

# Development Application Committee Meeting



**DATE:** Tuesday, 05 December 2023

**TIME:** 6:00pm

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

28 November 2023

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**City of Newcastle**  
PO Box 489, Newcastle NSW 2300  
Phone 4974 2000  
[newcastle.nsw.gov.au](http://newcastle.nsw.gov.au)

## Agenda

- 1. ATTENDANCE**
- 2. ACKNOWLEDGEMENT OF COUNTRY**
- 3. PRAYER**
- 4. APOLOGIES / LEAVE OF ABSENCE / REQUEST TO ATTEND BY AUDIOVISUAL LINK**
- 5. DISCLOSURES OF INTEREST**
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  - 7.2. 2/29 AND 3/31 HONEYSUCKLE DRIVE NEWCASTLE - FOOD AND DRINK PREMISES - CHANGE OF USE INCLUDING FIT OUT AND SIGNAGE - DA2023/00243..... 51
  - 7.3. 775 HUNTER STREET NEWCASTLE WEST - COMMERCIAL PREMISES - INCLUDING DEMOLITION OF EXISTING STRUCTURES, GROUND FLOOR COMMERCIAL/RETAIL TENANCY, SECURE GROUND FLOOR END OF TRIP FACILITIES AND 6 LEVEL COMMERCIAL/OFFICE PREMISES- DA2022/00923..... 85

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

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

### **6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 21 NOVEMBER 2023**

#### **RECOMMENDATION**

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

#### **ATTACHMENTS**

**Attachment A:** 231121 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](http://www.newcastle.nsw.gov.au)*

## Minutes

### Development Application Committee Meeting



Council Chamber, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West, Tuesday, 21 November 2023 at 6:03pm.

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#### 1. ATTENDANCE

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

J Bath (Chief Executive Officer), D Clarke (Executive Director Corporate Services and CFO), A Jones (Executive Director Creative and Community Services), C Thomson (Executive Director City Infrastructure), M Bisson (Executive Director Planning and Environment), E Kolatchew (Executive Manager Legal and Governance), S Moore (Executive Manager Finance, Property and Performance), P Emmett (City Wide Development Assessment Manager), R Dudgeon (Executive Manager Project Management Office), A Ryan (City Significant and Strategic Planning Manager), K Sullivan (Councillor Services/Minutes/Meetings Support), J Knight (Councillor Services/Meetings Support), A Poule-Font (AV/Information Technology Support) and R Williams (Information Technology Support)

#### 2. ACKNOWLEDGEMENT OF COUNTRY

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

#### 3. PRAYER

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

#### 4. APOLOGIES / LEAVE OF ABSENCE / REQUEST TO ATTEND BY AUDIO VISUAL LINK

##### MOTION

Moved by Cr Barrie, seconded by Cr Richardson

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

**Carried  
unanimously**

Nil apologies.

## **5. DISCLOSURES OF INTEREST**

### **Councillor Winney-Baartz**

Councillor Winney-Baartz declared a significant, non-pecuniary interest in Item 7.4 - 61 Grinsell Street, Kotara - Sec 4.55(1a) Modification to DA2021/00662 - Dwelling House including secondary dwelling, ancillary structures (pool and retaining walls) and demolition of existing structures - changes to design - MA2022/00336, stating that she was a close friend of the owner of the property and would leave the Chamber for discussion on the item.

### **Councillor McCabe**

Councillor McCabe declared a non-significant, non-pecuniary interest in Item 7.4 - 61 Grinsell Street, Kotara - Sec 4.55(1a) Modification to DA2021/00662 - Dwelling House including secondary dwelling, ancillary structures (pool and retaining walls) and demolition of existing structures - changes to design - MA2022/00336, stating that she knew James Ryan who provided legal advice for the residents at 63 Grinsell Street, Kotara and would manage the conflict by remaining in the Chamber for discussion on the item.

### **Councillor Mackenzie**

Councillor Mackenzie declared a non-significant, non-pecuniary interest in Item 7.4 - 61 Grinsell Street, Kotara - Sec 4.55(1a) Modification to DA2021/00662 - Dwelling House including secondary dwelling, ancillary structures (pool and retaining walls) and demolition of existing structures - changes to design - MA2022/00336, stating that the same as Councillor McCabe, he knew James Ryan who had been engaged by one of the opponents to the proposal for legal advice.

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

### **6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 17 OCTOBER 2023**

#### **MOTION**

Moved by Cr McCabe, seconded by Cr Barrie

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

**Carried  
unanimously**

## **7. DEVELOPMENT APPLICATIONS**

### **7.1. 44 YOUNG STREET CARRINGTON - DWELLING HOUSE - ALTERATIONS AND ADDITIONS - DA2023/00450**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr McCabe

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density zone in which the development is proposed to be carried out; and
- B. That DA2023/00450 for Dwelling house - alterations and additions at 44 Young Street Carrington be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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

**Against the Motion:** Nil.

**Carried**

**7.2. 134 KING STREET NEWCASTLE - PARTIAL DEMOLITION AND  
REFURBISHMENT OF AN EXISTING COMMERCIAL BUILDING,  
INCLUDING TWO ADDITIONAL LEVELS - DA2023/00082**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Adamczyk

- A That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.3 Height of buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the MU1 Mixed Use zone in which the development is proposed to be carried out; and
- B That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the MU1 Mixed Use zone in which the development is proposed to be carried out; and
- C That DA2023/00082 for alteration and additions, including two additional floors of commercial floor space to the existing building at 134 King Street, Newcastle be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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

**Against the Motion:** Nil.

**Carried**

**7.3. 52 HICKSON STREET MEREWETHER - DWELLING HOUSE - ALTERATIONS, ADDITIONS AND ANCILLARY STRUCTURE (SOLAR ENERGY SYSTEM) - DA2023/00569**

**MOTION**

Moved by Cr McCabe, seconded by Cr Winney-Baartz

- A. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2023/00569 for alterations and additions at 52 Hickson Street, Merewether, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

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

**Against the Motion:** Nil.

**Carried**

**7.4. 61 GRINSELL STREET KOTARA - SEC 4.55(1A) MODIFICATION TO DA2021/00662 - DWELLING HOUSE INCLUDING SECONDARY DWELLING, ANCILLARY STRUCTURES (POOL AND RETAINING WALLS) AND DEMOLITION OF EXISTING STRUCTURES - CHANGES TO DESIGN - MA2022/00336**

Councillor Winney-Baartz left the Chamber for discussion on the item.

**MOTION**

Moved by Cr Barrie, seconded by Cr McCabe

- A. That MA2022/00336 for Section 4.55(1A) modification to DA2021/00662 – Dwelling house – including secondary dwelling, ancillary structures (pool and retaining walls) and demolition of existing structures at 61 Grinsell Street Kotara

be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and

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

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Clausen, Duncan, McCabe, Pull, Richardson and Wood.

**Against the Motion:** Councillors Church, Mackenzie and Wark.

**Carried**

Councillor Winney-Baartz did not return to the Chamber prior to the meeting being closed.

**The meeting concluded at 6.39pm.**



## 7. DEVELOPMENT APPLICATIONS

### 7.1. 28 DENISON STREET NEWCASTLE WEST - CONCEPT DEVELOPMENT APPLICATION - CO LIVING HOUSING COMPRISING 51 ROOMS AND COMMUNITY ARTIST SPACE - DA2023/00119

**APPLICANT:** GOOD LIVING NEWCASTLE PTY LTD  
**OWNER:** PROPRIETORS OF STRATA PLAN 22981  
**REPORT BY:** PLANNING & ENVIRONMENT  
**CONTACT:** EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT /  
ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT  
& REGULATION

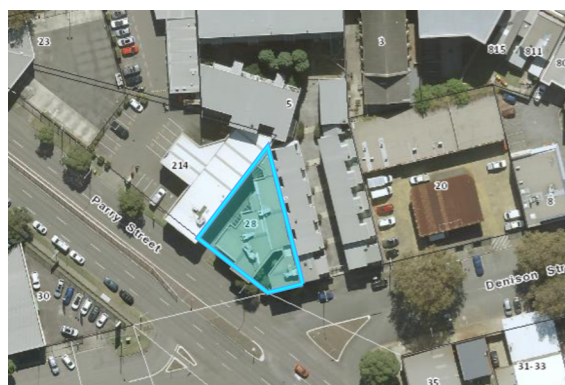
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## PART I

### PURPOSE

A concept application has been received seeking consent for the demolition of an existing building and the erection of a 12-storey co-living development comprising 51 rooms (including 3 accessible rooms) and dedicated community artist space at 28 Denison Street, Newcastle West. The cost of the future works proposed under the concept application is \$18,208,881.

The concept application (DA2023/00119) has been submitted pursuant to Division 4.4 'Concept Development Applications' of the Environmental Planning and Assessment Act 1979 (EP&A Act), and as such the application merely sets out the concept proposal for the development site and a subsequent development application will be required to be lodged for the detailed physical development works.



**Subject Land: 28 Denison Street Newcastle West**

Any subsequent development application would be required to be consistent with the subject concept application and would be subject to a further detailed planning assessment including review by the Urban Design Review Panel (UDRP).

The concept application has been designed in accordance with Part 3 'Co-living housing' of State Environmental Planning Policy (Housing) 2021.

The submitted concept application was assigned to Principal Development Officer (Planning), William Toose, for assessment.

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

- 1) The estimated value of the proposed development (\$18,208,881) exceeds the staff delegation limit of \$10M.
- 2) The proposed variation to the Minimum Lot Size (MLS) development standard of State Environmental Planning Policy Housing 2021(SEPP Housing) being more than a 10% variation.

The concept application also results in a 9.42% variation to the applicable Floor Space Ratio development standard.

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

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

The concept application has been amended several times during the assessment process, resulting in a reduced building height from 47.3m to 38.25m and a reduction in co-living room numbers from 72 to 51 rooms.

### Issues

- 1) The proposed development has a FSR of 3.6:1 and does not comply with the prescribed FSR of 3.3:1 (i.e., 3:1 under clause 7.10A of NLEP 2012 in addition to a 10% bonus) granted under clause 68(2)(ii) SEPP (Housing). The variation is 181m<sup>2</sup>, or a 9.42% variation to the floor space ratio development standard as prescribed at cl.7.10A NLEP2012 and applicable bonus under cl.68(2)(ii) SEPP (Housing).
- 2) The subject site has an area of 582m<sup>2</sup> and does not comply with the minimum lot size of 800m<sup>2</sup> for co-living development under clause 69(1)(b)(ii) SEPP (Housing). The variation is 218m<sup>2</sup>, or a 27.25% to the minimum lot size development standard.

### Conclusion

The concept proposal for the demolition of existing structures and erection of a 12-storey co-living development comprising 51 co-living rooms and community artist space 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 DAC note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the FSR development standard at Clause 7.10A and bonus at cl.68(2)(ii) SEPP (Housing) 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 MU1 Mixed Use zone in which the development is proposed to be carried out; and
- B. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the minimum lot size development standard at under clause 69(1)(b)(ii) SEPP (Housing), and considers the objection to be justified in the circumstances and to be consistent with the objectives for development within the MU1 Mixed Use zone in which the development is proposed to be carried out; and
- C. That concept proposal DA2023/00119 for the erection of a 12-storey co-living development comprising 51 co-living rooms and community artist space at 28 Denison 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**.

## Political Donation / Gift Declaration

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE AND APPLICATION HISTORY

#### 1.1 Site details

The subject site is located on the northern side of Parry Street within close proximity to several key sites including the 'Gateway 1' and 'Gateway 2' office buildings to the south-east, the 'Store Development', Newcastle Interchange and state government office buildings to the north-east. Adjoining the site to the north-west is a 2-storey commercial building with at-grade parking, currently occupied by 'Bob Jane T-Marts'.

Adjoining the site to the north and east is a 2-3 storey multi-dwelling strata housing development fronting Denison Street directly adjoins the site to the east. This development extends to the north of the site with a frontage to Tudor Street.

The surrounding development is varied in terms of built form and character and includes older 1 and 2 storey commercial buildings of varying ages, 2-4 storey residential development, as well as newer multi storey commercial, residential, and mixed developments.

Marketown Shopping Centre and multiple businesses, restaurants and services along King Street and Hunter Street are all within walking distance of the site. The Newcastle Transport Interchange is located approximately 350m walking distance to the south-east of the site. Numerous bus routes provide frequent services along King Street, Hunter Street and Tudor Street. The closest bus stop is on Parry Street, approximately 140m walking distance from the site.

