development in its entirety (comprising the Modification Development Consent and Subject Application) does not comply with the height of building development standard of 45m prescribed for the site under Clause 4.3 of the NLEP 2012.
- ii) Development Application assessment process and procedures: CN needs to ensure correct processes are followed in regard to Development Application assessments and that residents in the area are considered when major decisions are made.

#### **i) Amenity Issues:**

- i) Views/ outlook: the three additional floors proposed above the approved structure will impact views from existing apartments in the vicinity of the subject site.

- ii) Privacy: the three additional floors proposed above the approved structure will impact visual privacy for existing apartments in the vicinity of the subject site.

**j) Design and Aesthetic Issues:**

- i) Built form and scale: the three additional floors proposed above the approved structure will be inconsistent with surrounding buildings and will be overbearing for the neighbouring development and the Wickham area in general.

**k) Traffic and Parking Issues:**

- i) Car parking provisions: the alterations and additions proposed will facilitate 21 additional apartments, however additional onsite car parking provisions is not proposed under the Subject Application.

**l) Miscellaneous:**

- i) Purchasers of apartments within the approved development will be adversely impacted: including construction delays, financial and emotional stress, design changes to apartments, Level 13 apartments no longer 'penthouse apartments'.
- ii) Profit margin vs public interest: the proposed alterations and additions serve only to increase the developers profit margin at the expense of the City's amenity.
- iii) Impacts on property values: the proposed alterations and additions will decrease property values of apartments in other high-rise buildings.

The concerns raised by objectors are addressed as part of the Planning Assessment at **Section 5.0**.

#### **4.0 INTEGRATED DEVELOPMENT**

The proposal is not '*integrated development*' pursuant to s.4.46 of the EP&A Act 1979.

#### **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 1979, as detailed below.

In the consideration of the Subject Application, it is noted that the assessment discussed below is limited to only those matters that are relevant to the alteration and additions proposed to the approved development. Other aspects of the approved development, which do not form a part of the scope of alterations and additions were considered as part of the original development assessment and as such are not included below.

**5.1 Provisions of any environmental planning instrument  
State Environmental Planning Policy (Biodiversity and Conservation) 2021**

Chapter 2 – Vegetation in non-rural areas

Chapter 2 of the *State Environment Planning Policy (Biodiversity and Conservation) 2021* ('Biodiversity and Conservation SEPP') works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW. Chapter 2 seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the state, and to preserve the amenity of non-rural areas of the state through the appropriate preservation of trees and other vegetation.

The subject site is clear of any native trees or vegetation. The Subject Application does not propose the removal of any vegetation to facilitate the proposed development. Accordingly, the provisions of the Chapter 2 of the Biodiversity and Conservation SEPP are not applicable to the Subject Application.

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

*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* ('BASIX SEPP') applies to buildings that are defined as '*BASIX affected development*', being development that involves the erection (but not the relocation) of a '*BASIX affected building*' (i.e.: contains one or more dwelling).

Defined under the EP&A Reg 2021, a '*BASIX affected building*' means a building containing at least one dwelling but does not include hotel or motel accommodation, or certain types of boarding house, hostel, or co-living housing. Accordingly, the provisions of the BASIX SEPP apply to the Subject Application.

A BASIX Certificate was lodged with the application (Certificate number: 956741M\_02), demonstrating that the development can achieve the required water and energy reduction targets. It is noted that the submitted BASIX Certificate applies to the development in its entirety, comprising the Modified Development Consent and the Subject Application.

A condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) requiring that the development be carried out in accordance with the submitted BASIX Certificate. The proposal is acceptable having regard to the provisions of the BASIX SEPP.

**State Environmental Planning Policy (Industry and Employment) 2021**

Chapter 3 – Advertising and signage

Chapter 3 of the *State Environmental Planning Policy (Industry and Employment) 2021* ('Industry and Employment SEPP') contains planning provisions for advertising and signage in the State.

The Subject Application does not seek development consent for signage. A separate development application would be required to be submitted for any future signage which does not comply with exempt of complying development criteria.

**State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development**

*State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* ('SEPP 65') aims to improve the quality of residential apartment development by establishing a consistent approach to the design and assessment of new apartment development across the State. SEPP 65 establishes nine design quality principles to be applied in the design and assessment of residential apartment development.

*Section 4 – Application of Policy:*

Section 4(1) of SEPP 65 sets out development for which this policy applies. The Subject Application comprises development for the purposes of alterations and additions to an approved mixed-use development with a residential accommodation component (shop top housing) which consists of at least three or more storeys and contains at least four or more dwellings. As such, the provisions of SEPP 65 are applicable in accordance with s.4(1) of the policy.

Section 4(2) clarifies that if a particular development comprises development which s.4(1) identifies and other development, SEPP 65 applies only to the part of the development identified under s.4(1) and does not apply to the other part. As such, the alterations proposed to the commercial and retail components of the Modified Development Consent are not subject to the provisions of SEPP 65 in accordance with s.4(2).

*Section 28 – Determination of development applications:*

Section 28(1) of SEPP 65 requires the consent authority to refer a development application to which this policy applies to the relevant design review panel for advice concerning the design quality of the development prior to determining the application.

Furthermore, s.28(2) of SEPP 65 requires consent authorities to take into consideration; (a) the advice obtained from the design review panel; and (b) the design quality of the development when evaluated in accordance with the design quality principles; (c) the *Apartment Design Guide* ('ADG'), when determining a development application for consent to which SEPP 65 applies.

CN's Urban Design Review Panel ('UDRP'), who operate under a charter stating that they undertake the functions of a design review panel for the purposes of SEPP 65, have reviewed the proposed development on several occasions. Initially the alterations and additions were considered prior to lodgement of the Subject Application at a meeting of the UDRP held on 27 April 2022 at which time the UDRP recommended a limited number of refinements to achieve design quality.

After receipt of the Subject Application, the proposed development was reviewed for a second time, as the UDRP meeting held 26 October 2022. This review identified that the documentation submitted with the Subject Application had not addressed the limited number of refinements previously recommended in the 27 April 2022 written advice. The UDRP reiterated their previous comments and recommended amended documentation be provided to the UDRP electronically for confirmation.

In response to the advice from the UDRP meeting held 26 October 2022, the applicant submitted a written response addressing the UDRP's 27 April 2022 written advice. The current amended plans relied upon for this assessment were submitted on 10 November 2022. In addition to addressing a number of drafting inconsistencies within the architectural drawings, the current amended plans also included additional information to address the UDRP's recommendations, specifically:

- i) Annotation specifying the provision of a security gate and CCTV at the vehicle ramp from Basement 1 (commercial parking) to Basement 2 and Basement 3 (residential parking)
- ii) Direct access to the ground floor bike storage area from the adjacent retail premises has been removed.
- iii) Shadow diagrams updated to better demonstrate the overshadowing impacts introduced on surrounding development and public domain as a result of the three additional floors proposed.
- iv) External finishes schedule updated to include details of the facade treatments and screens.

The Subject Application was subsequently electronically referred to the UDRP for comment. The final advice of the UDRP, provided via email dated 11 November 2022 confirmed the following:

- i) That the applicants written response to the UDRP's 27 April 2022 written advice, and the current amended plans are satisfactory, and
- ii) That the UDRP had no further recommendations.

The proposed development has sufficiently incorporated the recommendations and resolved the concerns raised by the UDRP. As such, the Subject Application has now satisfied the UDRP advice and is considered an appropriate design response consistent with the design quality principles under SEPP 65.

A *SEPP 65 Design Verification Statement* (prepared by Team 2 Architects, dated 8 April 2022) was submitted in support of the Subject Application in accordance with s.29 of the EP&A Reg 2021 which requires a development application that relates to residential apartment development to be accompanied by a statement by a qualified designer. This statement confirms that a qualified designer, which means a person registered as an architect in accordance with the *Architects Act 2003* as defined in the EP&A Reg 2021, directed the design of the architectural drawings, and provides



an explanation that verifies how the related development documentation achieves the design quality principals and objectives of the ADG.

The ADG provides greater detail on how residential development proposals can meet the design quality principles set out in SEPP 65 through good design and planning practice.

Whilst the ADG document is a guide which under s.28(2) the consent authority must take into consideration when determining a development application to which SEPP 65 applies, the provisions of s.6A under SEPP 65 establish that the objectives, design criteria and design guidance set out in Parts 3 and 4 of the ADG will prevail over any inconsistent DCP control for specific topic areas, being; (a) visual privacy; (b) solar and daylight access; (c) common circulation and spaces; (d) apartment size and layout; (e) ceiling heights; (f) private open space and balconies; (g) natural ventilation; and (h) storage.

Assessment of the Subject Application has been undertaken having consideration for the ADG. The alterations and additions proposed to the residential accommodation (shop top housing) component of the approved development are considered to demonstrate good design and planning practice.

Table 1 below, addresses compliance with the objectives and design criteria of the relative topic areas in accordance with s.6A of SEPP 65. Where a topic area is not specified in a design criteria, or where it is not possible for the development to satisfy the design criteria, the compliance comments in the following table will have regard to the design guidance relevant to that topic area.

As noted previously, the consideration of the Subject Application is limited to only those matters that are relevant to the alteration and additions proposed to the approved development. For clarity, the following is noted:

- i) Whilst the Subject Application proposes alterations to the Basement 3, Basement 2, Basement 1, Ground Floor, Level 1, Level 2, and Level 3 floor plans approved under the Modified Development Consent, these levels do not contain residential accommodation (shop top housing) and the provisions of the ADG are not applicable. Therefore, the proposed alterations to these levels are not matters for consideration in the ADG assessment detailed in Table 1 below.
- ii) Whilst the Subject Application proposes alterations to the Level 4 to Level 12 floor plans approved under the Modified Development Consent and these levels contain residential accommodation (shop top housing), the alterations are limited to minor internal changes (deletion of void and seating within lift lobby) which have limited relevance to the topic areas of the ADG. Therefore, the proposed alterations to these levels are not matters for consideration as the ADG assessment detailed in Table 1 below.
- iii) Therefore, the ADG assessment detailed in Table 1 below is limited to Level 13 to Level 16 (seven apartments per floor for a total of 28

apartments), which are subject to the alterations (Level 13) and additions (Level 14 to Level 16) proposed under the Subject Application.

- iv) Compliance with the relative topic areas of the ADG of other aspects of the approved mixed-use development which remain unchanged under the Subject Application were considered in the assessment of the Original Development Consent and Modified Development Consent and deemed satisfactory. Accordingly, these other aspects are not matters for further consideration as part of the assessment of the Subject Application.

**Table 2: Compliance with required topic areas of ADG**

<b>3B Orientation</b>	
<b>Objective 3B-2</b>	
Overshadowing of neighbouring properties is minimised during mid winter.	
<b>Comment:</b>	<b>Compliance:</b>
<p>The alterations and additions proposed under the Subject Application result in minimal additional overshadowing compared to that approved under the Modified Development Consent; whilst a 'longer' shadow is cast as a result of the three additional levels, no changes are proposed to the width of the built form approved under the Modified Development Consent meaning width of the shadow remains 'narrow' and consistent with that approved. As such, the additional shadow generated is minor, and moves quickly around the neighbouring development and public domain.</p> <p>Solar access to living rooms, private open spaces and communal open spaces of neighbouring properties has been considered.</p> <p>The submitted shadow diagrams demonstrate that adjoining development achieve greater than 3 hours of sunlight between 9am to 3pm mid-winter, despite the additional shadow generated as a result of the Subject Application, in addition:</p> <ul style="list-style-type: none"> <li>• No development north of the subject site is affected by overshadowing from the development in its entirety.</li> <li>• The additional overshadowing will not impact any residential development south of the subject site and overshadowing of the commercial development south of the subject site will be gone by 12noon at mid-winter.</li> <li>• The additional overshadowing does not affect development on the east side of Stewart Avenue until 1pm mid-winter and with the expectation of a small portion of the rear of 33 Beresford Street, the afternoon shadow resulting from the Subject Application is generally cast on the light rail track and does not impact surrounding residential or commercial development.</li> </ul>	<p>Complies</p>

<p>The Subject Application results in minimal additional shadowing on the surrounding public domain, specifically:</p> <ul style="list-style-type: none"> <li>• Additional overshadowing is cast onto Hunter Street at 9am mid-winter but is gone by 10am.</li> <li>• The additional overshadowing does not affect Stewart Avenue until 12noon mid-winter and is gone by 1pm.</li> </ul> <p>It is considered that the proposed development results in reasonable daylight access. The submitted shadow diagrams demonstrate that the overshadowing impacts on adjoining development and public domain are not unreasonable having regard to the intended desired future character and built form for the area, and the nature of existing and approved development in the vicinity of the subject site. Notably, a significant amount of the additional overshadowing falls on the roadway and rail corridor and it not considered to have an unreasonable impact on daylight access to the public domain.</p>		
<p><b>3D Communal and public open space</b></p>		
<p><b>Objective 3D-1</b> An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping</p>		
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>
<p>3. Communal open space has a minimum area equal to 25% of the site.</p>	<p>No changes are proposed or required to the communal open space (located on Level 4 Podium) as approved under the Modified Development Consent.</p>	<p>N/A</p>
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>
<p>4. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).</p>	<p>No changes are proposed or required to the communal open space (located on Level 4 Podium) as approved under the Modified Development Consent.</p>	<p>N/A</p>
<p><b>3E Deep soil zones</b></p>		
<p><b>Objective 3E-1</b> Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.</p>		
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>
<p>2. Deep soil zones are to meet</p>	<p>Whilst internal alterations are</p>	<p>N/A</p>

the following minimum requirements:			proposed to the basements and ground floor plans approved under the Modified Development Consent, no changes are proposed to the extent of site coverage approved under the Modified Development Consent, which does not facilitate deep soil landscaping.
<b>Site area</b>	<b>Minimum dimensions</b>	<b>Deep soil zone (% of site area)</b>	
greater than 1500m <sup>2</sup>	6m	7%	

**3F Visual privacy**

**Objective 3F-1**

Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.

**Design Criteria:**

2. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

Building height	Habitable rooms & balconies	Non-habitable rooms
up to 12m (4 storeys)	6m	3m
up to 25m (5-8 storeys)	9m	4.5m
over 25m (9+ storeys)	12m	6m

Note: Separation distances between buildings on the

**Comment:**

The site is irregular in shape and maintains three street frontages: Dangar Street (north boundary), Hannell Street (east boundary), and Charles Street (west boundary).

As such, the site has one 'side boundary' - being the south boundary - for which the minimum separation distances of this part of the ADG are applicable.

Notwithstanding the above, it is noted that the three additional floors of shop top housing are proposed in a seamless form repeating the overall pattern of the approved structure and maintaining the building setbacks from the three street front frontages as approved under the Modified Development Consent.

**Separation distance to south boundary**

Over 25m (Level 13 to Level 16)

Whilst internal alterations are proposed to the Level 13 floor plan approved under the Modified

**Compliance:**

Satisfactory (Merit based assessment)

<p>same site should combine required building separations depending on the type of room (see figure 3F.2). Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	<p>Development Consent, no change is proposed to the separation distances from the building to the south boundary. At Level 14 to Level 16, being the three additional levels proposed, a minimum separation distance of 4m is provided between the building and the south boundary. Whilst this does not comply with the minimum separation distance for buildings from side and rear boundaries at this height (12m for habitable rooms), the rail corridor adjacent the site to the south provides over 30m separation between the south boundary of the subject site and the north boundary of the land on the opposite side of the rail corridor.  The width of the rail corridor alone facilitates sufficient space between the proposed development and any development on the opposite side of the rail corridor to achieve suitable amenity consistent with the intentions for the building separation objective. As such, the non-compliance is accepted on a balanced view having regard for both visual privacy, and access to light and air.</p>	
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**A4 Solar and daylight access**

**Objective 4A-1**

To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.

<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
<p>3. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</p>	<p>A total of 19 out of the 28 apartments subject to the proposed alterations and additions, or 68%, will achieve a minimum of 2hrs sunlight during 9am and 3pm at mid-winter.  Whilst this does not comply with the design criteria, it is noted that the variation is very minor (a minimum 19.6 out of 28 apartments would achieve 70%) and the development in</p>	<p>Satisfactory (Merit based assessment)</p>

	<p>its entirety (comprising the Modified Development Consent and the subject application) results in 86 out of the 118 total apartments, or 73%, achieving a minimum of 2hrs sunlight during 9am and 3pm at mid-winter, which complies.</p> <p>(For details refer to drawing <i>Solar Access Diagram</i>, drawing no: DA-5050, rev: D, dated 10 November 2022, prepared by Team 2 Architects)</p> <p>Further, the proposal has been designed having regard to optimising the number of apartments receiving sunlight to habitable rooms, primary windows, and private open space (full height glazing for the maximum practical extent of apartment frontages has been provided to maximise daylight access).</p> <p>As such, the minor non-compliance is able to be accepted in this instance.</p>	
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>
<p>4. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter.</p>	<p>N/A</p>	<p>N/A</p>
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>
<p>5. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</p>	<p>None of the 28 apartments subject to the proposed alterations and additions, or 0%, will receive no direct sunlight between 9am and 3pm at mid-winter.</p>	<p>Complies</p>
<p><b>4B Natural ventilation</b></p>		
<p><b>Objective 4B-3</b> The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.</p>		

Design Criteria:	Comment:	Compliance:								
<p>3. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p>	<p>A total of 19 out of the 28 apartments subject to the proposed alterations and additions, or 68%, will achieve natural cross ventilation.</p> <p>(For details refer to drawing <i>Cross Ventilation Diagram</i>, drawing no: DA-5040, rev: D, dated 10 November 2022, prepared by Team 2 Architects)</p> <p>For the single aspect apartments, the layout and design maximise natural ventilation; apartment depths have been minimised and frontages maximised to increase ventilation and airflow.</p> <p>All habitable rooms are naturally ventilated via adjustable windows with suitable effective operable areas.</p>	<p>Complies</p>								
<p>4. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	<p>N/A</p>	<p>N/A</p>								
<p><b>4C Ceiling heights</b></p>										
<p><b>Objective 4C-1</b> Ceiling height achieves sufficient natural ventilation and daylight access.</p>										
Design Criteria:	Comment:	Compliance:								
<p>2. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" data-bbox="204 1615 632 2080"> <thead> <tr> <th colspan="2" data-bbox="204 1615 632 1742"><b>Minimum ceiling height for apartment and mixed-use buildings</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="204 1742 379 1832">Habitable rooms</td> <td data-bbox="379 1742 632 1832">2.7m</td> </tr> <tr> <td data-bbox="204 1832 379 1921">Non-habitable</td> <td data-bbox="379 1832 632 1921">2.4m</td> </tr> <tr> <td data-bbox="204 1921 379 2080">If located in mixed used areas</td> <td data-bbox="379 1921 632 2080">3.3m for ground and first floor to promote future</td> </tr> </tbody> </table>	<b>Minimum ceiling height for apartment and mixed-use buildings</b>		Habitable rooms	2.7m	Non-habitable	2.4m	If located in mixed used areas	3.3m for ground and first floor to promote future	<p>Level 13 to Level 16 have a floor-to-floor height of 3.1m. As such, a minimum ceiling height from finished floor level to finished ceiling level of 2.7m to habitable rooms and 2.4m to non-habitable rooms can be achieved for all apartments.</p> <p>No two storey apartments or attic spaces are proposed.</p>	<p>Complies</p>
<b>Minimum ceiling height for apartment and mixed-use buildings</b>										
Habitable rooms	2.7m									
Non-habitable	2.4m									
If located in mixed used areas	3.3m for ground and first floor to promote future									

	flexibility of use												
<p>These minimums do not preclude higher ceilings if desired.</p>													
<p><b>4D Apartment size and layout</b></p>													
<p><b>Objective 4D-1</b> The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.</p>													
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>											
<p>3. Apartments are required to have the following minimum internal areas:</p> <table border="1" data-bbox="204 797 632 1144"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>studio</td> <td>35m<sup>2</sup></td> </tr> <tr> <td>1 bedroom</td> <td>50m<sup>2</sup></td> </tr> <tr> <td>2 bedroom</td> <td>70m<sup>2</sup></td> </tr> <tr> <td>3 bedroom</td> <td>90m<sup>2</sup></td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	Apartment type	Minimum internal area	studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p>All 28 apartments subject to the proposed alterations and additions are provided the minimum internal areas required.</p> <p>(For details refer to drawing <i>Apartment Mix &amp; Schedule</i>, drawing no: DA-5010, rev: D, dated 10 November 2022, prepared by Team 2 Architects)</p>	<p>Complies</p>	
Apartment type	Minimum internal area												
studio	35m <sup>2</sup>												
1 bedroom	50m <sup>2</sup>												
2 bedroom	70m <sup>2</sup>												
3 bedroom	90m <sup>2</sup>												
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>											
<p>4. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	<p>All 28 apartments subject to the proposed alterations and additions provide habitable rooms with a window in an external wall.</p>	<p>Complies</p>											
<p><b>Objective 4D-2</b> Environmental performance of the apartment is maximised.</p>													
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>											



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<p>3. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	<p>N/A - All apartments are provided a combined living/ dining/ kitchen area.</p>	<p>N/A</p>
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>
<p>4. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p>All 28 apartments subject to the proposed alterations and additions have a maximum habitable room depth of 8m or less from a window for open plan living, dining and kitchen area, measured from glass line to furthest kitchen bench.</p>	<p>Complies</p>
<p><b>Objective 4D-3</b> Apartment layouts are designed to accommodate a variety of household activities and needs.</p>		
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>
<p>5. Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space)</p>	<p>All master bedrooms have a minimum area of 10m<sup>2</sup>, and all other bedrooms have a minimum area of 9m<sup>2</sup> (excluding wardrobe space).</p>	<p>Complies</p>
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>
<p>6. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p>	<p>All bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p>	<p>Complies</p>
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>
<p>7. Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> <li>• 3.6m for studio and 1-bedroom apartments.</li> <li>• 4m for 2- and 3-bedroom apartments.</li> </ul>	<p>Analysis of the current amended floor plans found 20 out of the 28 apartments subject to the proposed alterations and additions have living rooms or combined living/ dining rooms which achieve the minimum dimensions required for the number of bedrooms provided.</p> <p>(For details refer to drawings; <i>Level 13</i>, drawing no: DA-1009, rev: D, dated 10 November 2022; <i>Level 14 – 15 typical</i>, drawing no: DA-1010, rev: A, dated 10 November 2022; and <i>Level 16</i>, drawing no: DA-1011, rev: D, dated 10 November 2022, prepared by Team 2 Architects)</p> <p>Details of the non-complying</p>	<p>Satisfactory (Merit based assessment)</p>

	<p>apartments are listed below:</p> <p><u>8 x 2 Bed apartments</u></p> <p>Apartments 1303, 1304, 1403, 1404, 1503, 1504, 1602, and 1603 have combined living/ dining rooms with a minimum dimension of 3.8m, which is less than the minimum 4m required for 2-bedroom apartments.</p> <p>The design guidance for this objective acknowledges that a merit-based assessment is appropriate in circumstances where minimum areas or room dimensions are not met.</p> <p>The submitted design drawings have suitably demonstrated the apartments are well designed by showing the useability and functionality of the space with realistically scaled furniture layouts and circulation spaces, despite the minor non-compliance.</p> <p>As such, the proposal complies with the design guidance for this objective.</p>				
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>			
<p>8. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</p>	<p>N/A</p>	<p>N/A</p>			
<p><b>4E Private open space and balconies</b></p>					
<p><b>Objective 4E-1</b></p>					
<p>Apartments provide appropriately sized private open space and balconies to enhance residential amenity.</p>					
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>			
<p>3. All apartments are required to have primary balconies as follows:</p> <table border="1" data-bbox="209 1966 632 2056"> <tr> <td data-bbox="209 1966 384 2056">Dwelling type</td> <td data-bbox="384 1966 504 2056">Min. area</td> <td data-bbox="504 1966 632 2056">Min. depth</td> </tr> </table>	Dwelling type	Min. area	Min. depth	<p>Analysis of the current amended floor plans found 16 out of the 28 apartments subject to the proposed alterations and additions have primary balconies that achieve the minimum area and depths required.</p>	<p>Satisfactory (Merit based assessment)</p>
Dwelling type	Min. area	Min. depth			

Studio	4m <sup>2</sup>	-
1 bedroom	8m <sup>2</sup>	2m
2 bedroom	10m <sup>2</sup>	2m
3+ bedroom	12m <sup>2</sup>	2.4m

The minimum balcony depth to be counted as contributing to the balcony area is 1m.

(For details refer to drawings; *Level 13*, drawing no: DA-1009, rev: D, dated 10 November 2022; and *Level 14 – 15 typical*, drawing no: DA-1010, rev: A, dated 10 November 2022, prepared by Team 2 Architects)

Details of the non-complying apartments are listed below:

3 x 3-bedroom apartments

Apartments 1301, 1401, and 1501 have primary balconies with a maximum depth of 2m which is below the minimum 2.4m required.

6 x 3 bedroom apartments

Apartments 1305, 1306, 1405, 1406, 1505, and 1506 have primary balconies with depths varying above and below the minimum 2.4m required, and areas ranging from 5.9sqm to 7sqm.

3 x 4 bedroom apartments

Apartments 1307, 1407, and 1507 have primary balconies with a maximum depth of 2m which is below the minimum 2.4m required for 4-bedroom apartments.

Although the balconies do not in all instances meet the minimum dimensions described in the part of the ADG, the total balcony area provided for each of the above mentioned apartments range between 30sqm to 39sqm which far exceeds the minimum 12sqm area required for 3 and 4 bedroom apartments.

The relationship of the balconies to living room spaces allows the balconies in most instances to serve as an extension to the living space. Fixed vertical aluminium louvres are provided to the balcony corners to create wind breaks, frame views and

	<p>provide multiple balcony options for corner apartments.</p> <p>The design drawings have suitably demonstrated the apartment balconies are well designed by showing the useability and functionality of the space with realistically scaled furniture layouts and circulation spaces, despite the non-compliance.</p> <p>The non-compliances proposed are minimal and can be accepted on a balanced view regarding both minimum balcony depths and areas.</p>	
<p><b>Design Criteria:</b></p> <p>4. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m.</p> <p>5.</p>	<p>No changes are proposed to private open space of apartments located on the podium level (Level 4) as approved under the Modified Development Consent.</p>	N/A
<p><b>4F Common circulation and spaces</b></p>		
<p><b>Objective 4F-1</b></p> <p>Common circulation spaces achieve good amenity and properly service the number of apartments.</p>		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
<p>2. The number of apartments off a circulation core on a single level is maximum eight.</p>	<p>At Level 13 to Level 16, the maximum number of apartments off a circulation core on a single level is 7.</p>	<p>Complies</p>
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
<p>3. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>The development in its entirety, comprising the Modified Development Consent and the Subject Application, will result in 118 apartments serviced by two lifts. Meaning on average a single lift will service 59 apartments.</p> <p>It is noted that the lift related requirements of the ADG are very general and does not account for</p>	<p>Satisfactory (Merit based assessment)</p>

	<p>different types of residential buildings.</p> <p>The location, number, and size, of the lifts servicing the residential component of the development has suitably considered functional uses.</p> <ul style="list-style-type: none"> <li>• The residential vertical circulation core services the three basement parking levels, ground level, and all levels containing residential apartments (Level 4 to Level 16).</li> <li>• Lift redundancy has been addressed by the provision of two lifts which ensures access to an alternative lift in case one lift is out of service.</li> <li>• Suitable clearance is provided in front of the lifts to allow for people passing, for medical emergency access, and for movement of furniture.</li> </ul> <p>A suitable condition has been included in the recommended Draft Schedule of Conditions (refer to <b>Attachment C</b>) requiring a vertical transportation report be prepared by a suitably qualified person to ensure the lifts installed comply with the minimum standards in <i>ISO 8100-32:2020 Lifts for the transportation of persons and goods – Part 32</i>:</p> <ul style="list-style-type: none"> <li>• average waiting time: 60 seconds or less</li> <li>• handling capacity: 7 per cent or more.</li> </ul> <p>On balance, the non-compliance can be accepted subject to the recommended conditions.</p>	
<p><b>4G Storage</b></p>		

<b>Objective 4G-1</b>										
Adequate, well designed storage is provided in each apartment.										
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>								
<p>2. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th style="text-align: left;">Dwelling type</th> <th style="text-align: left;">Storage size volume</th> </tr> </thead> <tbody> <tr> <td>1 bedroom</td> <td>6m<sup>3</sup></td> </tr> <tr> <td>2 bedroom</td> <td>8m<sup>3</sup></td> </tr> <tr> <td>3+ bedroom</td> <td>10m<sup>3</sup></td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	1 bedroom	6m <sup>3</sup>	2 bedroom	8m <sup>3</sup>	3+ bedroom	10m <sup>3</sup>	<p>All of the 28 apartments subject to the proposed alterations and additions are provided with the minimum storage volumes required in accordance with the number of bedrooms provided.</p> <p>The storage for each apartment is provided by a combination of; (1) storage located and access from within the individual apartments, and (2) storage volume access from a common area (a secure storage cage within the carparking areas).</p> <p>At least 50% of the required storage is located within the individual apartments.</p> <p>(For details refer to drawing <i>Storage Diagram 01</i> and <i>Storage Diagram 02</i>, drawing no's: DA-5030 and DA-5031, rev: D, dated 10 November 2022, prepared by Team 2 Architects).</p> <p>Whilst there are enough storage cages shown on the current amended floor plans for the number of apartments requiring the provision of additional storage external to the apartment, limited information is provided on the apartments that are allocated a 'storage cage' of adequate size to meet the total minimum storage volume required.</p> <p>A suitable condition has been included in the recommended Draft Schedule of Conditions (refer to <b>Attachment C</b>) to address this matter.</p>	<p>Complies with conditions</p>
Dwelling type	Storage size volume									
1 bedroom	6m <sup>3</sup>									
2 bedroom	8m <sup>3</sup>									
3+ bedroom	10m <sup>3</sup>									

## **State Environmental Planning Policy (Planning Systems) 2021**

### Chapter 2 State and regional development

Chapter 2 of the *State Environmental Planning Policy (Planning Systems) 2021* ('Planning Systems SEPP') contains planning provisions for state or regionally significant development, state-significant infrastructure, and critical state-significant infrastructure.

#### *Section 2.19 – Declaration of regionally significant development: section 4.5(b):*

The capital investment value of the Subject Application is \$7,973,653 including GST and falls below the \$30 million criteria in Section 2 of Schedule 6 of the Planning Systems SEPP. Further, the development does not trigger any of the other criteria specified in Schedule 6 of the Planning Systems SEPP, and as such is not declared to be regionally significant development under s.2.19 of the Planning Systems SEPP. Accordingly, CN is the consent authority for the Subject Application.

## **State Environmental Planning Policy (Resilience and Hazards) 2021**

### Chapter 2 Coastal management

Chapter 2 of the *State Environmental Planning Policy (Resilience and Hazards) 2021* ('Resilience and Hazards SEPP') contains planning provisions for land use planning within the coastal zone consistent with the *Coastal Management Act 2016*.

Chapter 2 applies to land the whole or any part of which is within the 'coastal zone'. The 'coastal zone' is defined in the *Coastal Management Act 2016* as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability.

The subject site is mapped within two coastal management areas; Coastal Environment Area and Coastal Use Area, as identified by the *Coastal Environment Area Map* and *Coastal Use Area Map* respectively. The relevant provisions of Chapter 2 have been considered in the assessment of the Subject Application, as discussed below.

#### *Section 2.10 – Development on land within the coastal environment area:*

Section 2.10 of the Resilience and Hazards SEPP specifies that the consent authority must not grant development consent on land that is within the coastal environment area unless they are satisfied in respect to whether the proposed development is likely to cause an adverse impact on; (a) the integrity and resilience of the biophysical, ecological and hydrological environment, including surface and groundwater; (b) coastal environmental values and natural coastal process; (c) water quality of the marine estate in particular any sensitive coastal lakes; (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms; (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public including persons with a disability; (f) Aboriginal cultural heritage, practices and places; and (g) the use of the surf zone.

The site is located within a well-established urban setting, with development existing on the site for many years, there are no likely impacts to this environment, particularly in relation to the biophysical environment, coastal processes, and maintaining public access to existing open space and the foreshore.

The proposal would have no material impact on environmental, coastal, native vegetation, surf zone or access issues listed above. Similarly, the long historic usage of the site, and its highly disturbed nature, means that it is unlikely that any evidence of Aboriginal cultural heritage, practices and places would remain on the site.

