



City of
Newcastle



CITY OF NEWCASTLE

Development Applications Committee

Councillors,

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

DATE: Tuesday 19 October 2021

TIME: Following the Briefing Committee Meeting

VENUE: Audio visual platform Zoom

J Bath
Chief Executive Officer

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

Tuesday 12 October 2021

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DEVELOPMENT APPLICATIONS COMMITTEE
19 October 2021

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CONFIRMATION OF PREVIOUS MINUTES

**MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE
21 SEPTEMBER 2021**

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 210921 Extraordinary Development Applications Committee Minutes

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

Attachment A

CITY OF NEWCASTLE

Minutes of the Extraordinary Development Applications Committee Meeting held via audio visual platform Zoom on Tuesday 21 September 2021 at 6.41pm.

PRESENT

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

IN ATTENDANCE

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

ATTENDANCE VIA AUDIO VISUAL MEANS

PROCEDURAL MOTION

Moved by Cr Luke, seconded by Cr Mackenzie

That Council:

1. Notes the current Public Health Orders applicable to all of NSW;
2. Notes tonight's Extraordinary Development Applications Committee meeting is livestreamed on Council's website providing for access to members of the public;
3. Notes the unprecedented public health risks facing the community and in the interests of public health and safety, permits all Councillors to attend the Extraordinary Development Applications Committee meeting of 21 September 2021 by audio visual means.

**Carried
unanimously**

APOLOGIES

MOTION

Moved by Cr Luke, seconded by Cr White

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

**Carried
unanimously**

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Nil.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 JULY 2021
MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE
27 JULY 2021

MOTION

Moved by Cr Mackenzie, seconded by Cr Winney-Baartz

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

Carried
unanimously

DEVELOPMENT APPLICATIONS

ITEM-16 DAC 21/09/21 - 120 PARRY STREET NEWCASTLE WEST AND 16 HALL STREET NEWCASTLE WEST - DA2020/00322 - DEMOLITION (EXISTING BUILDING) AND MIXED USE DEVELOPMENT (EIGHT STOREY) COMPRISING GROUND FLOOR BUSINESS, RESIDENTIAL (30 APARTMENTS), CAR PARKING AND ASSOCIATED APARTMENTS

MOTION

Moved by Cr Duncan, seconded by Cr Robinson

- A. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R4 High Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2020/00322 for the demolition of existing buildings and the erection of an eight-storey mixed-use development comprising ground floor business use and residential flat building (30 apartments), car parking, and associated site works at 120 Parry Street and 16 Hall Street Newcastle West be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B** and amended as follows:

Additional conditions:

Condition 1A

The development must be amended as follows:

- a. Two hardstand visitor spaces are to be provided for on site. The removal of two car stacker 'bays' (eight stacked spaces) is required to facilitate this requirement.

Amended plans or documentation demonstrating compliance must be provided to the Certifying Authority and Council prior to the issue of a Construction Certificate.

Condition 25A

The visitor parking bays are to be constructed in paving bricks or in a suitable alternative visually unobtrusive paving material which contrasts in colour and texture with that used in the construction of the driveway. Full details are to be included in documentation for a Construction Certificate application.

Amended conditions:

1. On-site parking accommodation is to be provided for a minimum of 39 vehicles and such be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 'Traffic, Parking and Access' of Councils' adopted Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application. Parking spaces shall be allocated as follows:
 - a) 2 hardstand spaces for visitor parking
 - b) 36 stacker spaces for residential parking
 - c) 1 hardstand car space for accessible parking
1. On-site parking accommodation is to be provided for a minimum of 39 vehicles and such be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 'Traffic, Parking and Access' of Council's adopted Newcastle Development Control Plan 2012 and with the details indicated on the submitted plans except as otherwise provided by the conditions of consent. A parking allocation plan shall be submitted to the Principal Certifying Authority that is consistent with the following requirements:
 - a) 2 hardstand spaces for visitor parking
 - b) 36 stacker spaces for residential parking
 - c) 1 hardstand car space for accessible parking
1. On-site car parking accommodation is to be provided for a minimum of 39 car parking vehicles (includes minimum of 2 hardstand residential visitor parking spaces, 36 stacker residential apartment parking spaces, 1 hardstand accessible parking space) and 22 residential bicycle spaces (Class 2) and 5 visitor bicycle spaces (Class 3).

In the event of any future subdivision, parking is to be allocated as follows:

- a) The residential spaces are to be allocated to corresponding residential units, with a minimum of one parking space provided to each unit. A stratum subdivision is required to facilitate this arrangement.
- b) The car stacker to remain as common property.
- c) The hardstand accessible spaces is to be allocated to the commercial unit.
- d) The 2 hardstand visitor parking spaces are to remain in common property at all times. The on-site parking bays are to be made available for the use of casual visitors to the premises and such spaces under no circumstances being subdivided, leased or controlled by or on behalf of particular unit owners or residents.

C. That those persons who made submissions be advised of CN's determination.

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Clausen, Duncan, Dunn, Luke, Robinson, White and Winney-Baartz.

Against the Motion:

Councillors Church, Elliott and Mackenzie.

Carried

The meeting concluded at 7.11pm

DEVELOPMENT APPLICATIONS

ITEM-17 **DAC 19/10/21 - 164 HUNTER STREET, NEWCASTLE - DA2019/00331.01 - SECTION 4.55(2) MODIFICATION TO DA2019/00331 - MIXED-USE (COMMERCIAL, RETAIL & RESIDENTIAL) INVOLVING ALTERATIONS AND ADDITIONS TO HERITAGE LISTED BUILDING - CHANGES TO APPROVED PLANS INCLUDING AN ADDITIONAL STOREY**

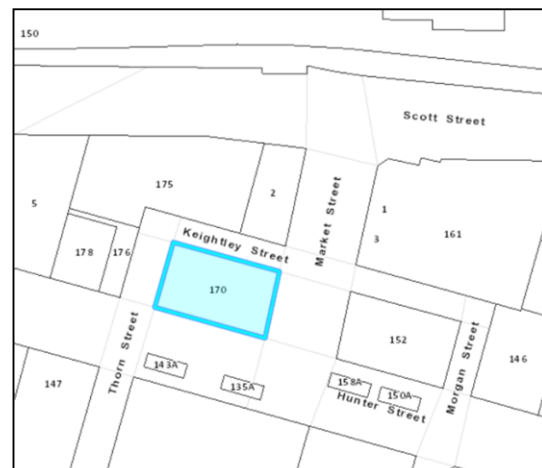
APPLICANT: **DE WITT CONSULTING**
OWNER: **SINGLOST PTY LIMITED**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

PURPOSE

An application to modify development consent DA2019/00331 under Section 4.55(2) has been received. Consent was granted on the 21 October 2019 for a 'mixed-use development (nine commercial/ retail tenancies and 28 apartments), involving alterations and additions to a heritage listed building, including two additional storeys and rooftop terrace' at 164 Hunter Street Newcastle.

The approved development included a 25% variation to the height of building development standard and a 50% variation to the floor space ratio development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012).



Subject Land: 164 Hunter Street Newcastle

The modification application proposes changes to the approved plans and the addition of one storey to the building (containing six residential apartments).

The modified development has been amended and improved during the assessment process, specifically in response to issues raised by CN's Urban Design Review Panel (UDRP). The modified development, as amended, is supported by the UDRP.

The application was publicly notified for a period of 14 days, between 9 November 2020 and 23 November 2020, in accordance with CN's Community Participation Plan.

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

The submitted application was assigned to Development Officer (Planning), Elle Durrant, for assessment.

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

The proposed variation to the height of buildings development standard of NLEP2012 being more than a 10% variation (30% variation proposed to Hunter Street elevation and 40% variation proposed to Keightley Street elevation).

- i) The proposed variation to the floor space ratio (FSR) development standard of NLEP 2012 being more than a 10% variation (59.6% variation proposed).

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

Issues

- 1) The proposed development (as modified) does not comply with the height of buildings development standard of 20m under NLEP 2012. The proposed height of the building is 26m along the Hunter Street elevation (to the south) and 28m along the Keightley Street elevation (to the north), including lift overrun and rooftop communal area. This equates to a 30% variation, and a 40% variation to the height of buildings development standard, respectively, if considered in the context of the two main street frontages. It is noted that the approved development includes a 25% variation to the height of building development standard of NLEP 2012.
- 2) The proposed development (as modified) does not comply with the FSR development standard of 3:1 under NLEP 2012. The proposed development (as modified) has an FSR of 5.03:1, which equates to a 59.6% variation to the FSR development standard. It is noted that the existing building currently exceeds the FSR development standard of 3:1 under the NLEP 2012, being 3.1:1. Furthermore, the approved development includes a 50% variation to the FSR development standard of the NLEP 2012.

- 3) No car parking is provided as part of the proposed development (as modified). A historical parking deficiency exists for this building and is considered acceptable given the constraints of the site and the heritage listing for the facade, therefore limiting the ability to make substantial changes to the existing building.
- 4) The subject site is listed ('1406 Municipal Building') for its local heritage significance in NLEP 2012. The adaptive re-use of the building and upper additions, as modified, respond well to the existing built form and are setback to preserve the appearance of the building from the public domain, minimising the impact on the streetscape.

Conclusion

The proposed development (as modified) has been assessed having regard to the relevant heads of consideration under Section 4.55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act1979) and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the variation to the height of building development standard of NLEP 2012 and consider the variation to be justified; and
- B. That the Development Applications Committee (DAC) note the variation to the FSR development standard of NLEP 2012 and consider the variation to be justified; and
- C. That DA2019/00331.01 application to modify development consent for mixed-use development involving alterations and additions to heritage listed building at 164 Hunter Street Newcastle, be approved and consent granted subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

Section 10.4 of the EP&A Act1979 requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined.

The following information is to be included on the statement:

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

The applicant has answered **NO** to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the*

application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?

PART II

1.0 THE SUBJECT SITE

The site is located at 164 Hunter Street, Newcastle (Lot 1 DP 600274) and has an area of 594.5sqm. The site has frontages to Hunter Street (south), Market Street (east), Thorn Street (west) and Keightley Street (north). A moderately steep fall in level is evident from Hunter Street to Keightley Street.

A commercial building known as the '*Municipal Building*' is located on site and is listed as an item of local heritage significance in NLEP 2012. The building currently comprises of several tenancies across four levels, including a basement level. No parking is currently provided on the site and there is no provision for vehicular access to the site.

The building sits within the retail area of Hunter Street, the immediate setting having been the subject of previous streetscape works including introduction of colonnaded awnings over ground floor shop fronts on the south facade. The building has a close visual association and significant streetscape presence with the eastern elevation facing the encompassing route of Market Street. The rear, northern elevation is, in contrast, utilitarian lacking detail and having limited streetscape value.

The context comprises extensive adaptive development retaining and enhancing the core historic aspects of the Hunter Street urban centre. Current adaptive reuse of early 20th Century buildings to the southern opposing side of the street incorporates restoration and retention of existing facades in conjunction with cohesive additions of projection above the existing parapet line.

The neighbouring site to the west, at No.176 Hunter Street, is a heritage building known as the '*Former AA Dangar Building*' which has development approval (DA2017/00052) for adaptive re-use as a mixed-use development comprising retail, commercial and residential land uses. This neighbouring approved development includes two additional levels, no on-site car parking, an overall height of 24.95m (24.75% variation) to the Hunter Street elevation, and results in an FSR of 3.57:1 (19% variation).

Relevant development history

Approved development – DA2019/00331

Development consent was granted by Newcastle City Council on 21 October 2019 (DA2019/00331) for '*mixed-use development (nine retail tenancies and 28 apartments), involving alterations and additions to heritage listed building, including two additional storeys and rooftop terrace*' on the subject site; Lot 1 DP 600274 164 Hunter Street Newcastle.

Particulars of the approved development are listed below:

Basement Level (Keightley Street)

- i) Internal alterations to create four retail tenancies accessed from Keightley Street and Market Street.
- ii) Addition of residential lobby and associated lift and fire stair, accessed from Keightley Street.
- iii) Addition of shared toilet facilities.
- iv) Reinstatement and improvement works to the facade, modified access and fenestration.

Ground Level (Hunter Street)

- i) Internal alterations to create five retail tenancies, with mezzanine level at northern end, accessed from Hunter Street.
- ii) Addition of WC on mezzanine level of Tenancy 5.
- iii) Reinstatement and improvement works to facade.
- iv) Addition of street awning to Hunter Street and Market Street facades.

Levels 1 and 2

- i) Internal alterations of existing commercial tenancies into 16 residential apartments (ie. eight apartments per floor) and associated lobby, lift and fire stairs.
- ii) Existing windows within the heritage facades along Thorn Street, Hunter Street and Market Streets to be retained and supplemented by low level fixed panels under the existing sills.
- iii) Addition of windows to Keightley Street facade.
- iv) Reinstatement and improvement works to the facades generally.

Levels 3 and 4

- i) Addition of two levels containing 12 residential apartments of apartment (ie. six apartments per floor).

Rooftop

- i) Addition of a rooftop terrace for communal use by future residents building, incorporating a landscaped perimeter and screen enclosed service areas.

The approved development is required to comply with CN's East End Public Domain Masterplan which includes road reserve upgrades, pavement treatment and other improvements, to ensure the desired character of the area occurs.

The approved development includes a 25% variation to the height of building development standard and 50% variation to the floor space ratio development standard of the NLEP 2012.

2.0 THE PROPOSAL

The current application to modify development consent DA2019/00331 consists of changes to the approved plans including additional storey (containing an additional six residential apartments).

Particulars of the modifications proposed are listed below:

- i) One additional storey (Level 5) containing 6 x 1-bedroom apartments, resulting in a total of 34 apartments.
- ii) Increased building height by 3.1m, resulting in a total building height of 26m along the Hunter Street elevation (to the south) and 28m along the Keightley Street elevation (to the south), including lift overrun and rooftop communal area. This equates to a 30% and 40% variation to the height of buildings development standard, respectively if considered in the context of the two main street frontages.
- iii) Increased floor space ratio by 0.53:1, resulting in a total FSR of 5.03:1. This equates to a 59.6% variation to the FSR development standard.
- iv) Re-design of external features, materials and general appearance of all three upper levels and rooftop terrace.
- v) Increase in the height of approved street awning to Hunter Street and Market Street facades.
- vi) Rearrangement and rationalisation of floor layouts and services, including the provision of a dedicated on-site refuse area for the storage of garbage bins.
- vii) Changes to wording of conditions of development consent to reflect the modified development.

The modified development has been amended and improved during the assessment process, specifically in response to issues raised by CN's Urban Design Review Panel (UDRP). The modified development, as amended, is supported by the UDRP.

A copy of the current amended plans for the modified development proposed is appended at **Attachment A**.

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days, between 9 November 2020 and 23 November 2020, in accordance with CN's Community Participation Plan. No submissions were received as a result of the notification process.

In response to matters raised during the assessment process, several amendments to the modification application as originally submitted have been made during the assessment process.

After consideration of the nature and scope of the amendments made, having regard to CN's Community Participation Plan, re-notification of the modification application was not considered necessary.

4.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the relevant provisions of Section 4.55 of the EP&A Act 1979, as detailed below.

The subject application to modify development consent has been made under Section 4.55(2). Section 4.55(2) states a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if it is satisfied with regards to the matters below;

Subsection 4.55(2)(a) – substantially the same development

Officer comment

The consideration of the substantially the same development test, as established in several precedents by the NSW Land and Environment Court, should not only include the physical characteristics of the approved and modified schemes, but also the nature and magnitude of impacts of the developments. In these respects, the modified scheme should be 'essentially or materially' the same as that originally approved.

An assessment of the qualitative and quantitative elements of the development approved and as proposed to be modified has been undertaken, and found the development being modified is substantially the same development as the development for which consent was originally granted. Details are provided below.

Qualitative Comparison

The proposed development, as modified, is substantially the same development, in a qualitative sense, as that originally approved as:

- a) There will be no change to the land use.
- b) The architectural quality will not be diminished.
- c) There are no changes which would have a detrimental impact on the heritage significance of the listed heritage item (being the former Municipal Building), or those in the vicinity of the site, nor will it impact the character of the Heritage Conservation Area of which the site is a part (being the Newcastle City Centre Heritage Conservation Area).
- d) There are no changes to the building footprint, and whilst the proposal includes an additional residential apartment level, the additional height as a result will not adversely impact on the adjoining properties or public domain.
- e) There is no change in impact or potential impacts to the natural environment as a result of the proposal.
- f) The changes will not preclude the development from complying with the conditions of consent, except where proposed to be modified within this application.

Quantitative Comparison

The following table provides a summary of the key features of the approved development and the modified development to assist with the quantitative assessment of the proposed modification.

	Approved development (DA2019/00331)	Modified development (DA2019/00331.01)
1-bed apartments	26	32
2-bed apartments	2	2
Total apartments	28	34
Car spaces	0	0
Commercial tenancies	9	9
Commercial GFA	925sqm	770sqm
Residential GFA	1,764sqm	2,225sqm

Total GFA	2,689sqm	2,995sqm
FSR	4.5:1	5.03:1
Number of levels (excluding basement)	5 plus rooftop terrace	6 plus rooftop terrace
Maximum RL	27.4 AHD	30.5 AHD

The proposed development, as modified, is substantially the same development, in a quantitative sense, as originally approved as it:

- a) Does not significantly alter the number, or mix of apartments
- b) Does not change the number of commercial tenancies.
- c) Does not significantly alter the GFA.
- d) Does not significantly alter the approved height.

Subsection 4.55(2)(b) – consultation

Officer comment

No public authority or approval bodies were required to be consulted.

Whilst the development involves alterations to a building within a mine subsidence district and therefor approval is required under Section 22 of the *Coal Mine Subsidence Compensation Act 2017*, at lodgement of the original development application (DA2019/00331) the applicant did not elect for the development to be *'integrated development'* for the purposes of Section 4.46 of the EP&A Act 1979, and such General Terms of Approval from Subsidence Advisory NSW do not form part of the original development consent.

Subsection 4.55(2)(c)(i) & (ii) – Notification

Officer comment

The application was publicly notified for a period of 14 days, between 9 November 2020 and 23 November 2020, in accordance with CN's Community Participation Plan.

Subsection 4.55(2)(d) – Submissions

Officer comment

No submissions were received during the public notification period.

Subsection 4.55(3) – relevant matters in section 4.15(1) and reasons given for the grant of the consent that is sought to be modified.

Officer comment

The proposed modification continues to adhere to the reasons for approval in that the modification respects the historic and built qualities of the heritage building while increasing the residential population of the City Centre. The modified development continues to provide additional commercial/ retail spaces that will assist with activating the street frontages and add vitality to this section of Hunter Street, as well as allowing for the adaptive reuse of the existing heritage building.

The site continues to provide a mixed used development which will support both residential development and commercial activity within proximity to public transport infrastructure. Accordingly, the modification application is considered satisfactory.

Section 4.15(1) EP&A Act 1979 outlines the matters a consent authority is to take into consideration that are of relevance to the development. An assessment of the modification against the matters for consideration under Section 4.15 of the EP&A Act is provided below.

4.1 Provisions of any environmental planning instrument

State Environmental Planning Policy No 55 - Remediation of Land

State Environment Planning Policy No 55 – Remediation of Land (SEPP 55) provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration to whether the land is contaminated, and if the land is contaminated, the consent authority must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

The land is currently developed, and the site is not listed as potentially contaminated on CN's Contaminated Land Register. The site does not have a history of potentially contaminated uses. Having due regard to the provisions of SEPP 55 and the nature of the proposal, the site is considered to be suitable for the proposed development.

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

State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the *Coastal Management Act 2016*. The 'coastal zone' is defined in the Act as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability.

The subject site is located with two coastal management areas; Coastal Use Area and Coastal Environment Area, as mapped under the CM SEPP mapping.

The development, as modified, involves alterations and additions to a heritage listed building in the Newcastle City Centre. The site is located within a well-established urban setting, with development existing on the site for many years. There are no likely impacts to this environment as a result of the development, as modified, particularly in relation to the biophysical environment and coastal processes and maintaining public access to the foreshore. There are no applicable coastal management programs which apply to the subject site.

The proposed development (as modified) is not likely to cause increased risk of coastal hazard on the subject or other land is considered acceptable having regard to the relevant provisions of the CM SEPP.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP) applies to buildings that are defined as 'BASIX affected development', being "development that involves the erection (but not the relocation) of a BASIX affected building," (i.e.: contains one or more dwelling).

Accordingly, the provisions of the BASIX SEPP apply to the proposed development (as modified). An amended BASIX Certificate was lodged with the application (Certificate number: 998961M_04), demonstrating that the modified development can achieve the required water and energy reduction targets.

A condition of consent was imposed on the original development consent requiring the competition of all commitments listed in the relevant BASIX certificate for the development prior to the issue of an Occupation Certificate. This condition remains unchanged under the subject modification application.

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

State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65) applies to the development for the purpose of mixed-use development comprising a residential accommodation component (amongst other development types) and aims to improve the quality of residential apartment development.

Clause 28(2) of SEPP 65 requires the consent authority to take into consideration the advice of a Design Review Panel (constituted under Part 3 of the Policy), and the design quality of the development when evaluated in accordance with the Design Quality Principles set out in the Apartment Design Guide.

CN's Urban Design Review Panel (UDRP), previously known as the Urban Design Consultative Group, have reviewed the modification application on three occasions during the assessment as detailed below.

Initially, the modification application was reviewed at the meeting of the UDRP held 25 November 2020. In response to matters raised during the assessment process, several amendments to the application were made during the assessment process and the modified application was referred to the UDRP for a second and third time at meetings held 31 March 2021 and 25 August 2021.

The most recent amendments to the modification application occurred in September 2021, specifically in response to the advice from the UDRP meeting held 25 August 2021.

An assessment of the modified development, as amended, has been undertaken having regard to the UDRP 25 August 2021 advice in relation to the Design Quality Principles, as detailed in **Table 1** below. CN is satisfied the most recent amendments and additional information submitted has adequately responded to the matters raised by the UDRP in respect to the previous iteration.

As such, the modification application was electronically referred to the UDRP for final advice. The final advice of the UDRP, provided via email dated 14 September 2021, confirmed the UDRP is satisfied the modified development is acceptable. Consent conditions addressing minimum landscaping widths and final material and finishes selections were recommended by the Panel.

The current amended proposal has sufficiently incorporated the recommendations, and suitable conditions of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**), to resolve the concerns raised by the UDRP. As such, the development application has now satisfied the UDRP advice and is considered an appropriate design response.

Table 1: Consideration of the UDRP advise in relation to the Design Quality Principles under SEPP 65

Design Quality Principles	Assessment
Principle 1. Context and Neighbourhood Character	
<p><u>UDRP Comment – 25 August 2021</u> <i>"Acknowledging the established character and scale of the setting the Panel recommends the following inclusion in the application.</i></p> <p><i>A site section from harbour to cathedral – showing existing, approved, and permissible (i.e. FSR and height of building development standards under NLEP 2012) built form analysis may assist in demonstrating the design argument for the FSR and height variations. Reference could be made to the SJB documentation for the East End development including David Moir’s view analysis."</i></p> <p><u>Officer Comment</u> A site section from harbour to cathedral has been provided as requested by the Panel (see drawing titled 'Proposed Section' prepared by BN Architecture dated 08</p>	

September 2021).

In addition to the site section, additional built form analysis has been provided. A 3D block model analysis demonstrating the massing from eight viewpoints has been prepared to demonstrate the effect of the modified development in a three-dimensional setting in relation to the approved building heights and NLEP 2012 permissible height of buildings (refer to **Attachment D**).

Noting that the upper levels and rooftop of the modified development will be viewed from high levels of the setting and from future development in the vicinity, the additional block model analysis provided assists in demonstrating the design argument for the FSR and height variations proposed. CN is satisfied the modified development will not form part of the skyline when viewed from distant viewpoints in the context of the existing/ approved/ permissible building heights, and topography of the area.

Principle 2. Built Form and Scale

UDRP Comment – 25 August 2021

- i) *The Panel considered the amendments made to articulation of the proposed additional floor, deleting the previously proposed mansard form and replacing this with a recessed wall line and projecting soffit. The amendments are considered to reduce the visual impact of the additional storey height and the communal areas above.*
- ii) *However, the Panel remains unable to support the current articulation as an acceptable cohesion of new and existing built form within the context of Hunter Street. The additions need to demonstrate a clear architectural continuity through a contemporary interpretation.*
- iii) *To this end, the Panel recommends further amendment of the proposed external massing and expression, including:*
- iv) *Maintaining the established symmetrical articulation of the Hunter Street elevation in the new additions. Breakup of proposed cladding panels, or alternate materials, needs to provide greater engagement between the addition and existing facades.*
- v) *Alignment of windows and recesses in the Hunter Street facade of the proposed addition with the window bays and vertical elements of the existing facade.*
- vi) *Further exploration of material selection utilising texture, fine detail, and a sense of structural depth that ensure long term contribution to the qualities of the existing building.*
- vii) *Articulation of recessed balconies at the south-east corner of the building in*

a manner that references the symmetry of the facade below. This is an opportunity to achieve greater, yet subtle, connectivity between the existing heritage building and the proposed addition.

viii) Alignment of the slot window proposed to the lift lobby /hallway of the new elevation with the existing curved pediment or inclusion of the window in a wider, similarly aligned panel, within the new exterior.

ix) Alignment of vertical joints in the new cladding panels with the pilasters of the existing building.

Officer Comment

The breakup of cladding panels on the proposed addition have been further resolved – vertical joints in the cladding have been aligned to the pilasters of the host building as far as possible. The placement of windows and alignment of cladding panels now achieve greater engagement between the addition and existing facades (see

Figure 1 below).