## **1.2 Relevant development history**

On 5 November 2021, a Pre-Development Application (PR2021/00091) meeting was held with CN staff to seek preliminary comments on the proposal. The architectural design was amended in response to the minutes from that meeting. On 1 June 2022, a further Pre-Development Application (PR2022/00053) meeting was held with CN staff.

During the assessment process, the development application was formally referred to the UDRP on four separate occasions, at meetings held on 29 June 2022; 6 April 2023, 3 August 2023, and 30 August 2023.

The architectural design and supporting documentation were amended in response to the minutes from the UDRP meetings held on 29 June 2022; 6 April 2023, and 3 August 2023. The current amended architectural drawings and the changes made in response to the UDRP comments were discussed at the final meeting of the UDRP held 30 August 2023.

The UDRP reviewed the development proposal for a fifth time via electronic referral. As such, the development application has now satisfied the UDRP advice and is considered an appropriate design response. The concept proposal achieves design excellence, subject to design amendments that have been adopted into the current design submitted as part of this application. Further, suitable conditions of consent have been included in the recommended conditions of consent.

## 2.0 THE PROPOSAL - CONCEPT DEVELOPMENT S.4.22 EP&A ACT

The subject development application is a 'concept development application' submitted in accordance with s.4.22 of the EP&A Act.

For the purposes of the Act a 'concept development application' is defined by subclause 4.22(1) EP&A Act as:

*"a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications."*

The concept development application seeks consent only for building envelopes and height, indicative land use mix and floor space allocation, but does not seek consent for any physical works. Approval for the construction of a future development in accordance with the concept plan will be subject to a subsequent separate development application and a detailed assessment report.

Any future development application lodged for the physical works, or construction will be reviewed by CN's Urban Design Review Panel (UDRP) during the assessment process.

The concept proposal has been designed in accordance with Part 3 'Co-living housing' of SEPP (Housing). The proposal as amended, involves the demolition of existing development within the site and the erection of a 12-storey development comprising 51 co-living rooms (including 3 accessible rooms) supported by vehicular parking, and indoor and outdoor communal space, as well as a dedicated community artist space.

The concept proposal has been assessed by CN's UDRP on several occasions during the assessment process, resulting in an overall reduction in building height from 47.3m to 38.25m, which complies with the development standard. The Floor Space Ratio (FSR) development standard is exceeded; however, this variation has been assessed and is considered acceptable in the context of adjoining and potential future developments within the area (as detailed later in this report).

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

## 3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Participation Plan (CPP). No submissions were received as a result of the notification process.

## 4.0 INTEGRATED DEVELOPMENT

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

## 5.0 PLANNING ASSESSMENT

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

### 5.1 Provisions of any environmental planning instrument

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

##### Chapter 4: Remediation of Land

The provisions of Chapter 4 of SEPP R&H have been considered in the assessment of the development application. Section 4.6 requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The site is currently developed by buildings and hardstand area. A desktop evaluation of the site, including a review of the EPA Contaminated Lands Register, did not identify any historical activities or notified sites likely to have resulted in soil or groundwater contamination. Furthermore, CN's records do not identify any past contaminating activities on the site.

Notwithstanding the above, a Preliminary Site Investigation (PSI) will be required to be carried out in accordance with the '*Guidelines for Consultants Reporting on Contaminated Sites*' as part of any future detailed Development Application, following demolition of existing development on site.

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

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

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

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

A loading zone with vehicular access is proposed from Parry Street, which is a classified regional road. Under the T&ISEPP:

*'The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*

- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*

- (i) the design of the vehicular access to the land, or*
  - (ii) the emission of smoke or dust from the development, or*
  - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.'*

Written advice from Transport for New South Wales (TfNSW), as the manager of the classified road, was received dated 08 August 2023 and which provided concurrence to the proposed loading zone and vehicular access from Parry Street. The proposal is acceptable having regard to the provisions of the T&I SEPP.

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

*State Environmental Planning Policy (Housing) 2021* (SEPP (Housing)) includes provisions relevant to 'co-living housing', under Part 3 of Chapter 3 'Diverse housing'.

Clause 67 within Part 3 provides that development for the purpose of co-living housing may be carried out with consent on land in a zone in which development for the purposes of residential flat buildings or shop top housing is permitted under another environmental planning instrument. Development for the purposes of residential flat buildings is permitted with consent within the MU1 Mixed use zone within which the subject site is located. Therefore, clause 67 allows co-living housing development to be carried out on the subject site with consent.

Clause 68 within Part 3 provides “non-discretionary development standards” that are applicable to development for the purposes of co-living housing. The consent authority may not impose a more onerous standard than those standards or take those standards into further consideration if those standards are complied with.

An assessment of the concept application against the applicable standards identified in subclause 68(2) SEPP (Housing) has been set out below:

#### **Clause 68 - Non-discretionary development standards**

##### **Floor space ratio**

*“for development in a zone in which residential flat buildings are permitted – a floor space ratio that is not more than –*

- (i) the maximum permissible floor space ratio for residential accommodation on the land, and*
- (ii) an additional 10 percent of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing,”*

Residential flat buildings are permitted within the MU1 Mixed Use zone. As the site is subject to an FSR of 3:1 under the NLEP, the proposal would benefit from a 10% FSR bonus, increasing the maximum FSR to 3.3:1.

<b>Development Component</b>	<b>Gross Floor Area (GFA)</b>
Residential	1,992.5m <sup>2</sup>
Manager's Office	22.5m <sup>2</sup>
Community Art Space	86m <sup>2</sup>
<b>Total:</b>	<b>2,101m<sup>2</sup></b>

The proposal results in non-compliance, with an FSR of 3.6:1. A clause 4.6 variation request to vary the NLEP development standard has been submitted.

#### Communal living area (more than 6 private rooms)

- (b) *for co-living housing containing more than 6 private rooms –*
- (i) *a total of at least 30 square metres of communal living area plus at least a further 2 square metres for each private room in excess of 6 private rooms, and*
  - (ii) *minimum dimensions of 3m for each communal living area,”*

The proposal includes 51 co-living rooms and therefore requires a communal living area of at least 118m<sup>2</sup>. The proposal includes 158m<sup>2</sup> of communal living area. The proposed communal living area complies with subclause (c), noting also that it is accessible by lift to all the proposed co-living rooms.

#### Communal open spaces

- (c) *communal open spaces –*
- (i) *with a total area of at least 20 percent of the site area, and*
  - (ii) *each with minimum dimensions of 3 metres,*

The proposed co-living development occupies a site area of 582m<sup>2</sup> and therefore requires 116m<sup>2</sup> of communal open space. The proposal provides an outdoor terrace on Level 2 measuring 160m<sup>2</sup> and a rooftop communal area of 185m<sup>2</sup> equating to 59% of the site area. The proposed outdoor communal area complies with subclause (d).

#### Car parking

- (e) *for development on land in an accessible area—0.2 parking spaces for each private room*

The site is approximately 350m walking distance from the Newcastle Interchange (including light rail station and bus stop) and is within an 'accessible area'. Accordingly, 10 car spaces are required.



The proposal provides 9 car spaces and is supplemented by 5 motorbike parking spaces and up to 50 bicycle parking spaces. The deficiency of 1 car parking space can be supported considering the proposed oversupply of bicycle and motorbike parking beyond minimum DCP requirements. A further detailed assessment of car parking is outlined within the DCP discussion of this report below.

### Clause 69 - Standards for co-living housing

Clause 69 within Part 3 prescribes 'standards for co-living housing' that are applicable to the concept development application. An assessment of the concept proposal against the relevant provisions of cl.69 is provided below:

#### Private room floor area:

- (1)(a) *each private room has a floor area, excluding an area, if any, used for private kitchen or bathroom facilities, that is not more than 25 square metres and not less than –*
- (i) *for a private room intended to be used by a single occupant – 12 square metres, or*
  - (ii) *otherwise – 16 square metres, and*

None of the proposed rooms have an area excluding kitchen and bathroom facilities exceeding 25 square metres or less than 16 square metres. The proposed rooms size therefore comply with the minimum sizes.

#### Minimum lot size

- (1)(b) *the minimum lot size for the co-living housing is not less than—*
- (iii) *for development on land in Zone R2 Low Density Residential—600m<sup>2</sup>, or*
  - (iv) *for development on other land—800m<sup>2</sup>, and*

The site is zoned MU1 Mixed use zone and subject to a minimum lot size of 800m<sup>2</sup> for the purpose of co-living housing.

The site has an area of 582m<sup>2</sup>. The proposal results in a variation to the minimum lot size of 218m, equating to a 27.25% exceedance. The applicant has submitted a cl.4.6 variation request in respect to this standard. A detailed assessment has been provided within the discussion under Clause 4.6 Exceptions to Development Standards below.

#### Manager workspace

- (1)(d) *the co-living housing will contain an appropriate workspace for the manager, either within the communal living area or in a separate space, and*

An office space for use by the manager is provided at level 2.

#### Land in a business zone

- (1)(e) *for co-living housing on land in a business zone—no part of the ground floor of the co-living housing that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use, and*

No part of the ground level of the proposed co-living housing that fronts a street will be used for residential purposes. There will be a foyer to the proposed development facing both street frontages, as well as fire stairs and car parking areas. Those uses are not for “residential purposes”. The proposal therefore complies.

#### Bathroom, laundry, and kitchen facilities

- (1)(f) *adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant, and*

The proposal provides private bathroom and kitchen facilities within each boarding room. The proposed development also includes a communal laundry. Each resident will have private balconies which can be used for drying clothes. The proposal therefore complies.

#### Room occupation

- (1)(g) *each private room will be used by no more than 2 occupants, and*

The submitted operational plan of management describes occupancy rules under which the rooms will not be occupied by more than two residents.

#### Bicycle and motorcycle spaces

- (1)(h) *the co-living housing will include adequate bicycle and motorcycle spaces.*

The proposal includes vertical bicycle storage for five motorbike parking spaces and up to 50 bicycle parking spaces. Bicycle and motorcycle parking is adequate for the 51 private rooms.

#### Building Separation

- (2)(b) *if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide, and*

This requirement is applicable because the proposed development has at least 3 storeys. The tower above the podium is setback from the eastern and western

boundaries with no windows or openings. Openings to habitable rooms are not proposed to these elevations.

The positioning of glazing and openings relative to the setbacks will not result in any adverse privacy impacts on existing or potential future development. Design elements such as louvres and opaque glazing will be considered as part of the future detailed application to further address privacy matters, as required. Most balconies and windows within the concept proposal are orientated towards the street frontages.

The proposed setbacks when assessed against the objectives of the ADG are acceptable.

#### Solar access

- (2)(c) *at least 3 hours of direct solar access will be provided between 9am and 3pm at mid- winter in at least 1 communal living area, and*

The proposed communal living room includes north and east facing windows that will ensure that compliance is achieved.

#### Compatibility

- (2)(f) *the design of the building will be compatible with—*
- (i) *the desirable elements of the character of the local area, or*
  - (ii) *for precincts undergoing transition—the desired future character of the precinct.*

The local area ranges from single-storey commercial buildings to city centre towers. The LEP envisages mixed use development from 60m to 90m in height within the visual catchment of the site. The proposed development is compatible with the desirable elements of the locality, having regard to the following:

- i) The modern character of recently approved development in the area.
- ii) The height of the proposed development relative to other recently approved developments
- iii) The design includes architectural elements that break down the scale of the building,
- iv) The conceptual design of the proposed development is compatible with the desired future character of the City's West End precinct, having regard to street wall height, bulk, scale and massing.

It is considered that the proposal is acceptable when assessed under clause 69(2)(f) of SEPP (Housing).

### Clause 70 - No subdivision

Clause 70 provides that no subdivision of co-living housing into separate lots is permitted. As the proposal does not include subdivision the proposal does not contravene this requirement.

### **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 MU1 Mixed Use zone under NLEP 2012.

“Co-living housing” is defined in the NLEP 2012 *Dictionary* as:

*...a building or place that—*

- 1) *has at least 6 private rooms, some or all of which may have private kitchen and bathroom facilities, and*
- 2) *provides occupants with a principal place of residence for at least 3 months, and*
- 3) *has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day, but does not include backpackers' accommodation, a boarding house, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*

As detailed earlier in this report, clause.67 of SEPP (Housing) provides that co-living housing to be carried out with consent on land in which development for the purposes of residential flat buildings or shop top housing is permitted under another environmental planning instrument.

Development for the purposes of residential flat buildings and shop top housing is permitted with consent within the MU1 Mixed Use zone within which the subject site is located. Therefore, co-living housing development is permissible with consent in the MU1 Mixed use zone.

The co-living housing component will contain 51 private rooms, all with private kitchen and bathroom facilities. The development will accommodate residents for at least three months and will have management services provided 24 hours daily.

