

Extraordinary Development Application Committee Meeting



DATE: Tuesday, 27 June 2023

TIME: 6:00pm

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

22 June 2023

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City of Newcastle
PO Box 489, Newcastle NSW 2300
Phone 4974 2000
newcastle.nsw.gov.au

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Note: Items may not necessarily be dealt with in numerical order

6. CONFIRMATION OF PREVIOUS MINUTES

6.1. MINUTES – EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE 9 MAY 2023

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 230509 Extraordinary 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

Minutes

Development Application Committee Meeting

Council Chamber, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West, Tuesday, 09 May 2023 at 6:00pm.



1. ATTENDANCE

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.

J Bath (Chief Executive Officer), D Clarke (Executive Director Corporate Services), K Hyland (Acting Executive Director Creative and Community Services), J Rigby (Executive Director City Infrastructure), M Bisson (Interim Executive Director Planning and Environment), E Kolatchew (Executive Manager Legal and Governance), P Emmett (Development Assessment Section Manager), L Barnao (Councillor Services/Meeting Support), W Haddock (AV/Information Technology Support) and A Paule-Font (AV/Information Technology Support).

2. ACKNOWLEDGEMENT OF COUNTRY

The Lord Mayor read the message of acknowledgement to the Awabakal and Worimi peoples.

3. PRAYER

The Lord Mayor read a prayer and a period of silence was observed in memory of those who served and died so that Council might meet in peace.

4. APOLOGIES / LEAVE OF ABSENCE / REQUEST TO ATTEND BY AUDIOVISUAL LINK

Nil apologies.

MOTION

Moved by Cr Mackenzie, seconded by Cr McCabe

The request submitted by Councillor Richardson and Councillor Clausen to attend by audio visual link be received and leave granted.

Carried

5. DISCLOSURES OF INTEREST

Nil.

6. CONFIRMATION OF PREVIOUS MINUTES

Nil.

7. DEVELOPMENT APPLICATIONS

7.1. SUPPLEMENTARY REPORT - 30 VILLA ROAD, WARATAH WEST - DA2022/01085 - DWELLING HOUSE - ALTERATIONS, ADDITIONS AND ANCILLARY DEVELOPMENT (CARPORT, GARAGE AND RETAINING WALLS) INCLUDING DEMOLITION

MOTION

Moved by Cr Mackenzie, seconded by Cr McCabe

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 DA2022/01085 for alterations and additions to the existing dwelling house at 30 Villa Road, Waratah West 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 unanimously

7.2. SUPPLEMENTARY REPORT - 38 POWER STREET ISLINGTON - DA2022/01239 - SEMI-DETACHED DWELLINGS - INCLUDING DEMOLITION OF EXISTING DWELLING AND BOUNDARY ADJUSTMENT

MOTION

Moved by Cr Mackenzie, seconded by Cr Winney-Baartz

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 4.1 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 R3 Medium Density Residential Zone in which the development is proposed to be carried out; and
2. That DA2022/01239 for the construction of two semi-detached dwellings and two-into-two lot (boundary alteration) subdivision at 38 Power Street, Islington, 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 6.10pm.

6.2. MINUTES – DEVELOPMENT APPLICATIONS COMMITTEE 16 MAY 2023

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 230516 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

Minutes

Development Application Committee Meeting

Council Chamber, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West, Tuesday, 16 May 2023 at 7:15pm.



1. ATTENDANCE

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.

J Bath (Chief Executive Officer), D Clarke (Executive Director Corporate Services), J Rigby (Executive Director City Infrastructure), M Bisson (Interim Executive Director Planning and Environment), E Kolatchew (Executive Manager Legal and Governance), S Moore (Executive Manager Finance, Property and Performance), P Emmett (Development Assessment Section Manager), M Brooks (Corporate Planning & Performance Manager), A Jones (Director & Interim Manager Waste Services), M Murray (Chief of Staff), L Barnao (Councillor Services/Meetings Support), Warren Haddock (AV/Information Technology Support).

2. ACKNOWLEDGEMENT OF COUNTRY

Read at previous Committee meeting on night.

3. PRAYER

Read at previous Committee meeting on night.

4. APOLOGIES / LEAVE OF ABSENCE / REQUEST TO ATTEND BY AUDIOVISUAL LINK

Nil apologies.

MOTION

Moved by Cr Barrie, seconded by Cr Wark

The request submitted by Councillor Wood to attend by audio visual link be received and leave granted.

Carried

5. DISCLOSURES OF INTEREST

Nil.

6. CONFIRMATION OF PREVIOUS MINUTES

6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 26 APRIL 2023

MOTION

Moved by Cr Mackenzie, seconded by Cr Adamczyk

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

Carried

7. DEVELOPMENT APPLICATIONS

7.1. 53 STEVENSON PLACE NEWCASTLE EAST - DA2022/01127 - DWELLING HOUSE - ALTERATIONS AND ADDITIONS

MOTION

Moved by Cr Mackenzie, seconded by Cr Adamczyk

- 1 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 objectives of Clause 4.4 and the objectives for development within the R3 Medium Density Zone in which the development is proposed to be carried out; and
- 2 That the development application for alterations and additions at 53 Stevenson St Newcastle East 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 unanimously

The meeting concluded at 7.20pm.

7. DEVELOPMENT APPLICATIONS

7.1. DAC 27/06/23 – 7-9 WENTWORTH STREET WALLSEND – DA2021/01548 – CENTRE-BASED CHILD CARE FACILITY – INCLUDES DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF BUSINESS IDENTIFICATION SIGNAGE

APPLICANT: ZONE PLANNING GROUP
OWNER: G R SHEDDEN & J E SHEDDEN
REPORT BY: PLANNING & ENVIRONMENT
CONTACT: EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT /
ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT
& REGULATION

PART I

PURPOSE

A Development Application (DA2021/01548) has been received seeking consent to demolish the two existing dwellings and other structures and the erection of a two-storey centre-based child care facility, comprising 90 spaces and associated signage at 7 and 9 Wentworth Street, Wallsend. The value of the works is \$4,022,558.

The submitted application was assigned to Development Officer Alex Hunter, for assessment.

The application is referred to the Development Applications Committee for determination, due to the proposed 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.



**Subject Land: 5-7 Wentworth Street
Wallsend**

The Applicant submitted amended plans during the assessment process in response to recommendations of City of Newcastle (CN) officers and advice from the Urban Design Review Panel (UDRP). The amended plans are the subject of this report.

The amended application was re-notified to surrounding landowners in accordance with City of Newcastle's (CN's) Community Participation Plan between 18 October and 14 November 2022. No submissions were received.

A copy of the plans for the proposed centre-based child care facility is at **Attachment A**.

Issues

- 1) The proposed development does not comply with the height of buildings development standard of 8.5m for the subject land under NLEP 2012. The proposed development will result in a maximum height of 9.73m equating to an exceedance of 1.23m, or 14.47% above the development standard.
- 2) The architectural design of the proposed development has been reviewed by CN's Urban Design Review Panel on three occasions. The design has been amended in accordance with the comments provided by the Panel and is acceptable.

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

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 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
- B. That DA2021/01548 for the demolition of two dwellings and other structures, and the erection of a centre-based child care facility and associated signage at 7 & 9 Wentworth Street, Wallsend, 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?*

PART II

1.0 THE SUBJECT SITE

The development site is located at 7 and 9 Wentworth Street, Wallsend, and comprises two separate allotments known as Lot 1 DP 799571 and Lot 1 DP 199706. The combined allotments make up an L-shaped site with a total area of 1,710m², with a 40.45m frontage to Wentworth Street and a 33.53m frontage to Neilson Street.

Each lot accommodates existing residential development. No. 7 Wentworth Street contains a single-storey weatherboard dwelling with a tiled roof as well as an ancillary detached garage. No. 9 Wentworth Street contains a single-storey weatherboard dwelling with a tiled roof as well as an ancillary detached single garage and detached shed.

Vegetation within each allotment comprises residential scale planting as well some established exotic trees. A 13m high Peppercorn tree is located at the rear of 7 Wentworth and two 9m high Cypress trees are located at the rear of 9 Wentworth Street.

The topography of the site slopes downwards to the north at an approximate grade of 8%.

The northeast boundary of the site is shared with a single-storey multi-dwelling housing development and the northwest boundary adjoins single dwellings. Opposite the site to the east is St Patricks Primary School.