The proposed development is suitably designed, sited, and able to be managed, to avoid causing an adverse impact referred to in s2.10(1) of the Resilience and Hazards SEPP.

*Section 2.11 – Development on land within the coastal use area:*

Section 2.11 of the Resilience and Hazards SEPP specifies that the consent authority must not grant development consent on land that is within the coastal use area unless is satisfied in respect to whether the proposed development is likely to cause an adverse impact on; (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability; (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores; (iii) the visual amenity and scenic qualities of the coast, including coastal headlands; (iv) Aboriginal cultural heritage, practices and places; and (v) cultural and built environment heritage.

Newcastle Harbour is located over 170m northeast of the subject site and separated by Stewart Avenue which is a four to six lane classified road. As a result of its siting, the proposed development will have no material impact on maintaining public access to the foreshore, in this case being Newcastle Harbour.

The proposed development has considered the surrounding coastal and built environment. The shadow diagrams submitted with the Subject Application demonstrate that the overshadowing impact of the proposed development, on adjoining development and the public domain would not be greatly increased and is not unreasonable having regard to the intended desired future character and built form for the area, and the nature of existing and approved development in the vicinity of the subject site.

The bulk, scale and size of the proposed development does not cause undue adverse environmental impacts, including impacts on public domain in terms of wind tunnelling and loss of views to the foreshore (being Newcastle Harbour).

As discussed in **Section 5.5** of this report below, with the inclusion of the recommended wind mitigation treatments from the submitted 'Pedestrian Wind Environment Letter' (prepared by Windtech Consultants, dated 2 November 2022) all areas within and around the development site will experience suitable wind comfort and safety conditions for the intended use of those areas.

When viewed from the public realm the building appears consistent with the emerging high-density scale of the locality. The proposed development will alter the



general outlook due to the three additional floors proposed above the approved structure, however this is considered reasonable on a balanced view having regard for both visual amenity and scenic qualities of the environment, and for the strategic desire to achieve density in an inner-city location. The main bulk of the development in its entirety (comprising the Modified Development Consent and the Subject Application) is articulated and setback from the four-storey podium base to reduce its visual impact and facilitate an appropriate transition between taller buildings to the south and the lower scale buildings to the north.

The long historic usage of the site, and its highly disturbed nature, means that it is unlikely that any evidence of Aboriginal cultural heritage, practices and places would remain on the site. The proposed development is suitably designed, sited, and able to be managed, to avoid causing an adverse impact referred to in s2.11(1) of the Resilience and Hazards SEPP.

*Section 2.12 – Development in coastal zone generally – development not to increase risk of coastal hazards:*

Section 2.12 of the Resilience and Hazards SEPP specifies that the consent authority must not grant development consent on land within the coastal zone unless it is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposed development is located within the city centre and as a result of its siting is not considered likely to cause increased risk of coastal hazards on the subject or other land.

*Section 2.13 – Development in coastal zone generally – coastal management programs to be considered:*

Section 2.13 of the Resilience and Hazards SEPP specifies that the consent authority must not grant development consent on land within the coastal zone unless it has taken into consideration the relevant provisions of any certified coastal management program that applies to the land. There are no applicable coastal management programs which apply to the subject site.

#### Chapter 4 – Remediation of land.

Chapter 4 of the Resilience and Hazards SEPP contains planning controls for the remediation of contaminated land. The relevant provisions of Chapter 4 have been considered in the assessment of the Subject Application, as discussed below.

*Section 4.6 – Contamination and remediation to be considered in determining development application:*

Section 4.6 of the Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, the consent authority 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 to be carried out, or whether remediation is required.

The Original Development Consent included an assessment of the existing site suitability in respect to land contamination. The two contamination issues affecting

the site consist of hydrocarbon impacts in the vicinity of a former underground storage tanks in the northwest of the site and elevated PAH and some asbestos materials in fill across the site. A Remedial Action Plan ('RAP') was prepared by Douglas Partners (Project No. 39961.02, dated October 2018) to address the contamination and ensure that the land could be made suitable for the now approved development. 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. The implementation of the RAP was included as a condition of the Original Development Consent.

Subsequently, the current Modified Development Consent granted approval for an additional basement level. An amended RAP was prepared by Douglas Partners (Project No. 39961.02, dated November 2018) addressing the additional excavations required to facilitate the additional basement level. The amended RAP nominated off-site disposal of contaminated material which is consistent with the RAP prepared for the Original Development Consent. The current Modified Development Consent modified the conditions imposed on the Original Development Consent to require the implementation of the amended RAP. There are no earthworks proposed under the Subject Application to facilitate the alteration and additions proposed to the approved building.

The conditions of consent relating to land contamination and remediation imposed on the Original Development Consent, and as amended by the Modified Development Consent, remain unchanged under the Subject Application and will continue to apply to the subject site. Accordingly, the site is considered suitable for the proposed development and contaminated land investigation is not warranted in this instance

The Subject Application satisfies the requirements and s.4.6 of the Resilience and Hazards SEPP, which requires the consent authority to be satisfied that the development site will be suitable for the proposed development following remediation works.

## **State Environmental Planning Policy (Transport and Infrastructure) 2021**

### Chapter 2 – Infrastructure

Chapter 2 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* ('Transport and Infrastructure SEPP') contains planning provisions for the delivery of infrastructure across the State such as hospitals, roads, railways, emergency services, water supply and electricity delivery. The relevant provisions of Chapter 2 have been considered in the assessment of the Subject Application, as discussed below.

#### *Section 2.48 – Determination of development applications – other development:*

Section 2.48(2) of the Transport and Infrastructure SEPP requires consent authorities to refer an application for certain development impacted by an electricity tower, electricity easement, substation, or power line, as identified in s.2.48(1) to the

relevant electricity supply authority (Ausgrid) and any concerns raised by the electricity supply authority are to be considered as part of the assessment.

The application comprises development to be carried out within proximity to underground power mains. As such, the application was required to be referred to Ausgrid in accordance with s.2.48(2) of the Transport and Infrastructure SEPP. Written advice from Ausgrid was received dated 28 May 2022 which provided recommendations to satisfy Ausgrid requirements, including:

- i) The developer engaged an electrical consultant or contractor to complete an NECF-03 Form "Connection Application – Large, Multiple and Remote Connections" for connection of the proposed development to the adjacent electricity network infrastructure.
- ii) Based on the design of the development provided, it was identified that the "as constructed" minimum clearances will not be encroached by the development. However, the existing overhead mains may require relocating should the minimum safety clearances be compromised during construction, this relocation work is generally at the developers cost.

Suitable conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) to satisfy the recommendations and requirements raised within the Ausgrid referral response.

*Section 2.98 – Development adjacent to rail corridors:*

Section 2.98(2) of the Transport and Infrastructure SEPP requires consent authorities to give written notice to the rail authority of an application for development on land that is in or adjacent to a rail corridor if it – (a) is likely to have an adverse effect on rail safety; (b) involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains; (c) involves the use of a crane in air space above any rail corridor; or (d) is located within 5m of an exposed overhead electricity power line that is used for the purpose of railways or rail infrastructure facilities - as identified in s.2.98(1) and take into consideration any response received.

The application is for development on land that is adjacent to a rail corridor, being for both light rail and heavy rail.

Light rail:

Transport for NSW ('TfNSW') is the rail authority for the rail corridors of the Newcastle Light Rail for purpose of the requirements of the Transport and Infrastructure SEPP. As such, the application was required to be referred to TfNSW for comment in accordance with s2.98(2). Written advice from TfNSW was received dated 14 September 2022, which advised:

- i) TfNSW has assessed the documentation submitted in support of the application and raises no comments, and does not require the imposition of any conditions in relation to the proposed alterations and amendments, and

- ii) The conditions of consent relating to the protection of the Newcastle Light Rail provided in the Notice of Determination for DA2018/01197 dated 30 April 2019 remain relevant to the alterations and additions proposed under the Subject Application.

The conditions of consent relating to the protection of the Newcastle Light Rail imposed on the Original Development Consent, and as amended by the Modified Development Consent, remain unchanged under the Subject Application, and will continue to apply to the site. As such, no specific conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) in this regard, which is consistent with TfNSW referral response.

Heavy rail:

Sydney Trains, via Instrument of Delegation from the Secretary of Transport, has been delegated to act as the rail authority for the heavy rail corridor for purpose of the requirements of the Transport and Infrastructure SEPP. As such, the application was required to be referred to Sydney Trains for comment in accordance with s2.98(2). Final written advice from Sydney Trains was received dated 4 October 2022, which advised:

- i) Sydney Trains has assessed the Subject Application in accordance with the relevant Transport for NSW Assets Standard Authority standards and Sydney Trains requirements and confirm that Sydney Trains have no additional comments on the proposed development works associated with the subject development application.

All conditions and comments applied to the Original Development Consent (DA2018/01197) are still relevant and applicable.

The conditions of consent imposed on the Original Development Consent, and amended by the Modified Development Consent, to satisfy Sydney Trains requirements remain unchanged under the Subject Application. As such, no specific conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) in this regard, which is consistent with Sydney Trains referral response.

*Section 2.100 – Impact of rail noise or vibration on non-rail development:*

Section 2.100 of the Transport and Infrastructure SEPP applies to development for the purposes of – (a) residential accommodation; (b) a place of public worship; (c) a hospital; or (d) an educational establishment or centre-based child care facility – that are on land in or adjacent to a rail corridor and that the consent authority considers is likely to be adversely affected by rail noise or vibration.

Section 2.100(2) requires the consent authority to take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette before determining a development application for development to which this section applies.

Furthermore, s.2.100(3) requires that the consent authority must not grant consent to development for the purposes of residential accommodation unless it is satisfied that appropriate measure will be taken to ensure that the following LAeq level are not exceeded:

- a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am,*
- b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

The provisions of s.2.100 of the Transport and Infrastructure SEPP apply to the Subject Application as development consent is being sought for alterations and additions to approved mixed-use development comprising alterations to approved floor plans and three additional floors of '*residential accommodation*' located on land adjacent to a rail corridor.

An Acoustic Assessment prepared by Acoustic Logic (project ref: 2181324.1, dated 12 October 2018) accompanied the application for the Original Development Consent. This report provided an assessment of the impact of external noise sources (principally road and rail noise) on the future occupants of the now approved building, the impact of rail induced vibration on the now approved building, and the impact of noise emissions from the now approved development on neighbouring premises. For each of these matters, an appropriate assessment criterion was described then the existing or predicted noise or vibration levels were used to determine compliance.

The findings and recommendations are summarised below:

- i) Noise impacts from existing environmental noise sources (traffic and rail) on future occupants of the development can be reduced in accordance with the requirements of the NDCP 2012, *State Environmental Planning Policy (Infrastructure) 2007*, AS/NZS 2107:2016, and the NSW Department of Planning '*Development Near Rail Corridors and Busy Roads – Interim Guideline*', subject to the minimum construction requirements set out in Section 5.4 of the report.
- ii) Measurement of rail vibration levels determined that the existing levels comply with the NSW Department of Planning '*Development Near Rail Corridors and Busy Roads – Interim Guideline*', and therefore railway induced vibration levels will not impact the future residents and no specific ameliorative treatments are required.
- iii) The potential noise emissions from the site will be associated with mechanical plant. Noise emissions objectives for the site have been determined based on the requirements of the NDCP 2012, NSW Environmental Protection Authority '*Noise Policy for Industry*', and the NSW Environmental Protection Authority '*Protection of Environment Operations Regulation 2008*'. Whilst the final plant selections and layout had not yet been determined, the report does conclude that the plant can be satisfactorily attenuated to achieve the target criteria through appropriate plant selection and location and, if necessary, standard

acoustic treatments such as noise screens, enclosures, and in-duct treatments (silencers/lined ducting). The report recommends a detailed review of all external mechanical plant and equipment be undertaken once plant selection and locations are finalised to determine minimum acoustic treatments required for compliance with the above guidelines.

Accordingly, conditions were imposed on the Original Development Consent requiring appropriate acoustic treatments be implemented in accordance with the recommendations set out in the Acoustic Assessment prepared by Acoustic Logic (project ref: 2181324.1, dated 12 October 2018).

Subsequently, an Amended Acoustic Assessment was prepared by Acoustic Logic (project ref: 20201385.1, dated 1 March 2021) presumably because of the Modified Development Consent.

Given the Acoustic Assessment prepared for the Original Development Consent, and the subsequent Amended Acoustic Assessment, do not address the Subject Application (specifically, the three additional floors of shop top housing proposed above the approved structure), a letter prepared by Acoustic Logic ('Acoustic Logic Letter', ref: 20201385.2/1209A/R0/VF, dated 12 September 2022) was submitted providing advice as to any effect that the alterations and additions proposed under the Subject Application has on the acoustic impacts and recommendations assessed in Acoustic Logic's previous report, as summarised below.

With regard to external noise impacts from existing environmental noise sources (traffic and rail) on the proposed development, the Acoustic Logic Letter confirms that the findings and recommendations (facade construction requirements) detailed in the Amended Acoustic Assessment for Level 5 to Level 12 of the approved development will also be applicable to Level 13 to Level 15 of the proposed development, and the recommendations nominated for Level 13 of the approved development will be applicable to Level 16 of the proposed development.

Furthermore, the Acoustic Logic Letter confirms that the previous advice with respect to railway induced vibration and potential noise emissions from the development, remain unchanged with respect to the proposed development.

Accordingly, with the adoption of the measures recommended in the Amended Acoustic Assessment and the Acoustic Logic Letter, the requirements of the relevant planning guidelines will be achieved and there would be no adverse noise or vibration impacts on future occupants as a result of external noise sources (principally road and rail noise).

The potential for acoustic impacts from rail noise or vibration has been assessed by CN staff in accordance with s.2.100 of the Transport and Infrastructure SEPP. Suitable conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) requiring; (1) appropriate acoustic treatment be implemented and in accordance with the recommendations set out in the Amended Acoustic Assessment prepared by Acoustic Logic, (project ref: 20201385.1, dated 1 March 2021) and the letter prepared by Acoustic Logic ref: 20201385.2/1209A/R0/VF, dated 12 September 2022); and (2) written final certification confirming the recommended acoustic treatment has been implemented

in accordance with the requirements of the above report be submitted to the Principal Certifying Authority and CN prior to the issue of an Occupation Certificate.

Additionally, it is noted that Condition 2 of the Modified Development Consent identifies the 'approved documentation' which the approved development is to be implemented in accordance with. Further, Condition 84 of the Modified Development Consent specifically references the Acoustic Assessment prepared for the approved development and which is now superseded by the Amended Acoustic Assessment prepared by Acoustic Logic and the Acoustic Logic Letter submitted with the Subject Application.

In order to avoid inconsistency between consents which apply to the subject site, a condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) pursuant to s.4.17(1)(b) and s.4.17(5) of the EP&A Act 1979 and s.67 of the EP&A Regulations 2021 which has the effect of modifying Condition 2 and Condition 84 of the Modified Development Consent to reference the submitted Amended Acoustic Assessment prepared by Acoustic Logic and the Acoustic Logic Letter.

*Section 2.119 – Development with frontage to classified road:*

Section 2.119(2) of the Transport and Infrastructure SEPP specifies that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that; (a) where practicable and safe, vehicular access is provided by a road other than the classified road; (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development; and (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

The provisions of s.2.119 apply to the Subject Application as the site has a frontage to Hannell Street (MR316) which is a classified (State) road. CN is the roads authority for this road and all other public roads in the area, in accordance with Section 7 of the *Roads Act 1993*.

Under the current Modified Development Consent, vehicular access to the development is provided by Charles Street, not Hannell Street, and this remains unchanged under the Subject Application.

A Traffic and Parking Assessment has been prepared by MLA Transport Planning (ref: 20040107C-220411, dated 11 April 2022) and submitted with the Subject Application and addresses the traffic and parking implications arising from the alterations and additions proposed to the approved development.

In terms of the traffic effects, the Traffic and Parking Assessment found that the proposed development would generate an additional 10 vehicle per hour during the busiest peak period when compared to the approved development. The Traffic and Parking Assessment concludes that the proposed development would not create any discernible traffic effect on the surrounding road networks and confirms that the nearby intersections would continue to operate as original planned. Accordingly, it is

understood that the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the proposed development.

As discussed above, under '*Section 2.100 – Impact of rail noise or vibration on non-rail development*' and '*Section 2.120 – Impact of road noise or vibration on non-road development*' of the Transport and Infrastructure SEPP assessment, with the adoption of the measures recommended in the submitted Amended Acoustic Assessment and the Acoustic Logic Letter, the requirements of the relevant planning guidelines will be achieved and there will be no adverse noise or vibration impacts on future occupants as a result of external noise sources (principally road and rail noise). Suitable conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) in this regard.

*Section 2.120 – Impact of road noise or vibration on non-road development:*

Section 2.120 of the Transport and Infrastructure SEPP applies to development for the purposes of – (a) residential accommodation; (b) a place of public worship; (c) a hospital; or (d) an educational establishment or centre-based child care facility – that are on land in or adjacent to a road corridor for a freeway, a tollway or a transitway or any other road with an average daily traffic volume of more than 20,000 vehicles and that the consent authority considers is likely to be adversely affected by road noise or vibration.

Section 2.120(2) requires the consent authority to take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette before determining a development application for development to which this section applies.

Furthermore, s.2.120(3) requires that the consent authority must not grant consent to development for the purposes of residential accommodation unless it is satisfied that appropriate measure will be taken to ensure that the following LAeq level are not exceeded:

- a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am,*
- b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

The provisions of s.2.120 of the Transport and Infrastructure SEPP apply to the Subject Application as development consent is being sought for alterations and additions to approved mixed-use development comprising alterations to approved floor plans and three additional floors of '*residential accommodation*' located on land adjacent to the Hannell Street which has an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of Transport for NSW).

As discussed above, under '*Section 2.100 – Impact of rail noise or vibration on non-rail development*:' of the Transport and Infrastructure SEPP assessment, with the adoption of the measures recommended in the submitted Amended Acoustic Assessment and the Acoustic Logic Letter, the requirements of the relevant planning



guidelines will be achieved and there will be no adverse noise or vibration impacts on future occupants as a result of external noise sources (principally road and rail noise).

The potential for acoustic impacts from road noise or vibration has been assessed in accordance with s.2.120 of the Transport and Infrastructure SEPP. Suitable conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) requiring; (1) appropriate acoustic treatment be implemented and in accordance with the recommendations set out in the Acoustic Assessment prepared by Acoustic Logic, (project ref: 20201385.1, dated 1 March 2021) and the letter prepared by Acoustic Logic ref: 20201385.2/1209A/R0/VF, dated 12 September 2022); and (2) written final certification confirming the recommended acoustic treatment has been implemented in accordance with the requirements of the above report be submitted to the Principal Certifying Authority and CN prior to the issue of an Occupation Certificate.

*Section 2.122 – Traffic-generating development:*

Section 2.122(4) of the Transport and Infrastructure SEPP requires consent authorities to give written notice to TfNSW of an application for certain development specified as 'traffic generating development' in Column 1 of the Table to Schedule 3, that involves – (a) new premises of the relevant size or capacity; or (b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity – as identified in s.2.122(1) and take into consideration any response received, the accessibility of the site concerned, and any potential traffic safety road, congestion or parking implications of the development.

The application is for the purposes of residential development (shop top housing) and involves alterations and additions, therefore the trigger for the proposed development to be considered 'traffic generating development' is to comprise of either – (a) 300 or more dwellings for a site with access to any road; or (b) 75 or more dwellings for a site with direct access, or access within 90m, to a classified road – in accordance with Column 2 and Column 3 of the Table to Schedule 3 respectively.

Whilst the Subject Application will not result 300 or more dwellings, it does relate to development which in its entirety (comprising the Modified Development Consent and Subject Application) includes 75 or more dwellings on a site that has direct pedestrian access to a classified road, with Hannell Street (MR316) being a classified state road. As such, the proposed development is considered 'traffic generating development' and the application was required to be referred to TfNSW for comment in accordance with s2.122(4). Written advice from TfNSW was received dated 10 June 2022, which advised TfNSW had reviewed the referred information and provided comments to assist the consent authority in making a determination, which are summarised below:

- i) The temporary pump out pipe proposed to discharge to Hannell Street, as indicated on ACOR DWG No.c13, should be relocated to the stormwater pit in Charles Street.

- ii) Discharged stormwater from the development shall not exceed the capacity of the Hannell Street stormwater drainage system. Council shall ensure that drainage from the site is catered for appropriately and should advise TfNSW of any adjustments to the existing system that are required prior to final approval of the development.
- iii) Council should ensure that appropriate traffic measures are in place during the construction phase of the project to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity.
- iv) Council should ensure that the applicant is aware of the potential for road traffic noise to impact on the development on the site, in particular, noise generated by Hannell Street, a classified State Road. In this regard, the developer, not TfNSW, is responsible for providing noise attenuation measures in accordance with the NSW Road Noise Policy 2011, prepared by the department previously known as the Department of Environment, Climate Change and Water. If the external noise criteria cannot feasibly or reasonably be met, TfNSW recommends that Council apply internal noise objectives for all habitable rooms with windows that comply with the Building Code of Australia.

The applicant provided confirmation on the dewatering discharge location, and CN's site inspection has confirmed that the temporary pump out pipe is discharging to an existing kerb inlet pit in Charles Street.

The submitted stormwater plans and supporting documents have demonstrated that the development will not impact on the downstream stormwater system and is sustainable.

The subject site has no formal access from the Hannell Street frontage. Vehicle access to the development site is on Charles Street, via Bishopsgate Street. Demolition works have been completed and initial site preparation works have commenced onsite in accordance with the current Modified Development Consent. The conditions of consent relating to traffic management during construction imposed on the Original Development Consent, and as amended by the Modified Development Consent, remain unchanged under the Subject Application, and will continue to apply to the site.

As discussed above, under '*Section 2.100 – Impact of rail noise or vibration on non-rail development*' and '*Section 2.120 – Impact of road noise or vibration on non-road development*' of the Transport and Infrastructure SEPP assessment, with the adoption of the measures recommended in the submitted Amended Acoustic Assessment and the Acoustic Logic Letter, the requirements of the relevant planning guidelines will be achieved and there will be no adverse noise or vibration impacts on future occupants as a result of external noise sources (principally road and rail noise).

The accessibility of the site concerned, and any potential traffic safety road, congestion or parking implications of the proposed development has been assessed by CN staff in accordance with s.2.122 of the Transport and Infrastructure SEPP.

**Newcastle Local Environmental Plan 2012**

The following summarises an assessment of the proposal against the provisions of the *Newcastle Local Environmental Plan 2012* ('NLEP 2012') that are primarily relevant to the proposed development:

Clause 2.2 – Zoning of land & Clause 2.3 Zone objectives and Land Use Table:

The subject site is included within the B3 Commercial Core zone as shown on the '*Land Zoning Map*'.

The Subject Application proposes alterations and additions to approved mixed-use development satisfying the definitions of '*commercial premises*', '*retail premises*' (being a type of '*commercial premises*' and '*shop top housing*' under the NLEP 2012, all of which are permissible with consent within land zoned B3 Commercial Core in accordance with Land Use Tables of Clause.2.3 of the NLEP 2012.

The proposed development is consistent with the objectives of the B3 Commercial Core zone, which include the following (pursuant to the Land Use Table in Clause 2.3 of the NLEP 2012):

- i) *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- ii) *To encourage appropriate employment opportunities in accessible locations.*
- iii) *To maximise public transport patronage and encourage walking and cycling.*
- iv) *To provide for commercial floor space within a mixed-use development.*
- v) *To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.*
- vi) *To provide for the retention and creation of view corridors.*

The development in its entirety, comprising the Modified Development Consent and the Subject Application, will integrate residential (shop top housing) with commercial uses suitable to serve the needs of the community within a mixed-use development. With the site ideally located with respect to public transport (neighbouring the Newcastle Transport Interchange), the development will provide employment opportunities in an accessible location and will assist in strengthening the role of the Newcastle City Centre as a regional business centre for the Hunter Region.

Clause 2.7 - Demolition Requires Development Consent

As the Subject Application seeks development consent for alteration and additions to an approved, but not constructed building, no demolition works are required.

Clause 4.3 - Height of Buildings

Clause 4.3 of the NLEP 2012 limits building heights to that shown on the current *'Height of Building Map'*. The *'Height of Building Map'* specifies a maximum permissible building height of 45m across the site.

Clause 4.3(2) of the NLEP 2012 specifies a maximum permissible building height of 45m across the site. As a result of the alterations and additions proposed, the development in its entirety (comprising the Modified Development Consent and the Subject Application) has a maximum building height of 56.95m, measured as a vertical distance from ground level (existing) to the highest point of the building being the lift overruns, resulting in an exceedance of 11.95m, or a 26.5% variation, to the 45m height of building development standard prescribed under Clause 4.3 of the NLEP 2012.

The applicant has submitted a written request in accordance with cl.4.6 of the NLEP 2012 to vary the development standard imposed by cl.4.3 of the NLEP 2012. Refer to *'Clause 4.6 - Exceptions to Development Standards'* assessment below.

Clause 4.4 - Floor Space Ratio, and Clause 7.10 Floor space ratio for certain development in Area A

Clause 4.4 of the NLEP 2012 limits floor space ratio of development to that shown on the current *'Floor Space Ratio Map'*. The *'Floor Space Ratio Map'* specifies a maximum floor space ratio of 6:1 is permissible on the site.

However, the provisions of Clause 7.10 of the NLEP 2012 apply to the Subject Application as the site is located within the Newcastle City Centre and is shown within 'Area A' on the *'Floor Space Ratio Map'*.

Clause 7.10(2) of the NLEP 2012 operates to reduce the maximum floor space ratio of a building other than building used wholly for either or both, a commercial premises or tourist and visitor accommodation that is not strata subdivided, on land with a site area of 1,500sqm or more as follows:

- a) *Where the 'Floor Space Ratio Map' identifies a maximum floor space ratio of 6:1 (or greater) – 5:1*
- b) *Where the 'Floor Space Ratio Map' identifies a maximum floor space ratio of 5:1 – 4:1*
- c) *Where the 'Floor Space Ratio Map' identifies a maximum floor space ratio of 4:1 – 3:1*

The provisions of Clause 7.10(2)(a) apply to the Subject Application as the development is not for a wholly commercial building on land with a site area greater than 1,500sqm, and the *'Floor Space Ratio Map'* identifies a maximum floor space ratio of 6:1.

Accordingly, the maximum floor space ratio for the Subject Application is reduced to 5:1.

As a result of the alterations and additions proposed, the development in its entirety (comprising the Modified Development Consent and the Subject Application) has a gross floor area of 20,134sqm, calculated in accordance with the 'gross floor area' definition under the NLEP 2012. This equates to a floor space ratio of 6.9:1 (based on a site area of 2,904sqm), resulting in a 38.66% variation to the 5:1 floor space ratio development standard prescribed under cl.7.10 of the NLEP 2012.

The applicant has submitted a written request in accordance with cl.4.6 of the NLEP 2012 to vary the development standard imposed by cl.7.10 of the NLEP 2012. Refer to '*Clause 4.6 - Exceptions to Development Standards*' assessment below.

#### 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 applicant has submitted three written requests in accordance with Clause 4.6 of the NLEP 2012, seeking to vary the height of buildings, building separation, and relevant floor space ratio development standards respectively, which are all discussed below.

An assessment of the submitted written requests has been undertaken below. In undertaking the assessment, consideration has been given to both the provisions of Clause 4.6 of the NLEP 2012 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.

Whilst it is well established that a written request to vary a development standard in accordance with the provisions of Clause 4.6 must be carefully drafted and well-reasoned, it is noted that the size of the proposed variation is not in itself a material considered as to whether a variation is supported. No numerical limitation on the size of a variation to a development standard such as height of building or floor space ratio exists under the Clause 4.6 wording.

In this regard, Clause.4.6 is in similar terms to the now repealed *State Environmental Planning Policy No 1 - Development Standards* ('SEPP 1'). Relevantly, like SEPP 1, there are no provisions that make necessary for a consent authority to decide whether the variation is minor. This makes the Court of Appeal's decision in *Legal and General Life v North Sydney Municipal Council* [1990] 69 LGRA 201, which considered whether there was any limit (numerical maximum) to the extent to which

a consent authority could vary a development standard under the then applicable SEPP 1, equally applicable to Clause 4.6. There are no constraints on the degree to which a consent authority may depart from a numerical standard under cl.4.6, as confirmed in by the Court in *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at paragraph.85, if the provisions of Clause 4.6 are properly met.

*Variation to Clause.4.3 - Height of buildings:*

Clause 4.3(2) of the NLEP 2012 specifies a maximum permissible building height of 45m across the site. As a result of the alterations and additions proposed, the development in its entirety (comprising the Modified Development Consent and the Subject Application) has a maximum building height of 56.95m, measured as a vertical distance from ground level (existing) to the highest point of the building being the lift overruns, resulting in an exceedance of 11.95m, or a 26.5% variation, to the 45m height of building development standard prescribed under Clause 4.3 of the NLEP 2012.

It is noted that assessment of the Modified Development Consent considered and supported a maximum building height of 47.65m, resulting in an exceedance of 2.65m, or a 5.9% variation, to the 45m height of building development standard prescribed under cl.4.3 of the NLEP 2012.

Therefore, the Subject Application represents a 9.3m increase to the maximum building height approved under the Modified Development Consent, which is a result of the three additional levels of shop top housing proposed above the approved structure.

An assessment of the applicant's written request has been undertaken below:

***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.***

Clause 4.3 of the NLEP 2012 prescribes a numeric standard and is considered a development standard in that it is consistent with the definition of development standards under s.1.4 of the EP&A Act1979.

Clause 4.3 of the NLEP 2012 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 'Clause 4.6 Variation Request – Clause 4.3 Height of buildings' (project 22-025, dated 9 November 2022, prepared by Gyde Consulting) constitutes a written request for the purposes of Clause 4.6(3) of the NLEP 2012.

In Wehbe Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with development standards may be considered unreasonable or unnecessary. Preston CJ established

five circumstances in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary.

The applicant's response to Clause 4.6(3)(a) is contained in Section 4 of the applicants written request. The applicants written request seeks to rely on the first Wehbe consideration to demonstrate that compliance with the Clause 4.3 of the NLEP 2012 is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding the numerical non-compliance.

A summary of the justification provided within the applicant's written request with respect to the objectives of the height of building development standard is provided below.

*Objective: (a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy:*

- i) The proposed height is in line with the desired built form of the immediate area, as shaped by the height of buildings development standard prescribed for land within the vicinity of the subject site, providing a better transition from taller permitted building heights south and east of the subject site (90m) and the reduced permitted building heights to the north and west of the subject site (45m and 35m respectively).
- ii) Land within the immediate vicinity of the subject site has seen a large amount of redevelopment given the proximity to major public transport infrastructure and other necessary services. The area is characterised by higher density mix use development which is presented within the proposed development.
- iii) The proposed development is compatible with its surroundings having regard to the Land Environment Court Planning Principle on 'compatibility with context' established in *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*, for the following reasons:
  - a) The physical impacts of the proposed alterations and additions on surrounding development are negligible and therefore acceptable. In particular, the three additional levels proposed are expected to cause no constraint to the amenity or development potential of surrounding sites and land uses. The proposal does not result in any unreasonable amenity impact for adjoining development with the surrounding sites maintaining acceptable solar access, visual privacy, and acoustic privacy.
  - b) The appearance of the development in its entirety, comprising the Modified Development Consent and the Subject Application, is in harmony with the buildings around and the character of the street. In particular, the alterations and additions proposed under the Subject Application result in a development that enhances the streetscape and built form character of the site consistent with the locality specific provisions under Section 6.03 'Wickham' of the NDCP2012.

- c) The nature and scale of development in the immediate vicinity is characterised by higher density mix use development with active street frontages. Whilst alterations are proposed to the Ground Floor to Level 12 floor plans approved under the Modified Development Consent, the external articulation of the Ground Floor to Level 12 approved under the Modified Development Consent is largely maintained. Of note, the Subject Application maintains an active street frontage Dangar Street and Hannell Street (four separate retail spaces at Ground Floor), as approved under the Modified Development Consent. Furthermore, a 3m building setback from the southern boundary is proposed at ground level. This setback creates an improved interface with the adjacent Newcastle Transport Interchange as it promotes pedestrian activation of the public domain and is therefore considered a better outcome to that approved under the Modified Development Consent.
  