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

- 1) *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*

- 2) *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- 3) *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- 4) *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- 5) *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

The proposal seeks to introduce co-living housing in a highly accessible CBD location, which will be complemented by dedicated community artist space.

The site's proximity to public transport and a range of services, along with the provision of one bicycle space per room, will help to maximise public transport patronage by future residents and encourage walking and cycling.

The site is in the West End of Newcastle CBD, which is identified in both regional and local planning strategies as the major city centre for the Hunter Valley under the established centres hierarchy. The scale of the development is compatible with surrounding developments in the area and consistent with regional strategies and plans, for higher density buildings around key public transport nodes.

The provision of co-living housing in proximity to Newcastle CBD and other nearby commercial centres will help support these centres, particularly through the creation of an increased customer and employee base.

The proposal does not involve any commercial development that would potentially impact the viability of the Newcastle CBD and other nearby commercial centres.

The application is consistent with objectives of the MU1 Mixed use zone and as consistent with the desired future character of the area.

#### Clause 2.6 - Subdivision—Consent Requirements

The proposed co living housing development is not proposed to be subdivided. Further as detailed within the SEPP (Housing) discussion above subdivision of co-living housing is prohibited.

#### Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 60m. The proposal has been amended during the assessment process with an overall reduction in building height from 47.3m to 38.25m and the concept building height is therefore compliant with the maximum building height.

### Clause 4.4 - Floor Space Ratio

Clause 4.4 of the NLEP 2012 ordinarily prescribes a maximum FSR of 6:1 for the site, however Clause 7.10A of the NLEP 2012 provides additional provisions for certain land under 1,500m<sup>2</sup> in the Newcastle City Centre, which includes the subject site.

Clause 7.10A provides a FSR of 3:1 for the site. In addition, clause. 68(2)(a)(ii) SEPP (Housing) affords an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing. Therefore, the site has an applicable FSR of 3.3:1.

The proposed development has a FSR of 3.6:1 and does not comply with the prescribed FSR of 3.3:1 (i.e., 3:1 under clause 7.10A of NLEP 2012 plus the 10% SEPP Housing bonus), as detailed below.

<b>Development Component</b>	<b>Gross Floor Area (GFA)</b>
Residential	1,992.5m <sup>2</sup>
Manager's Office	22.5m <sup>2</sup>
Community Art Space	86m <sup>2</sup>
Total:	2,101m <sup>2</sup>

The variation is 181m<sup>2</sup> or 9.42% to the applicable development standard. The applicant has submitted a written request in accordance with Clause 4.6 of NLEP 2012 to vary the FSR development standard.

### Clause 4.6 - Exceptions to Development Standards

The proposed development involves two clause 4.6 variation requests:

- i) Minimum Lot Size - Clause 69(1)(b)(ii) - SEPP (Housing)
- ii) Floor space ratio for certain other development Clause 7.10A - NLEP 2012 and 10% bonus under cl. 68(2)(a)(ii) SEPP (Housing).

An assessment of the Applicant's Clause 4.6 Variation Request to the height of building and FSR development standards is provided below.

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

- 1) *The objectives of this clause are as follows:*
  - a) *To provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- 2) *Development consent may, subject to this clause, be granted for development*

*even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

- 3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- 4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - a) *the consent authority is satisfied that:*
    - i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
    - iii) *the concurrence of the Secretary has been obtained.*
- 5) *In deciding whether to grant concurrence, the Secretary must consider:*
  - a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - b) *the public benefit of maintaining the development standard, and*
  - c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

**Clause 4.6 Variation to NLEP Clause 7.10A - Floor space ratio for certain other development & SEPP (Housing) Cl. 68(2)(a)(ii) - 10% Bonus FSR**

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

The development application does not seek to vary any of the development standards excluded from the operation of Clause 4.6 of the NLEP 2012. Accordingly, pursuant

to Clause 4.6 it is open to the Applicant to make a written request seeking to justify the contravention of the building height development standard by demonstrating that compliance with the standard is unreasonable or unnecessary.

Is the standard to be varied a development standard?

The floor space ratio development standard contained in NLEP 2012 and the 10% bonus provision under cl.68(2)(a)(ii) SEPP (Housing) are consistent with the definition of development standards under section 1.4 of EPA Act and not a prohibition.

What are the objectives of the development standard?

The objectives of Clause 4.4 – Floor Space Ratio, which are applicable also to clause.7.10 Floor space ratio for certain other development, are as follows:

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

What is the numeric value of the development standard in the environmental planning instrument?

Under the NLEP 2012, the site has a FSR development standard of 3:1. However due to the application of cl.68(2)(a)(ii) SEPP (Housing) a 10% bonus is applied to the applicable FSR giving the site a maximum FSR of 3.3:1.

What is the proposed numeric value of the development standard in your development application?

The proposed development has an FSR of 3.6:1, which equates to a 9.42% variation to the applicable FSR control applying to the site.

**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?**

As outlined above, in the Land and Environment Court Judgement of *Wehbe vs Pittwater Council* [2007] NSW LEC 827, ('the Wehbe judgement') Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with them may be considered unreasonable or unnecessary.

The submitted Clause 4.6 - Exception to a development standard request to vary the building separation development standard seeks to rely on the first Wehbe



consideration to demonstrate that compliance with the development standard is unreasonable and unnecessary, stating that that the objectives of the development standards are achieved notwithstanding non-compliance.

The Applicant submits that the development is consistent with the objectives of Clause 4.4. under which clause 7.10A operates, for the following reasons:

- i) *It is intended that FSR's throughout the Newcastle City Centre be to a higher density, consistent with urban consolidation objectives. The proposed additional FSR sought for the subject site is consistent with this objective and is specifically appropriate because it allows a built form more consistent with that nearby.*
- ii) *The proposed additional floor space will ensure density, bulk, and scale more consistent with the surrounding locality.*
- iii) *The development is consistent with the standard (floor space ratio) and zone objectives, even with the proposed variation to the maximum FSR;*
- iv) *There are no additional significant adverse impacts arising from the proposed non – compliance;*
- v) *The proposed co-living development with the additional floor space represents an opportunity to make a significant improvement to the public realm and contribution to the revitalisation of the city centre.*
- vi) *The proposed building, in particular with the proposed additional floor space, will contribute to building design excellence appropriate to a regional city by providing a form and density of development that is consistent with the character of the locality*
- vii) *The proposed development including with additional FSR is not inconsistent with this objective.*
- viii) *The proposed additional floor space will ensure density, bulk, and scale more consistent with the surrounding locality".*

Comment:

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

It is considered that requiring compliance with the development standard is unreasonable and unnecessary in this instance and that the proposed variation, as submitted, is in the public interest in terms of the FSR development standard objectives.

Similarly, it is considered that the proposed variation is in the public interest as the applicants Clause 4.6 variation requests have demonstrated that the zone objectives have otherwise been met.

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

The Applicant submits that the proposed variation to the FSR development standard will not adversely and unreasonably affect the amenity of the surrounding sites and the public domain, with regard to the following (as summarised):

- i) *The site's dual frontage to wide road reserves facilitates generous building separation distances between the proposal and adjoining sites. As a result, despite its smaller area which has resulted in the reduced FSR allowance, the site is capable of supporting larger floor plates and an increased density. In contrast, a similar density on a single frontage site with a narrow road reserve would result in a more overbearing development and greater potential amenity impacts. This is a site-specific condition that contributes to the suitability of the site to accommodate the proposed density.*
- ii) *The site is significantly separated from Birdwood Park and nearby heritage items. As such, consistent with important DCP principles for the 'West End Character Area', the proposal will not result in any overshadowing impacts to Birdwood Park, and will not impact on any heritage items or their settings.*
- iii) *The proposed density does not prevent an appropriate built form and landscaping outcome from being provided. The proposal remains well below the maximum building height control applying to the site under the NLEP 2012. The site is also able to accommodate generally compliant setbacks, generous communal open space areas (both indoor and outdoor) that receive excellent solar access, and generally compliant parking, indicating that the proposal is able to fit comfortably within the site and provide an appropriate response to nearby existing, approved and potential future development.*
- iv) *there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. In particular, the proposal does not result any unreasonable overshadowing or privacy impacts to adjoining properties, nor will the proposal result in any significant view loss for existing or future development.*
- v) *The proposal satisfies the underlying principles of SEPP Housing and meets the objectives of the MU1 Mixed Use zone.*

Comment:

The Applicant's written request is considered to satisfy the requirements of Sub-clause 4.6(3)(b). In this respect, it has been assessed and determined that the Applicant's written request has demonstrated that the proposed FSR variation does not result in significant adverse environmental impacts and that there are sufficient environmental planning grounds to justify a contravention to the development standard.

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

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

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

The Applicant's clause 4.6 variation request, as assessed above, has demonstrated that the proposal meets the objectives of clause 4.4 under which the operates.

The concept proposal seeks to promote the economic revitalisation of the City Centre through the redevelopment of a currently underutilised site for high density residential development complemented by a dedicated community artist space. It is anticipated that the proposed co living housing will be predominately occupied by young adults, providing a strong potential employee and customer base for businesses and services in the City Centre.

The proposal promotes residential opportunities in the City Centre through the provision of 51 co-living rooms in a well serviced location, as well as recreational and community opportunities through the provision of community space.

Requiring compliance with the FSR development standard is unreasonable and unnecessary in this instance and that the proposed variation, as submitted, is considered to be in the public interest in terms of the objectives of the Newcastle City Centre under which development standard operates. Similarly, it is considered that the proposed variations are in the public interest as the applicant's clause 4.6 variation requests have demonstrated that the zone objectives have otherwise been met.

The clause 4.6 variation request is accepted on the basis of the first limb Wehbe as discussed above in terms of Clause 4.6(3)(a). The design has responded to the UDRP advice and is considered consistent with the objectives and design guidance provided in the relevant planning controls.

**Conclusion - Variation to Clause 7.10A - Floor space ratio for certain other development & Clause 68(2)(a)(ii) - an additional 10% of the maximum permissible FSR**

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

If made to strictly comply with the applicable FSR, there would be no additional benefit to the streetscape or public domain. Strict compliance with cl. 7.10A NLEP and the 10% bonus applied under cl. 68(2)(a)(ii) SEPP (Housing), and is therefore considered unreasonable and unnecessary.

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

**Clause 4.6 Variation to Clause 69(1)(b)(ii) - Minimum Lot Size (MLS) development standard - SEPP (Housing)**

Is the standard to be varied a development standard?

The Minimum Lot Size (MLS) development standard set out in Clause 69(1)(b)(ii) of SEPP (Housing) is consistent with the definition of development standards under section 1.4 of EPA Act and not a prohibition.

What are the objectives of the development standard?

The current MLS standard contained in Clause 69(1)(b)(ii) was introduced on 1 July 2022. There are no specified objectives of the MLS standard. However, the standards prescribed by cl.69 SEPP (Housing) relate to the overall amenity of co-living developments and the suitability of land for the proposed form of housing.

The proposed development fits comfortably on the site, responds appropriately to surrounding built form and meets the relevant objectives of the site's MU1 Mixed Use zoning.

What is the numeric value of the development standard in the environmental planning instrument?

The current MLS standard contained in Clause 69(1)(b)(ii) provides that the minimum lot size for the co-living housing is not less than—

- i) for development on land in Zone R2 Low Density Residential—600m<sup>2</sup>, or

- ii) *for development on other land - 800m<sup>2</sup>*

What is the proposed numeric value of the development standard in your development application?

The site area is 582m<sup>2</sup> equating to a variation of 218m<sup>2</sup> or 27.25% to the standard prescribed under cl.69(1)(b)(ii) SEPP (Housing).

**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?**

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case.

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

It is acknowledged that there no objectives underpinning the MLS standard, however there are considered to be other contributing factors which demonstrate that the subject site is suitable for the proposed form of housing.

The Applicant submits that requiring strict compliance with the standard is unreasonable, or unnecessary because:

- i) *The underlying objective or purpose of the MLS standard is not apparent, and therefore is not relevant to the development with the consequence that compliance is unnecessary;*
- ii) *The development is consistent with the zone objectives, even with the proposed variation; and*
- iii) *There are no additional significant adverse impacts arising from the proposed non-compliance.*

Comment:

The Applicant's written request is considered to satisfy the requirements of Sub-clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, particularly in the absence of any objectives of the development standard.

It is considered that requiring compliance with the development standard is unreasonable and unnecessary in this instance and that the proposed variation, as

submitted, is in the public interest in terms of the MLS development standard.

Similarly, it is considered that the proposed variation is in the public interest as the applicants Clause 4.6 variation requests have demonstrated that the zone objectives have otherwise been met.