The neighbourhood is characterised by low density residential land uses in single to two-storey forms.



Figure 1: Wentworth Street Frontage



Figure 2: Neilson Street Frontage

2.0 THE PROPOSAL

The Applicant seeks consent for a centre-based child care facility within the site located at 7-9 Wentworth Street, Wallsend, identified as Lot 1 DP 199706 and Lot 1 DP 799571. The proposal comprises the following:

- i) Demolition of existing structures within the site, including two single dwellings and ancillary structures.
- ii) Construction of a two-storey centre-based child care facility comprising up to 90 child care spaces for children 0-5years old, including:
 - a) Six activity rooms (total area of 334.24m²)
 - b) Three outdoor play areas (total area of 642.24m²)
 - c) Three sleeping rooms
 - d) Ground-level covered parking for 23 vehicles
 - e) Amenities, preparation rooms, kitchen, dry-store, reception, meeting rooms, laundry and library
 - f) Onsite stormwater infiltration tank and detention tank
 - g) Landscaping and deep soil planting areas
 - h) Business identification signage

The proposed centre-based child care facility will employ 15 staff members and will operate from 6:30am to 6:30pm Monday to Friday. The centre will also open during weeknights and Saturdays (during daylight hours only) up to six times per year for special events attended by parents, children and visitors. No operations are to be carried out on weekends or Public Holidays.

The proposed development has a maximum building height of 9.73m and thereby represents a 1.23m (or 14.47%) encroachment of the 8.5m Height of Buildings Standard under Clause 4.3 of the NLEP 2012. A Clause 4.6 Request to Vary a Development Standard report has been provided by the Applicant.

Originally, the proposed development entailed a significantly different architectural design whereby the building massing was focussed towards the south of the site and the northern portion of the site would be retained as a car parking area. However, this layout was not supported by CN's Urban Design Review Panel due to likely adverse impacts on the streetscape amenity and inconsistency with the established character of the neighbourhood.

Amended plans were lodged under Clause 37 and Clause 38 of the *Environmental Planning & Assessment Regulation 2021* which resulted in a different site layout as originally proposed. These plans situate the building mass towards the north and

include an under-croft parking area, as well as upper-level outdoor play areas situated towards the south of the site. Amended documentation and professional reports were also submitted in support of the amended layout.

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with CN's Community Participation Plan from the 23 November to the 10 December 2021. No submissions were received.

The amended application was also notified in accordance with CN's Community Participation Plan from the 18 October to the 14 November 2022. No submissions were received.

4.0 INTEGRATED DEVELOPMENT

The proposal is integrated development pursuant to Section 4.46 of the EP&A Act as approval is required from Subsidence Advisory NSW under section 22 of the NSW *Coal Mine Subsidence Compensation Act 2017* due to the site being located within a Mine Subsidence District. Subsidence Advisory NSW granted their '*General Terms of Approval*', to the amended architectural plans on the 4 November 2022 (Refer to **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 (Biodiversity & Conservation) 2021

Chapter 2 Vegetation in non-rural areas

This chapter of the SEPP aims to protect the biodiversity value 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 preservation of trees and other vegetation.

The Applicant seeks consent for the removal of three established trees within the site to facilitate the proposed development. These include trees 2, 3 and 5 stated in the table below. The trees proposed for removal are non-native yet are considered declared vegetation as they are over three metres in height. An Arborist Report has been provided which demonstrates that these trees are suitable for removal and have been appropriately offset by the proposed landscape planting. The trees are not suitable to be retained on the site in consideration of the proposed use for a child care centre and due to the species profile and condition of the trees.

Trees 1 and 4 are located on the adjoining sites and are to be retained. It is recommended that tree protection measures be included in the consent to ensure the protection of these trees as recommended in the Arborist report.

| | Tree | Height | Retention value | Outcome |
|---|---------------------------------|---------------|------------------------|----------------|
| 1 | Syzygium smithii (Lilly Pilly) | 8m | Low | Retain |
| 2 | Cupressus spp (Cypress) | 9m | Low | Remove |
| 3 | Cupressus spp (Cypress) | 9m | Low | Remove |
| 4 | Syzygium australe (Lilly Pilly) | 10m | Moderate | Retain |
| 5 | Melia azedarach (Peppercorn) | 13m | Moderate | Remove |

In addition, four street trees will be impacted by the driveway crossing and footpath works. City Greening have supported the removal of the street trees as they are quite young and have recommended that six trees be planted as compensation. Conditions have been included in the consent in relation to the street trees.

The proposed development is satisfactory in regard to this chapter.

State Environment Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of land

This chapter contains planning controls for the remediation of contaminated land.

Section 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, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject site has been mapped by CN's systems as potentially contaminated land.

The applicant has provided a Preliminary and Detailed Site Investigation for Contamination which identified three 'areas of environmental concern' (AECs) within the site relating to:

- a) Current and former buildings within the site
- b) Storage of waste materials
- c) Filling on the site

Targeted sampling and analysis of the AECs was undertaken which revealed that lead contamination within the soil around the existing buildings which exceeds relevant health criteria. All other detected contaminants were below the human health criteria.

A Remediation Action Plan (RAP) was prepared by Qualtest Laboratories dated 29 October 2021 and the development must be carried out in accordance with this report. The RAP outlines how the lead in the surface soil will be remediated to make the site suitable for the proposed child care facility.

The proposed remedial strategy for the site is as follows:

- 1) Excavation of the lead contaminated soils.
- 2) Disposal of the contaminated soil to a licensed waste facility.
- 3) Validation of the resulting excavation, including use of the existing delineation data, where appropriate.

The Validation Report is to be written by an experienced and appropriately accredited, contaminated land consultant, in accordance with relevant sections of the NSW Environmental Planning Authority publication (2020) 'Guidelines for Consultants Reporting on Contaminated Land'.

Relevant conditions of consent are recommended to ensure that disposal of material from the site and import of new fill material is appropriately managed. Conditions are also recommended requiring compliance with the provision of the RAP and the preparation of a Validation Report to certify remedial actions across the site.

The proposed development is satisfactory (subject to the application of conditions) in relation to this chapter of the SEPP.

State Environmental Planning Policy (Transport & Infrastructure) 2021

Chapter 3 Educational Establishments and Child Care Facilities

This chapter of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP) aims to facilitate the effective delivery of educational establishments and early education and care facilities across the State.

Section 3.22 – Centre-based child care facility—concurrence of Regulatory Authority required for certain development

Section 3.22 of the policy applies to development for the purpose of centre-based child care facility if the floor area or open space of the building or place do not comply with the relevant requirements of the *Education and Care Services National Regulations*.

The proposed development plans indicate that more than 3.25m² has been provided per child within each activity room as per the table below:

| Activity Room | No. of Children | Required Area | Provided Area |
|-----------------|-----------------|-------------------|----------------------|
| Activity Room 1 | 8 | 26 m ² | 30.42 m ² |
| Activity Room 2 | 12 | 39 m ² | 45.66 m ² |
| Activity Room 3 | 15 | 49 m ² | 60.25 m ² |
| Activity Room 4 | 15 | 49 m ² | 54.34 m ² |
| Activity Room 5 | 20 | 65 m ² | 73.80 m ² |
| Activity Room 6 | 20 | 65 m ² | 69.77 m ² |

Accordingly, the proposal complies with *Education and Care Services National Regulations* and concurrence from the Regulatory Authority is not required for the subject development.

Section 3.23 – Centre-based child care facility—matters for consideration by consent authorities

Section 3.23 requires that before determining a development application for a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the *Child Care Planning Guideline* in relation to the proposed development.

The applicant has provided an assessment of the proposed facility against Part 3 and Part 4 of the *Child Care Planning Guideline* which demonstrates that the proposal can meet the relevant controls.

As above, the development complies with the unencumbered internal floor area requirements of Regulation 107.

The amended plans indicate that the development will provide more than 7.0m² per child of unencumbered outdoor space in accordance with Regulation 108 as follows:

| Outdoor Area | No. of Children | Required Area | Provided Area |
|---------------------|------------------------|----------------------|-----------------------|
| Outdoor Play 1 | 20 | 140 m ² | 148.21 m ² |
| Outdoor Play 2 | 30 | 210 m ² | 210.50 m ² |
| Outdoor Play 3 | 40 | 280 m ² | 283.53 m ² |

Section 3.24 – Centre-based child care facility in certain zones—additional matters for consideration by consent authorities

The development site is not located in a prescribed zone and therefore the provisions of this clause do not apply.

