

# Development Application Committee Meeting



**DATE:** Tuesday, 15 August 2023

**TIME:** 6:00 pm

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

08 August 2023

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**City of Newcastle**  
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## Agenda

1. ATTENDANCE
2. ACKNOWLEDGEMENT OF COUNTRY
3. PRAYER
4. APOLOGIES / LEAVE OF ABSENCE / REQUEST TO ATTEND BY AUDIOVISUAL LINK
5. DISCLOSURES OF INTEREST
6. CONFIRMATION OF PREVIOUS MINUTES..... 3
  - 6.1. MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE - 25 JULY 2023 ..... 3
7. DEVELOPMENT APPLICATIONS ..... 8
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[For documents marked 'Distributed under Separate Cover' refer to Council's website at http://www.newcastle.nsw.gov.au/](http://www.newcastle.nsw.gov.au/)

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

## **6. CONFIRMATION OF PREVIOUS MINUTES**

### **6.1. MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE - 25 JULY 2023**

#### **RECOMMENDATION**

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

#### **ATTACHMENTS**

**Attachment A:** 230725 Extraordinary Development Applications Committee Meeting Minutes

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

## Minutes

### Extraordinary Development Application Committee Meeting

Council Chamber, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West, Tuesday, 25 July 2023 at 6:00pm



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#### 1. ATTENDANCE

The Lord Mayor (Councillor N Nelmes), Councillors J Barrie, J Church, 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 and CFO), J Rigby (Executive Director City Infrastructure), M Bisson (Executive Director Planning and Environment), L Duffy (Acting Executive Director Creative and Community Services), E Kolatchew (Executive Manager Legal and Governance), S Moore (Executive Manager Finance, Property and Performance and Deputy CFO), R Dudgeon (Executive Manager Project Management Office), N Kaiser (Interim Executive Manager Media Engagement Economy and Corporate Affairs), D Manderson (Executive Manager Civil Construction and Maintenance), M Murray (Chief of Staff), M Kikken, (Executive Manager Environment and Sustainability), K Anderson (Senior Environmental Strategist), M Meehan (Senior Media Adviser), A Ryan (City Significant and Strategic Planning Manager), L Barnao (Council Liaison Officer), A Knowles (Councillor Services/Minutes/Meeting Support), W Haddock (AV/Information Technology Support) and B Smith (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 AUDIO VISUAL LINK

##### MOTION

Moved by Cr Richardson, seconded by Cr Mackenzie

The requests submitted by Councillor Adamczyk and Councillor Clausen to attend by audio visual link be received and granted.

**Carried**

Nil apologies.

Councillors Adamczyk and Clausen were not present during the meeting.

## **5. DISCLOSURES OF INTEREST**

Nil.

## **6. CONFIRMATION OF PREVIOUS MINUTES**

### **6.1. MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE MEETING 27 JUNE 2023**

#### **MOTION**

Moved by Cr Mackenzie, seconded by Cr Barrie

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

**Carried  
unanimously**

## **7. DEVELOPMENT APPLICATIONS**

### **7.1. 21 PARNELL PLACE NEWCASTLE EAST – DA2022/00705 – MIXED USE - ALTERATIONS AND ADDITIONS TO EXISTING HOTEL OR MOTEL ACCOMMODATION (NEWCASTLE BEACH HOTEL), ANCILLARY FOOD AND DRINK PREMISES AND COMMERCIAL USE (ANCILLARY HOTEL SPA)**

A memo from the Executive Director Planning and Environment was issued to address questions and comments raised by Councillors and submitters in relation to Item 7.1 – DA2022/00705.

#### **PROCEDURAL MOTION**

Moved by Cr Mackenzie, seconded by Cr Duncan

Council have a five minute recess to read the memo distributed to Councillors.

**Carried**

Council adjourned at 6.12pm.

#### **PROCEDURAL MOTION**

Moved by Cr Duncan, seconded by Cr Wood

Council recess be extended.

**Carried**

Council reconvened at 6.29pm

In moving the motion, Councillor Pull indicated he was moving the updated recommendation outlined in the memo to Councillors.

#### **MOTION**

Moved by Cr Pull, seconded by Cr Richardson

- 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 R3 Medium Density Residential zone in which the development is proposed to be carried out; and
- B. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out; and
- C. That DA2022/00705 for mixed use - alterations and additions to existing hotel or motel accommodation (Newcastle Beach Hotel), with ancillary food and drink premises and commercial use (ancillary hotel spa) and dual occupancy (attached 2 x dwellings) at 21 Parnell Place Newcastle East be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B** as amended by **Attachment A** of the Council memo dated 25 July 2023; and
- D. That those persons who made submissions be advised of CN's determination.

#### **PROCEDURAL MOTION**

Moved by Cr Wood, seconded by Cr McCabe

Council allow a recess to enable officers to update the Conditions of Consent.

**Carried**

Council moved into recess at 7.09pm and reconvened at 7.15pm.

Council Officers proposed an additional condition to the Draft Conditions of Consent at Attachment B, as follows:

#### Condition 3

The retained elements of the existing building are to be upgraded to the extent necessary to achieve full compliance with the National Construction Code, Volume One (BCA Class 2 to Class 9 Buildings). Full details are to be included in documentation for a Construction Certificate application.

Note: Detailed plans are to be provided demonstrating compliance with the Premise Standard, and at a minimum access to accessible areas such as accessible toilets are to be through automatic doors. In addition, suitable provision of accessible accommodation and associated amenities are to be provided within the hotel.

The mover and seconder of the motion accepted the additional condition into the motion.

The motion moved by Councillor Pull and seconded by Councillor Richardson, as amended, was put to the meeting.

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

**Against the Motion:** Nil.

**Carried**

**The meeting concluded at 7.29pm.**

## 7. DEVELOPMENT APPLICATIONS

### 7.1. 1B ISLINGTON STREET ISLINGTON - DA2022/01482 - GROUP HOMES - INCLUDING DEMOLITION OF EXISTING STRUCTURES

**APPLICANT:** CORE PROJECT GROUP PTY LTD  
**OWNER:** ISLINGTON PROPERTY NO 2 PTY LIMITED  
**REPORT BY:** PLANNING & ENVIRONMENT  
**CONTACT:** EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

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## PART I

### PURPOSE

An application has been received seeking consent for the demolition of the existing structures and the erection of a residential flat building (comprising six, two-bedroom dwellings) to be used as a specialist disability group home on land known 1B Islington Street Islington.

The proposed group home will provide accommodation and care for disabled residents that require support 24 hours a day, seven days a week. The site is to be operated by '4U Care', a Newcastle-based and National Disability Insurance Scheme (NDIS) supported organisation that provides a range of services and programs including disability support, Supported Independent Living (SIL) and shared support activities.

The submitted application is assigned to Principal Development Officer, William Toose, for assessment.

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

Details of the submissions received are summarised at Section 3.0 of Part II of this report. The proposal was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) between 4 January and 25 January 2023 and in



**Subject Land: 1B Islington Street Islington**



response three submissions of objection (including two submissions from the same household) were received in relation to traffic and parking.

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

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). These amended plans are the subject of this report.

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

## Issues

- 1) The proposed development does not comply with the height of buildings development standard of 8.5m under NLEP 2012. The proposed height of the building is 11.8m (to the top of the clerestory windows) which equates to a 25.18% variation to the height of buildings development standard.