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

The Applicant submits that the proposed variation to the MLS development standard will not adversely and unreasonably affect the amenity of the surrounding sites and the public domain, with regard to the following (as summarised):

*The standard does not make any distinction between different locations, orientation or configuration of a site. In the absence of any clear objectives, there are considered to be other contributing factors which indicate that the subject site is suitable for the proposed form of housing. These include:*

- i) Despite a smaller site area which has resulted in the reduced FSR allowance, the site is capable of supporting appropriate setbacks. In contrast, a similar density on a single frontage site with a narrow road reserve would result in a more overbearing development and greater potential amenity impacts. This is a site-specific condition that contributes to the suitability of the site to accommodate the proposal.*
- ii) The site is within a CBD location and is not constrained by any major environmental constraints (such as significant vegetation, steep topography, bushfire/APZs) that may require a larger site area to support the proposed development.*
- iii) The site area does not prevent an appropriate built form and landscaping from being provided. The proposal remains well below the maximum building height control applying to the site under the NLEP 2012. The site is also able to accommodate generally compliant setbacks, generous communal open space areas (both indoor and outdoor) that receive excellent solar access, and generally compliant parking, indicating that the proposal is able to fit comfortably within the site and provides an appropriate response to nearby existing, approved and potential future development.*
- iv) The social benefits of providing housing stock for 40 individuals (including people with a disability) that is supported by high-amenity indoor and outdoor communal space, and within a highly sought after location, should be given weight in the consideration of the variation request. The proposal also contains dedicated community artist space located on level 1 which provides a direct benefit to the community as well as activation to the street. Insistence on compliance with the MLS control would result in the development not being undertaken on this well-located site.*

- v) *It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. In particular, the proposal does not result in any unreasonable overshadowing or privacy impacts to adjoining properties, nor will the proposal result in any significant view loss for existing or future development.*
  
- vi) *The proposed development achieves the objects provided in Section 1.3 of the EP&A Act, specifically:*
  - a) *The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential accommodation (1.3(c));*
  
  - b) *To promote the delivery and maintenance of affordable housing (1.3(d));*
  
  - c) *The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).*

It is considered that the proposed development fits comfortably on the site, responds appropriately to surrounding built form and meets the relevant objectives of the MU1 Mixed Use zone.

Comment:

The Applicant's written request is considered to satisfy the requirements of Sub-clause 4.6(3)(b). In this respect, it has been assessed and determined that the Applicant's written request has demonstrated that the proposed MLS variation does not result in significant adverse environmental impacts and that there are sufficient environmental planning grounds to justify a contravention to the development standard.

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

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

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

The consent authority must be satisfied when assessing a Clause 4.6 variation, that the proposed development, and its associated Clause 4.6 variation are in the public interest by being consistent with the objectives of the development standard.

The Housing SEPP provides no specific instruction or intent of the minimum lot size controls in Clause 69(1)(b). Clause 69(1)(b) does not otherwise nominate any objectives to establish the intent of the controls.

Notwithstanding, the applicant submits the proposal is considered to satisfy the relevant principles which support the objectives of SEPP Housing, as follows:

- a) *enable the development of diverse housing types, including purpose-built rental housing,*
- b) *ensuring new housing development provides residents with a good level of amenity,*
- c) *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- d) *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- e) *supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- f) *mitigating the loss of existing affordable rental housing.*

The applicant's Clause 4.6 variation request, as assessed above, has demonstrated that compliance with the development standard is unreasonable and unnecessary in this instance and that the proposed variation, as submitted, is in the public interest in terms of the MLS development standard objectives. Similarly, it is considered that the proposed variation is in the public interest as the applicant's Clause 4.6 variation requests have demonstrated that the zone objectives have otherwise been met.

The Clause 4.6 variation request is accepted based on the first limb Wehbe as discussed above in terms of cl4.6(3)(a). As such, the proposed development is in the public interest because it is consistent with the intent of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of Sub-clause .4.6(4)(a)(ii) of the NLEP 2012 is satisfied.

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

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



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

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

**Conclusion - Clause 4.6 Variation to Clause 69(1)(b)(ii) - Minimum Lot Size (MLS) development standard - State Environmental Planning Policy (Housing) 2021 (SEPP Housing)**

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

The proposal is of a built form and scale that is compatible with the surrounding built environment and recent developments within the area. It is considered that it will have minimal adverse amenity impacts in terms of visual dominance, overshadowing and view loss. As such, Strict compliance with Clause 69(1)(b)(i) of SEPP (Housing) is therefore considered unreasonable and unnecessary.

**Clause 5.10 - Heritage Conservation**

The site is identified as a non-contributory building and is not considered to contribute to the significance of the Newcastle City Centre Heritage Conservation Area (HCA). The proposal is situated on the western edge of the HCA and is separated from nearby heritage items. Accordingly, the new development will not have a negative impact on the significance of these items.

A Heritage Impact Statement (HIS) by a suitably qualified heritage architect or heritage consultant will be required with any further development application, with heritage input provided into the design including the selection of materials, colours and architectural treatment.

**Clause 6.1 – Acid Sulfate Soils**

The site is affected by Class 4 acid sulphate soils and the proposed development is considered satisfactory. An acid sulfate soils management plan is not required.

**Clause 6.2 - Earthworks**

The concept proposal does not include physical works. The level of earthworks proposed to facilitate the will be subject to a detailed assessment under this clause as part of any subsequent development application.

### Part 7 Additional Local Provisions—Newcastle City Centre

#### Clause 7.1 – Objectives of Part, and Clause 7.2 Land to which this Part applies:

The site is located within the Newcastle City Centre. Part 7 of the NLEP 2012 contains additional locality specific provisions for development on land located within the Newcastle City Centre.

The subject site is included within the Newcastle City Centre as shown on the '*Newcastle City Centre Map*'. In accordance with Clause 7.2, the provisions of Part 7 of the NLEP 2012 therefore apply to the Subject Application.

The proposed development is consistent with the objectives of Part 7, which include promoting the economic revitalisation of the Newcastle City Centre, facilitating design excellence, and protecting the natural and cultural heritage of Newcastle.

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 consistent with the objectives of Part 7 of the NLEP 2012.

#### Clause 7.4 - Building Separation

This clause requires that a building must be erected so that the distance "*to any other building is not less than 24 metres at 45 metres or higher above ground*". The site is not located within 24m of any existing buildings that reach a height of 45m or more. The concept proposal complies with this requirement.

#### Clause 7.5 - Design Excellence

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

The proposal does not generate a requirement to undertake an architectural design competition in accordance with this clause, as the height of the proposed building is not greater than 48m and the site is not identified as a key site.

Clause 7.5(3) provides several matters that the consent authority must consider in deciding whether to grant consent on land to which the design excellence provisions apply.

On 5 November 2021, a Pre-Development Application (PR2021/00091) meeting was held with CN staff to seek preliminary comments on the proposal. The architectural

design was amended in response to the minutes from that meeting. On 1 June 2022, a further Pre-Development Application (PR2022/00053) meeting was held with CN staff.

During the assessment process, the development application was formally referred to the UDRP on four separate occasions, at meetings held on 29 June 2022; 6 April 2023, 3 August 2024, and 30 August 2023.

The architectural design and supporting documentation were amended in response to the minutes from the UDRP meetings. The current amended architectural drawings and the changes made in response to the UDRP comments were discussed at the meeting of the UDRP held 30 August 2023

It is noted that a greater level of design detail has been provided during the assessment process, than typically submitted for a concept development application of this nature, to properly address UDRP and CN assessment matters. The UDRP have confirmed that the amended proposed 'concept' development achieves design excellence, subject to design amendments that have been adopted into the current design submitted as part of this concept' development application.

The current amended proposal has incorporated the recommendations of the UDRP through the assessment process and any future development application lodged for any physical works or construction will be referred to the UDRP for comment during assessment. Further, the UDRP will have continued involvement and provide ongoing design review of the developed design during the assessment of the future physical works development application.

The concept proposal is considered to facilitate a future development of the site that is capable of achieving 'design excellence', having regard to the design excellence considerations provided in Clause 7.5(3) of the NLEP 2012.

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

Design Quality Principles	Assessment
<p><b>Principle 1: Context and Neighbourhood Character</b></p> <p><u>UDRP comments:</u></p> <p>An engagement strategy including opportunities for "This Is Not Art" (TINA) to collaborate with the Traditional Owners Corporation and Awabakal Land Council is intended to accompany a future development application following the initial concept application.</p> <p>The Panel supports the evolution of</p>	<p>Early engagement with Traditional Owners Corporation and Awabakal Land Council has commenced and will be further explored and represented in the detailed design process of the subsequent DA.</p> <p>Opportunities with landscape design, foyer installations and integration of built elements will be considered as part of any future DA.</p>

<p>ongoing opportunities through the design, employment, advice and guidance as deemed appropriate by the Community for this project.</p>	
<p><b>Principle 2: Built Form and Scale</b></p> <p><u>UDRP comments:</u></p> <p>The podium massing generally addresses both street frontages.</p> <p>The development appears to be driven by strict adherence to a regular tower form, rather than a meaningful response to the urban context, street geometries, and podium arrangements.</p> <p>Further work is required to demonstrate how the site adjacent in Denison Street may be redeveloped if it remains unamalgamated.</p>	<p>Tower massing has been revised to respond to the geometry of the site. Reconfiguration of room layouts and proportions result in a compact, efficient floor plate without significantly increasing overall floor area.</p> <p>The alignment of rooms to the street boundaries, whilst stepping the north facing rooms back from the splayed boundary, provides greater setbacks to habitable areas.</p> <p>The tower form has been revised to have a stronger relationship with the podium and street alignments. Articulation is intended between the street wall height and the upper-level tower mass to reinforce the future character whilst establishing a key corner statement and built form (similar to the Gateway development further east along Parry Street).</p> <p>Tower geometry has been revised to respond to the 'wedge' alignment of the street boundaries. Deep recesses, articulated balconies and a strong roof form present a dynamic built form to Parry and Denison Streets.</p> <p>The presentation to the side boundaries is intended to be treated with textural patterns, mineral stains and/or artworks.</p>
<p><b>Principle 3: Density</b></p> <p><u>UDRP comments:</u></p> <p>Variations to SEPP Housing and NLEP development standards would need to demonstrate a proposed development achieves a superior outcome in urban, public and communal benefits. The development being lodged under a particular SEPP and LEP has public expectations minimum standards are</p>	<p>The revised scheme achieves a reduced GFA and FSR by through the improved efficiency of circulation paces and internalising the void within the reconfigured entry foyer.</p> <p>The amended proposal improves the community benefit at street level and provides further opportunity for the dedicated art space to interact with the public domain.</p> <p>Building separation has been improved with greater setbacks, particularly to the north</p>

<p>demonstrated.</p> <p>Options for internal and external podium level and rooftop spaces will deliver residents needed amenity for day-to-day living and opportunities for incidental exchanges that support prospects of building a sense of community. Communal spaces are supported in principle and satisfy the Housing SEPP requirements.</p> <p>The Panel notes the reduction in sought development from 80 co-living rooms to 50 rooms has reduced the number of storeys and reduced the number of rooms per floor served by the lift core, which is considered a positive direction for the design development of the type.</p> <p>The reduction has opened the potential for a high-quality urban tower form and to achieve high levels of amenity that appear achievable.</p> <p>The proposed reduced number of rooms are more realistic for the site.</p>	<p>facing units that vary in setback from a min. 4m. With the exception of the lift and stair core, all other elevations facing side boundaries are 3m from the boundary. The tower form is broken down into smaller, articulated packages.</p>
<p><b>Principle 4: Sustainability</b></p> <p><u>UDRP comments:</u></p> <p>Opportunities for minimising the carbon footprint of the building are available and will need to be addressed as part of any future development applications associated with this concept approval.</p>	<p>Further detailed assessment is to be undertaken post concept approval that would accompany a future DA for assessment.</p>
<p><b>Principle 5: Landscape</b></p> <p><u>UDRP comments:</u></p> <p>The amended Communal Open Space arrangements are supporting in principle. The Panel noted the undercroft planting is unlikely to be viable and landscape on structure more generally will need to be well resolved, low maintenance and cost effective over the long-term.</p>	<p>Landscape on-structure options are to be investigated and resolved to ensure low maintenance and also remain cost effective over the long term.</p> <p>Areas for working gardens could be incorporated into the podium communal open space and will be considered.</p> <p>Further detailed assessment is to be undertaken post concept approval that would accompany a future DA for assessment.</p>