Section 3.25 – Centre-based child care facility – floor space ratio

The applicable floor space ratio relevant to the site is 0.75:1 pursuant to the Newcastle Local Environmental Plan 2012.

The ground floor level has an approximate GFA of 286m² and the upper level has an approximate FSR of 431m² indicating a total approximate GFA of 717m².

- GFA = 717m²
- Site area = 1,710m²
- FSR = 0.41:1

The proposal is acceptable in regard to Section 3.25.

Section 3.26 – Centre-based child care facility – Non-discretionary standards

This section identifies development standards for particular matters relating to a centre-based child care facility that, if complied with, prevent the consent authority from requiring more onerous standards for those matters.

The development standards are noted. Compliance has been demonstrated in relation to indoor and outdoor space in accordance with the relevant regulations. The site is not located in a heritage conservation area nor is it a heritage item.

The proposal is considered acceptable in relation to Section 3.26.

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3 Advertising and signage

The Aim of this chapter is to ensure that signage including advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and are of a high-quality design and finishes.

The proposed development includes the erection of two circular wall-mounted business identification signs. The proposed signs will be 1.6m in diameter and will feature a green backing board with three white 'leaves' arranged to depict the corporate logo of Eden Academy.

The proposed signage does not include third-party advertising.

The proposed signage is consistent with the aims of the chapter and as demonstrated below satisfies the assessment criteria specified in Schedule 5 of the SEPP.

| <u>Schedule 5 Criteria</u> | |
|--|--|
| <i>Character of the area</i> | <p>The proposal is for two wall-mounted business identification signs along the south-eastern and south-western elevations of the proposed child care centre. The proposed signs are low impact and are unlikely to adversely affect the residential amenity of the area.</p> <p>The development is consistent with the Newcastle Development Control Plan 2012 and as such meets the requirements for the future character of the area.</p> |
| <i>Special areas</i> | There are no specific visually important areas that the sign will detract from. |
| <i>Views and vistas</i> | The development does not detract from any important views. |
| <i>Streetscape, setting or landscape</i> | The development will not unreasonably dominate the streetscape or detract from other signage within the area. |
| <i>Site and building</i> | The proposed signs are 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. |

| | |
|--|---|
| <i>Associated devices and logos with advertisements and advertising structures</i> | No ancillary devices are proposed to be installed on the sign structures. |
| <i>Illumination</i> | The proposed signs will not be internally or externally illuminated. |
| <i>Safety</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. |

The proposed signage is acceptable having regard to SEPP (Industry and Employment) requirements and the nature of the development.

Urban Design Review Panel

CN's Urban Design Review Panel (UDRP) has reviewed the development application on three occasions. Following the November 2021 review, the Applicant provided extensively amended plans and documentation. Following the May 2022 review, revised plans were provided to address the UDRP's remaining issues.

UDRP Meeting 1 - 25 November 2021

The original design was considered by the UDRP at its meeting on 25 November 2021 and was found to be an unsuitable response to the site context, established neighbourhood character, landscaping, amenity, safety and security and overall aesthetics. The recommendation of the panel was as follows:

'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.

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'.

In response, the Applicant undertook a complete re-design of the development that situates the building mass towards the north and includes an under-croft parking area, as well as upper-level outdoor play areas situated towards the south of the site. A full suite of amended documentation was submitted along with the revised plans.

UDRP Meeting 2 – 25 May 2022

The revised architectural design was reviewed by the UDRP at its meeting on the 25 May 2022. The UDRP were generally pleased with the redesign, in terms of context, neighbourhood character, built form and scale, and aesthetics. However, the UDRP identified remaining design issues in regard to landscaping, pedestrian and vehicle access, car parking and Crime Prevention Through Environmental Design (CPTED). The recommendations of the panel were as follows:

'The Panel was unable to support the proposal as presented. Amendments to the design as outlined above, as well as provision of additional information, are required for the Panel to potentially support the proposal. It is recommended that an amended proposal be presented again to the UDRP for further consideration.'

In response to the recommendations of 25 May meeting, the Applicant submitted further amended plans. The changes included:

- a) Deletion of tandem car parking and removal of the protruding area of the basement car parking area thereby allowing additional deep soil planting to the Wentworth Street frontage.
- b) Internal rearrangement of the lower-ground floor and main entrance, while retaining the entrance along the northern boundary. The internal reception area now faces the car park replacing previous service areas. All points of entry to the lower ground area arrive at the same reception.

The revised plans were forwarded to the UDRP for review who provided the following response:

'This design has progressed reasonably well, and is capable of approval with conditions that better address the UDRP's previous advice in response to both earlier schemes, in regard to child safety in the car park, and CPTED issues with the lower level.'

'To that end, I would recommend that the lower area be made capable of being secured after operating hours. This can be addressed fairly simply via a roller shutter (visually open mesh type) being placed on the driveway, and an outward opening gate at landing at the top the egress stair to the street on the opposite side of the car park. In conjunction with this, a visually open security screen should be placed between the driveway and the Wentworth St pedestrian entry path adjacent to it - to reduce risk of children stepping onto the driveway.'

The Applicant has provided final amended plans which detail security gates to the Wentworth Street access ramp and a palisade fence to provide a physical barrier between the car parking area and the pedestrian access pathway.

Final correspondence indicating support for the architectural design of the development was provided from the Panel on 12 May 2023 via email.

The proposed development is thereby satisfactory in regard to urban design and architectural form.

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 in the R2 Low Density Residential Zone under the provisions of NLEP 2012, within which the proposed development 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 child care centre will provide a service that will meet the day to day needs of parents and children who reside in the local area.

Clause 2.6 - Subdivision—Consent Requirements

The development includes the consolidation of two existing allotments into one title. A condition of consent has been recommended which requires the registration of the consolidated land title prior to the issue of an occupation certificate.

Clause 2.7 - Demolition Requires Development Consent

The proposed development seeks consent for the demolition of all existing structures within 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 proposed consolidated title will have a total area of 1,710m² and will therefore exceed the minimum lot size standard of 400m².

Clause 4.3 - Height of Buildings

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.

The proposed development will result in a maximum height of 9.73m equating to an exceedance of 1.23m or 14.47% above the height of buildings development standard of 8.5m for the subject land.

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 0.75:1 which equates to gross floor area of 1,282m². The proposed development has a gross floor area of approximately 717m² which equates to a floor space ratio of 0.41:1.

Accordingly, the submitted FSR complies with this requirement.

Clause 4.6 - Exceptions to Development Standards

The objectives of Clause 4.6 are to:

- 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.

As indicated above, the proposed development comprises a building height of 9.73m which equates to a 14.47% exceedance of the building height standard under Clause 4.3 of the NLEP.

The applicant has submitted a written request to vary the height of buildings standard in accordance with Clause 4.6 of the 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.

The table below assesses the proposed development and provided variation request against the relevant provisions of Clause 4.6 of the NLEP 2012.

| Clause | Provision |
|---------------|--|
| 4.6(2) | <p data-bbox="357 293 1278 360"><i>Is the provision to be varied a development standard? And is the development standard excluded from the operation of the clause</i></p> <p data-bbox="357 398 1369 544">The maximum building height 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 Environmental Planning & Assessment Act 1979 ('EP&A Act').</p> <p data-bbox="357 577 1337 645">The maximum building height development standard is not expressly excluded from the operation of Clause 4.6.</p> |
| 4.6(3) (a) | <p data-bbox="357 687 1294 833"><i>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.</i></p> <p data-bbox="357 866 1342 978">The submitted 'Clause 4.6 – Request to Vary Development Standard' prepared by Zone Planning constitutes a written request for the purposes of Clause 4.6(3)(a).</p> <p data-bbox="357 1012 1361 1079">The Applicant seeks to demonstrate that compliance with the standard is unreasonable in the circumstances of the proposed development.</p> <p data-bbox="357 1113 1369 1326">In <i>Wehbe</i> Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with them 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, as follows:</p> <ol data-bbox="357 1359 1390 2036" style="list-style-type: none"> <li data-bbox="357 1359 1374 1438">1) <i>Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?</i> <li data-bbox="357 1471 1374 1583">2) <i>Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?</i> <li data-bbox="357 1617 1374 1729">3) <i>Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?</i> <li data-bbox="357 1762 1374 1908">4) <i>Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?</i> <li data-bbox="357 1942 1374 2036">5) <i>Is the "zoning of particular land" unreasonable or inappropriate so that a development standard appropriate for that zoning also unreasonable or unnecessary as it applied to that land.</i> |

Consequently, compliance with that development standard is unnecessary and unreasonable.