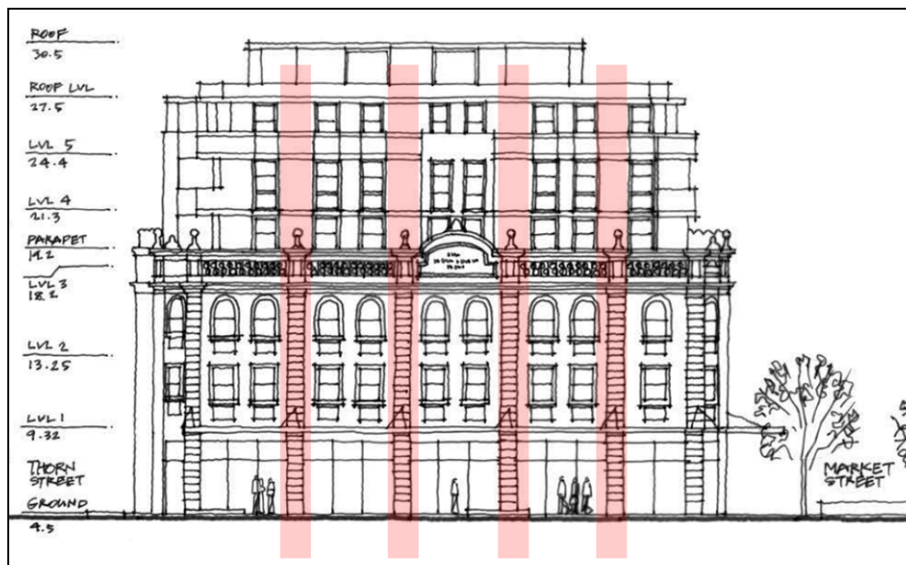


Figure 1: Extract of Hunter Street Elevation – red markup shows the alignment and proportions of cladding elements on the addition with the pilasters on the host building below.

The shape/ proportions of windows in the proposed addition have been amended to be 'vertical' to provide continuity with the windows of the host building. It is noted that this approach has been applied to not just the Hunter Street elevation, but also the east and west elevations, to better respond to the existing windows within the host building on these facades which is considered positive.

The placement of the windows in the proposed addition have also been amended – using a pattern of single and double windows aligned vertically. Whilst all windows within the proposed addition do not align with the window bays of the host building

below, their grouping now provide a continuity to the 'rhythm' established by the window spacing in the host building (being bays of single or double windows aligned vertically on all floors).

Amended material and finishes selection has been provided, and as detailed under '*Principle 9. Aesthetics*' of the Design Quality Principles assessment below, a suitably worded condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**), requiring a detailed material, colours and finishes schedule be submitted to and approved by CN prior to the issue of a Construction Certificate.

The articulation of the recessed balconies at the south-east corner (Hunter Street and Market Street) was tested by the applicant and proved to be unworkable for several reasons. To make the opening for the recessed balcony symmetrical about the corner of the host building would mean extending the balcony approximately 3m along the Hunter Street elevation (see **Figure 2** below). This would reduce the internal area of these southeast apartments to an unacceptable size and significantly impacted on the useability and functionality of the internal space.

Furthermore, extending the opening for the balcony along the Hunter Street elevation also significantly reduced opportunities to provide the symmetry and 'rhythm' to the Hunter Street facade of the proposed addition which is needed to achieve greater connection and continuity with the host building. Reducing the length of the opening for the recessed balcony along the east facade as way of then reducing the impact on the Hunter Street elevation (still trying to achieve the symmetry about the corner of the host building) was also tested. However, this would restrict access to the northeast aspect and views across to the harbour, and as such considered unsatisfactory.

On balance, CN considers the applicant has demonstrated considerable and meaningful effort to redesign the approved building to provide an improved development that strengthens the dominance of the host building, despite the additional level sought by the modification application.

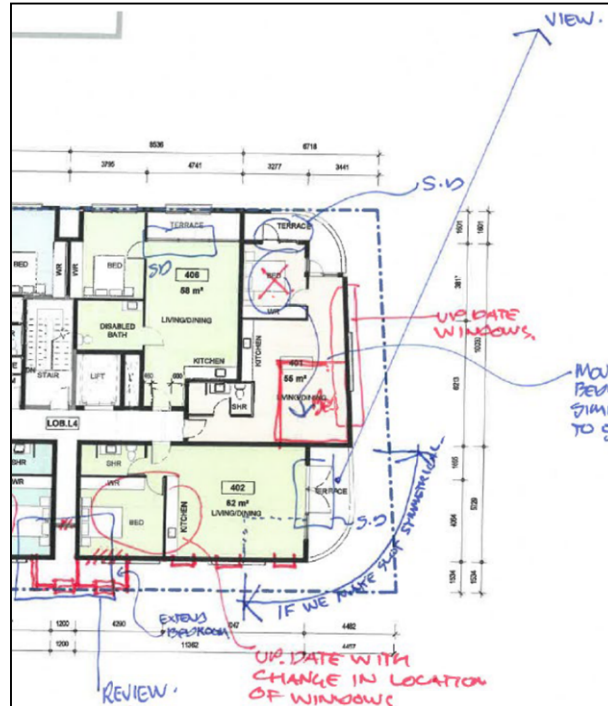


Figure 2: Extract of Sketch demonstrating testing of southeast corner terrace symmetry (Source: de Witt Consulting).

The slot window to the lift lobby/ hallway of the apartment levels of the proposed addition have been incorporated into a small 'pop-out' element on the Hunter Street elevation that aligns with the central curved pediment on the host building below. The placement of windows within the 'pop-out' element, matches with the host building below.

Importantly, it is noted that the placement of the slot window to the lift lobby/hallway of the new addition as approved is not symmetrical in any form. Furthermore, the new addition as approved provides zero connection to the symmetry of the curved pediment, 'rhythm' of the window bays, or repetition of the pilasters of the Hunter Street elevation in the host building.

The modified development is an important improvement on the current approved development in this respect. The 'pop-out' element to the proposed addition now acts as a 'central' element that aligns with the curved pediment element of the host building within the Hunter Street elevation, and in doing so, provides a continuity in form and massing between the two (see **Figure 3** below).

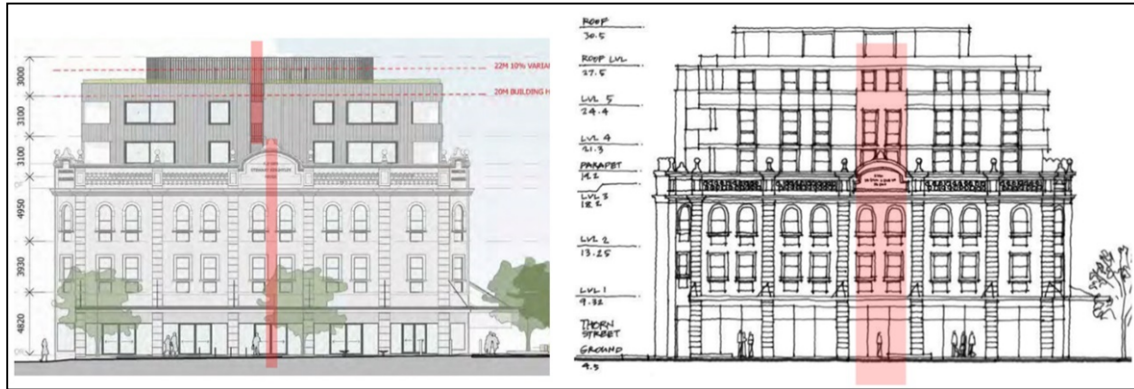


Figure 3: Extract of approved and modified Hunter Street Elevation (Source: BN Architecture) – red markup shows the alignment of 'central' window element in the addition and the curved pediment on the host building for both the approved development (right) and modified development proposed (left).

Principle 3. Density

UDRP Comment – 25 August 2021

The Panel continues to support reduction in the extent of enclosed area to the rooftop.

Officer Comment

The rooftop level gross floor area (GFA) has been reduced by approximately 42sqm (from approximately 90sqm to 48sqm).

The design, as amended, has sought to optimise the amenity of the rooftop communal area by providing a now suitably sized, enclosed area to offer protection and relief from the elements, balanced against the need to reduce the overall bulk of the building.

Principle 4. Sustainability

UDRP Comment – 25 August 2021

The Panel notes the rooftop area is large and provides opportunities for improving sustainability. Inclusions such as photovoltaic cells, and a discrete reintroduction of the traditional roof top clothes drying area should be considered to improve sustainability.

The provision of shaded and landscaped areas of the rooftop identified elsewhere in the response are considered important cooling elements for the building. Improved landscaping and shaded areas discussed above are also supported as contributing to the overall cooling of the building.

Officer Comment

The inclusion of photovoltaic cells was explored by the applicant but found to be

impractical due to the minimised space remaining in the enclosed communal area.

A current BASIX Certificate has been submitted with the modification application which lists the commitments to achieve appropriate building sustainability. The building achieves the building sustainability requirements without the provision of photovoltaic cells or communal external clothes drying areas, and as such the proposed development is considered satisfactory in this regard. Furthermore, it is noted that the provision of photovoltaic cells and rooftop clothes drying area are sustainability measures which can be implemented by future residents once they have occupied the space.

Principle 5. Landscape

UDRP Comment – 25 August 2021

Perimeter landscape treatment does not create a pleasant, landscaped environment, and is an instance where a landscape presence visible at the top of a building as viewed from the street, does not soften the appearance of the building, but adds yet another layer to the multi level proposal. Landscape beds should have only low species towards the outer wall, with bigger shrubs provided away from the outer parapet walls in wider beds that define seating spaces. The footprint of the interior communal space should be substantially reduced to lessen the appearance of the top floor being another full level. Shading is important, but could be less extensive, and could rely more on living vines and shrubs, rather than the extension to the roof.

Officer Comment

Amended landscape drawings prepared by Green Space Planting Co. have been provided.

The height and setback of the raised planter beds to the perimeter of the rooftop level have been amended so they are not visible when the building is viewed from street level. The amended landscape drawings specify mass planting of low groundcovers, succulents and grasses to the perimeter planter beds. Large decorative pots will be placed away from the outer parapet walls to create smaller zones with casual seating opportunities.

The raised planter bed along the east, south and west perimeters of the rooftop area are approximately 0.8m wide. Along the northern edge, the width is increased to 2m. The UDRP have previously recommended a minimum width of 1m for raised landscaping beds at rooftop level. As such, a condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) requiring the landscape plans be amended to show a minimum width of 1m for the raised landscaping beds provided at the rooftop level, with full details to be provided with the documentation for a construction certificate.

The landscaping arrangement, and planting scheme generally, has had due regard

to orientation/ aspect and the local climatic conditions in terms of wind and sun-exposure.

The enclosed communal space at rooftop level has been reduced by near 50%, as detailed under '*Principle 3. Density*' of the Design Quality Principles assessment above.

The most recent amendment has increased the landscaping area by approximately 17sqm (from approximately 70sqm to 87qm).

Principle 6. Amenity

UDRP Comment – 25 August 2021

The Panel acknowledged the improved spatial efficiency of apartments layouts whilst noting the need to include laundries within each apartment. Also absent were storage provisions for bulky day to day items such as ironing boards and vacuums.

Other elements of amenity requiring further amendment were identified as:

- i) Rooftop communal area –the indoor area should be decreased, and the treatment of landscaping increased.*
- ii) Proposed balconies are undersized. Whilst not insisting on ADG compliant areas for the original heritage building component, better use could be made of narrow balconies. If greater access to these were available from the interior. On Level 5 balconies, the single hinged door access from the living/ dining area is not supported. Amendments are required to provide a usable link between internal and external areas.*

Officer Comment

The plans have been amended and now show the location of laundries and storage with all apartments. Additionally, detailed kitchen layouts have been provided to demonstrate that suitable size and functionality is achieved.

Importantly, it is noted that the modified development includes individual storage cages (located on the basement level), which the approved development does not provide. As detailed under '*Objective 4G Storage*' of the Apartment Design Guide assessment below, the modified development as amended, complies with the storage volume requirements of the Apartment Design Guide.

Single hinged door access to apartment balconies have been removed. The layouts of these apartments have been further refined and have bi-fold doors between the living/dining space and balcony to create useable link between the internal and external areas.

The bi-fold door arrangement on Level 5 makes better use of the narrow balconies

– when open, an indoor/outdoor area with a depth ranging from 2.3m – 2.4m is provided (see **Figure 4** below).

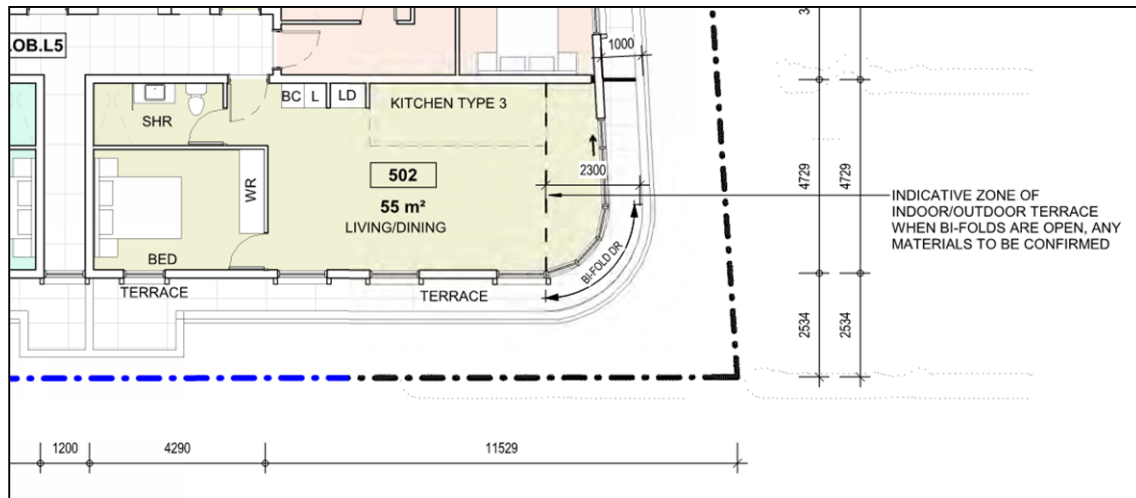


Figure 4: Extract of Level 5 Floor Plan (Source: BN Architecture).

Principle 7. Safety

UDRP Comment – 25 August 2021

No additional comments

Principle 8. Housing Diversity and Social Interaction

UDRP Comment – 25 August 2021

A reduction in enclosed areas, including extended corridors, would provide a viable rather than excessive facility at roof level.

Officer Comment

The enclosed communal space at rooftop level has been reduced by near 50%, as detailed under 'Principle 3. Density' of the Design Quality Principles assessment above.

Principle 9. Aesthetics

UDRP Comment – 25 August 2021

A reduction

The Panel considered further design development and amendment of the proposed additions is required, as discussed above, to ensure a cohesive design responding to the quality of the existing building and the related setting. In addition to previous comments the following aspects of the design were raised by the Panel.

- i) *The indicated colour and material selections for the additions remain an item of concern. Improved articulation of external cladding, including alignment of openings and panel junctions, is required to achieve acceptable cohesion of new and existing exteriors.*
- ii) *Colour selection of external cladding including soffits and window frames should be selected with regard to the setting, including surrounding buildings, the pattern of sunlight, and proposed colour scheme for the retained building exterior.*
- iii) *As noted above, treatment of the expressed slit window to the new lift lobby/access hallway, proposed for the southern elevation, is to be aligned with the prominent curved pediment on the retained Hunter Street Elevation or incorporated within a related panel that provides this alignment.*

Officer Comment

Further amendments have been made to improve the articulation of the external cladding, including the alignment of openings and panel junctions, as detailed under '*Principle 3. Built Form and Scale*' of the Design Quality Principles assessment above.

The colour and material selections indicated on the previous iteration of drawings reviewed by the Panel were incorrect and inconsistent. Amended materials and finishes selection has been provided, correcting these errors.

The colour scheme shown for the host building is consistent with the previous iterations which have been considered by the Panel and CN's Heritage Officer. Vitradual solid aluminium cladding is proposed for the new addition, with two colour options provided; 'Noble Red' (Option 1), or 'Opulent Brown' (Option 2). The applicant advised the colour selections and materials proposed have been chosen in consultation with the project heritage consultant and having due regard to the setting and surrounding buildings. Further, the applicant's response acknowledges that "*the final selection of colour should be made on site with large colour samples to achieve the most appropriate solution*". CN is satisfied in this regard, and a suitably worded condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**), requiring a detailed material, colours and finishes schedule be submitted to and approved by CN prior to the issue of a Construction Certificate.

The treatment of the expressed slit window to the Hunter Street elevation of the addition has been amended to be aligned with the curved pediment on the Hunter Street facade of the host building, as detailed under '*Principle 3. Built Form and Scale*' of the Design Quality Principles assessment above.

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

Further to the nine Design Quality Principles, the ADG provides greater detail on how residential development proposals can meet these principles through good design and planning practice.

The application has been assessed for compliance with the required topic areas within Parts 3 and 4 of the ADG pursuant to Clause 6A under SEPP 65. This assessment only addresses compliance with the objective and design criteria of the required topic area. Where a required topic area is not a specified design criteria, or where it is not possible for the development to satisfy the design criteria, the compliance comments in the following table will have regard to the design guidance relevant to that topic area.

Table 2: Compliance with required topic areas of the Apartment Design Guide

3B Orientation	
Objective 3B-1 Building types and layouts respond to the streetscape and site while optimising solar access within the development	
Objective 3B-2 Overshadowing of neighbouring properties is minimised during mid winter	
Comment: The modified development maintains the existing building footprint and orientation to street frontages. The changes proposed to the approved floor plans suitably respond to the restricted site conditions to allow for available views, optimising solar access to apartments and allowing for cross ventilation to apartments. Given the scale and proximity of existing and proposed developments, some overshadowing of the site already occurs which is beyond the control of this development. Access to natural daylight is maximised wherever possible through the placement of apartments to the east and north aspects. Additional overshadowing because of the modification proposed occurs within the existing shadows cast by the adjoining and surrounding buildings which are bigger in size and scale. The modified development, as amended, is considered satisfactory in regard to overshadowing to neighbouring buildings and the public domain. The modified development will not result in overshadowing of solar collectors on neighbour buildings as there are none.	Compliance: Complies

3D Communal and public open space		
Objective 3D-1 An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		
Design Criteria:	Comment:	Compliance:
1. Communal open space has a minimum area equal to 25% of the site.	25% of the total site area equals 148m ² . The modified development includes a communal rooftop terrace which provides 259m ² of communal open space, equalling 43% of the total site area.	Complies
Design Criteria:	Comment:	Compliance:
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).	No changes are proposed to the general orientation and aspect of the communal open space approved under the original development consent; northeast facing, overlooking the public domain of the Market Street lawn with longer views to the harbour beyond. The principle useable part of the communal open space of the modified development (the northeast portion of the communal rooftop terrace) achieves beyond the minimum solar access requirements of 2hrs sunlight between 9am and 3pm in mid-winter to over 50% of the area. The communal rooftop terrace of the modified development is supported by landscaping and has been designed to offer a high-quality amenity for a variety of uses, consistent with that of the approved development.	Complies
3E Deep soil zones		
Objective 3E-1 Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.		

Design Criteria:			Comment:	Compliance:						
<p>1. Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th> <th>Minimum dimensions</th> <th>Deep soil zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td>greater than 1500m²</td> <td>6m</td> <td>7%</td> </tr> </tbody> </table>			Site area	Minimum dimensions	Deep soil zone (% of site area)	greater than 1500m ²	6m	7%	<p>The approved development does not provide deep soil landscaping due to the heritage listed building occupying the entirety of the development site. No changes are proposed to the approved development regarding deep soil landscaping.</p> <p>Achieving the design criteria is not possible due to the location and constraints of the subject sites (heritage listed building occupies the entirety of the development site), and the extensive site coverage with non-residential development at ground. The proposal instead complies with the design guidance for this objective by integrating acceptable stormwater management and alternative forms of planting such as planting on structures.</p> <p>As such, the modified development is considered acceptable in this regard.</p>	<p>Satisfactory (Merit based assessment)</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)								
greater than 1500m ²	6m	7%								

3F Visual privacy

Objective 3F-1

Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.

Design Criteria:			Comment:	Compliance:						
<p>1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th> <th>Habitable rooms & balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>up to 12m</td> <td>6m</td> <td>3m</td> </tr> </tbody> </table>			Building height	Habitable rooms & balconies	Non-habitable rooms	up to 12m	6m	3m	<p>The development site is irregular in that all boundaries are street frontages; Keightley Street (north boundary), Market Street (east boundary), Hunter Street (south boundary), and Thorn Street (west boundary).</p> <p>As such, the development site does not have any side or rear boundaries meaning the minimum separation distances described under the design criteria are not applicable.</p> <p>No changes are proposed to the</p>	
Building height	Habitable rooms & balconies	Non-habitable rooms								
up to 12m	6m	3m								

(4 storeys)			approved setbacks on the lower levels (Basement to level 3) as these have been established by the footprint of the existing heritage listed building which is to be maintained.
up to 25m (5-8 storeys)	9m	4.5m	Changes are proposed to the approved building envelope for Level 3 and Level 4:
over 25m (9+ storeys)	12m	6m	<ul style="list-style-type: none"> i) Zero setback from the Keightley Street (north) boundary ii) 1.8m setback from Market Street (east) boundary iii) 1.5m setback from Hunter Street (south) boundary iv) 1.5m setback from Thorn Street (west) boundary
<p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2).</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>			<p>The upper addition of the modified development has suitable setbacks to minimise visual impact on the streetscape, consistent with the approved development. The modified development continues to achieve visual and acoustic privacy through the placement of windows/openings and the use of screening where required.</p> <p>The additional residential level (Level 5) being proposed under the modified application is setback a minimum 2.8m and 2.5m from the Market Street and Hunter Street boundaries, respectively.</p> <p>The upper addition of the modified development (being Levels 3 to 5) provides setbacks suitable to the relationship with neighbouring buildings existing and approved.</p> <p>As such, the modified development is consistent with the intent of this objective and acceptable in this regard.</p>

A4 Solar and daylight access		
Objective 4A-1		
To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space		
Design Criteria:	Comment:	Compliance:
<p>1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</p>	<p>The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites. Importantly, it is noted that the approved development does not achieve the design criteria, rather the approved development satisfied the design guidance for this objective by demonstrating how:</p> <p>1) the site constraints and orientation (adaptive re-use of heritage listed building, and the scale and proximity of existing/proposed neighbouring buildings) preclude meeting the design criteria; and</p> <p>2) the proposal was designed having regard to optimising the number of apartments receiving sunlight to habitable rooms, primary windows, and private open space (maximising the number of apartments orientated to the east and north aspects).</p> <p>Changes are proposed to the approved layout of apartments on Level 1 to 4. However, the modified development will maintain the level of solar and daylight access achieved to apartments under the approved development. In rationalising the approved apartment layouts on Levels 1 to 4, the modified development has been designed having due regard to optimising the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.</p>	<p>Satisfactory (Merit based assessment)</p>
<p>2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter.</p>		
<p>3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</p>		

	<p>The additional level (Level 5) proposed under the modification application will result in an additional six apartments. A total of four out of the six additional apartments proposed, or 75%, will achieve a minimum of 2hrs sunlight during 9am and 3pm at mid-winter. As such, the additional level proposed complies with the design guidance for this objective.</p> <p>On balance, the modified development is considered acceptable in regard to solar and daylight access.</p>	
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4B Natural ventilation

Objective 4B-3

The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.

Design Criteria:	Comment:	Compliance:
<p>1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p>	<p>A total of 26 out of 34 apartments, or 76%, are naturally cross ventilated. For the single aspect apartments, the layout and design maximise natural ventilation; apartment depths have been minimised and frontages maximised to increase ventilation and airflow.</p> <p>All habitable rooms are naturally ventilated via adjustable windows with suitable effective operable areas.</p>	<p>Complies</p>
<p>2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	<p>N/A</p>	<p>N/A</p>

4C Ceiling heights

Objective 4C-1										
Ceiling height achieves sufficient natural ventilation and daylight access.										
Design Criteria:	Comment:	Compliance:								
<p>1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="background-color: #e0e0e0;">Minimum ceiling height for apartment and mixed use buildings</th> </tr> </thead> <tbody> <tr> <td style="width: 20%;">Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use</td> </tr> </tbody> </table> <p>These minimums do not preclude higher ceilings if desired.</p>	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p><u>Mixed use</u> No changes are proposed to the approved floor-to-floor height of 4.82m for the Ground Level. As such, a minimum ceiling height from finished floor level to finished ceiling level of 3.3m can be achieved for the Ground Level.</p> <p><u>Apartments</u> No changes are proposed to the approved floor-to-floor height for apartment Levels 1 to 4, being:</p> <ul style="list-style-type: none"> i) Level 1 floor to floor height = 3.93m ii) Level 2 floor-to-floor height = 4.95m iii) Levels 3 - 4 floor-to-floor height = 3.1m <p>The additional level (Level 5) proposed under the modification application has a floor-to-floor height of 3.1m.</p> <p>As such, a minimum ceiling height from finished floor level to finished ceiling level of 2.7m to habitable rooms and 2.4m to non-habitable rooms can be achieved for all apartments.</p> <p>No two storey apartments or attic spaces are proposed.</p>	<p>Complies</p> <p>Complies</p>
Minimum ceiling height for apartment and mixed use buildings										
Habitable rooms	2.7m									
Non-habitable	2.4m									
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use									
4D Apartment size and layout										
Objective 4D-1										
The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.										
Design Criteria:	Comment:	Compliance:								

<p>1. Apartments are required to have the following minimum internal areas:</p> <table border="1" data-bbox="172 365 598 629"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>studio</td> <td>35m²</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> </tr> <tr> <td>2 bedroom</td> <td>70m²</td> </tr> <tr> <td>3 bedroom</td> <td>90m²</td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Apartment type	Minimum internal area	studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>All of the apartments achieve the minimum internal areas required.</p>	<p>Complies</p>
Apartment type	Minimum internal area											
studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											
<p>Design Criteria:</p> <p>2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	<p>Comment:</p> <p>All of the apartments are provided with a window in an external wall to every habitable room.</p>	<p>Compliance:</p> <p>Complies</p>										
<p>Objective 4D-2 Environmental performance of the apartment is maximised.</p>												
<p>Design Criteria:</p> <p>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	<p>Comment:</p> <p>N/A (All apartments are provided a combined living/ dining/ kitchen area)</p>	<p>Compliance:</p> <p>N/A</p>										
<p>Design Criteria:</p> <p>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p>Comment:</p> <p>All apartments have a maximum habitable room depth of less than 8m from a window for open plan living, dining and kitchen area.</p>	<p>Compliance:</p> <p>Complies</p>										
<p>Objective 4D-3</p>												

Apartment layouts are designed to accommodate a variety of household activities and needs.					
Design Criteria: 1. Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)	Comment: All master bedrooms have a minimum area of 10m ² and all other bedrooms have a minimum area of 9m ² (excluding wardrobe space).	Compliance: Complies			
Design Criteria: 2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Comment: All bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Compliance: Complies			
Design Criteria: 3. Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments. • 4m for 2 and 3 bedroom apartments. 	Comment: All apartments have living rooms or combined living/ dining rooms which achieve the minimum dimensions required for the number of bedrooms provided.	Compliance: Complies			
Design Criteria: 4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Comment: N/A	Compliance: N/A			
4E Private open space and balconies					
Objective 4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity					
Design Criteria: 1. All apartments are required to have primary balconies as follows:	Comment: The design guidance provided for this objective acknowledges that achieving technical compliance with the design criteria is limited in heritage and adaptive reuse proposals.	Compliance: Satisfactory (Merit based assessment)			
<table border="1"> <tr> <td>Dwelling</td> <td>Min.</td> <td>Min.</td> </tr> </table>	Dwelling	Min.	Min.	Importantly, it is noted that the	
Dwelling	Min.	Min.			

type	area	depth	<p>approved development does not achieve the design criteria, rather the approved development satisfied the design guidance for this objective by demonstrating:</p>
Studio	4m ²	-	
1 bedroom	8m ²	2m	
2 bedroom	10m ²	2m	
3+ bedroom	12m ²	2.4m	
<p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>			<p>(1) the site constraints (adaptive re-use of heritage listed building, and close proximity to road and noise sources) preclude meeting the design criteria; and</p>
<p>Design Criteria: 2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>			<p>(2) the proposal provides juliet balconies, operable walls and other amenity benefits for future occupants within the apartments and common spaces (increased ceiling heights to apartments within existing heritage building, increased internal apartment areas and high quality communal open space).</p>
			<p>Changes are proposed to the approved layout of apartments on Level 1 to 4, and an additional apartment level (Level 5) is proposed.</p>
			<p>Whilst the changes proposed under the modification application do not result in technical compliance with the design criteria, the site-specific constraints taken into consideration in the assessment of the approved development remain relevant and the modified development incorporates the same amenity benefits for future occupants achieved under the approved development in regard to this objective.</p>
			<p>As discussed under <i>'Principle 6. Amenity'</i> of the Design Quality Principle assessment above, amendments were made during the</p>

	<p>assessment process in response to recommendations from the UDRP including the provision of bi-fold doors, to the Level 5 apartments, between the living/ dining space to create a useable link between the internal and external areas. The bi-fold door arrangement makes better use of the narrow balconies – when open, an indoor/outdoor area with a depth ranging from 2.3m – 2.4m is provided (see Figure 4 above).</p> <p>Furthermore, the modified development provides generous communal space at rooftop level that will compensate for the reduced size of apartment balconies. As such, the modified development satisfies the design criteria for this objective.</p>	
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4F Common circulation and spaces

Objective 4F-1

Common circulation spaces achieve good amenity and properly service the number of apartments.