- iv) The subject site is located within the Rail Edge urban precinct under Section 6.03.01 of the NDCP 2012. The proposed development aligns with the future character of the Rail Edge urban precinct which is –
  - a) "envisaged to support high density residential development that capitalises on its location adjacent to Newcastle Transport Interchange and provide and provide ground level commercial uses, with neighbourhood level retail and services activating street corners. Building scale and form transitions down to integrate with the lower scale Village Hub precinct fronting Bishopsgate Street."
  
  - b) In particular, the additional levels of shop top housing will facilitate 21 additional residential apartments on the site. Furthermore, the additional height is considered to facilitate the desired built scale and form transitions from the taller permitted building heights on the southern side of the Newcastle Transport Interchange (90m height limit), down to the lower permitted building heights of the Village Hub precinct to the north of the subject site (10m height of buildings).

*Objective: (b) to allow reasonable daylight access to all developments in the public domain:*

- i) The alterations and additions proposed under the Subject Application result in minimal additional overshadowing compared to that approved under the Modified Development Consent; whilst a 'longer' shadow is cast as a result of the three additional levels, no changes are proposed to the width of the built form approved under the Modified Development Consent meaning the width of the shadow remains 'narrow' and consistent with that approved. As such, the additional shadow impact is minor and moves quickly around the neighbouring development and public domain.
  
- 2) The submitted shadow diagrams demonstrate that adjoining development achieve greater than 3 hours of sunlight between 9am to 3pm mid-winter, despite the additional shadow generated as a result of the Subject Application, specifically:



- a) No development north of the subject site is affected by overshadowing from the development in its entirety.
  - b) The additional overshadowing as a result of the non-compliant component will not impact any residential development south of the subject site and overshadowing of the commercial development south of the subject site will be gone by 12noon at mid-winter.
  - c) The additional overshadowing as a result of the non-compliant component does not affect development on the east side of Stewart Avenue until 1pm mid-winter, and with the expectation of a small portion of the rear of No.33 Beresford Street, the afternoon shadow resulting from the Subject Application is generally cast on the light rail track and does not impact surrounding residential or commercial development.
- 3) The Subject Application results in minimal additional shadowing on the surrounding public domain, specifically:
- a) Additional overshadowing resulting from the non-compliant component is cast onto Hunter Street at 9am mid-winter but is gone by 10am.
  - b) The additional overshadowing does not affect Stewart Avenue until 12noon mid-winter and is gone by 1pm.

Additionally, the applicants written request also seeks to demonstrate that the 'unreasonable and unnecessary' requirement is met because the burden placed on the community by not permitting the proposed variation would be disproportionate to the consequence attributed to the non-compliant development as proposed.

A summary of the justification provided within the applicant's written request seeking to demonstrate that a scheme compliant with the 45m height of building development standard would not reflect the objectives of the land use zone and the *Wickham Master Plan 2017* ('WMP 2017') is provided below:

The vision and merit for additional height on the subject site are presented by Council within the Planning Proposal to amend NLEP 2012 and the implemented actions of the WMP 2017 and subsequent *Wickham Master Plan 2021 Update* ('WMP 2021 Update') which supports an increase to the subject sites permissible building height from 45m to 60m.

- 4) The proposed development complies with a 60m height limit and is therefore consistent with the strategic planning for the subject site as identified within the WMP 2017 and subsequent WMP 2021 Update.
- 5) The proposed development achieves the strategic goals set-out within the WMP 2017 and subsequent WMP 2021 Update to provide housing and

job growth through infill development of increased densities within well serviced areas.

- 6) This disproportion between the adverse impacts of the variation, versus the benefits of requiring strict compliance is sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

Assessment comment

It is agreed that the built form of the development in its entirety (comprising the Modified Development Consent and the Subject Application) will make a positive contribution to the City Centre streetscape, consistent with the scale of development envisaged by the locality specific planning provisions for Wickham. It is considered that, overall, the Subject Application will deliver an appropriate built form that is consistent with the desired future character, while remaining compatible with the scale of nearby developments. The proposed development including the height variation, will sit comfortably within the context of the surrounding built form; the proposed height provides a desirable transition from the adjoining height limit of 90m permitted along Hunter Street in Newcastle West to the south and the lower height limits of 45m and 24m development fronting Bishopsgate Street to the north.

The proposed development results in reasonable daylight access. The submitted shadow diagrams demonstrate that the overshadowing impact due to the non-compliance on adjoining development and public domain is not unreasonable having regard to the intended desired future character and built form for the area and the nature of existing and approved development in the vicinity of the subject site. Notably, a significant amount of the additional overshadowing falls on the roadway and rail corridor and it not considered to have an unreasonable impact on daylight access to the public domain.

The desired built form intended by the WMP 2017, and subsequent WMP 2021 Update, supports the applicant's argument that a scheme compliant with the 45m height of building development standard would not reflect the objectives of the land use zone and strategic planning for the subject site. The WMP (discussed in further detail elsewhere within this report) considers possible incentive-based mechanisms that enable the assessment of additional density above the prescribed development standards. The WMP identifies the land subject to the Subject Application as having the potential to accommodate an even greater building height of up to 60m. Despite this, the incentive-based mechanism is not yet formally adopted or gazetted within CNs local environmental plan. As such, variations to development standards are still assessed under Clause 4.6 of the NLEP 2012.

In this respect, the Subject Application alone is slightly inconsistent with the WMP 2021 Update, in that the 'public benefit' aspects of the WMP 2021 Update have not yet been incorporated within any amendment to the NLEP 2012. Notwithstanding this, the desired built form intended by the WMP 2021 Update still exists within a publicly exhibited and CN adopted strategic policy and informs an intended future amendment of the NLEP 2012. The lack of the WMP 2021 Update public benefit resolution does not negate this intended desired built form.

Furthermore, the WMP 2021 Update 'public benefit' requirements are specific to an individual proposal, whereas the 'public interest' provisions (under Clause 4.6(4)(b) below) are a broad criterion measured against the outcomes under the NLEP 2012 and the wider overall community. The fact that the public benefit requirements under the WMP 2012 Update are not yet in force is not sufficient basis to withhold support for the proposed height exceedance in this regard, nor does it negate that the WMP 2021 Update still adopts strategically these greater heights (i.e., 60m for the subject site) and indicates that these heights are appropriate and, in effect, broadly in the public interest.

It is accepted that the alterations and additions proposed will result in the development in its entirety (comprising the Modified Development Consent and the Subject Application) having a better density outcome for the subject site within the Newcastle City Centre, compared to a scheme compliant with respect to the height of building development standard, by increased housing options at the scale submitted. The proposed increase in number of dwellings resulting from the exceedance to the height of building development standard only further supports making "...a positive contribution to the desired built form and is considered consistent with the established centres hierarchy."

Having regard to the sites position and context within the Newcastle City Centre and the applicable environmental controls and policies, the development in its entirety (comprising the Modified Development Consent and the Subject Application) remains consistent with the established centres hierarchy and represents a positive contribution to the location.

Overall, 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 as the objectives of the development standard are achieved notwithstanding non-compliance.

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

In *Initial Action*, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole.

The applicant's response to Clause.4.6(3)(b) is contained in Section 5 of the applicant's written request.

The specific environmental planning grounds identified in the applicant's written request to justify the exceedance to the development standard are summarised and assessed below:

- i) The proposed contravention of the standard does not result in adverse environmental impacts to adjoining properties and the proposal has been

designed to respond to the existing and future built form character of the area which is influenced within the endorsed WMP 2021 Update.

- ii) The proposed contravention continues to promote good design and amenity of the built environment, resulting in improved urban design and amenity considerations for both the local community and future occupants of the building.
- iii) The proposed contravention allows for further density in this key transport orientated location within the emerging commercial core of the Newcastle City Centre (in Newcastle West) and has been designed with strict consideration of the strategic planning framework for this location.
- iv) The proposed contravention of the height standard does not detract from the development's achievement of the objectives of the height of building development standard and the objectives of the zone.

Assessment comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the proposed development has been designed to respond to the site's unique characteristics being located at the interface of the emerging commercial core of the Newcastle City Centre (in Newcastle West) and directly adjacent to the Newcastle Transport Interchange. The proposed additional height facilitates the density anticipated within the strategic planning framework without resulting in unreasonable amenity impacts on neighbouring development.

It is accepted that the alterations and additions proposed will result in the development in its entirety (comprising the Modified Development Consent and the Subject Application) having a better outcome for the subject site within the Newcastle City Centre, compared to a scheme compliant with respect to the height of building development standard, by increased housing options at the scale submitted. The proposed increase in number of dwellings resulting from the exceedance to the height of building development standard only further supports making "...a positive contribution to the desired built form and is considered consistent with the established centres hierarchy."

The desired built form intended by the WMP 2017, and subsequent WMP 2021 Update, supports the applicant's argument that the proposed contravention reflects the strategic planning for the subject site. Fundamentally, the WMP 2021 Update adopts strategically greater heights (being 60m for the subject site) and indicates that these heights are appropriate and, in effect, broadly in the public interest.

***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)***

It is considered, based on the assessment outlined above, the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the NLEP2012. 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 objectives for development within the zone in which the development is proposed to be carried out.***

The applicant's response to Clause 4.6(4)(a)(ii) is contained in Section 6 of the applicants written request.

It is noted that consideration of the applicant's justifications as to the satisfaction of the objective of the height of building development standard have formed part of the Clause 4.6(3)(a) assessment above.

However, Clause 4.6(4)(a)(ii) does not require consideration of whether the objectives have been adequately addressed within the applicant's written request, rather that, 'the proposed development will be in the public interest because it is consistent with the relevant objectives of both the particular development standard (being Clause.4.3 – Height of buildings') and the objectives for development within the zone in which the development is proposed (being B3 Commercial Core). This is discussed below.

*Objectives of Clause.4.3 'height of buildings'*

The development is consistent with the objectives of Clause 4.3 'Height of buildings' as the scale of the development makes a positive contribution to towards the desired built form and is consistent with the established centres hierarchy. The development also allows reasonable daylight access to all developments and the public domain.

*Objectives of the B3 Commercial Core zone:*

- i) To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- ii) To encourage appropriate employment opportunities in accessible locations.*
- iii) To maximise public transport patronage and encourage walking and cycling.*
- iv) To provide for commercial floor space within a mixed-use development.*
- v) To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.*
- vi) To provide for the retention and creation of view corridors.*

The Subject Application is consistent with the objectives of the B3 Commercial Core zone as follows:

- i) The development in its entirety (comprising the Modified Development Consent and the Subject Application), integrates a mixture of compatible land uses; 'commercial premises', 'retail premises', and 'shop top housing'. The services and residential accommodation (shop top housing) will service the needs of the local and wider community.
- ii) With the site ideally located with respect to public transport (neighbouring the Newcastle Transport Interchange), the development in its entirety will provide employment opportunities in an accessible location and will assist in strengthening the role of the Newcastle City Centre as a regional business centre for the Hunter Region.
- iii) The site is in an accessible location, with close proximity to shops, jobs, education, recreation and entertainment which will assist in maximising public transport patronage and encouraging walking and cycling. Further, the public domain improvements resulting from the alterations proposed to the Ground Floor will enhance accessibility and permeability through the site (connecting Hannell Street to Station Street) and surrounding areas. The provision of services within the development will service the day to day needs of future residents which will also encourage walking.
- iv) No change to the commercial floor space component of the mixed-use development as approved under the Modified Development Consent.
- v) The proposed development seeks to capitalise on opportunities for views toward the harbour to the north-east of the site; city centre views to the east of the site; and the city west and river wetland views to the north-west and south-west respectively. The built form and scale of the development in its entirety (comprising the Modified Development Consent and the Subject Application) does not impeded existing view corridors.

As such, 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 the 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.***

Planning Circular PS20-002 issued 5 May 2020 advises consent authorities of arrangements for when the Secretary's concurrence to vary development standards may be assumed, including when council or its Independent Hearing and Assessment Panel are to determine applications when development standards are varied.

In accordance with Planning Circular PS20-002, all consent authorities may assume the Secretary's concurrence under Clause 4.6 of a local environmental plan that adopts *the Standard Instrument (Local Environmental Plans) Order 2006* or any

other provision of an environmental planning instrument to the same effect, subject to conditions.

Of relevance to the Subject Application, Condition No. 2 stipulates the Secretary's concurrence may not be assumed for the following development, if the function of determining the development application is exercised by a delegate of the consent authority:

- i) the development contravenes a numerical standard by greater than 10%;  
or
- ii) the variation is to a non-numerical standard

The purpose of the restriction on assumed concurrence for variations of numerical and non-numerical standards applying to delegates is to ensure that variations of this nature are considered by the council or its independent hearing and assessment panel and that they are subject to greater public scrutiny than decisions made by council staff under delegation.

The Subject Application contravenes the numerical standard of cl.4.2 'Height of buildings' of the NLEP 2012 (amongst other development standards) by greater than 10%. As such, the application is required to be reported to the Development Applications Committee to assume the Secretary's concurrence in accordance with Planning Circular PS20-002.

*Variation to Clause.7.4 'Building separation':*

Clause 7.4(1) of the NLEP 2012 specifies a minimum building separation of 24m at 45m or higher above ground level. As a result of the alterations and additions proposed, the upper position of Level 13 which occurs at 45m and higher above ground level has an 18.68m separation from the existing building at No. 38 Hannell Street (Stella apartments), resulting in a non-compliance of 5.32m, or a 22.2% variation, to the 24m building separation development standard prescribed under cl.7.4 of the NLEP 2012.

It is noted that assessment of the Modified Development Consent considered and supported a minimum building separation of 22.6m between the portion of Level 13 occurring 45m or higher above ground level to the existing building at No. 38 Hannell Street, resulting in a non-compliance of 1.4m, or a 9.4% variation, to the 24m building separation development standard prescribed under cl.7.4 of the NLEP 2012.

Therefore, the Subject Application represents a 3.92m increase to the minimum building separation at 45m or higher above ground level approved under the Modified Development Consent, which is a result of the alteration proposed to Level 13 and the three additional levels of shop top housing proposed above the approved structure.

An assessment of the applicant's written request has been undertaken below:

***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.***

Clause 7.4 of the NLEP 2012 prescribes a numeric standard and is considered a development standard in that it is consistent with the definition of development standards under s.1.4 of the EP&A Act1979.

Clause 7.4 of the NLEP 2012 is not expressly excluded from the operation of cl.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 'Clause 4.6 Variation Request – Clause 7.4 Building separation' (project 22-025, dated 9 November 2022, prepared by Gyde Consulting) constitutes a written request for the purposes of cl.4.6(3) of the NLEP 2012.

In *Wehbe* Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with development standards may be considered unreasonable or unnecessary. Preston CJ established five circumstances in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary.

The applicant's response to cl.4.6(3)(a) is contained in Section 4 of the applicants written request. The applicants written request seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the cl.7.4 of the NLEP 2012 is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding the numerical non-compliance.

In this instance, cl.7.4 of the NLEP 2012 is not accompanied by an express objective. As such, the applicant's written request assumes 'the intention of the standard is to ensure that sufficient space is provided to achieve suitable amenity regarding external and internal privacy as well as adequate capacity for solar access.'

A summary of the justification provided within the applicant's written request in this regard is provided below:

- i) Due to the general site arrangement of the approved development subject to the proposed alteration and addition, which has increased building setbacks from the east boundary by locating the built towards the west boundary, the existing building at No.38 Hannell Street is 'offset' from the proposed development towards the northeast. As such, the non-compliance with respect to building separation only affects a minor portion of each building and opportunities for overlooking as a result of the non-compliance are limited. See Figure 1 below.

Furthermore, only the upper most floor and the roof top services of the existing building at No.38 Hannell Street occur above the 45m height plane. Due to the height and design of the existing building at No.38 Hannell Street, Level 13 of the proposed development displays the largest variation to the minimum building separation of 24m for the portion of the proposed development occurring at 45m or higher. Whilst Level 14 of the proposed development displays a lesser variation to



the building separation development standard, the building separation at Level 15 and above is 24m or greater. As such, the non-compliance with respect to building separation only affects a minor portion of each building and opportunities for overlooking as a result of the non-compliance are limited. See Figure 2 below.

- ii) The subject site is situated south of the existing building at No.38 Hannell Street, therefore there are no overshadowing impacts on the neighbouring building as a result of the non-compliance with minimum building separation.

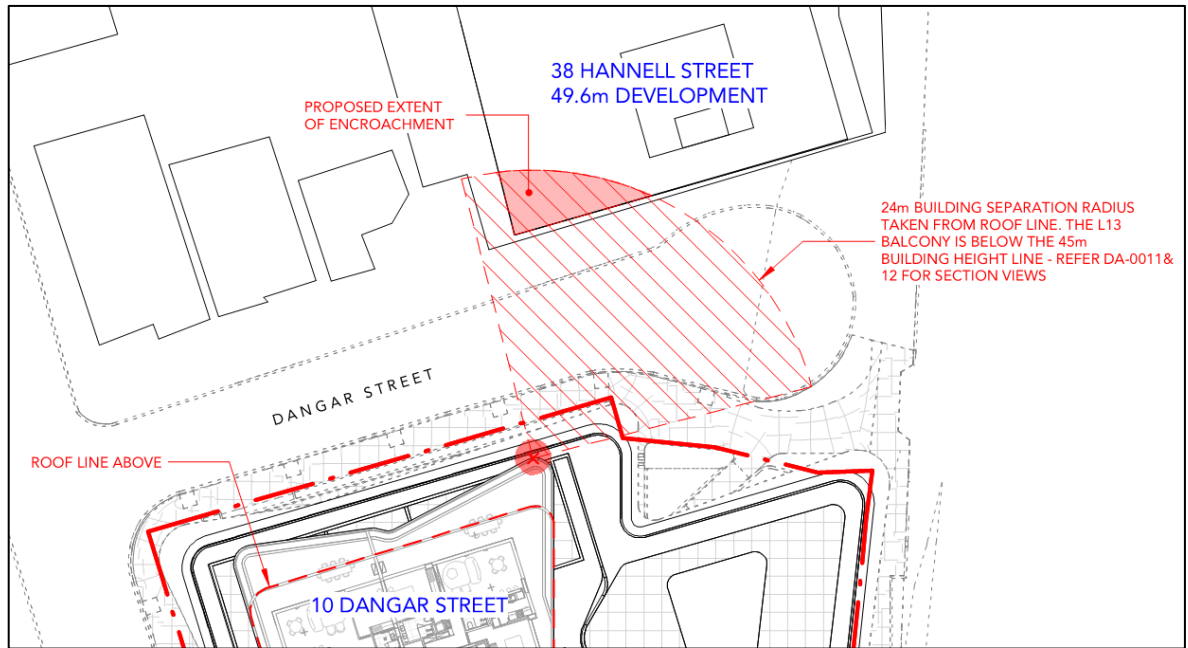


Figure 1: Extract of 'Building Set Back Plan' (source: Team 2 Architects)

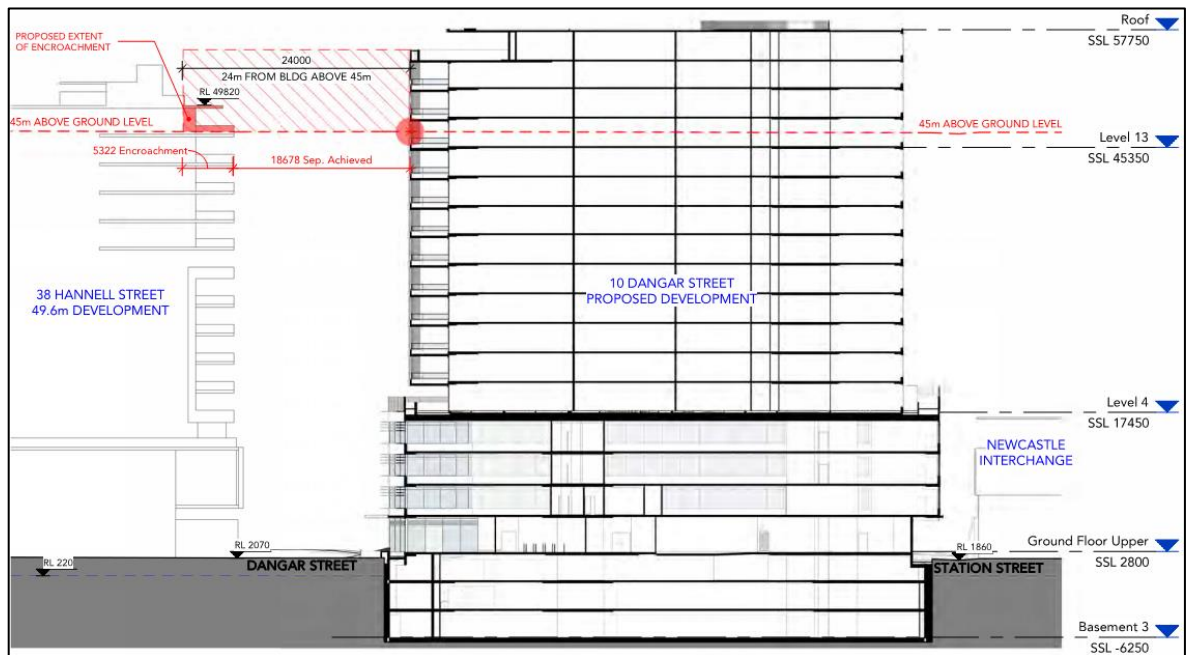


Figure 2: Extract of 'Hannell St Development Street Context Section' (source: Team 2 Architects)

Assessment comments:

It is accepted that the intent of the building separation development standard is to ensure adequate distance is provided between developments to improve amenity, increase solar access, reduce noise issues, and limit overlooking, between neighbouring buildings.

As demonstrated in the written request it is only the upper most storey (Level 14) of the existing building at No.38 Hannell Street that occurs 45m above ground (in addition to the roof top plant which does not include habitable use and is increasingly setback from the main building facade). The remaining storeys of No.38 Hannell Street are less than 45m in height.

Essentially the variation only relates to the interface between the southwest corner apartment of the existing building at 38 Hannell Street on Level 14, and the northeast corner apartments of the proposed development at Levels 13 and Level 14 (proposed apartments 1306 and 1406). The 'offset' nature of the two buildings, combined with the physical separation distance, achieves reasonable visual privacy between the two buildings. Further, the proposed development provides full height, fixed vertical screening at the balcony corner which will further restrict direct sight lines between the proposed development and the existing building at No.38 Hannell Street.

It is accepted that due to the subject site being located south of No.38 Hannell Street, there are no overshadowing impacts on the neighbouring building as a result of the proposed contravention to the building separation development standard. Further, the submitted solar access diagrams demonstrate that despite the building separation non-compliance, the northeast corner apartments at Level 13 and Level 14 (proposed apartments 1306 and 1406) have been designed to receive unimpeded solar access during 9am to 3pm at mid-winter.

As noted above, the Modified Development Consent considered and supported a minimum building separation of 22m between the portion of Level 13 occurring 45m or higher above ground level to the existing building at No. 38 Hannell Street. Whilst the variation under the Modified Development Consent was numerically less than that proposed under the Subject Application this is due to the roof of approved Level 13 having an increased setback from main building facade. Importantly, it is noted that the Modified Development Consent approved use of this area of Level 13 as apartment balcony. Meaning the potential impacts at this level, which were assessed and found to be acceptable under the Modified Development Consent, remain unchanged under the Subject Application.

Whilst the Subject Application does not meet the building separation development standard, the proposed development has suitably considered the existing development on adjoining sites. Overall, the applicant's written request is considered to satisfy the requirements of cl.4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the objectives of the development standard are achieved notwithstanding non-compliance.

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

In *Initial Action*, Preston CJ identified that for there to be ‘sufficient’ environmental planning grounds to justify a written request under cl.4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole.

The applicant's response to Clause 4.6(3)(b) is contained in Section 5 of the applicant's written request. The specific environmental planning grounds identified in the applicants written request to justify the exceedance to the development standard are summarised and assessed below:

- i) The proposed contravention of the standard does not result in adverse environmental impacts to adjoining properties.
- ii) The proposed contravention is minor, relating only to a small portion of the upper most southwest corner apartment at No.38 Hannel Street and does not impact upon privacy or solar aspects of the development.
- iii) The proposed contravention continues to promote good design and amenity of the built environment, resulting in improved urban design and amenity considerations for both the local community and future occupants of the building.
- iv) The proposed contravention allows for further density (additional housing) in this key transport orientated location within the emerging commercial core of the Newcastle City Centre (in Newcastle West) and has been designed with consideration of the strategic planning framework for this location.
- v) The proposed contravention of the building separation development standard does not detract from the development's achievement of the intentions of the development standard and the objectives of the zone.

**Assessment comments:**

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the proposed development has been designed to respond to the site's unique characteristics being located at the interface of the emerging commercial core of the Newcastle City Centre (in Newcastle West) and directly adjacent to the Newcastle Transport Interchange. The proposed development, notwithstanding the contravention to minimum building separation, facilitates the density anticipated within the strategic planning framework without resulting in any significant impacts to adjoining properties, particularly in respect to overshadowing, loss of privacy or amenity.

***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)***

It is considered, based on the assessment outlined above, the applicant’s written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the NLEP2012. 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 objectives for development within the zone in which the development is proposed to be carried out.***

The applicant’s response to Clause 4.6(4)(a)(ii) is contained in Section 6 of the applicant’s written request.

It is noted that consideration of the applicant’s justifications as to the satisfaction of the objective of the building separation development standard have formed part of the Clause.4.6(3)(a) assessment above.

However, Clause 4.6(4)(a)(ii) does not require consideration of whether the objectives have been adequately addressed within the applicant’s written request, rather that, ‘the proposed development will be in the public interest because it is consistent with the relevant objectives of both the particular development standard (being cl.7.4 ‘Building separation’) and the objectives for development within the zone in which the development is proposed (being B3 Commercial Core). This is discussed below.

*Objectives of Clause 7.4 ‘Building separation’*

As detailed in the Clause 4.6(3)(a) assessment above, the development is consistent with the intention of Clause 7.4 ‘Building Separation’ as adequate distance is provided to improve amenity, increase solar access, reduce noise issues, and limit overlooking between neighbouring buildings.

In this instance where Clause 7.4 of the NLEP 2012 is not accompanied by an express objective, for completeness an assessment of the proposed development against the objectives of Part 7 ‘Additional local provisions - Newcastle City Centre’ of the NLEP 2012 is provided below.

*Objectives of Part 7 ‘Additional local provisions – Newcastle City Centre’:*

- a) *to promote the economic revitalisation of Newcastle City Centre:*
- b) *to strengthen the regional position of Newcastle City Centre as a multi-functional and innovative centre that encourages employment and economic growth:*

- c) *to protect and enhance the positive characteristics, vitality, identity, diversity and sustainability of Newcastle City Centre, and the quality of life of its local population:*
- d) *to promote the employment, residential, recreational and tourism opportunities in Newcastle City Centre:*
- e) *to facilitate the development of building design excellence appropriate to a regional city:*
- f) *to encourage responsible management, development and conservation of natural and man-made resources and to ensure that Newcastle City Centre achieves sustainable social, economic and environmental outcomes:*
- g) *to protect and enhance the environmentally sensitive areas and natural and cultural heritage of Newcastle City Centre for the benefit of present and future generations,*
- h) *to help create a mixed use place, with activity during the day and throughout the evening, so Newcastle City Centre is safe, attractive, inclusive and efficient for its local population and visitors alike.*

The Subject Application is considered consistent with the objectives of Part 7 'Additional local provisions – Newcastle City Centre' as:

- i) Wickham, which was once a semi-industrial area at the outer fringe of the Newcastle City Centre, has evolved into a mix use urban neighbourhood supporting the emerging commercial core within Newcastle West.
- ii) The development in its entirety (comprising the Modified Development Consent and the Subject Application) incorporates commercial, retail, and high density residential (shop top housing). A mixed-use development of this scale will strengthen the emerging commercial core of Newcastle West and will reinforce the desired future character of the Newcastle City Centre.
- iii) With the site ideally located with respect to public transport (neighbouring the Newcastle Transport Interchange), the development in its entirety comprising the Modified Development Consent and the Subject Application will provide employment and investment opportunities in an accessible location and will assist in strengthening the role of the Newcastle City Centre as a multi-functional regional centre for the Hunter Region.
- iv) The development in its entirety will enhance the positive characteristics of the locality and the quality of life for the local population. The site is in an accessible location, with close proximity to shops, jobs, education, recreation and entertainment which will assist in maximising public transport patronage and encouraging walking and cycling. Further, the public domain improvements resulting from the alterations proposed to the

Ground Floor will enhance accessibility and permeability through the site (connecting Hannell Street to Station Street) and surrounding areas. The provision of services within the development will service the day to day needs of future residents which will also encourage walking within a topography which is amenable to pedestrians and cyclists.

- v) Pursuant to Clause.7.5(5) of the NLEP 2012, the Government Architect NSW (delegate of the Director-General) has certified in writing that a design competition is not required for the proposed development on the site. This exemption was granted on the basis that the proposed development exhibits design excellence, notwithstanding the contraventions to development standards. This finding is further confirmed via the support of CN's UDRP which reviewed the proposed development during the assessment of the Subject Application.
- vi) The proposal is consistent with CN's urban consolidation objectives, making efficient use of the established public infrastructure and services. The proposed development provides for the orderly economic development of the site for purposes for which it is zoned and will not have any significant adverse social or economic impacts.
- vii) The proposed development will not have undue adverse impact on the natural or built environment.

*Objectives of the B3 Commercial Core zone:*

The Subject Application is considered consistent with the objectives of the B3 Commercial Core zone for the reasons detailed above in the Clause 4.6(4)(a)(ii) assessment of the variation to Clause 4.3 'Height of buildings'.

As such, 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 the 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.***

As detailed in the Clause 4.6(4)(b) assessment of the variation to Clause 4.3 'Height of buildings' above, Planning Circular PS20-002 issued 5 May 2020 advises that the consent authority may assume the Secretary's concurrence under Clause 4.6 of a local environmental plan subject to conditions.

The Subject Application contravenes the numerical standard of Clause 7.4 'Building separation' of the NLEP 2012 (amongst other development standards) by greater than 10%. As such, the application is required to be reported to the Development Applications Committee to assume the Secretary's concurrence in accordance with Planning Circular PS20-002.

*Variation to cl.7.10 'Floor space ratio for certain development in Area A':*

Clause 7.10(2)(a) of the NLEP 2012 specifies a maximum permissible floor space ratio of 5:1. As a result of the alterations and additions proposed, the development in its entirety (comprising the Modified Development Consent and the Subject Application) has a gross floor area of 20,134sqm, calculated in accordance with the 'gross floor area' definition under the NLEP 2012. This equates to a floor space ratio of 6.9:1 (based on a site area of 2904sqm), resulting in a 38.66% variation to the 5:1 floor space ratio development standard prescribed under cl.7.10 of the NLEP 2012.

It is noted that the assessment of the Modified Development Consent considered and supported a gross floor area of 17,069sqm. This equates to a floor space ratio of 5.87:1 (based on a site area of 2,04sqm), resulting in an exceedance of 0.87:1, or a 17.55% variation, to the 5:1 floor space ratio development standard prescribed under cl.7.10 of the NLEP 2012.

The Subject Application represents a 3,065sqm increase to the gross floor area approved under the Modified Development Consent, which is a result of the alterations proposed to approved floor plans and the three additional levels of shop top housing proposed above the approved structure.

An assessment of the applicant's written request has been undertaken below:

***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.***

Clause 7.10 of the NLEP 2012 prescribes a numeric standard and is considered a development standard in that it is consistent with the definition of development standards under s.1.4 of the EP&A Act1979.

Clause 7.10 of the NLEP 2012 is not expressly excluded from the operation of cl.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 'Clause 4.6 Variation Request – Clause 7.10 Floor space ratio for certain development in Area A (project 22-025, dated 26 April 2022, prepared by Gyde Consulting) constitutes a written request for the purposes of cl.4.6(3) of the NLEP 2012.

In *Wehbe* Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with development standards may be considered unreasonable or unnecessary. Preston CJ established five circumstances in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary.

The applicant's response to Clause 4.6(3)(a) is contained in Section 4 of the applicant's written request. The applicant's written request seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the Clause 7.10 of the

NLEP 2012 is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding the numerical non-compliance.

In this instance, Clause 7.10 of the NLEP 2012 is not accompanied by an express objective. As such, the applicant's written request considers the objectives of cl.4.4 'floor space ratio' of the NLEP 2012.

A summary of the justification provided within the applicant's written request with respect to the objectives of the floor space ratio development standard is provided below.