The Applicant's Clause 4.6 Variation Request relies upon the first *Wehbe* consideration to demonstrate that the objectives of the standard and the objectives of the R2 Low Density Residential Zone have been met notwithstanding noncompliance with the standard.

The objectives of Clause 4.3 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 Clause 4.6 Request contends that the proposed variation in building height is minor in scale and enables a site responsive design that is consistent with the pitched hip and gable style of roof that characterises the surrounding area. The Applicant adds that the proposed roof design reflects the established character of the neighbourhood when viewed from Wentworth Street as the child care centre will present mainly as a single-storey built form due to the sloping topography of the site. Accordingly, the proposed development will make a positive contribution to the desired built form within the locality.

The Applicant's Clause 4.6 Request indicates that the extent of the proposed height variation will not result in adverse amenity impacts on the adjoining properties due to overshadowing or overlooking.

The exceeding area is minor in scale and is centralised to the middle of the roof form and as such will not significantly add to shadowing. In addition, shadow diagrams provided by the Applicant indicate that shadows will fall over the side setback area of the adjoining land and will thereby not significantly impact on the amenity and function of the adjoining private open space. Furthermore, the site is adjoined to the Southwest and Southeast by road reserve, and early morning and late afternoon shadows will thereby predominately fall within public land.

Accordingly, the proposed development satisfactorily achieves the objectives of Clause 4.3 of the NLEP.

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

- To provide for the housing needs of the community within a low density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

| | |
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| | <ul style="list-style-type: none"> <i>To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.</i> <p>The proposed development is consistent with the zone objectives as it will provide child care services for the residents of the locality and surrounding area. The proposed height variation will not result in the proposed development being inconsistent with these objectives.</p> <p>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.</p> |
| <p>4.6(3) (b)</p> | <p><i>That there are sufficient environmental planning grounds to justify contravening the development standard.</i></p> <p>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.</p> <p>The Applicant's Clause 4.6 Report provides the following environmental planning justifications for the contravention of the standard:</p> <ul style="list-style-type: none"> <i>Clause 4.3 height of building is not expressly excluded from the operation of Clause 4.6 and therefore can be varied;</i> <i>Strict compliance with Clause 4.3 height of buildings may occur with a roof form that is a skillion which would not be preserving the character of local area. As a result, whilst additional building height is required, it results in a preferred planning outcome;</i> <i>Similarly, strict compliance with the maximum building height with the current design would encounter accessibility difficulties consistent with National Construction Code, the Discrimination Disability Act 1992 and Disability Access to Premises – Buildings Standards (2010) requiring multiple internal steps and disabled pathways;</i> <i>The adopted site planning approach enables a suitable bulk/ scale as viewed from the public domain with the minor exceedance in building height visually inconspicuous facilitating retention in the character/ visual amenity in the local area;</i> |

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| | <ul style="list-style-type: none"> • <i>The minor exceedance in building height enables the objectives of Clause 4.3 of NLEP 2012 to be retained despite the variation sought (see Section 4 below), and</i> • <i>Appreciating the location of the building height exceedance in the north-western portion and the minor variation extent, the development would not adversely impact privacy, overshadowing and acoustic. Indeed, the development would retain at least between 2-3 hours of solar access to surrounding residential development including the nearest affected property at 6 Neilson Street, Wallsend.</i> <p>The written request outlines environmental planning grounds which adequately justify the contravention.</p> |
| <p>4.6(4) (a)(i)</p> | <p><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).</i></p> <p>As outlined above the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the NLEP 2012. It follows that the test of Clause 4.6(a)(i) is satisfied.</p> |
| <p>4.6(4) (a)(ii)</p> | <p><i>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.</i></p> <p>The applicant's response to the objectives of Clause 4.1 is assessed above and is satisfactory in regard to this subclause.</p> <p>The proposed development is within the public interest as it a permissible land use in the R2 Low Density Residential Zone and will establish a facility that will service the day to day needs of the community for child care in accordance with the objectives of the zone. The proposal adopts an appropriate scale as viewed from the street and does not diminish or fail to achieve the strategic direction of the local area consistent with key strategic documents for the city. The building height proposed ensures a site responsive approach is exhibited as the development maintains a roof form that screens the lift overrun and is architecturally consistent with the character of the locality, as well as responsive to the natural features of the site by limiting the need for</p> |

| | |
|-------------------------------------|---|
| | <p>excessive cut over the relevant part of the site. The height exceedance does not unreasonably diminish solar access to surrounding residential accommodation and retains a suitable amenity for the local area.</p> <p>Based on the above, the development satisfactorily addresses the provisions of this subclause and approval of the proposed development will be in the public interest.</p> |
| <p>4.6(4) (b)</p> | <p><i>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.</i></p> <p>The Secretary's concurrence to the exception to the minimum lot size 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.</p> <p>The requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the height of buildings development standard. The Clause 4.6 variation request has demonstrated that the proposed building height is acceptable and therefore that strict compliance with the prescribed standard would be unnecessary in this instance. The Clause 4.6 variation request is supported.</p> |

Conclusion

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

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of the NLEP 2012.
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential Zone in which development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the FSR development standard, as required by clause 4.6(4)(b) of the NLEP 2012, is assumed, as per NSW Planning and Environment Circular PS 20-002 of May 2020.

- d) The proposed building height exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing, view loss, bulk and scale.

It is considered that the exceedance proposed is an acceptable planning outcome and strict compliance with the development standard is unreasonable in the case.

The proposal facilitates a land use that will meet the day to day needs of surrounding residents through the provision of child care whilst maintaining an architectural form that is compatible with the prevailing character of the locality, and respecting the amenity and quality of the surrounding environment, in accordance with relevant R2 Zone objectives.

It is considered the clause 4.6 variation request is well founded and the request for the variation of the building height development standard to 9.73m is supported.

Clause 5.10 - Heritage Conservation

Clause 5.10 does not apply to the proposed development as the subject site is not identified as a heritage item or located in the vicinity of a heritage item or heritage conservation area. Furthermore, the subject site is not a known place of Aboriginal Heritage Significance and no recorded items of aboriginal cultural value have been uncovered within the site or its immediate surrounds.

Clause 6.1 – Acid Sulfate Soils

The site is identified as containing Class 5 Acid Sulfate Soils. The Applicant has provided a Remedial Action Plan which indicates that the site is located in an area of 'no known occurrence' of acid sulfate soils. Accordingly, the proposed development is satisfactory in regard to this clause.

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

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)

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

Subdivision - Section 3.01

The proposed consolidation of Lot 1 DP 799571 and Lot 1 DP 199706 has been discussed previously in Section 4.5 of this report. The lot resulting from the development is able to achieve adequate solar access and essential services such as water, sewer and electricity. The proposal is satisfactory having regard to the requirements of s.3.01.

Community Services - Section 3.11

The proposed development has been considered by Newcastle's Urban Design Review Panel (UDRP) on three occasions. The design has been amended in accordance with comments provided by the UDRP and is now acceptable. Accordingly, the development satisfies the controls and objectives of Section 3.11.01-Building Design.

Safety & Security – Section 4.04

The proposed development has considered Crime Prevention through Environmental Design Principles as demonstrated in the submitted Crime Risk Assessment prepared by SLR Consulting Australia.

Passive and assisted surveillance of the street frontage and car parking areas will be achieved through strategically placed windows and viewing platforms within the building to avoid 'hidden spots', use of lighting and CCTV surveillance.

Natural Access Control of the premises has been achieved through clear pedestrian and vehicular access points, wayfinding signage, and the delineation of public and private spaces.

Territorial reinforcement has been achieved through the integration of security gates to access points of the premises, delineation and ongoing demarcation of boundaries and ongoing maintenance of lighting, landscaping and signage.

Space Management can be achieved through the operational management and maintenance of landscaping, lighting and signage, and through the restriction of after-hours access via the security gates to access points.