Design Criteria:	Comment:	Compliance:
<p>1. The maximum number of apartments off a circulation core on a single level is eight.</p>	<p>No changes are proposed to the approved number of apartments per floor on Levels 1 to 4, being;</p> <ul style="list-style-type: none"> i) Level 1 - 8 apartments ii) Level 2 - 8 apartments iii) Level 3 - 6 apartments iv) Level 4 - 6 apartments <p>The additional level (Level 5) proposed under the modification application contains 6 additional apartments.</p>	<p>Complies</p>
<p>2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>N/A</p>	<p>N/A</p>

4G Storage										
Objective 4G-1 Adequate, well-designed storage is provided in each apartment.										
Design Criteria:	Comment:	Compliance:								
<p>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Dwelling type</th> <th style="text-align: left;">Storage size volume</th> </tr> </thead> <tbody> <tr> <td>1 bedroom</td> <td>6m³</td> </tr> <tr> <td>2 bedroom</td> <td>8m³</td> </tr> <tr> <td>3+ bedroom</td> <td>10m³</td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	1 bedroom	6m ³	2 bedroom	8m ³	3+ bedroom	10m ³	<p>All apartments in the modified development are provided with the minimum required storage volume (being storage in addition to storage in kitchen, bathrooms, and bedrooms).</p> <p>The storage volume for each apartment is provided by a combination of; (1) storage located and access from within the individual apartments, and (2) storage volume access from a common area (a secure storage cage within the basement storage cage area).</p> <p>Importantly, it is noted this is a significant improvement compared to the approved development in which none of the apartments achieve the minimum storage volumes required, and 12 apartments are not approved any storage volume from a common area.</p>	<p>Complies</p>
Dwelling type	Storage size volume									
1 bedroom	6m ³									
2 bedroom	8m ³									
3+ bedroom	10m ³									

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the B4 Mixed Use zone under the provisions of NLEP 2012. The proposal is a mixed-use development, comprising retail/business tenancies at ground level with residential apartments above, which are defined as 'commercial premises' and 'residential flat building' respectively under NLEP 2012 and are permissible with consent within the B4 Mixed Use zone.

The proposed development is consistent with the objectives of the B4 Mixed Use zone, which are:

- a) To *provide* a mixture of compatible land uses.

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

The modified development will integrate residential and retail / business development within a City Centre location. The site is ideally located with respect to public transport and will support the viability of the City Centre through increased housing and employment opportunities within the area.

Clause 2.7 - Demolition Requires Development Consent

The modified development includes internal demolition works. Conditions are recommended in the Draft Schedule of Conditions (refer to **Attachment B**) to ensure that demolition works and disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

Under the NLEP 2012, the site is prescribed a maximum building height of 20m.

The modified development does not comply with the height of building development standard of 20m for the subject site under NLEP 2012. The proposed height of the building is 26m along the Hunter Street elevation (to the south) and 28m along the Keightley Street elevation (to the north), including lift overrun and rooftop communal area. This equates to a 30% and 40% variation to the height of buildings development standard considered in the context of the two main street frontages, respectively.

In assessing the original development application, a written request for a 25% variation to the height of building development standard imposed by clause 4.3 of the NLEP 2012 was considered and supported. The written request to vary the height of building development standard considered the matters contained in clause 4.6 – Exceptions to Development Standards.

As provided in the plans and elevations of the modified development, the 3.1m increase to approved building height is a result of the additional storey of residential apartments proposed under the modification application.

A written request to vary the development standard imposed by Clause 4.3 of the NLEP 2012 has been submitted in support of the current modification application. However, there is no requirement to submit such a written request for an application to modify development consent.

The relevant judgements (originating with *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163) say that section 4.55 of the EP&A Act1979 is a 'free-standing provision', meaning that "a modification application may

be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application". This means that it is section 4.55 itself which authorise the development to be approved notwithstanding any breach of development standards.

Section 4.55 is a broad power to approve, subject to its own stand-alone tests. The applicant need only meet the "substantially the same test", and having passed that statutory bar, the application must then be assessed on its merits having regard to the relevant consideration under section 4.15 of the EP&A Act 1979, including relevant SEPP, LEP and DCP objectives.

As such, a merit-based assessment of the modified development with respect to the objectives of the clause 4.3 height of building development standard of NLEP 2012 has been undertaken and is detailed below.

The objectives of the height of building development standard are:

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

The scale of the development, as modified, will continue to contribute towards the desired character in presenting a mixed-use development that provides both high density residential living and further opportunities for commercial and retail development in close proximity to public transport. The development, as modified, continues to be consistent with the intended future urban form within the area, having regard to the combination of controls under the NLEP 2012 and NDCP 2012 (notably Section 6.01 Newcastle City Centre).

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

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

Clause 4.4 - Floor Space Ratio

The Floor Space Ratio Map prescribes a maximum permissible floor space ratio (FSR) of 3:1 for the subject site.

The modified development does not comply with the FSR development standard of 3:1 for the subject site under NLEP 2012. The modified development has a FSR of 5.03:1, which equates to a 59.6% variation to the FSR development standard.

It is noted that the existing building has a FSR of 3.1:1 which does not comply with the FSR development standard of 3:1. Furthermore, the approved development has a FSR of 4.5:1, equalling a 50% variation to the FSR development standard of the NLEP 2012.

In assessing the original development application, a written request for a 50% variation to the FSR development standard imposed by clause 4.4 of the NLEP 2012 was considered and supported. The written request to vary the FSR development standard gave consideration to the matters contained in clause 4.6 – Exceptions to Development Standards.

As provided in the plans and elevations of the modified development, the 0.53:1 increase to the approved building FSR is a result of the additional storey of residential apartments proposed under the modification application.

A written request to vary the development standard imposed by clause 4.4 of the NLEP 2012 has been submitted in support of the current modification application. However, as detailed under '*Clause 4.3 – Height of Building*' of the NLEP 2012 assessment above, there is no requirement to submit such a written request for an application to modify development consent.

Instead, a merit-based assessment of the modified development with respect to the objectives of the clause 4.4 FSR development standard of NLEP 2012 has been undertaken and is detailed below.

The objectives of the height of building development standard are:

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

While the building density and built form have been increased, the proposed development, as modified, is considered to provide an appropriate density of development consistent with the scale of development envisaged by the applicable planning provisions.

The development site is in the Newcastle City Centre which is identified as the major centre under the established centres hierarchy for the Hunter Valley. It is considered that the scale of modified development is appropriate and consistent with regional strategies and plans, for higher density development around key public transport nodes.

The modified development affords the retention and upgrading of an otherwise predominantly vacant and aging locally listed heritage building, to ultimately provide improved housing and commercial options in an area that has access to transport, employment and recreation opportunities.

Having regard to the objectives of the clause, the building design, as modified, will continue to make a positive contribution to the City Centre streetscape and will not result in excessive density, bulk, and scale. The design modifications and additional GFA do not result in an increased development footprint. The modification includes changes to the approved internal layouts to improve the functionality, amenity, and accessibility spaces.

The external changes proposed to the approved upper addition, including the provision of an additional storey, make a positive contribution towards the desired built form of Hunter Street and surrounds without compromising the heritage item to which the development relates or those proximate to the site. The modified development has considered its relationship to the streetscape and adjoining properties and provides substantial articulation and architectural treatment to its elevations.

When viewed from the streetscape and surrounding properties, the floor space exceedance is not a dominant feature of the building to that which is approved under DA2019/00331. The modified development continues to retain appropriate setbacks for the levels of the upper addition, providing appropriate separation to existing and future development. Notably, the levels of the upper addition, as modified, have been redesigned to be recessive in nature to ensure the existing heritage building remains the dominant component.

The FSR exceedance is not considered to result in adverse impacts to the bulk and scale or massing of buildings along Hunter Street when viewed from Hunter Street and Market Street as it appropriately responds to the height, massing and predominant horizontal and vertical proportions of existing buildings surrounding the site.

It is considered that, overall, the modified development will deliver an appropriate density that is consistent with the desired future character, while remaining compatible with the scale of nearby developments. The proposed development including the height and FSR variation, will sit comfortably within the context of the surrounding built form, and will not look out of place. For the above reasons, the proposed development, as modified, remains consistent with the objectives of clause 4.4 and the additional FSR is supported.

Clause 5.10 - Heritage Conservation

The subject site is listed (*'1406 Municipal Building'*) for its local heritage significance in NLEP 2012 and is located within the Newcastle City Centre Heritage Conservation Area.

In accordance with Clause 5.10(2) development consent is required to alter the exterior of a heritage item, and to alter a heritage item that is a building by making structural changes to its interior. The modified development includes components which will make changes to the detail, and/or appearance of the building exterior, along with structural changes to the building interior. Development consent is being sought for the development, as such the proposal is satisfactory in this regard.

Clause 5.10(5) requires Council to consider the impact proposals will have on the heritage significance of heritage item(s), those in the vicinity of a site and the character of the Heritage Conservation Area of which the site is part. These heritage considerations are addressed in the Statement of Heritage Impact (SoHI) prepared by John Carr Heritage Design dated 27 October 2020 and Addendum to SoHI prepared by John Carr Heritage Design dated 16 August 2021, submitted in support of the modification application. Having regard to the Heritage Conservation Area and heritage items in the vicinity, the Addendum to SoHI states:

"The initial SoHI and this Addendum report has assessed the proposed improved design and found that the overall development has minimal impact on the heritage significance of the former Municipal Building, the nearby individually listed heritage items and the surrounding heritage conservation area."

The materiality and form of the upper addition, as modified, is modern but recessive to the heritage building below. The bulk and scale of the development, together with the facade, sits comfortably in the conservation area and complements both the period architecture and other infill contemporary designs.

The modified development will not significantly affect the heritage significance of the listed heritage buildings, nor detract from their setting or obstruct any view of these heritage items from public places. It is also considered that the modifications will not significantly affect the heritage significance of the Newcastle City Centre Heritage Conservation Area.

The modified development provides long term re-use of the heritage listed item and provides for the security and maintenance of the building fabric into the future.

Changes to the wording of relevant conditions of development consent are recommended in the Draft Schedule of Conditions (refer to **Attachment B**) to reference the SoHI and Addendum to SoHI submitted in support of the modification application.

The preparation of an archival record of the building and a suitable Heritage Interpretation Plan, to the satisfaction of CN's Heritage Officer, has been addressed by the provision of suitably worded conditions included in the recommended Draft Schedule of Conditions (refer to **Attachment B**).

Clause 6.1 – Acid Sulfate Soils

The subject site is identified as Class 5 Acid Sulfate Soils (ASS).

ASS are not typically found in Class 5 areas. Areas classified as Class 5 are located within 500 metres on adjacent class 1,2,3 or 4 land. Works in a class 5 area that are likely to lower the water table below 1 metre AHD on adjacent class 1, 2, 3 or 4 land will trigger the requirement for assessment and may require management.

Given the nature of the site and scale of the proposed works the development is not likely to result in disturbance of ASS nor the lowering of the water table on adjacent

ASS class land, and as such submission of an Acid Sulfate Soils Management Plan is not required for the development works. The modified development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

It will be necessary for earthworks to be undertaken to facilitate the modified development. The earthworks proposed are minor and within the existing building footprint. Given the nature, extent and location of the earthworks, the level of earthworks proposed to facilitate the development is considered acceptable having regard to this clause.

Part 7 Additional Local Provisions—Newcastle City Centre

The site is located within the Newcastle City Centre. There are several requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The proposal is considered to be consistent with the objectives of Part 7 as detailed below.

Clause 7.5 - Design Excellence

Clause 7.5 applies to the erection of a new building or to significant alterations to an existing building and states that a consent authority must not grant consent to development within the Newcastle City Centre unless the development exhibits design excellence.

The proposal does not trigger the requirements of clause 7.5(4) to undertake an architectural design competition as the height of the proposed building is not greater than 48m and the subject site is not identified as a key site on the Key Sites Map of the NLEP 2012.

An Architectural Design Verification Statement has been prepared by BN Group Pty Ltd (dated 8 September 2021) as part of the SEPP 65 requirements and addresses the design principles that have been used to formulate the proposal, as modified.

The modification application was referred to CN's Urban Design Review Panel (UDRP) on several occasions during the assessment process. The UDRP provided feedback to guide the achievement of design excellence in the overall design of the modified proposal.

The modified development has been amended and developed in response to the recommendation of the UDRP during this time, as detailed under the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment of this report above. It is considered that the modified development, as amended, has adequately addressed the recommendation of the UDRP and satisfies the design excellence criteria.

Clause 7.10A - Floor Space Ratio for Certain Other Development

The subject site area of less than 1,500sqm. Accordingly, the provisions of this clause apply to the development. This clause specifies that the maximum FSR of a building is whichever is the lesser of the FSR identified on the *Floor Space Ratio Map* or 3:1.

The *Floor Space Ratio Map* identifies a maximum FSR of 3:1 for the subject site. Accordingly, the maximum permissible FSR remains 3:1 in accordance with clause 4.4. As discussed under '*Clause 4.4 – Floor Space Ratio*' of the NLEP 2012 assessment above, the modified development will result in an FSR of 5.03:1, which equates to a 59.6% variation to the FSR development standard.

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

Proposed Design and Place State Environmental Planning Policy (Design & Place SEPP): Explanation of Intended Effect

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

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

4.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

In the consideration of the subject application to modify development consent, it is noted that the *Newcastle Development Control Plan 2012* (NDCP 2012) assessment discussed below is limited to only those matters that are relevant to the changes proposed to the approved development. Other aspects of the approved development, which do not form a part of the proposed modification were considered as part of the original assessment and as such are not included below.

Residential Development - Section 3.03

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

The approved development was assessed and considered acceptable in respect to these controls. The modified development does not propose any significant changes to these aspects. The modified development establishes a scale and built form appropriate for its location, and continues to provide good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

Furthermore, many of the controls in 3.03 specify compliance with the relevant components of the Apartment Design Guide under SEPP 65 as an acceptable solution. The modification application satisfies the provisions of the Apartment Design Guide, as detailed under the *'State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development'* assessment in **Section 4.1** of this report above.

The overall floor space ratio, height and character of the development are considered to be acceptable in the context of the area and the site, as previously discussed in this report.

Commercial Uses - Section 3.10

The objective of this section of the NDCP 2012 is to encourage commercial development that has a positive contribution to surrounding development, attracts pedestrian traffic, and activates street frontages.

The approved development was assessed and considered acceptable in respect to these controls. The modified development does not propose any significant changes to these aspects as the scope of changes proposed to the commercial use of the approved development are limited to the rationalisation of internal floor layouts (realignment of internal walls separating tenancies) and services (including the provision of a dedicated on-site refuse area for the storage of garbage bins).

As such, the modified development is considered to achieve the objectives and controls within this section of the NDCP 2012. These include activation of street frontages, promotion of uses that attract pedestrian traffic along ground floor street frontages for commercial and retail premises and compatibility with other development sites in the locality.

Heritage Items - Section 5.05

As discussed under *'Clause 5.10 Heritage Conservation'* of the NLEP 2012 assessment in **Section 4.1** of this report above, the modified development will not significantly affect the heritage significance of the building or of the listed heritage items in the vicinity of the site.

Archaeological Management - Section 5.06

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an '*Archaeological Site*'. However, the SoHI (prepared by John Carr Heritage Design dated 20 March 2019) submitted in support of the approved development recommended that a Baseline Archaeological Assessment of the site be undertaken prior to the issue of a Construction Certificate, to ascertain if there are any relevant archaeological remains of former uses on the site.

This recommendation is reiterated in the SoHI (prepared by John Carr Heritage Design dated 27 October 2020) and Addendum to SoHI (prepared by John Carr Heritage Design dated 16 August 2021) submitted in support of the modification application.

A condition of consent was imposed on the original development consent requiring verification of compliance with the recommendation in the SoHI prepared in support of the approved development, with details to be included in documentation for a Construction Certificate Application. Changes to the wording of relevant conditions of development consent are recommended in the Draft Schedule of Conditions (refer to **Attachment B**) to reference the updated SoHI and Addendum to SoHI submitted in support of the modification application.

Newcastle City Centre - Section 6.01

The approved development was assessed and considered acceptable in respect to the relevant controls for the Newcastle City Centre. The modified development does not propose any significant changes to these aspects. The building setbacks and street wall height established by the existing heritage listed building are maintained. The modified additions on the upper levels are set back from the historic facade and protruding structures have been limited, to ensure that visual impacts on the streetscape and potential for impacts from overshadowing are minimised.

No views to or from any historical landmarks are adversely impacted on. The levels of the upper addition to the existing heritage building, including the additional level proposed under the modification application, are largely screened by other nearby buildings and recently approved developments within the broader area.

The modified proposal respects the historic and built qualities of the existing heritage building while increasing the residential population of the City Centre and adding commercial activity to the ground floor.

Heritage Conservation Areas - Section 6.02

As discussed under '*Clause 5.10 Heritage Conservation*' of the NLEP 2012 assessment in **Section 4.1** of this report above, the modified development will not significantly affect the heritage significance of the Newcastle City Centre Heritage Conservation Area.

Landscape Open Space and Visual Amenity - Section 7.02

The existing heritage listed building provides no area at ground level for landscaping. As such, the approved development incorporated landscaping into the communal rooftop terrace via the provision of raised landscaping beds.

The modified development involves changes to the rooftop communal level and therefore changes to the approved landscaping plan. Landscape Drawings, submitted in support of the modified development, have been prepared by Green Space Planning Co. (dated 03 September 2021) in accordance with the requirements of this section.

The submitted Landscape Drawings demonstrates sufficient areas of soft landscaping with a detailed planting schedule also provided. The landscaping design is generally in scale and context with the proposed mixed-use development within a City Centre location.

Traffic, Parking and Access - Section 7.03

The GFA of the existing commercial development is 1850sqm which would attract an on-site parking demand of 31 spaces in accordance with the parking rates under NDCP 2012. As the current building does not provide any on-site parking, there is an associated historic parking deficiency of 31 spaces which may be deducted from any proposed development.

The approved development comprises 26 x 1-bedroom apartments, 2 x 2-bedroom apartments, and 925sqm of commercial/retail GFA. The total car parking requirement for the approved development was 38.2 car parking spaces (17.4 for residential, 5.4 for visitors and 15.4 for commercial), with an overall parking deficiency of 7.2 spaces. This was considered acceptable.

The modified development is mixed use, comprising 32 x 1-bedroom apartments, 2 x 2-bedroom apartments, and 770sqm of commercial/retail GFA. Applying the parking rates of the NDCP 2012, the total car parking requirement for the modified development is 40.8 car parking spaces (21 for residential, 7 for visitors and 12.8 for commercial). Applying the historic deficiency of 31 spaces, the modified development would ordinarily be required to provide 9.8 on-site car parking spaces under the NDCP 2012.

The NDCP 2012 acknowledges that there are situations where it is impracticable, or undesirable to provide parking on site at the nominated rate where the benefits of the proposal are significant. The proposed development, as modified, offers the potential for adaptive re-use and renewal of the Hunter Street Mall area and provision of residential development within close proximity to public transport and amenities.

The creation of on-site parking will require at least partial redevelopment of the existing site instead of adaptive re-use and bring additional traffic into the area which is not considered a desirable outcome for the Newcastle City Centre area. With consideration of these factors, the demonstrated benefits outweigh the concerns

regarding the level of parking provision and it is therefore recommended that the proposed parking deficiency of 9.8 spaces be supported.

No motorbike parking spaces are required for developments in the Newcastle City Centre Precinct. No bike parking is required for residential developments in the Newcastle City Centre precinct. It is noted that adequate public bicycle parking facilities are available on nearby Hunter Street to service demand generated by the commercial premises.

The parking provision proposed for the development is considered acceptable given the constraints of the site and the heritage listing for the facade which limits the ability to make substantial changes to the existing building.

The proposed development, as modified, has been assessed by CN's Senior Development Officer (Traffic) and found to be acceptable. The proposed development is considered to be acceptable with regard to traffic, access and parking, noting that the identified car parking deficiency is supported on the basis of the retention of a heritage item and the location of the site being in close proximity to services.

Waste Management - Section 7.08

Demolition, excavation and construction waste

Conditions of consent have been imposed on the original development consent addressing waste management during demolition and construction phases. These condition remains unchanged under the subject modification application.

Operation waste

Historically, the development site has utilised Keightley Street for the storage of garbage bins and the original development application had initially proposed to formalise an on-street arrangement with the provision of a bin enclosure in Thorn Street. However, this arrangement was not supported by CN and conditions of consent were imposed on the original development consent requiring the development proposal be amended to provide a dedicated internal/onsite refuse area for the storage of garbage bins (recyclable and non-recyclable), within the building.

The modification development includes some rationalisation of approved internal layout, including the provision of a dedicated on-site refuse area for the storage of garbage bins.

The on-site refuse area will store the waste and recycling generated by both the residential and commercial components of the proposed development, as modified. Adequate space has been provided to store the garbage bins required for the modified development as addressed in the Site Waste Minimisation and Management Plan prepared by de Witt Consulting (dated September 2021) in support of the modification application.

A further condition of consent was imposed on the original development consent to prohibit garbage bins from being presenting to the street for collection, instead requiring the waste service provider to access the onsite refuse area and manually collect and returned the bins. The condition requires the waste service arrangement to be in place prior to occupation of the premises and maintained during the operation and use of the development. This condition remains unchanged under the subject modification application.

Street Awnings and Balconies - Section 7.10

The approved development removes an existing freestanding acrylic covered walkway to the Hunter Street elevation and replaces it with a suspended street awning to the Hunter Street and Market Street facades at ground level, which is functional and respectful of the heritage of the building. The existing awning structure is intrusive on the significance of the listed heritage building.

The modified development has raised the height of the approved street awning to Hunter Street and Market Street facades, enabling increased height to ground floor retail frontages. This follows precedent in shop windows to remaining buildings of later 19th and early 20th Century buildings in Hunter Street. The street awnings, as modified, continue to accord with the design criteria set out in this section of the NDCP 2012 and are considered acceptable.

Development Contributions

Section 7.12 of the EP&A Act1979 enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's *Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019*.

A condition of consent has been imposed on the original development consent requiring development contributions be paid, calculated on the estimated cost of works provided for the approved development. Changes to this condition of development consent are recommended in the Draft Schedule of Conditions (refer to **Attachment B**) to reflect the increased cost of works for the modified development.

4.4 Planning agreements

No planning agreements are relevant to the proposal.

4.5 The regulations (and other plans and policies)

Demolition

The application has been considered pursuant to the provisions of the EP&A Act1979.

A condition of consent was imposed on the original development consent to require demolition works to be planned and carried out in accordance with AS2601 – Demolition of Structures. This condition remains unchanged under the subject modification application.

NSW Address policy and guidelines

In accordance with NSW Government policy, Local Governments are responsible for providing clear and logical addressing to ensure quick and accurate location by delivery, utility and emergency services, and the public.

The approved development will result in the production, aggregation, publication or usage of a new address. A condition of consent was imposed on the original development consent allocating street address/es in accordance with *City of Newcastle's House Numbering Policy* and the *Surveying and Spatial Regulation*.