*Objective: (a) to provide an appropriate density of development consistent with the established centres hierarchy:*

- j) The proposed floor space ratio is consistent with the desired scale of development, as shaped by the floor space ratio development standard prescribed for land within the vicinity of the subject site, providing a better transition from higher permitted density south of the subject site (8:1 maximum floor space ratio) and the reduced permitted density to the west of the subject site (4:1 maximum floor space ratio).
- ii) Land within the immediate vicinity of the subject site has seen a large amount of redevelopment given the proximity to major public transport infrastructure and other necessary services. The area is characterised by higher density mix use development which is presented within the proposed development.
- iii) The bulk of the development in its entirety (comprising the Modified Development Consent and the Subject Application) is arranged as a residential (shop top housing) tower on top of a street activating mixed use podium.
- iv) The proposed development is compatible with its surroundings having regard to the Land Environment Court Planning Principle on 'compatibility with context' established in *Project Venture Developments v Pittwater Council [2005]* NSWLEC 191, for the following reasons:
  - a) The physical impacts of the proposed alterations and additions on surrounding development are negligible and therefore acceptable. In particular, the three additional levels proposed are expected to cause no constraint to the amenity or development potential of surrounding sites and land uses. The proposal does not result in any unreasonable amenity impact for adjoining development with the surrounding sites maintaining acceptable solar access, visual privacy, and acoustic privacy.
  - b) The appearance of the development in its entirety, comprising the Modified Development Consent and the Subject Application, is in harmony with the buildings around and the character of the street. In particular, the alterations and additions proposed under the Subject Application result in a development that enhances the streetscape



and built form character of the site consistent with the locality specific provisions under Section 6.03 'Wickham' of the NDCP 2012.

- c) The nature and scale of development in the immediate vicinity is characterised by higher density mix use development with active street frontages. Whilst alterations are proposed to the Ground Floor to Level 12 floor plans approved under the Modified Development Consent, the external articulation of the Ground Floor to Level 12 approved under the Modified Development Consent is largely maintained. Of note, the Subject Application maintains an active street frontage to Dangar Street and Hannell Street (four separate retail spaces at Ground Floor), as approved under the Modified Development Consent. Furthermore, a 3m building setback from the southern boundary is proposed at ground level. This setback creates an improved interface with the adjacent Newcastle Transport Interchange as it promotes pedestrian activation of the public domain and is therefore considered a better outcome to that approved under the Modified Development Consent.
- d) The subject site is located within the Rail Edge urban precinct under Section 6.03.01 of the NDCP 2012. The proposed development aligns with the future character of the Rail Edge urban precinct which is –

*"envisaged to support high density residential development that capitalises on its location adjacent to Newcastle Transport Interchange and provide ground level commercial uses, with neighbourhood level retail and services activating street corners. Building scale and form transitions down to integrate with the lower scale Village Hub precinct fronting Bishopsgate Street."*

- e) In particular, the additional levels of shop top housing and associated increase in floor space ratio will facilitate 21 additional residential apartments on the site. Furthermore, the addition is considered to facilitate the desired build scale and form transition from the higher density on the southern side of the Newcastle Transport Interchange (8:1 maximum floor space ratio), down to the reduced density of the Village Hub precinct to the north of the subject site (4:1 and 1.5:1 maximum floor space ratio).

*Objective: (b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.*

- i) The proposed development is consistent with the projected density outlined in the strategic planning framework of the WMP 2021 Update.
- ii) The WMP 2021 Update allows a maximum FSR of 7:1, subject to incentivised floor space bonuses when provided within a Planning Agreement. In addition to the monetary incentives, an increased setback

along the southern boundary has been provided to allow for a publicly accessible pedestrian through-site link.

- iii) The development in its entirety (comprising the Modified Development Consent and the Subject Application) provides a considerable amount of high-quality retail and commercial floor space for this location.
- iv) The proposed development maintains the centres' hierarchy by contributing to desired future character of the commercial core of the Newcastle City Centre (in Newcastle West) and by integrating well with other recent developments within the vicinity of the site.
- v) The development in its entirety (comprising the Modified Development Consent and the Subject Application) makes a positive contribution towards the commercial core of the Newcastle City Centre (in Newcastle West) and the B3 Commercial Core zone which it is located in.
- vi) The proposed development maintains retail uses on the ground floor thereby activating the street frontages, whilst also providing commercial floor space within the podium level.
- vii) The proposed development maintains an appropriate bulk and scale through the distribution and placement of floor space, and concentration of densities, throughout the development site.
- viii) The density of the development in its entirety (comprising the Modified Development Consent and the Subject Application) is consistent with that anticipated within the strategic framework of the WMP 2012 Update, which identifies a maximum floor space ratio of 7:1 for the site subject.
- ix) Additionally, the applicant's written request also seeks to demonstrate that the 'unreasonable and unnecessary' requirement is met because the burden placed on the community by not permitting the proposed variation would be disproportionate to the consequence attributed to the non-compliant development as proposed.
- x) A summary of the justification provided within the applicant's written request seeking to demonstrate that a scheme compliant with the 5:1 floor space ratio development standard would not reflect the objectives of the land use zone and the WMP 2021 Update is provided below:
  - a) The vision and merit for additional floor space ratio on the subject site are presented by Council within the Planning Proposal to amend NLEP 2012 and the implemented actions of the WMP 2021 Update which supports an increase to the subject sites permissible floor space ratio to 7:1 subject to incentivised floor space bonuses when provided within a Planning Agreement.
  - b) The proposed development complies with a 7:1 floor space ratio and is therefore consistent with the strategic planning for the subject site as identified within the WMP 2021 Update.

- c) The proposed development achieves the strategic goals set out within the WMP 2021 Update to provide housing and job growth through infill development of increased densities within well serviced areas.
- d) This disproportion between the adverse impacts of the variation, versus the benefits of requiring strict compliance is, in itself, sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

Assessment comment

It is agreed that the built form of the development in its entirety (comprising the Modified Development Consent and the Subject Application) will make a positive contribution to the City Centre streetscape, consistent with the scale of development envisaged by the locality specific planning provisions for Wickham. It is considered that, overall, the Subject Application will deliver an appropriate density that is consistent with the desired future character, while remaining compatible with the scale of nearby developments. The proposed development including the floor space ratio variation, will sit comfortably within the context of the surrounding built form and will not look out of place; the resulting built scale provides a desirable, gradual transition from the higher permitted density south of the subject site to the reduced density to the north and west of the subject site.

The desired density intended by the WMP 2021 Update supports the applicant's argument that a scheme compliant with the 5:1 floor space ratio development standard would not reflect the objectives of the floor space ratio development standard, the land use zone, and the WMP 2021 Update.

As detailed in the cl.4.6(3)(a) assessment of the of the variation to cl.4.3 'Height of buildings' above, notwithstanding that the public benefit' aspects of the WMP 2021 Update have not as yet been incorporated within any draft amendment to the NLEP 2012, the desired built form and density intended by the WMP 2021 Update still exists within a publicly exhibited, and CN adopted, strategic policy and informs an intended future amendment of the NLEP 2012.

The lack of the WMP 2021 Update public benefit resolution does not negate that the WMP 2021 adopts strategically these greater densities (i.e. 7:1 for the subject site) and indicates that these densities are appropriate and, in effect, broadly in the public interest.

It is accepted that the alterations and additions proposed will result in the development in its entirety (comprising the Modified Development Consent and the Subject Application) having a better density outcome for the subject site within the Newcastle City Centre, compared to a scheme compliant with respect to the floor space ratio development standard, by increased housing options at the scale submitted. The proposed increase in number of dwellings resulting from the exceedance to the height of building development standard only further supports making "...a positive contribution to the desired built form and is considered consistent with the established centres hierarchy."

Having regard to the sites position and context within the Newcastle City Centre, the applicable environmental controls and policies, development in its entirety (comprising the Modified Development Consent and the Subject Application) remains consistent with the established centres hierarchy and represents a positive contribution to the location.

Overall, 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 as the objectives of the development standard are achieved notwithstanding non-compliance.

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

In *Initial Action*, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under cl.4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole.

The applicant's response to Clause 4.6(3)(b) is contained in Section 5 of the applicant's written request. The specific environmental planning grounds identified in the applicant's written request to justify the exceedance to the development standard are summarised and assessed below:

- i) The proposed contravention of the standard does not result in adverse environmental impacts to adjoining properties and the proposal has been designed to respond to the existing and future built form character of the area which is influenced within the endorsed WMP 2021 Update.
- ii) The proposed contravention continues to promote good design and amenity of the built environment, resulting in improved urban design and amenity considerations for both the local community and future occupants of the building.
- iii) The proposed contravention allows for further density in this key transport orientated location within the emerging commercial core of the Newcastle City Centre (in Newcastle West) and has been designed with strict consideration of the strategic planning framework for this location.
- iv) The proposed contravention of the floor space ratio limit does not detract from the development's achievement of the objectives of the floor space ratio development standard and the objectives of the zone.

Assessment comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the proposed development has been designed to respond to the site's unique characteristics being located at the interface of the emerging commercial core of the Newcastle City Centre (in Newcastle West) and

directly adjacent to the Newcastle Transport Interchange. The additional levels of shop top housing and associated increase in floor space ratio will facilitate the density anticipated within the strategic planning framework without resulting in unreasonable amenity impacts on neighbouring development.

It is accepted that the alterations and additions proposed will result in the development in its entirety (comprising the Modified Development Consent and the Subject Application) having a better outcome for the subject site within the Newcastle City Centre, compared to a scheme compliant with respect to the floor space ratio development standard, by increased housing options at the scale submitted. The proposed increase in number of dwellings resulting from the exceedance to the floor space ratio development standard only further supports making "...a positive contribution to the desired built form and is considered consistent with the established centres hierarchy."

The desired built form and density intended by the WMP 2017, and subsequent WMP 2021 Update, supports to the applicant's argument that the proposed contravention reflects the strategic planning for the subject site. Fundamentally, the WMP 2021 Update adopts strategically greater floor space ratio (being 7:1 for the subject site) and indicates that these densities are appropriate and, in effect, broadly in the public interest.

***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)***

***It is considered, based on the assessment outlined above, the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the NLEP2012. It follows that the test of cl.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 objectives for development within the zone in which the development is proposed to be carried out.***

The applicant's response to Clause 4.6(4)(a)(ii) is contained in Section 6 of the applicant's written request.

It is noted that consideration of the applicant's justifications as to the satisfaction of the objective of the floor space ratio development standard have formed part of the Clause 4.6(3)(a) assessment above.

However, Clause 4.6(4)(a)(ii) does not require consideration of whether the objectives have been adequately addressed within the applicant's written request, rather that, 'the proposed development will be in the public interest because it is consistent with the relevant objectives of both the particular development standard

and the objectives for development within the zone in which the development is proposed. This is discussed below.

*Objectives of Clause 7.10 'Floor space ratio for certain development in Area A'*

Clause 7.10 of the NLEP 2012 is not accompanied by an express objective. As detailed in the Clause 4.6(3)(a) assessment above, the proposed development has therefore been assessed against the objectives of the 'base' development standard, being Clause 4.4 'Floor space ratio' of the NLEP 2012. The development is considered to be consistent with the objectives of Clause 4.4 as the proposed building density, bulk and scale makes a positive contribution towards the desired built form and is consistent with the established centres hierarchy.

For completeness, an assessment of the proposed development against the objectives of Part 7 'Additional local provisions - Newcastle City Centre' of the NLEP 2012 has also been undertaken and is detailed above in the Clause 4.6(4)(a)(ii) assessment of the variation to Clause 7.4 'Building separation'.

*Objectives of the B3 Commercial Core zone:*

The Subject Application is considered consistent with the objectives of the B3 Commercial Core zone for the reasons detailed above in the Clause 4.6(4)(a)(ii) assessment of the variation to Clause 4.3 'Height of buildings'.

As such, 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 the 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.***

As detailed in the Clause 4.6(4)(b) assessment of the variation to cl.4.3 'Height of buildings' above, Planning Circular PS20-002 issued 5 May 2020 advises that the consent authority may assume the Secretary's concurrence under Clause 4.6 of a local environmental plan subject to conditions.

The Subject Application contravenes the numerical standard of Clause 7.10 'Floor space ratio for certain development in Area A' of the NLEP 2012 (amongst other development standards) by greater than 10%. As such, the application is required to be reported to Development Applications Committee to assume the Secretary's concurrence in accordance with Planning Circular PS20-002.

Clause 4.6 - Conclusion

The states of satisfaction required by 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, building separation and floor space ratio development standards.

The Clause 4.6 variation requests have demonstrated that the proposed building height, building separation and floor space ratio are acceptable and therefore that strict compliance with the prescribed development standards would be unreasonable. The Clause 4.6 variation requests are supported.

Clause 5.10 - Heritage Conservation

Clause 5.10 seeks to conserve the heritage significance of heritage items and heritage conservation areas, archaeological sites, Aboriginal objects and places of heritage significance, and the environmental heritage of the City of Newcastle.

Certain works relating to heritage items, development within heritage conservation areas, archaeological sites, Aboriginal objects and places of heritage significance, as outlined within Clause 5.10(2), require development consent under this clause. Further, Clause 5.10(4) specifies that the consent authority must, before granting consent under this clause, consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area concerned.

The subject site is not identified as a heritage item and is not located within a heritage conservation area. Further, the site is not a listed archaeological site and is not identified as an indicative archaeological site in the *Newcastle Archaeological Management Plan 1997*.

Whilst a search of the Aboriginal Heritage Information Management System (AHIMS) identified six Aboriginal sites or listed Aboriginal Places within 200m of the subject site, there are no earthworks proposed under the Subject Application to facilitate the alterations and additions proposed to the approved building.

The conditions of consent relating to Aboriginal heritage imposed on the Original Development Consent, and as amended by the Modified Development Consent, remain unchanged under the Subject Application, and will continue to apply to the subject site. Accordingly, the site is considered suitable for the proposed development and an assessment in accordance with the provisions of Clause 5.10(4) is not warranted in this instance.

In addition, the provisions of Clause 5.10(5)(c) provide that the consent authority may, before granting consent to any development on land that is within the vicinity of a heritage item or a heritage conservation area, require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned. In this regard, the subject site is in the vicinity of the following heritage items:

**Table 3: Heritage items within the vicinity of the subject site**

Item	Address	Significance	Listing & Item No.
Residence	15 Charles Street Wickham	Local	NLEP 2012 - I681
Former School of Arts	80 Honeysuckle Drive Wickham	Local	NLEP 2012 - I690

The residence located at No.15 Charles Street, which is located west of the subject site on the opposite side of Charles Street, is surrounded by an existing high-density residential development (the 'West End Apartments' development) and an industrial warehouse. In this context the heritage listed residence offers a reflection of residential design from its period. The Former School of Arts building is located some distance away, approximately 80m east of the subject site on the opposite side of Stewart Avenue which is a four to six lane classified road and positioned between Honeysuckle Drive and Station Street.

By virtue of location and existing surrounds, it is unlikely that the proposed alterations and additions will have a significant impact on the listed heritage items in the vicinity and therefore a heritage management document is not warranted in this instance.

Clause 5.21 – Flood planning

Clause 5.21(2) of the NLEP 2012 provides that development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied that certain preconditions, such as that the development incorporates measures to manage risk to life, are addressed.

The subject site is flood prone, with the peak 1% AEP flood level of 2.2m AHD, and an estimated Probable Maximum Flood level of 3.4m AHD. The flood planning level (FPL) for the subject site is 2.68m AHD, which is based on the highest flood level, in this case being flash flooding. The risk to life for flash flooding for the subject site is L4 and therefore a flood refuge was required to be provided at 3.01m AHD.

Additionally, the subject site has been identified as a flood storage area during the PMF event and a small section at the southwestern corner (Charles Street corner at the entry of the train station) is noted to be a flood storage area at 1% AEP. The above data is consistent with the flood information that was used to assess the Modified Development Consent.

Whilst internal alterations are proposed to the basements and ground floor plans approved under the Modified Development Consent, no changes are proposed to the approved finished floor levels under the Subject Application. Further, the conditions of consent relating to flood planning imposed on the Modified Development Consent remain unchanged under the Subject Application and will continue to apply to the subject site.



The three additional floors proposed under the Subject Application are located above the approved structure and therefore the flood planning provisions have limited relevance.

The flood risk of the development has been assessed by CN staff in accordance with cl.5.21 of the NLEP 2012 and are acceptable subject to the conditions of consent included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) addressing flood planning.

#### Clause 6.1 – Acid Sulfate Soils

Clause 6.1 seeks to ensure that development does not disturb, expose, or drain acid sulfate soils (ASS) and cause environmental damage. Certain works outlined within cl.6.1(2) is noted as requiring development consent when carried out on land shown on the '*Acid Sulfate Soils Map*'.

The '*Acid Sulfate Soils Map*' identifies the subject site as containing Class 3 ASS. Pursuant to cl.6.1(2), works more than 1m below the natural ground surface or which are likely to lower the watertable by 1m below natural ground surface, require development consent.

Further, cl.6.1(3) specifies that development consent must not be granted for the carrying out of works under the clause unless an ASS management plan has been prepared for the proposed works in accordance with the *Acid Sulfate Soils Manual* and this has been provided to the consent authority.

An Acid Sulfate Soil Management Plan accompanied the application for the Original Development Consent. Given that the site had been subjected to several metres of filling, it was found that disturbance of potential ASS during earthworks was likely to be minor and/or localised and can be reasonably managed in accordance with the recommendations of the Acid Sulfate Soils Management Plan. Conditions were imposed on the Original Development Consent, requiring the development to be carried under the provisions of an Acid Sulfate Soils Management Plan.

Subsequently, the Modified Development Consent granted approved for an additional basement level. An updated Acid Sulfate Soils Management Plan was prepared by Douglas Partners (project ref: 39961.02, dated 19 January 2021) addressing the additional earthworks required to facilitate the additional basement level. The updated Acid Sulfate Soils Management Plan was included in the conditions imposed under the Modified Development Consent.

There are no earthworks proposed under the Subject Application to facilitate the alteration and additions proposed to the approved building. The conditions of consent relating to the management of acid sulfate soils imposed on the Original Development Consent, and as amended by the Modified Development Consent, remain unchanged under the Subject Application, and will continue to apply to the subject site. Accordingly, the site is considered suitable for the proposed development and an Acid Sulfate Soils Management Plan is not warranted in this instance.

Clause 6.2 - Earthworks

Clause 6.2 of the NLEP 2012 aims to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items, or features of the surrounding land. Specifically, **Clause 6.2(2)** specifies that consent is required for earthworks unless the works are exempt development, or ancillary to other development for which development consent has been granted.

There are no earthworks proposed under the Subject Application required to facilitate the alteration and additions proposed to the approved building.

Part 7 Additional Local Provisions—Newcastle City Centre

Clause 7.1 – Objectives of Part, and Clause 7.2 Land to which this Part applies:

Part 7 of the NLEP 2012 contains additional locality specific provisions for development on land located within the Newcastle City Centre.

The subject site is included within the Newcastle City Centre as shown on the '*Newcastle City Centre Map*'. In accordance with Clause 7.2, the provisions of Part 7 of the NLEP 2012 therefore apply to the Subject Application.

The proposed development is consistent with the objectives of Part 7, which include promoting the economic revitalisation of the Newcastle City Centre, facilitating design excellence, and protecting the natural and cultural heritage of Newcastle.

Clause 7.3 - Minimum building street frontage

Clause 7.3(1) requires that a building erected on land in the B3 Commercial Core zone must have at least one street frontage of at least 20m. The Original Development Consent satisfied this requirement by having a building frontage of 55m to Hannell Street. The Modified Development Consent made no changes in this regard.

Whilst alterations are proposed to the ground floor plan approved under the Modified Development Consent, the building maintains street frontage to Hannell Street well in exceedance of the 20m minimum required under this clause.

Clause 7.5 - Design Excellence

Clause 7.5 applies to the erection of a new building or to significant alterations to a building and states that a consent authority must not grant consent to development within the Newcastle City Centre unless the development exhibits design excellence.

The Subject Application seeks development consent for alterations and additions which in the opinion of the consent authority are significant, and therefore the provisions of Clause 7.5 apply. Clause 7.5(3) provides several matters that the consent authority must consider in deciding whether to grant consent on land to which the design excellence provisions apply. The proposed development is considered to deliver 'design excellence' and is of a high standard of architectural

quality, having regard to the design excellence considerations provided in Clause 7.5(3) of the NLEP 2012. This finding was further confirmed via CN's UDRP who provided full support for the Subject Application as detailed in the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment in **Section 5.1** of this report above.

Clause 7.5(4) provides that development consent must not be granted for certain types of development unless an architectural design competition has been held in relation to the proposed development, this includes 'development in respect of a building that is or will be higher than 48m in height'.

The development in its entirety (comprising the Modified Development Consent and the Subject Application) has a building height greater than 48m specifically as a result of the three additional floors proposed above the approved structure. Accordingly, the provisions of Clause 7.5(4) apply to the Subject Application.

However, Clause 7.5(5) specifies that Clause 7.5(4) does not apply if the Director-General certifies in writing that the development is one for which an architectural design competition is not required. Pursuant to Clause 7.5(5) of the NLEP 2012, the Government Architect NSW (delegate of the Director-General) has certified in writing that a design competition is not required for the proposed development, subject to the implementation of alternative design excellence process in accordance with the conditions of the waiver (letter dated 26 September 2022).

The alternative design excellence process provides a method of design integrity be established to ensure the development retains design excellence through to the completion of construction, this includes continuing review by CN UDRP at key milestones. Accordingly, a design competition is not required to be held prior to the granting of development consent.

Suitable conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) requiring the development to be undertaken in accordance with the architectural design competition waiver issued by the Government Architect NSW and the Design Excellence Strategy (rev: 02, dated 1 September 2022, prepared by Gyde Consulting) which was the basis on which the waiver was granted.

#### Clause 7.6 - Active Street Frontages in Zone B3 Commercial Core

Clause 7.6 states that consent cannot be granted for a development in a B3 Commercial Zone unless the building will have an active street frontage, where the ground floor facing the street is to be used for business or retail premises. The Original Development Consent satisfied this requirement with the inclusion of commercial retail premises at ground level along the Hannell Street and Dangar Street frontages. The Modified Development Consent made no changes in this regard. Whilst internal alterations are proposed to the ground floor plan approved under the Modified Development Consent, no changes are proposed to the extent of ground floor active street frontage approved.

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

There is no exhibited draft environmental planning instrument relevant to the application.

## 5.3 Any development control plan

### Newcastle Development Control Plan 2012

Council, at its meeting of 27 September 2022, adopted the amendments to the *Newcastle Development Control 2012* ('NDCP 2012') - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted development control plan sections include savings provisions to the following effect: *'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.'*

Notwithstanding, as the amended sections have been publicly exhibited and subsequently adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration. The main planning requirements of relevance in the NDCP 2012, as it applied to the proposal at the time of lodgement, are discussed below.

#### Residential Development - Section 3.03

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

Assessment of the Original Development Consent and subsequent Modified Development Consent considered and supported the approved development in respect to these controls. The alterations and additions proposed under the subject application does not include any significant changes to the majority of these aspects. The development in its entirety (comprising the Modified Development Consent and the Subject Application) maintains a scale and built form appropriate to its location and continues to provide good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

Furthermore, many of the controls in Section 3.03 of the NDCP 2012 specify compliance with the relevant components of the ADG under SEPP 65 as an acceptable solution. The Subject Application satisfies the provisions of the ADG, as detailed under the *'State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development'* assessment in **Section 5.1** of this report above, having specific regard to the design quality of the three additional floors of residential apartments (shop top housing) proposed above the approved structure.

Accordingly, the Subject Application is considered acceptable in relation to Section 3.03 of the NDCP 2012 and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity.

#### Commercial Uses - Section 3.10

Due to the nature and scope of the Subject Application, being minor alterations to approved floor plans and three additional floors above an approved structure, Section 3.10 of the NDCP 2012 contains limited controls relevant to the Subject Application. Nevertheless, the proposed development is considered satisfactory regarding the intent of the NDCP 2012.

#### Flood Management - Section 4.01

Refer to the '*Clause 5.21 – Flood planning*' assessment of the NLEP 2012 in **Section 5.1** of this report above.

#### Safety and Security - Section 4.04

The nature and scope of alterations and additions proposed under the Subject Application have limited impact on the safety and security outcomes within the development having regard to Crime Prevention Through Environmental Design (CPTED) principles, as compared to the approved development. The development in its entirety (comprising the Modified Development Consent and the Subject Application) continues to provide passive surveillance of the street and communal areas from residential balconies and living areas, podium commercial tenancies, and ground floor retail spaces. The internal driveway design continues to ensure low speed traffic movements to facilitate pedestrian safety. Direct, secure access remains available between the front entry, car parking areas, lifts, and stairs to the upper level of the buildings.

However, as the Subject Application proposes external alterations at ground level along the south boundary, these amendments require further consideration with respect to safety and security due to the unique interface with the Newcastle Transport Interchange and associated public domain areas.

The approved development provides three levels of basement parking. Additional parking, the vehicle ramp providing access to the basement levels below, and end of trip facilities are located in the southwest corner of the site at ground level. To screen this car parking and services area, this resulted in solid or 'blank' walls at ground level for the southern half of the Charles Street facade and for the majority of the southern facade facing the Newcastle Transport Interchange (with a nil setback along this boundary). This site arrangement permitted all the ground level facing Hannell and Dangar Streets to be activated, as well as the northern portion of the Charles Street facade.

The southern facade facing the Newcastle Transport Interchange was developed during the assessment of the Original Development Consent to ensure it made a positive contribution to the civic space, rather than reading as a 'side wall'. Public art was proposed for the extent of solid wall at ground level along the Charles Street

facade and the southern facade facing the Newcastle Transport Interchange as a means of providing further street activation and amenity to this public interface.

At the time of assessment of the Original Development Consent, the then Urban Design Consultant Group (now UDRP) and the Hunter and Central Coast Regional Planning Panel reviewed the development and were satisfied with the interface between the building at ground level and the Newcastle Transport Interchange. The Panel and UDRP also considered the Modified Development Consent and the interface between the buildings and and was satisfied that the provision of public art to this area would provide for an attractive space despite the solid wall.

The Original Development Consent and Modified Development Consent were granted prior to the WMP 2021 Update coming into effect. Amongst other matters, the WMP 2021 Update identified locations of proposed community infrastructure projects, which includes a 3m wide active transport link along the southern boundary of the subject site which is the boundary shared with the Newcastle Transport Interchange.

By relocating the end of trip facilities from the Ground Floor to Level 1, the alterations and additions proposed under the Subject Application will facilitate a three-metre setback at ground level along the southern boundary with columns supporting the podium levels above forming a colonnade. This increased setback enables a 'link' along the southern boundary of the site connecting Hannell Street and the corner of Charles and Station Streets (refer to Figure 4 below).

The three metre 'link' occurs only at ground level, with structural columns located within the three-metre setback to support the building over. Accordingly, this three-metre wide 'link' will not be land dedicated to CN, nor will it operate as an 'active transport connection' (i.e., suitable for bikes) as envisaged in the WMP 2021 Update. Notwithstanding, as detailed under '*Approval Pathways*' of **Section 2.0** of this report above the subject application is properly characterised as 'alterations and additions' and must be assessed as such, not as a new development. Given this, it is considered that the alterations and additions proposed under the Subject Application provides an improved pedestrian and safety outcome compared to the current approval on the site, notwithstanding that full realisation of the community infrastructure projects identified in the WMP 2012 Update is not achieved.

There are no changes proposed under the Subject Application with respect to the public art component as approved, other than the wall on which it is located will be setback three metres from the southern boundary (refer to Figure 4 below). Further, there are no changes proposed to the building entry (residential lobby) and retail premises (Retail 4) approved in the south east corner of the site, which provide an activated corner at the interface with Hannell Street and the Newcastle Transport Interchange (refer to Figure 5 below).

The increased setback to the southern boundary enhances the shared interface with the Newcastle Transport Interchange and provides a safer and protected pedestrian thoroughfare. This is a high pedestrian location where there is an increasing need to improve pedestrian safety, comfort and connectivity, as well as the qualities of public space. The increased setback along this façade provides further opportunity for

connectivity and visual permeability, with clear sightlines through the site to the public domain. It does not result in the creation of entrapment areas.

This finding was further confirmed via CN's UDRP who provided full support for the Subject Application, in particular noting that the increased setback at ground level and resulting colonnade form would '*...provide a positive space which is beneficial to public using the Interchange. The Panel considered this to be a worthwhile change in the design.*' Safety was also considered by the UDRP, with no concerns raised in this regard.

The development in its entirety (comprising the Modified Development Consent and the Subject Application) is satisfactory having regard to Crime Prevention Through Environmental Design (CPTED) principles: surveillance, access control, territorial reinforcement, and space management. Lighting, signage, emergency access, fencing and parking is considered to be appropriate to the nature of the proposal and has been incorporated into the development.

Additional crime prevention features to reduce the likelihood of criminal activity and provide a safe environment, can be addressed by the imposition of suitable conditions of consent. Suitable conditions of consent have been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) requiring a lighting strategy; and a design and management plan ('lighting plan') to be prepared by a qualified lighting designer and be reviewed and informed by the applicant's CPTED consultant. The lighting plan must be designed to ensure that spaces of shadow and concealment are not created by the building and the landscaping – particularly at points of ingress and egress, and within the three-metre building setback along the southern boundary at ground level. Lighting is to ensure that the external elevations have appropriate lighting.

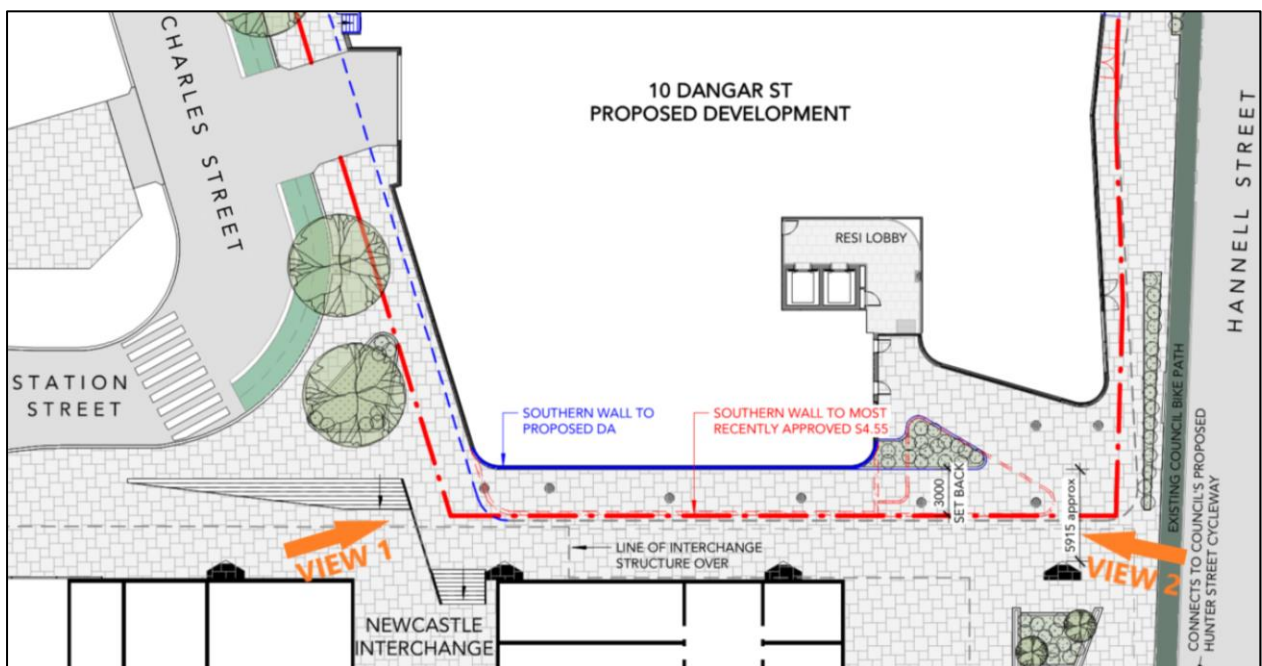


Figure 3: Extract of 'Ground Floor Public Domain Plan' (source: Team 2 Architects)



**Figure 4:** View 1 of proposed 3m setback at ground level (looking east towards Hannell St). Refer to Figure 3 above for location of viewpoint (source: Team 2 Architects).



**Figure 5:** View 2 of proposed 3m setback at ground level (looking west with the Interchange on the left). Refer to Figure 3 above for location of viewpoint (source: Team 2 Architects).