## 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 (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 R4 High Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2022/01482 for a residential flat building comprising six permanent group homes at 1B Islington Street, Islington be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

## Political Donation / Gift Declaration

Section 10.4 of the *Environmental Planning and Assessment Act 1979* requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before

the application is made and ending when the application is determined. The following information is to be included on the statement:

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject site has an area of 590.7m<sup>2</sup> and is a regular shaped allotment. The front boundary is adjacent to Islington Street and the rear boundary adjoins an unnamed laneway.

The site has previously been occupied by car dealerships. Development on the site comprises single-storey buildings, sheds and awning.

The site adjoining the northeast side boundary is known as 240 Maitland Road, which formerly operated as a petrol station. The buildings and associated structures have been demolished. A development application (DA2022/01197) for a new petrol station and carwash is currently under assessment by CN. The site adjoining the southeast side boundary is known as 1A Islington Street and comprises a single-storey dual-occupancy.

The site is entirely developed, and there are no landscaped areas or vegetation on the site.

Directly opposite Islington Street is 230 Maitland Road which comprises a three-storey mixed-use development (approved by DA2014/0752), that consists of commercial tenancies on the ground floor and nine residential apartments within the levels above.

The site is located within an area described by the Newcastle Development Control Plan 2012 (NDCP 2012) as the Islington Renewal Corridor.

### 2.0 THE PROPOSAL

#### Proposed development

The proposal is for the demolition of existing structures and the construction of a residential flat building to be used as a group home.

The proposed development includes carer's facilities to assist with on-site care to be provided for residents with a disability.

The proposal also includes landscaping and civil works and the provision of seven off-street car parking spaces within the rear setback of the site.

Subdivision of the group homes is not proposed.

### Operation details

The proposed group home is to provide accommodation and care for disabled residents that require support 24 hours a day, seven days a week. The site is to be operated by 4U Care, a Newcastle-based and National Disability Insurance Scheme (NDIS) supported organisation that provides a range of services and programs including disability support, Supported Independent Living (SIL) and shared support activities.

A maximum of six carers will be on-site at any given time between 6:00am and 10:00pm, with a maximum of two overnight carers who will be on-site between 10:00pm and 6:00am.

Residents will regularly leave the group homes for off-site activities and to attend appointments with off-site medical specialists via two on-site vans capable of transporting wheelchair residents.

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

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

## **BACKGROUND**

On 2 June 2022, a Pre-Development Application meeting (PR2022/00054) was held with CN staff, to seek comments on the proposal. The architectural design and supporting documentation were amended in response to the minutes from that meeting.

On 28 September 2022 and 2 March 2023, meetings were held with CN's Urban Design Review Panel (UDRP) and the minutes from those meeting confirmed that the proposed development was supported, subject to design amendments that have been adopted into the current design submitted as part of this development application.

### **3.0 PUBLIC NOTIFICATION**

The proposal was publicly notified in accordance with CN's Community Participation Plan between 4 January and 25 January 2023 and in response three submissions of objection (including two submissions from the same household) were received.

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

- i) Traffic generation
- ii) Parking demand within the street
- iii) Intensification of use within rear laneway

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

#### **4.0 INTEGRATED DEVELOPMENT**

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

#### **5.0 PLANNING ASSESSMENT**

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

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

##### **State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R&H)**

###### **Chapter 2 - Coastal Management**

The site is located within a mapped Coastal Use Area. Therefore, the SEPP R&H is applicable to the development. Clause 2.11 requires the consent authority to consider the surrounding coastal, natural, and built environment.

The bulk, scale and size of the proposed development has been considered in the assessment of the application. It has been satisfactorily demonstrated that the proposed development has been designed, sited, and will be managed to avoid, minimise, or mitigate any adverse impacts on the Coastal Use Area.

The proposal is acceptable having regard to the requirements of Clause. 2.11.

###### **Chapter 4: Remediation of land**

In accordance with subclauses 4.6 (2 and 4) of SEPP R&H, CN is required to consider whether the land is contaminated, and if contaminated whether it is suitable for the proposed land use (or can be made suitable, after remediation).

CN's land use records revealed that the subject premises was used as a caryard since the 1960s which included the importation of uncontrolled fill. This indicated that the land may be potentially contaminated. As the proposed group home is for a residential land use, a Preliminary Site Investigation (PSI) was provided. The conclusions of the PSI recommended that additional investigation occur (such as leachability testing, vapour and groundwater assessment).

A Detailed Site Investigation (DSI) has been prepared in accordance with SEPP R&H and no evidence of gross contamination was identified. Subject to the imposition of the recommended conditions of consent, the site can be managed, remediated, and validated appropriately so that it does not pose a risk to human health or the environment.

The application satisfies the requirements and s.4.6 of SEPP R&H, which requires the consent authority to be satisfied that the development site will be suitable for the proposed development. Accordingly, the site is considered suitable for the proposed development and contaminated land investigation is acceptable, subject to draft conditions included in **Attachment B**.

### **State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP T&I)**

#### Development likely to affect an electricity transmission or distribution network

In accordance with section 2.48 of the SEPP T&I Ausgrid were give written notice of the development seeking concurrence and comments about potential safety risks.

In response, Ausgrid has issued their advice, and no further assessment is required. The Ausgrid advice has been forwarded to the applicant for their information.

### **State Environmental Planning Policy (Biodiversity & Conservation) 2021 (SEPP B&C)**

The application does not propose the removal of any declared vegetation in order to facilitate the development. The provisions of SEPP B&C do not apply.

### **State Environmental Planning Policy (Housing) 2021**

The proposal is for 'group homes' (permanent)', which is defined as follows:

*'A group home (permanent) or permanent group home means a dwelling—*

- a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and*
- b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged.'*

The proposed development will contain 12 bedrooms across the six group homes on the site, and the disability provider is not a public authority, therefore consent is sought from Council for the proposal.

The application is being lodged pursuant to Sub-clause 61(1)(b) of the Housing SEPP that allows for permanent group homes to be undertaken with consent in prescribed

zones. The site is classified as a prescribed zone pursuant to Clause 60 of Housing SEPP, as it is within the R4 High Density Residential zone under the provisions of the NLEP 2012.

In accordance with Sub-clause 62(1)(a) a consent authority must not refuse consent to development for a group home unless the consent authority has made an assessment of the community need for the group home or impose a condition on a consent granted for a group home only because the development is for the purposes of a group home.

The proposal is acceptable having regard to the assessment of applicable provisions within Chapter 3, Part 2 (Group homes) of the Housing SEPP

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

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

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

This policy applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. SEPP 65 requires the consent authority to take into consideration the advice of an Urban Design Review Panel (UDRP) and the design quality of the development when evaluated in accordance with the design quality principles and the Apartment Design Guide (ADG).

Sub-section 28(1) of SEPP 65 requires the consent authority to refer a application to the relevant design review panel for advice concerning the design quality of the development prior to determining the application.

The application has been reviewed by CN's Urban Design Review Panel (UDRP), which operates under a charter stating that the Panel undertake the functions of a design review panel for the purposes of SEPP 65.

The application has been formally referred to the UDRP on two occasions, at meetings held on 28 September 2022 and 2 March 2023. In response to assessment matters raised by CN, including the advice from the UDRP meetings, an amended development application was submitted 5 April 2023.

The current amended proposal has satisfactorily incorporated the recommendations of the UDRP through the assessment process and suitable conditions of consent have been included in the recommended conditions of consent.

An assessment of the development under the ADG design principles, including relevant UDRP comments, is provided below.