Conditions have been recommended which require the proponent to prepare an operational plan of management that integrates the operational recommendations of the Crime Risk Assessment. As such, the proposed development is consistent with the requirements of Section 4.04 of the NDCP 2012.

Social Impact - Section 4.05

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

Soil Management - Section 5.01

The submitted site plans stipulates that sediment and erosion management will be undertaken in accordance with the best practice guidelines outlined by City of Newcastle.

A condition is recommended to be placed on the consent to ensure adequate sediment and erosion control measures are in place for the construction period.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with Chapter 4 of State Environment Planning Policy (Resilience and Hazards) 2021.

Vegetation Management - Section 5.03

The proposed development involves the removal of three trees within the site comprising two Cypress tress (9m high each) and a Peppercorn Tree (13m high). In addition, there are two Lilly Pilly trees located on adjoining land within proximity to the proposed area of works, that will be maintained and protected as part of the proposal.

In support of the proposed works, the Applicant has submitted an Arborist Report that details species, location, size, health and value of the trees. The report is prepared generally in accordance with CN's tree assessment requirements, and it is considered that the proposed tree removal is acceptable.

In addition, four street trees are proposed to be removed and conditions have been recommended that compensatory planting occur to negate the loss of the 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.

Heritage Items - Section 5.05

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

Landscape Open Space and Visual Amenity - Section 7.02

The proposal development is a 'Category 3' development and a Landscape Master Plan prepared by a Landscape Architect has been provided with the submitted documentation. The proposed landscaping provides a mixture of planting scales to provide internal amenity and to articulate and improve the building's interaction with the streetscape. Accordingly, the proposed landscaping is considered to be acceptable.

Traffic, Parking and Access - Section 7.03

The proposed development will achieve vehicular access from Wentworth Street via a 6.2m wide two-way driveway to a semi-basement parking area. The verge crossing will be offset approximately 7.0m from the northeast property boundary and will be splayed to support entry/egress manoeuvres.

The proposed parking area is located in a semi-basement ground floor and is configured as an L-shaped two-way blind aisle comprising 23 right angled car parking spaces. While the 'blind parking' aisle is not strictly compliant with Clause 2.4.2 of AS/NZS 2890.1:2004, it can be accepted on merit as there is sufficient area for vehicles to make a three-point turn to exit the parking area. Nine parking spaces will be designated for parent drop off/pick up and users of the car park will generally be familiar with the layout of the site, thereby minimising confusion and conflicts.

The proposed development generates a car parking requirement of 22.5 car parking spaces plus nine user class 3 pick-up/set-down spaces, and 1.5 bicycle parking spaces to comply with the provisions of the NDCP 2012. Therefore, the total requirement for parking is 31.5 car spaces and 1.5 bicycle spaces.

The proposed car parking arrangement is as follows:

- i) User class 1 parking (2.4 m x 5.4 m): 12 spaces
- ii) User class 3 parking (2.6 m x 5.4 m): 10 spaces
- iii) Accessible parking (2.6 m x 5.4 m): 1 space
- iv) Bicycles: 3 spaces.

The proposed parking space dimensions comply with minimum requirements set out in Australian /New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

A car parking deficiency of 8.5 spaces is proposed. A Traffic and Parking Assessment has been provided which demonstrates that the proposed 23 car parking spaces are sufficient to meet the full car parking demands of the development given the different parking demand patterns of staff and parents which enable complementary shared use of parking capacity.

The under-croft parking area will be illuminated with overhead lighting to ensure easy way finding of users. Reduced lighting will remain after hours as a crime reduction measure. A condition of consent has been recommended to minimise potential adverse impacts to surrounding land users because of the security lighting.

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 development involves a dual stormwater management system as follows:

- i) Roofwater will be captured and drained to the street via four onsite rainwater detention tanks with overflows drained to a stilling pit prior to discharging into the Wentworth Street kerb area. Impervious first floor area will be conveyed directly to the stilling pit prior to discharge to Wentworth Street.
- ii) Water captured from landscaped areas and impervious ground floor areas will be directed to an underground storage and infiltration tank. Overflows will be disposed of internally to the site by sheet flows via a level spreader.

A detailed assessment of the proposed stormwater management measures has been undertaken. The following is noted:

- i) The stormwater management strategy is proposed to maximise stormwater disposal to the Wentworth Street frontage and minimise drainage to the natural low points at the northwest corner of the site.
- ii) The proposed stormwater management strategy achieves the minimum onsite storage requirements.
- iii) A stormwater infiltration system is proposed to dispose of a small catchment area of 130m² of run-off.

The proposed stormwater management strategy is suitable for the development and is supported.

Waste Management - Section 7.08

A Waste Management Plan has been provided with the application which includes details for demolition, construction and operational waste management.

The submitted waste management report states that waste will be collected via kerbside pickup on Wentworth Street for collection by CN's weekly waste service. The on-site manager is to wheel the bins out to the kerb for collection and wheel bins back to a dedicated storage within the site when empty.

Waste collection vehicles will be able to stop along the site frontage for pick-up at the driveway location without affecting traffic.

Based on the submitted information, the proposal is considered to be acceptable in regard to waste management.

Advertising and Signage - Section 7.09

As indicated in Section 5.1 above, the proposed development comprises the installation of two circular Business Identification Signs on the south-eastern and south-western elevations of the proposed child care centre. The proposed signs will be mounted on the external faces of the walls and will feature a 1.6m diameter green backing board with three white 'leaves' constructed of 10mm ply arranged to form the Eden Academy logo.

The proposed signs are not visually intrusive and will not be illuminated. The signs are therefore not expected to adversely impact the character or amenity of the area.

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, based on the anticipated cost of works of \$4,022,558.

A condition requiring this contribution to be paid has been recommended 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 Australian Standard AS2601 – Demolition of Structures and a condition 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 the 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/Architectural Design

The proposed development has been architecturally designed in consideration of the existing character of the neighbourhood. Design themes, materials and colour pallets

have been selected to reflect the residential nature of the street as demonstrated through the use of horizontal weatherboard cladding, gable and hipped roof designs and facade brickwork. Furthermore, the development will present as a single storey building to both Neilson and Wentworth Street frontages in order to respect the established architectural character of the locality.

The development will appear higher on the northern and western facades due to the slope of the land.

The proposed development has undergone an extensive review process by the Urban Design Review Panel which resulted in extensive alterations to the original design to attain high quality architectural design. Refer to **Section 5.3** for further detail.

Traffic and Parking

The proposed development has been supported by a Traffic and Parking Assessment prepared by SECA Solutions Pty Ltd (dated 14 February 2023). This assessment suitably demonstrates that the proposed 23 parking spaces are sufficient to meet the full car parking requirements of the proposed development.

The surrounding road network has the capacity to accommodate the additional traffic loading from the proposed development.

Acoustic Impacts

The proposed development has been supported by an Acoustic Impact Assessment prepared by Spectrum Acoustics (dated August 2022) which has been prepared in respect to the following guidelines:

- i) Association of Australian Acoustical Consultants (AAAC) Child care Centre noise Assessment Guideline V3, September 2020.
- ii) Noise Policy for Industry 2017.

A theoretical model predicted that the development is likely to comply with the relevant noise goals and criteria. The noise controls recommended in the noise assessment include acoustic fences and retaining walls to a minimum height of:

- i) 2.6m acoustic fence to shield the adjacent neighbour on Neilson Street to the west.
- ii) 2.2m along Neilson and Wentworth Streets and;
- iii) 1.5m along the northern boundary of the carpark.

The Acoustic Impact Assessment has been reviewed by CN's Environmental Health Team. The acoustic impact of the site and proposed amelioration methods are appropriate to mitigate significant adverse impacts from adjoining land users. Relevant conditions of consent have been recommended for the installation of the above acoustic shielding.

Bulk and Scale

The proposed development will have a maximum height of 9.73m. The proposed built form has a site coverage of 965m² (or 56% of site area) and total landscaped area of 449m² (or 26.2% of the site area). Notwithstanding these attributes, the proposal will present to Wentworth Street and Neilson Street as a single storey building with the building massed towards the internal areas of the site to minimise impacts to the public streetscape. The proposed massing effect will not have a significant adverse impact on adjoining land as demonstrated through the overshadowing diagrams.