The modified development includes an increase to the approved number of apartments and as such the street addressing allocated by way of condition of consent imposed on the original development consent requires revision.

It is no longer CN's preference to have the allocation of street addresses imposed by way of condition of consent. Instead, a standard condition of consent is typically imposed requiring the developer submit a request to CN to obtain house number prior to the application for a Construction Certificate with full details to be provided in the documentation for a Construction Certificate.

As such, the Draft Schedule of Conditions (refer to **Attachment B**) recommends the original condition allocating street address/es be deleted, and a new condition be imposed requiring the developer to submit a request to CN to obtain house number prior to the application for a Construction Certificate, in accordance with CN's current approach.

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

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

Character, Streetscape, External Appearance, Urban Design, Height, Bulk and Scale

The modified development is considered acceptable having regard to the proposed height, external appearance, character, bulk and scale of the development. The proposal has been assessed by CN's UDRP and is considered to be acceptable having regard to the provisions of SEPP 65 and the Apartment Design Guide.

The height of buildings and floor space ratio development standards are exceeded by the proposed development, as modified. However, these variations have been

considered in the context of adjoining and potential future development. The development also has minimal impacts on surrounding development and is considered to be acceptable.

The proposed setbacks of the upper additions and the site's location ensure that impact on solar access and public spaces is minimised.

Through material selection, setbacks and design considerations, the heritage component remains the dominating element of the proposed development, as modified, which contributes to the street and the mall area.

Traffic, Access and Parking

The modified development is considered to be acceptable with regard to traffic, access and parking, noting that the identified car parking deficiency is supported on the basis of the retention of a heritage item and the location of the site being in close proximity to services.

Amenity (Privacy, Overshadowing, Views and Noise)

The proposal, as modified, 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.

Given the scale and proximity of existing and proposed developments, some overshadowing of the site already occurs which is beyond the control of this development. Additional overshadowing because of the modification proposed occurs within the existing shadows cast by the adjoining and surrounding buildings which are bigger in size and scale. The modified development is considered satisfactory in regard to overshadowing to neighbouring buildings and the public domain.

There are no significant views that will be impacted in this location and the modified development does not have a significant adverse impact on the adjoining properties in terms of view loss. The development, as modified, 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.

A noise assessment was carried out to support the approved development and is considered to remain relevant to the modified development, which remains substantially the same as that approved. The noise assessment demonstrated that compliance with internal noise level requirements for the residential component would be achieved.

The noise assessment also addressed future uses of the commercial tenancies at the subject site. Given that the uses are currently speculative, no assessment of any mechanical plant or patron noise were provided and as such potential impacts could not be accurately determined. As such, CN's standard "*no offensive noise*" standard

condition was imposed on the development consent to provide a reasonable and sufficient level of control for the situation. Furthermore, a condition of consent was imposed on the original development consent for CN's standard hours of ie 7:00am – 6:00pm) to limit any potential noise impacts. These conditions remain unchanged under the subject modification application. Should the future tenants wish to modify the hours, an application will be required, enabling potential noise impacts to be further considered.

4.7 The suitability of the site for the development

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

At-grade access to the site will be available for pedestrians, from adjacent roads and public transport. The City Centre location and the availability of public transport services ensures the site is suitable in terms of accessibility.

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

The design of the modified development has considered the cultural significance of the heritage listed building and the heritage conservation area. The levels of the upper addition have been designed to be sympathetic with the existing facade, to minimise any impacts on the significance of the item and the heritage conservation area. The modified development continues to provide retail and business spaces on the ground floor which will assist with activating the street frontages and add vitality to this section of Hunter Street, as well as allowing for the reuse of the existing building.

The proposed development, as modified, will have positive social and economic benefits. It will facilitate employment within walking distance to public transport and local services, as well as providing employment during the construction period. The development continues to provide additional housing opportunities within the City Centre. The modified development does not generate any significant overshadowing or privacy impacts and will provide a suitable level of amenity for future occupants, including adequate acoustic attenuation from potential noise generated by the commercial component of the development, and from neighbouring land uses.

It is expected that the modified development will not adversely impact on any public or private views. Views from surrounding roads and residential developments are generally screened as a result of landform, existing developments or recently approved developments.

The modified development will have minimal impact on the natural environment. The site does not contain any vegetation and the proposal will not impact on any natural ecosystems. Appropriate measures will be required to be in place during proposed building works to minimise any sediments leaving the site or entering waterways.

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

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

4.9 The public interest

Overall, the modified development will have an acceptable impact on the surrounding natural and built environment and will result in positive social and economic impacts.

The modified development is satisfactory having regard to the principles of ecologically sustainable development. The proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services.

The development, as modified, is in the public interest and will allow for the orderly and economic development of the site, leading to additional commercial premises and residential accommodation in an area that is well serviced by public transport and community facilities and will assist with the revitalisation of the City.

The modified development will provide housing in a well-serviced area to meet the demands of a growing population, while incorporating increased housing choice within the City Centre. The proposal includes sufficient measures to address potential crime and safety issues.

5.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under Section 4.55(2) and Section 4.15(1) of the EP&A Act 1979 and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

- Item 17 - Attachment A:** Submitted Plans - 164 Hunter Street Newcastle
- Item 17 - Attachment C:** Draft Schedule of Conditions - 164 Hunter Street Newcastle
- Item 17 - Attachment B:** Processing Chronology - 164 Hunter Street Newcastle
- Item 17 - Attachment D:** Block massing analysis - 164 Hunter Street Newcastle

Item 17 Attachments A - D distributed under separate cover

ITEM-18 **DAC 19/10/21 - 292 WHARF ROAD, NEWCASTLE - MA2021/00090 - SECTION 4.55(1A) MODIFICATION TO DA 2016/00201 - COMMERCIAL PREMISES - CHANGES TO FLOOR PLANS, ELEVATIONS AND CONDITIONS OF CONSENT**

APPLICANT: **WILSON PLANNING PTY LTD**
OWNER: **NEWCASTLE CITY COUNCIL**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

PURPOSE

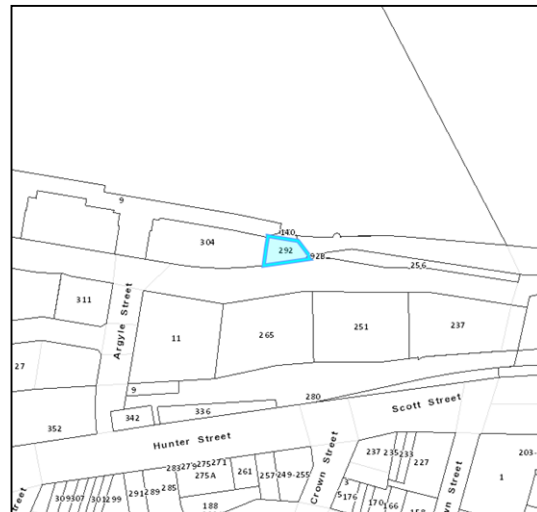
A Modification Application (MA2021/00090) has been received seeking to modify DA2016/00201 which gave consent for *'alterations to an existing building and a change of use to cafe, shop, business premises and signage'* on 19 July 2016. The Section 4.55(1A) modification proposes changes to floor plans, elevation, and conditions of consent.

The application was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP). A total of 32 submissions objecting to the proposal were received.

The application is referred to the Development Applications Committee (DAC) for determination due to the number of objections received during the notification period.

The concerns raised by the objectors in respect of the proposed development include noise, public safety and increase in anti-social behaviour, impact to residential amenity, odour, parking, waste management and number of liquor premises in the area.

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



Subject Land: 292 Wharf Road Newcastle

The proposal was considered at the Public Voice (PV) Committee Meeting held on 21 September 2021. The issues raised included noise, odour, traffic and parking, late night sale of takeaway food, impact to residential amenity, waste management, introduction of a liquor licence and litter.

Issues

- 1) Matters raised in the submissions including noise, public safety and increase in anti-social behaviour, impact to residential amenity, odour, parking, waste management and number of liquor premises in the area.

Conclusion

The proposed modification of the approved development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) and Section 4.55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

- A. That MA2021/00090 at 292 Wharf Road Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

Section 10.4 of the EP&A Act requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined.

The following information is to be included on the statement:

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

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

PART II

1.0 THE SUBJECT SITE

The site is known as 292 Wharf Road Newcastle NSW and has a legal description of Lot 1000 in Deposited 1087291. The site is irregular in shape and has a total site area of approximately 380.5m². The site is located along the Newcastle Harbour foreshore with a 29.75m wide frontage to Wharf Road.

The subject site is identified as being flood affected and within the Coastal Environment Area map as prescribed under State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). The site is also located within a mine subsidence district.

Existing improvements on the site include a detached single-storey commercial building with rotunda-shaped addition to the east. The existing building is a painted masonry structure with metal roofing. The building also incorporates two metal roller doors with a single vehicle crossing fronting Wharf Road.

The site currently operates as "Lynch's Hub" a small takeaway food and drink premises approved under development consent DA2016/00201. The surrounding area predominantly consists of multi-storey residential development to the west and south, multi-story commercial building to the south-east and adjoining the site to the north and east is the Foreshore Footpath and associated public land.

The subject site is flat and contains one significant tree along the Wharf Road frontage.

2.0 THE PROPOSAL

The applicant seeks consent to modify DA2016/00201 which gave consent for *'alterations to an existing building and a change of use to cafe, shop, business premises and signage'* on 19 July 2016. The Section 4.55(1A) modification proposes changes to floor plans, elevation, and conditions of consent.

The proposed modifications include:

- i) Internal floor plan amendments including relocating the cafe server counter to accommodate internal seating and expansion of the café's kitchen into the previous 'rickshaw and bike storage' area.
- ii) Installation of a commercial kitchen to allow the preparation of hot food including a new mechanical exhaust consisting of an extraction fan and exhaust canopy.
- iii) Extension of approved hours of operation for the cafe to allow evening trade:

Existing		Proposed	
Monday to Thursday	7am to 6pm	Monday to Thursday	7am to 9pm
Friday and Saturday	7am to 7pm	Friday and Saturday	7am to 10pm
Sunday	7am to 7pm	Sunday	7am to 9pm

- iv) Conversion of the 'bike workshop' to a retail shop, selling organic food products as well as other local produce and products.

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days between 11 March 2021 and 25 March 2021 in accordance with CN's CPP. During the notification period 32 submissions were received.

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

a) Amenity and Social Issues:

- i) Noise – unreasonable transfer of noise to adjoining properties attributable to mechanical ventilation of the proposed commercial kitchen as well as patrons and dispersion of people within the surrounding Newcastle Harbour foreshore area.
- ii) Anti-social behaviour and impact to residential amenity – increase of anti-social behaviour associated with the consumption of alcohol at the site including littering, vandalism, abusive language and damage to property.
- iii) Odour – unreasonable transfer of offensive odours to adjoining residential properties as caused by the proposed commercial kitchen and exhaust.
- iv) Delivery and waste management – inadequate waste management measures and current non-compliance with delivery of goods to the premise outside the permitted 7am to 8pm timeframe.

b) Traffic and Parking Issues:

- i) Increase to traffic and parking congestion within the surrounding road network.

c) Miscellaneous:

- i) Concern raised on the number of licensed premises in the Local Government Area (LGA).

- ii) Hours of operation – the proposed hours of operation will impact on the amenity of the area.

Public Voice (PV) Committee

The proposal was considered at the PV Committee Meeting held on 21 September 2021. The issues raised included noise, odour, traffic and parking, late night sale of takeaway food, impact to residential amenity, delivery and waste management, introduction of a liquor licence and litter.

The applicant provided a presentation in response to the issues which is discussed in further detail in Section 5.0 of the 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) and Section 4.55 of the EP&A Act, as detailed below.

In the consideration of the subject 4.55(1A) application to modify consent DA2016/00201, the assessment is limited to only those matters that are relevant to the proposed changes to the approved development. Other aspects of the approved development, which do not form a part of the proposed modification were considered as part of the original assessment.

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

(1A) *Modifications involving minimal environmental impact*

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

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

(c) *it has notified the application in accordance with—*

(i) *the regulations, if the regulations so require, or*

(ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

(d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

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

The proposed modification has been assessed to be of minimal environmental impact in accordance with subclause 'a'. The proposed modification retains the use of the site as a commercial premises with the proposed amendments restricted to internal floor plan alterations, extension of operation hours and conversion of the 'bike workshop' to a retail shop. Except for a flue addition to the roof servicing the proposed commercial kitchen there are no changes to the building footprint.

Assessment regarding noise and odour, as discussed below, concludes that there are no unreasonable amenity impacts resulting from the proposed development. Further, a Plan of Management (PoM) has been provided detailing appropriate alcohol management, security, delivery servicing, and waste management procedures as part of the extended operations of the venue. As such, the significance of the impacts of the development are minimal.

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

With regards to subclause 'b', the development to which the consent as modified relates is substantially the same development for which consent was originally granted. The modification application does not propose to alter the approved building footprint and does not result in a significant change to the built form.

The proposed modifications retain the use of the site as a commercial premises with the proposed amendments restricted to internal floor plan alterations, extension of operation hours and conversion of the 'bike workshop' to a retail shop. The site will continue to be used as a commercial premises with its primary operation retained as a food and drink premises.

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

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

The modification application was placed on public exhibition, for a period of 14 days from 11 March 2021 and 25 March 2021 in accordance with the EP&A Act, *Environmental Planning & Assessment Regulations 2000* (EP&A Regs) and CN's CPP. During the notification period 32 submissions were received.

5.1 SECTION 4.15(1) EVALUATION

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

5.1.1 *The provision of any environmental planning instrument*

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

In accordance with Clause 7 of this policy, the consent authority 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).

The site is identified as being potentially contaminated on the 10.7(5) planning certificate applied to the land which lists several contaminated land records. As the proposal does not involve a change to a more sensitive land use or any physical construction works which may disturb soil, the land is considered suitable for to the proposed development and a contaminated land investigation is not warranted in this instance. The proposal is acceptable having regard to this policy.

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

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

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

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

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

As such, Clause 13 - *Development on land within the coastal environment area* and Clause 14 - *Development on land within the coastal use area* of the SEPP need to be taken into consideration in determining the development application. Considering the extent of the proposed works the proposal is not deemed to have any adverse

impact on the access, overshadowing, amenity or heritage values of the foreshore. The proposal is acceptable having regard to this policy.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

Clause 2.1 - Land Use Zones

The site is located in the B4 Mixed Use zone NLEP 2012 and the proposed development is permissible with development consent as 'food and drink premises' and 'retail premises' which is a type of 'commercial premises'.

The proposed development is consistent with the objectives of the B4 Mixed Use zone, which are:

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

The site is located within the Newcastle City Centre precinct with access to public transport nodes. The proposed development predominantly operates during the day and is unlikely to impact the viability of the Newcastle City Centre. The application has been supported by a PoM, Noise Impact Assessment (NIA) and Social Impact Comment (SIC) which details the development will not cause unreasonable impact to the surrounding land uses.

Clause 4.3 - Height of Buildings

NLEP 2012 does not prescribe a maximum building height for the subject site. As the proposed works are wholly within the existing building footprint, except for the addition of a flue, the application is acceptable having regards to building height.

Clause 4.4 - Floor Space Ratio

NLEP 2012 does not prescribe a maximum floor space ratio for the subject site. The proposed modifications retain the existing building footprint.

Clause 5.10 - Heritage Conservation

The subject site is located within the Newcastle City Centre Heritage Conservation Area as identified in NLEP 2012. The proposed works retain the existing footprint of the building. The external works are restricted to the addition of a flue which does not create any additional bulk or scale to the site and will not detract from the existing heritage amenity of the surrounding area.

Clause 5.20 - Standards that cannot be used to refuse consent—playing and performing music

Clause 5.20 sets out standards that a consent authority cannot use to refuse licensed premises on the grounds of noise caused by the playing or performance of music, if the consent authority is satisfied the noise may be managed and minimised to an acceptable level.

The application has been supported by a NIA which has been reviewed by CN staff and consideration has been given to the noise impact upon current and future residential receivers. The NIA specifies that the proposed expanded operations of the Lynch's Hub are able to meet compliance with the required acoustic criteria.

A condition of consent of DA2016/00201 restricts the premises to the playing of low-level background music. The modification does not include amendments to this condition.

Clause 6.1 - Acid Sulphate Soils

The site is affected by Class 3 acid sulphate soils. The proposal does not include excavation works. As such, the proposed development is considered satisfactory in this regard.

Clause 6.5 - Public Safety – Licensed Premises

Clause 6.5 requires the consent authority to consider public safety before granting consent to use land or part of land as a licensed premise. The proposed modifications retain the use of the site as a commercial premises with the proposed amendments restricted to internal floor plan alterations, extension of operation hours and conversion of the 'bike workshop' to a retail shop. The proposal also includes the intention to apply for a Liquor License. The development application has been referred to NSW Police for comment.

The NSW Police referral, dated 29 March 2021, raises no objection in relation to trading hours or the application of a Liquor License. Further, the application has been supported by a PoM and SIC. These documents outline proposed strategies to mitigate social impacts, including antisocial behaviour and impact to residential amenity that could arise because of the proposed development. This includes processes around complaint handling, security, service of alcohol and waste management.

For these reasons, the proposal is acceptable in respect to this clause.

Part 7 Additional Local Provisions - Newcastle City Centre

The development is proposed on land located within the Newcastle City Centre and as such the controls of Part 7 apply.

There are several requirements and objectives for development within the Newcastle City Centre, which includes promoting the economic revitalisation of the City Centre,

facilitating design excellence and protecting the natural and cultural heritage of Newcastle.

The proposed works include predominantly internal building alterations and internal fit out and are not considered significant to warrant design excellence requirements. Further, the proposed development is not on a site greater than 1,500m², the development is not 45m in height, not within an Area A or B height of buildings map and not within Area A floor space ratio map and accordingly additional local provisions do not apply.

As such, the proposal is consistent with the objectives of Part 7 of the NLEP 2012.

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

There are no exhibited draft environmental planning instruments relevant to the application.

5.1.3 *any development control plan*

The main planning requirements of relevance in the Newcastle Development Control Plan 2012 (NDCP 2012) are discussed below.

Commercial Uses - Section 3.10

The modification application retains the use of the site as a commercial premises with the proposed amendments restricted to internal floor plan alterations, extension of operation hours and conversion of the 'bike workshop' to a retail shop. Aside from the addition of a flue to the roof area of the building, the proposal does not change any built form addressing the streetscape in either Wharf Road or from the public domain. The proposed flue is 600mm in height and presents to the Wharf Road frontage.

The height of the flue is less than that of the existing street tree and is not considered to be dominant feature when viewed from Wharf Road. The existing placement of solar panels and siting of the new flue to the southern part of the roof will obscure any view of the flue at the Newcastle Foreshore interface. Limited controls under Section 3.10 are of direct relevance as requirements relating to the scale and position of new physical development do not apply.

Flood Management - Section 4.01

The site is identified as being flood prone land. Flood management was considered under the previous application. As the existing property risk is not being significantly increased and the application is acceptable with regards to flood management.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District. The proposal, being for internal floor plan amendments, change of operation hours and change of use with no major alterations, is deemed approval by Subsidence Advisory NSW.

Safety and Security - Section 4.04

The proposed modification includes the intention to supply, serve or sell alcohol which is subject to separate approval processes under liquor licensing guidelines of the NSW Office of Liquor and Gaming. The proposal was referred to the NSW Police who raised no objection to the proposal.

The application has also been supported by a PoM and a SIC outlining proposed strategies to mitigate social impacts, including antisocial behaviour and impact to residential amenity that could arise as a result of the proposed development. This includes processes around complaint handling, security, service of alcohol and waste management.

The proposed amendments are of low impact and unlikely to generate significant safety and security impacts on the surrounding area. The application of an on-premises liquor licence, with the intent to provide patrons the sale of alcohol with the consumption of food, is not intended for the premises to operate as a 'pub' or 'small bar' which are focused solely on the service of alcoholic drinks.

Further, an assessment against the acceptable solutions of this control is undertaken below:

Exterior design and layout

- i) The main building entrance is located on the Foreshore Footpath façade and is visible from the street.
- ii) The development application does not appear to create entrapment locations or blind corners.
- iii) Building walls adjacent to the street include windows allowing opportunities for casual surveillance of the area.
- iv) Signage is existing and assists persons in navigating to the main building entry along the Foreshore Footpath.

Surveillance and sightlines

- i) An additional condition of consent will require the use of technical supervisions such as 24/7 video surveillance (CCTV) to provide an additional layer of comfort for users of the space.

Lighting

- i) The previously issued development consent required the inclusions of suitable emergency and external lighting.

Signage/wayfinding

- i) Existing signage around the curtilage of the building is to be retained.

Overall, the building design and functionality increases casual surveillance of surrounding footpath areas through retention of external glazing and increase of pedestrian traffic along the Foreshore Footpath frontage. The premises has been in operation for some time, and it is evident that the crime prevention measures currently in place are satisfactory

Social Impact - Section 4.05

The applicant submitted a Social Impact Statement (SIC) which details the proposed amendments retain the existing maximum of 20 patrons permitted within the premises with the extension to operation hours until 10pm (Fridays and Saturdays). The SIC goes on to detail an assessment of the proposed modifications against the Newcastle After Dark Strategy:

CN adopted the Newcastle After Dark 2018-2022 Strategy in November 2018 to guide the development of the city's night-time economy. The site is within the Civic/CBD Precinct, where 'incidences of antisocial behaviour are quite low'. According to this strategy, the extended use will trade predominantly within the 'Twilight and Evening Economy' periods and will provide desired service of food, activation of, surveillance of, and interaction with, the public foreshore domain; thereby making visitors to the area feel safer after dark and reducing the risk and prevalence of antisocial behaviour and crime.

The NSW Police have reviewed the proposed modifications, including extended hours of trade and proposal to seek an on-premises liquor licence, and have raised no objections. Specifically, the Police referral states:

'Police have no adverse submissions in relation to the change in hours. The applicant has stated in their plan of management they are intending to apply for an On-Premises liquor Licence to Liquor and Gaming NSW. Police would not object at this stage to any On Premise Liquor Licence being granted with similar trading hours.'

Further, the submitted PoM addresses the responsible service of alcohol by stating that the licensee "will ensure that all staff involved in the sale and supply of liquor has completed an approved NSW Responsible Service of Alcohol (RSA) Course and holds a valid NSW Competency Card and/or interim certificate". Further, the provision of a on-premises liquor licence only authorises the sale and supply of liquor for consumption in conjunction with the sale of food.

It is noted that the applicant will also be required to provide a Community Impact Assessment for the application for a liquor licence to Liquor and Gaming NSW prior to a liquor license being approved.

The potential impacts of the development are localised and can be managed during operation through conditions of consent. Accordingly, conditions regarding hours of operation, CCTV management, maximum patron capacity and operation in accordance with the PoM are included in the draft development consent conditions (refer to **Attachment B**).

Land Contamination - Section 5.02

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

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Aboriginal Heritage - Section 5.04

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

Heritage Items - Section 5.05

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

Archaeological Management - Section 5.06

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

Newcastle City Centre - Section 6.01

The subject site is located within the Newcastle City Centre within the 'Foreshore' precinct. Limited controls under Section 6.01 are of direct relevance as requirements relating to the scale and position of new development do not apply. Considering the minor scale of physical works proposed which are predominantly internal, the application is consistent with the relevant performance criteria of this control.

Heritage Conservation Areas - Section 6.02

The subject site is located within the Newcastle City Centre Heritage Conservation Area. The existing building is identified as 'neutral'. The proposed external works are restricted to the addition of a flue. The proposed modification is acceptable having regard to the objectives of this section.

Traffic, Parking and Access - Section 7.03

The subject site gains vehicle access via Wharf Road. As the existing building takes up the entirety of the developable site, there is no opportunity to provide on-site carparking. A historic car parking deficiency applies.

The applicable car parking requirement is 1 space per 60m² as a non-residential use within the Newcastle City Centre area. The current use of the site as approved under DA2016/00201 generates a car parking requirement of three off-street car parking spaces. Due to the location of the development within the Newcastle City Centre, and the limited space available onsite, a concession for the required car parking spaces was granted at the time of the approval.

As the floor area of the building is not to be increased, the historic deficiency can be applied to the proposed modifications and therefore the development is considered acceptable in relation to parking.

Deliveries to the site will remain via the dedicated loading/servicing area on the southern side of the existing building fronting Wharf Road. Delivery times will be structured to allow for a small bread delivery daily and up to six additional small deliveries per week being milk, coffee products, cold drinks, and other produce. A condition of consent restricts all deliveries to be between 7am and 8pm (refer to **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 works do not increase the existing building footprint and the amount of hard surface on site is to remain unchanged. Stormwater management requirements do not apply.

Waste Management - Section 7.08

Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

A ventilated waste storage room is to be retained as part of the proposed internal amendments. Waste bins will be located in this dedicated room with general waste being removed from site daily whilst recyclables will be picked up weekly. Condition 41 of the development consent DA2016/00201 requires deliveries and waste collection are to be restricted between 7:00am to 8:00pm. This condition is to remain (refer to **Attachment B**).

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposal is exempt from incurring a levy, as detailed in CN's Development Contributions Plans.

5.1.4 *any planning agreement*

No planning agreements are relevant to the proposal.

5.1.5 *the regulations*

The application has been considered pursuant to the provisions of the EP&A Act requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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

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

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

Noise

The proposed modifications include the extension of the food preparation area and a new mechanical exhaust system with an extraction fan and exhaust canopy. The application also outlines the intention to apply for an on-premises liquor license (alcohol to be served with meals). Both of these activities have the potential to generate noise impacts.

Considering the proximity of the proposed development to multi-residential receivers to the west and south along Wharf Road (namely the “Breakwater” apartments immediately to the west and “Nautilus on the Harbour” apartments to the south), noise is a primary environmental concern in relation to this application.

As such, the application included a Noise Impact Assessment (NIA), and consideration has been given to the noise impact upon current residential receivers. The report has assessed the operation of the premises against the NSW Environment Protection Authority's (EPA) 'Noise Policy for Industry' (NPfI) noise criteria, which requires the following:

The NPfI specifies two separate criteria designed to ensure existing and future developments meet environmental noise objectives. The first limits intrusive noise to 5dB(A) above the background noise level and the other is based on the total

industrial noise in an area in relation to the noise levels from the development to be assessed.