**Consideration of the UDRP advice in relation to the design quality principles under SEPP 65**

Design Quality Principles	Assessment
<p><b>Principle 1: Context and Neighbourhood Character</b></p> <p><u>UDRP comments:</u></p> <p><i>The proposal is located within the Islington Renewal Corridor and is zoned R4 High Density Residential under Newcastle Local Environmental Plan 2012 (NLEP). Maitland Road is the main road through the suburb and is an important connection to Maitland in the north-west. The renewal corridor has a mix of development types along the Maitland Road frontage and low to medium scale residential developments to the south and west of the site.</i></p> <p><i>The site was previously occupied by a car yard and has frontage to Islington Street to the south-east and an unnamed lane to the north-west. The lot to the east is a former Service Station site and is currently vacant. Islington Park is situated to the east and the proposed development can benefit from views to the park.</i></p>	<p><u>Officer comment:</u></p> <p>The group home is developed in partnership with "4U Care". The residents will be under the age of 40 and the goal is to get them out of 'aged care' and get them into facilities that are suitable for them. The Applicant states there is a shortage across the state for this type of development.</p> <p>The Specialist Disability Accommodation Design Standard (federal legislation) sets out the requirements for specialist disability accommodation (SDA) under the National Disability Insurance Scheme. It is mandatory for new buildings to achieve the Specialist Disability Accommodation Design Standard in order to register as an SDA dwelling.</p> <p>The proportions of the building, heights and setbacks from the street are in keeping with the pattern set out by the surrounding buildings and create a visual transition between the Islington renewal corridor and the low scale residential development surrounding the site.</p> <p>The design of the building has been amended in accordance with the panel's recommendations and the amended proposal is considered acceptable.</p>
<p><b>Principle 2: Built Form and Scale</b></p> <p><u>UDRP comments:</u></p> <p><i>The Applicant presented an options analysis which was used to determine the most appropriate solution for the site and its purpose as Specialist Disability</i></p>	<p><u>Officer comment:</u></p> <p>The six group homes are located within a three-storey building that is orientated on the site in a northwest-southeast direction.</p>

*Accommodation. The options tested the entry and carpark arrangements, the number of stories and bedroom configurations.*

*Although the preferred option has fewer desirable aspects, such as reduced solar access, it was agreed by the Panel that it is operationally better. Of note, was the importance of providing alternative bedroom locations which allows residents to choose which bedroom they prefer – either closer to the road and with the view to the park or away from the noise of the road and more private.*

Car parking is located at the rear of the site. Pedestrian access to the site is via the Islington Street frontage, with vehicular access to the site via the unnamed laneway to the rear.

Each level of the building will contain two x two-bedroom group homes. Staff facilities including office and sleeping facilities have been provided on the first floor.

The layout of each group home has been designed to provide a dual-aspect open plan living area (containing a kitchen, a dining area and living areas), with bedrooms and bathrooms to be located and oriented to the sides of the building. Private open space areas for each group home are to be provided in the form of covered balconies on the southeast side of the building; communal outdoor spaces are to also be provided on the northwest side of the first and second floors.

Landscaped areas and access pathways are provided around the boundaries of the site, with bicycle parking and a communal waste storage area to be located within the southwest side of the rear setback adjacent to proposed car parking facilities.

The entrance into the building is covered and defined architecturally to create a clear link through the site.

Internally, the proposal takes advantage of both the outlook to Islington Park from the units and private outdoor spaces facing Islington Street, whilst maximising solar access and privacy with two large communal terraces facing the laneway.

The design of the building has been amended in accordance with the panel's recommendation and the amended proposal is considered acceptable.



<p><b>Principle 3: Density</b></p> <p><u>UDRP comments:</u></p> <p><i>The design is expected to achieve a high level of amenity for residents and each apartment, resulting in a density that is considered appropriate to the site and its context.</i></p> <p><i>The proposed development will result in the provision of additional housing within an established inner city local suburb with access to public transport, essential community infrastructure and services.</i></p> <p><i>The amended proposal has addressed the UDRP's concerns and is considered acceptable.</i></p>	<p><u>Officer comment:</u></p> <p>The proposed development density is in accordance with local development guidelines and desired future character of the area.</p> <p>The development has accommodated the proposed number of dwellings without compromising the amenity of the development or its surroundings.</p> <p>The proposed development achieves a floor space ratio (FSR) that is consistent with the allowable FSR.</p>
<p><b>Principle 4: Sustainability</b></p> <p><u>UDRP comments:</u></p> <p><i>The proposed design solution is consistent with the principles of the Apartment Design Guide. Where solar access to the individual units has not been achieved, desirable outlook was prioritised and improved by providing two large north facing outdoor terraces, accessible to all residents and their carers.</i></p> <p><i>Consideration is given to materials to reduce heating and cooling costs. An analysis of the buildings has been undertaken in order to meet the BASIX / Section J requirements and solar amenity.</i></p>	<p><u>Officer comment:</u></p> <p>Noted.</p>
<p><b>Principle 5: Landscape</b></p> <p><u>UDRP comments:</u></p> <p><i>The deep soil and landscaped areas have improved by reconfiguring the entry and side passage from Islington Street. The Panel recommends considering the design for any possible increases in deep soil provision.</i></p>	<p><u>Officer comment:</u></p> <p>Limited deep soil planting is achievable on site due to the lot size and previous use of the site, however deep on- structure planting is maximised to achieve substantial landscaping.</p> <p>The landscaped areas serve as a circulation space and visual amenity to residents, carers</p>

	<p>and visitors. Robust landscape elements with minimal maintenance planting is provided</p> <p>Two communal terraces provide all residents access to solar and landscaped amenities.</p> <p>The amended proposal has addressed the UDRP's concerns and is considered acceptable.</p>
<p><b>Principle 6: Amenity</b></p> <p><u>UDRP comments:</u></p> <p><i>Each unit has been provided with a private outdoor space in the form of a court or balcony that has a functional area and configuration for recreational use.</i></p> <p><i>The Panel suggests the building gateway entry point be roofed, which would improve the wet weather functioning of the entry for when carers move residents from the van into the building.</i></p> <p><i>The Panel notes the improvements to the rooms; the size of the Carer's room and the provision of storage areas on each level.</i></p>	<p><u>Officer comment:</u></p> <p>The dwellings are oriented to address the street frontage and therefore their private open space do not receive the required sunlight. However, both the top dwellings receive direct solar access from north facing clerestory windows over the internal living spaces and 50% of the dwellings also receive direct solar access to the primary bedroom windows, where the residents are likely to spend a large amount of time.</p> <p>In addition, two large communal terraces facing North provide a usable and appealing alternative to the residents' private open spaces.</p> <p>Internally, the proposal takes advantage of both the outlook to Islington Park from the units and private outdoor spaces facing Islington Street, whilst maximising solar access and privacy with two large communal terraces facing the laneway.</p> <p>The amended proposal has addressed the UDRP's concerns and is considered acceptable.</p>
<p><b>Principle 7: Safety</b></p> <p><u>UDRP comments:</u></p> <p><i>The development will be home to vulnerable people and their safety is important. A well-designed development makes it easier for staff to manage the home. The Applicant advised that there</i></p>	<p><u>Officer comment:</u></p> <p>The layout of the proposed dwellings and vehicular parking has ensured that the majority of areas have clear lines of sight and access points.</p>