<p>Opportunities for partnering with Awabakal and Worimi advisers and generally Caring for Country practice opens landscape design to consider urban repair and the potential of creating habitat for birds and insects that should be explored on the podium. These should be key principles in informing the future landscape design and integral to the overall projects Designing for Country strategy.</p> <p>The panel suggested that, considering the communal living nature of the development, areas for working gardens could be incorporated into the podium Communal Open Space.</p>	
<p><b>Principle 6: Amenity</b></p> <p><u>UDRP comments:</u></p> <p>Balconies provide positive private amenity supported in principle.</p> <p>Provision of communal open spaces at the podium and rooftop are consistent with the Housing SEPP requirements) and supported in principle.</p> <p>Natural daylight and ventilation to the lift core is supported.</p>	<p>Minimal rooms per floor maintains and revised room layouts have increased building setbacks and efficiency. Solar orientation to rooms is supplemented by generous communal areas at the podium level and rooftop.</p> <p>The proposed development has been designed to limit overlooking of neighbouring properties and within the development site itself.</p> <p>Regard has been given to the adjoining 2-4 storey residential development to the north and east. Podium planters capable of supporting screening plantings are conceptually proposed along the eastern boundary at level 2 to prevent overlooking from the communal open space areas at podium level. In addition, only a single unit at each tower level has been orientated towards the east. These units are setback by between 7.6m and 11m from the eastern boundary, and the balconies of these units have been orientated and designed such that the reduced separation (in some places) will not unreasonably compromise the privacy of the residents of the proposed development or residents of future development on the adjoining site.</p>

	<p>Design elements such as louvres and opaque glazing will be considered as part of the future detailed DA to further address privacy matters, as required. All other balconies and windows within the concept development are orientated towards the street frontages.</p>
<p><b>Principle 7: Safety</b></p> <p><u>UDRP comments:</u></p> <p>The reduction of the proposed yield reduces safety risks associated with an overly dense development for the housing type proposed. The provision of a manager and office area is supported.</p> <p>There are opportunities at Ground Level to create a meaningful ground floor space; a more efficient fire egress; and more welcoming building entry sequence and character, that would address the street activation and CPTED concerns.</p> <p>Management of access via lifts and fire stair to each level needs further clarification.</p>	<p>The amended design response has reduced external safety concerns. Internal operations will be further investigated as part of the detailed design stage post concept approval.</p>
<p><b>Principle 8: Housing Diversity and Social Interaction</b></p> <p><u>UDRP comments:</u></p> <p>The number of accessible rooms should comply with NDCP 2012 requirement.</p>	<p>NDCP 2012 requires 3 accessible rooms for up to 60 total rooms. An additional room has now been provided on level 2 to comply with CN requirement.</p>
<p><b>Principle 9: Aesthetics</b></p> <p><u>UDRP comments:</u></p> <p>The Concept presented preliminary consideration of materials. In principle, the use of robust, low maintenance materials is supported. Composition of elevations requires design development to achieve façade demonstrating modulation that creates structural depth, texture, and a cohesive use of colour.</p>	<p>The presentation to the side boundaries with minimal blank walls are intended to be treated with textural patterns, mineral stains and/or artworks.</p> <p>Articulation to the built form, as well as detailing, materials, and finishes, will be further considered as part of the subsequent future DA, with a view to creating a high standard of architectural design.</p>

	The proposed concept development has been sited and designed to fit comfortably within the site, including through appropriate setbacks and the provision of generous communal open space areas at Level 2 and rooftop level.
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Any future development application will need to demonstrate compliance with the AD G and as outlined earlier within the report will be referred to the UDRP. A condition of consent has also been recommended to ensure that any future development achieve platinum level liveable housing design standards.

#### Clause 7.10A - Floor Space Ratio for Certain Other Development

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Clause 4.4 of the NLEP 2012 ordinarily prescribes a maximum FSR of 6:1 for the site, however Clause 7.10A of the NLEP 2012 provides additional provisions for certain land under 1,500m<sup>2</sup> in the Newcastle City Centre (which includes the subject site).

Note the proposal would benefit from a 10% FSR bonus under the Housing SEPP, taking the maximum FSR up to 3.3:1. The proposal does not comply with the FSR control stipulated under Clause 7.10A (including the 10% bonus), with an FSR of 3.6:1.

The proposed development has a FSR of 3.6:1, therefore exceeding the FSR prescribed for the site under Clause 7.10A. Refer to previous discussion under Clause 4.6 Exceptions to Development Standards.

### 5.3 Any development control plan

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

The DCP has been subject to a comprehensive review which has considered the relevance of current development controls, whether they reflect best practice guidelines, adopted land use strategies, and CN's priorities. The Draft Development Control Plan 2023 was on exhibition from 28 September to 27 October 2023 and once adopted will replace the Newcastle DCP 2012.

The Draft DCP 2023 includes savings provisions to the following effect: 'DCP 2023 does not apply to any development application lodged but not finally determined before its commencement. Any development application lodged before its commencement will be assessed in accordance with any previous development control plan (DCP).'

Notwithstanding, as the draft is publicly exhibited, it has been considered within the assessment of this application below as a relevant matter for consideration.

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



### Residential Development - Section 3.03

The proposal is acceptable having regard to the requirements of this section of the NDCP 2012. It is noted that the operation of SEPP (Housing) 2021 and Section 6.01 of the DCP generally prevail over controls within Section 3.03 and are also considered to be more applicable to the scale of the development and its City Centre location.

The proposed design is acceptable having regard to character, streetscape appearance, height, bulk, and scale. The development is of a type and scale that is allowed under the planning controls and the design of the development generally meets the required numerical controls in terms of density, height, setbacks, open space, and landscaping.

The proposed building, whilst being of a contemporary design is considered aesthetically appropriate within the emerging built context of the area, which is identified as an area of growth and revitalisation. The impact on general outlook is considered acceptable having regard to the allowable height and scale for development under CN's adopted controls.

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

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

### Flood Management - Section 4.01

Details are to be provided in any further development application associated with this concept approval demonstrating how flood risks to property and life at the development are adequately managed in accordance with the objectives and controls of Section 4.01 '*Flood Management*' of Newcastle Development Control Plan 2012.

The proposed concept development can be supported from a flood management perspective on the basis that NDCP flood risk management controls can be readily achieved in a future Development Application. Accordingly, the proposal is acceptable in relation to flooding.

### Safety and Security - Section 4.04

A formal CPTED assessment will be undertaken as part of future Development Application for detailed design, as required. The concept development application has demonstrated that a future proposal is likely to be capable of complying with relevant DCP controls, with further consideration to specific development details to be provided as part of the subsequent detailed DA.

### Social Impact - Section 4.05

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

The proposal contributes to housing diversity which means greater housing choice, which can also create more affordable housing options. The development will increase the population in an ideal location and lead to the activation of an existing under-utilised site.

It is unlikely that a development of the nature proposed would result in increased anti-social behaviour. Redevelopment of this under-utilised site is a positive outcome socially. The proposal will provide additional housing choice and employment opportunities in the locality (during construction).

- i) The provision of additional low-cost rental housing stock (including adaptable units) in the Newcastle CBD, to support the supply of diverse housing.
- ii) The creation of additional jobs during the construction and operational phases of the development (including site manager, maintenance, landscaping).
- iii) Flow-on economic impacts to the local economy, both through the purchase of construction goods and services, and through purchases by residents, visitors and workers throughout the operational phase.
- iv) Proposed public domain improvements, including street landscaping, which would increase the amenity of the area.

#### 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.

Any future application will need to demonstrate that the due diligence process has been followed with regard to Aboriginal cultural heritage. Please refer to the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*, and Section 5.04 (Aboriginal Heritage) of the NDCP 2012.

#### Heritage Items - Section 5.05

This matter has been 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'.

### Heritage Conservation Areas - Section 5.07

This matter has been discussed under Clause 5.10 Heritage of NLEP 2012.

### Newcastle City Centre - Section 6.01

The proposal is consistent with this section of the DCP, having been designed in accordance with the Newcastle City Centre requirements and in consultation with CN's UDRP.

#### *General controls*

##### *(6.01.03) A1. Street*

###### *wall heights*

The DCP recommends a street height of 16m, and a setback of 6m above the street wall height. The concept proposal provides a street wall height of approximately 3 storeys (9m) to both street elevations.

Having regard to the site's context, lot orientation, width of the road reserve, as well as the street wall heights of nearby existing and approved development, this variation would not result in unreasonable amenity impacts or depart from the desired future character of the locality

The proposed setbacks and the overall proportions of the building are considered appropriate given the site's context and relationship with surrounding development in the City Centre.

##### *A2. Building setbacks*

The building setbacks of the podium level and tower form are acceptable in terms of building envelope and building separation. The proposed setbacks do not result in adverse impacts in terms of overlooking, overshadowing, or streetscape appearance. The site is located within an area undergoing significant change, and it is considered that the proposed bulk is consistent with the character of the locality.

##### *A3. Building separation*

This part relates to the assessment of more than one building on the same site and does not apply to the subject development application.

##### *A4. Building depth and bulk*

This section of the DCP indicates that the maximum GFA per floor for a commercial building above street wall height is 1,200m<sup>2</sup>. Additionally, buildings above street wall height are to have a maximum building length of 50m. The proposed development complies with the provisions of this section.

#### *A5. Building exteriors*

A schedule of materials and finishes is required to be provided as part of a future detailed Development Application. Further consideration of materials and finishes (in consultation with UDRP) will be undertaken as part of the subsequent detailed design Development Application.

#### *A6. Heritage buildings*

This part relates to the assessment or alteration work of listed heritage items and does not apply to the subject concept development application.

#### *A7. Awnings*

The site is not located within an active street frontage area and therefore an awning is not required to be provided.

#### *B1. Access networks*

The DCP does not identify any existing or new connections through the site.

#### *B2. Views and vistas*

New development must protect the nominated views within the city centre and achieve equitable view sharing from adjacent development.

The proposed concept proposal demonstrates that significant views will not be obscured and there will not be unreasonable impact on any of the nominated views identified within this section of DCP 2012.

#### *B4. Addressing the street*

The proposal contributes to the safety, amenity, and quality of the public domain through the provision of a ground level forecourt and lobby, and communal open space and private balconies overlooking the public domain.

#### *B5. Public artwork*

Under the DCP public artwork is required to be provided where development is over 45m in height. The provisions of control B5 do not apply.

#### *B6. Sun access to public spaces*

New development is required to be designed to ensure that reasonable sunlight access is provided to new and existing public spaces. The overshadowing impacts of the proposed development have been assessed and does not result in unreasonable overshadowing impacts to either existing or proposed public spaces. The shadow diagrams demonstrate that the proposed development allows reasonable daylight access to all surrounding developments and the public domain.

### *B7. Infrastructure*

The proposed development will connect to the existing water and sewer network services the subject site. The concept proposal is capable of complying with relevant DCP controls, with further consideration to be given as part of the subsequent detailed DA.

### *B8. Site amalgamation*

The subject site is not located on former rail corridor land; accordingly, this section does not apply.

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

The provision of significant deep soil landscaping is not achievable due to the site's City Centre location and relatively small site area.

The concept proposal provides on-structure landscaping, at podium and rooftop level to provide amenity and privacy. Two street trees are proposed to provide shade and amenity and to help soften the appearance of built form.

The proposed conceptual landscaping is considered acceptable. Further consideration to landscaping provision will be given as part of the future detailed DA.

### Traffic, Parking and Access - Section 7.03

#### *a) Traffic impact*

A Traffic Impact Assessment has been prepared to address traffic impacts of the proposed concept development on the local and state road network.

The Traffic Impact Assessment confirms that the additional traffic generated by the proposal would have an acceptable impact on the capacity of the adjacent road network. Given the low traffic volumes generated by the development, which will be distributed across various routes to/from the site, the assessment considers that the development would have minimal impacts upon intersections in the locality with no recommendation to upgrade assets or intersections within the road reserve.

#### *a) Parking rates*

Co-living housing is not a form of residential accommodation currently considered in the parking rates of Section 7.03 'Traffic, Parking and Access' of the NDCP.

Co-living housing developments proposed under the HSEPP are subject to parking requirements set out in clauses 68 and 69. With regard to the number of car parking spaces, subclause 68(2)(e)(i) of SEPP(Housing) provides that a non-discretionary development standard for parking provision in new co-living housing in an accessible area, unless '*a relevant planning instrument*' specifies a lower number, is at least 0.2 car parking spaces per private room.