Social Impact - Section 4.05

The development in its entirety (comprising the Modified Development Consent and the Subject Application) provides for a mix of residential accommodation (ranging from 1 bedroom to 4-bedroom apartments) which supports social mix and housing affordability. Further, the development provides large areas of commercial floorplate (Level 1 to Level 3) along with areas on the ground floor for retail activities.

The proposed development is likely to have a positive social impact through providing additional housing choice within proximity to services and will activate Dangar Street and Hannell Street through the provision of retail spaces on the ground floor. It will also provide employment opportunities with the construction and the ongoing commercial and retail functions on the site.

Soil Management - Section 5.01

There are no earthworks proposed under the Subject Application to facilitate the alteration and additions proposed to the approved building. The conditions of consent relating to soil management, such as sediment and erosion control measures, imposed on the Original Development Consent, and as amended by the Modified Development Consent, remain unchanged under the Subject Application, and will continue to apply to the subject site.

Land Contamination - Section 5.02

Refer to the '*State Environmental Planning Policy (Resilience and Hazards) 2021*' assessment in **Section 5.1** of this report above.

Vegetation Management - Section 5.03

At the time of lodgement, the subject site was vacant of any permanent structures or vegetation as a result of demolition works being completed and initial site preparation works commencing in accordance with the Current Modified Development Consent. Accordingly, the Subject Application does not propose the removal of any vegetation to facilitate the alteration and additions proposed to the approved building.

Aboriginal Heritage - Section 5.04

Refer to the '*Clause 5.10 – Heritage conservation*' assessment of the NLEP 2012 in **Section 5.1** of this report above.

Heritage Items - Section 5.05

Refer to the '*Clause 5.10 – Heritage conservation*' assessment of the NLEP 2012 in **Section 5.1** of this report above.

Archaeological Management - Section 5.06

Refer to the '*Clause 5.10 – Heritage conservation*' assessment of the NLEP 2012 in **Section 5.1** of this report above.

Heritage Conservation Areas - Section 6.02

Refer to the '*Clause 5.10 – Heritage conservation*' assessment of the NLEP 2012 in **Section 5.1** of this report above.

Wickham - Section 6.03

Due to the nature and scope of the Subject Application, being minor alterations to approved floor plans and three additional floors above an approved structure, Section 6.01 of the NDCP 2012 contains limited controls relevant to the proposal.

Notwithstanding, it is considered that the development in its entirety (comprising the Modified Development Consent and the Subject Application) is acceptable having regard to its character, streetscape appearance, height, bulk, and scale. The development is of a type and scale that is allowed under the planning controls and the design of the building is considered aesthetically appropriate within the emerging built context of the area.

The impact on general outlook and overshadowing of neighbouring properties is acceptable, having regard to the site's context, the intended desired future character and built form for the area, and the nature of existing and approved development in the vicinity of the subject site.

The floor space ratio, height and character of the development are considered acceptable, as previously discussed elsewhere in this report. Further, a three-metre building setback from the southern boundary is proposed at ground level. This setback creates an improved interface with the adjacent Newcastle Transport Interchange as it promotes pedestrian activation of the public domain and is therefore considered an improved outcome to that approved under the Modified Development Consent.

Landscape Open Space and Visual Amenity – Section 7.02

Whilst internal alterations are proposed to the floor plans approved under the Modified Development Consent, no meaningful changes are proposed to the landscaping provisions approved under the Modified Development Consent. Accordingly, Section 7.02 of the NDCP 2012 contains limited controls relevant to the proposal and the Subject Application is satisfactory.

Traffic, Parking and Access - Section 7.03

At the time the Modified Development Consent was granted, Section 7.03 Version 4 of the NDCP 2012 was in force. Subsequently, Council has adopted amendments to this section of NDCP 2012 and Version 5 came into effect on 1 November 2022.

Version 5 includes saving provisions which allows the use of Version 4 where a development application has been lodged but not yet determined. However, the provisions of Version 5 have been considered within the assessment of the Subject Application as discussed below.

*Vehicular access, driveway design and crossing location:*

There are no changes proposed under the Subject Application to the location and design of the driveway access from the Charles Street site frontage as approved under the Modified Development Consent. Charles Street had been made 'one-way' in accordance with the WMP 2017 and therefore the driveway access will be left in/left out.

There are no changes proposed under the Subject Application to the internal vehicular access ramps as approved under the Modified Development Consent. Whilst there are minor changes proposed to the internal car parking layout under the Subject Application, the design of the parking area remains compliant.

*Parking demand:*

A Traffic and Parking Assessment has been prepared by MLA Transport Planning (ref: 20040107C-220411, dated 11 April 2022) and submitted with the Subject Application and addresses the parking demands arising from the alterations and additions proposed to the approved development.

Subsequently, a letter prepared by MLA Transport Planning ('MLA Letter', ref:20040110A-220919, dated 19 September 2022) was submitted in response to assessment matters raised by CN. The MLA Letter addressed the assessment matters raised by CN and has demonstrated that the parking provisions of the development in its entirety (comprising the Modified Development Consent and the Subject Application) is generally sustainable.

The Traffic and Parking Assessment and the MLA Letter submitted in support of the Subject Application have provided detailed parking comparisons for the Modified Development Consent against the Subject Application, with an in-depth parking analysis for the residential, commercial and retail components of the development in its entirety (comprising the Modified Development Consent and the Subject Application) as well as discussing the transport mode shift towards encouraged use of public transport.

*Car parking:*

The Modified Development Consent includes the provision of 198 car parking spaces, distributed over the four levels of parking of the approved development (Basement 3, Basement 2, Basement 1, and Ground Floor).

Changes are proposed under the Subject Application to the number and allocation of car parking spaces approved under the Modified Development Consent. A total of 195 car parking spaces are proposed, resulting in a reduction of three car parking space from the approved development.

A summary of the car parking proposed for the development in its entirety (comprising the Modified Development Consent and the Subject Application) is provided in Table 4 below.

**Table 4: Summary of the car parking requirements, the approved car parking allocation and the car parking proposed**

Land use	Approved car parking allocation (Modified Development Consent)	Proposed car parking allocation
Residential	86	111
Residential visitors	10	12
Retail	17	10
Commercial	85	62
<b>Total</b>	<b>198</b>	<b>195</b>

*Accessible parking spaces:*

A condition of consent has been recommended that a minimum of six car parking spaces shall be designated as disabled parking and shall be provided between residential, commercial, and retail uses. The ratio of disabled parking spaces provided is acceptable having regard to Section 7.03.

*Residential:*

As noted above the development proposes 111 spaces for the residential component. The proposed development maintains 12 residential visitor car spaces, consistent with the Modified Development Consent, and proposes to co-share 12 retail and commercial car spaces as visitor parking after business hours. Thus, 24 residential visitor car spaces would be available after business hours. Proposed multi-use of the retail and commercial parking is consistent with the Modified Development Consent.

*Commercial and retail:*

A total of 62 Commercial and 10 Retail parking spaces are proposed under the Subject Application. The provision of commercial and retail car parking spaces do not meet the previous or current car parking rates (Section 7.03 Version 4 and Section 7.03 Version 5 respectively).

Notwithstanding the above, the aims of the current car parking rates in the DCP (Section 7.03 Version 5) is to reduce dependency on cars. Further, the subject site adjoins the Newcastle Transport Interchange, which now consists of the new Bus Exchange, Light Rail, Heavy Rail, and the additional Bus Stops on the Hannell Street frontage of the site.

The submitted traffic reports and Green Travel Plan, together with the provision of additional bicycle and motorbike parking spaces together with the generous provision of end user facilities such as shower and locker facilities, further support the reduced car parking provision on site. Accordingly, the proposed commercial and retail car parking spaces are considered sufficient to service the development.

The Traffic and Parking Assessment and the MLA Letter sufficiently justify the variation to the car parking requirements. The MLA Letter has considered the provision for different modes of transport for the development and focused on elements such as the sustainable move towards the use of public transportation, use of alternative transport while also considering the shared use car parking spaces between residential visitors and the retail/commercial components of the development.

Further to this, the alterations and additions proposed under the Subject Application facilitate additional end user facilities, compared to the Modified Development Consent, with the provision for secured lockers, bicycle parking and additional toilet and shower facilities for commercial and retail users.

The MLA Letter has provided an in-depth management plan highlighting the Green Travel Plan options for commercial and retail tenancies. The proposal aims to encourage the use of public and alternative transport by a managed implementation process and through monitoring the green travel plan. The MLA Letter recommends Green Travel Plan conditions, Strata By-Laws and a condition to prohibit the selling and/or renting of any on-site car parking spaces to non-occupants of the proposed development.

CN is promoting the use of public transport in the Newcastle LGA. Transport mode shift to use public and alternative transport options for commercial and retail premises within the Newcastle City Centre is encouraged over the high dependency on cars. The Subject Application has a flexible approach towards the use of alternative transport modes and multi-use car parking spaces. On balanced car parking numbers and allocations can be accepted.

Suitable conditions of consent have been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) addressing the car parking requirements and allocations of the proposed development.

Additionally, it is noted that Condition 7 and Condition 91a of the Modified Development Consent specifies the parking requirements and allocations (car, motorbike, and bicycle parking) for the approved development. Further, Condition 69 and 100a of the Modified Development Consent specifies that the residential visitor parking spaces are to be allocated as indicated in the architectural plans DA1000 – DA1003 submitted in support of the Modified Development Consent and address the use of commercial/retail car parking spaces for the purposes of residential visitor parking after business hours ('multi-use car parking spaces').

In order to avoid inconsistency between consents which apply to the subject site, a condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) pursuant to s.4.17(1)(b) and s.4.17(5) of the EP&A Act 1979 and s.67 of the EP&A Regulations 2021 which has the effect of modifying Condition 7 and Condition 91a of the Modified Development Consent to update the parking requirements and allocations in accordance with the changes proposed under the Subject Application, and Condition 69 and 100a of the Modified Development Consent to ensure the residential visitor car parking spaces and 'multi-use car parking spaces' are allocated as proposed under the Subject Application.

*Green travel plan:*

A condition was imposed on the Modified Development Consent which required a green travel plan to be prepared and implemented for the approved development [Condition 91b)].

A green travel plan has subsequently been prepared for the development in its entirety (comprising the Modified Development Consent and the Subject Application), forming part of the Traffic and Parking Assessment and MLA Letter submitted with the Subject Application.

The submitted Traffic and Parking Assessment and the MLA Letter recommend green travel plan conditions, Strata By-Laws and a condition to prohibit the selling and/or renting of any on-site car parking spaces to non-occupants of the proposed development.

Suitable conditions of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) to ensure the green travel plan and associated recommendations within the submitted Traffic and Parking Assessment and MLA Letter are implemented.

In order to avoid inconsistency between consents which apply to the subject site, a condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) pursuant to s.4.17(1)(b) and s.4.17(5) of the EP&A Act 1979 and s.67 of the EP& A Regulations 2021 which has the effect of modifying Condition 91b of the Modified Development Consent to reflect the green travel plan and associated recommendations within the submitted Traffic and Parking Assessment and MLA Letter.

*Electric vehicle charging:*

Section 7.03 Version 5 now includes requirements for the provision of electric vehicle parking within development. A minimum of 5% of the car parking spaces are to be installed with Level 2 or higher electric vehicle charging points, and 100% of the car parking spaces are to be designed with electrical infrastructure (such as cable size, distribution boards and electrical circuitry) to allow for future installation of electric vehicle charging points.

The development in its entirety (comprising the Modified Development Consent and the Subject Application) provides a total of 195 car parking spaces, thus a minimum of 10 car parking spaces are required to be installed with Level 2 or higher electric vehicle charging points.

Suitable conditions of consent have been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) to ensure the required electric vehicle circuitry and electric vehicle charging points are implemented.

In order to avoid inconsistency between consents which apply to the subject site, a condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) pursuant to s.4.17(1)(b) and s.4.17(5) of the EP&A Act 1979 and s.67 of the EP& A Regulations 2021 which has the effect of

modifying conditions of the Modified Development Consent to include a new condition to ensure the required electric vehicle circuitry and electric vehicle charging points are implemented.

*Loading and servicing:*

There are no changes proposed under the Subject Application to the number and location of loading bays approved under the Modified Development Consent; four loading bays, including one combined loading/ carwash bay and one small rigid vehicle loading bay, are maintained at the Ground Floor.

*Motorbike parking:*

The Modified Development Consent includes the provision of 19 motorbike spaces, distributed within the basement parking levels of the approved development.

Changes are proposed under the Subject Application to the number and location of motorbike spaces approved under the Modified Development Consent. Three additional motorbike spaces are proposed, resulting in a total of 22 motorbike spaces which are generally distributed over the four levels of parking (Basement 3, Basement 2, Basement 1, and Ground Floor).

A minimum of 13 motorbike spaces are required in accordance with the requirements of this section of the NDCP 2012, resulting in a surplus of nine motorbike spaces. The number of motorbike spaces proposed is well above the minimum NDCP 2012 requirements and offer an alternative travel option.

The proposed distribution of motorbike spaces between residential and commercial/retail is listed below and is supported:

- a) 6 motorbike spaces for residential
- b) 1 motorbike spaces for residential visitor
- c) 15 motorbike spaces for commercial and retail

Condition 7 and Condition 91a of the Modified Development Consent specifies the parking requirements and allocations (car, motorbike, and bicycle parking) for the approved development.

In order to avoid inconsistency between consents which apply to the subject site, a condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) pursuant to s.4.17(1)(b) and s.4.17(5) of the EP&A Act 1979 and s.67 of the EP& A Regulations 2021 which has the effect of modifying Condition 7 and Condition 91a of the Modified Development Consent to update the parking requirements and allocations in accordance with the changes proposed under the Subject Application .

*Bicycle parking:*

The Modified Development Consent includes the provision of 179 bicycle spaces, distributed over the four levels of parking of the approved development (Basement 3, Basement 2, Basement 1, and Ground Floor).

Changes are proposed under the Subject Application to the number and location of bicycle spaces approved under the Modified Development Consent. A total of 31 additional bicycle spaces are proposed, resulting in 210 bicycle spaces which are generally distributed over the four levels of parking (Basement 3, Basement 2, Basement 1, and Ground Floor).

A minimum of 170 bicycle spaces are required in accordance with the requirements of this section of the NDCP 2012, resulting in a surplus of 40 bicycle spaces. The number of bicycle spaces proposed is well above the minimum NDCP 2012 requirements and offer an alternative travel option. Furthermore, additional end user facilities including accessible toilets and additional showers are proposed.

The proposed distribution of bicycle spaces between residential and commercial/retail is listed below and is supported:

- a) 118 bicycle spaces for residential (that is, one space per apartment)
- b) 12 bicycle spaces for residential visitors
- c) 80 bicycle spaces for commercial and retail

Condition 7 and Condition 91a of the Modified Development Consent specifies the parking requirements and allocations (car, motorbike, and bicycle parking) for the approved development.

In order to avoid inconsistency between consents which apply to the subject site, a condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) pursuant to s.4.17(1)(b) and s.4.17(5) of the EP&A Act 1979 and s.67 of the EP& A Regulations 2021 which has the effect of modifying Condition 7 and Condition 91a of the Modified Development Consent to update the parking requirements and allocations in accordance with the changes proposed under the Subject Application.

*Loading zone:*

The current amended plans show a proposed heavy rigid vehicle loading zone on the eastern side of Charles Street adjacent the subject site (*Site Plan*, drawing no. DA-0010, rev: E, dated 10 November 2022, prepared by Team 2 Architects).

The proposed loading zone has been shown to demonstrate that there is a suitable location available for CN's waste collection vehicle to park that is within 10m from the onsite waste collection point in accordance with CN requirements.



However, consultation has been undertaken with CN's Traffic and Transport team and the proposed heavy rigid vehicle loading zone is not supported. Notwithstanding, and as detailed in the '*Waste Management - Section 7.08*' assessment of the NDCP 2012 below, assessment of the Modified Development Consent confirmed that the residential component of the now approved development was capable of being serviced by CN's Waste Services, in accordance with CN policy and as such waste collection does not require use of the loading zone. Waste collection for the development does not require kerbside collection as the development has been designed to facilitate collection by CN (further detailed below).

Whilst the proposed development increases the size of the approved waste storage rooms located on the Ground Floor to accommodate the additional waste generated by the 21 additional apartments proposed, no changes are made to the location of access points into the waste storage rooms approved under the Modified Development Consent. Further, there are no changes proposed to the transfer of waste, bin movements, or path of travel for waste collection as provided under the Modified Development Consent, which still provides collection by CN and does not allow for kerbside collection. As such, the Subject Application remains consistent with the approved development in regards this regard.

CN's Waste and Commercial Collection Manager has reviewed the Subject Application in relation to waste servicing and was satisfied in regard to operational waste management. It is considered that adequate services and waste facilities are available to the development.

*Public domain:*

A Roads Act application (RA2020/00708) in relation to the approved development has been lodged and approved by CN for the public domain and associated works in accordance with Condition 22 of the Modified Development Consent.

The Roads Act approval generally consists of the following:

- i) The changes to on-street parking scheme.
- ii) Proposed raised pedestrian crossing at the corner of Station Street.
- viii) Footpath Upgrade works along Hannell, Dangar, Charles, and Station Streets and kerb extension works for pedestrian management.
- ix) New footpath pavement treatment to generally be continuous from the Newcastle Transport Interchange and around the property.
- x) Landscaping of all frontages of the site including new street trees, paver pavement and planter beds.
- xi) Stormwater and drainage works.
- xii) Street lighting works.

It is noted that CN have recently engaged consultants to review the Newcastle City Centre Public Domain Technical Manual (NCCPD Tech Manual), including the incorporation of the Wickham Masterplan Area. The review is currently being undertaken. In this regard, consultation with the applicant will occur through this process and any changes to the approved Roads Act approval arising from the amendments to the NCCPD Tech Manual in respect to the Wickham Public Domain will be appropriately coordinated and managed.

Notwithstanding, it is noted that there are no changes proposed under the Subject Application to public domain works as approved under the Modified Development Consent. The Subject Application is considered to be satisfactory.

*Traffic generation:*

A Traffic and Parking Assessment has been prepared by MLA Transport Planning (ref: 20040107C-220411, dated 11 April 2022) and submitted with the Subject Application and addresses the traffic and parking implications arising from the alterations and additions proposed to the approved development.

The Traffic and Parking Assessment found that the proposed development would generate an additional 10 vehicle per hour during the busiest peak period when compared to the approved development. It is concluded that the proposed development would not create any discernible traffic effect on the surrounding road networks and confirms that the nearby intersections would continue to operate as original planned.

Accordingly, the traffic generated as a result of the alterations and additions proposed under the Subject Application is considered acceptable.

*Construction traffic:*

The subject site has no formal access from the Hannell Street frontage. Vehicle access to the development site is on Charles Street, via Bishopsgate Street. Demolition works have been completed and initial site preparation works have commenced onsite in accordance with the Current Modified Development Consent.

The conditions of consent relating to traffic management during construction imposed on the Original Development Consent, and as amended by the Modified Development Consent, remain unchanged under the Subject Application, and will continue to apply to the site.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

*Stormwater management:*

Updated Stormwater Management Plans have been prepared by Acor Consultants and submitted with the Subject Application, addressing the alterations proposed to the basement levels. The submitted Stormwater Management Plans applies to the development in its entirety, comprising both the Modified Development Consent and the Subject Application.

There are no changes to the stormwater reuse tank proposed under the Subject Application to facilitate the alterations and additions proposed. The submitted Stormwater Management Plans are consistent with the Modified Development Consent in this regard, showing a 73m<sup>3</sup> stormwater reuse tank located at Basement 1 for reuse and retention. The reuse will be generally for Ground Floor retail tenancies and landscape areas, Level 1 to Level 3 commercial tenancies, and the Level 4 landscaped podium.

The stormwater quality and quantity assessment by Acor Consulting has demonstrated compliance with the NDCP 2012 guidelines for reuse, and stormwater management is designed to mitigate downstream impacts. There are no changes to the drainage discharge connection under the Subject Application to facilitate the alterations and additions. The submitted Stormwater Management Plans are consistent with the Modified Development Consent in this regard, showing the discharge from the onsite retention tank is to be connected to the existing kerb inlet pit on Charles Street.

Suitable conditions of consent have been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) addressing stormwater management for the proposed development.

Additionally, Condition 2 of the Modified Development Consent identifies the 'approved documentation' which the approved development is to be implemented in accordance with. Further, Condition 28 of the Modified Development Consent specifically reference the stormwater management plans prepared for the approved development which are now superseded by the updated Stormwater Management Plans submitted with the Subject Application.

In order to avoid inconsistency between consents which apply to the subject site, a condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) pursuant to s.4.17(1)(b) and s.4.17(5) of the EP&A Act 1979 and s.67 of the EP& A Regulations 2021 which has the effect of modifying Condition 2 and Condition 28 of the Modified Development Consent to reference the submitted Stormwater Management Plans prepared by Acord Consultants.

Other conditions of consent relating to stormwater management imposed on the Original Development Consent, and as amended by the Modified Development Consent, remain unchanged under the Subject Application, and will continue to apply to the subject site.

*Groundwater management:*

There are no changes to groundwater management proposed under the Subject Application to facilitate the alterations and additions proposed. However, as discussed in the 'Section 1.22 – Traffic-generating development' assessment of the Transport and Infrastructure SEPP in **Section 5.1** of this report above, written advice from TfNSW received dated 10 June 2022, recommended the temporary pump out pipe shown to discharge to Hannell Street on the submitted Stormwater Management Plans ('Erosion & Sediment Control Plan', drawing no. C13, issue H, dated 7 April

2022, prepared by Acor Consultants), should be relocated to the stormwater pit in Charles Street.

The applicant provided confirmation on the dewatering discharge location, and CN's site inspection has confirmed that the temporary pump out pipe is being discharging to an existing kerb inlet pit in Charles Street.

The conditions of consent relating to groundwater management imposed on the Original Development Consent, and as amended by the Modified Development Consent, remain unchanged under the Subject Application, and will continue to apply to the subject site.

#### Waste Management - Section 7.08

##### *Demolition waste:*

The Subject Application seeks development consent for alteration and additions to an approved, but not yet constructed building, accordingly there are no demolition works.

##### *Operational waste:*

The Modified Development Consent approved separate waste storage rooms for the residential and commercial components located at ground floor to store the waste and recycling generated by the now approved development.

Assessment of the Modified Development Consent supported waste collection for the commercial and retail component via private collection from the commercial waste storage room at Ground Floor, which is facilitated by the provision of a small rigid vehicle loading bay adjacent the waste storage rooms.

Assessment of the Modified Development Consent concluded that the residential component of the now approved development was capable of being serviced by CN's Waste Services, in accordance with CN policy. CN's heavy rigid vehicles are able to park at the corner of Charles and Station Streets and collect the residential bins from the onsite residential waste storage room at Ground Floor, which has been designed to satisfy CN's required travel distances.

Alterations are proposed under the Subject Application to increase the size of both the residential and commercial waste storage rooms located on the Ground Floor. No changes are made to the location of access points into the waste storage rooms. An amended operation Waste Management Plan has been prepared by Elephants Foot Recycling Solutions (revision G, dated 5 April 2022) detailing the operational phase of the development in its entirety (comprising the Modified Development Consent and the Subject Application).

Waste storage and collection facilities remain integrated into the development and will have minimal impact on the amenity of adjoining residents, building entry and the streetscape. Furthermore, the development in its entirety can be serviced without disruption to traffic, on street parking and without requiring the presentation of waste bins to the street frontages.

Suitable conditions of consent have been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) addressing operational waste management.

Additionally, it is noted that Condition 2 of the Modified Development Consent identifies the 'approved documentation' which the approved development is to be implemented in accordance with.

In order to avoid inconsistency between consents which apply to the subject site, a condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) pursuant to s.4.17(1)(b) and s.4.17(5) of the EP&A Act 1979 and s.67 of the EP&A Regulations 2021 which has the effect of modifying the Condition 2 of the Modified Development Consent to include the Waste Management Plan prepared by Elephants Foot Recycling Solution (revision G, dated 5 April 2022).

Other conditions of consent relating to waste management imposed on the Original Development Consent, and as amended by the Modified Development Consent, remain unchanged under the Subject Application, and will continue to apply to the subject site.

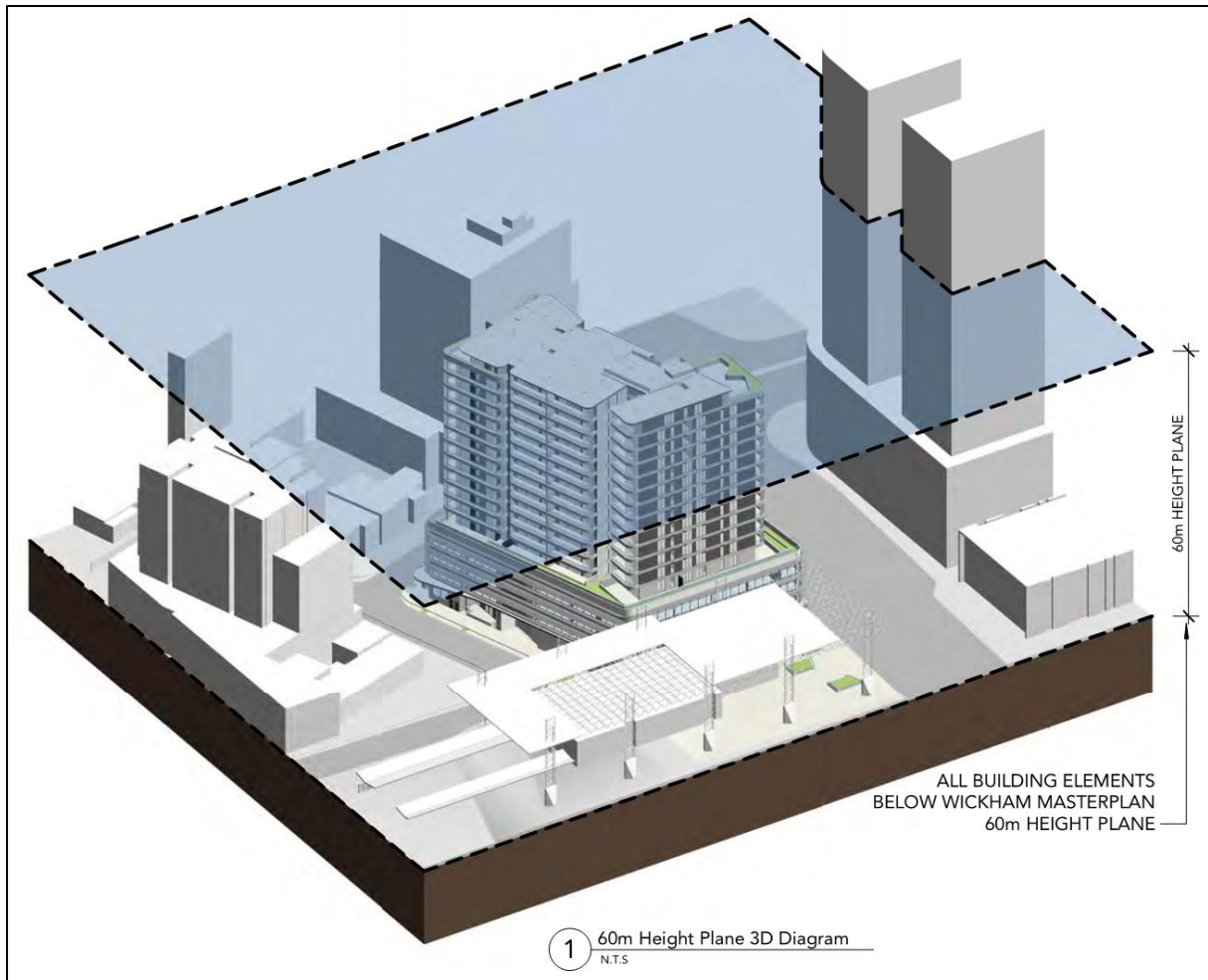
### **Wickham Master Plan 2017 and Wickham Master Plan 2021 Update**

The WMP 2017 was adopted by Council on 28 November 2017 and outlines the vision of how the area is to evolve over a 25-year period from a semi-industrial suburb into a mixed-use urban area, reinforcing the Newcastle City Centre core with the adjoining Newcastle West. The Master Plan has divided the area into six interconnecting precincts, with the subject site located in the Rail Edge precinct.

The WMP 2017 identifies land that is likely to redevelop and has identified the subject site as having redevelopment potential. It states that additional development potential may be achieved for development proposals that enable adequate solar access and view sharing, meet relevant design codes, and provide a quantifiable community benefit to Wickham in exchange for additional building height. The WMP 2017 specifically identifies that the subject site has the potential to accommodate even greater building height up to 60m (19/20 storeys), which provides a transition from the adjoining height limit of 90m (30 storeys) allowed along Hunter Street in Newcastle West. Despite this, the incentive-based mechanism is not yet formally adopted or gazetted within CN's local environmental plan, and as such variations to development standards are still assessed under cl.4.6 of the NLEP 2012.

The Subject Application results in an increase to the approved building height of the Modified Development Consent, specifically as a result of the three additional floors proposed above the approved structure. As detailed under the '*Clause 4.6 – Exception to Development Standards*' assessment of the NLEP 2012 in **Section 5.1** of this report above, the proposed development exceeds the 45m height of building development standard currently prescribed for the subject site. However, at 56.95m height the proposed development remains below the 60m building height recommended in the WMP 2017. Figure 6 below shows that all elements of the development in its entirety (comprising the Modified Development Consent and the Subject Application) are below the 60m height plane (shown in blue) recommended

in the WMP 2017. The massing and dominance of the surrounding development will soften with this transitioning approach, allowing for cohesive design and suitable scale when viewed from public areas.



**Figure 6:** Extract of 'Height Plane Diagram' (source: Team 2 Architects)

The WMP 2017 also identifies strategies and actions required to implement the desired vision for Wickham. This includes improving accessibility and connectivity, creating safe, attractive public places, and ensuring the built environment is functional and resilient.

The WMP 2017 foreshadows 'potential land acquisitions', including a three-metre acquisition to Station Street for street/footpath works and a 10m acquisition to Charles Street (south-west corner) for open space/public domain improvements. These 'potential land acquisitions' were considered in the assessment of the Original Development Consent, however no mechanism for such acquisitions had progressed for inclusion in the NLEP 2012 at the time. As such, it was considered that there was insufficient certainty about land acquisitions affecting the subject site to justify seeking these acquisitions.

Following ongoing monitoring and review of the implementation of the WMP 2017, identification of further challenges, and engagement with the local community, CN prepared the WMP 2021 Update, which Council adopted on 28 September 2021. Council subsequently adopted an amendment to the WMP 2021 Update on 26 July

2022. The amendment involved minor changes to the areas proposed for development incentives and the corresponding controls that apply in these areas.

The WMP 2021 Update considers possible incentive-based mechanisms to enable the assessment of additional density above the prescribed development standards. The WMP 2021 Update identifies that the subject site has the potential to accommodate even greater floor space ratio, up to 7:1 subject to incentivised floor space bonuses when provided within a Planning Agreement. Despite this, the incentive-based mechanism is not yet formally adopted or gazetted within CN's local environmental plan and as such variations to development standards are still assessed under clause 4.6 of the NLEP 2012.

The Subject Application results in an increase to the approved floor space ratio of the Modified Development Consent, specifically as a result of the three additional floors proposed above the approved structure. As detailed under the '*Clause 4.6 – Exception to Development Standards*' assessment of the NLEP 2012 in **Section 5.1** of this report above, the proposed development exceeds the 5:1 floor space ratio development standard currently prescribed for the subject site. However, with a 6.9:1 floor space ratio the proposed development remains below the 7:1 floor space ratio recommended in the WMP 2021 Update.

The development in its entirety (comprising the Modified Development Consent and the Subject Application) includes several urban activation spaces and there is sufficient space around the edges of the development to provide a suitable transition from the Newcastle Transport Interchange into the development, which allows for pedestrian flow and connectivity within the Wickham area. Notably, the three-metre building setback at ground level from the southern boundary proposed under the Subject Application creates an improved interface with the adjacent Newcastle Transport Interchange as it promotes pedestrian activation of the public domain and is therefore considered a better outcome to that approved under the Modified Development Consent.

In summary, the objectives of the WMP 2017 and WMP 2021 Update have generally been met in that the proposed development is further facilitating urban renewal for a site that has been identified as having development potential due to its strategic location and access to services.

### **Development Contributions**

The following Local Infrastructure Contributions Plans are relevant pursuant to Section 7.18 of the EP&A Act 1979.