<p><i>may be one or two carers in a two-bedroom unit, depending on the level of required care and there will be carers on site and on call 24/7. This provides good site guardians which is important for this type of development.</i></p> <p><i>The Applicant has considered many safety issues such as securing the carpark and the front boundary.</i></p> <p><i>The Panel noted the improvements to the security of the ground floor street-facing units, which previously could potentially be accessed.</i></p>	<p>Public and private domain is clearly distinguished through the use of openings and screening to ensure overlooking of public spaces without compromising the privacy of the dwellings.</p> <p>Generally, living spaces have been oriented towards the street to reduce privacy and acoustic impacts towards other residents, as well as encouraging passive surveillance of the public domain. Bedroom windows face the site setbacks.</p> <p>Adequate building separation, setbacks and screening where required ensure the privacy of all residents, and adjoining neighbours.</p> <p>The amended proposal has addressed the UDRP's concerns and is considered acceptable.</p>
<p><b>Principle 8: Housing Diversity and Social Interaction</b></p> <p><u>UDRP comments:</u></p> <p><i>A north facing terrace is proposed on each level. The terraces provide opportunities for residents to leave their room and have access to the sun. Although the orientation of the development is not ideal, this space allows for social interaction and solar access.</i></p>	<p><u>Officer comment:</u></p> <p>This proposal provides a total of six dwellings, all of which contain two bedrooms. The proposal is designed with specialist disability accommodation principles in mind, for the highest level of support.</p> <p>The development contributes positively through outdoor communal areas. Although primarily used as circulation, visually pleasing landscaping elements create an inviting communal space that promotes social interaction.</p>
<p><b>Principle 9: Aesthetics</b></p> <p><u>UDRP comments:</u></p> <p><i>The Panel noted the improvements to the car park facade and is supportive of the building's aesthetic approach.</i></p>	<p><u>Officer comment:</u></p> <p>The proposed development has been designed to be consistent with higher-density forms of development along the western side of Maitland Road. The development's exterior will comprise a variety of materials including exposed brick surfaces, fibre-cement</p>

	<p>cladding and contrasting metal highlighting and a Colorbond steel roof.</p> <p>The amended proposal has addressed the UDRP's concerns and is considered acceptable.</p>
<p><b>Recommendation</b></p> <p><u>UDRP comments:</u></p> <p><i>The Panel supports the applicant's selection of the preferred option and understands the rationale behind the decision. A small number of matters, as are expected to be satisfactorily addressed.</i></p> <p><i>With the expected resolution of the identified matters, the development can be considered to exhibit a high level of design quality, and the completed proposal can provide a much-needed home for people in need.</i></p> <p>The Panel supports the further refinement of the development and considers the proposed development a positive contribution to the Islington area and the future residents.</p>	<p><u>Officer comment:</u></p> <p>In summary, the design of the proposed amended development satisfactorily addresses the design principles of SEPP 65.</p> <p>The Panel's recommendations have been well addressed and is a well-designed development.</p>

### Apartment Design Guide (ADG) - Key "Rule of Thumb" Numerical Compliances

In addition to the nine design principles, the ADG provides benchmarks for designing and assessing a residential apartment development. The following section contains an assessment of the development against key aspects of the ADG.

#### 2B Building Envelopes

The proposal meets the setback requirements under Section 6.04 – Islington Renewal Corridor of the NDCP 2012. It is noted that the setbacks identified for the corridor allow for side boundaries with zero setbacks where no openings are proposed, However, side setbacks have been increased in order to provide deep soil landscaping along the boundaries of the site and to minimise overshadowing impacts to the adjoining dwelling to the south-west of the site. It is noted that the impact of a compliant building envelope by adopting a nil side setback in accordance with the setback controls of the Islington Renewal Corridor would be more detrimental in this instance.

### 2C Building Height

Under NLEP 2012 the site has a maximum building height of 8.5m. The submitted building height is 11.8m (to the top of the clerestory windows) which does not comply with the development standard. As the proposed development seeks to vary the FSR development standard in Sub-clause 4.4(2), a written variation request pursuant to Clause 4.6 has been made by the Applicant which seeks to justify the contravention of the development standard.

Refer to discussion under Clause 4.6 Exceptions to Development Standards below.

### 2D Floor Space Ratio

Under NLEP 2012 the site has a maximum 0.9:1 floor space ratio. The submitted FSR is 0.89:1 which complies with this development standard.

### 2E Building Depth

The proposed building meets the requirements of the ADG in terms of depth of the apartment floor plates, ensuring adequate natural ventilation and sunlight.

### 2F Building Separation

The scale and bulk of the proposed development responds to the desired future character of the Islington Renewal Corridor in terms of building envelope, setbacks and building separation.

### 2G Street Setbacks

The proposal meets the setback requirements under Section 6.04 – Islington Renewal Corridor of NDCP 2012 and has addressed the design concerns raised by the UDRP.

### 2H Side and Rear Setbacks

As discussed under *2B Building Envelopes*, the proposed zero setbacks are consistent with Section 6.04 – Islington Renewal Corridor of NDCP 2012 and the provisions of the ADG. The proposal meets the rear setback via the combination of the proposed rear setback and the additional separation provided by the width of the laneway. Visual and acoustic privacy is maintained using screening and landscaping.

### 3B Orientation

The orientation of the building and floor plans respond to the specific site conditions to allow for available views, optimising solar access to units and creating a high level of cross ventilation to all apartments. The front setback has been reduced and the side setbacks increased to minimise overshadowing of the adjoining dwelling to the south-west of the site.

The overshadowing impacts of the proposal are discussed in Section 5.3 of this report - Siting the development (3.03.02).

### 3C Public Domain Interface

The building is consistent with the established street frontage setback. Secure boundary access points provide resident amenity to the communal and ground floor terraces without compromising safety or visual connection between spaces.

The proposed development is consistent with the provisions of Section 6.04 – Islington Renewal Corridor of the NDCP 2012.

### 3D Communal and Public Open Space

The communal open space area is supported by generous deep soil landscaping which has been designed to offer a high-quality amenity to future residents. It is noted that the landscaping along the south-western boundary has been increased to provide separation and privacy to the adjoining neighbouring property.

The communal open space is designed to be accessible to all residents, with good passive surveillance.

### 3E Deep Soil Zones

A total of 66.36m<sup>2</sup>, or 11.23% of site area consists of deep soil landscaping, which exceeds the required minimum of 7% of the site area.

### 3F Visual Privacy

The building orientation and dwelling layouts are such that there are limited opportunities for views into the neighbouring properties, having regard to the position of windows and the location of landscaping.

The side setbacks to the south-western boundary maintains visual privacy and maximises solar access to 1A Islington Street, particularly during morning periods in mid-winter.

The orientation of the dwellings provides privacy for residents while maintaining outlook towards Islington Park.

### 3G Pedestrian Access and Entries

The main building's entrance is accessed from Islington Street. A separate secure access is also provided to the rear lane. It is considered that the position of the entry to the residential foyer/lobby is acceptable.

### 3H Vehicle Access & 3J Bicycle and Car Parking

The car park entry is located at the rear of the site, accessed by the laneway as required under Section 6.04 – Islington Renewal Corridor of NDCP 2012.

Parking facilities have been provided at ground level to accommodate the number of apartments in the building, as well as operational requirements. The visual impact of the parking has been minimised through the use of screening and landscaping.

### 4A Solar and Daylight Access

The dwellings are oriented to address the street frontage and both the top dwellings receive direct solar access from north facing clerestory windows over the internal living spaces and 50% of the dwellings also receive direct solar access to the primary bedroom windows, where the residents are likely to spend a large amount of time.

Communal open space areas have been proposed on the rear northwest elevation of Levels 1 and 2; the locations, orientation and elevation of the communal areas will subsequently provide direct solar access during mid-winter, thereby providing spaces with high levels of amenity for residents of the group homes.

### 4B Natural Ventilation:

All of the dwellings are naturally cross ventilated and do not exceed 18m in depth, which is acceptable.