The NIA specifies that the proposed operations of Lynch's Hub can comply with the required acoustic criteria. Further noise control recommendations outlined within the NIA include the installation of acoustic barriers on the exhaust plant and details of the plant to be approved by the acoustic consultant before installation.

As the extension of operation hours does not overlap into sleep disturbance hours, the patronage is restricted to 20 people and the footprint of the building is unchanged, subject to the adherence of the conditions of consent (refer to **Attachment B**), the development is acceptable with regards to noise impact.

Odour

The proposed development seeks to install a commercial kitchen enabling the preparation of hot food. Given the proximity of nearby residential receivers (within 15m), the proposed development has potential to generate the emission of odours.

The applicant was requested to provide an Odour Assessment Report, whilst a formal odour assessment was not provided, the applicant's response is summarised as follows:

"...the development is small in scale... given prevailing wind conditions in the evenings in this location, i.e. north-easterly, the majority of clean air leaving the premises will travel south-west towards the multi storey carpark, not towards residential buildings...the commercial kitchen will be fitted with as stainless steel exhaust canopy over the grill, hotplates and deep fry and will be fitted with a honeycomb filter that will capture a majority, if not all, of the grease-laden air and stop grease and odours from existing the roof top fan extractor...only clean air will enter the atmosphere above the premises."

Whilst it is acknowledged that the proposed exhaust vent is considerably lower in height than surrounding buildings with the closest residential receiver less than 15m away, the small scale of the operation is not considered to generate significant air impurities or odour concerns. Further, any new commercial kitchen is required to be designed and manufactured to meet the Australian Standards.

Notwithstanding, a condition of consent has been included requiring the installation of an activated carbon filtration system onto the kitchen exhaust if CN is to consider that unreasonable impurities have been emitted from the premises (refer to **Attachment B**).

Carbon adsorbers are identified as the most effective solution for reducing any potential cooking odour impacts by adsorbing odorous materials into the pores of the carbon. Activated carbon filters use the millions of micropores to create an exponentially large surface area to remove harmful chemicals through adsorption. During the activated carbon adsorption process, compounds in the contaminated air

react with the carbon to stick to the surface area, effectively removing these contaminants from the air.

The proposed modification will not result in any significant impacts to the surrounding environment. The proposed modification facilitates appropriate development of the site with the modification supporting an existing local business.

The modified development maintains consistency with the B4 Mixed Use zone objectives as it proposes to integrate suitable mixed-use development in an accessible location. The modified development will result in the orderly economic development of the site for purposes for which it is zoned. The development, as approved and modified, will benefit the community through provision of residential and commercial premises in a city-central location and develop the site to its full potential.

5.1.7 *the suitability of the site for the development*

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

The proposed development is located in the City Centre. The proximity of the site to existing services and amenities, public transport makes this a suitable site for the ongoing operation as a 'café' and 'shop', in turn benefiting the community, both socially and economically.

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

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

The application was publicly notified for a period of 14 days between 11 March 2021 and 25 March 2021 in accordance with CN's CPP. During the notification period 32 submissions were received.

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

Table 1: *summary of objections*

Issue	Comment
Noise	A NIA has been submitted and consideration has been given to the noise impact upon current and future

	<p>residential receivers. The NIA demonstrates that the proposed expanded operations of Lynch's Hub can meet compliance with the required acoustic criteria.</p> <p>Relevant conditions of consent are included in the recommended draft condition set (refer to Attachment B), as previously referenced in this report.</p>
Anti-social behaviour and impact to residential amenity	<p>The application has been supported by a PoM and SIC. These documents address the proposed preventative measures to reduce the likelihood of anti-social behaviours. Relevant conditions of consent are included in the recommended draft condition set (refer to Attachment B).</p> <p>In addition, the application was referred to the NSW Police for comment and no objection was raised.</p>
Odour	<p>As discussed in this report, a condition of consent will be included requiring the installation of an activated carbon filtration system onto the kitchen exhaust if CN is to consider that unreasonable impurities have been emitted from the premises (refer to Attachment B). Carbon adsorbers are an effective solution for reducing any potential cooking odour impacts.</p>
Delivery and waste management	<p>A ventilated waste storage room is to be retained as part of the proposed internal amendments. Relevant conditions of consent are included restricting deliveries and waste servicing to and from the site to between 7am and 8pm (refer to Attachment B).</p>
Traffic and parking	<p>A concession for the required car parking spaces was granted at the time of development consent DA2016/00201. The proposed modifications do not generate any additional carparking requirements as approved under development consent DA2016/00201.</p>
Number of licensed premises in the Newcastle Local Government Area (LGA)	<p>This concern is not a matter of consideration pursuant to Section 4.15 of the EP&A Act.</p>
Hours of operation	<p>As discussed in the report above, the proposed extension to the operating hours to 9pm/10pm is outside the sleep disturbance hours. The application has been supported by a NIA demonstrating the extending operations of "Lynch's Hub" are able to meet compliance</p>

	with relevant acoustic criteria. The proposal is considered acceptable in relation to these matters.
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5.1.8.1 Public Voice (PV) Committee

The proposal was considered at the PV Committee Meeting held on 21 September 2021. The issues raised included noise, odour, traffic and parking, late night sale of takeaway food, introduction of a liquor licence and impact to residential amenity, delivery and waste management and litter.

In response to the matters raised at the PV Committee Meeting, the Applicant has provided an updated Plan of Management to include additional operational strategies. This includes additional waste and delivery management strategies, litter management and take-away procedures.

The issues raised during the PV Committee meeting and a response to those issues are summarised in the table below.

Table 2: *summary of objections raised during PV Committee Meeting held 21 September 2021*

Issue	Applicant Response
Unreasonable transfer of noise to adjoining properties attributable to mechanical ventilation of the proposed commercial kitchen as well as patrons and dispersion of people within the surrounding Newcastle Harbour foreshore area.	<p>A NIA has been submitted and consideration has been given to the noise impact upon current and future residential receivers. The NIA demonstrates that the proposed expanded operations of Lynch's Hub can meet compliance with the required acoustic criteria.</p> <p><u>CN comment:</u> Relevant conditions of consent are included in the recommended draft condition set (refer to Attachment B).</p>
Unreasonable transfer of offensive odours to adjoining residential properties as caused by the proposed commercial kitchen and exhaust.	<p>The application has detailed specifications regarding the effectiveness of the suggested honeycomb filtration system which achieves more than adequate filtration for the proposed operation.</p> <p><u>CN comment:</u> Due to the small-scale operations the odour impacts are considered to be minimal. Notwithstanding, a condition of consent has been recommended requiring the installation of an activated carbon filtration system onto the kitchen exhaust if CN is to consider that unreasonable impurities have been emitted from the premises (refer to Attachment B).</p>

<p>Increase to traffic and parking congestion within the surrounding road network.</p>	<p>The proposed modifications do not generate any additional carparking requirements as approved under development consent DA2016/00201.</p> <p><u>CN comment</u> The response is considered satisfactory.</p>
<p>Introduction of a liquor licence, sale of takeaway food and impact to residential amenity</p>	<p>Responsible service of alcohol requirements will be in force at all times as required by any liquor licence.</p> <p>Signage will be placed within the venue requesting patrons to enter and leave the establishment in a manner mindful of our neighbours. Staff will remind patrons of this policy and, where necessary, any patrons found to cause disturbance deliberately or repeatedly to neighbouring residences will be barred from the premises.</p> <p>Further, a NIA has been submitted which details that from an acoustic perspective there will be no unreasonable impact from the proposed development and that the existing noise levels at all proposed times of operation will be equal or greater than the noise level created by the proposed operations.</p> <p>A complaints register will be maintained, and any specific issues detected will be worked through in collaboration with neighbours towards resolution.</p> <p><u>CN comment</u> The response is considered satisfactory.</p>
<p>Inadequate waste management measures and current non-compliance with delivery of goods to the premise outside the permitted 7am to 8pm timeframe.</p>	<p>Presently no supplier or contractor has access to the Lynch's Hub building. Deliveries can only occur when Lynch's Hub is staffed i.e. between 7am and 8pm.</p> <p>Garbage collection currently occurs after 7am two days per week. With an increase in volume within the premises, there will be a corresponding increase to the number of collections per week.</p> <p>The Plan of Management has been updated to reflect wherever possible, garbage to be collected by the contractors from the internal bin room to avoid bins being placed on the kerb and the potential for rubbish to leave receptacles. If necessary to place bins at the kerb, these will only be placed at the kerb on the morning of collection and returned after collection.</p>

	<p><u>CN comment:</u> The PoM has been updated to reflect that where possible bins will be collected by contractors from the internal bin room to avoid bins being placed on the kerb.</p>
<p>Littering</p>	<p>The functions of Lynch's Hub operate in a predominantly 'grab-and-go' format. Further, during recent COVID-19 restrictions there was a surge in packaging due to takeaway-only sales. At this time, additional bins were placed outside for customers and staff emptied them regularly. This practice will continue, and signage will be placed at the point of sale asking patrons to dispose of litter thoughtfully.</p> <p>Further, CN has installed additional recycling and waste receptacles in the vicinity of Lynch's Hub which will improve this issue further.</p> <p>Staff also do an 'emu parade' at the close of trade each night to ensure any rubbish with the site is collected and placed in bins.</p> <p><u>CN comment</u> The response is considered satisfactory.</p>

All submissions received have been considered, and as such concerns raised in the submissions do not warrant the refusal of the application in its current form or necessitate any further amendments.

The proposed development has been found to be consistent with the objectives and relevant controls of the NLEP 2012 and the NDCP 2012 as discussed elsewhere within this report.

5.1.9 *The public interest*

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

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

The proposed development will not have a significant impact on the natural and built environment, allowing the amenity of adjoining commercial and residential premises to be retained. The development is in the public interest as it provides continued

employment within the established City Centre precinct and encourages greater viability to the existing night-time economy.

The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment. The development is in the public interest and will allow for the orderly and economic development of the site.

6.0 CONCLUSION

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

ATTACHMENTS

- Item 18 - Attachment A:** Submitted Plans - 292 Wharf Road, Newcastle
- Item 18 - Attachment B:** Draft Schedule of Conditions - 292 Wharf Road, Newcastle
- Item 18 - Attachment C:** Processing Chronology - 292 Wharf Road, Newcastle

Item 18 Attachments A - C distributed under separate cover

ITEM-19 **DAC 19/10/21 - 2 PRINCETON AVENUE, ADAMSTOWN HEIGHTS - DA2021/00729 - RESIDENTIAL FLAT BUILDING - THREE STOREY RESIDENTIAL FLAT BUILDING COMPRISING SEVEN UNITS AND BASEMENT PARKING, ASSOCIATED EARTHWORKS, LANDSCAPING AND INFRASTRUCTURE**

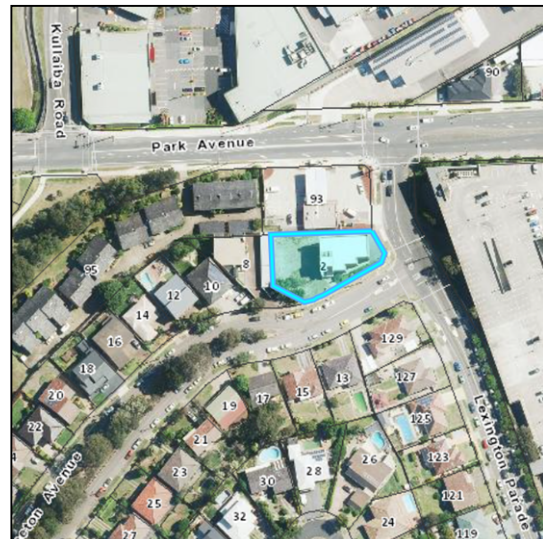
APPLICANT: **ADW JOHNSON**
OWNER: **SANLAR PTY LTD**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

PURPOSE

An application has been received seeking consent (DA2021/00729) to construct a three-storey residential flat building comprising seven units and basement parking, associated earthworks, landscaping, and infrastructure at 2 Princeton Avenue Adamstown Heights.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed 20.4% variation to the height of building development standard under Clause 4.3 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation. It is also noted that the development also proposes a 6.7% variation to the floor space ratio (FSR) standard under Clause 4.4 of the NLEP 2012.



Subject Land: 2 Princeton Avenue Adamstown Heights

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

The objector's concerns included:

- i) Shadowing
- ii) Height

- iii) FSR
- iv) Setbacks
- v) Vehicular Access

The submitted application was assigned to Principal Development Officer (Planning), Damian Jaeger for assessment.

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

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

- 1) The proposed development does not comply with the Height of Buildings development standard of 10m under the NLEP 2012. The proposed height of the building is 12.04m, this equates to a 20.4% variation to the height of buildings standard.
- 2) The proposed development does not comply with the FSR development standard of 0.9:1 under NLEP 2012. The proposed development has an FSR of 0.96:1 which equates to a 6.7% variation to the Floor Space Ratio development standard, under the NLEP 2012.

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out;
- B. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor space ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out;

- C. That proposal to construct of a three-storey residential flat building comprising seven units and basement parking, associated earthworks, landscaping and infrastructure at 2 Princeton Avenue Adamstown Heights be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- D. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

The following information is to be included on the statement:

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

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 931 DP 569169 and is known as 2 Princeton Avenue, Adamstown Heights. The site is irregular in shape and has a total area of 1,203 m². The site is located on the north-western corner of the intersections of Princeton Avenue and Lexington Parade. The existing site access is via Lexington Parade utilising an existing driveway crossing (there is no vehicular access to Princeton Avenue). The site has a frontage of 39.93 metres to Princeton Avenue, a frontage of 15.94 metres to Lexington Parade, 45.91 metres to the north and 38.99 metres to the west.

The existing site, towards the eastern end, contains the 'Belair Commercial Centre', a three-storey building used as office premises (ground level parking and two levels of offices above). The overall site slopes from the west to the east with a steep crossfall from the south-western corner down to the north-eastern corner.

Further east of the site is the Westfield Kotara shopping centre (on the eastern side of Lexington Parade). To the north is an existing service station (on R3 zoned land). Directly adjoining the site to the west is historic squash courts now converted to 11 apartments. Broadly to the north and east of the site are commercially zoned lands

with various retail, showroom, and service businesses. Towards the south and west of the subject site the existing development predominately consists of single dwellings (single and two storeys).

The portion of the subject site the current development is proposed on is clear of any significant vegetation. The trees and shrubs which appear to be located towards the southwestern corner of the subject site are on the part of the adjoining site which extends partially across the frontage of the subject site. The remaining vegetation on the subject site is associated with the Belair Commercial Centre and is located across this building's frontage to Princeton Avenue and the corner of Lexington Parade.

2.0 THE PROPOSAL

The applicant seeks consent for the construction of seven dwellings (3 x 3 bedroom and 4 x 2 bedroom) over four levels inclusive of a semi basement parking and storage level. The vehicular access for the site is via the existing commercial development to Lexington Parade. The proposal directly abuts this existing commercial building on the subject site.

The basement level is proposed to be partially cut into the site and will involve nine parking spaces, a turning area, resident storage, and waste storage area. The proposed ground floor level contains two complete 2-bedroom dwellings and the first level of a two level three-bedroom dwelling. The first floor of the proposal contains two complete 2-bedroom dwellings and the top level of a two level three-bedroom dwelling from below. The second level of the proposal contains two 3-bedroom dwellings.

During the assessment process minor amendments were made to the application to:

- a) increase the setbacks from the northern boundary adjacent the existing service station
- b) increase the parking spaces to nine spaces.

The development, as amended, is supported by the Urban Design Review Panel. A copy of the current amended plans is at **Attachment A**.

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

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with CN's Community Participation Plan (CPP). One submission was received in response. The concerns raised by the objector in respect of the proposed development are summarised as follows:

- i) Height – Concern regarding impacts of the height exceedance

- ii) FSR - Concern regarding impacts of the FSR exceedance
- iii) Overshadowing – Concern regarding the impacts of the overshadowing especially in terms of the two balconies that only have solar access from the common boundary.
- iv) Setbacks – Concern that the proposal does not meet the setbacks under the Newcastle Development Control Plan 2012 (NDCP 2012).
- v) Vehicular Access – Concern regarding the potential traffic conflict issues.

In response to matters raised during the assessment process, several amendments to the application as originally submitted have been made during the assessment process (as detailed in Section 2.0 above). After consideration of the nature and scope of the amendments made, having regard to the CPP, re-notification of the application was not considered necessary.

4.0 INTEGRATED DEVELOPMENT

The proposal is integrated development pursuant to Section 4.46 of the EP&A Act as approval is required from Subsidence Advisory NSW under the *Coal Mine Subsidence Compensation Act, 2017*. The Subsidence Advisory NSW have stamped the associated plans for approval and no further general terms of approval were required.

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 (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)

State Environment Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW. The Vegetation SEPP seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the state, and to preserve the amenity of non-rural areas of the state through the appropriate preservation of trees and other vegetation.

The subject site is clear of any native trees or vegetation. The applicant does not propose the removal of any vegetation to facilitate the development. The provisions of the Vegetation SEPP do not apply.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) was introduced to facilitate the delivery of infrastructure across the State by improving regulatory certainty and efficiency. The ISEPP simplifies the process for providing infrastructure in areas such as education, hospitals, roads, railways, emergency services, water supply and electricity delivery

Clause 45 - Development impacted by an electricity tower, electricity easement, substation, power line

Clause 45 of the ISEPP requires certain development applications to be referred to the relevant electricity supply authority (Ausgrid) and any concerns raised by the electricity supply authority are to be considered as part of the assessment. This includes development within or adjacent to an easement for electricity purposes; adjacent to a substation; within 5m of an exposed overhead electricity power line; or a pool within 30m of a structure supporting an overhead transmission line.

The proposal was required to be referred to Ausgrid in accordance with the ISEPP. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action. A condition of consent is recommended within **Attachment B**, requiring the applicant to seek approval of Ausgrid prior to commencing any works.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP) applies to buildings that are defined as 'BASIX affected development', being "development that involves the erection (but not the relocation) of a BASIX affected building," (i.e.: contains one or more dwelling).

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 33—Hazardous and Offensive Development (SEPP 33)

The applicant undertook a SEPP 33 Hazard Screening prepared by Advitech (19 May 2021) the Hazard Screening considered the existing service station which adjoins the site.

The SEPP 33 screening thresholds are not triggered by the petrol or diesel underground tank storage. The relief vents for the underground fuel storage tanks are located near the south-west boundary of the service station. The relief vents are approximately 5m from the proposed residential development. The transport movements to service all fuels on site at the service station is estimated at

approximately 52 per annum, which is significantly less than the threshold allowances. The service station is not considered a 'potentially offensive industry' as defined by SEPP 33 and a Preliminary Hazard Analysis (PHA) is not required.

Advitech advises that vapour recovery is applied to the relief vent and that the separation distance to the proposed development is sufficient.

The report concluded that the service station is neither a potentially hazardous industry, nor a potentially offensive industry and, therefore, the requirements of SEPP 33 are not triggered by the proposed development. The hazard assessment has demonstrated the current proposal is not at risk (e.g. explosions and odours) due to its relative position compared to the location of the existing service station. Overall, the proposed development is considered satisfactory in terms of SEPP 33.

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

State Environment Planning Policy No 55 – Remediation of Land (SEPP 55) provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration to whether the land is contaminated and, if the land is contaminated, the consent authority must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

The subject land is currently being used for commercial purposes and CN's records do not identify the site as being contaminated. However, the applicant undertook a contamination investigation of the site, prepared by Agility Engineering dated 19 February 2020. The contamination investigation found very low levels of zinc and asbestos on site, at a level which can be reasonably removed.

Therefore, the site can be made suitable in terms of land contamination, subject to conditions recommended within **Attachment B**, requiring the removal of these contaminants from the site and provision of a clearance certificate.

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

State Environment Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65) applies to the development for the purpose of mixed-use development comprising a residential accommodation component (amongst other development types) and aims to improve the quality of residential apartment development.

Clause 28(2) of SEPP 65 requires the consent authority to take into consideration the advice of a Design Review Panel (constituted under Part 3 of the Policy), and the design quality of the development when evaluated in accordance with the Design Quality Principles set out in the Apartment Design Guide.

CN's Urban Design Review Panel (UDRP) reviewed the proposal at pre-DA stage and reviewed the development application on 25 August 2021. A summary of the UDRP's advice in relation to the ten design principles is provided in the table below.

Design Quality Principles - Assessment

Principle 1: Context and Neighbourhood Character

UDRP comments:

The proposal consists of a seven dwelling, residential flat building (4x2 Bed, 3x3 Bed Units), over four levels, including a basement parking (8 spaces) and storage level. The vehicular access for the site is via the commercial development to Lexington Parade.

The proposal directly abuts this existing commercial building.

The Panel has been notified that the applicants have included a copy of the Building Application, 97/77, approved on 9th March 1977, for a two-stage commercial building (no residential component). Stage One was built on the part of the site towards Lexington Parade, while Stage Two was never built. A later subdivision of the land was approved on 16 February 2000, which split the land into two lots with the Stage One building solely located on one lot and the remainder of the land vacant. The design approved in 1977 is of little real utility to the current assessment considering changes in planning and design controls, and the proposal is a different kind of development (residential).

The proposal is located at 2 Princeton Street Adamstown Heights. The site is currently residentially zoned (R3, Medium Density Residential) and yet contains a commercial building located on the eastern side of the site. Further east is the Westfield Kotara shopping centre. To the north is an existing service station (also R3 zoned land). To the north and east of the site is commercially zoned land with various retail, showroom and service businesses.

Directly adjoining to the west, are the former squash courts (8 Princeton Ave), that have been converted to 11 residential apartments under DA2007/1580, approved on 25 July 2012. It is important to consider the interface between the two developments. Towards the south and west the existing development predominately consists of single dwellings (single and two storeys).

Officer comment:

An assessment of the proposal finds that the design has carefully considered the site constraints and existing features having regard to height, bulk scale, setbacks and existing character. The existing site is irregular in shape, with a long frontage to Princeton Avenue, and the design integrates well into the existing streetscape. Overall, the proposal is acceptable on balance.

Principle 2: Built Form and Scale

UDRP comments:

The proposal has been set back from its northern boundary with the existing Coles

Express service station site, as recommended by the UDRP. A more appropriately scaled buffer of landscape treatment above the car park structure has been provided, providing more useful landscape screening of the adjoining site. This is further assisted by the local topography, which includes a ground level for the service station substantially below that of the proposed residential floors.

A slight exceedance over the allowable 10m height plane has evidently resulted from existing site excavation associated with the approved (but unconstructed) commercial building.

A previously identified (at pre-lodgement) potential issue is any likely impact of the proposal to the two neighbouring apartments at No8 Princeton Ave (located in the former squash court) that have their private open spaces opening directly onto the subject site at minimal setback. The Applicant's consultants have considered impact of the proposed development and have provided detailed shadow diagrams illustrating the proposal as compared with the approved commercial development for the site, and the likely impact of a complying CDC development (town houses). Solar access to the POS of the two units is currently fairly poor due to their orientation and their being set at a low level relative to the natural ground beyond. They are largely shaded by the former squash court-built envelope that they are located within. The subject proposal, due to its setback from the common boundary, is considered a less severely impacting development than a townhouse or other complying development would potentially be. Furthermore, the solar diagrams submitted demonstrate that the minor height exceedance of the proposal is located such that it does not add any appreciable additional overshadowing as compared to a fully compliant development.

It is noted that the existing 3m wide easement in favour of No 8 Princeton Ave has been retained on the subject site – reducing any impact of the proposed development on the adjoining site as compared to a potentially closer CDC development, if the easement were to be extinguished.

Officer comment:

The proposal has been amended to address the issues previously raised by the UDRP and is acceptable. It is further noted that the subject site would likely enjoy *existing use rights* associated with the existing commercial building within the R3 Medium Density Residential zone and/or be able to construct the Stage two component of the 1977 approval.

The applicant submitted shadow diagrams showing the current proposal, a possible complying development certificate proposal (CDC), the previously approved commercial stage two proposal, and the current proposal (minus proposed dwelling six on the topmost floor adjacent 8 Princeton Avenue) and the affected private open spaces (POS).

Each of these different development scenarios shows that marginal difference is made to the shadowing impacts on the neighbouring POS when compared to the current proposal.

Notably, the impacts of the CDC proposal are similar as the current proposal (a

CDC can be approved by a private certifier based solely on meeting prescriptive criteria without any development application).

Further, that the shadows of the proposal, with dwelling six removed, show that there is little noticeable improvement made in terms of the shadowing impacts on 8 Princeton Avenue and their POS. It is likely this is due to a combination of these POS areas being inset into the building, being very low relative to the natural ground level and this neighbouring building being built to the boundary (i.e. zero setbacks). Ultimately, the current proposal is acceptable including its shadowing impacts.

Principle 3: Density

UDRP comments:

The site has a FSR of 0.9:1. The submitted details indicate that the proposal is 0.96:1 which equates to an exceedance of 6.7%. The Panel considered this to be reasonable in the context.

Officer comment

The proposal, to support the proposed height and FSR variations, submitted details of the conceptual shadowing impacts of the proposal if dwelling six within the design was removed (which would remove the majority of the FSR variation and potentially height that would contribute to over shadowing of 8 Princeton Avenue).

Ultimately, the conceptual removal of dwelling six makes little difference to the overshadowing impacts. The design and setbacks of the proposal are otherwise considered to be acceptable. The outlook of the neighbouring development is acceptable considering the majority of 2 and 8 Princeton Avenue would consist of blank walls except the two POS's and three windows.

Principle 4: Sustainability

UDRP comments:

The proposal offers a good northern orientation to all dwellings, the majority of which also enjoy good cross ventilation. As recommended, a skylight has been incorporated in the lift lobby areas that will provide natural light to this area. In addition to complying with BASIX provisions, opportunities for incorporating sustainability provisions, such as PV solar generation were again encouraged.

Officer comment:

The proposal is acceptable in terms of sustainability.

Principle 5: Landscape

UDRP comments:

It was noted that the extent of landscape treatment has been increased (since pre-lodgement) to the northern side of the site above the car park. The building setback has also been increased to this boundary. The landscape beds are considered to be substantial enough that they can now provide a softening effect whilst maintaining northern sun.