- a) City of Newcastle Section 7.11 Development Contributions Plan 2021-2036. ('Section 7.11 Plan')

The Section 7.11 Plan was prepared pursuant to the provisions of the EP&A Act 1979 and the EP&A Regulations 2000 and took effect from 1 January 2022. In accordance with the EP&A Act 1979 and the EP&A Regulations 2000, the S7.11 Plan authorises a consent authority to impose a condition of consent requiring the payment of a levy.

The S7.11 Plan applies to residential development which would result in the creation of additional private lots/dwellings, except mixed residential and non-residential development where the residential component comprises less than 10% of the total gross floor area or where an exemption is provided by the S7.11 Plan.

The Subject Application is for residential development (shop top housing) and will result in the creation of additional private lots/ dwellings (21 additional apartments). The carrying out of the proposed development would result in an increased demand on public amenities and public services within the area. A contribution of \$266,651.36 (indexed) would be required for the proposed redevelopment under the contributions plan.

A condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) requiring the above contribution be paid.

The condition of consent relating development contributions imposed on the Original Development Consent, and as amended by the Modified Development Consent, remain unchanged under the Subject Application, and will continue to apply to the subject site.

#### 5.4 Planning agreements

A draft Planning Agreement in connection with the Subject Application has been separately assessed and reported to Council by City of Newcastle's ('CN') Urban Planning Section. At the Ordinary Council meeting held on 27 September 2022, Council resolved to place the draft Planning Agreement on public exhibition for 28 days.

Public exhibition of the draft Planning Agreement occurred between 30 September 2022 and 28 October 2022.

Subsequently, the Planning Agreement was reported to Council for endorsement at the Ordinary Council meeting held 22 November 2022. Council resolved to endorse the Planning Agreement.

Notwithstanding the above, it is noted that under the provisions of the *Environmental Planning and Assessment Act 1979* ('EP&A Act 1979') the Planning Agreement and Subject Application require separate assessment processes and pathways.

A condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) requiring that:

*The Planning Agreement (VPA2022/00001) relating to Lot 1 DP1197377, known as 10 Dangar Street Wickham, as executed, must be registered on the Title of land prior to the issue of any Construction Certificate. Full Details are to be included in the documentation for a Construction Certificate application.*



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

### AS2601 -1991: The Demolition of Structures

As the Subject Application seeks development consent for alteration and additions to an approved, but not yet constructed building, no demolition works are proposed.

### Section 62 and 64 of the EP&A Reg2021 – Fire safety and other considerations

Fire safety and other considerations, as nominated in s.62. and s.64 6 of the EP&A Regulations 2021 do not apply to this application.

### Local Government Act 1993

This application does not generate the need for a separate s.68 application under the *Local Government Act 1993*.

### NSW Address policy and guidelines

The development would result in the need for a new address for the premises. Suitable conditions of consent have been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) to identify the street addresses allocated.

Additionally, it is noted that Condition 105 of the Modified Development Consent requires the applicant to contact CN to obtain addressing allocations for the approved development.

In order to avoid inconsistency between consents which apply to the subject site, a condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) pursuant to s.4.17(1)(b) and s.4.17(5) of the EP&A Act 1979 and s.67 of the EP& A Regulations 2021 which has the effect of modifying the Condition 105 of the Modified Development Consent to identify the street addresses allocated.

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

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

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

Views

The development in its entirety (comprising the Modified Development Consent and the Subject Application) will alter the general outlook from surrounding prominent areas and existing residential development surrounding the subject site due to the proposed changes in size and scale. However, this is considered reasonable in the high-density urban context of the site and scale of surrounding development.

Further, the overall building form, and bulk and scale of the development in its entirety (comprising the Modified Development Consent and the Subject Application) does not impede on identified view corridors.

Having regard to the impacts of view sharing, it is considered that the proposed development has adequately balanced the amenity of adjoining apartments with the overall desire to achieve density in an inner-city location.

Wind tunnelling

The Newcastle area is subject to strong winds, particularly during winter. As the development in its entirety (comprising the Modified Development Consent and the Subject Application) incorporates a tall building with a large surface area, there is a potential for the development to influence wind movement, including the creation of downward drafts from the facade impacting on the ground plane below.

The application for the Modified Development Consent was not accompanied by a wind tunnel report. As such, a condition was imposed on the Modified Development Consent requiring a wind tunnelling report be prepared by an appropriate qualified and experienced engineer for the approved development [Condition 16a)].

A Pedestrian Wind Environment Study was prepared by Windtech Consultants (ref: WG476-01F02(REV1), dated 3 November 2021 – 'WE REPORT') for the approved development in accordance with Condition 16a of the Modified Development Consent. This report assesses the wind environment conditions within and around the approved development with reference to both wind comfort and safety.

As the WE Report does not address the Subject Application (specifically, the three additional floors of shop top housing proposed above the approved structure), a letter prepared by Windtech Consultants ('Pedestrian Wind Environment Letter', ref: WG476-03F02(rev0)- Alts & Adds Mod WE Response Letter, dated 2 November 2022 – 'WE LETTER') was submitted by the applicant providing advice as to any effect that the alterations and additions proposed under the Subject Application has on the wind environment conditions and recommendations assessed in Windtech Consultants previous report.

The Pedestrian Wind Environment Letter notes that the development in its entirety (comprising the Modified Development Consent and the Subject Application) shares very similar massing and form to the model tested during the previous wind tunnel study undertaken for the approved development.

The WE Letter confirms that the trafficable areas within and around the proposed development are expected to experience similar wind conditions to those outlined within Windtech Consultants previous report for the approved development. As such, the wind mitigation treatments recommended with the Pedestrian Wind Environment Study are still applicable, with the following treatments recommended to address the alterations proposed to Level 13 and the three additional floors proposed (Level 14 to Level 16) under the Subject Application:

Level 13, Level 14, and Level 15:

- i) Retain proposed standard height impermeable balustrade.
- i) Provision of full height vertical angled louvred sections on north-east corner balconies (5-6m long extension on the northern balconies, and 1m long extension on the southern balconies).

Level 16 (consistent with approved Level 13):

- i) Retain proposed standard height impermeable balustrade.
- ii) Retain proposed densely foliating evergreen shrubs or hedge planting.
- iii) Provision of full height vertical angled louvred section for 3-4m along the western perimeter of the north-western balcony.

With the inclusion of the recommended wind mitigation treatments from Windtech Consultants, it is expected that all areas within and around the subject development will experience suitable wind comfort and safety conditions for the intended uses of those areas.

Suitable conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment C**) requiring; (1) appropriate wind mitigation treatments be implemented and in accordance with the recommendations set out in the WE REPORT and the WE Letter; and (2) written final certification confirming the recommended wind mitigation treatments have been implemented in accordance with the requirements of the above documentation be submitted to the Principal Certifying Authority and CN prior to the issue of an Occupation Certificate.

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

As discussed throughout this report, the site is considered suitable for the alterations and additions proposed to the approved development as the site has been identified for this scale and form of development through the strategic planning process, specifically the WMP 2017 and WMP 2021 Update.

The variations sought to the development standards are acceptable given the circumstances of the development site. The alterations and additions proposed to the approved, but not yet construction development, are acceptable having regard to built form characteristics and potential impacts. The Subject Application has been reviewed and supported by CN's UDRP during the assessment.

The land is suitably zoned for the development which is permissible. The site is strategically located at the interface of the emerging commercial core of the Newcastle City Centre (in Newcastle West) and is surrounded by a variety of essential services and infrastructure. In particular, the site is located directly adjacent to the Newcastle Transport Interchange, which is a major public transport node providing access to the Central Coast, Newcastle, Sydney, and Hunter train line, the Newcastle Light Rail, and the Newcastle bus interchange which provides abundant connections throughout the local government area and beyond.

The constraints of the site have been considered in the design of proposal. Further, the site is not affected by significant environmental constraints that would preclude development of the site. The site is therefore suitable for the development, as outlined within the detailed assessment contained within this report, and subject to the recommended conditions of consent.

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

The development application was publicly notified in accordance with CN's Community Participation Plan (CPP). The Subject Application was notified on two occasions, the first notification period occurred for a period of 14 days, between 26 May 2022 and 9 June 2022, and one submission was received in response. The Subject Application was notified for a second occasion in association with the draft Planning Agreement between 30 September 2022 and 28 October 2022, in response four submissions were received. Further, details of the public notification are provided in at **Section 3.0** of Part II of this report.

The following table provides a summary of the matters raised in submissions objecting to the proposed development. Response to these matters are contained in the relevant sections of this report and also discussed in Table 2 below.

**Table 2: Matters raised in submissions objecting to the proposed development**

Matter	Officer Comment
<b>Statutory and Policy Issues</b>	
<p><b>Height of building:</b> as a result of the three additional floors proposed above the approved structure, the development in its entirety (comprising the Modification Development Consent and Subject Application) does not comply with the height of building development standard of 45m prescribed for the site under Clause</p>	<p>As a result of the alterations and additions proposed, the development in its entirety (comprising the Modified Development Consent and the Subject Application) has a maximum building height of 56.95m, resulting in an exceedance of 11.95m, or a 26.5% variation, to the 45m height of building development standard prescribed under cl.4.3 'height of buildings' of the NLEP 2012.</p> <p>The applicant has submitted a written request in accordance with cl.4.6 of the NLEP 2012 to vary the development standard imposed by cl.4.3 of the NLEP 2012. As discussed under the 'Clause 4.6 – Exception to Development Standards' assessment of the NLEP 2012 in <b>Section 5.1</b> of this report above, an assessment of the written request has been undertaken and is considered well founded.</p>

## CITY OF NEWCASTLE

<p>4.3 of the NLEP 2012</p>	<p>The applicant's written request has adequately addressed the matters required to be demonstrated under cl.4.6(3). Further that the proposed development is in the public interest as it is consistent with objectives of the building height development standard. The proposed development is also considered to be consistent with the B3 Commercial Core zone objectives. Concurrence from the Planning Secretary is provided under Planning Circular PS18-003 issued 5 May 2020.</p>
<p><b>Development Application assessment process and procedures:</b> correct processes should be followed in regard to Development Application assessments and that residents in the area are considered when major decisions are made.</p>	<p>A comprehensive and detailed assessment of the matters for consideration under Section 4.15(1) of the EP&amp;A Act 1979, has been undertaken. In this regard, the likely impacts of the development - including environmental impacts on both the natural and built environments, and social and economic impacts on the locality -have been considered in the context of relevant policies including relevant SEPPs, NLEP 2012 and NDCP 2012.</p> <p>The Subject Application was advertised and notified in accordance with the EP&amp;A Act 1979, EP&amp;A Regulations 2021, and CN's Community Participation Plan. The submissions objecting to the Subject Application received in response to the public notification process have raised a variety of issues, all of which have been genuinely considered and evaluated.</p> <p>After a detailed consideration of the statutory requirements, it has been determined that despite the objections received during the assessment process, the application is in the public interest.</p> <p>The comprehensive assessment has illustrated that there will be no significant adverse ecological impacts, heritage impacts or traffic impacts. It is considered that the development does not cause any significant overshadowing, privacy impacts or unreasonable view loss for surrounding properties.</p> <p>The proposal is consistent with CN's urban consolidation objectives, making efficient use of the established public infrastructure and services. The proposed development provides for the orderly economic development of the site for purposes for which it is zoned and will not have any significant adverse social or economic impacts.</p>
<p><b>Amenity Issues</b></p>	
<p><b>Views/ outlook:</b> the three additional floors proposed above the approved structure will impact views from existing apartments in</p>	<p>The development in its entirety (comprising the Modified Development Consent and the Subject Application) will alter the general outlook from surrounding prominent areas and existing residential development surrounding the subject site due to the proposed changes in size and scale. However, this is considered reasonable in the high-density urban context of the</p>

<p>the vicinity of the subject site.</p>	<p>site and scale of surrounding development.</p> <p>Further, the overall building form, and bulk and scale of the development in its entirety (comprising the Modified Development Consent and the Subject Application) does not impede identified view corridors. Principles of view sharing have been considered and it is concluded that the proposed development has adequately balanced the amenity of adjoining apartments with the overall desire to achieve density in an inner-city location.</p>
<p><b>Privacy:</b> the three additional floors proposed above the approved structure will impact visual privacy for existing apartments in the vicinity of the subject site.</p>	<p>As discussed under the '<i>Clause 4.6 – Exception to Development Standards</i>' assessment of the NLEP 2012 in <b>Section 5.1</b> of this report above, adequate separation is provided between buildings to minimise any potential amenity impacts, including privacy, daylight access, acoustic amenity, and natural ventilation.</p>
<p><b>Design and Aesthetic Issues</b></p>	
<p><b>Built form and scale:</b> the three additional floors proposed above the approved structure will be inconsistent with surrounding buildings and be overbearing for the neighbouring development and the Wickham area in general.</p>	<p>The proposed development is consistent with the objectives of the height of building development standard as the scale of the development makes a positive contribution towards the desired built form and is consistent with the established centres hierarchy, as demonstrated by the design review process that the Subject Application has been through.</p> <p>The WMP 2017 and WMP 2021 Update adopt strategically greater height for the subject site (60m), establishing that this additional height is appropriate. It is acknowledged that the three additional floors proposed above the approved structure result in a non-compliance with the 45m building height prescribed for the site. However, at 56.95m height the proposed development remains below the 60m building height recommended in the WMP 2017. The massing and dominance of the surrounding development will soften with this transitioning approach, allowing for a cohesive design and suitable scale when viewed from public areas.</p> <p>There are sufficient environmental planning grounds to justify the contravention of the prescribed building height development standard. The proposed development consists of a high quality, architecturally designed building that makes a positive contribution to the locality. The proposal achieves the objectives of the Planning Proposal for the site which supported the changes to zoning, building height and density provisions.</p> <p>The proposed development is permissible in the zone. Further, as detailed under the '<i>State Environmental Planning Policy No</i></p>

	<p>65—<i>Design Quality of Residential Apartment Development</i>' assessment in <b>Section 5.1</b> of this report above, the application is consistent with the design requirements contained within SEPP 65 and the ADG, and CN's UDRP have assessed the proposal as achieving design excellence notwithstanding the variations to NLEP 2012 development standards. Accordingly, the Subject Application is considered satisfactory.</p>
<p><b>Traffic and Parking Issues</b></p>	
<p><b>Car parking provisions:</b> the alterations and additions proposed will facilitate 21 additional apartments, however additional onsite car parking provisions are not proposed under the Subject Application.</p>	<p>As discussed under the '<i>Traffic, Parking &amp; Access – Section 7.03</i>' assessment of the NDCP 2012 in <b>Section 5.1</b> of this report above, it has been demonstrated that the proposed development is acceptable having regards to traffic and parking requirements.</p>
<p><b>Miscellaneous</b></p>	
<p><b>Purchasers of apartments within the approved development will be adversely impacted:</b> including construction delays, financial and emotional stress, design changes to apartments, Level 13 apartments no longer 'penthouse apartments'.</p>	<p>It is understood several apartments within the approved development have been purchased 'off the plan. Impacts on purchases of apartments with the approved, but not yet constructed development, as a result of the proposed alterations and additions is not a matter of consideration in determining a Development Application pursuant to s.4.15 of the EP&amp;A Act 1979. This is a civil matter between the vendor and any purchaser.</p>
<p><b>Profit margin vs public interest:</b> the proposed alterations and additions serve only to increase the developers profit margin at the expense of the City's amenity</p>	<p>As discussed under in <b>Section 5.9</b> of this report below, it has been demonstrated that the proposed development is in the public interest. The proposed development is consistent with the objectives of the relevant SEPPs, NLEP 2012, and the NDCP 2012.</p> <p>The development in its entirety (comprising the Modified Development Consent and the Subject Application) reflects the desired strategic outcomes of the WMP 2017 and WMP 2021 Update. Further, the development in its entirety will have a positive contribution to the streetscape and is designed being compatible with the character of development in the areas.</p> <p>The increased setback to the southern boundary facilitated under the Subject Application enhances the shared interface with the Newcastle Transport Interchange and provides a safer</p>

	<p>and protected pedestrian thoroughfare.</p> <p>The physical impacts as a result of the proposed alterations and additions on surrounding development is considered negligible as it is not expected to cause constraint to the amenity or development potential of the surrounding sites and land uses. Accordingly, the Subject Application is considered satisfactory in this regard.</p>
<p><b>Impacts on property values:</b> the proposed alterations and additions will decrease property values of apartments in other high-rise buildings</p>	<p>A detailed assessment has been undertaken and concludes that the proposed development represents orderly and economical use and development of the land consistent with relevant strategic outcomes. A possible reduction in the value of property located within the vicinity of the subject site is not a matter of consideration in determining a Development Application pursuant to s.4.15 of the EP&amp;A Act 1979.</p>

The issues and concerns raised in the submissions do not warrant the refusal of the application in its present form or require any further amendments. The proposed development does not raise any other significant public interest issues beyond matters already addressed in this report.

The proposed development is considered an acceptable form of development for the site as discussed within this report subject to the conditions included in the recommended Draft Schedule of Conditions (refer to **Attachment C**).

**5.9 The public interest**

The proposed development is satisfactory having regard to the principles of ecologically sustainable development. The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

The proposal is consistent with CN’s urban consolidation objectives, making more efficient use of the established public infrastructure and services. The proposed development is in the public interest and will allow for the orderly and economic development of the subject site, generally consistent with the previously approved development.

The development in its entirety (comprising the Modified Development Consent and the Subject Application) is satisfactory having regard to the provision of additional housing and retail uses within the Wickham and Newcastle City Centre area and is consistent with the strategic planning outcomes intended for the area.

It is noted that WMP 2017 and WMP 2021 Update adopts strategically greater height and density for this area and the subject site (60m height of building, and 7:1 floor space ratio) and establishes that the additional height and density are appropriate and, in effect, broadly in the public interest. As a result of the proposed alterations and additions, the development in its entirety complies with the greater height and density identified for the site within the WMP 2017 and WMP 2021 Update.



The proposed development does not result in unacceptable impacts upon surrounding development. The proposal is not expected to cause constraint to the amenity or development potential of the surrounding sites and land uses.

**6.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under s.4.15(1) of the EP&A Act1979 and is supported on the basis that the recommended conditions in **Attachment C** are included in any consent issued.

**ATTACHMENTS**

- Item 28 Attachment A:** Planning Proposal – 10 Dangar Street Wickham
- Item 28 Attachment B:** Submitted Plans – 10 Dangar Street Wickham
- Item 28 Attachment C:** Draft Schedule of Conditions – 10 Dangar Street Wickham
- Item 28 Attachment D:** Processing Chronology – 10 Dangar Street Wickham

**Item 28 Attachments A-D distributed under separate cover**

**ITEM-29                    DAC 06/12/22 - 204 UNION STREET THE JUNCTION -  
DA2021/01107 - CENTRE BASED CHILD CARE FACILITY  
INCLUDING TREE REMOVAL**

**APPLICANT:**                    **STIRLING JUNCTION FAIR SHOPPING CENTRE PTY LTD**  
**OWNER:**                        **PERPETUAL CORPORATE TRUST LIMITED**  
**REPORT BY:**                    **PLANNING AND ENVIRONMENT**  
**CONTACT:**                    **INTERIM EXECUTIVE DIRECTOR, PLANNING &  
ENVIRONMENT / ACTING MANAGER, PLANNING,  
TRANSPORT & REGULATION**

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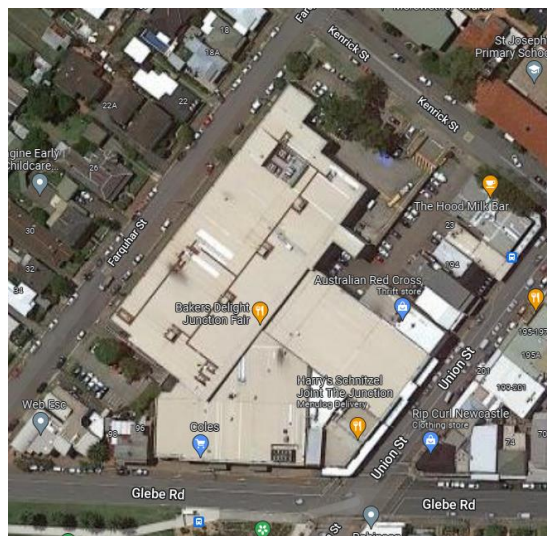
**PART I**

**PURPOSE**

A Development Application (DA2021/01107) has been received seeking consent for a centre based child care facility including tree removal.

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

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



**Subject Land:** 204 Union Street, The Junction

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN's) Community Participation Plan. In response, a total of four submissions were received, comprising one submission of support, two submissions of objection and one late submission of objection.

The key concerns raised by the objectors in respect of the amended development include:

- i) 'Saturation' of childcare centres.
- ii) Streetscape impact.
- iii) Traffic impact.

- iv) Car parking impact.
- v) Overshadowing of neighbouring commercial properties.
- vi) Emergency and evacuation risk to children.
- vii) Discriminates against some children and parents in the design.
- viii) Consideration of current COVID19 pandemic in design, particularly cross flow ventilation.
- ix) Concern of non-compliance under the *Education and Care Service National Regulations*
- x) Concerns raised of non-compliance with the National Construction Code requirements.

**Issues**

- 1) Architectural and urban design.
- 2) Car parking and traffic impacts.
- 3) Public submissions.
- 4) Compliance with State Environmental Planning Policy (Transport and Infrastructure) 2021.

**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. That DA2021 be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
- B. That those persons who made submissions be advised of CN's determination.

**Political Donation / Gift Declaration**

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject site comprises Lot 10 DP 1129170, 204 Union Street, The Junction. The site contains the existing Junction Fair Shopping Centre. The subject development area is an existing staff car parking area, addressing Farquhar Street (approximately 450m<sup>2</sup> in area). The lot is an irregular shaped allotment with boundaries addressing Glebe Road, Union Street, Farquhar Street and Kenrick Street.

The site is zoned B2 Local Centre under the Newcastle Local Environmental Plan (NLEP) 2012, in which zone the proposed *Centre based childcare facility* is permitted with consent.

Existing development on adjoining sites includes a mix of commercial premises. Across from the site on Farquhar Street is a childcare centre and residential properties, within a medium density residential zone.

### 2.0 THE PROPOSAL

#### Proposal

The Applicant seeks consent for a four-storey childcare centre, which includes:

- i. Demolition of existing staff carpark.
- ii. Site works and infrastructure.
- iii. Construction of a four-storey childcare centre (841m<sup>2</sup> gross floor area).
- iv. Landscaping and removal of two trees.
- v. A ground floor car park comprising 13 car spaces.
- vi. 109 total childcare places (24 babies, 35 toddlers and 50 pre-schoolers).

A copy of the current plans and elevations are included at **Attachment A**. The proposal was amended to address concerns raised by CN and those raised in submissions and the changes included:

- i. Increased setback to the upper level and a reduction in floor areas, resulting in a decrease of childcare spaces from 120 to 109.
- ii. Plan of management amendments to include evacuation procedures and security control points (access to entry and movement through building).
- iii. Changes to the carpark area to include staff parking only. All other required parking to be absorbed into the existing car park for the shopping centre onsite.
- iv. Amenity amendments - perforated balustrades added to the western elevation of level one to provide for additional ventilation.
- v. Landscaping amendments – changes to species selection to improve air quality and cater for children with sensory needs.

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

### **3.0 PUBLIC NOTIFICATION**

The original application was publicly notified in accordance with CN's Community Participation Plan (CPP), for a period of 14 days between 1 September and 15 September 2021. In response a total of four submissions were received, one submission of support, two submissions of objection and one late submission of objection were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

#### **a) Statutory and Policy Issues**

Concerns were raised regarding noncompliance with the *Education and Care Service National Regulations*. The regulation is specified under State Environmental Planning Policy (Transport and Infrastructure) 2021.

#### **b) Traffic, parking and access issues**

- i. The proposal is catering for increased people in the area, including staff which will impact on traffic in Farquhar Street.
- ii. The interaction of the existing car parking area with The Junction Fair Shopping Centre and the proposed car parking area.
- iii. The loss of existing staff parking (19 spaces) for the shopping centre.
- iv. The lack of proposed car parking for the development.

#### **c) Overshadowing and solar access**

- i. Overshadowing to the private courtyard of neighbouring businesses which are utilised by staff.

#### **d) Streetscape**

- i. Building design and streetscape appearance.

- ii. Lack of passive surveillance on the street.

**e) Miscellaneous**

- i. Emergency and evacuation risk to children through the design.
- ii. Accessibility on site regarding the staff, children and parents/caregivers with disabilities.

**Public Voice Committee**

The proposal and the issues raised in public notification were considered at a meeting of the Public Voice Committee held on 18 October 2022. At the meeting the following additional concerns were raised regarding the impact of the development:

- i. Non-compliance with the outdoor space requirements of the relevant State Environmental Planning Policy, including ventilation.
- ii. Construction management noise and air pollution.
- iii. Consideration of other childcare centres close by and potential noise impacts.
- iv. Insufficient car parking proposed for development and impact to existing carparking for Junction Fair Shopping Centre.

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

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

**4.0 INTEGRATED DEVELOPMENT**

The proposal is integrated development pursuant to Section 4.46 of the EP&A Act as approval is required from NSW Subsidence Advisory under section 11 of the *Coal Mine Subsidence Compensation Act 2017*. Approval has been granted and the '*General Terms of Approval*', were issued on 17 June 2021 and are included in **Attachment E**.

**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 (Resilience and Hazards) 2021

#### Chapter 4 Remediation of land

Chapter 4 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to consider whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the proposed development or whether remediation is required.

The subject land is currently being used for car park purposes and CN's records do not identify any past contaminating activities on the site. Clause 4.6 specifies a preliminary site investigation is required where 'child care purposes' are proposed. The applicant submitted a Preliminary Site Assessment prepared by RCA Australia dated July 2021. A CN Environmental Protection Officer has assessed the submitted report and provided the following comments:

*'A Preliminary Site Assessment was prepared by RCA Australia dated July 2021 due to the proposed change of land use. The conclusion of the report was that the site is considered suitable for the proposed use.'*

*'The child care floors and outdoor play spaces will all be located on the first second and third floors. The ground floor will be a car park which services the childcare facility. Therefore, the criteria applied is HIL D (commercial\industrial) rather than HIL A for a residential\sensitive use. This is consistent with section 2.4.8 of the NEPM which states that the ground floor use sets the applicable criteria.'*

*'Provisions are required for the management of soils including disposal of material from the site as well as any fill entering the site. This is addressed by the conditions of consent below.'*

Based on the assessment by CN's Environmental Protection Officer, the proposal is considered satisfactory and meets the provisions of Chapter 4 of the SEPP.

### State Environmental Planning Policy (Biodiversity and Conservation) 2021

#### Chapter 2 Vegetation in non-rural areas

The Biodiversity and Conservation SEPP (the SEPP) works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW.

The proposed development proposes the removal of two trees that, in accordance with the provisions of the SEPP, requires that assessment be made with regard to the provisions of the NDCP 2012 (see Section 5.03 – Vegetation Management below).

**State Environmental Planning Policy (Transport and Infrastructure) 2021**

This policy facilitates the effective delivery of infrastructure across the State. The development is subject to the following relevant chapters of the policy.

Chapter 2 Infrastructure

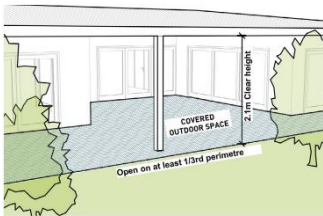
The proposal was required to be referred to Ausgrid in accordance with Clause 2.48 of Transport and Infrastructure SEPP. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

Chapter 3 Educational establishments and childcare facilities

The aim of this Chapter is to facilitate the effective delivery of educational establishments and early education and care facilities.

*Part 3.3 Early education and care facilities—specific development controls*

The proposal has been assessed against the relevant provisions and requirements of this policy and is considered acceptable. Refer to detailed consideration below:

<p><i>Clause 3.22 - Centre-based childcare facility—concurrence of Regulatory Authority required for certain development</i></p>	<p>The SEPP states that is the requirements of the National Regulations relating to the amount of unencumbered indoor or outdoor space are not met in a DA in NSW, the concurrence of the regulatory authority (NSW Department of Education) will be required. The proposal complies with the indoor floor area (354.25m<sup>2</sup> required and 380m<sup>2</sup> provided) and outdoor space (763m<sup>2</sup> required and 833m<sup>2</sup> provided) requirements of the Education and Care Service National Regulations, thereby not requiring concurrence with the Regulatory Authority</p> <p>The proposed outdoor areas meets the minimum requires as prescribed in Figure 1 from NSW DPIE – Childcare Planning Guideline – October 2021.</p>  <p>Figure 8 Covered areas such as verandahs can be included in outdoor space calculations.</p> <p><b>Figure 1: Covered areas included as outdoor space</b></p>									
<p><i>3.23 Centre-based childcare facility—matters for consideration by consent authorities</i></p>	<p>The proposal complies with the requirements of the Child Care Planning Guideline as detailed below:</p> <table border="1"> <thead> <tr> <th>Considerations</th> <th>Compliance</th> <th>Comment</th> </tr> </thead> <tbody> <tr> <td>3.1 Site selection and location</td> <td>Yes</td> <td>This report, and supporting documentation, outlines how the site's location will not present an unsafe risk to children, staff or visitors.</td> </tr> <tr> <td></td> <td></td> <td>An acoustic assessment accompanies this application and is deemed to respond to the</td> </tr> </tbody> </table>	Considerations	Compliance	Comment	3.1 Site selection and location	Yes	This report, and supporting documentation, outlines how the site's location will not present an unsafe risk to children, staff or visitors.			An acoustic assessment accompanies this application and is deemed to respond to the
Considerations	Compliance	Comment								
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		An acoustic assessment accompanies this application and is deemed to respond to the								



		requirement for a Noise Management Plan.
3.2 Local character, Streetscape	Yes	The proposal has been amended to consider the streetscape and local character of the area.
3.2 The public interface.	Yes	The proposal has been designed to take into consideration the mixed uses and setbacks on Farquhar Street.
3.3 Building Envelope & Design	Yes	The proposed building height, FSR and setbacks of the development are considered to be acceptable.
3.3 Form and Articulation	Yes	The proposal has been considered by CN's UDRP and is satisfactory in terms of form and articulation.
3.3 Orientation	Yes	The design of the proposal allows ample solar access and is considered satisfactory.
3.3 Accessible Design	Yes	The building has been designed to ensure accessibility to and within the building in accordance with the relevant requirements of AS1428.1. The applicant provided an adequate accessibility report.
3.4 Landscaping	Yes	The proposed landscaping areas within the building are adequate and have been reviewed by CN's UDRP and are satisfactory.
3.5 Visual Privacy	Yes	The proposed child care centre is separated from other uses and provides adequate visual privacy to nearby residential uses. The Urban Design Review Panel raised no concerns with the final design.
3.5, 3.6 & 3.7 Acoustic Privacy, Noise & Air Pollution & Hours of Operation	Yes	The proposal has been the subject of an acoustic report, which has been assessed by CN's Environmental Protection Officer, and it is confirmed that the development will not have any unreasonable impact. The proposal has been assessed and

			is considered to be acceptable in terms of air pollution.
	3.8 Traffic, Parking & Pedestrian Circulation	Yes	<p>The proposal will:</p> <ul style="list-style-type: none"> <li>• Provide separate vehicle and pedestrian entries from the street.</li> <li>• Staff parking to be located on the ground floor level of the proposed child care centre, and utilising existing pedestrian infrastructure within the site to access the child care centre.</li> <li>• All vehicles will enter and leave the site in a forward direction.</li> <li>• Deliveries to the site will generally be via light vans and will occur outside typical drop off and pick up times (9:00am and 3:00pm), further addressed in a recommended condition of consent included in <b>Attachment C</b></li> <li>• Further comments regarding carparking are provided within 5.3 – Section 7.03 – Traffic, parking and Access report.</li> <li>• The parking and traffic arrangements are e satisfactory.</li> </ul>
	3.8 Car and Bicycle Parking	Yes	The development is considered acceptable on traffic grounds (parking, access and maneuverability) and is suitable for local traffic conditions.
3.24 Centre-based child care in Zone In1 or IN2 – additional matters for consideration by consent authorities	The site is located within a B2 Local Centre zone and this provision does not apply.		
3.25 Centre-based child care facility—floor space ratio (R2 Low Density Residential Zone)	The site is located within a B2 Local Centre zone and this provision doesn't apply.		
3.26 Centre-based child care facility—non-discretionary development standards under subclause (2): a) <b>location</b> —the development may be located at any distance from an existing or	The proposal complies with all non-discretionary standards including the indoor and outdoor space requirements under clause 3.22 above.		