### 4C Ceiling Height:

A minimum floor to ceiling height of 2.7m for habitable rooms and 2.4m minimum heights for non-habitable rooms has been achieved, while the floor plate depths allowing for maximum penetration of natural light into the space.

### 4D Apartment Size and Layout:

All dwelling sizes meet the minimum identified in the ADG.

### 4E Private Open Space and Balconies:

All dwellings have a balcony with a minimum depth of 2m or greater and meet the minimum area requirements. The configuration of the balconies and dwellings will provide a good level of surveillance to public and private areas.

### 4F Common Circulation and Spaces:

The proposal meets the provisions of the ADG in respect to the layout and design of circulation spaces.

#### 4H Acoustic Privacy & 4J Noise and Pollution:

The building layout has been designed to achieve minimisation of noise transfer to and from dwellings. Acoustic treatments to walls, floors and ceilings further reduce noise transfer. The applicant has prepared an acoustic report to address the impacts of traffic noise (i.e. Maitland Road) on future residents of the proposed development.

The proposed group homes also have the potential to be impacted by noise associated with the future service station proposed at 240 Maitland Road Islington. A 2.7m acoustic fence is proposed along the full length of the service station boundary as part of the development of 240 Maitland Road.

#### **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 site is located within an R4 High Density Residential zone under NLEP 2012

The proposed development is characterised as a residential flat building containing six 'group home (permanent) or permanent group home'. A residential flat building is permitted with consent in the R4 zone. Pursuant to clause 61(1)(b) of the Housing SEPP, group homes are permitted with consent within the R4 zone.

The proposal is consistent with the zone objectives, which are:

- i) To provide for the housing needs of the community within a high-density residential environment.*
- ii) To provide a variety of housing types within a high-density residential environment.*
- iii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- iv) To promote a denser urban form along transport corridors while respecting the residential character of adjoining streets.*
- v) To maximise redevelopment and infill opportunities for high density housing within walking distance of centres.*
- vi) To provide for commercial development that contributes to the vitality of the street where provided within a mixed use development.*



- vii) *To promote a balance of residential accommodation within a mixed-use development.*

The proposed development is consistent with the zone objectives as follows:

- i) Meet housing needs of people with disabilities both in the local community and within a form of development that is consistent with a high-density residential environment.
- ii) Provide specialised housing for persons with disabilities which provides a greater variety of housing within the zone.
- iii) Provide for higher density housing that is in close proximity to local centres, and transport corridors.

Not adversely affect the ability of surrounding sites to provide land uses, facilities and/or services that meet the day-to-day needs of local residents.

#### Clause 2.6 - Subdivision—Consent Requirements

Subdivision of the group homes is not proposed.

#### Clause 2.7 - Demolition Requires Development Consent

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

#### Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum building height of 8.5m.

The proposed development will result in a maximum height of 10.94 metres, equating to an exceedance of 3.3m or 25.18% above the height of buildings development standard for the subject land.

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

#### Clause 4.4 - Floor Space Ratio (FSR)

Under the NLEP 2012 the site has a FSR development standard of 0.9:1. The submitted FSR is 0.896:1, or 518.53m<sup>2</sup> of gross floor area (based on a site area of 590.7m<sup>2</sup>) and complies with this requirement.

#### Clause 4.6 - Exceptions to Development Standards

The development application is accompanied by a written Clause 4.6 variation request.

The provisions of Clause 4.6 relevant to the assessment of the Applicant's variation request are as follows:

- 1) *The objectives of this clause are as follows:*
  - a) *To provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- 2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- 3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- 4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - a) *the consent authority is satisfied that:*
    - i. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - b) *the concurrence of the Secretary has been obtained.*
- 5) *In deciding whether to grant concurrence, the Secretary must consider:*
  - a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

- b) *the public benefit of maintaining the development standard, and*
- c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

An assessment of the Applicant's Clause 4.6 Variation Request to the maximum floor space ratio development standards is provided below.

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

The development application does not seek to vary any of the development standards excluded from the operation of Clause 4.6 of the NLEP 2012. Accordingly, pursuant to Clause 4.6 it is open to the Applicant to make a written request seeking to justify the contravention of the building height development standard by demonstrating that compliance with the standard is unreasonable or unnecessary.

What is the name of the environmental planning instrument that applies to the land?

Newcastle Local Environmental Plan 2012.

What is the zoning of the land?

NLEP 2012 identifies that the site is within the R4 High Density Residential zone.

The objectives of the R4 High Density Residential zone are as follows:

- i) *To provide for the housing needs of the community within a high density residential environment.*
- ii) *To provide a variety of housing types within a high density residential environment.*
- iii) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- iv) *To promote a denser urban form along transport corridors while respecting the residential character of adjoining streets*
- v) *To maximise redevelopment and infill opportunities for high density housing within walking distance of centres.*
- vi) *To provide for commercial development that contributes to the vitality of the street where provided within a mixed use development.*
- vii) *To promote a balance of residential accommodation within a mixed use development.'*

Is the standard to be varied a development standard?

The Height of buildings development standard contained in NLEP 2012 is consistent with the definition of development standards under section 1.4 of the *Environmental Planning & Assessment Act, 1979* ('EPA Act') and not a prohibition.

What are the objectives of the development standard?

*4.3 Height of buildings*

*1. The objectives of this clause are as follows—*

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

What is the proposed numeric value of the variations proposed to the development standard?

Due to the nature of the roof form, the heights of the building vary. Elements of the proposed building that breach the building height development standard, and their respective heights are as follows:

- i) The two clerestory roofs will have varying heights of between 9.51m and 10.64m (which constitutes variations to the building height development standard of 1.01m and 2.14m (i.e. 11.8% to 25.18%) respectively).
- ii) The roof parapets will have heights of 9.34m (which constitute variations to the building height development standard of 840 mm (i.e. 9.88%).
- iii) The lift overrun will have a height of 9.6m (which constitutes a variation to the building height development standard of 1.1 metres (i.e. 12.94%).
- iv) The roofs above the communal stairway and communal open space areas at the rear of the building will have heights of 8.67m (which constitutes a variation to the building height development standard of 170mm (i.e. 2%).

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

In the Land and Environment Court Judgement of *Wehbe vs Pittwater Council [2007] NSW LEC 827*, (the *Wehbe* judgement) 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.

In this judgment, 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. These are as follows:

- 1) *Would the proposal, despite numerical non compliance, be consistent with the relevant environmental or planning objectives?*
- 2) *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?*
- 3) *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*
- 4) *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?*
- 5) *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. Consequently, compliance with that development standard is unnecessary and unreasonable.'*

The submitted Clause 4.6 -Exception to a development standard request to vary the height of building development standard seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable and unnecessary, stating that that the objectives of the development standards are achieved notwithstanding non-compliance.

The Applicant submits that the development is consistent with the objectives of Clause 4.3 for the following reasons:

- a) *to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*

*The site adjoining the subject site’s north-eastern side boundary is vacant, however has a maximum building height of 14 metres. Residential sites generally to the west of the site (i.e. within R3-zoned sites) contain lower density forms of residential development with heights of one-to-two storeys*

*The NLEP 2012 prescribes building height development standards that create notable (i.e. 5.5 metre) height differences for development on sites that are within the same R4 zone. Despite breaching the building height development standard, the height and scale of the proposed development provides a more positive contribution towards desired local built form, by providing a progressive height transition between desired taller development along Maitland Road to*

*lower density residential development generally to the west of the subject site.*

*The scale of the proposed building will therefore facilitate a progressive increase in building height along Islington Street, and the tallest parts of the building will not be visible to persons within that adjoining road reserve. As a result, the proposed height of the building therefore not appear to be inconsistent with, and will instead visually respond to, the desired built form of the surrounding area.*

- b) *to allow reasonable daylight access to all developments and the public domain.*

*The proposed development will not result in significant, nor unreasonable overshadowing impacts on 1A Islington Street (including the northeast-facing private open space area), and*

*The centralised locations of the tallest parts of the building (i.e. clerestory roofs) are such that additional shadows cast by such features are self-internalised within the proposed roof, and will not contribute to additional overshadowing of the adjoining site.*

The Applicant's written request is considered to satisfy the requirements of Sub-clause 4.6(3)(a) and the first *Wehbe* consideration in demonstrating that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, as the objectives of the development standard are achieved notwithstanding non-compliance.