Pedestrian access from Princeton Ave through to the entry, and the surrounding landscape has been better resolved. An automatic watering system should be provided to all on-structure landscape areas.

The treatment of the easement area to the west of the site is entirely of turf, due to access considerations. While pedestrian access must be maintained, it was suggested that the inclusions of some ground cover plantings and shrubs in the area would provide a more attractive option for the two neighbouring units that overlook the easement area.

Officer comment:

The proposal is acceptable in terms of landscaping.

Principle 6: Amenity

UDRP comments:

Individual apartments achieve good solar aspect and cross ventilation and have a pleasant aspect in spite of their location adjacent to a service station, thanks to being elevated above the neighbouring site to the north. The dwellings can be expected to offer good levels of amenity.

The previously noted car parking shortfall has been addressed. In respect to waste and recycling management, the DA has been referred to Council's Waste Services section internally where the proposal will be assessed.

Officer comment:

The amended design has addressed the issues previously raised and the proposal is acceptable in terms of amenity.

Principle 7: Safety

UDRP comments:

No safety issues were identified by the Panel.

Officer comment:

The report above under SEPP 55 addressed and find the site acceptable in terms of land contamination. Overall, the proposal; is acceptable in terms of safety.

Principle 8: Housing Diversity and Social InteractionUDRP comments:

The Panel remains supportive of the apartment mix (since pre-lodgement), Further consideration might usefully be given as to how the interior of the Entry and Lift Lobby areas can be utilised to facilitate casual social interaction between residents.

Officer comment:

The proposed development, having regard to its size and nature is acceptable in terms of housing diversity and social interaction.

Principle 9: AestheticsUDRP comments:

The Panel expressed support for the design approach and aesthetic treatment of the proposal. It was considered to sit comfortably with the older commercial development adjacent, and with the streetscape. The proposal repeats the widths of the staggered facade elements of the adjacent commercial units, acknowledging the original site design solutions and relationships. The colours and finishes were also supported.

Officer comment:

The UDRP have reviewed the proposal and considered that it integrates well with the existing commercial building on the site. The design is acceptable having regard to aesthetics, materials proposed and streetscape.

Amendments Required to Achieve Design QualityUDRP comments:

The site has remained undeveloped for many years, and the proposal is a well-conceived and executed design response that will provide a small group of residences that fit the context well and that will provide a good level of amenity and convenience to future residents. The Panel supports the proposal, assuming confirmation of waste and recycling aspects to the assessing officers' satisfaction.

Officer comment:

The overall proposal is satisfactory with respect to waste and recycling. Waste management is addressed within the report below.

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

Further to the nine Design Quality Principles, the ADG provides greater detail on how residential development proposals can meet these principles through good design and planning practice.

The application has been assessed for compliance with the required topic areas within Parts 3 and 4 of the ADG pursuant to Clause 6A under SEPP 65. This assessment only addresses compliance with the objective and design criteria of the required topic area. Where a required topic area is not a specified design criterion, or where it is not possible for the development to satisfy the design criteria, the compliance comments in the following table will have regard to the design guidance relevant to that topic area.

3B Orientation		
Objective 3B-1 Building types and layouts respond to the streetscape and site while optimising solar access within the development		
Objective 3B-2 Overshadowing of neighbouring properties is minimised during mid winter		
Comment: The orientation of the building and floor plans respond to the specific site conditions to allow for optimising solar access to units and creating a high level of cross ventilation to all apartments. Given the scale and proximity of existing and proposed developments, some overshadowing of the adjoining development occurs which as detailed above is beyond the control of this development. Access to natural daylight is maximised wherever possible.	Compliance: Complies	
3D Communal and public open space		
Objective 3D-1 An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		
Design Criteria: 1. Communal open space has a minimum area equal to 25% of the site.	Comment: The amended proposal provides limited communal open space largely consisting of land at the Princeton Avenue, street frontage and along the western side of the building. The proposal includes approximately 23.15% landscape	Compliance: Complies
Design Criteria: 2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of		

<p>the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).</p>	<p>area (25% required). Having regard to the size of the proposal and the nature of the site it is considered that the proposal is acceptable in terms of communal and public open space.</p>	
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3E Deep soil zones

Objective 3E-1
 Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.

<p>Design Criteria:</p> <p>1. Deep soil zones are to meet the following minimum requirements:</p> <table border="1" data-bbox="175 918 603 1288"> <thead> <tr> <th data-bbox="175 918 295 1142">Site area</th> <th data-bbox="295 918 466 1142">Minimum dimensions</th> <th data-bbox="466 918 603 1142">Deep soil zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td data-bbox="175 1142 295 1288">greater than 1500m²</td> <td data-bbox="295 1142 466 1288">6m</td> <td data-bbox="466 1142 603 1288">7%</td> </tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	greater than 1500m ²	6m	7%	<p>Comment:</p> <p>The proposal provides deep soil plantings along the Princeton Avenue, street front of the site and is adequate in terms of Deep Soil zones and the ADG providing 19.75% deep soil zones.</p>	<p>Compliance:</p> <p>Complies</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)						
greater than 1500m ²	6m	7%						

3F Visual privacy

Objective 3F-1
 Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.

<p>Design Criteria:</p> <p>1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p>	<p>Comment:</p> <p>Most of the proposed development does not have privacy impacts towards the side boundaries as there are no windows proposed on the eastern side of the building (its built against the existing commercial building) and the western boundary has only three windows. The angle of these</p>	<p>Compliance:</p> <p>Satisfactory (Merit based assessment)</p>
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Building height	Habitable rooms & balconies	Non-habitable rooms	<p>three windows, relative to the two neighbouring private open space areas, is such that there are no real privacy impacts.</p> <p>The rear elevation is acceptable in terms of the ADG and privacy impacts as it is towards an existing service station. The majority of the proposed building meets the required 6m setback with dwelling two being approximately 4.9m.</p> <p>Overall, it is considered that the proposal is acceptable in terms of visual privacy.</p>
up to 12m (4 storeys)	6m	3m	
up to 25m (5-8 storeys)	9m	4.5m	
over 25m (9+ storeys)	12m	6m	
<p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2). Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>			

A4 Solar and daylight access

Objective 4A-1
To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space

Design Criteria:	Comment:	Compliance:
<p>1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local</p>	<p>The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites. The proposal is designed to optimise sunlight to all apartments. Each proposed dwelling has a direct northern orientation for at least the proposed living rooms. All of the apartments receive a minimum of two hours direct</p>	<p>Complies</p>

government areas.	sunlight between 9am and 3pm at mid-winter.	
<p>Design Criteria:</p> <p>2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter.</p>	It is considered that the design has good overall solar access.	
<p>Design Criteria:</p> <p>3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</p>		
4B Natural ventilation		
<p>Objective 4B-3 The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.</p>		
<p>Design Criteria:</p> <p>1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p>	<p>Comment:</p> <p>At least 70% of the apartments are naturally cross ventilated and do not exceed 18m in depth.</p>	<p>Compliance:</p> <p>Complies</p>
<p>Design Criteria:</p> <p>2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to</p>		

glass line.												
4C Ceiling heights												
Objective 4C-1 Ceiling height achieves sufficient natural ventilation and daylight access.												
<p>Design Criteria:</p> <p>1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" data-bbox="178 743 603 1191"> <thead> <tr> <th colspan="2">Minimum ceiling height for apartment and mixed use buildings</th> </tr> </thead> <tbody> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use</td> </tr> </tbody> </table> <p>These minimums do not preclude higher ceilings if desired.</p>	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p>Comment:</p> <p>The proposal meets the 2.7m minimum floor to ceiling heights for habitable rooms and 2.4m minimum heights for non-habitable rooms, while the floor plate depths allow for maximum penetration of natural light into the space.</p>	<p>Compliance:</p> <p>Complies</p>		
Minimum ceiling height for apartment and mixed use buildings												
Habitable rooms	2.7m											
Non-habitable	2.4m											
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use											
4D Apartment size and layout												
Objective 4D-1 The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.												
<p>Design Criteria:</p> <p>1. Apartments are required to have the following minimum internal areas:</p> <table border="1" data-bbox="178 1780 603 2045"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>studio</td> <td>35m²</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> </tr> <tr> <td>2 bedroom</td> <td>70m²</td> </tr> <tr> <td>3 bedroom</td> <td>90m²</td> </tr> </tbody> </table>	Apartment type	Minimum internal area	studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Comment:</p> <p>All apartment sizes meet the minimum identified in the ADG, providing an acceptable level of amenity for future residents.</p>	<p>Compliance:</p> <p>Complies</p>
Apartment type	Minimum internal area											
studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											

<p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>		
<p>Design Criteria: 2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	<p>Comment: All the apartments are provided with a window in an external wall to every habitable room.</p>	<p>Compliance: Complies</p>
<p>Objective 4D-2 Environmental performance of the apartment is maximised.</p>		
<p>Design Criteria: 1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	<p>Comment: All habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	<p>Compliance: Complies</p>
<p>Design Criteria: 2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p>Comment: All apartments have a maximum habitable room depth of less than 8m from a window for open plan living, dining and kitchen area.</p>	<p>Compliance: Complies</p>
<p>Objective 4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs.</p>		
<p>Design Criteria: 1. Master bedrooms have a minimum area of 10m² and other bedrooms 9m²</p>	<p>Comment: All master bedrooms have a minimum area of 10m² and all other bedrooms have a minimum area of 9m² (excluding wardrobe</p>	<p>Compliance: Complies</p>

(excluding wardrobe space)	space).	
Design Criteria: 2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Comment: All bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Compliance: Complies
Design Criteria: 3. Living rooms or combined living/dining rooms have a minimum width of: 1. 3.6m for studio and 1 bedroom apartments. 2. 4m for 2 and 3 bedroom apartments.	Comment: All apartments have living rooms or combined living/ dining rooms which achieve the minimum dimensions required for the number of bedrooms provided.	Compliance: Complies
Design Criteria: 4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Comment: N/A	Compliance: N/A

4E Private open space and balconies

Objective 4E-1

Apartments provide appropriately sized private open space and balconies to enhance residential amenity.

Design Criteria: 1. All apartments are required to have primary balconies as follows:	Comment: The design guidance provided for this objective acknowledges that achieving technical compliance with the design criteria is limited in heritage and adaptive reuse proposals. All apartments have at least one balcony with a minimum depth of 2m or greater and meet the minimum area requirements. The configuration of balconies and apartments will provide a good level or surveillance to public and private areas.	Compliance: Complies															
<table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Min. area</th> <th>Min. depth</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table>	Dwelling type	Min. area	Min. depth	Studio	4m ²	-	1 bedroom	8m ²	2m	2 bedroom	10m ²	2m	3+ bedroom	12m ²	2.4m		
Dwelling type	Min. area	Min. depth															
Studio	4m ²	-															
1 bedroom	8m ²	2m															
2 bedroom	10m ²	2m															
3+ bedroom	12m ²	2.4m															
The minimum balcony depth to																	

<p>be counted as contributing to the balcony area is 1m.</p>								
<p>Design Criteria: 2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>								
<p>4F Common circulation and spaces</p>								
<p>Objective 4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments.</p>								
<p>Design Criteria: 1. The maximum number of apartments off a circulation core on a single level is eight.</p>	<p>Comment: The proposal meets the provisions of the ADG in respect to the layout and design of circulation spaces.</p>	<p>Compliance: Complies</p>						
<p>Design Criteria: 2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>								
<p>4G Storage</p>								
<p>Objective 4G-1 Adequate, well-designed storage is provided in each apartment.</p>								
<p>Design Criteria: 1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p>	<p>Comment: All apartments are provided with the minimum required storage volume (being storage in addition to storage in kitchen, bathrooms, and bedrooms).</p>	<p>Compliance: Complies</p>						
<table border="1"> <thead> <tr> <th data-bbox="161 1854 395 1928">Dwelling type</th> <th data-bbox="395 1854 635 1928">Storage size volume</th> </tr> </thead> <tbody> <tr> <td data-bbox="161 1928 395 1966">1 bedroom</td> <td data-bbox="395 1928 635 1966">6m³</td> </tr> <tr> <td data-bbox="161 1966 395 2004">2 bedroom</td> <td data-bbox="395 1966 635 2004">8m³</td> </tr> </tbody> </table>	Dwelling type	Storage size volume	1 bedroom	6m ³	2 bedroom	8m ³		
Dwelling type	Storage size volume							
1 bedroom	6m ³							
2 bedroom	8m ³							

3+ bedroom	10m ³	At least 50% of the required storage is to be located within the apartment.	

SEPP 65 Concluding Comment

The proposal is considered to be acceptable having regard to the provisions of SEPP65, taking into consideration the design criteria in the ADG and comments received from the UDRP in respect of the design quality principles.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R3 Medium Density Residential zone under the provisions of the NLEP 2012, within which zone the proposed development is permissible with CN's consent as a *residential flat building*.

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

- i) *To provide for the housing needs of the community within a medium density residential environment.*
- ii) *To provide a variety of housing types within a medium 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 allow some diversity of activities and densities if—*
 - a) *the scale and height of proposed buildings is compatible with the character of the locality, and*
 - b) *there will be no significant adverse impact on the amenity of any existing nearby development.*
- v) *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development—*
 - a) *has regard to the desired future character of residential streets, and*

- b) *does not significantly detract from the amenity of any existing nearby development.*

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 10m. The submitted height is approximately 12.04m and does not comply with this standard. The proposed development will result in a maximum height of 12.04m, equating to an exceedance of 2.04m or 20.4% 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

Under the NLEP 2012 the site has a FSR development standard of 0.9:1. The submitted FSR is approximately 0.96:1 and does not comply with this standard. The proposed development will result in a total FSR of 0.96:1, equating to an exceedance of 84m² or 6.7% above the prescribed maximum FSR for the subject land.

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

Clause 4.6 - Exceptions to Development Standards

The objectives of Clause 4.6 'exceptions to development standards', are [subclause (1)]:

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

The applicant has submitted a detailed request for the variation of the height (Clause 4.3) and FSR (Clause 4.4) development standards under Clause 4.6 of the NLEP 2012.

To allow variations to development standards under the NLEP 2012 the applicant must make a formal request under Clause 4.6 which specifically addresses the terms of Clause 4.6, particularly Clause 4.6(3). Additionally, the consent authority must consider the written request from the applicant for the variation plus be satisfied that the proposal will be in the public interest, is consistent with the objectives of the relevant standards and the objectives of the zone (Clause 4.6(4)).

An assessment of the Clause 4.6 variation request has been undertaken below, in undertaking the assessment consideration has been given to both the provisions of

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

The Clause 4.6 request to vary the height and FSR standard, as it applies to the current amended design, is supported and a detailed assessment is included below.

Preliminary - Clause 4.6 Assessment

Firstly, it is noted that the subject site has a height standard under the current the NLEP 2012 provisions, Clause 4.3, of 10 metres and the submitted proposal is 12.04 metres (20.4% variation). Similarly, subject site has a FSR standard under the current Newcastle LEP 2012 provisions, Clause 4.4, of 0.9:1 and the submitted proposal is 0.96:1 (6.7% variation).

Clause 4.6(3)

The applicant's written request for the Clause 4.6 variation must demonstrate the proposal is justified under Clause 4.6(3) (a) & (b), as follows:

- (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.'*

It is considered that the applicant's Clause 4.6 variation request meets these requirements as detailed above. It is considered that the urban design, overshadowing and visual impacts are acceptable.

Clause 4.6(4)

The consent authority must not grant consent to a Clause 4.6 variation unless it is satisfied with the matters under Clause 4.6(4) as detailed below:

"(4) Development consent must not be granted for development that contravenes a development standard unless:

- i) the consent authority is satisfied that:*

- a) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - b) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- ii) *the concurrence of the Secretary has been obtained.'*

The detailed assessment below addresses Clause 4.6 and specifically Clauses 4.6(3) and 4.6(4) demonstrating that these clauses have been satisfied.

Height Standard Variation (Cl4.6(3))

The applicant's written submission contends that the variation to the height standard should be supported as the resultant impacts are acceptable and it would be unnecessary in this instance to require strict compliance in this instance. The Cl 4.6 variation request details that the height variation largely stems from the existing cross fall on site, especially towards the north-eastern corner of the proposal and, as such, the impacts of the exceedance are not significant.

Furthermore, requiring strict compliance would result in the current proposal stepping down as it meets the existing commercial building and therefore being inconsistent with this existing building on site instead of integrating as designed. Finally, it is further advised that requiring strict compliance with the height standard would make minimal difference at the western side of the subject site. The applicant has demonstrated by the submitted clause 4.6 variation and supporting details (e.g. shadow diagrams) that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered that the impacts resulting from the amended proposal are acceptable, strict compliance in this instance would be unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard. Overall, it is recommended that support for the variation be given.

Height Standard Variation Cl 4.6(4)(a)(i)

It is considered that the applicant has satisfactorily addressed the provisions of Clause 4.6(3) as detailed above.

Height Standard Variation Cl 4.6(4)(a)(ii)

Height Standard Objectives

The height objectives under Clause 4.3 are as follows:

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

Following an assessment of the proposal under the provisions of the Apartment Design Guideline (ADG) and the objectives of the Newcastle LEP 2012 (i.e. zone and height objectives), it has been determined that the scale of the amended development (i.e. 12.4m high) makes a positive contribution to the desired form intended under the adopted planning controls and the hierarchy of the area. It is further noted that the height variation is largely the result of the slope of the land including the cross fall down to the north-eastern corner of the site.

The applicant has demonstrated via series of various shadow diagrams that decreasing the height of the proposal (e.g., the conceptual removal of proposed Dwelling six) makes minimal difference to the overshadowing impacts of the development.

It is further noted that the applicant has shown that current proposal's shadowing impacts is very similar to that of both a complying development certificate proposal which could be allowed on site (i.e., approval being without a development application via private certifier) and the impacts of the approved Stage Two for the extension of the Belair Commercial Centre.

It is further noted that much of the impacts occurring for the adjoining site 8 Princeton Avenue, stem from this neighbouring development being the conversion of historic squash courts which were already built to the boundary and, as such, this development has 'borrowed' its amenity from the subject site. This existing neighbouring development, with zero setbacks, would not comply as a new residential development under the ADG and the shadowing impacts on its two side private open space areas, which are inset into the building, are largely a result of the existing zero setbacks.

It is considered that a reduction in height, to achieve compliance with the height standard, would not reduce the shadowing impacts or significantly improve the development, and is not justified based on the circumstances on the case in this instance.

The applicant has effectively submitted comparative shadow diagrams, which show the relative differences in the overshadowing between a compliant conceptual design (i.e., the removal of dwelling six) and the current proposal. The diagrams demonstrate that the extent of additional shadowing resulting from the height variation does not have any significant additional impacts.

Overall, it is considered that the proposal allows reasonable daylight access to all developments and the public domain.

Zone Objectives- Height Cl 4.6(4)(a)(ii)

The proposed development is in the public interest and the variation to the height standard is consistent with the objectives of clause 4.3, as the scale of the development makes a positive contribution towards the desired built form and is consistent with the established centres hierarchy. The proposal also allows for reasonable daylight access to the public domain and nearby developments.

The proposed development meets the objectives of the zoning in providing for a variety of housing needs within the community at a height and scale compatible with the future character of the locality. The assessment within this report demonstrates that the amenity impacts from the proposal are reasonable having regard to the circumstances in this instance.

FSR Standard Variation (Cl4.6(3))

The applicant's written submission contends that the variation to the FSR standard should be supported as the resultant impacts are acceptable and it would be unnecessary in this instance to require strict compliance in this instance. The Cl 4.6 variation request details that the FSR variation is not significant and the reduction in the design of 84m² would not result in improvement in the design in terms of overshadowing, density bulk or scale impacts. Conversely, the removal of the 84m² could lessen the overall design result for the proposal without any real improvement in planning outcomes in terms of character, streetscape or visual appearance.

It is considered that the variation request has reasonably demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered that the impacts resulting from the amended proposal are acceptable and, as such, it is recommended that support for the variation be given.

FSR Standard Variation Cl 4.6(4)(a)(i))

It is considered that the applicant has satisfactorily addressed the provisions of Clause 4.6(3) as detailed above.

FSR Standard Variation Cl 4.6(4)(a)(ii))

FSR Standard Objectives

The FSR objectives under Clause 4.4 are as follows:

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

The proposal involves a 6.7% variation to the FSR standard (i.e. 84m²) which, in the overall scheme of the design, does not form a large portion of the development being approximately 80% of the floor area of proposed dwelling six. Following an assessment of the proposal under the provisions of the Apartment Design Guideline (ADG) and the objectives of the NLEP 2012 (i.e. zone and FSR objectives), it has been considered that the amended development is consistent with the established centre hierarchy.

The overall size of the proposal is consistent with the density, bulk, scale and visual appearance of comparable designs which could otherwise be reasonably expected on the site. It is considered that the proposal is acceptable having regard to the FSR development standard objectives. The reduction of the proposed FSR, so to strictly comply with the standard, would be unnecessary and result in a lesser planning outcome for the subject site.

Zone Objectives - FSR Cl. 4.6(4)(a)(ii)

The proposed development is in the public interest and the variation to the FSR standard is consistent with the objectives of clause 4.4, as the scale of the development makes a positive contribution towards the desired built form and is consistent with the established centres hierarchy.

The proposed development meets the objectives of the zoning in providing for a variety of housing needs within the community at a density, bulk and scale compatible with the future character of the locality. The assessment within this report demonstrates that the amenity impacts from the proposal are reasonable having regard to the circumstances in this instance.

Secretary's Concurrence Cl 4.6(b)

The Secretary's concurrence as under Clause 4.6(4)(b) of NLEP 2012, to the proposed Clause 4.6 variations of the height of buildings development standard (20.4%), being over 10% and the FSR standard variation being 6.7%, is assumed, as per Department of Planning Circular 20-002 dated 5 May 2020, as the proposal is to be determined by the Development Applications Committee.

Overall, it is considered that the submitted Clause 4.6 variation request is adequate and support for the variations should be given.

Clause 5.10 - Heritage Conservation

The proposal does not trigger any other specific provisions under this clause. The subject property:

1. is not listed as a heritage item under the NLEP 2012,
2. is not located within the vicinity of a heritage item,
3. is not located within a Heritage Conservation Area,

4. is very unlikely to be affected by any items of Aboriginal heritage or archaeological items due to the disturbed nature of the site.

As such, the proposed development is satisfactory in respect to the provisions of Clause .5.10.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils and the proposed development is considered satisfactory in this regard. Areas classified as Class 5 are located within 500 metres on adjacent class 1,2,3 or 4 land. Works in a class 5 area that are likely to lower the water table below 1 metre AHD on adjacent class 1, 2, 3 or 4 land will trigger the requirement for assessment and may require management.

Given the nature of the site and scale of the proposed works the development is not likely to result in disturbance of ASS nor the lowering of the water table on adjacent ASS class land, and as such submission of an Acid Sulfate Soils Management Plan is not required for the development works. The modified development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

It will be necessary for earthworks to be undertaken to facilitate the development. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography. Given the nature, extent and location of the earthworks, the level of earthworks proposed to facilitate the development is considered acceptable having regard to this clause.

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

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

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

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

The proposed development includes a Clause 4.6 variation request. As discussed above under Clause 4.6 of the NLEP 2012 of this report, the proposal achieves the objectives of the R3 Medium Density Residential zone and the objectives of Clauses 4.3 (height) and 4.4 (FSR) notwithstanding noncompliance.

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

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

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

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Residential Development - Section 3.03

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

Many of the controls in 3.03 specify compliance with the relevant components of the Apartment Design Guide under SEPP 65 as an acceptable solution. The application satisfies the provisions of the Apartment Design Guide, as detailed under the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment in **Section 4.1** of this report above.

The overall floor space ratio, height and character of the development are acceptable in the context of the area and the site, as previously discussed in this report.

Flood Management - Section 4.01

The subject site is not affected by flooding.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District and the Subsidence Advisory NSW have stamped the associated plans for approval.

Safety and Security - Section 4.04

The proposal has been designed to adequately address the Crime Prevention Through Environmental Design (CPTED) principles of: -

- i) Surveillance
- ii) Access Control
- iii) Territorial Reinforcement
- iv) Space Management

The combination of design and mitigation measures (e.g. including lighting, CCTV, directional signage, active and passive surveillance) is such that the proposal is considered to be acceptable.

Social Impact - Section 4.05

It is considered that the proposed development is consistent with the zone objectives and is appropriate having regard to the strategic planning intent for the future of the area. It is considered that the proposal is acceptable in terms of its social impacts.

The proposal will have the positive social effect of providing for additional housing diversity within the area.

Soil Management - Section 5.01

It is considered that the proposal is acceptable subject to recommended conditions of consent regarding soil and sediment control.

Land Contamination - Section 5.02

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

Aboriginal Heritage - Section 5.04 & Heritage Items - Section 5.05

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

Landscape Open Space and Visual Amenity - Section 7.02

The proposal is satisfactory providing a combination of landscaping, deep soil zones and private balconies as assessed under SEPP 65 above.

Traffic, Parking and Access - Section 7.03

Vehicular Access, Driveway Design and Crossing Location

The proposed development is located on the corner of Lexington Parade and Princeton Avenue, with an existing access 6m driveway from Lexington Parade, serving the existing commercial building on the site and is acceptable for two-way travel in accordance with AS2890.1.

The proposed car park layout, turning bay and overall dimensions are compliant with AS2890.1. Sight distances for pedestrians have been checked by the traffic consultant who confirmed that sight distances at the entry to the site are compliant with AS2890.1.

To address potential traffic generation concerns in relation to Lexington Parade access, the development will be limited to "Left Turn Only" entry/exit and signage shall be included as a condition of consent and is to be located within the property boundary.

Parking Demand

Parking provision is to be provided in accordance with Section 7.03 Traffic, Parking and Access of the NDCP 2012 and SEPP65 Apartment Design Guideline.

As there are seven apartments proposed in this building, nine parking spaces are required and the development complies with this requirement.

A total of eight bicycle parking spaces (min class 2 security level) are required. Two storage areas are proposed within the basement to be used for miscellaneous storage including bicycle parking. A condition is recommended requiring bicycle racks within the storage area for eight bicycles.