The car parking requirement stipulated in subclause 68(2)(e)(i) of SEPP (Housing) is a non-discretionary development standard. Non-discretionary development standards are defined in cl. 4.15 of the EP&A 1979 and paraphrased in the SEPP (Housing) to be *"particular matters relating to development for the purposes of co-living housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters."*

Subclause 69(1)(h) stipulates that development consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied that the co-living housing will include adequate bicycle and motorcycle parking spaces.

Council would consider that the provision of bicycle and motorbike parking in Co-living Housing developments to the minimum rate required at Boarding Houses, to be adequate. The parking requirement of the amended development proposal is calculated as follows:

Use	Parking Rate	Relevant Quantity	Parking Requirement
Co-living Housing (SEPP Housing 2021)	0.2 car spaces for each private room.	51 rooms	10 car spaces
Boarding House (NDCP 2012)	1 bicycle space (sec level B) per 10 rooms for staff/residents  1 bicycle space (sec level C) per 20 rooms for visitors	51 rooms	5 bicycle spaces  2.5 (3) bicycle spaces
All development (NDCP 2012)	1 motorbike space per 20 car spaces required		0.5 (1) motorbike spaces
Total Requirement:			10 car spaces  8 bicycle spaces  1 motorbike space
Proposed:			9 car spaces  5 motorbike spaces  50 bicycle spaces

A deficiency of one car parking space for the development is considered acceptable given the oversupply of bicycle parking.

On-site car parking will not be allocated, so parking for servicing vehicles can be accommodated within the on-site car park. The concept proposal can comply with relevant DCP controls, with further consideration to be given as part of the subsequent detailed DA.

a) *Green Travel Plan*

A detailed Green Travel Plan in accordance with Element 7.03 'Traffic, Parking and Access' of Newcastle Development Control Plan 2012 is to be submitted with any further development application related to this concept approval. The Green Travel Plan shall encourage use of alternative modes of transport and include Public Transport Routes and Bicycle Network Plans. The Green Travel Plan is to be prepared and made available to the new residents and commercial/retail premises tenants.

a) *Public Transport*

The site is well serviced by public transport with bus stops and light rail within close proximity to the site.

Section 7.05 - Energy Efficiency

The concept proposal is capable of complying with relevant DCP controls, with further consideration to be given as part of the subsequent detailed DA.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

Any subsequent development application will be required to be accompanied by a Stormwater Management Plan which includes details of connections to the existing drainage infrastructure, and any infrastructure upgrades and details of stormwater harvesting for re-use within the development. The applicant will be required to provide calculations to show the stormwater harvesting volumes will achieve the retention volume requirements as set out in Section 7.06 'Stormwater' of Newcastle Development Control Plan 2012 and the associated Technical Manual.

The concept proposal is supported from a stormwater management perspective on the basis that NDCP stormwater controls can be readily achieved in a future Development Application. Accordingly, the proposal is acceptable in relation to water management.

Waste Management - Section 7.08

All loading / servicing activity (including waste collection) associated with the development will be undertaken either within designated loading dock areas and/or kerbside in an approved and designated loading zone on Parry Street. Waste collection vehicles will be able to stop along the Parry Street frontage for pick-up at the driveway location without affecting traffic or requiring presentation to the kerb.

Further detailed assessment will be undertaken as part of the subsequent detailed DA. Based on the submitted information, the concept proposal is acceptable.

### Development Contributions

The s.7.12 Development Contributions Plan is not applicable to the concept development application as no physical development works are proposed. However, a condition of consent requiring the contribution to be paid will be imposed on any consent granted as part of any subsequent DA for physical works.

#### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

The amended concept design is acceptable having regard to the proposed height, external appearance, character, bulk, and scale of the proposed development. The proposal has been assessed by CN's Urban Design Review Panel on several occasions and is acceptable having regard to the provisions of NLEP 2012 and NDCP 2012.

The FSR development standard is exceeded by the proposed development. However, this variation has been considered in the context of adjoining and potential future development. The development also has minimal impacts on surrounding development and is acceptable.

The proposal achieves adequate visual and acoustic privacy for nearby development and has suitably addressed the potential future development of the area.

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

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

The site is highly accessible and well serviced by public transport, making it suitable for high density residential development.

The proposed development is compatible with surrounding commercial and residential development and is consistent with the desired built form of Newcastle West.

The likely impacts of the proposal on the surrounding environment will be minimal and environmental impacts can be mitigated during detailed design and construction.



Appropriate utilities are, or can be made, available to service the site.

The proposal is generally compliant with the statutory planning framework applicable to the site and intended use. Non-compliance with the minimum lot size and maximum floor space ratio standards will not result in any unreasonable additional amenity impacts on adjoining or adjacent properties.

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

The concept proposal was publicly notified in accordance with CNs Community Participation Plan (CPP) and in response no submissions were received.

### **5.9 The public interest**

The development is acceptable having regard to the provision of additional housing options within the Newcastle City Centre area and is consistent with the strategic planning outcomes intended for the area. The proposal is in the public interest and facilitates the orderly and economic development of the site for purposes for which it is zoned and will not have any significant adverse social or economic impacts.

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

This assessment has demonstrated that the development does not cause any significant overshadowing, privacy impacts or unreasonable view loss for surrounding properties. The proposed development does not raise any other significant public interest issues beyond matters already addressed in this report.

## **6.0 CONCLUSION**

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

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

## **ATTACHMENTS**

**Attachment A:** Submitted Plans - 28 Denison Street Newcastle West

**Attachment B:** Draft Schedule of Conditions - 28 Denison Street Newcastle West

**Attachment C:** Processing Chronology - 28 Denison Street Newcastle West

**Attachments A - C: Distributed under separate cover**

## 7.2. 2/29 AND 3/31 HONEYSUCKLE DRIVE NEWCASTLE - FOOD AND DRINK PREMISES - CHANGE OF USE INCLUDING FIT OUT AND SIGNAGE - DA2023/00243

**APPLICANT:** RAINSFORD ARCHITECTURE  
**OWNER:** LEE 4 PTY LTD  
**REPORT BY:** PLANNING & ENVIRONMENT  
**CONTACT:** EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

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### PART I

#### PURPOSE

An application (DA2023/00243) has been received seeking consent for change of use to a food and drink premises, fitout and signage at 2/29 & 3/31 Honeysuckle Drive Newcastle.

The proposal is for the first use of a recently completed ground floor commercial area and includes the combination of two tenancies.

The submitted application was assigned to Senior Development Officer (Planning) Ethan Whiteman, for assessment.



**Subject Land: 2/29 & 3/21 Honeysuckle Drive Newcastle**

The application is referred to the Development Applications Committee (DAC) for determination, due to the number of public submissions received. A total of 38 submissions objecting to the proposal were received.

The main issues raised include:

- i) Inconsistency with existing plan of management
- ii) Establishment of licensed premises within the Honeysuckle Precinct
- iii) Hours of operation
- iv) Residential amenity impacts
- v) Public safety impacts

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

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.

The proposal was considered at the Public Voice Committee Meeting held on 17 October 2023. The issues raised were consistent with the original objections and details of the meeting including the applicant's response to concerns raised are addressed in Section 2.0 of Part II of this report.

### Issues

- 1) Matters raised in the submissions including inconsistency with existing plan of management, establishment of licensed premises within the Honeysuckle precinct, hours of operation, residential amenity and public safety.

### 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 DA2023/00243 for Food and Drink Premises - Change of use and fit-out including signage at 2/29 - 3/31 Honeysuckle Drive 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 *Environmental Planning and Assessment Act 1979* requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

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

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

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

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## **PART II**

### **1.0 THE SUBJECT SITE**

The subject site comprises lots 6 & 7 in Strata Plan 105458 (2/29 & 3/31 Honeysuckle Drive Newcastle). The two tenancies occupy the northern portion of the Huntington buildings' ground floor, facing the Harbour. The two tenancies are currently vacant and have not been previously occupied. A covered outdoor area is located on the northern edge of the building and faces the water.

To the east and west of the building are public pedestrian access paths which separate the eastern Huntington apartment building from both the Lume apartments and the western Huntington building respectively.

The development site is located within the Honeysuckle precinct, which is located within the Newcastle City Centre. The site enjoys direct access to Newcastle Harbour approximately 50m to the north.

The predominant building form of the Honeysuckle precinct is mixed-use developments with associated commercial and retail spaces located at ground level and residential apartments located above.

### **2.0 THE PROPOSAL**

#### Background - State significant approval

The subject building was approved under a State Significant Development application, (Ref: SSD8999) and was granted consent on 21 June 2019 for the construction of an eight-storey mixed-use development comprising of the following:

- i) 86 residential units
- ii) ground floor retail
- iii) communal open space including an internal courtyard and roof top terrace
- iv) two levels of basement car parks with 190 car parking spaces
- v) public domain improvements, public open space and hard and soft landscaping.

The consent gave approval for the commercial tenancies. However, the details of the first use did not form part of the approval. A condition was placed on the notice of determination detailing that the consent did not approve the following:

- i) strata subdivision
- ii) retail premises including food and drink premises' fit-out and hours of operation
- iii) business premises' fit-out and hours of operation
- iv) outdoor seating areas
- v) signage

The consent also stated that a separate development application(s) is to be lodged and consent obtained for the above works and uses (except where exempt and complying development applies). The subject application has therefore been lodged seeking approval for the use of the ground floor as a food and drink premise.

### Current Proposal

The applicant seeks consent for the use of the commercial spaces known as 2/29 & 3/31 Honeysuckle Drive to operate as a food and drink premises. The proposal includes building works that are required to combine the two separate tenancies into one.

The works for which consent were sought upon lodgment of the application included:

- i) replacement of the existing ground floor fixed glazed window located along the northern elevation to an operable glazed window
- ii) removal of existing walls and the inclusion of kitchen and bar areas
- iii) inclusion of a server area to the western elevation to facilitate take-away service
- iv) extension of a glass roof over the western and eastern end bays of the existing outdoor area.

The proposed operational hours are:

- 1) Monday to Saturday: 7am until 12 midnight
- 2) Sunday: 7am until 10pm

The original proposed seating capacity of the premises was 530 patrons, with 355 seated outdoor and 175 indoor. All outdoor seating is to be located within a 'courtyard' space as identified on the approved stratum plans and shown in Figure 1 and 2 below.

The applicant lodged a request to include six signs after the lodgement of the application in response to an additional information request from CN.

**Figure 1:** Proposed floor plan - brown shaded areas at the top and side of plan form part of stratum lot.

On 3 November 2023, in response to the concerns raised at the Public Voice meeting, the applicant submitted a revised proposal. The following amendments were made to the proposal:

- 1) Removal of server window to western elevation.
- 2) Reduction in patron numbers from 530 to 475, with 300 seated outdoor patrons and 175 patrons indoor. This is a 10% reduction on the original capacity for which consent was sought.
- 3) Revised hours of operation to:
  - a) Monday to Thursday: 7am until 11pm
  - b) Friday and Saturday: 7am to 12 midnight
  - c) Sunday: 7am until 10pm

The applicant also submitted further supporting documentation on 3 November 2023 including:

- 1) Revised Acoustic Report
- 2) Revised Venue Management Plan including reference to capacity, hours of operation, recommendations of the acoustic report including physical and operational mitigation measures and a progressive patron disbursement strategy.
- 3) Noise Disturbance Policy
- 4) Noise Disturbance Register

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 C**.

### **3.0 Public Voice Committee**

The proposal was considered at a meeting of the Public Voice Committee (PV) held on 17 October 2023. Residents raised concerns with regards to maximum patronage, noise impacts, adequacy of acoustic report, hours of operation, adequacy of venue management plan, incompatibility with desired character of Honeysuckle precinct and inconsistency with Newcastle After Dark Strategy.

The applicant was requested to respond to the matters raised during the PV and the applicant has provided responses to these concerns as outlined below. The concerns have also been considered throughout the applicable sections of this report, including Section 5.3 which assesses the content of submissions received during the public notification period.

#### Maximum patronage (capacity)

The objectors raised concern regarding the patron numbers (particularly outdoors) and the increase in capacity compared to that approved under the State Significant Development approval.

#### *Applicant response*

The outdoor patron numbers have been reduced from 355 to 300. This equates to total patrons' numbers (internal and external) reducing from 530 to 475, which is an approximate 10% reduction in capacity.

The Plan of Management and Acoustic Report prepared for building under the State Significant Approval made assumptions or generalisations on the use of the space without a specific proposal for the use.

The permissible patron numbers are generally dictated by the building code, which nominates a minimum square meterage per person and then nominates the required toilet facilities to service that population. Based on the Building Code of Australia figure that applies to this development type of 1sqm per person, there is a potential external population of 395 patrons and an internal population of 258 patrons, or 653 patrons in total. The proposed patron numbers are significantly below this figure.