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

The Applicant submits that the proposed variations to the building height development standard will not adversely and unreasonably affect the amenity of the surrounding sites and the public domain, with regard to the following:

- i) *'As the height variations occur above proposed window openings, they will not create adverse visual privacy outcomes,*
- ii) *Solar access within the site, to adjoining sites and the public domain will not be unreasonably affected by proposed breaches of the building height variations, noting that shadows created by the tallest points of the building will be self-internalised and as such will have no impacts on adjoining sites,*
- iii) *Significant views are not obtainable from surrounding sites, therefore no adverse view-loss impacts will arise as a result of the building height variations, and*
- iv) *In addition to a contemporary and high-quality building design, the proposed height of the building will provide for a progressive height transfer between future medium- and high- density residential environments and as such will maintain visual amenity from surrounding sites.'*

*The Applicant's written request has demonstrated that the proposed building height variation does not result in significant adverse environmental impacts and that there are sufficient environmental planning grounds to justify a contravention to the development standard.*

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

It is concluded that the Applicant's Clause.4.6 variation request has satisfied the relevant tests under this clause.

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

Should strict compliance with the 8.5m building height standard be required, then this will require removal of the second level or significant amendments to the design and possible loss of two group homes that are to provide for much needed accommodation.

The proposed development will provide for six group homes that have been designed specifically to cater for the housing needs of people with disabilities within the local community.

The proposed development satisfies the objectives of both the building height development standard and the R4 High Density Residential zone under the NLEP 2012.

The proposed development will provide for increased housing diversity within the local area, through the provision of dwellings for a specific demographic within the community (i.e. people with disabilities).

The design of the proposed development also seeks to respect the residential character of the surrounding area, by proposing a design that promotes a suitable transition between higher and lower density residential areas to the east and west of the site respectively.

As such, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of Sub-clause .4.6(4)(a)(ii) of the NLEP 2012 is satisfied.

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

The Secretary's concurrence to the exception to the height of buildings development standard, as required by Sub-clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 of 5 May 2020).

The proposed exception to the Height of buildings development standard of NLEP 2012 is an acceptable planning outcome and, in this instance, requiring strict compliance would be unreasonable and unnecessary. The proposed variation to the development standard does not cause any undue adverse environmental impacts, including impacts on neighbouring properties, in terms of overshadowing and visual privacy.

Given the above, it is concluded that the Applicant has sufficiently demonstrated that requiring strict numerical compliance with the development standard would be unreasonable and unnecessary as the proposal already achieves the underlying objectives notwithstanding the numerical non-compliance.

Officer's conclusion

As demonstrated within the Applicant's written request by the assessment above, compliance with the development standard is considered unreasonable and unnecessary in the circumstances. There are sufficient environmental planning grounds to justify the contravention; and the proposed development will be in the public interest because it is consistent with the objectives of the zone and the Height of buildings development standard.

If made to strictly comply with Clause 4.3, there would be no additional benefit to the streetscape or public domain. Strict compliance with Clause 4.3 of the NLEP 2012 is therefore considered unreasonable and unnecessary.

The proposed height of the development is of a built form and scale that is compatible with the surrounding built environment and recent developments within the area. It is considered that it will have minimal adverse amenity impacts in terms of visual dominance and overshadowing. As such, it is considered that the height of the development is acceptable.

Clause 5.10 - Heritage Conservation

The subject site is not a listed local or state heritage item. The site is not a listed archaeological site and is not identified as an indicative archaeological site within the Newcastle Archaeological Management Plan 1997. Further, the site is not an Aboriginal Place. An AHIMS search found no Aboriginal objects in the vicinity of the site.



### Clause 6.1 – Acid Sulfate Soils

The site is mapped as Class 4 Acid Sulfate Soils (ASS) however the potential for this proposed development to disturb Acid Sulfate Soils is considered low as only minor earthworks are proposed (to a depth of approximately 300mm). Accordingly, an Acid Sulfate Soils Management Plan is not required for the works in accordance with the provisions of Clause.6.1.

However, a condition of consent is recommended that requires further assessment of ASS potential to be undertaken during excavation. If ASS is found to be present, soils will be treated in accordance with the NSW Acid Sulfate Soils Advisory Committee's Manual. The proposal is considered acceptable having 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.

An assessment has found that due to the nature, extent and location of the earthworks, and the proposed mechanisms to be put in place during the work, 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**

### *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 the Applicant 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 Council'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.

It is noted that Council at its meeting of 27 September 2022 adopted the following amendments to the NDCP 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

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

Council at its meeting of 26 April 2023 adopted amendments to NDCP 2012 – Section 6.04 Renewal Corridors. The amendments came into effect on 29 May 2023.

This DCP amendment:

- i) consolidates five sections of Newcastle DCP 2012 into one section with common overarching objectives and controls where relevant to character typology
- ii) promotes development and renewal, site consolidation, efficient use of land,
- iii) reasonable landscaping and deep soil requirements, and universal access
- iv) supports actions to review landscaped areas, consider heat island effect, provide tree canopy, support universal housing design principles and reflect consistency with zone objectives.

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

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

#### Residential Development - Section 3.03

The proposal is acceptable having regard to the requirements of this section of the NDCP 2012. The proposal has been assessed by the UDRP and is acceptable having regard to the provisions of SEPP 65 and the Apartment Design Guide which generally prevail in terms of the design criteria.

The proposed design is acceptable having regard to its character, streetscape appearance, height, bulk, and scale. The development is of a type and scale that is

allowed under the planning controls and the design of the development generally meets the required numerical controls in terms of density, height, setbacks, open space and landscaping. The proposed building, whilst being of a contemporary design is considered aesthetically appropriate within the emerging built context of the area, which is identified as a renewal corridor.

The impact on general outlook is considered acceptable having regard to the allowable height and scale for development under Council's adopted controls.

Overshadowing of neighbouring properties is considered acceptable, having regard to the site's context and the overall impact of the development throughout the year. In terms of the site itself, the building has been designed to allow both internal and external solar access appropriate to the nature of the development.

The floor space ratio, height and character of the development is considered acceptable, as previously discussed elsewhere in this report.

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

#### *Principal controls (3.03.01)*

##### *A. Frontage widths*

The site has a frontage of approximately 22m to Islington Street and is consistent with the minimum frontage width of 15m for residential flat buildings in R4 zones.

##### *A. Front setbacks*

The proposed front setback is consistent with the established front setback of other sites within Islington Street.

It is also noted that the development on the opposite side of Islington Street is built to the street alignment with nil setback.

The proposed development front setback complies with locality specific controls under part 6.04 Islington Renewal Corridor of the DCP.

##### *A. Side and rear setbacks*

The controls under Section 6.04 Islington Renewal Corridor of the DCP and the Apartment Design Guidelines (ADG) of SEPP 65 prevail over these controls. The proposed development is considered acceptable in this regard.