One motorcycle parking space is provided, meeting the motorcycle parking requirements.

Traffic Generation

A traffic report has been prepared by B J Bradley and Associates to support the development application. The development is expected to generate approximately four additional trips during peak hours. This is not expected to be a significant increase to the surrounding road network and is acceptable.

Draft conditions of consent addressing the above engineering assessment has been recommended within **Attachment B**.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

Stormwater Management

This development is required to be designed and constructed in accordance with the controls of *Section 7.06 Stormwater of City of Newcastle's DCP*.

Stormwater drawings have been prepared by MPC for this development and show a 10kL underground rainwater tank located in the basement carpark, overflowing to an existing pit on the northern side of the site and draining to Council's stormwater network. The 10kL rainwater reuse tank is provided within the design and meets the storage requirements for the proposed development.

The applicant's engineers have submitted sufficient details, including drainage calculations, to demonstrate that the proposal can connect directly to the existing kerb inlet pit, without further need detention, is acceptable due to the limited hardstand area not otherwise being captured on the onsite rainwater reuse tanks. Section 138 approval will be required for this stormwater connection to the kerb inlet pit within the road reserve.

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012. Draft conditions of consent addressing the above engineering assessment has been recommended within **Attachment B**.

Waste Management - Section 7.08

Demolition, excavation and construction waste

Conditions of consent have been imposed on the original development consent addressing waste management during demolition and construction phases. These condition remains unchanged under the subject modification application.

Operation waste

The applicant has prepared an amended detailed waste management plan, which addresses waste minimisation and litter management strategies. Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued. Subject to these conditions the development is acceptable.

Development Contributions

Section 7.12 of the EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's *Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019*.

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

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

NSW Address policy and guidelines

In accordance with NSW Government policy, Local Governments are responsible for providing clear and logical addressing to ensure quick and accurate location by delivery, utility and emergency services, and the public. Conditions of consent have been recommended to address this requirement.

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

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

Acoustic Impacts

The site is located at 2 Princeton Avenue Adamstown Heights. Noise from traffic (from on Parkway Avenue and Lexington Parade) has the potential to adversely affect sensitive receivers occupying the proposed new dwellings. The applicant provided a Noise Impact Assessment (NIA), prepared by Environmental Monitoring Services (23 March 2021).

The proposed residential flat building will be located near an existing office building. There is an operating service station (to the north) and Westfield Kotara Shopping Centre (to the east - which has a rooftop carpark). There are residential properties to the south and west of the site.

The NIA analysed the predicted impact of noise in the daytime, evening, and night-time periods in the location of the proposed dwellings. Internal noise goals are:

- i) 35 dB(A) for bedrooms/sleeping areas (windows closed).
- ii) 40 dB(A) for habitable rooms any other time.

Traffic was found to be the dominant noise source most of the time with activity from the service station and distant mechanical noise audible when the traffic reduced on Park Avenue.

The identified noise levels are considered appropriate subject to the implementation of the acoustic attenuation measures outlined in Section 5 of the NIA. This includes, construction requirements including, roof/ceiling construction, walls, windows, doors and ventilation to reduce noise impacts to acceptable levels (particularly on the northern and southern sides of the proposed building).

Further acoustic review should be undertaken as part of the detailed design process when selecting, locating and designing mechanical plant (such as heating, ventilation and AC systems) to ensure compliance with the relevant requirements as specific plant items will be finalised during the detailed design phase of the project.

It is noted that this is a “window closed” scenario. Therefore, alternative ventilation must be provided. As per Australian Standard 2021:2015 *“An acoustically insulated building must be kept virtually airtight to exclude external noise. Therefore, mechanical ventilation or air conditioning is needed to provide fresh air and to control odours. Requirements for acceptable indoor-air quality are given in AS 1668.2. Recommended design sound levels for different area of occupancy in buildings are given in AS 2107:2016”*.

Construction noise from the proposal will not adversely impact neighbours. The above points are addressed by the standard conditions of consent recommended at **Attachment A**. Provided that all the recommendations in the acoustic report are adhered to, it is considered that residents are unlikely to experience adverse impacts due to noise.

5.7 The suitability of the site for the development

The site is located within a proclaimed Mine Subsidence District and the Subsidence Advisory NSW have stamped the associated plans for approval.

The constraints of the site have been considered in the proposed development, which includes hazards/risks (i.e., adjoining service station) flooding, contamination, acid sulfate soils and heritage. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

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

The original application was publicly notified in accordance with CN’s Community Participation Plan (CPP). One submission was received in response. The key issues raised within the submission have been discussed previously in this report. The following table provides a summary of the issues raised and a response to those issues.

Issue	Comment
Height – Concern regarding impacts of the height exceedance.	A detailed assessment of the height of the proposal and its associated variation has been undertaken above within the report which demonstrates that the height is acceptable including its shadowing, bulk, scale, character and urban design.
FSR - Concern regarding impacts of the FSR exceedance.	A detailed assessment of the FSR of the proposal and its associated variation has been undertaken above within the report which demonstrates that the FSR is acceptable including its shadowing, density, bulk, scale, character and urban design.
Shadowing – Concern regarding the impacts of the overshadowing especially in terms of the two balconies that only have solar access from the common boundary.	Detailed assessment and consideration of the shadowing impacts on the neighbouring sites, and particularly the two adjacent balcony/private open space (POS) areas, has been undertaken within the report above. The assessment has shown, on balance, that the shadowing impacts are acceptable having regard to the circumstances of the case. Furthermore, the applicants have provided a series of different shadowing schemes demonstrating that the proposal is reasonable in this instance.
Setbacks – Concern that the proposal does not meet the setbacks under the NDCP 2012.	The setbacks under the NDCP 2012 are not the prime control in this instance and the requirements of SEPP65 and the ADG prevail as the main design guidelines. As outlined within the report above, it is considered that the proposal meets the requirements of the ADG in terms of setbacks.
Vehicular Access – Concern regarding the potential traffic conflict issues.	CN's Development Engineers have assessed the proposal, including a traffic report submitted by the applicant, and consider that the proposal does not generate significant traffic or cause traffic conflict as discussed within the report above.

5.9 The public interest

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

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

6.0 CONCLUSION

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

ATTACHMENTS

Item 19- Attachment A: Submitted Plans - 2 Princeton Avenue Adamstown Heights

Item 19 - Attachment B: Draft Schedule of Conditions - 2 Princeton Avenue Adamstown Heights

Item 19 - Attachment C: Processing Chronology - 2 Princeton Avenue Adamstown Heights

Item 19 Attachments A - C distributed under separate cover

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ITEM-20 **DAC 19/10/21 - 4 GARRETT STREET, CARRINGTON - DA2021/00812 - ALTERATIONS AND ADDITIONS TO DWELLING HOUSE**

APPLICANT: **FELICITY BETH PARK**
OWNER: **C J PARK & F B PARK**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

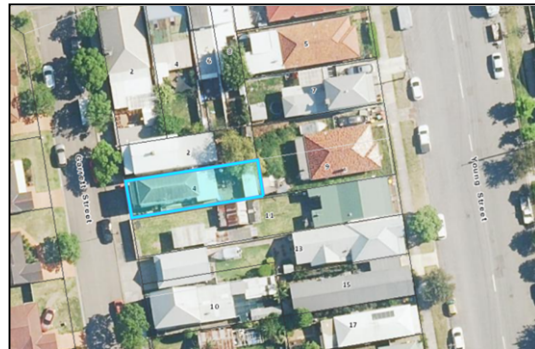
PART I

PURPOSE

A Development Application (DA2021/00812) has been received seeking consent for alterations and additions to a dwelling house at 4 Garrett Street Carrington.

The submitted application was assigned to Graduate Planning Officer, Elsa Berger for assessment.

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



Subject Land: 4 Garrett Street, Carrington

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

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

Issues

- 1) Floor Space Ratio (FSR) – The proposed development has a FSR of 0.798:1 and does not comply with the FSR development standard of 0.6:1 as prescribed under Clause 4.4 of the NLEP 2012.

The variation equates to an exceedance of 33.34m² or 32.96%.

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, as the consent authority, notes the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2021/00812 for dwelling house – alterations and additions at 4 Garrett Street Carrington be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

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

The following information is to be included on the statement:

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

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

PART II

1.0 THE SUBJECT SITE

The subject property is known as 4 Garrett Street, Carrington and has a legal description of Lot 1 in Deposited Plan 919898. The site is a rectangular shaped allotment with a frontage of 6.705m to Garrett Street, a depth of 25.145m and a total area of 168.47m². The site is relatively flat and devoid of any significant vegetation and currently contains a two storey, timber and tin roof dwelling house.

The site is located within an established residential area comprising a mixture of single-storey and two storey dwellings. Existing development on adjoining sites

includes a two storey dwelling house of similar bulk and scale to the north, and single storey dwelling houses to the south and to the east.

2.0 THE PROPOSAL

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

The proposed works include a first-floor addition, containing two new bedrooms and a new bathroom.

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days between 30 June 2021 and 14 July 2021 in accordance with CN's Community Participation Plan (CPP). No submissions were received as a result of the notification process.

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

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

The subject site is listed on CN's contaminated lands register due to the presence of a black glassy slag and ballast that was used as filling material over 100 years ago in the Carrington locality. Accordingly, a condition relating to the removal and disposal of slag material from the site is recommended if any slag is unearthed during excavations.

In this application, the site is already residential, and the application is for alterations. As the land use is not changing and the site will continue to be used for residential

purposes, clause 7(1) of SEPP 55 has been met. In addition, clause 7(2) has not been triggered as no change of use has been proposed. The development is satisfactory under the provisions of SEPP 55.

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

The Vegetation SEPP (the SEPP) works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW. Part 3 of the Vegetation SEPP contains provisions similar to those contained in Clause 5.9 of the NLEP 2012 (now repealed) and provides that the Newcastle Development Control Plan 2012 (NDCP 2012) can make declarations with regards to certain matters, and further that CN may issue a permit for tree removal.

The subject site is clear of any native trees or vegetation. The applicant does not propose the removal of any vegetation in order to facilitate the development. The provisions of the Vegetation SEPP do not apply.

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

The SEPP seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the *Coastal Management Act 2016* (the Act).

The 'coastal zone' is defined in the Act as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability.

The site is located within the 'coastal use area' as defined under the Act. As such, Part 2 Division 4 Clause 14 of the SEPP applies to the proposed development.

It is considered that the proposed development will not cause any adverse impact on the following:

- i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability
- ii) overshadowing, wind funnelling and the loss of views from public places to foreshores
- iii) the visual amenity and scenic qualities of the coast, including coastal headlands
- iv) Aboriginal cultural heritage, practices and places
- v) cultural and built environment heritage.

The development is designed, sited and will be managed to avoid any adverse impact referred to above. Moreover, the proposed development is not likely to cause increased risks of coastal hazards on that land or other land. Furthermore, the site is not subject to a coastal management program.

The proposed development is considered to meet the provisions of Clause 15 and 16 and is consistent with the applicable provisions of the SEPP.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

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

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

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

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

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

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

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

Comment: The proposed development provides for a single two-storey dwelling in a low-density, low impact form that respects the amenity, heritage and character of surrounding development and the quality of the environment.

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 8.5m. The proposed height is 7.565m and complies with this requirement.

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 0.6:1. The proposed development has a gross floor area of 134m², resulting in a total FSR of 0.798:1 and equating to an exceedance of 33.34m² or 32.96% above the prescribed maximum FSR for the subject land.

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

Clause 4.6 - Exceptions to Development Standards

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

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

The proposed development contravenes Clause 4.4 'Floor space ratio' of the NLEP 2012. The FSR Map provides for a maximum FSR of 0.6:1. The proposed development has a total of 134m² of combined floor space. The proposal results in an FSR of 0.798:1 (based on a site area of 168.6m²), which exceeds the maximum FSR for the site by 33.34m² or 32.96%. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

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

unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

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

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

The FSR development standard is not expressly excluded from the operation of Clause 4.6.

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

The submitted 'Exception to Development Standard', prepared by Buildcert Planning (dated August 2021) constitutes a written request for the purposes of Clause 4.6(3).

In *Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe)*, Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with them may be considered unreasonable or unnecessary. Preston CJ established five circumstances in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary, as follows:

- 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 Applicant's 'Clause 4.6 Variation Request – Floor Space Ratio' written response seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable or unnecessary, stating that the objectives of the development standard are achieved notwithstanding non-compliance.

The objectives of the maximum floor space ratio standard outlined in Clause 4.4 of the NLEP 2012 are:

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

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

- a) It is considered that strict compliance with the development standard for FSR of the site is unreasonable and unnecessary in the circumstances of this case, as the proposal is considered to achieve the objectives of Clause 4.4 as outlined below.
- b) In addition to providing adequate floor area that is capable of meeting the needs of a contemporary family unit, the proposed development maintains the low-density residential nature of the site and is consistent with the surrounding character and scale of both traditional and contemporary forms of housing.
- c) Moreover, it is noted that the works proposed are modest and that the existing dwelling presents a historical exceedance, with the existing floor area of 114.9m² equating to a FSR of 0.682:1.
- d) Furthermore, the proposed development allows for the retention of the dwelling, while many dwellings with a similar style and character within the immediate area being demolished in recent years to make way for contemporary designs that also rely upon an FSR variation due to the smaller lot sizes that characterise the locality.

Having regard to these matters, it is considered that the objectives of the standard are achieved, notwithstanding the non-compliance with the FSR.

CN Officer Comment

It is considered that the proposal for alterations and additions to a single dwelling is consistent with the low-density objectives of the land. In addition, the building density, bulk and scale makes a positive contribution towards the existing and desired built form of the area.

Moreover, the proposed development allows for the provision of adequate floor space that is capable of meeting the needs of a contemporary family unit while retaining the existing dwelling, which is consistent with the existing and desired character of the area.

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

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

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

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

- i) The proposed alterations and additions increase the efficiency and functionality of the dwelling, whilst being constrained by environmental factors and land size.
- ii) The removal of a small amount of gross floor area to achieve a smaller numerical figure, is not considered necessary to achieve the objectives of the standard.
- iii) The size and character of the dwelling is consistent with other dwellings in the locality.

CN Officer Comment

The non-compliance with the development standard will not result in any additional environmental, amenity or streetscape impacts compared to a compliant development. The additional FSR will not result in any inconsistency with the desired built form of the locality.

The objectives of the development standard are achieved despite the non-compliance of the FSR for the site (which is 33.34m² over the FSR control). In addition, the proposed development is generally consistent having regard to the combination of controls under the NLEP 2012, NDCP 2012 and State Environmental Planning Policies.

It is considered that there are sufficient environmental planning grounds to justify contravening the development standard.

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

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

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

This provision does not require consideration of whether the objectives have been adequately addressed, rather that, ‘the proposed development will be in the public interest because it is consistent’, with the relevant objectives.

Objectives of Clause 4.4 ‘Floor space ratio’

It is considered that the proposed development is consistent with the objectives of Clause 4.4 ‘Floor space ratio’ as it is of an appropriate density which is consistent with the established centres hierarchy. Moreover, the development for a single detached two-storey dwelling is of a density, bulk and scale that is consistent with the built form as identified by the centres hierarchy.

Objectives of the R2 Low Density Zone

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

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

The proposed development is consistent with the objectives of the R2 Low Density Residential Zone, as the development provides adequate floor space that is capable of meeting the needs of a contemporary living while retaining an appropriate single two-storey dwelling form complementary to the low-density residential environment.

In addition, the proposal does not hinder other land uses that provide facilities or services located on adjoining lands. Moreover, the proposed development provides a

housing form that respects the amenity, heritage and character of surrounding development and the quality of the environment. Furthermore, the development is permissible within the land use zone.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of Clause 4.6(4)(a)(ii) of 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 (ie. of the Department of Planning, Industry and Environment) concurrence to the exception to the FSR development standard as required by Clause 4.6(4)(b) of the NLEP 2012, is assumed, as per Department of Planning Circular PS20-00 of 5 May 2020.

Conclusion

The proposed variation to the floor space ratio development standard is considered to have satisfied the requirements of Clause 4.6 of the NLEP 2012. The Clause 4.6 variation request has demonstrated that the proposed floor space ratio is acceptable and therefore that strict compliance with the prescribed floor space ratio would be unreasonable and unnecessary. The Clause 4.6 variation request is supported and there is power to grant development consent to the proposed development notwithstanding the variation from the floor space ratio development standard.

Clause 5.10 - Heritage Conservation

The site is not listed as a heritage item under the NLEP 2012, nor is it located within a Heritage Conservation Area. The site is however located within the vicinity of a heritage item (Date Palms in Hargrave Street). It is considered that the proposed development will retain the significance of the heritage item. The proposed development is considered satisfactory in regard to Clause 5.10 of the NLEP 2012.

Clause 6.1 – Acid Sulfate Soils

The subject site is identified as containing Class 2 Acid Sulfate Soils (ASS). Accordingly, any works below the natural ground surface, or works by which the water table is likely to be lowered requires consideration under this clause.

The proposed development consists of alterations and additions to the upper level of the existing dwelling and does not involve any earthworks. Given the scale of the proposed works the development is not likely to result in disturbance of ASS nor the lowering of the water table. As such, submission of an Acid Sulfate Soils Management plan is not required for the development works. The application is therefore considered acceptable with regards to Clause 6.1 of the NLEP 2012.

Clause 6.2 - Earthworks

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

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

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning, Industry and Environment. The ones that are relevant to the application are outlined below.

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

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

The EIE is broad and indicates that the proposed Design and Place SEPP applies to all scales of development including residential flat buildings.

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

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

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

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

The proposed development includes a Clause 4.6 variation request. As discussed above under Clause 4.6 - Exceptions to Development Standards of this report, the proposal achieves the objectives of the R2 Low Density Residential zone and the objectives of Clause 4.4 of the NLEP 2012 notwithstanding noncompliance.

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Single Dwellings and Ancillary Development - Section 3.02

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

Street frontage appearance (3.02.03)

The proposed development is located at the rear of the dwelling and will not result in any changes to the existing front setback or the street frontage appearance. The proposed development is therefore considered satisfactory in regard to this section of the NDCP 2012.

Side / rear setbacks (building envelope) (3.02.04)

The site has a width of 6.705m, which is less than 8m, and as such this section of the NDCP 2012 allows the proposed development to be built to both side boundaries, as long as the boundary walls have a maximum height of 3.3m or match an existing adjoining wall (whichever is greater), have a maximum length of 20m or 50% of the lot depth (whichever is the lesser), and be in accordance with the Building Code of Australia, maintenance free and attractive finish.

The proposed development will retain the existing 300mm northern side setback and will be setback 1m from the southern side boundary. The wall on the northern side boundary will match the height of the wall from the dwelling on the adjoining northern property. The length of the wall on the northern side is 14m, which is slightly more than the maximum 50% of the lot depth of the site (which is 25.145m). This

discrepancy is considered to be negligible and acceptable, as it is considered that it will not result in adverse impacts on the amenity of adjoining properties. Moreover, the requirement that the wall needs to be in accordance with the Building Code of Australia, can be addressed by a condition of consent. The minimal setback enables future maintenance and the finish is considered compatible with the existing dwelling.

The proposed development will have a rear setback of 8.2m, which complies with the minimum 3m rear setback required for any part of the building up to 4.5m in height and with the minimum 6m rear setback required for any part of the building over 4.5m in height.

The proposed development is therefore considered satisfactory in regard to this section of the NDCP 2012.

Landscaping (3.02.05)

The proposed development will not result in any changes to the landscaped area. The proposed development is therefore considered satisfactory in regard to this section of the NDCP 2012.

Private open space (3.02.06)

The proposed development will retain the existing area of private open space. The proposed development is therefore considered satisfactory in regard to this section of the NDCP 2012.

Privacy (3.02.07)

The proposed development includes two new bedroom windows on the southern elevation and a new bathroom window on the eastern elevation. The western and northern elevation remain the same.

It is considered that the proposed development does not unreasonably overlook living room windows or the principal area of private open space of neighbouring dwellings.

The proposed development is therefore considered satisfactory in regard to this section of the NDCP 2012.

Solar access (3.02.08)

It is considered that the proposed development does not significantly overshadow living area windows and principal areas of private open space of adjacent dwellings. The proposed development is therefore considered satisfactory in regard to this section of the NDCP 2012.

View sharing (3.02.09)

The proposed development is over 5m in height with a total proposed building height of 7.565m. Notwithstanding, adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development. The proposed development is therefore considered satisfactory in regard to this section of the NDCP 2012.

Car parking and vehicular access (3.02.10)

There is a historical deficiency of off-street car parking on the site and in the area. Due to the narrow width of the site, car parking and safe vehicular access is not possible and would require demolishing the existing dwelling on the site. Taking into account the historical car parking deficiency and the constraints of the site, the proposed development is considered satisfactory in regard to this section of the NDCP 2012.

In conclusion, when assessed against the relevant provisions of *Section 3.02 - Single Dwellings and Ancillary Development* of the NDCP 2012, the proposed development is considered acceptable and achieves compliance with relevant acceptable solutions and the performance criteria for building form, building separation and residential amenity.

The proposed development establishes a scale and built form that is appropriate for its location. The proposal retains the street frontage appearance and provides good residential amenity, while maintaining privacy for adjoining neighbours.

Flood Management - Section 4.01

The site is located on flood prone land. The proposed development however only consists of alterations and additions to the existing upper level of the exiting dwelling. It is considered that the proposed development will not result in increased flood risk or in additional impacts on the flood behaviour on the site. Accordingly, the proposal is acceptable in relation to flooding.

Mine Subsidence - Section 4.03

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

Social Impact - Section 4.05

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

Soil Management - Section 5.01

The proposed development consists of alterations and additions to the upper level of the existing dwelling and as such is not anticipated to result in soil erosion. Moreover, soil management can be addressed by a condition of consent requiring that sediment and erosion control measures are in place for the construction period.

Land Contamination - Section 5.02

As discussed within the SEPP No.55 discussion within this report, the site is listed on Council's land contamination register. However, the site already contains a dwelling used for residential purposes and the proposed development only consists of alterations and additions to the second floor of the existing dwelling. The site is considered suitable for the proposed development and a condition is to be placed on the consent for any black slag unearthed during construction to be suitably disposed of at Summerhill Waste Management Centre.

Vegetation Management - Section 5.03

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

Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are no known heritage items of Aboriginal significance recorded on the site or within 50m of the site.

Heritage Items - Section 5.05

The site is not a listed heritage item. However, it is located in the vicinity of a heritage item (i.e. Date Palms in Hargrave Street). It is considered that the proposed development will retain the significance of the heritage item. The proposed development is thus considered satisfactory in regard to this section of the NDCP 2012.

Archaeological Management - Section 5.06

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an '*Archaeological Site*'. Moreover, the proposal consists of alterations and additions to the upper level of the existing dwelling and as such will not result in site disturbance.

Landscape Open Space and Visual Amenity - Section 7.02

The proposal is a 'Category 1' development and as such does require a landscaping plan.

Traffic, Parking and Access - Section 7.03

As discussed under Section 3.02.10 of the report, there is a historical deficiency of off-street car parking on the site and in the area. Due to the narrow width of the site, car parking and safe vehicular access is not possible and would require demolishing the existing dwelling on the site. Taking into account the historical car parking deficiency and the constraints of the site, the proposed development is considered acceptable in regard to this section of the NDCP 2012.

Stormwater- Section 7.06

All stormwater from the roof will be connected to the existing house drains that run to the street. The proposed development consists of minor additions and alterations to the existing dwelling that do not substantially alter the impervious footprint, and as such does not require additional stormwater management measures. Furthermore, stormwater management can be addressed by way of conditions of consent, which have been included in the Draft Schedule of Conditions (refer **Attachment B**). The proposed development is therefore considered satisfactory in regard to this section of the NDCP 2012.

Waste Management - Section 7.08

Demolition and waste management during construction can be addressed by way of conditions of consent and have been included in the Draft Schedule of Conditions (refer **Attachment B**).

Adequate and screened bin storage for three residential waste bins is retained. The dwelling also maintains adequate site frontage to utilise CN's public collection service. The proposed development is therefore considered satisfactory in regard to this section of the NDCP 2012.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposal is exempt from incurring a levy, as detailed in CN's Development Contributions Plans.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and NDCP 2012 considerations. The proposed development will not result in any undue adverse impact on the natural or built environment. The development is located within a site suitably zoned for residential development and of a size able to cater for such development. The proposed development is compatible with the existing character, bulk, scale and massing of the existing built form in the immediate area. The proposal will not have any negative social or economic impacts.

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

5.7 The suitability of the site for the development

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

The site is located in an established residential area with good connectivity to a range of services and facilities. The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

The site is located on flood prone land. The proposed development consists of alterations and additions to the upper level only and will therefore not result in any changes to the flood risk or the flood behaviour on the site.

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

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

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

5.9 The public interest

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

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

The proposed development is satisfactory having regard to the principles of ecologically sustainable development. Moreover, the proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact the natural environment.

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

6.0 CONCLUSION

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

ATTACHMENTS

- Item 20 - Attachment A:** Submitted Plans – 4 Garrett Street, Carrington
- Item 20 - Attachment B:** Draft Schedule of Conditions - 4 Garrett Street, Carrington
- Item 20 - Attachment C:** Processing Chronology - 4 Garrett Street, Carrington

Item 20 Attachments A - C distributed under separate cover

ITEM-21 **DAC 19/10/21 - 16 PARKWAY AVENUE, BAR BEACH - DA2021/00294 - DWELLING HOUSE - ALTERATIONS AND ADDITIONS**

APPLICANT: **EJE ARCHITECTURE**
OWNER: **I SMITH & R J DI STEFANO**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

PURPOSE

An application has been received seeking consent for alterations and additions to a dwelling house at 16 Parkway Avenue, Bar Beach.

The submitted application was assigned to Development Officer, Mark McMellon for assessment.

The application is referred to the Development Applications Committee for determination, due to the proposed variation to the Height of Buildings development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (21.35% variation).



Subject Land: 16 Parkway Avenue Bar Beach

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

The amended proposal was publicly notified in accordance with City of Newcastle’s (CN) Public Participation Plan (CPP) and one submission was received in response.