<p><i>proposed early education and care facility.</i></p> <p>b) <b>indoor or outdoor space</b></p> <p>i) <i>for development to which regulation 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations applies—the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those regulations, or</i></p> <p>ii) <i>for development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies—the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause</i></p> <p>c) <b>site area and site dimensions</b>—<i>the development may be located on a site of any size and have any length of street frontage or any allotment depth,</i></p> <p>d) <b>colour of building materials or shade structures</b>—<i>the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.</i></p>	
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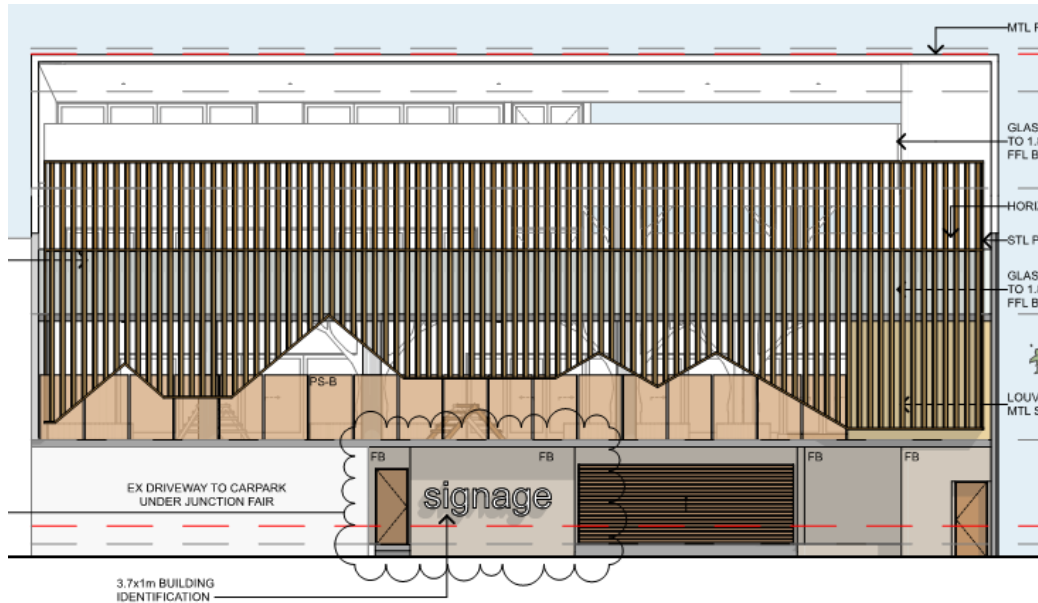
## State Environmental Planning Policy (Industry and Employment) 2021

### Chapter 3 Advertising and signage

The SEPP (I&E) sets out planning controls for advertising and signage in NSW. The SEPP requires signage to be compatible with the future character of an area, provide effective communication in suitable locations and be of high-quality design and finish.

The Policy applies to all signage that can be displayed with or without development consent under another environmental planning instrument that applies to the signage and is visible from any public place or public reserve.

The proposal is for business identification signage on the facade of the building, as shown in Figure one below. This elevation faces Farquhar St.



**Figure one:** Location of business identification signage

Schedule 5 of the SEPP sets out Assessment Criteria for advertising signs. The proposed sign meets the criteria as:

- a) The sign is compatible with existing signs in the area.
- b) There are no specific visually important areas that the sign will detract from.
- c) The development does not detract from any important views.
- d) The scale and proportion of the sign is consistent with existing signage on-site and on the adjacent site.
- e) The development will not unreasonably dominate the streetscape or detract from other signage within the area.
- f) The proposed sign is compatible with the scale, proportion and other characteristics of the site and will not detract from any important features of the site or any buildings.
- g) No ancillary devices are proposed to be installed on the sign structures.
- h) No internal or external illumination is proposed.
- i) The location of the sign is consistent with other signage in the area and is not considered to have any major safety implications for the area.
- j) The site is not within a heritage conservation area.
- k) The proposed signage will not impact on the heritage significance of nearby heritage items.

The proposed signage is acceptable having regard to the provisions of the SEPP.

**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 located within the B2 Local Centre zone under NLEP 2012 and the proposed *centre-based childcare facility* is permissible with consent.

The proposed development is a 'centre-based child care facility' (refer to definition below) and is consistent with relevant objectives of the B2 Local Centre zone, as follows:

- a. *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- b. *To encourage employment opportunities in accessible locations.*
- c. *To maximise public transport patronage and encourage walking and cycling.*

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

***Centre-based child care facility means—***

- i. a building or place used for the education and care of children that provides any one or more of the following—
- ii. long day care,
- iii. occasional child care,
- iv. out-of-school-hours care (including vacation care),
- v. preschool care, or
- vi. an approved family day care venue (within the meaning of the Children (Education and Care Services) National Law (NSW)),

***Note—****An approved family day care venue is a place, other than a residence, where an approved family day care service (within the meaning of the Children (Education and Care Services) National Law (NSW)) is provided.*

***but does not include—***

- i. a building or place used for home-based child care or school-based child care, or
- ii. an office of a family day care service (within the meanings of the Children (Education and Care Services) National Law (NSW)), or
- iii. a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or
- iv. a child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium) to care for children while the children's parents are using the facility, or

- v. a service that is concerned primarily with providing lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or providing private tutoring, or
- vi. a child-minding service that is provided by or in a health services facility, but only if the service is established, registered or licensed as part of the institution operating in the facility.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the structures (car park area) on the site. Conditions are recommended at **Attachment C** 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

Under the NLEP 2012 the site has a maximum height of 14m. The proposal has a maximum height of 13.86m and complies with this requirement.

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 2:1. The proposed FSR is 0.8:1 and complies with the FSR.

The site area for 204 Union St is 11,125m<sup>2</sup>. The existing shopping centre is 8,127m<sup>2</sup> and the proposed Childcare facility is 841m<sup>2</sup>, totally 8,968m<sup>2</sup>.

Clause 5.10 - Heritage Conservation

The development site is located in close proximity to local heritage items on Farquhar St, including the Former Primitive Methodist Parsonage at 28 Farquhar St and a local residence at 26 Farquhar St. Imagine Early Learning and Child care Centre is located at 28 Farquhar St.

The proposal involves facade changes within the existing streetscape. The proposal has been considered by the Urban Design Review Panel (UDRP) on two occasions and the design has amended its front setbacks and streetscape appearance in response to UDRP recommendations. The amended proposal is considered to be satisfactory in regard to the impact on local heritage items and the proposal will not impact on the heritage significance of these items.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils. A Preliminary Site Investigation Assessment prepared by RCA Australia for the subject site included soil sampling which confirmed that neither actual or potential ASS were present at two metres below the surface. The proposal was reviewed by CN's Environmental Protection Officer and the following comments provided:

*"The site is mapped as Class 4 Acid Sulfate Soils (ASS). ASS will need to be considered as part of the detailed design if excavation is required below 1.5m or any dewatering is required for construction purposes."*

Excavation greater than two metres is not indicated on the section plan. The proposal is considered satisfactory with acid sulfate soils and has been further addressed with a recommended condition of consent included in **Attachment C**.

#### Clause 6.2 - Earthworks

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

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

There is no exhibited draft environmental planning instrument relevant to the application.

### **5.3 Any development control plan**

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

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

#### Flood Management - Section 4.01

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

*'Flood details in specific area relevant to development:*

*Local Catchment - 1% AEP = 5.73m AHD, 0.45 m/s, P1*

*PMF = 6.23m AHD, 0.45 m/s, L2 (partial L4)*

*Min floor level 6.23, No floodway or storage and no refuge required*

*The ground floor carpark is set at 5.81m AHD which is 0.08m above the 1% AEP. The PMF however is approximately 6.23m AHD in this location which would only be 0.42m above the floor level.*

*Refuge is not required however will be available on the upper floors. Flooding is considered acceptable in the circumstance of this development.'*

The proposal is acceptable in relation to flooding.

#### Mine Subsidence - Section 4.03

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

NSW and is included within the recommended conditions at **Attachment C** and the General Terms of Approval at **Attachment E**.

Safety and Security - Section 4.04

The proposal is consistent with relevant aspects of this element and is summarised below:

- a) A reasonable level of surveillance is provided internally and externally to the development site.
- b) A safety audit by SECA's traffic engineers observed that JFCP currently provides a low-speed shared zone and speed control devices accommodating the safe movement of adults with children within the car park. Additional improvements, including high visibility marked pedestrian walkways, enhanced 10km/h speed limit signage, and additional speed humps are proposed to further improve safety in JFCP. Operational aspects of the Centre will ensure children's safety when in care.

Access to the child care centre is via a staffed check-in counter and is adequate to provide safety and security to the centre.

The proposal includes a Plan of Management (POM) adequately outlining the safety and security arrangements for the proposal (refer to **Attachment B**). The POM includes requirements for emergency evacuation, ongoing maintenance of landscaping and the centre, and the movement of people from the basement car park to the sign in area. The POM identifies that a car park marshal will be in attendance during peak drop off and pick up hours (7:30-9am and 3-4pm) to direct traffic entry/exit within the basement car park.

Conditions of consent have been recommended which require that the Junction Fair Car park be managed in accordance with the Junction Fair Shopping Centre Car Park Management Plan (prepared by Stirling Property Funds dated November 2022), and the Plan of Management prepared by Tillys Play and Development Centre dated 19/07/2022).

Social Impact - Section 4.05

The proposal has a positive social impact as it will provide additional childcare places within a local area to service local needs. The development will also provide employment during the construction period and will allow ongoing employment within the centre and will have positive flow on impacts for local businesses within The Junction commercial area.

Land Contamination - Section 5.02

Land contamination has been considered acceptable as detailed within the State Environmental Planning Policy (Resilience and Hazards) 2021 assessment above.

Vegetation Management - Section 5.03

The development proposes the removal of two trees from the subject site.



The applicant has submitted an arborist's report that details species, location, size, health and value of the trees to be removed. The report is indicating that one of the trees is unhealthy and does not warrant retention. The other tree, while healthy, has had already 50% of its structural root zone compromised and cannot be retained as it falls within the footprint of the proposed development. This second tree is rated as having a moderate retention value and, as such, compensatory trees are generally required. The proposal includes internal landscaping specifically designed for the use and this includes small trees, which satisfies the requirement for compensatory planting.

It is considered that the proposed tree removal is acceptable.

#### Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site.

#### Heritage Items - Section 5.05

This issue is assessed under Clause 5.10 Heritage of NLEP 2012 above.

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

The *Education and Care Service National Regulations* sets minimum indoor and outdoor areas for child care facilities as detailed under SEPP (T&I) above.

The Landscape Design plans include landscaping detail for the three outdoor play spaces (covered decks) located on each level of the building. The proposed landscaping treatment has been based on Australian Children's Education & Care Quality Authority (ACECQA) requirements for sustainability and safety. In addition, comments received from CN's UDRP noted that consideration should be made to refine the landscaping to include sensory planting and species selection to improve air quality. The applicant amended the landscape plans to include indoor plant species that improve air quality in addition to providing stimulating plant species for children such as herbs, vegetable and texture plant species. The amended landscape design is considered acceptable for the child care centre use.

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

##### *Summary*

The site includes the existing Junction Fair Shopping Centre, which provides 200 parking spaces at basement level.

The development site is located on the area that is currently used for staff parking (19 spaces), which will be displaced with this proposal. The proposed development will include 13 car spaces located at ground level, underneath the child care centre and accessed from Farquhar St.

The proposal is designed to connect directly into the existing Junction Fair Shopping Centre from a new opening within the pedestrian ramp area. The main entry of the childcare facility links to the existing car park area. The 13 spaces that are to be proposed to be constructed, will be used for staff parking, with other parking needs

(parent drop off/pick up) to be met by the existing parking area of the shopping centre.

The development proposal generates an on-site parking demand of 27 car spaces based on the rate of 1 space per 4 children in accordance with this section of the NDCP 2012. These rates are based on the amended proposal which is for 109 children and 18 staff.

The parking deficiency of the amended development is therefore 14 car spaces.

*Parking Occupancy Survey (SECA Solution)*

Parking surveys were undertaken by SECA to determine the parking occupancy of the existing Junction Fair car park (200 spaces, restricted 3P) for a two-week period from the 21st of February 2022 to the 4th of March 2022.

Snapshot occupancy/vacancy counts were captured each hour from 2pm to 6pm. Counts were also provided at 8am and 9am for both Tuesdays.

This parking survey identified a low rate of parking occupancy (11-62%) during the morning and afternoon peak hours (8am to 9am and 4pm to 6pm), and a high rate of occupancy (46-88%) from 9am to 4pm.

An occupancy rate of 85% is widely accepted within the industry to be an optimal usage level for a parking facility. At this rate of usage, most spaces are occupied however drivers are still able to find a parking space after a short search. When parking exceeds this level, locating a free space may become difficult and some drivers will give up and seek parking elsewhere. Parking below 85% is generally considered to be an underutilisation of the facility.

The parking survey demonstrated the existing car parking facilities at 204 Union Street are generally underutilised during the child care peak periods and can accommodate additional parking from the proposed development.

The results of these surveys were discussed at the Public Voice Committee meeting as they informed the development proposal.

*Development Parking Demand Characteristics*

The subject development is expected to generate two types of parking demand:

- a) Short-term (generally 5 min – 30 min) parking by parents to pick-up or drop-off children at the centre. Peak demand is limited to the peak morning (6:30am - 9:00am) and afternoon (3:00pm – 6:30pm) periods.
- b) Long-term (generally up to 8 hours) parking by child care centre staff with a constant peak demand from 9am to 5:00pm.

The development will replace the existing "Tenants Car Park" containing 19 car parking spaces that was assumed to accommodate parking for staff working at the

Junction Fair shopping centre. This Tenant Car Park was confirmed by SECA to have a high level of occupancy (73% – 100%) from the hours of 9am to 3:30pm and moderate level of occupancy (30% – 79%) during peak hours.

#### *Strategy to Manage Child care Centre Parking*

The existing 200-space covered car park at Junction Fair was identified by SECA as being generally underutilised (up to 100 spaces available, <85% occupancy) during morning and afternoon peak hours, which coincides with typical peak drop-off (6am-9am) and pick-up (3pm-6pm) activity periods at child care centres. The short-stay (3P) nature of the Junction Fair is also compatible with parent parking demand generated by the development.

Considering this, the Applicant proposed to offset non-staff parking demand to the existing 200-space car park at Junction Fair. The proposed at-grade covered car park (13 spaces) could then be designated for child care centre staff parking to simplify access and parking management at the development site to address concerns previously raised by the UDRP and submitters regarding potential conflicts with existing traffic in Farquhar Street.

The development will also have a main pedestrian access integrated to the existing Junction Fair shopping centre. Parents parking in the Junction Fair can make use of existing facilities to travel on-foot to the proposed childcare.

The 13 on-site car spaces will accommodate parking for two-thirds of the proposed centre staffing of 18 (assuming one vehicle per staff). This is considered acceptable under the NDGP, which prescribes a standard parking rate of one space per two staff for a broad spectrum of developments.

#### *Displaced Tenant Parking*

The displaced 19 tenant car parking spaces will be offset to the existing Junction Fair car park. The existing car park is designated as 3P parking which was previously enforced by CN rangers.

It is noted that CN's parking enforcement agreement with Junction Fair has been expired for a number of years and CN is currently in negotiation for a new arrangement. As such, the 3P restriction is not enforceable under Section 650 of the *Local Government Act 1993* currently and no penalties can be issued at this point of time.

The addition of 19 all-day parked vehicles to the existing Junction Fair car park is likely to increase occupancy to moderate levels (21-72%) during peak hours (8am to 9am and 4pm to 6pm) and to high rates of occupancy (55-98%) from 9am to 4pm. Based on SECA's survey, occupancy may be expected to exceed 85% for three hours or more on a given week within the period of 9am to 4pm.

This exceedance was considered acceptable given that the survey identified a significant component of the peak mid-day parking demand at the Junction Fair car park was generated by external sites such as St Joseph's Primary School, provided additional parking management operations were put in place to reduce the ability for

external sites to utilise the Junction Fair shopping centre carparking remove for all day parking. Conditions of consent have been recommended regarding parking and traffic management including fee paid parking.

*Public Voice Committee Meeting 18 October 2022*

The Public Voice Committee meeting discussed the survey and traffic counts above and noted:

- a) The data surveyed by the Applicant's traffic consultant appears to be inconsistent with anecdotal experiences that the Junction Fair car park has minimal vacancies during the afternoon peak (4pm-6pm).
- b) The displacement of the existing 'tenant' car park may increase on-street parking if this parking is not accommodated within the existing car park.
- c) The existing Junction Fair shopping centre was approved with a parking deficiency. Further intensification of use at the site may exacerbate on-street car parking congestion in the locality.
- d) The safety of pedestrians considering the increase of parents with toddlers and prams associated with the proposed childcare centre.

Based on the scale and level of activity generated by the Junction Fair, in considering point (c), it is more appropriate to rely on a site-specific study rather than generic parking rates provided in the DCP for 'Shopping Centres.' This is also consistent with the recently amended NDCP 2012.

In response to other concerns raised at the Public Voice Committee the Applicant submitted supplementary advice and further traffic analysis to reaffirm the findings of the original report:

- i. A parking occupancy survey at the existing Junction Fair Car Park (JFCP) from the hours of 6.00am to 6.00pm from Monday to Friday for an additional week in October 2022. The survey period must not overlap with any school or public holidays.
- ii. An operational parking management plan, confirming agreement by the operator of Junction Fair to accommodate tenant/staff car parking within JFCP to offset the displaced Tenant Car Park.
- iii. Provide observations for the purpose of trips made to the JFCP and identify parking demand generated by trip attractors external to the development.
- iv. Assess the safety of existing pedestrian facilities in the JFCP considering the increase of parents with toddlers and prams utilising the facility.

*Supplementary Parking Occupancy Survey (SECA Solution)*

The Applicant submitted an addendum traffic advice prepared by SECA Solution dated November 2022. CN officers reviewed the study and note the following:

- i. An additional week (17/10/22-21/10/22) of parking survey data was produced based on analysis of security footage at the Kenrick and Farquhar Street entrances to the JFCP. Data was provided at hourly intervals from 6am-6pm for a typical Monday to Friday working week containing no public or school holidays.
- ii. It is noted the method of analysis used by SECA captures only entry and exit movements at JFCP within a given hour period. The difference between entry and exiting movements reflects the number of vehicles remaining in the car park, whether parked, manoeuvring, or circulating. For simplicity it can be assumed all remaining vehicles are parked and occupy a space however this can result in calculated occupancy rates exceeding 100%.
- iii. The new data reaffirms parking supply is available within JFCP during the typical peak parking activity period of child care centres. Low (<10%) to moderate (~60%) occupancy levels were surveyed in JFCP, confirming the car park operates below the optimal utilisation rate of 85% during city-wide peak morning (6am-9am) and afternoon (3pm-6pm) periods when most parent pick-up and drop-off activity typically occur.

If the displaced tenant parking is factored in (by assuming 19 spaces are filled all day), the expected occupancy of JFCP during the 6am-9am and 3pm-6pm periods increases to a maximum of 67%. The occupancy of a further 27 car spaces due to pick-up and drop-off at the childcare would increase maximum occupancy to about 80%. As such, the JFCP is still considered to provide sufficient parking capacity to accommodate parent pick-up and drop-off activity generated by the proposed child care centre.

- iv. The data continued to reflect high rates of occupancy between the periods of 9am-3pm (51%-102.5%) with a notable spike in demand on the Thursday and Friday. Occupancy appears to exceed the 85% threshold six times within the full survey period.
- v. The likely effects of the displaced tenant car parking can be modelled by assuming 19 car spaces are occupied all day. This results in occupancy at JFCP exceeding the 85% threshold about 13 times within a 5-day work week, double that of the existing case.
- vi. Observations made by SECA note a considerable level of parking demand at JFCP is generated by external trip attractors such as the existing street-front commercial tenancies on Union Street and other surrounding businesses and the St Josephs Catholic School on the opposite side of Kenrick Street. The external attractors impact on both short and long term parking (i.e. all day workers) to JFCP.
- vii. A safety audit by SECA's traffic engineers observed that JFCP currently provides a low-speed shared zone and speed control devices accommodating the safe movement of adults with children within the car park. Additional improvements, including high visibility marked pedestrian

walkways, enhanced 10km/h speed limit signage, and additional speed humps are proposed to further improve safety in JFCP.

It should be noted that both Traffic Surveys relied on in CN's assessment captured the state of the Junction Fair Car Park (JFCP) within a period of time spanning the end of February 2022 and early March 2022 and October 2022. Although signposted, the 3P parking restrictions at JFCP were not enforced during this period due to the lapsing of the contract between CN and Junction Fair and no other control measure in place.

Conditions of consent (**Attachment C**) have been recommended to require that parking demand and turn over in the JFCP be managed by a fee-based parking management system and in accordance with the submitted Parking Management Plan.

#### *JFCP Management Plan*

The Applicant has submitted a revised Car Park Management Plan prepared by Stirling Property Funds (the operating controller of Junction Fair) dated 7 November 2022. The plan includes the following measures to manage the existing Junction Fair car park:

- i. Provision of free unallocated, all day tenant parking for a maximum of 19 tenants/workers will be provided within JFCP to offset the loss of the external 19-space tenant car park off Farquhar Street.
- ii. Significant discouragement of long-term and all-day commuter/worker parking through the implementation of a fee structure starting after three hours of free parking.
- iii. Encouraged use of car spaces in JFCP (via soft management measures such as operational practices and customer communication at the childcare centre) closer to the childcare centre for parent pick-up and drop-off to reduce pedestrian activity across the car park.
- iv. Additional signage and traffic control devices to enhance pedestrian safety.
- v. A ticketless car park management system with boomless entry to enforce paid parking restrictions.

#### *Conclusion*

CN officers assessed the submitted car park management plan and supplementary survey data, and provide the following comments:

- a) The additional parking occupancy data indicates sufficient parking capacity was generally available in JFCP to accommodate parent pick-up and drop-off activity (typically 6am-9am & 3pm-6pm) generated by the child care centre.

- b) The displacement of 19 tenant car parking spaces as all-day parking to JFCP would result in more frequent underperformance (>85% occupancy), during the period of 9am-3pm.
- c) To address the potential impacts of displaced tenant parking and child care parking activity to the JFCP, the site operator proposes the implementation of fee structured parking and parking controls to reduce the burden on parking generated by external sources. This was a recommendation of the Traffic Study addendum to reduce parking at the JFCP not associated with Junction Fair.

The ticketless, paid parking system proposed in the Car Park Management Plan would be adequately suited to this particular development and the boomless entry would limit queue generation. The paid parking system to be installed and in ongoing operation is considered an acceptable solution to manage the current non-complying all day parking usage that is occurring.

This amended parking management plan is therefore found to be an acceptable solution for the accommodation of the displaced tenant car parking and additional parking activity generated by the childcare centre. The parking management requirements have been included in the Draft Schedule of Conditions at **Attachment C**.

#### *Vehicular access*

The proposal development has satisfactory sightlines entering and leaving the site. An additional car parking space (increased from 12 to 13 spaces) was provided in the amended plans replacing the turning bay at the end of the blind aisle at the on-site car park. A turning bay is not required in this instance for a staff only car parking area.

#### *Site Servicing*

The applicant provided a detailed Site Waste Management Plan which identifies that the ground floor waste storage has a capacity of 4x 660 lite bins for general and recycling waste. The operational waste will be collected twice a week by private arrangement of light vehicles able to access the site. The plan has been assessed by CN's Waste & Commercial Collection Manager and is considered adequate subject to conditions recommended at **Attachment C**.

#### Section 7.05 - Energy Efficiency

The proposed development has been design ed with regard of energy efficiency including orientation consideration, material selection, window glazing and thermal regulation. The proposal was review by Urban Design Review Panel on several occasions and sustainability design quality principle was considered satisfactory.

Stormwater- Section 7.06

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

*'Area of development proposed under this DA = 706.7 m<sup>2</sup> and will be approximately 100% impervious. Total storage required for this site is approximately 17.6m<sup>3</sup>. The roof covers approximately 500m<sup>2</sup> with the remaining 200m<sup>2</sup> covered by the playground areas on the upper floors. The proposed rainwater tank of 20,000L is considered acceptable for this site.'*

The proposed stormwater management plan meets the requirements of NDCP 2012 and is considered acceptable subject to conditions recommended at **Attachment C**.

Water Efficiency - Section 7.07

The proposal is acceptable having regard to this section.

Waste Management - Section 7.08

A Waste Management Plan has been provided with the application. The proposal provides for bulk storage bins associated with child care waste and in accordance with the EPA Waste Guidelines. Operational waste generated by the Child care Centre will be separated, collected and stored on-site by the employees of the Centre and taken off-site by a licensed waste management contractor twice weekly to an approved waste management facility (e.g., Summerhill Waste Management Centre) for either recycling or landfill.

The proposal includes a waste storage enclosure in the ground floor car park area to allow ease of access for service light vehicles to collect. The waste storage enclosure will be masonry with a roof and bunded to a sewer connection point with provision of a water tap for cleaning. The waste storage enclosure has been designed to cater for 4 x 660 litre bins.

Based on the submitted information, the proposal is considered to be acceptable subject to the demolition and waste management conditions recommended at **Attachment C**.

Advertising and Signage - Section 7.09

The proposal includes flush wall business identification signage. The signage is considered acceptable with regard to the DCP section and has been considered in detail under SEPP (I&E) within this report.

Development Contributions

The EP&A Act 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 Section 7.12 Development Contributions Plans.



A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions at **Attachment C**.

**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 and will be included in the recommended conditions of consent at **Attachment C**.

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 the NLEP 2012 and the NDCP 2012 considerations. In addition, the following impacts are considered relevant.

Urban Design Review Panel

The proposal was referred to CN's Urban Design Review Panel (UDRP) under the provisions of CN's Urban Design Review Charter 2020 as it is considered a significant development that warranted review in terms of the design quality principles. The proposal was reviewed by UDRP on 27 October 2021 and recommendations were made to improve the design quality. A further review by the Panel was undertaken on 22 May 2022, with a summary provided in the table below.

Design Quality Principles	Assessment
<b>Principle 1. Context and Neighbourhood Character</b>	
<p><u>UDRP Comment – 27 October 2021 (UD2021/01109)</u></p> <p><i>“The site is located on the south-western side of the Junction Fair Shopping Centre and faces Farquhar Street. It is bounded on two sides by the existing Junction Fair complex, and its south-eastern boundary adjoins the rear open space of two terrace houses fronting Nos. 96 and 98 Glebe Road, that are currently used as commercial spaces. The site’s south-western boundary adjoins a laneway that accesses the rear of the terraces, beyond which is a two- storey modern commercial bounding on the corner of Glebe Road and Farquhar Street.</i></p> <p><i>The site is currently designated as a Tenant Car Park serving the Junction Fare, and it includes two shade trees near the existing up-ramp (exit) from the main Centre car park. The ramps to and from the existing</i></p>	<p><u>Officer Comments</u></p> <p>The UDRP comments are noted.</p>

<p><i>main Centre customer car park are currently both in the open air and are proposed to remain in place with the proposed structure to be suspended across this space.”</i></p> <p><u>UDRP Comment – 25 May 2022 (UD2021/01109.01)</u></p> <p><i>“The character of the area is unchanged.”</i></p>	
<p><b>Principle 2. Built Form and Scale</b></p>	
<p><u>UDRP Comment – 27 October 2021 (UD2021/01109)</u></p> <p><i>“The Panel noted some concerns about the planning of the development and the inherent constraints of the site. These related to a range of issues, including the safety of pedestrian access from the proposed ground level car park to the lift, the reception/ “sign-in” space and its unimpeded access to the internal stair, the use of the outdoor play areas as the primary circulation and access route to the classroom spaces other than to the Level 1 babies’ rooms. The very internalised nature of the “outdoor” play areas, influenced by the quite limited circular openings between floors in these areas, and the inclusion of 1800mm high continuous glass balustrades behind the metal screen louvres on the north-western facing street-front façade, contributed to this sense of enclosure, and the lack of good opportunity for natural ventilation and desirable cooling breezes.</i></p> <p><i>The proposal extends two floors above the height of the surrounding development, including the existing Junction Fair building that immediately abuts the proposed building on its northern and eastern sides, limiting any possible openings in these directions.</i></p> <p><i>Given the depth of the “outdoor” space relative to the limited openings and the standard floor to floor heights (and therefore the achievable ceiling heights) the capacity to create attractive, sun-filled (in winter) and landscaped play spaces is very limited.</i></p> <p><i>One possible improvement that may give opportunity for better light and ventilation to the play spaces, could involve the stepping back of the upper two floors of the development at the street front, which would also allow the proposal to sit more comfortably with the corner building and to sit more comfortably in the street.”</i></p> <p><u>UDRP Comment – 25 May 2022 (UD2021/01109.01)</u></p> <p><i>“A reduction in 11 child places in the proposal has allowed for a reduction in built form, with an increased setback for the upper level provided. This assists in providing a more consistent</i></p>	<p><u>Officer Comments</u></p> <p>In response to the UDRP concerns regarding the setbacks and the provision of natural light, increased front setbacks were provided and the proposal was reduced in scale to cater for 109 places rather than 120.</p> <p>The reduction in place numbers was also required to align with the prescribed requirements of SEPP (Transport and Infrastructure) for indoor and outdoor spaces.</p> <p>Furthermore, the development application was referred to Ausgrid for comment on 17 September 2021 and is considered acceptable subject to standard Ausgrid requirements which have already been provided to the applicant to address.</p> <p>The panel additionally, noted concerns with the car parking arrangements and parent drop off interaction. In consideration of the car parking layout and location, the proposal was amended to have all proposed car parking on the ground floor to be dedicated staff parking only. The parent/carer giver parking is proposed to be located within the existing car parking area on the site. This has been justified with an adequate car parking analysis and supported by CN's engineers.</p>

*parapet height with the current Junction Fair rear façade and is less dominant in the street. It also assists in respect to the concerns raised previously by the Panel in respect to adequate natural light and ventilation (desirable breezes) to the play areas and the centre.*

*The following were recommended in respect to the development of the Plan of Management (POM) be:*

- *Integration of POM with physical design – which is considered fundamental.*
- *POM needs to be designed in tandem with the developed design.*
- *Likewise, the Emergency Evacuation plan needs to be developed in tandem with the physical design.*
- *Evacuation will be via two sets of fire stairs.*
- *Babies will be transported into fire rated cot evacuation area located off the outdoor plays areas.*
- *Babies will be evacuated via Farquhar Street to a safe congregation area.*
- *Preschool and toddlers will access either of the stairs depending on proximity.*
- *The fire stairs to the western elevation provides access to Farquhar Street and stairs to the east access the existing pedestrian ramp onto Glebe Road. The existing pedestrian ramp is fully sprinklered. Children will be moved onto a safe congregation area from this point.*

*Function of the entry point:*

- *A staff member will be needed to oversee entry and drop off – even if more advanced technologies are applied to this via PIN access or the like.*
- *The management of the interface with Junction Fair is important operationally and in terms of safety.*

*Playrooms - operational element:*

- *Parents are normally entering all the way into the play areas to access the playrooms – how would that work operationally? This is relevant to the spatial planning.*
- *It would appear that there will need to be marshalling or escorting from the secure point to the rooms.*

*Car Parking:*

- *The Panel noted that the amendments to the proposed dedicated carparking have improved the issues identified previously.*
- *Does the gate/shutter remain open*