##### *B. Landscaped Area*

The subject site is devoid of vegetation, having been previously developed to all boundaries. No vegetation removal is proposed.

Part 3E of ADG requires 7% of the site area for deep soil zones. This equates to 41.3m<sup>2</sup>. A total of 65.22m<sup>2</sup> has been provided which exceeds the minimum requirement, subsequently providing for spaces that will enable the planting of trees and larger vegetation to enhance the amenity of the site.

#### *Siting the development (3.03.02)*

##### *A. Local character and context*

The proposal is consistent with the intended planning outcomes (high density residential) envisaged under Section 6.04 Islington Renewal Corridor.

##### *B. Public domain Interface*

Windows from all the dwellings will overlook the primary street frontage, while the carer's area and communal open space areas overlooking the rear laneway. The public domain interface is consistent with the provisions of Section 6.04 Islington Renewal Corridor.

##### *C. Pedestrian and vehicle access*

Vehicular access is from the unnamed lane at the rear, as required under under 6.04 Islington Renewal Corridor. Sufficient and safe pedestrian access has been provided from Islington Street.

##### *D. Orientation and siting*

The submitted shadow diagrams indicate that the adjoining property to the south-west will experience additional overshadowing.

However, the principal private open space area of the adjoining site to the southwest, being 1 & 2 / 1A Islington Street, will continue to receive at least two hours of solar access.

##### *E. Building Separation*

The building separation guidelines set out in Part 2F of the ADG has been applied and the development is considered to be acceptable in this regard.

#### *Amenity (3.03.03)*

##### *A. Solar and daylight access*

The controls under the ADG apply and the development is considered to be acceptable in this regard.

##### *B. Natural ventilation*

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

*A. Ceiling heights*

The proposal meets or exceeds the floor to ceiling height of 2.7 metres under Section 3.03.

*A. Dwelling size and layout*

The controls under the ADG apply and the development is considered to be acceptable in this regard.

*A. Private open space*

The controls under the ADG and the development is considered to be acceptable in this regard.

*A. Storage*

The controls under the ADG and the development is considered to be acceptable in this regard.

*A. Car and bicycle parking*

The controls under Section 6.04 Islington Renewal Corridor and the ADG apply and the development is considered to be acceptable in this regard.

*B. Visual privacy*

The controls under Section 6.04 Islington Renewal Corridor and the ADG apply and the development is considered to be acceptable in terms of privacy impacts.

*C. Acoustic privacy*

The controls under Section 6.04 Islington Renewal Corridor and the ADG apply and the development is considered to be acceptable in terms of privacy impacts.

*J. Noise and pollution*

The building layout has been designed to achieve minimisation of noise transfer to and from the dwellings. Acoustic treatments to walls, floors and ceilings further reduce noise transfer. The applicant has prepared an acoustic report to address the impacts of traffic noise from Maitland Road on future residents of the proposed development.

*Configuration (3.03.04)*

*A. Universal design*

The proposal is considered to be acceptable in terms of the universal design provisions.

*A. Communal area and open space*

The controls under Section 6.04 Islington Renewal Corridor and the ADG apply and the development is considered to be acceptable in terms of communal area and open space.

*A. Architectural design and roof form; and*

*B. Visual appearance and articulation*

The development has been reviewed by the UDRP and is considered to be acceptable. The development establishes a scale and built form that is appropriate for its location. Further it will provide good presentation to the street with adequate residential amenity, while maintaining reasonable privacy for adjoining neighbours.

#### Flood Management - Section 4.01

In accordance with Section 4.01 'Flood Management' of the NDCP, the floor levels of occupiable rooms on the subject site are to be not lower than the flood planning level of 5.90m Australian Height Datum. The proposed development meets this requirement, and an on-site flood refuge is not required.

Accordingly, the proposal is acceptable in relation to flooding.

#### Safety and Security - Section 4.04

A Crime Prevention Through Environmental Design Assessment has been provided which demonstrates that the proposal incorporates appropriate crime prevention features to reduce the likelihood of criminal activity and provide a safe environment for future residents. Landscaping, walls and fencing have been designed to ensure clear sightlines between public and private areas. Accordingly, the proposal is acceptable in relation to safety and security.

#### Social Impact - Section 4.05

The proposed development will result in the provision of additional housing within an established suburb with access to public transport, employment opportunities, community infrastructure, education and services.

The development will increase the population in an ideal location and lead to the activation of an existing underutilised site. The associated public domain improvements also contribute positively to the existing locality.

The development does not involve a potential loss of opportunity or resources for future generations. It is unlikely that a development of the nature proposed would result in increased anti-social behaviour.

Redevelopment of this under-utilised site is a positive outcome socially. The proposal will provide additional housing for people with a disability and employment opportunities in the locality. As such, the proposed development is acceptable in terms of the above section of NDCP 2012.

### Soil Management - Section 5.01

Temporary measures to minimise soil erosion and appropriate mitigation measures will be implemented prior to any earthworks commencing on the site, in line with the recommendations of the submitted geotechnical report and erosion and sedimentation plans submitted with the application.

Accordingly, the proposal is acceptable subject to conditions to address soil management and ensure adequate sediment and erosion control measures are in place for the construction period.

### Land Contamination - Section 5.02

Land contamination has been investigated and is considered suitable as detailed under SEPP R&H 2021 within the report above, which found the site to be acceptable for the proposed development and consistent with the provisions of the SEPP and CN's requirements subject to the inclusion of CN's standard conditions of consent addressing classified waste removal/ disposal.

### Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees and the potential for this development to potentially impact any private trees on the neighbouring property is considered low as only minor earthworks are proposed.

### Aboriginal Heritage - Section 5.04

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

### Heritage Items - Section 5.05

The subject is not a listed heritage item, nor within proximity to a heritage item. Section 5.05 is not applicable to the subject development application.

### Archaeological Management - Section 5.06

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

### Islington Renewal Corridor - Section 6.04

Council at its meeting of 26 April 2023 adopted amendments to Newcastle Development Control Plan (NDCP 2012) – Section 6.04 Renewal Corridors. The amendments came into effect on 29 May 2023.

The 'saving provisions' of the amendments provide that any development application lodged but not determined prior to this section coming into effect will be determined

taking into consideration the provisions of the plan that applied at the date of lodgement of the application. Therefore, as the application was submitted in December 2022, the application has been assessed in accordance with the former renewal corridor provisions of NDCP 2012.

The site is located with Precinct 3 (Islington Park) of the Islington Renewal Corridor.

The strategic overview for the locality is as follows:

*'The Islington Renewal Corridor is characterised by its position on a principal access route into the Newcastle CBD, adjoining significant open space areas (Wickham Park, Islington Park and Throsby Creek), and its location adjacent to the Beaumont Street Shopping Precinct and the Sydney to Newcastle railway line.*

*The aim of this plan is to ensure that development builds on the characteristics of the Islington village centre and existing built form along Maitland Road, while providing opportunities to intensify residential density to accommodate an additional 150 dwellings, and stimulate commercial activity, to vitalise the streetscape along the corridor.*

*Tree planting on Maitland Road will mature and serve to visually integrate the built form and to ensure an ongoing contribution of large and significant trees to the local landscape character.*

*Pedestrian movement across Maitland Road aims to be improved to enable increased accessibility to the open spaces of Islington Park, Throsby Creek, and Wickham Park.'*

The DCP character statement for Precinct 3 (Islington Park) provides that:

*'This precinct is made up of a mix of commercial type development and large underutilised sites. The precinct has an outlook and views over Islington Park across Maitland Road and is adjoined by existing residential areas. There is potential to redevelop this precinct over time for higher density residential development overlooking Islington Park. This will improve passive surveillance of the area. Additional streetscape improvements including additional pedestrian crossings will also help to activate this area and improve pedestrian safety. This precinct has a target of providing seventy (70) additional dwellings.'*

The proposal is for six group homes in the form a residential flat building, not a mixed-use development. Therefore, the ground floor has not been designed to incorporate future commercial development.