#### Adequacy of acoustic report

The objectors raised concern regarding the adequacy of the submitted acoustic documentation relating to the location of sensitive receivers, monitoring locations and assessment criteria. The objectors raised further concern for the proposed operable glazing to the northern elevation, whether the intended mitigation measures were acceptable and whether the operator of the premises understood and acknowledged the recommendations of the acoustic documentation. The objectors requested access to on-going acoustic data from the venue.

#### *Applicant Response*

The receiver location R3 in Figure 1 of the 18 August report is shown in the wrong location and should be within the breezeway. However, the assessment was conducted relative to the correct location adjacent to the breezeway (as detailed in the report) and compliance with the criterion was achieved.

The assessment for R2, above the outdoor dining area, was conducted on the worst-case assumption that a glazed area equivalent to twice the opening area of the operable doors would be open. The significant existing awnings over the outdoor dining area were shown to provide adequate attenuation of noise from both internal and external patrons and music noise emitting from the open glazing to achieve compliance with the criterion at R2. There is a small gap of approximately 300mm between the nearest (longest) awning and the building. This opening will be covered



over as detailed on the architectural plan as a mitigation measure. All existing glazing is double glazed and all proposed glazing will be double glazed.

The acoustic measures to be put in place include physical and managed measures which have been addressed in the Acoustic Report and Venue Management Plan. In addition to these measures, a summary of the amendments that have been made to the design to respond to the concerns raised include:

- i) Removal of the Eastern courtyard area seating (in the breezeway) and shade structures.
- ii) Removal of the Western courtyard seating (in the breezeway).
- iii) Removal of the Western facade take away window. This has now been placed inside the building.
- iv) Reduction in outdoor patron numbers from 355 to 300 and reduction of total patron numbers from 530 to 475. This equates to a reduction of approximately 10%.

The acoustic measures which are nominated in the Venue Management Plan and Acoustic report include:

Physical acoustic controls:

- i) The gap between the awning roof and building to be closed for the full length of the roof with acoustic baffle.
- ii) The glass infill roof between awning structures extended to fill in open sections at the eastern and western ends.
- iii) The facade vent louvres on the east and west elevation to be closed over from inside. Refer to Figure 3 below.
- iv) New doors/windows to be double glazed to match existing.
- v) Operable glass doors to be centred and positioned primarily under the solid section of awning roof.
- vi) Signage adjacent to toilets indicating emergency exit doors are not used by patrons other than in an emergency. Toilet access to be internal only.



**Figure 3:** Location of louvre on east elevation that is proposed to be closed.

Managed acoustic controls:

- i) Progressive patron disbursement strategy is to be implemented.
- ii) East doors to be locked at 10pm to prevent use.
- iii) Louvre roof to be closed at 10pm.
- iv) Kitchen to close at 10pm.
- v) Bar service ceases 30 minutes prior to closure.
- vi) Music volume is reduced 30 minutes prior to closure.
- vii) Staff to monitor patrons entering and existing to prevent loitering in the breezeway areas.
- viii) Waste to be taken to waste room prior to 10pm.

The Acoustic Report has been amended to include an acoustic study and detailed discussion around the sleep disturbance impact from patrons within the breezeway while walking away from the venue. It nominates that the potential for sleep disturbance to adjacent residents is within acceptable levels and will generally be minimal as the staff will be managing patrons in these areas during the shutdown process.

The Venue Management Plan has been updated to outline the recommendations set out in the Acoustic Report. The recommendations have also been indicated on the architectural plans, specifically closing off the louvres above the existing glazing.

A management system for noise complaints has been outlined in the additional documentation that allows residents a direct line to the venue if required. It notes that if a complaint has been reported it will be further investigated and independent noise monitoring conducted by a professional consultant to quantify noise emissions and a report submitted to the regulatory authority.

#### Hours of operation

Objections raised concern regarding the hours of operation proposed.

#### *Applicant response*

The originally proposed trading hours have been reduced for weekday trading in response to residents' concerns. Trading will cease at 11pm Monday to Thursday which will include a soft closure starting at 10:30pm on those days and from 11:30pm on Friday and Saturday.

The original proposal was for trading to midnight Monday to Saturday and to 10pm on Sundays.

#### Character

Objections raised concern that a venue of the proposed nature and scale would not be consistent with the desired character of the Honeysuckle Precinct.

#### *Applicant response*

The scale and nature of the development was proposed in the design of the building under the State Significant Development process where it was assessed against the precinct plan and the relevant planning legislation. The proposed development responds directly to the desired character of the precinct.

#### Newcastle After Dark Strategy

Objections raised concern that the proposed development is not consistent with the Newcastle After Dark Strategy.

#### *Applicant response*

The proposal responds to the Newcastle After Dark Strategy. The strategy calls for a safe, vibrant and diverse night-time economy. The proposal will increase security of the area, encourage patrons to visit the area and provide diverse dining options within the one venue. The strategy speaks of a thriving city for people to live, work, invest and visit and the development is proposing a high-quality hospitality venue to further engage with the Harbour and the western end of the precinct.

#### Patron dispersal

Objections raised concerns around the cumulative impacts of the dispersal of 530 patrons into the public domain at midnight.

### *Applicant response*

In response to concerns regarding the dispersal of patrons at the closure of the venue, the applicant has prepared a progressive patron disbursement strategy which outlines activities which are undertaken by staff from 10pm to begin the dispersal of patrons over a two hour window. This strategy forms part of the Venue Management Plan. The strategy is outlined below:

At 10pm:

- i) East breezeway access doors locked.
- ii) Designated staff to monitor breezeway areas to prevent loitering.
- iii) Kitchen to cease operations no later than 10pm (limited menu options after as per liquor licensing requirements).
- iv) Natural patron exit of diners at kitchen closure.

30 minutes prior to venue closure:

- i) Bar service ceases.
- ii) Music to cease.
- iii) Lighting levels are increased.
- iv) Active removal of loose table items including glassware to encourage disbursement.
- v) Staff will advise patrons at bar service completion and ask them to finish consumption and to quietly move on respecting the neighbourhood and surroundings.
- vi) Staff to monitor breezeways and proximity to ensure patron compliance during soft closure period and after final closure.

As stated above, the applicant has supplied additional information and amended the proposal to address the concerns of objectors raised at the Public Voice meeting.

### **3.0 PUBLIC NOTIFICATION**

The application was publicly notified in accordance with CN's Community Participation Plan (CPP), for a period of 14 days between 30 March and 13 April 2023. In response, 41 submissions were received with 38 submissions objecting to the proposal. Three submissions were received in support of the proposal, on the basis that reasonable operating hours were consented to.

Since the application was notified, the plans have been amended to remove the proposed fixed shade structures to the eastern elevation of the outdoor seating areas

and to remove proposed outdoor seating from the 'breezeways' at the eastern and western side of the building. In addition, a number of changes have been made to the proposal after the Public Voice meeting to address the concerns raised in the submissions.

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

**a) Statutory and Policy Issues**

- i) The proposed land use is inconsistent with the Plan of Management which was provided to apartment owners at the time of purchase.
- ii) The proposed operational hours are inconsistent with the Plan of Management provided to apartment owners at the time of purchase.
- iii) Objections have raised concern that development is considered a 'State Significant Development' and should be assessed by the State Government.

**b) Amenity Issues**

- i) Noise generated by outdoor seating, patrons congregating within the public domain and the removal of the existing fixed double-glazed windows. The proposed hours of operation would likely impact on the existing amenity enjoyed by residents.
- ii) Increase in anti-social behaviour - potential for an increase in anti-social behaviour at the subject site and surrounding locality because of the proposed licensed premises.
- iii) Public safety impacts - public safety and personal security at the subject site and surrounding precinct because of the establishment of a licensed premises.
- iv) Residential amenity impacts - cumulative impact from the establishment of a licensed premises would subsequently increase the 'nightlife' scene and decrease the residential amenity of the area.

**c) Design and Aesthetic Issues**

- i) Inappropriate changes to approved architectural plans.
- ii) Signage - omission of signage detail within the development application.
- iii) Appropriateness of sanitary facilities.

#### **d) Miscellaneous**

- i) Proposed operational hours are inconsistent with the Honeysuckle precinct including the use of outdoor space after 10pm.
- ii) Marketing of venue - the venue is being marketed as offering a range of dining options.
- iii) Management of operational waste.
- iv) Decrease in property value.
- v) The proposal is not a valid application as there has been no involvement with the residential strata for consultation and agreement as required under the Strata Management Statement.

The objector's 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**

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

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

The subject site is located within the Coastal Use area as defined under Chapter 2 of this SEPP. The proposed development is considered to be acceptable having regard to the matters for consideration under Clauses 2.11 and 2.12 of this SEPP. The proposed development is therefore acceptable in relation to the provisions of this SEPP.

###### **Chapter 4 Remediation of Land**

Clause 4.6 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration 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 as contaminated land as per CN records.

The subject site however has been subject to previous remediation works and site validation certification issued prior to the establishment of the Huntington Development.

As the land has already been remediated and validated as such and there are no earthworks proposed nor any change to a more sensitive land use than already anticipated through the state significant approval, it is considered that the land is suitable for the purpose of the development for which consent is sought.

The provisions of Clause 4.6 are therefore satisfied.

### **5.1.3 State Environmental Planning Policy (Industry and employment) 2021 - Chapter 3 Advertising and signage**

The proposed signage is not inconsistent with the assessment criteria prescribed by schedule 5 of this SEPP.

As discussed within Section 5.3 of this report, conditions are recommended for signage to ensure on-going compliance with this SEPP and the Newcastle Development Control Plan 2012.

### **5.1.4 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

At the time of lodgement of the development application, the subject property was included within the B4 Mixed Use 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 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.*

On 26 April 2023, the naming of the Mixed-Use zone under NLEP 2012 changed to MU1 Mixed Use Zone in addition to further land uses listed as permitted with consent and additional/reworded objectives.

Notwithstanding that savings provisions apply and therefore the proposed development is subject to the previous provisions of the Mixed-Use zone which applied

at the time of lodgement of the development application. The proposed development remains a land use permitted with consent in the zone and further aligns with the additional and reworded objectives of the Mixed-Use Zone, namely:

- i) To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- ii) To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- iii) To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

Accordingly, the proposed development will generate employment opportunities and is to be established at the ground floor of a building which provides an active frontage to the public space. It will attract pedestrian traffic and displays strong alignment with the objectives of the land use zoning prescribed under NLEP 2012.

#### Clause 2.7 - Demolition Requires Development Consent

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

#### Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 14m and 24m. The portion of the site in which the proposed development will be undertaken has a maximum allowable height of 14m. The height of the proposed development does not exceed 14m and is therefore compliant with this clause.

#### Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 2:1 and 2.5:1.

The proposed development does not include an increase in gross floor area and therefore does not alter the existing floor space ratio at the site.

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 3 acid sulphate soils and the proposed development is considered satisfactory in this regard as earthworks are not proposed.

#### Clause 6.5 - Public Safety—Licensed Premises

Clause 6.5 requires the consideration of public safety before granting consent to a use of land as a licensed premises. A licensed premises means a hotel within the meaning of the *Liquor Act 2007* or a registered club.



Although not specifically a hotel or registered club, consideration to this clause is warranted given the premises is to be licensed.

The applicant has submitted a Crime Risk Assessment and a comprehensive Venue Management Plan which detail the potential impact on public safety and recommend management measures.

The proposal was referred to the NSW Police who provided a response containing conditions recommended to be imposed on any consent issued. The conditions included hours of operation, installation of Closed-Circuit Television, on-going compliance with the venue management plan and music and noise conditions.

It is considered that the proposal would not be detrimental to public safety if the Venue Management Plan is implemented on site.

### Part 7 Additional Local Provisions—Newcastle City Centre

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre and activity during the day and throughout the evening, 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 of the NLEP 2012 noting there are no design clauses specific to the subject site or proposed development.

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

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

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

##### **Draft Newcastle Development Control Plan 2023**

The Draft Newcastle Development Control Plan (DCP) 2023 provides updated guidelines and development controls for new development in the Newcastle Local Government Area. The Draft DCP was publicly exhibited from Thursday 28 September to Friday 27 October 2023.

Whilst the Draft DCP has been publicly exhibited, the Plan is yet to be finalised and formally adopted by City of Newcastle. Notwithstanding, the Draft DCP requires consideration in accordance with Section 4.15(1)(a)(ii) of the Environmental Planning & Assessment Act 1979.

Having regard to the specific matters for consideration within this Development Application and relevance to the Draft DCP it is noted that Section F1 Newcastle City

Centre includes objectives, performance and design criteria with the specific intent of designing buildings with an acknowledgement that noise transmission is present in the city centre and requiring venues to mitigate acoustic impact through the recommendations of acoustic experts.