<p>during the day?</p> <ul style="list-style-type: none"> <li>• A question arose as to how does the approaching driver/parent know there are free spaces in the car park before driving in? If the turning bay were to be misused (parked in) even for a short period, and the car park is full, drivers would be required to reverse onto the street – which is highly undesirable. The Applicant responded that the use electronic indicator signs external to the car park was intended, and that a parking “marshal” would be employed to oversee drop-off and pick up parking in the car park during peak periods.</li> <li>• The Panel raised a question in respect to what’s the plan for staff parking? The Applicant responded that they are relying upon there being sufficient excess spaces available within the Junction Fair semi-basement car parking. It was indicated that the spaces would not be allocated.</li> <li>• It is also anticipated that “shared purpose” visits would occur, with customers of junction fair at times also being customers of the childcare.</li> </ul> <p>The Panel deferred to Council’s Traffic Engineers in respect to the detail of the arrangement but raised no in-principle concerns.”</p>	
<b>Principle 3. Density</b>	
<p><u>UDRP Comment – 27 October 2021 (UD2021/01109)</u></p> <p>“An appropriate density for the site will be determined by achieving a layout that adequately addresses the considerable constraints of the site. It is therefore unlikely that a development could possibly be placed upon the site that takes full advantage of the numeric FSR pertaining to it as permitted in the controls. It is also noted that, due to flooding issues, it has not been possible to lower the parking for the proposed facility to access and match that of the existing Centre car park, which would potentially have produced better access opportunities.</p> <p>“Displaced” cars from existing Tenant carpark: – the Panel noted it is difficult to argue the existing Tenant/ staff carpark is redundant when the site photos show this car parking close to full - however the Panel would defer to the advice of the Council traffic engineers in this regard.”</p> <p><u>UDRP Comment – 25 May 2022 (UD2021/01109.01)</u></p> <p>“The reduction of 11 child places appears to have alleviated the extent of issues arising from a design brief that sought to place too much</p>	<p><u>Officer Comments</u></p> <p>The maximum permissible floor space ratio (FSR) for the subject site is 2:1 under Clause 4.4 of NLEP2012 and the proposed FSR for the site is 0.8:1. A reduction in the number of childcare places as result of the amended proposal provides for a density that is still satisfactory. The UDRP noted that the number of childcare places appears to be manageable based on the plan of management provided for the development. The amendments have addressed the concerns raised in the UDRP October 2021 advice.</p>

<p><i>development on a relatively tight, highly constrained site.</i></p> <p><i>The ultimate FSR appropriate to the site is likely to be determined more by addressing constraints and identifying a combined physical design development with the preparation of a highly functional Plan of Management."</i></p>	
<p><b>Principle 4. Sustainability</b></p>	
<p><u>UDRP Comment – 27 October 2021 (UD2021/01109)</u></p> <p><i>"Opportunities for PV Solar panels and rainwater collection should be pursued.</i></p> <p><i>Reliance upon air-conditioning should not be exaggerated by the internal planning and configuration of the development. Child care centres tend to rely upon "split system" style systems for heating and cooling – but these do not supply fresh air. The HVAC system needs to integrate the provision of fresh air and, when needed, heating and cooling. Means of reducing the heat island effect of the surrounding roof surfaces should be considered as part of the design. Likewise, glare reduction from the immediately adjacent large roof planes."</i></p> <p><u>UDRP Comment – 25 May 2022 (UD2021/01109.01)</u></p> <p><i>"The previous comments are reiterated.</i></p> <p><i>Indoor air quality is an important consideration, given the location of the Centre adjacent to and above large car parking areas, and near a fairly busy road. In addition to ensuring that make up air is drawn from location(s) where pollutants are less likely to be at high levels, other indoor air quality measures should be addressed. These would appropriately include use of in-room air filters. One of the easiest and most efficient means of improving indoor air quality is from including living plants within spaces – with some species offering more benefit than others."</i></p>	<p><u>Officers Comment</u></p> <p>The amended plans responded to the comments made regarding indoor air quality. The amended details provide perforated balustrades for the Level 1 western elevation to allow additional ventilation through the Level 1 outdoor play area.</p> <p>In addition, it is noted all habitable rooms will be provided with fresh air HVAC mechanical ventilation.</p> <p>The amended landscape plans include indoor species selection for improved air quality and are located within spaces adequate for the species. The amendments have addressed the concerns raised in the UDRP May 2022 advice and is considered satisfactory.</p>
<p><b>Principle 5. Landscape</b></p>	
<p><u>UDRP Comment – 27 October 2021 (UD2021/01109)</u></p> <p><i>"The guidelines for outdoor play areas in child care facilities emphasise engagement with nature. This is about touch, texture and sensory experiences – and contact with living plants in a pleasant, stimulating environment – what is proposed currently doesn't achieve that due to the enclosed nature of the spaces.</i></p> <p><i>Landscaping shown is very optimistic in terms of its capacity to thrive, given how enclosed the areas are.</i></p> <p><i>In this simulated outdoor play area, requirements are to provide the appropriate soil volumes - which will be a challenge - to get the</i></p>	<p><u>Officers Comment</u></p> <p>A detailed landscape plan was submitted with the development application and an amended plan was submitted responding to the advice received during assessment by both CN and UDRP.</p> <p>As such, the amended landscape design submitted has suitably addressed the concerns previously raised by the Panel (October 2021) and in addition to the second review (May 2022) in relation to landscape species selection for children stimulation and air quality improvements.</p> <p>The amendments have addressed the concerns</p>

<p><i>trees of intended size to grow up through the voids.</i></p> <p><i>If the planting is all in planters sitting above the floor slab, it is hard for the children to interact with the elevated plants. The transition through though spaces should be considered, and opportunity for raised levels to create the interest and allow children to see and touch plants at their level.</i></p> <p><i>Sand play is an important component of outdoor play. Getting the sand into the landscaped areas and maintaining these areas will be quite challenging given the access.”</i></p> <p><u>UDRP Comment – 25 May 2022 (UD2021/01109.01)</u></p> <p><i>“The Panel noted that was positive to see the inclusion of the living trees in the landscape design. Optimising the extent of living trees, shrubs and ground covers in the play areas, to the extent practicable, will be the best means of enhancing these spaces with interest and delight for the children.</i></p> <p><i>There also appear to be more opportunities for low level, stimulating plants for children to touch – herbs etc.”</i></p>	<p>raised.</p>
<p><b>Principle 6. Amenity</b></p>	
<p><u>UDRP Comment – 27 October 2021 (UD2021/01109)</u></p> <p><i>“The site planning approach is very 'internalised' and extends boundary to boundary with no deep soil landscaping or shade trees.</i></p> <ul style="list-style-type: none"> <li>• <i>Concerns arise about how little exposure to natural light, winter sun, desirable summer breezes and natural ventilation is provided.</i></li> <li>• <i>It is a building relying heavily on its north-western side to get any light and ventilation, but this is substantially shut down by glazing and screens and allows little cross ventilation.</i></li> <li>• <i>The areas are designated 'open space', have 1800mm high glass balustrades and an exterior screen that restricts that aperture further. In terms of getting breeze through, it is limited by the high balustrades – the amount of natural ventilation into this space is actually quite restricted</i></li> <li>• <i>The voids through the play areas are not very large in diameter and if the trees proposed were to succeed, which is doubtful, they will be casting shade over the void.</i></li> <li>• <i>No circulation is provided “back of house” to the main classrooms. Access to into the rooms is through the outdoor</i></li> </ul>	<p><u>Officers Comment</u></p> <p>As acknowledged in the UDCG May 2021 advice, the development application has addressed the amenity concerns through design amendments (setbacks), ventilation and improvements to the landscaping. In addition, the level 1 Reception area has changed to provide an improvement for staff in accessing the childcare centre. Additionally, the landscaping has amended to provide an improved amenity through landscape design for children and staff.</p> <p>The amendments have addressed the concerns raised in the UDRP May 2022 advice and is considered satisfactory.</p>

<p><i>play areas, which is disruptive to the children, and is not good practice.</i></p> <p><i>The location of the 'sign-in' space at the level of the existing lift-lobby at the top of the shopping centre ramp, necessitates any parents and carers with prams and wheelchair users, who make use of the ground floor 'drop-off' car park spaces, to use two separate lifts to access the classrooms. Others will have to negotiate stairs to access all rooms.</i></p> <p><i>The lift / stairs/ entry areas are considered too small - particularly in respect to pick-up or drop-off spaces. The gathering space outside the lift doors needs to be increased and made into a more pleasant and active space. "</i></p> <p><u>UDRP Comment – 25 May 2022 (UD2021/01109.01)</u></p> <p><i>“Within the limitations of what is possible on the site, the amended design has gone a considerable way towards addressing the concerns that the Panel raised previously in respect to amenity.</i></p> <ul style="list-style-type: none"> <li><i>• It was again noted that this is not an easy site to design for – a lot of this difficulty comes from what is existing and established around the site.</i></li> <li><i>• While the design has come a long way since the previous iteration, some further design development offers opportunities to further improve comfort and amenity for children and staff.</i></li> </ul> <p><i>One reservation that remains arises from the very restricted opportunity for cross ventilation of some of the outdoor play spaces due to the high solid glass balustrades that face the street-front to the west.</i></p> <ul style="list-style-type: none"> <li><i>• Are there opportunities to have more areas without glass balustrades where the screen element acts as the fall protection? For example, can tensile stainless-steel mesh be utilised as a second layer behind the large screens at the façade?”</i></li> </ul>	
<b>Principle 7. Safety</b>	
<p><u>UDRP Comment – 27 October 2021 (UD2021/01109)</u></p> <p><i>“Traffic impacts:</i></p> <ul style="list-style-type: none"> <li><i>• Having regard to the adjacent Junction Fair Shopping Centre carpark exit immediately adjacent to the site, and existing peak time queuing of vehicles waiting to turn left from Farquhar Street onto Glebe Road. Cars awaiting access for the drop- off and pick-up parks proposed, are likely to obstruct access from the existing ramp.</i></li> <li><i>• Ensuring adequate sight lines for drivers</i></li> </ul>	<p><u>Officers Comment</u></p> <p>The applicant provided an amended Plan of Management (POM) following comments about safety concerns raised in the UDCG May 2022 advice:</p> <p>The POM incorporated safety aspects including changes to parking arrangements (staff parking on ground floor of childcare centre) and front of house reception arrangements to always ensure staff attendance.</p> <p>An emergency evacuation plan has been incorporated within the POM and the applicant will be required to submit a final emergency</p>

<p><i>using existing ramp exit, and those exiting the proposed car park, to pedestrians using Farquhar Street.</i></p> <ul style="list-style-type: none"> <li><i>• Several points of conflict around the traffic and pedestrian access at the entries.</i></li> <li><i>• Traffic arising from the existing child care centre in the immediate vicinity also needs to be considered.</i></li> <li><i>• The bicycle parking area at Ground level is very small, poorly located and insecure.</i></li> </ul> <p><i>The CPTED report submitted is not sufficient – it needs to take into account that the proposal is not the typical child care typology (ground level or even two storey child care centre). Also needs to detail how the carparking is proposed function.</i></p> <p><i>Safety concerns arise particularly for children in the car parking area, as there are no dedicated pedestrian walkways to access the lift. All pedestrians have to cross the paths of vehicles entering and leaving the parking spaces, which is of concern.</i></p> <p><i>"Secure points"</i></p> <ul style="list-style-type: none"> <li><i>• Is there a secure point at the carpark lift?</i></li> <li><i>• Another Secure point is required internally at the 'sign in level' – having it open is a concern as once anyone is past the front entry doors, there is nothing preventing access to the stairs and all upper levels.</i></li> </ul> <p><i>A solid metal screen is proposed across the entire façade – do potential issues arise for emergency services access? – for example in the event of a fire. Checking with the fire Brigade is recommended to determine if the screening proposed is something their equipment can quickly handle in an emergency. Managing fire egress is obviously very crucial."</i></p> <p><u>UDRP Comment – 25 May 2022 (UD2021/01109.01)</u></p> <p><i>"The following issues relate to multiple categories, including Safety, and are discussed in greater detail under the headings above:</i></p> <p><i>Plan of Management (POM)</i></p> <ul style="list-style-type: none"> <li><i>• Integration of POM with physical design is fundamental</i></li> <li><i>• POM needs to be design in tandem with the developed design</i></li> </ul> <p><i>Emergency evacuation plan</i></p> <p><i>Function of the entry point:</i></p> <ul style="list-style-type: none"> <li><i>• A staffed reception would be needed</i></li> <li><i>• Interface with Junction Fair is important</i></li> </ul> <p><i>Carparking:</i></p> <ul style="list-style-type: none"> <li><i>• Need for electronic information outside</i></li> </ul>	<p>evacuation plan as part of the construction certificate documentation.</p> <p>The applicant provided a letter from Affinity Fire Engineering dated 01 April 2022. The letter advises the metal screens at the front facade are not expected to impact on Fire Brigade intervention or occupancy evacuation. It notes design work in construction will be required to achieve compliance with the BCA.</p> <p>The amendments have addressed the concerns raised in the UDRP May 2022 advice and is considered satisfactory.</p>
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<p><i>car park informing drivers if park is full.</i></p> <ul style="list-style-type: none"> <li>• <i>Proposed parking “marshal”</i></li> </ul>	
<b>Principle 8. Housing Diversity and Social Interaction</b>	
<p><u>UDRP Comment – 27 October 2021 (UD2021/01109)</u></p> <p><i>“The need for child care and early education facilities is acknowledged, and is supported in principle, providing the constraints of the site can be adequately addressed.”</i></p> <p><u>UDRP Comment – 25 May 2022 (UD2021/01109.01)</u></p> <p><i>“Nothing further to add.”</i></p>	<p><u>Officers Comment</u></p> <p>The UDRP comments are noted.</p>
<b>Principle 9. Aesthetics</b>	
<p><u>UDRP Comment – 27 October 2021 (UD2021/01109)</u></p> <p><i>“Consideration of the experience at pedestrian level on the streetscape – articulation and lighting at this level.</i></p> <p><i>Consider the potential to have something stimulating and changing on/in the building at the car park level, so that the arrival to the building is something exciting and stimulating for the children when they arrive each day – the wall that says ‘signage’ could potentially be a wall for the children rather than adults, or this treatment could be inside the car park.</i></p> <p><i>The building façade would be better integrated with the streetscape if the upper floors were set back from the street.”</i></p> <p><u>UDRP Comment – 25 May 2022 (UD2021/01109.01)</u></p> <p><i>“The setting back of the upper floor has assisted in the presentation of the building to the street.</i></p> <p><i>Given the limited ground level street-front and the presence of the multiple vehicular entries and exits – both proposed and existing - and the need for information signage in respect to car parking, careful consideration will need to be given in respect to any other necessary inclusions in the remaining street façade at ground. These include signage, fire booster pump (if required) and hydrants, meter cupboards, fire exit doors, and a range of other inclusions – which should be addressed and detailed at DA stage.</i></p> <p><i>Opportunities remain for some for “fun” murals or (non-advertising) changing displays on the blank walls within the carpark near the lift.”</i></p>	<p><u>Officers Comment</u></p> <p>The proposal includes business identification signage on the facade fronting Farquhar Street. The proposal has addressed air quality, landscaping and internal layout arrangements with regard to requirements for Centre Based Child care Facilities within the SEPP and is acceptable.</p> <p>The reference location of the fire hydrant booster and service metres are on the amended Architectural Plans.</p> <p>The notation of murals on the internal carpark areas have been noted on the amended plans.</p> <p>The amendments have addressed the concerns raised in the UDRP May 2022 advice and is considered satisfactory.</p>
<b>Recommendation:</b>	
<p><u>UDRP Comment – 27 October 2021 (UD2021/01109)</u></p>	<p><u>Officers Comment</u></p> <p>As detailed in the officer comments provided</p>

<p><i>"The Panel is unable to support the proposed development. Significant amendments are required to achieve a satisfactory outcome. Appropriate amendments to the design to address the key issues, and additional information as outlined above, are required in order for the Panel to support the proposal.</i></p> <p><i>It is recommended that the proposal be presented again to the UDRP for further consideration of whether the amended proposal has addressed the concerns raised."</i></p> <p><u>UDRP Comment – 25 May 2022 (UD2021/01109.01)</u></p> <p><i>"Amendments to the design as outlined above are required in order for the Panel to support the proposal. The Panel suggests that the CN's assessing officer determine whether the amended proposal has addressed the concerns raised, and whether it needs to be presented again to the UDRP for further consideration.</i></p>	<p>above for each of the nine Design Principles, the current amended documentation is considered to address the recommendations of the UDRP. The response and amended details have been electronically forwarded to the UDRP and have been endorsed.</p>
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Overall, the proposed centre based child care facility is considered to be acceptable having regard to the matters raised by CN's UDRP and is supported on a design basis.

Acoustic Impacts

The applicant submitted an Acoustic Assessment prepared by RAPT Consulting dated June 2021. The acoustic impacts were considered due to the proximity of the proposal to sensitive receivers, being residential development. The submitted report and overall potential acoustic impacts has been assessed by CN's Environmental Protection Officer and the following comments were provided:

*'The proposal is for a centre based childcare facility. The site area is approximately 11,250 m<sup>2</sup>. The development proposes to operate between 6.30 am – 6.30 pm Monday to Friday and facilitate up to 109 children between the ages of 0 to 5 (nursery, toddler and preschool). There will be 18 staff. It is noted that the original proposal for was 120 childcare places, and this has been reduced after consultation with the Urban Design Review Panel dated 01 April 2022.*

Acoustics

*The proposed development will be four stories high. Residential properties (1 and 2 storeys) on Farquhar Street are located approximately 20m to the west of the site and could be impacted by noise from the operations of the development.*

*Noise associated with the proposal includes people's voices, mechanical plant/equipment, vehicle movements in the carpark and associated deliveries.*

*The Noise Assessment prepared by RAPT Consulting, June 2021 was prepared in accordance with:*

- a) Association of Australian Acoustical Consultants (AAAC) Childcare Centre noise Assessment Guideline V3, September 2020.
- b) Noise Policy for Industry 2017.

*The above documents require a criterion of 'background + 10dB' for a total of two hours outdoor play time per day is recommended in Section 5 of Association of Australian Acoustical Consultants (AAAC) Child Care Centre Noise Assessment Technical Guideline (V3). The standard Industrial Noise Policy criterion of 'background + 5dB' will apply for other noise sources on the site.*

*A cumulative assessment of all expected noise sources was undertaken. It has been confirmed that the acoustic model did not incorporate shielding from balustrades in the calculation and the assessment is a conservative/worst case scenario assessment.*

*The carpark is existing. The Traffic and Parking Assessment prepared by Intersect Traffic dated August 2021 concluded that no adverse impacts are predicted on the adjacent road network (such as queuing). The plans show that the future ground floor carpark will be enclosed by the new building, reducing the potential for noise impacts (providing the roller door is maintained appropriately).*

*It was assumed that the air conditioning system comprises of three medium double fan condenser units to be placed on the rooftop of the proposed building. There will also be mechanical plant associated with the proposed kitchen and laundry. Final selection of mechanical plant must be reviewed at the construction certificate stage to confirm compliance with the noise trigger levels established within the acoustic report.*

*The acoustics assessment concluded that the development is likely to comply with relevant noise goals and criteria (even when all noise sources are operating at the same time) provided that an operational noise management plan is implemented at the facility.*

*Noise from demolition and construction activities also has the potential to impact neighbours.'*

Based on the assessment of CN's Environmental Protection Officer, the proposal is considered satisfactory, subject to conditions recommended at **Attachment C**.

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

The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW at **Attachment E**.

The site is suitable for the proposed development as it is located within a local centre (The Junction) and is well serviced by public transport and community facilities. It is

considered that adequate services and waste facilities are available to the development.

At-grade access to the site will be available for pedestrians, from adjacent roads and public transport.

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

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

The main issue with suitability for the site is how the use will integrate with the existing centre on the site. This assessment report has provided comprehensive details on how the parking will be integrated on site adequately to allow both the child care centre and the retail centre to operate simultaneously with minimal impact due to the additional traffic management operations being implemented.

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

The application was notified in accordance with the Community Participation Plan. In response a total of four submissions were received, comprising one submission of support, two submissions of objection and one late submission of objection. Two Public Voice requests were received.

The key issues raised within the submissions have been discussed within the report above. The following table provides a summary of the remaining issues raised and associated responses.

ISSUE	COMMENT
Statutory and Policy Issues	<p>Objectors raised concerns regarding the non-compliance of the proposal with the Education and Care Regulations. The submitted proposal is compliant with the development standards prescribed under State Environmental Planning Policy (Transport and Infrastructure) 2021. Objections included concerns regarding the amount of unencumbered floor space.</p> <p>The floor area of the proposed building complies with clause 107 of <i>Education and Care services National Regulations</i> requiring 3.25m<sup>2</sup> of unencumbered indoor space per child as detailed within the assessment above (see SEPP T&amp;I).</p> <p>The SEPP states that is the requirements of the National Regulations relating to the amount of unencumbered indoor or outdoor space are not met in a DA in NSW, the concurrence of the regulatory authority (NSW Department of Education) will be required. The proposal complies with the indoor floor area (354.25m<sup>2</sup> required and 380m<sup>2</sup> provided) and outdoor space (763m<sup>2</sup></p>

	<p>required and 833m2 provided) requirements of the Education and Care Service National Regulations, thereby not requiring concurrence with the Regulatory Authority</p> <p>The proposed outdoor areas meets the minimum requires as prescribed in Figure 1 from NSW DPIE – Childcare Planning Guideline – October 2021.</p> <p>The proposal is compliant with the Newcastle Local Environmental Plan 2012 development standards. Clause 4.3 Height of Buildings identifies a maximum height of 14 metre for the site, the proposed development has a height of 13.86 metres. Furthermore, clause 4.4 Floor Space Ratio allows a maximum FSR of 2.1 for the site and the proposed development has an FSR of 0.8:1.</p>
<p>Traffic, parking and access issues</p>	<p>Traffic, parking, and access has been satisfactorily addressed subject to the recommended conditions of consent. A detailed assessment of these matters is contained within the Traffic, Parking and Access - Section 7.03 above. A Car Park Management Plan has been submitted with the application and forms part of the approved documentation, conditions of consent also include the requirements for fee-paid parking, installation and maintenance of a ticketless parking system.</p>
<p>Overshadowing and solar access</p>	<p>The site will overshadow the adjacent commercial buildings due to the orientation of the subject site and neighbouring site to the east. The shadowing impacts of the proposal are considered to be reasonable having regard to the B2 zoning and surrounding commercial uses. There are no overshadowing impacts on residential uses within Farquhar Street.</p>
<p>Streetscape</p>	<p>The submissions raised a number of concerns regarding the design of the proposed development, including the streetscape appearance and opportunities for the development to provide passive surveillance.</p> <p>In response, to the matters raised during the assessment, including comments by the UDRP, the Applicant submitted amended plans which resulted in improvements to the upper-level setbacks to the Farquhar Street elevation. The UDRP were satisfied with these changes from a design perspective. The proposal addresses Newcastle Development Control Plan 2012 - Section 3.10 Commercial Uses with regard to streetscape and front setbacks, including side and rear setbacks.</p> <p>In addition, a Crime Prevention Through Environmental Design Report and further correspondence has been</p>

	<p>submitted to address security and car parking safety. The amended application identifies the lift access points and the secure access points. It is also recommended that a staff member be located at the entry point of the centre.</p>
<p>Miscellaneous</p>	<p>An issue arising within the submissions was the emergency and evacuation procedures. The Applicant has provided a plan of management (refer to <b>Attachment B</b>) for the child care centre and outlines emergency evacuation procedures and movement of people within the basement area. The plan of management includes:</p> <ul style="list-style-type: none"> <li>i) Details of emergency procedures for the child care centre.</li> <li>ii) The emergency evacuation plan is to be developed in tandem with the physical design of the building.</li> <li>iii) Entry and drop off point require a physical staff member, and this is to be demonstrated in the design.</li> <li>iv) In addition, a condition (refer to <b>Attachment C</b>) has been included to ensure a site wide emergency evacuation plan by a suitably qualified person is submitted to the certifier as part of documentation for a construction certificate.</li> </ul> <p>A Disability Access Report has been included and identifies that the proposed development is compliant with the <i>Commonwealth Disability Discrimination Act 1992</i> (DDA), and other relevant policies, standards and codes.</p> <p>Whilst submissions noted the proposal had not addressed COVID 19, there is no planning requirements for development in relation to COVID 19 protocols. However, the proposal has been reviewed on two occasions by UDRP and cross ventilation has been improved to improve the outdoor play spaces.</p>

Public Voice

ISSUE	COMMENT
<p>Additional impact details regarding parking</p>	<p>The impacts of displacing the existing tenancy car parking from the site and the parking impacts from the development are discussed in detail in the report under Traffic, Parking and Access - Section 7.03 provisions.</p> <p>Relevant conditions of consent in this regard, including proposed traffic management operations to be in place</p>

	prior to construction certificate.
Emergency Evacuation Procedures	<p>The Applicant advised there are two egresses proposed from the Childcare Centre. One onto Farquhar Street at street level, not via the existing car park, and one via the existing ramp into the Junction Fair shopping centre onto Glebe Road. Each egress will meet the minimum requirement of the Building Code of Australia.</p> <p>In addition, the arrangement to move children across Glebe Road into the park as a muster point is only one idea for the proposed emergency protocol. Discussions will be held with the centre operator and centre management regarding a future plan, in conjunction with the approved plan of management for the childcare centre.</p> <p>A condition of consent is included that an Emergency Evacuation Management Plan for the development is to be completed in conjunction with the existing shopping centre. The plan is to be included in documentation submitted with a Construction Certificate application.</p>
Consideration of other childcare facilities within nearby vicinity	<p>An issue was raised regarding the lack of consideration of a nearby childcare facility.</p> <p>The consideration of similar businesses in the area is not a matter for consideration required under Clause 4.15 of EP&amp;A Act 1979, unless associated offsite impacts are intensified and/or unjustified such as car parking. The proposal is permissible on the site with regard to land zoning.</p>
Construction management impacts noise and dust	<p>An issue was discussed regarding construction impacts on nearby properties.</p> <p>A standard condition is included to ensure a construction management plan for the development is provided to the principal certifier with documentation for a Construction Certificate application.</p>

**5.9 The public interest**

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

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

The 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 C** are included in any consent issued.

**ATTACHMENTS**

- Item 29 Attachment A:** Submitted Plans – 204 Union Street, The Junction
- Item 29 Attachment B:** Plan of Management – 204 Union Street, The Junction
- Item 29 Attachment C:** Draft Schedule of Conditions– 204 Union Street, The Junction
- Item 29 Attachment D:** Processing Chronology - 204 Union Street, The Junction
- Item 29 Attachment E:** General Terms of Approval – NSW Subsidence Advisory - 204 Union Street, The Junction

**Item 29 Attachments A-E distributed under separate cover**



**ITEM-30**                    **DAC 06/12/22 – NOTICE OF RECOMMENDATION TO HUNTER CENTRAL COAST REGIONAL PLANNING PANEL – DA2018/01351 – WINTEN DEVELOPMENT – RESIDENTIAL SUBDIVISION AT 144 & 177 WOODFORD ROAD, & 610 MINMI ROAD MINMI**

**REPORT BY:**            **PLANNING AND ENVIRONMENT**

**CONTACT:**            **INTERIM EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING MANAGER PLANNING, TRANSPORT AND REGULATION**

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**PURPOSE**

To provide notice of the recommendation for determination to the Hunter and Central Coast Regional Planning Panel (HCCRPP) of Development Application DA2018/01351.

**RECOMMENDATION**

That the Development Applications Committee:

- 1 Notes the recommendation for determination and associated assessment report relating to DA2018/01351, which has been presented to the HCCRPP for consideration.

**KEY ISSUES**

- 2 Winten (No. 21) Pty Ltd (the Applicant) lodged an application with the City of Newcastle (CN) for 'Subdivision of 6 lots into: 874 residential lots; 7 development lots for future residential development; 14 Local Centre Lots; 1 Neighbourhood Centre Lot; 2 Residue Lots; and 20 lots for road widening, public reserves and drainage reserves (proposed to be dedicated to Council)' on 144 Woodford St, 177 Woodford St & 610 Minmi Rd, Minmi.
- 3 The development is categorised as regionally significant development as it has a capital investment value over \$30 million. Accordingly, the Hunter and Central Coast Regional Planning Panel (HCCRPP) is the consent authority for the application and CN is responsible for the assessment of the application on behalf of the HCCRPP.
- 4 The application is scheduled for a determination meeting of the HCCRPP on 5 December 2022. The CN assessment report and recommendation of refusal is provided as **Attachment A & B**.
- 5 The development is on land to which a Concept Plan approval (MP10\_0090) applies, issued by the NSW Planning Assessment Commission 6 August 2013. The Concept Plan envisages up to 3,300 dwellings across the 520-hectare development site at Minmi through to the Newcastle Link Road.

- 6 The Applicant is also seeking to have conditions imposed on DA2018/01351 that would modify the existing approval for DA2015/10393 (Minmi East Stage 1B). The purpose is to support a requirement of the Concept Approval to provide suitable land for recreation facilities.
- 7 The HCCRPP is the consent authority for DA/2087/2018 within the Lake Macquarie City Council (LMCC) Local Government Area which seeks consent for subdivision resulting in approximately 1,063 new residential allotments on land between DA2018/01351 and the Newcastle Link Road. This application is on land that is subject to the same Concept Plan approval (MP10\_0090). The assessment report by LMCC is provided at **Attachment C**. The assessment report by LMCC have recommended that the determination be deferred to enable further information to address outstanding matters.
- 8 The Summerhill Waste Management Centre (SWMC) has made a submission to LMCC on DA/2087/2018 (**Attachment D**), raising concern in relation to:
  - 8.1 Buffers Zone - Insufficient buffer between the residential lots to the waste facility that could result in amenity impacts upon future residents and operational constraints on the facility.
  - 8.2 Southern Access - Inadequate suitable corridor to enable a future road connection between the Summerhill Waste Management Centre and the Newcastle Link Road.

Figure 1 below shows the locality and the relationship between DA2018/01351 (shown in red), DA2015/10393 (shown in green) and the development proposed within the LMCC LGA (DA/2087/2018 shown in cyan).



FIGURE 1 – DA2018/01351, DA2015/10393 and DA/2087/2018 - (Source – CN Mapping)

- 9 The 'key issues' detailed in the CN assessment report for the subject DA2018/01351 include:
  - 9.1 Traffic
  - 9.2 Noise and Vibration
  - 9.3 Biodiversity
  - 9.4 Land contamination
  - 9.5 Mine subsidence
  - 9.6 Earthworks
  - 9.7 Flood planning
  - 9.8 Stormwater management and Water Quality
  - 9.9 Bushfire
  - 9.10 European Heritage
  - 9.11 Infrastructure Staging Plan
  - 9.12 Modification to DA2015/10393
  - 9.13 Inconsistency in documentation

10 The CN assessment report recommends that pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) that both DA2018/01351, and the request to modify DA2015/10393, are refused as:

10.1 CN cannot be satisfied that the proposed development is 'generally consistent' with the approved Concept Plan.

10.2 CN cannot be satisfied that the likely impacts on the natural and built environments are known and or can be appropriately mitigated

10.3 CN cannot be satisfied that the land is suitable for the proposed development

10.4 CN cannot be satisfied that the proposed development is not contrary to the public interest

11 A copy of the Recommended Reasons for Refusal are provided at **Attachment B**.

## FINANCIAL IMPACT

12 Nil

## NEWCASTLE 2040 ALIGNMENT

13 The noting of this report aligns with the strategic directions of the Newcastle 2040 Community Strategic Plan as follows:

### 1. Livable Newcastle

1.1. Enriched neighborhoods and place

1.1.1 Great spaces

1.1.2 Well-designed places

1.2. Connected and fair communities

1.2.1 Connected communities

1.3. Safe, active, and linked movement across the city

1.3.1 Connected cycleways and pedestrian networks

1.3.2 Road networks

## IMPLEMENTATION PLAN / IMPLICATIONS

14 The land is identified as an urban release area within the Greater Newcastle Metropolitan Plan and under the Newcastle Local Environmental Plan 2012.

15 CNs assessment of the application and recommendations to the HCCRPP are consistent with the requirements of the EP&A Act.

## RISK ASSESSMENT AND MITIGATION

16 There is no risk associated with noting this report.

**RELATED PREVIOUS DECISIONS**

17 Nil

**CONSULTATION**

18 DA2018/01351 has been publicly notified in accordance with CNs Community Participation Plan (CPP) on four separate occasions since it was first lodged in 2018. Detail on the submissions received are included within the assessment report provided at **Attachment A**.

**BACKGROUND**

19 DA2018/01351 was originally lodged with CN on 3 December 2018.

20 On 18 January 2019, the Applicant filed as Class 1 Appeal in the NSW Land and Environment Court (LEC) against CN's deemed refusal of the application.

21 In May 2021, the Appeal was discontinued by the Applicant, with the application subsequently returned to CN for assessment and determination by the HCCRPP.

**OPTIONS**

**Option 1**

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

**Option 2**

23 Council resolves not to note this report. This is not the recommended option.

**REFERENCES**

**ATTACHMENTS**

**Item 30 Attachment A:** CN Assessment Report

**Item 30 Attachment B:** CN Recommended Reasons for Refusal

**Item 30 Attachment C:** LMCC Assessment Report and Recommendations

**Item 30 Attachment D:** Copy of Summerhill submission to LMCC DA.

**Item 30 Attachments A-D distributed under separate cover**