The objectors' concerns include:

- i) Proposed development exceeds building height limits and is out of character with the area and the style of the existing dwelling.
- ii) Heritage concerns – the design of the proposed development does not reflect the style of the existing dwelling and is unsympathetic with the existing streetscape of Parkway Avenue.

- iii) Setbacks – reduction of light due to the bulk and scale of the proposal adjacent to the western side boundary.
- iv) Streetscape - not in character with the existing dwelling and the additional height will impact on the existing streetscape.

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

Issues

- 1) Variation to the Height of Buildings development standard under the NLEP 2012.

Conclusion

The amended 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 (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- C. That DA2021/00294 for alterations and additions to a dwelling at 16 Parkway Avenue Bar Beach be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
- D. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 331 DP 1109745, being a rectangular shaped corner allotment located on the north-western side of Parkway Avenue and Light Street, Bar Beach. The site has a frontage of 18.315m to Parkway Avenue, a depth of 45.720m and a total area of 837.3m². Vehicular access to the site is from Light Street and the site has a gentle cross slope towards the north-west.

The subject property is currently occupied by a rendered brick, two-storey dwelling with tile roof, a detached garage and swimming pool. The general form of development in the locality consists of a mixture of renovated two and three storey dwellings and modern architectural designed dwellings of up to three stories in height.

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to the existing dwelling comprising of the following works:

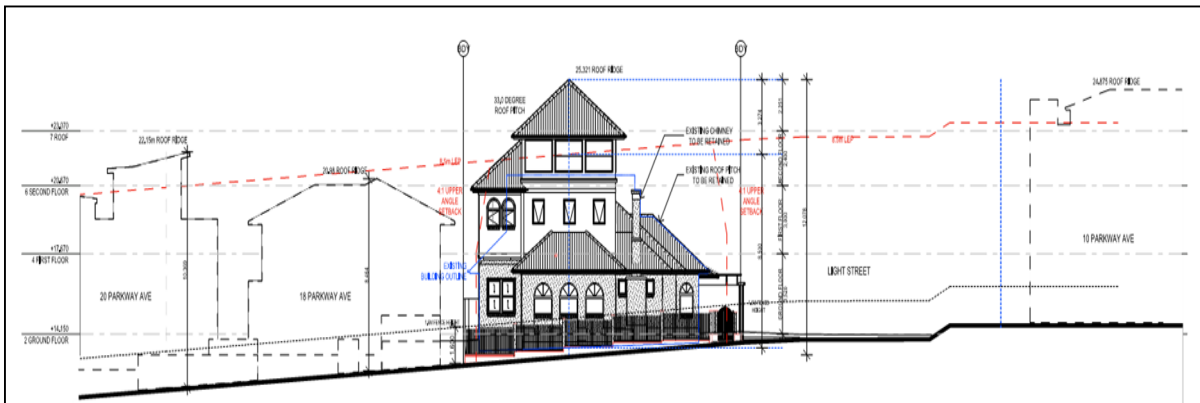
- i) Ground Floor extension at the northern end of the dwelling to include a new kitchen and rebuilt 'solarium' that will be a family living area.
- ii) A guest toilet in the ground floor lobby / front entry.
- iii) A lift servicing all floors in the ground floor hallway.
- iv) A new staircase and remodelled bathroom on the ground floor with an extension to Bedroom 2 that will have sliding doors to an outdoor patio.
- v) The walls of the existing study nook are to be demolished to allow for an open plan dining area connected to the new kitchen and living area.
- vi) Portions of the existing ground floor roof will be retained with a proposed new first floor plan comprising of a master bedroom with walk-in-wardrobe and ensuite, a bedroom, bathroom, study, hallway and new staircase.
- vii) A rooftop terrace is proposed on the second floor, which contains a living area with kitchenette, and an outdoor rooftop garden on the northern side.

- viii) Open fencing along Parkway Avenue and the front part of Light Street. Fencing will consist of garden beds and wrought iron fencing between masonry columns at 1.6metres in height.

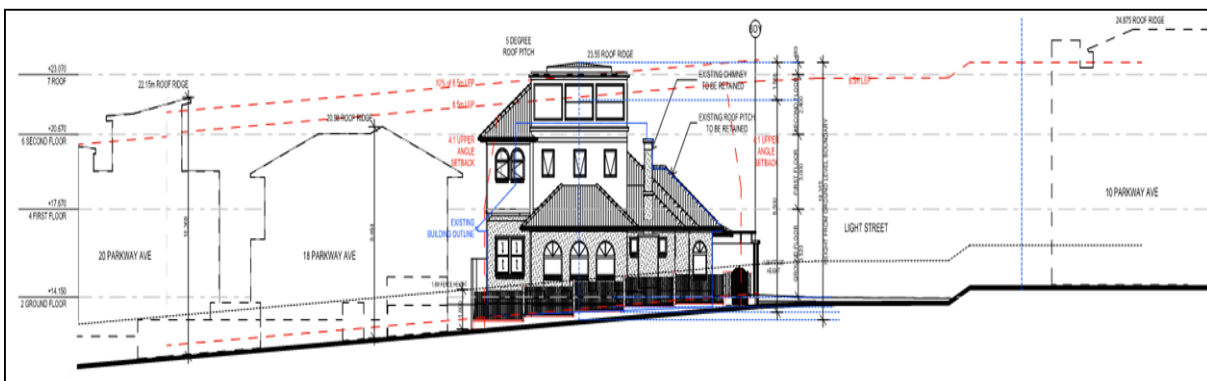
The applicant's original development proposal incorporated a different design incorporating a 33° hipped roof over the top of the proposed upper floor rooftop terrace. This resulted in a maximum height of 12.078m, equating to an exceedance of 3.578m or 42.09% above the Height of buildings development standard.

CN assessing officers did not support the original design as the proposed variation was seen as too excessive and requested that the design be reviewed to better address the NLEP 2012 Height of buildings principal development standard and reduce bulk and scale.

In response to concerns raised by CN assessing officers, the original proposal was amended, replacing the hipped roof over the rooftop terrace with a lower profile, flat roofed design, which can be seen in the diagram below.



Original proposal – South elevation fronting Parkway Avenue



Amended proposal - South elevation fronting Parkway Avenue

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

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

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with CN's Community Participation Plan. One submission was received objecting to the proposal, while three late submissions were received in support.

The current amended plans have also been publicly notified and one submission was received expressing continued concerns regarding the proposal. The concerns raised by the objector in respect of the amended development are summarised as follows:

- i) Building height - concern raised over exceedance to maximum building height prescribed to the site creating an undesirable precedence in the area.
- ii) Heritage concerns – the design of the proposed development does not reflect the style of the existing dwelling and is unsympathetic with the existing streetscape of Parkway Avenue.
- iii) Overshadowing – reduction of light due to the bulk and scale of the proposal adjacent the western side boundary.
- iv) Streetscape - Not in keeping with the character of the existing dwelling and the additional height will impact the character of the existing streetscape.

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 No 55 - Remediation of Land (SEPP 55)

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

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

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

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

The subject site is located within the mapped coastal use zone area. The proposed development is considered to have minimal adverse impact with regard to the general development controls of the Coastal Management SEPP and the specific controls in relation to the coastal use area.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is located within the R2 Low Density Residential zone under the provisions of NLEP 2012, within which zone the proposed development is permissible with CN's consent.

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

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

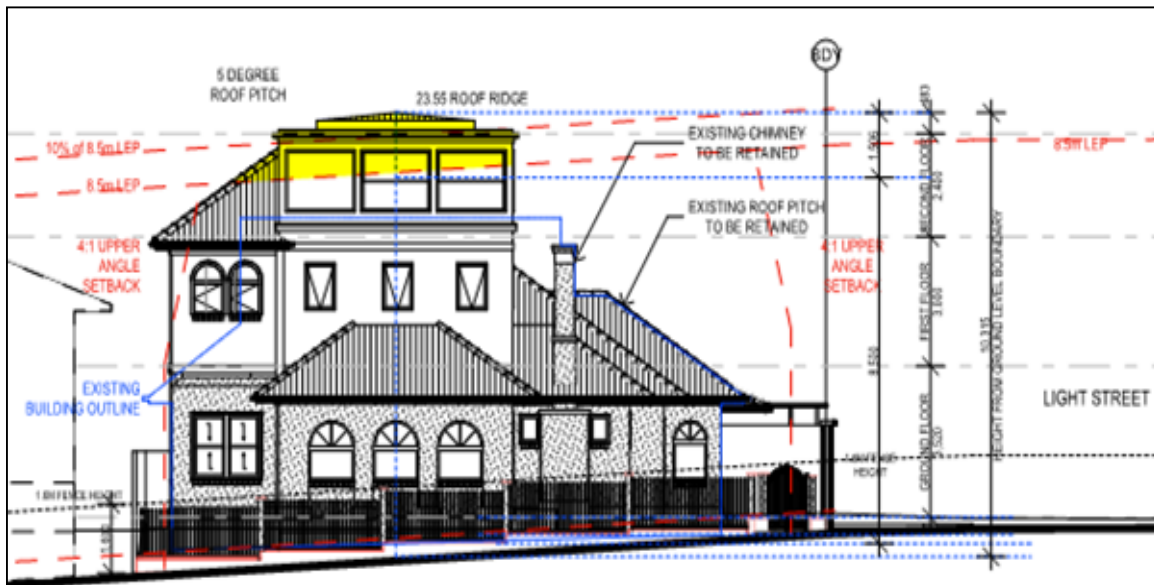
Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a height of buildings development standard of 8.5m.

The proposed development will result in a maximum height of 10.315m, equating to an exceedance of 1.815m or 21.35% above the height of buildings development standard, as depicted below.



Building height exceedance high-lighted in yellow – South elevation

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 0.75:1. The submitted FSR is approximately 0.36:1 and complies with this requirement.

Clause 4.6 - Exceptions to Development Standards

The proposal includes additions to a dwelling that exceeds the maximum height of buildings under Clause 4.3 of the NLEP 2012.

Under the NLEP 2012 the site has a maximum building height of 8.5 metres. The submitted height is approximately 10.315m, equating to an exceedance of 1.815m or 21.35% above the height of buildings development standard for the subject land.

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

The objectives of Clause 4.3 of NLEP 2012 are:

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

In assessing the proposal against the provisions of Clause 4.6, it is noted that:

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

The applicant's request to vary the development standard relating to the Building height development standard makes the following points:

"...Unreasonable or unnecessary

...The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary (see Wehbe v Pittwater Council [2007] NSWLEC 827).

The five ways of establishing that compliance is unreasonable or unnecessary are:

- 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- 3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
- 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; and*

5. *The zoning of the land is unreasonable or inappropriate.*

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (Wehbe v Pittwater Council [2007] NSWLEC 827, Initial Action Pty Limited v Woollahra Municipal Council [2018] NSWLEC 118 at [22] and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [28]) and SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 at [31].

*In this case, it is demonstrated below that Test 1 has been satisfied...
 ...The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

The following table considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (Test 1 under Wehbe).

Objectives of Clause 4.3 of the NLEP 2012	Discussion
<p><i>(a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,</i></p>	<p><i>The subject site is located near the eastern end of Parkway Avenue in a predominately residential/suburban setting.</i></p> <p><i>Parkway Avenue is one of the landmark streets within the Newcastle LGA and contains several significant dwellings scattered along its length.</i></p> <p><i>The existing character of the immediate area is an eclectic mix of architectural styles dating from the early 1920s to more modern present-day styles. The density of the area is also mixed with single dwellings sitting with medium density residential flat buildings of the same era.</i></p> <p><i>The mix of styles and developments also provides for a range of building heights in the locality.</i></p> <p><i>The NLEP 2012 responds to the site's setting by providing an R2 Low Density Residential zone over the subject site and surrounds to promote a diversity of housing forms to help meet the housing needs of the community that respects the amenity and character of surrounding development.</i></p> <p><i>Consistent with the objectives of the R2 zone, the application proposes a new double storey addition designed to reduce of bulk of an otherwise larger addition of a single floor only and to respect existing dwelling form and character. It is noted</i></p>

	<p><i>that the second storey is limited to a roof terrace only.</i></p> <p><i>As indicated above, the overall street character consists of buildings with a range of heights and densities. As such, there are already several neighbouring dwellings exceeding the height limit set for the area, including:</i></p> <ul style="list-style-type: none"> <i>i) 10m roof terrace ridge height of adjoining dwelling at No.10 Parkway Ave</i> <i>ii) 8.9m ridge height of residential flat building at No. 55 Light St.</i> <p><i>Although the second storey roof terrace exceeds the maximum height limit, the new addition sits unimposingly within the neighbouring context. Importantly, the subject site is located on the corner of Parkway Avenue and Light Street. This offers an opportunity to provide for a landmark structure in the context of the neighbourhood, consistent with the character and theme of the 'Garden Suburb'...</i></p>
<p><i>(b) to allow reasonable daylight access to all developments and the public domain.</i></p>	<p><i>Shadow diagrams have been provided as part of the architectural set of plans submitted by EJE Architecture and provided with the DA. These shadow diagrams demonstrate that most of the shadowing occurs within the adjoining public roads. The proposed alterations and additions (including the second storey sought under this variation) have minimal impact on the amenity of the surrounding public domain (being Parkway Avenue and Light Street) and surrounding dwellings in the locality.</i></p> <p><i>There is some minor additional overshadowing upon the dwelling at 10 Parkway Avenue, Bar Beach. However, this additional overshadowing forms within the front yard of the dwelling and does not intrude or affect daylight access to private open space.</i></p> <p><i>It is also acknowledged that the existing Parkway Avenue dwellings cast a significant amount of shade onto the public street network and approval of this development and the variation would add only negligible amounts of shade in the overall</i></p>

	area.
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As demonstrated in Table 1 above, the objectives of the height of buildings development standard are achieved notwithstanding the proposed variation.

*Therefore, in accordance with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], compliance with the height of buildings development standard is demonstrated to be unreasonable or unnecessary in this instance and the requirements of Clause 4.6(3)(a) have been met on this way alone.*

In addition, the applicant has also sought to demonstrate that there are sufficient environmental planning grounds to justify contravening the height of buildings standard, as required by Clause 4.6(3)(b) of the NLEP 2012.

The grounds from the applicant's justification that the assessing officer deemed relevant in this assessment included:

- i) topography of the site,
- ii) design considerations,
- iii) adjoining development heights,
- iv) amenity impacts and
- v) impact on nearby heritage items.

The applicant's Clause 4.6 request to vary the height of building Development Standard is appended at **Attachment B**.

CN Assessment of NLEP Clause 4.6 request

The proposal does not comply with the height of building standard prescribed by Clause 4.3 of the NLEP 2012. Having evaluated the likely affects arising from this non-compliance, it is considered that the objectives of Clause 4.6 of the NLEP 2012 are satisfied as the breach to the maximum building height does not create any adverse environmental planning impacts.

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

- a) It adequately addresses the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012.

- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the height of buildings development standard, as required by Clause 4.6(4)(b) of the NLEP 2012, is assumed, as per Department of Planning circular PS 20-002 of 05 May 2020.
- d) Although the proposed development exceeds the numerical maximum building height by 1.815m, it has been suitably demonstrated by the applicant that the proposed development will contribute positively towards the desired built form, commensurate with CN's relevant planning provisions. The proposed building height exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing and view loss. The proposed height, bulk and scale of the development is in character with the surrounding locality.
- e) It is considered that the exceedance proposed is an acceptable planning outcome and that strict compliance with the development standard is unreasonable and unnecessary in this case.

The applicant has demonstrated that in this instance the proposed height and scale of development is in character with the host building and surrounding locality. The proposal facilitates the ongoing use of an existing residential site in a single dwelling house capacity, providing for the housing needs of the community within a low density residential environment whilst suitably respecting the amenity, heritage and character of surrounding development and the quality of the environment, in accordance with the relevant R2 zone objectives.

The proposal also provides for an improvement to the functionality, liveability and amenity for building occupants, consistent with current expectations.

Further, it is considered the Clause 4.6 variation request is well founded. The request for the maximum building height to exceed 8.5m is supported.

Clause 5.10 - Heritage Conservation

Under the NLEP 2012, the subject property is not listed as a heritage item nor is it located within a Heritage Conservation Area. It is noted that, pursuant to subclause 5.10(2), the proposed development is not listed as development for which consent is required under Clause 5.10.

Four locally listed heritage items exist in the vicinity of the proposed development:

- i) 17 Parkway Avenue Bar Beach - Parkhurst Flats, (Item No. I30)
- ii) 23 Parkway Avenue Bar Beach - Residential Units, (Item No. I31)

- iii) Parkway Avenue, (Item No. I704)
- iv) 10 Parkway Avenue Bar Beach – Residence (demolished) (Item No. I29) as indicated in Schedule 5 of the NLEP 2012.

It is not considered necessary to require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage items. It is considered that the proposed development is designed and located in such a way that the heritage significance of the heritage items will be conserved and will not adversely impact upon the heritage items in the locality or the established streetscape.

Clause 6.1 – Acid Sulfate Soils

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

Clause 6.2 - Earthworks

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

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

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

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

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

The proposed development includes a Clause 4.6 variation request. As discussed above under Clause 4.6 of the NLEP 2012 of this report, the proposal achieves the objectives of the R2 Low Density Residential zone and the objectives of Clauses 4.3 (height) notwithstanding noncompliance.

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Single Dwellings and Ancillary Development - Section 3.02

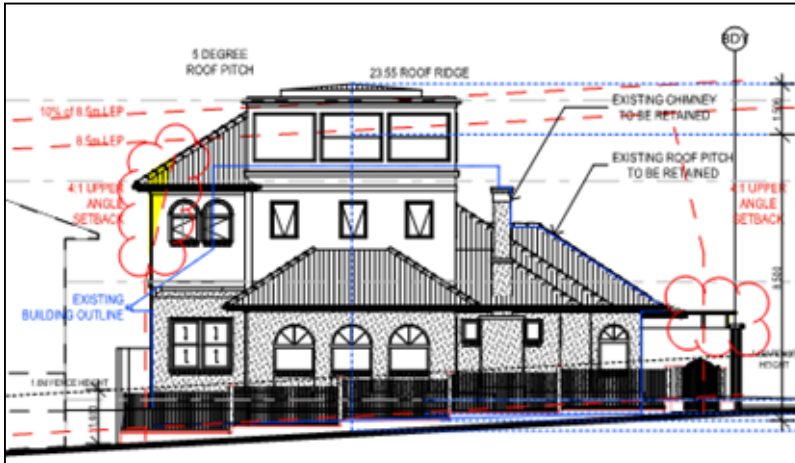
The following comments are made concerning the proposed development and the relevant provisions of Section 3.02.

Street frontage appearance (3.02.03)

The existing front setback to Parkway Avenue and side setback to Light Street of the existing dwelling will remain unchanged. The proposal includes a new covered outdoor dining area to the south-eastern side of the rear ground floor living area. With the majority of this new roof being setback from the side boundary. A small portion of this covered area extends to the Light Street side boundary, acting as a covered side entry from Light Street. The proposed development is considered satisfactory to the relevant Performance Criteria of this section.

Side / rear setbacks (building envelope) (3.02.04)

The majority of the proposed development is within the building envelope when measured from side boundaries, with the exception of a small section of the upper north-western wall of the proposed first floor, and part of the new outdoor covered area roof which extends to the Light Street side boundary (side covered entry) as depicted below.



Building envelope departure to side boundaries (clouded in red) – South elevation

It is considered the proposal will not adversely impact the streetscape or amenity of the area and that the proposed bulk and scale of the dwelling is similar to other dwellings in the vicinity. Given the orientation of the allotment, it is considered the building envelope departure will not adversely impact adjoining development with respect to overshadowing, view loss or privacy.

The proposal variation is satisfactory in respect of the relevant Performance Criteria of Section 3.02.04 of the NDCP 2012.

Landscaping (3.02.05)

The proposed development does not reduce the amount of existing landscaping of the site and will remain unchanged under this application. The proposed development is considered satisfactory in this regard.

Private open space (3.02.06)

Existing private open space is available as required by the acceptable solution criteria of this section. The proposed development is considered satisfactory in this regard.

Privacy (3.02.07)

The main living areas of the dwelling are located on the ground floor, while the first floor contains non-living areas such as bedrooms, bathrooms, and a study. Given the limited use of such rooms, this is not expected to have a significant impact on privacy.

The proposed roof-top terrace / living area, has windows facing Parkway Avenue (south) and Light street (east). There are no windows facing the western adjoining property and any overlooking towards the west from the roof-top terrace will be screened by the roof of the lower first floor, which run parallel to the side boundary and the neighbouring dwelling.

Any outlook towards the north from the roof-top terrace will be over the top of their own backyard and detached garage.

The proposal ensures the dwelling house does not unreasonably overlook living rooms or principal area of private open space of neighbouring dwellings and complies with the NDCP 2012 in terms of maintaining a reasonable standard of visual privacy.

Solar access (3.02.08)

Given the orientation of the subject site and the location of the proposed development, solar access impacts on neighbouring properties are considered satisfactory with regard to this section of the NDCP 2012.

View sharing (3.02.09)

The proposal will not result in any significant additional view impacts. The proposed development is considered satisfactory in this regard.

Car parking and vehicular access (3.02.10)

Vehicular access and on-site carparking is not affected by the proposal. The existing car parking and vehicular access arrangements via Light Street will remain and are considered satisfactory.

Ancillary development (3.02.12)

The existing fence on the north, west, and eastern boundaries will be retained. The proposed 1.6m high front fence, fronting Parkway Avenue and the front portion of Light Street, is proposed to be constructed using wrought iron opened picket panels between masonry columns.

It has been demonstrated by the applicant that the proposed front fence has suitably minimised amenity impacts. It is considered that the proposed front fence will:

- a) complement and harmonise with the streetscape
- b) permit a suitable outlook from the dwelling to the street for safety and surveillance
- c) permit safe vehicular access to the site and adjoining lots.

The proposed front fence is considered satisfactory to the relevant performance criteria of this section of the NDCP 2012.

The proposed development is considered acceptable in relation to the abovementioned NDCP 2012 section and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity.

The development establishes a scale and built form that is appropriate for its location. The proposal provides appropriate presentation to the street with acceptable residential amenity, while maintaining privacy for adjoining neighbours.

Mine Subsidence - Section 4.03

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

Soil Management - Section 5.01

The earthworks proposed as part of this application are minimal and are consistent with the requirements of the NDCP 2012.

The proposed development is satisfactory with respect to the relevant soil management objectives.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Heritage Items - Section 5.05

Refer to previous discussion within Part 5.1 of this report. It is considered that the proposed development will not adversely impact upon the heritage items in the locality or the established streetscape.

The proposed development is considered satisfactory having regard to this section.

Traffic, Parking and Access - Section 7.03

The proposal is acceptable having regard to this section as there are no changes to the current parking and access arrangements.

Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

Stormwater from the proposed roof areas will be connected to the existing gutters and downpipes and will be disposed of to the existing drainage system piped to CN's kerb gutter fronting the property.

The proposed development is satisfactory in accordance with the relevant aims and objectives of this section. Appropriate conditions relating to stormwater and any works within CN's road reserve will be included in recommended conditions in any development consent to be issued.

Waste Management - Section 7.08

Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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

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

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

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

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

5.7 The suitability of the site for the development

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

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

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

The application was notified in accordance with CN's Community Consultation Plan. One submission was received during the notification period. In addition, three late submissions by way of support for the proposal were lodged after the notification closing date.

The amended proposal received a further submission by way of objection from the original objector.

The key issues raised within the submissions have been discussed previously in this report.

CITY OF NEWCASTLE

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

Issue	Comment
<p>Non-compliance with NLEP 2012 Building height limit will create a precedence that is out of character with the existing streetscape of the area.</p>	<p>Refer to previous discussion within Part 5.1 of this report.</p> <p>There are a number of dwellings within the area of Parkway Avenue, Bar Beach Avenue and Memorial Drive in Bar Beach of a similar bulk and scale to the proposal and that exceed the NLEP 2012 maximum building height of 8.5m.</p> <p>The applicant has sought to justify the departure by way of a Clause 4.6 Application to vary a Development Standard.</p> <p>Having regard to the relevant objectives of Clause 4.3 of the NLEP 2012, exceedance with the acceptable planning outcome has been justified in this instance and strict compliance with the development standard is unreasonable and unnecessary in this case.</p>
<p>Heritage concerns – the design of the proposed development does not reflect the style of the existing dwelling and is unsympathetic with the existing streetscape of Parkway Avenue.</p>	<p>Refer to previous discussion within Part 5.1 of this report.</p> <p>The proposed development is not located in a Heritage Conservation Area and is not a listed Heritage Item under NLEP 2012.</p> <p>It is considered that the proposed development will not adversely impact upon the heritage items in the locality or the established streetscape.</p>
<p>Overshadowing – reduction of light due to the bulk and scale of the proposal adjacent the western side boundary.</p>	<p>Refer to previous discussion within Section 5.3 of this report.</p> <p>Given the orientation of the site and the location of the proposed development, solar access impacts on neighbouring properties are considered satisfactory and in accordance with the acceptable solution criteria of the NDCP 2012.</p>
<p>Streetscape - Not in keeping with the</p>	<p>Refer to previous discussion within Part 5.1 of this report.</p>

<p>character of the existing dwelling and the additional height will impact the character of the existing streetscape.</p>	<p>There are a number of dwellings within the area of Parkway Avenue, Bar Beach Avenue and Memorial Drive in Bar Beach that of a similar bulk and scale to the proposal and that exceed the NLEP 2012 maximum building height of 8.5m.</p> <p>The subject application has been assessed on its merits against the relevant planning provisions and is considered to be an acceptable planning outcome for the site and locality.</p>
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5.9 The public interest

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

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

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

6.0 CONCLUSION

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

ATTACHMENTS

Item 21 - Attachment A: Submitted Plans – 16 Parkway Avenue, Bar Beach.

Item 21 - Attachment B: Applicant's Clause 4.6 request to vary the height of building Development Standard – 16 Parkway Avenue, Bar Beach.

Item 21 - Attachment C: Draft Schedule of Conditions – 16 Parkway Avenue, Bar Beach.

Item 21 - Attachment D: Processing Chronology – 16 Parkway Avenue, Bar Beach.

Item 21 Attachments A - D distributed under separate cover