Overshadowing

The Applicant has provided shadow diagrams based on solar movements during the winter solstice which demonstrate that shadows will predominately fall within the surrounding road reserves. The side setback area of the adjoining dwelling at 6 Neilson Street will be partially impacted by overshadowing, however, this is considered acceptable as the impacted areas do not relate to that dwelling's private open space or internal living areas.

Privacy

The design of the proposed child care centre incorporates a number of windows along the north-eastern elevation of the upper floor which have the potential to overlook the backyard of the adjoining townhouses at 11 Wentworth Street. However, these windows relate to the staffroom, staff WC, laundry and library rooms of the facility and will therefore not be consistently or actively used as opposed to the child care rooms. Furthermore, the operational times of the child care centre are such that the most active periods of the facility will be during the day outside of typical hours that residents are likely to be at home. As such, the impact of overlooking has been adequately minimised by the proposed development.

View Loss

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

Operational Management

The Applicant has provided a Plan of Management (PoM) (ref: Z21016, dated May 2023) that details the general day-to-day operations, policies and procedures that the child care centre will follow. Included within the PoM are the proposed hours of operation which provide that the centre will operate from 6:30am to 6:30pm Monday to Friday. No operations are to be carried out on weekends or Public Holidays. However, it is proposed that the centre may open weeknights or Saturdays (during daylight hours only) up to six times per year for special events related to the centre.

A condition has been recommended requiring that the centre be operated in accordance with the provisions of the proposed PoM and a copy of the Pom is to be maintained on site and made available to Council regulatory officers on request.

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 subject site is relatively free of land-based constraints as it is located within the existing urban footprint of Wallsend and is free of both flooding impacts and bushfire threat. Remaining constraints relating to acid sulfate soils, mine subsidence and topography have been suitably addressed through the design of the proposed development. Potential amenity impacts to adjoining residential land users have been mitigated through acoustic barriers to the outdoor play areas and the car parking area.

The site is well located adjacent to an existing school to provide a convenient location for a child care centre whereby parents with school aged and pre-school aged children can minimise unnecessary travel. Furthermore, over 20% of households in Wallsend comprise families with young or mixed age children indicating strong market demand for child care in the locality.

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 twice, and no submissions were received during either notification period.

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.

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

Attachment A: Submitted Plans – 7 & 9 Wentworth Street, Wallsend

Attachment B: Draft Schedule of Conditions - 7 & 9 Wentworth Street, Wallsend

Attachment C: Processing Chronology - 7 & 9 Wentworth Street, Wallsend

Attachment D: General Terms of Approval – NSW Subsidence Advisory- 7 & 9 Wentworth Street, Wallsend

Attachments A - D distributed under separate cover

7.2. DAC 27/06/23 – SUPPLEMENTARY REPORT - 182 HUNTER STREET - MIXED-USE DEVELOPMENT (COMMERCIAL AND SHOP TOP HOUSING) - INVOLVING ALTERATIONS AND ADDITIONS TO LOCAL LISTED HERITAGE BUILDING - DA2021/01505

REPORT BY: PLANNING AND ENVIRONMENT

CONTACT: EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

PURPOSE

The subject application was considered at the Development Applications Committee (DAC) Meeting held on 26 April 2023.

The Development Application (DA) was recommended for approval; however, an alternative motion was put forward by Councillors as follows:

'The item lay on the table and that Councillors be briefed on the development application noting in particular height exceedances, external design, heritage, carparking and adaptive reuse.'

A Councillor Workshop was subsequently held on 20 June 2023 to provide a detailed briefing on the Application and to respond to the Councillor resolution of 26 April 2023. During the briefing, Councillors raised additional questions regarding the following matters:

- i) Adaptive reuse – detail regarding the extent of the existing heritage fabric to be retained and salvaged.
- ii) Compliance with the Apartment Design Guide (ADG)
 - a) Apartment layout,
 - b) Communal space.
- iii) Car parking
 - a) Extent of car parking provided on site,
 - b) Use of loading zone, and
 - c) EV charging infrastructure.
- iv) Accessibility
 - a) Silver Level Livable Housing Design Standards, and
 - b) Ground floor amenities.

This supplementary report provides further information regarding the matters raised by Councillors during the DAC meeting and the subsequent Councillor Workshop. In this regard, it is noted that amended plans that have been provided to respond to these matters are provided at Attachment C, and revised schedule of recommended

conditions for approval is provided at Attachment B, in addition to the previously prepared DA report which is included at Attachment A.

RECOMMENDATION

- 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 MU1 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 4.3 and the objectives for development within the MU1 Mixed Use Zone in which the development is proposed to be carried out; and
- C. That DA2021/01505 for alterations and additions at 182 Hunter Street Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- D. That those persons who made submissions be advised of CN's determination.

KEY ISSUES

1. Height of Buildings – The proposed development has a building height of 26.49m and does not comply with the maximum building height of 20m as prescribed under Clause 4.3 of the NLEP 2012. The applicant has submitted a cl 4.6 variation request.
2. Floor Space Ratio – The proposed development has a floor space ratio of 3.3:1 which does not comply with the maximum FSR of 3:1 as prescribed under Clause 4.4 of the NLEP 2012. The applicant has submitted a Clause 4.6 variation request.
3. Matters raised in the submissions including view loss, height exceedance, floor space ratio, solar access, traffic and parking, heritage, bulk and scale, noise, streetscape/character, impact on local infrastructure and construction concerns.
4. The subject site is listed for its local heritage significance in NLEP 2012 and is known as I409 – Former School of Arts. The proposal is for the adaptive reuse of the building and addition of floors above the existing built form, with the appearance of the building from the public domain and the streetscape forming key issues in the assessment.

BACKGROUND

The subject property comprises Lot 212 in DP 660080 and is a rectangular allotment with three street frontages to Hunter Street, Wolfe Street and Scott Street. The site has a total area of 768.98m² and is relatively flat with a gentle fall to the Scott Street boundary (north). The site has a frontage to Hunter Street mall to the south.

The site currently contains a two-storey masonry building with an RL of 15.97 that is occupied by a variety of small retail shops on the ground floor and is vacant at the first floor.

The development application seeks consent for partial demolition of the existing building and construction of a six-storey mixed-use development comprising ground floor retail tenancies with shop top housing (14 apartments), car parking and associated site works.

The application proposes adaptive reuse of the Cox Building (original building on-site, facing Hunter Street) as a bookstore, and incorporation of the facades of the rest of the building to the Wolfe and Scott frontages with four additional levels of residential units constructed above.

The ground floor comprises the retail bookstore tenancy, two additional smaller retail tenancies facing Wolfe Street, services, waste storage, and a secured parking areas with vehicle access provided from Scott Street.

The application presented to DAC on 26 April 2023, included 22 car spaces across the ground and mezzanine levels with access between them provided via a car lift, two motorcycle spaces and 18 bicycle spaces.

On 16 June 2023, the applicant submitted a final set of revised plans in response to the matters raised by DAC on 26 April 2023, and subsequent discussions with CN staff, which include the following amendments:

- i) Recessing of the garage door 2.4m from the northern boundary (as was to be achieved through draft condition 14 (a) as per the original report to the DAC).
- ii) Amendments to the Scott Street façade including infill of the existing fire exit door east of the vehicular entry and removal of supporting post for the awning.
- iii) Enlargement of the northern-most retail tenancy to result in a 35.8m² floor space which now extends around onto the Scott Street façade and activates Scott Street.
- iv) Internal reconfiguration to achieve enlargement of the retail tenancy including relocation of the ground floor bike store and loading bay and reduction of the width of the residential waste room.
- v) Removal of bin locations shown at the kerb on Wolfe Street from the site plans.
- vi) Reduce one car space and one bicycle space.

Drawing No. DD800 within the amended Architectural Plan set provides an accurate representation of the proposed colour palette to be utilised throughout the development. A condition has been included within the recommended conditions of consent (**Attachment B**), and which specifies that the colour/materials are to be detailed on plans to be submitted with the Construction Certificate Application.

Design Excellence

Clarification was sought by Councillors during the DAC meeting on the 26 April 2023 regarding by what means the proposed development exhibits design excellence.

In determining design excellence, the consent authority must have regard to both SEPP 65 and cl.7.5 of NLEP 2012 when forming a conclusion on the suitability of the design of a proposal which includes shop top housing and is located within the City Centre. Further, cl. 28(2) of SEPP 65 requires the consent authority to take into consideration the advice of a Design Review Panel when forming a view on design quality.