The proposal exceeds the rear setback control via the combination of the proposed rear setback and the additional separation provided by the width of the laneway.



Pedestrian access is proposed from Islington Street, with vehicular access to be obtained from the rear laneway.

Balconies are proposed on the front elevations to both provide articulation and visual interest, while balconies on the rear elevation will provide for communal area with high levels of amenity.

The building setbacks are generally consistent with the setback controls and will suitably reduce impacts to surrounding properties and land uses. Such setbacks provide for sufficiently sized landscaped areas, with bedroom windows being set further back from side boundaries to maintain visual privacy.

The proposed development offers improvements to the public domain and will improve the streetscape and overall amenity of the area. The proposed development is consistent with the intended future character of the area and recent developments in the area.

Overall, the proposal is considered to be acceptable having regard to the provisions of Section 6.08.

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

The subject site is devoid of vegetation, having been previously developed to all boundaries. No vegetation removal is proposed. The proposal is considered to be acceptable in terms of its landscaping outcomes and the provisions of the Apartment Design Guide.

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

The group homes will provide accommodation and care for disabled residents that require support 24 hours a day, seven days a week. A maximum of six carers will be on site at any given time between 6am – 10pm. A minimum of two overnight carers will be on site between 10pm – 6am. Residents will also intermittently leave the group home for off-site activities and to attend appointments with off-site medical specialists via two on-site suitably equipped vans capable of transporting wheelchair residents.

The parking spaces provided are considered sufficient to meet the operational requirements and demands.

The submitted traffic report has demonstrated that the development will not impact on the surrounding road network.

In addition, the group home shall be designed to be electric vehicle (EV) ready by pre-wiring, to ensure there is appropriate electrical circuitry to allow for future electric vehicle charging points in 100% of the car spaces.

The proposed development has provided off-street car parking, bicycle parking and motorbike parking in accordance with NDCP 2012 (savings provision) parking requirements.

The proposal is acceptable, subject to draft conditions included in **Attachment B**.

#### Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

#### Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012. The proposed stormwater management plan is supported subject to the recommended conditions on the consent.

#### Waste Management - Section 7.08

A Waste Management Plan has been provided with the application.

A dedicated waste storage area is to be provided on the southwest side of the site between the southwest boundary and carpark, which will have capacity for ten bins. Staff will move the internal waste to the external storage area, and on collection days will move the bins to the Islington Street frontage on collection days for kerbside collection. Following collection, the bins will be returned immediately by the carers to the waste storage area.

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 operational requirements and submitted information, the proposal is considered to be acceptable.

#### Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development is for the purpose of a permanent group home and is affected by Section 7.12 Development Contributions Plan. A condition requiring the contribution to be paid prior to issue of a Construction Certificate is included within the consent.

#### **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 will be included in the conditions of consent for any demolition works.

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

The amended plans are acceptable having regard to the proposed height, external appearance, character, bulk, and scale of the proposed development. The proposal has been assessed by CN's Urban Design Review Panel (UDRP) on two occasions and is acceptable having regard to the provisions of SEPP 65 and the Apartment Design Guide.

The proposal achieves adequate visual and acoustic privacy for the proposed residential development and for the surrounding properties and has suitably considered the potential future development of the area.

There are no significant views that will be impacted in this location and the proposal does not have a significant adverse impact on the adjoining properties in terms of view loss. The development will alter the general outlook due to the proposed changes in size and scale, but this is reasonable having regard to the height and scale of adjacent developments and other approved developments in the area.

The proposal will provide suitable housing for members of the community with support needs. Such housing is accessible and establishes a home-like environment that will afford high levels of amenity, privacy and flexibility for daily living, and fosters opportunities for increased participation in the local community.

Accordingly, it is submitted that the proposed development will not contribute to any negative community/social impacts, but rather significant and positive community and social impacts upon the local area.

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

The site is located within an identified growth and renewal corridor. The proposed development is consistent with the desired character and built form of the Islington Renewal Corridor, bringing new residential opportunities that are well placed, highly accessible and functional.

The site is within proximity to commercial centres to ensure residents will have good levels of amenity and proximity to services and facilities. The site is located within an established suburb and is accessible to key services and amenities. The land is suitably zoned for the development which is permissible.

The variation sought to the building height development standard is acceptable having regard to built form and potential impacts. The application has been reviewed and supported by CN's UDRP during the assessment and is supported.

The site is not affected by significant environmental constraints that would preclude development of the site. The site is therefore suitable for the development, as outlined within the detailed assessment contained within this report, and subject to the recommended conditions of consent.

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

The proposal was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan between 4 January and 25 January 2023 and in response three submissions of objections (including two submissions from the same household) were received in relation to traffic and parking.

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

Issue	Comment
<i>Insufficient parking</i>	<p>Seven car parking spaces have been proposed including an accessible space designed in accordance with AS2890.6, this meets the minimum parking requirement of five spaces.</p> <p>The parking spaces provided are considered sufficient to meet this demand.</p> <p>The proposal will not impact on the local traffic network in terms of traffic generation.</p>
<i>On street parking</i>	<p>The proposed development does not result in the removal of any on street parking spaces in Islington Street.</p> <p>The existing vehicular crossing in Islington Street is required to be removed and reinstatement of new footway paving matching existing.</p>
<i>Laneway needs to be resurfaced to prevent dust and dirt</i>	<p>The following works are required to be constructed by the developer in connection with the proposed development within the rear laneway.</p> <p>Reconstruct full width road pavement for the full frontage of the development to the Laneway up to the intersection of the laneway with Hubbard Street.</p> <p>Construction of a new driveway crossing to the 'Unnamed Laneway' with a maximum width of 6.4m.</p>

## 5.9 The public interest

The development is consistent with the aims and design parameters contained in the NLEP 2012 and NDCP 2012 and other relevant environmental planning instruments.

The proposed development is in the public interest as it provides for the orderly and economic development of the site.

This assessment has demonstrated that the development does not cause any significant overshadowing, privacy impacts or unreasonable view loss for surrounding properties.

The proposal is consistent with CN's urban consolidation objectives, making efficient use of the established public infrastructure and services. The proposed development provides for the orderly economic development of the site for purposes for which it is zoned and will not have any significant adverse social or economic impacts.

The proposed development does not raise any other significant public interest issues beyond matters already addressed in this report. The development is in the public interest and will allow for the orderly and economic development of the site.

## **6.0 CONCLUSION**

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls and the key issues identified in this report, it is considered that the application can be supported. The proposed development is suitable for the site and adequately responds to environmental, social, and economic impacts from the development and therefore, is within the public interest.

Given the high-quality design outcome for the site and its positive contribution to the locality, the consistency with NLEP 2012, Local Strategies (including the NDCP 2012) and applicable State environmental planning policies, and the absence of any significant adverse environmental impacts, the proposal is appropriate in the context of the site and the locality.

The proposal is acceptable having been assessed against the relevant heads of consideration under Section 4.15(1) of the EP&A Act, subject to the recommended conditions of consent.

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 - 1B Islington Street, Islington

**Attachment B:** Draft Schedule of Conditions - 1B Islington Street, Islington

**Attachment C:** Processing Chronology - 1B Islington Street, Islington

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