The proposed development has been reviewed by CN's Urban Design Review Panel (UDRP) and formerly the Urban Design Consultative Group on numerous occasions, resulting in the design being amended and refined to ensure that design excellence could be satisfied.

On 19 June 2023, the Chair of the UDRP (Dr Phillip Pollard) provided the following statement on the amended plans:

The proponents' vision for the building, at the heart of which is the bookshop and reading room space, offers a meaningful link to the social heritage of the former municipal building. Throughout the protracted design development process, the proponents have been receptive to Panel recommendations, and the design has been modified in response to the Panels' advice. Amendments included a reduction in height to be no higher than the adjacent brick parapet of the adjacent heritage building to the east, as well as a range of modifications that have reduced the bulk, scale, and visual dominance of the new works.

The UDRP considered that the current design achieves design excellence by maintaining significant elements of the facades and some other elements of the heritage structures and integrates the existing form in an adaptive reuse of the building that sits politely in its context, and that provides a high level of amenity to the future residents.

The contemporary design of the residential component of the proposal demonstrates a lightweight character, distinct from the heavy brick warehouse adjacent to the site, and the masonry heritage façade below. The massing of the addition is appropriately set back from the heritage façade to achieve a more recessive appearance and ensure the heritage facade maintains prominence. The composition of the façade screening has responded to the character of the heritage building below by aligning with the established façade bays.

The proposed screening resolves privacy, amenity, and shading issues with consideration to the building's highly exposed west-facing elevation. The renders

provided with the architectural documentation demonstrate the intent of the soft screen element to provide a calm overlay to the modern addition, while allowing a degree of control for residents. The contemporary nature of the screening is appropriate for this context, clearly distinguishable as a new intervention without visually dominating the subject heritage building.

Further, the proposed façade treatment has undergone a detailed review by the UDRP throughout the assessment of the application. Conditions of consent are recommended to ensure that final selection of materials is approved by the UDRP prior to the issue of a Construction Certificate.

Accordingly, the proposal exhibits design excellence as it achieves the objectives of SEPP 65 and the provisions of clause 7.5 of NLEP 2012.

Building Height

During the DAC meeting held on 26 April 2023, Councillors requested further information regarding the height of the proposed development. Additional details are provided below to explain the proposal in the context of the site and the relevant planning controls.

The subject site is bordered to the east by the Beberfaulds Warehouse Building, a local heritage item which occupies approximately 30% of the city block and exceeds the 20m height limit applicable to the subject site and immediate surrounds.

The height of the proposed development has been revised through the assessment process to present a height that is visually subservient to the adjacent Beberfaulds Warehouse building. The development as originally lodged proposed a building height of 27.81m or 7 storeys. However, following feedback from CN staff, the UDRP and the National Trust (through the public notification process), the Applicant amended the design with the current development having a maximum building height of 26.39m and 6 storeys. Noting that the height of the building is measured to the lift over run which projects 1.15m above the roof. The height of the building to the roof is 25.19m.

The applicant has submitted a written request to vary the height of building development standard pursuant to Clause 4.6 of the NLEP 2012 which has been assessed, as detailed within the Original DAC Report contained at **Attachment A** and is determined to be well founded. Accordingly, it is acceptable to allow for the proposed variation to the building height standard in this circumstance.

The height of the proposed development will not result in an unacceptable precedent to vary the maximum building height. The site has a unique context, adjacent to the Beberfaulds Warehouse building which itself exceeds the LEP height limit. It also has three historical street frontages and presents well-resolved elevations to each. The context is characterised by a variety of existing building heights, evident along the Scott Street frontage. The adjoining blocks currently being developed as part of the East End Precinct are an example of how some variation in building heights and forms can positively contribute to the local area through stepped building heights and retention of historical ornamental parapets and avoiding a homogenous character.

Further, the proposed height of the building has been determined to be consistent with the objectives outlined in clauses 4.3 and 7.9 of the NLEP 2012, providing a built form that responds to the local context whilst not resulting in unreasonable overshadowing of the public domain or surrounding development, and ensuring that key view corridors to items of significant for historic and urban design reasons are not impeded.

Adaptive Reuse of Heritage Item and Fabric

During the DAC meeting on the 26 April 2023, Councillors enquired regarding the suitability of the adaptive reuse of a heritage item. As detailed within the 26 April DAC report (**Attachment A**) the subject site is a heritage item of local significance, comprising three heritage listed buildings, being the original 1875 Cox building; the 1886 Menkens addition; and the 1905 Yeomans addition.

In 2004 the Department of Environment and Heritage published a document titled "Adaptive Reuse: Preserving our past, building our future" highlighting key considerations and benefits of the adaptive reuse of historic buildings. The document identifies that:

'The most successful built heritage adaptive reuse projects are those that best respect and retain the building's heritage significance and add a contemporary layer that provides value for the future. Sometimes, adaptive reuse is the only way that the building's fabric will be properly cared for, revealed, or interpreted, while making better use of the building itself. Where a building can no longer function with its original use, a new use through adaptation may be the only way to preserve its heritage significance.'

In consideration of the above, the following commentary on the intent of the proposal having regard to the proposed adaptive reuse has been provided by the applicant:

'The intent of the design is to retain as much of the significant internal heritage fabric as possible within the Cox Building, whilst placing required car parking within the northern portion of the building which is agreed holds minimal internal fabric of significance. This is not a case of facadism, but rather placing emphasis on retaining and restoring the features of the building of most significance. Features such as internal ceilings and light fixtures will be salvaged to be reused within public sections of the development and interpretation features incorporated so that the original internal layout of the buildings can be read following redevelopment. This ensures that the history of the former buildings is not lost and is readily interpreted by new users of the development.'

In addition to the retention of significant building fabric and the adaptive re-use reflecting the historical use of the building as Newcastle's first library, the development also includes restoration and improvements to the heritage façade, undoing unsympathetic modifications that have taken place over the years and reinstating original design features, and restoring the heritage value of the building. This includes but is not limited to reinstating the shopfront and missing window panels on the Scott Street frontage, exposing original brickwork features, and removing window arches on the Wolfe Steet frontage and reinstating openings to reflect the rhythm of the original building. This is in addition to the considerable repair and re-use of significant heritage features within the publicly

accessible portions of the building including pressed metal ceilings and ceiling rose, lighting fixtures, windows, and the Menkens WC.'

The proposed development has considerable benefits for the future interpretation of the heritage significance of the subject site through providing a link to the social heritage of the site, retaining, and restoring significant built form elements for heritage interpretation and providing a contemporary addition to the building which reads as suitably distinct from the existing building.

The extent of heritage fabric to be retained and reused is a result of ongoing consultation between the applicant's design team, CN planning staff and the UDRP. Structural requirements, servicing, and car parking, have resulted in compromise to the extent of heritage fabric retained in the later additions, with conservation efforts focused on the original 1875 section of the building.

As amended, the proposed development provides an adaptive reuse of the 1875 building and maximises reuse of heritage fabric from the later additions where possible for interpretation by visitors. This includes salvage of existing decorative elements throughout, pendant lights, windows, mouldings, timber joinery elements, ceiling roses and pressed metal, and repurposing of the Menkens-designed water closet.

The proposed development presents an opportunity to occupy and activate the building, noting it has been mostly vacant for some years. Continued occupation and use of the building will directly facilitate ongoing maintenance of the important heritage site. The proposed design solution includes retention of the 1875 building, the heritage facades of the later additions and reuse of surviving internal features, while also facilitating a contemporary and higher order use within the City Centre consistent with nearby approved and completed developments.

Conditions of consent are recommended requiring preparation of a heritage interpretation plan and schedule of conservation works, to be approved by CN prior to the issue of a Construction Certificate, to ensure these matters are appropriately considered and enacted during the detailed design phase.

Accordingly, it has been assessed that the proposed adaptive reuse of the heritage item is acceptable and warrants support having regard to the provisions of Clause 5.10 of NLEP 2012.

Compliance with Apartment Design Guide

Apartment layout and amenity

A detailed assessment of the development against the Apartment Design Guide (ADG) is contained within the Assessment Report that was presented to DAC on 26 April 2023 (**Attachment A**).

The apartments proposed within the development obtain a high level of amenity for future occupants with over 92% of units achieving solar access requirements, which is in excess of the required 70% compliance under the ADG. Further, over 64% of units achieve the required cross-ventilation, despite the unique constraints of the site, which again exceeds the 60% requirement under the ADG. All proposed apartments

exceed the minimum ceiling height provisions of 2.7m, ranging from 3.15m to 4.3m, depending on the units location within the development. First floor level apartments within the existing heritage building benefiting from the 4.3m ceiling height.

All 14 apartments have internal areas more than the minimum required under the ADG, and layouts result in functional usable spaces. There are thirteen bedrooms that are undersize with respect to ADG requirements, however the apartments contain three and four bedrooms, and the non-compliance is minimal from a numerical perspective and therefore does not significantly impact upon the livability, amenity and performance of the apartments and the overall development. The apartment layout and amenity is satisfactory on merit.

Communal Open Space

The proposed development is relatively small and located in an urban environment where recent public works provide quality extensive outdoor open space within close proximity. The development provides apartments which have high level of amenity, including quality living spaces and balcony areas.

The apartment offerings within the development exceed typical amenity which would likely have been compromised had the development been required to provide a communal outdoor area. In addition, with sufficient internal living and balcony spaces, in conjunction with the proximity to public recreation areas, the provision of a separate communal open space area would have limited utility and function for this site.

The provision of usable and viable communal open space for the development is further constrained by the small scale of the apartment offerings and the presence of existing heritage-listed boundary-to-boundary development. Notwithstanding, the development includes a meeting space and library area within the development.

Car parking

The additional retail space area has resulted in amendments to the original proposed car parking layout, resulting in the reduction of one car parking space for use as a loading zone. The development now having 21 car parking spaces.

In accordance with the applicable of the rates NDCP 2012, Section 7.03 Traffic, Parking and Access when the application was lodged, a total of 26 spaces (rounded from 25.6) are required. The amended development provides 21 car parking spaces and one loading zone, as follows:

- a) One dedicated loading bay,
- b) Two retail spaces,
- c) A maximum 19 residential spaces

An accessible car parking space has been imposed as a requirement via conditions (refer to **Attachment B**).

The existing building does not have any car parking, having a historic shortfall of parking spaces. It is noted that visitor car parking has not been provided, a concession

is given to this due to the existing parking deficiency. Two motorcycle parking spaces are provided, which meets the demand and is acceptable. Further, the plans show 17 bicycle parking spaces, which is acceptable.

It is noted that under the new provisions of the new DCP there are no minimum car parking requirements applicable for residential development within the City Centre. However, this does not provide that car parking not be provided and with respect to the subject development it is appropriate for car parking to be provided as proposed. Further, the development application was lodged under the previous DCP and benefits from the savings provisions with respect to car parking requirements.

A condition of consent has been imposed requiring that EV charging be provided to all parking spaces. The Applicant has agreed to the imposition of this requirement.

Accessibility – Silver Level Livable Housing Design Standards & Accessible Amenities

The Silver Level Livable Housing Design Standards relates to the designed and constructed elements of a dwelling to achieve accessibility, and requires wider doorways and halls, accessible bathrooms and at least one level entry accessway.

A number of the apartments are capable of Silver Level Standard. A condition of consent has been imposed to ensure the standard is achieved for 20% of units with information provided to the UDRP at the detailed design stage in accordance with the ADG (refer to **Attachment B**).

The amended development resulted in the deletion of a 'back of house store' from the ground floor plan and not accessible amenities. The original floor plan only included one accessible amenities, and this has been confirmed as being retained on the submitted amended plans.

In addition, a condition of consent is included that the building complies with the Commonwealth Disability Access to Building Standard 2010 (refer to **Attachment B**).

Assessment – Design Amendments

The amendments proposed within architectural plans provided by the Applicant on 16 June 2023, are assessed below:

Garage Setback - Scott Street

The amended plans display a revised setback of the garage door of 2.4m from the northern (Scott Street) boundary. The development application reported to the DAC on 26 April 2023 included a recommended condition of consent (14(a)) which required a 2.4m setback from the garage to the northern boundary. Amended plans detailing this requirement were to be submitted with the application for a Construction Certificate.

The 2.4m setback is required to enable a vehicle to remain at the entry to the car park without encroaching into the Scott Street Road corridor. A garage roller door without this recess (built to boundary) would result in vehicles waiting to enter the carpark and

block the Scott Street travel lane, fundamentally compromising the ongoing operation and function of a classified road.

The amended plans ensures that the development is satisfactory having regard to cl. 2.119 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* which requires that new vehicular access does not adversely compromise the ongoing safety, operation, and function of a classified road. In this regard, Scott Street is a classified road and vehicular access is proposed from that frontage.

The submission of the amended plans with the required setback therefore addresses the intent of the draft condition 14(a) previously reported to DAC. Accordingly, draft condition 14 has been amended to remove part (a) which required the 2.4m setback (refer to **Attachment B**).

Enlargement of Retail Space and Façade Amendments - Scott Street

The infill of the fire exit door to the Scott Street façade and removal of posts supporting awning are also considered to improve the streetscape. The enlargement of the northern-most retail space resulting in this area wrapping around the corner to Scott Street provides streetscape activation, which results in an improved outcome.

The additional streetscape activation through the enlarged retail space aligns with the objectives of the MU1 Mixed Use Zone as prescribed under NEP 2012 and Section 6.01 (Newcastle City Centre) of the NDCP 2012 and accordingly the proposal as amended displays greater consistency with the applicable planning regime and greater activation of the Scott Street facade.

Furthermore, the activation of the Scott Street façade increases passive surveillance of the public domain from street level, further aligning with the intent of Section 4.04 (Safety and Security) of NDCP 2012 and with the Crime Prevention Through Environmental Design (CPTED) principles.

Accordingly, the enlargement of the retail space and amendments to the Scott Street façade result in an improved outcome overall and are supported.

Waste Management

The amended plans remove any indication that bins (either residential or commercial) would be presented to Wolfe Street for collection and highlights only the area in Wolfe Street where waste servicing can occur.

This reflects the original intent for waste servicing from the proposal presented to the DAC on 26 April, with draft conditions 71 & 72 remaining relevant. The amendment to the submitted plans was required fundamentally for the purposes of clarity.

Amended and Deleted Conditions

The key amendments made to the original schedule of draft conditions presented to the DAC on 26 April 2023, have been outlined below:

- i) *Condition 1 (approved documentation)* - has been amended to reflect the latest plan iteration.
- ii) *Condition 4* - has been amended to clarify the requirement for the construction certificate details, including that materials and finishes, must be to the written satisfaction of the UDRP. In addition, that a minimum of 20% of the apartments are designed to achieve the Silver Level Livable Housing Standard.
- iii) *Condition 8 & 65* - have been updated to reflect the amended car parking numbers, to confirm that the loading zone is not to be used as a parking space and identifies the requirement for an accessible parking space as per existing condition 9.
- iv) *Condition 14* - has been amended to remove the requirement for the garage door to be setback 2.4m from the Scott Street boundary. Electric vehicle charging requirements for all spaces have been inserted into this condition.
- v) *Condition 24* – has been amended to reflect the requirement for the building to be provided with access for persons with disabilities to comply with the Commonwealth Disability Access to buildings standards.
- vi) *Condition 70* – has been amended to clarify the requirement for design verification statement prior to Occupation Certificate to include requirement for UDRP written satisfaction and that the Silver Level Livable Housing Standard requirement has been met.

CONCLUSION

Following a merit-based assessment and recognising the significant constraints of this site, including the degradation of the building fabric over an extended period of time, the development proposal presents an opportunity to activate this important building and will be a quality-built outcome. For many years the site has been under-utilised and largely vacant. The nature of the building, with varied internal levels, poor fabric condition, and three street frontages, has presented numerous challenges.

The application has undergone several rounds of amendments incorporating advice from the UDRP and council planning staff to address the key site constraints and refine the architectural treatment of the residential levels above. Further, the development is consistent with the ongoing renewal of the historic city centre that is contributing to a revitalised precinct, including the nearby East End development.

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

Attachment A: Development Assessment Committee Assessment Report – Meeting 26 April 2023 – DA2021/01505 – 182 Hunter Street, Newcastle.

Attachment B: Amended Draft Schedule of Conditions – DA2021/01505 – 182 Hunter Street, Newcastle.

Attachment C: Amended Architectural Plans – DA2021/01505 – 182 Hunter Street, Newcastle.

Attachments: A - C distributed under separate cover