It is noted that many of the areas of the Draft DCP dealing with the matter of noise transmission and suitable mitigation are a derivative of the recommendations of the Newcastle After Dark Strategy which recommends the Newcastle City Centre (including specific reference to the Honeysuckle precinct) as suitable for venues to trade into the late-night period.

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

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

#### 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 proposed development will provide an active frontage to the public domain through allowing the use of a vacant space in a prominent area of the city. The activation of the indoor space in addition to the existing covered outdoor area will attract pedestrian traffic within the immediate surrounds and will add to the ambience of the mixed use developments within Honeysuckle.

The proposed development is considered to provide a positive contribution at ground level to the immediate locality and also to the wider Honeysuckle precinct in order to contribute to enhancing the economic viability of the precinct.

#### Flood Management - Section 4.01

The subject site is flood prone. There are no changes to the existing floor levels of the building as part of the application. Given the proposed development anticipates a capacity of 530 patrons it is considered appropriate that a flood emergency response plan be prepared by the developer and adopted prior to the issue of an Occupation Certificate.

The requirement for a flood emergency response plan has been included as a recommended condition of consent.

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.

#### Safety and Security - Section 4.04

The applicant has submitted a Crime Risk Assessment (CRA) including an analysis to the principles of Crime Prevention Through Environmental Design (CPTED). The CRA acknowledges the importance of the principles in assisting to design out crime and makes recommendations for the implementation of elements into the development, which will be included as conditions where appropriate.

It is considered that the proposal is consistent with the CPTED principles in that it would provide:

- i) *surveillance* to the public domain which is currently lacking in a vacant building
- ii) *access control* provided to a standard expected for a food and drink premises
- iii) *territorial reinforcement* through providing use of a vacant tenancy which displays clear ownership of that space
- iv) *space management* through management of the premises in accordance with a venue management plan

In addition, the building design appears to be absent of any potential concealment or entrapment areas.

The proposed development is considered to be acceptable having regard to this Section of the DCP.

#### Social Impact - Section 4.05

A Social Impact Assessment is not required for the proposed development.

The establishment of a food and drink premises within an existing commercial space in the Honeysuckle Precinct would provide for additional diversity in dining and potential entertainment options. There are also strong public transport connections to the site.

The establishment of a licensed premises and potential for anti-social behaviour is an example of a potential negative social impact. However, the development application is supported by a comprehensive venue management plan and subject to reasonable management of the venue in accordance with the plan and liquor licensing requirements, these potential impacts would appear effectively mitigated.

#### Aboriginal Heritage - Section 5.04

An AHIMS search found ten known Aboriginal sites within 200m of the subject site. There are no earthworks proposed as a part of this development and it is considered

that due diligence process has been followed in this respect, and that the requirements of this Section of the DCP have been met.

#### Archaeological Management - Section 5.06

The site is not specifically listed in the NLEP 2012 as an '*Archaeological Site*'. The proposed development does not include earthworks and no further consideration is required in this respect. The proposed development is acceptable having regard to this Section of the DCP.

#### Part 6.00 Locality Specific Provisions

##### *Newcastle City Centre - Section 6.01, 6.01.02 Character Areas, C. Honeysuckle*

The subject site is located within the Newcastle City Centre and within the Honeysuckle precinct.

Development within the Honeysuckle Precinct is guided by the key principles outlined within S6.01.02(C). The proposed development is considered to be consistent with the key principles and it does not encumber the existing through site link between Honeysuckle Drive and the Hunter River foreshore and encourages activity and pedestrian movement.

The proposed development is consistent with the character statement for the Honeysuckle precinct as outlined within this section as it includes a food and drink premises that is located to take advantage of Honeysuckle's prime position on the Hunter River foreshore and provides activation with the surrounding public domain.

The proposed development is considered to be acceptable having regard to this Section of the DCP.

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

The subject site is located within the Newcastle City Centre and is an existing approved development, with parking already allocated to the uses on site. The proposed fit-out will decrease the existing floor space of the commercial tenancy to 175m<sup>2</sup> and the outdoor space proposes a maximum seated capacity of 300.

If applying the previous city centre car parking rate of 1 space per 60m<sup>2</sup> of floor area which applied at the time of the approval of the building under the state significant scheme, the resultant car parking requirement for 530m<sup>2</sup> is 8.83 spaces.

A total of eight spaces are allocated to the subject tenancy indicating that the assessment of the development application by the Department of Planning at the time anticipated this rate. The parking spaces are located in the basement and will be available for staff use.

The parking deficiency of one space can be supported for a number of reasons. CN's strategic objectives for parking in the City Centre includes mode shift to sustainable transport as identified within CN's '*Parking Plan 2021- on the Street (Parking Plan)*'.

There are also 15-minute parking spaces within Honeysuckle Drive to cater for pick-up/setdown activity which can assist with access to the site. The site is located within close proximity to public transport and the number of parking spaces provided on site is acceptable.

### Servicing

Servicing of the proposed development (with the exception of waste servicing which will be on-site as per existing arrangements) is to occur from the existing kerbside loading zone which exists on Honeysuckle Drive in close proximity to the site. The loading zone has a restriction on use to only between 6am - 5pm Monday to Saturday. A condition is recommended to ensure use within these times only for deliveries and/or pick up relating to the subject food and drink premises.

The proposed development is considered to be acceptable having regard to this Section of the DCP.

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

The proposal is acceptable in relation to water management.

### Waste Management - Section 7.08

The applicant has prepared a detailed Waste Management Plan (WMP), which addresses waste minimisation and litter management strategies. Demolition and waste management through the construction phase will be subject to conditions recommended to be included in any development consent to be issued.

The WMP contains operational detail for the development and indicates that bin storage will be within the commercial/retail waste room located within the western Huntington building. The building manager will then coordinate with a private waste contractor to ensure that bin collection is undertaken on-site and that no commercial/retail bins are presented to the Honeysuckle Drive kerbside for collection.

The submitted plans also indicate that bin storage will be contained within the retail/commercial waste room in the western most Huntington building, which is located approximately 10m from an access door leading directly to the subject premises.

CN's Waste and Commercial Collections Manager has reviewed the submitted Waste Management Plan and has not raised any issues with the operational detail.

Based on the submitted information, the proposal is considered to be acceptable.

### Advertising and Signage - Section 7.09

The proposal includes the installation of six signs. Two are located on the glazing elements of the northern elevation and one each on the east and west glazing and to the eastern and western end of the awning respectively.

The signs are considered to be four window signs and two fascia signs. The plans state that all of the signs are for the purpose of business identification only and all have indicative dimensions of 600mm x 600mm.

The types of signage proposed, locations and dimensions are all compliant with the controls of this Section of the DCP.

Conditions are recommended to be imposed on any consent issued that the signage be for business identification purposes, are not to be illuminated and have maximum dimensions of 600mm x 600mm.

The proposed signage is considered to be acceptable.

### Development Contributions

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

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

### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

### **5.5 The regulations (and other plans and policies)**

#### Environmental Planning and Assessment Regulation 2021

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Regulation 2021* with applicable clauses requiring further consideration discussed below:

#### *Clause 61 Additional matters that consent authority must consider*

As required by clause 61(1) consideration has been given to the Australian Standard AS2601-2001: *the demolition of structures* and a recommended condition imposed on the development consent requiring demolition works to be carried out in accordance with AS2601-2001.

#### *Clause 73 Maximum capacity signage*

The proposed development includes a use identified within clause 73(1) and accordingly a recommended condition has been placed on the consent requiring signage to be displayed in a prominent position in the building stating the numbers of persons that are permitted in the building.

### NSW Food Act

The proposed development includes the preparation of food. Conditions have been recommended on the consent in relation to the preparation of food to satisfy the requirements of the *Food Act 2003*.

### Newcastle After Dark Strategy

The Strategy guides the development of the city's night time economy. It outlines the key priorities and actions to be delivered by Council in its commitment to leading the development of a creative, safe and vibrant nightlife that contributes to the cultural and economic revitalisation of Newcastle.

The Strategy acknowledges that there is an expectation that life in the city centre is going to involve denser social and business interactions and that nightlife precincts will have different approved uses and later trading hours and increased noise levels. It also discusses the Agent of Change principle, whereby the entity responsible for introducing the change into the built environment carries the onus of mitigating the impacts of the change. In this case, the applicant is proposing a number of measures to mitigate the impact of the use as a food and drink premises on the surrounding properties through physical noise mitigation measures and operational aspects.

The Honeysuckle precinct is identified in the Strategy as an area that will grow over the next decade and the demand for waterside dining will increase. One of the challenges it is facing is the diversity of venue types and visitation on weeknights. The proposed development is consistent with the Strategy as it would increase the diversity of waterside venues offered in the precinct closer to Cottage Creek.

### **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 proposed development includes the establishment of a licensed premises in close proximity to residential receivers.

The applicant has submitted an Acoustic Assessment, with the latest version dated 18 August 2023 prepared by Spectrum Acoustics and an addendum added in November 2023. The reports have been reviewed by CN's Environmental Health Team.

The Acoustic Assessment follows the conventional process of determining the criteria for the potentially affected receivers, characterising source noise levels, modelling the propagation of these source levels, determining compliance, and specifying controls as necessary. The reports incorporate a series of assumptions in its noise modelling

to simulate a likely use scenario. These assumptions have been repeated within the set conditions.

The Acoustic Assessment modelled internal amplified entertainment which was propagated to receivers directly above and adjacent to the premises. The consultant concludes that based on the modelled assumptions, amplified entertainment and patron noise will be mitigated through a series of attenuation measures, these include:

- 1) Closing over the louvers (identified in Figure 4 of the Acoustic Assessment)
- 2) Closing the eastern door
- 3) All access via the operable doors will be centred and positioned under the solid section of awning roof and the installation of a noise control limiter at the premises.

The above mitigation measures have been included in the recommended conditions of consent.

#### *Undercover Outdoor Seating Area*

The Acoustic Assessment has also modelled external patron noise from the undercover outdoor area which was also propagated to receivers directly above and adjacent to the premises.

The consultant concludes that based on the modelled assumptions, patron noise will be mitigated through a series of attenuation measures including:

- 1) The gap between the awning roof and building to be closed for the full length of roof with an acoustic baffle.
- 2) The installation of a glass infill roof between the awning structures to extend to fill in open sections at the eastern and western ends.

The above mitigation measures have been included in the recommended conditions of consent.

#### *External Leased / Licensed Area*

The addendum to the report which was added in November 2023 addresses the impact of patrons leaving the premises after 10pm. The addendum concludes that noise levels at the potentially most affected receivers, from noise emissions from patrons leaving the venue after 10pm, would be barely audible and not considered intrusive. The addendum also outlines operational commitments made by the proponent through the submitted venue management plan to ensure 'soft closure' and a progressive patron disbursement strategy, allowing for reduction of patronage over a two-hour period and therefore reducing likelihood of impact as well as staff monitoring areas to discourage congregation.



The reports have demonstrated that the proposed development has satisfied the relevant noise assessment criteria based on the assumptions modelled.

Recommended conditions have been imposed on the consent and subject to compliance with these conditions the proposed development would not create significant adverse noise impacts.

#### Cumulative impacts on residential amenity and public safety resulting from operating hours

The cumulative impacts caused by noise, anti-social behaviour and security risk on the residents can be effectively mitigated by the on-going management of the premises in accordance with the recommended conditions of consent and the Venue Management Plan. The Acoustic Assessment and Crime Risk Assessment submitted with the application highlight that the impacts on the residents in close proximity will be minimal.

In conclusion, it is considered that the proposed development will not have any undue adverse impact on the natural or built environment. The development is compatible with the existing character of development in the immediate area and is located on a site suitably zoned for the proposed land use. The site is located within the Newcastle City Centre where CN's strategic planning documents support and encourage the operation of venues as part of the night time economy.

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

The site is suitable for the proposed development as it is located in the City Centre, which is well serviced by public transport and community facilities. At grade access to the site will be available for pedestrians, from adjacent roads, public open space and public transport.

It is considered that adequate services and waste facilities are available to 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 constraints of the site have been considered in the assessment of the proposed development, which includes flooding, contamination and acid sulfate soils.

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

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

The application was notified in accordance with CN's Community Participation Plan. A total of 41 submissions were received during the notification period, including two Public Voice requests. It is noted that 38 of the submissions received were in objection

to the proposal and three in support of the proposal, on the basis that consent would be given to reasonable hours of operation.

The proposal was considered at the Public Voice meeting held on 17 October 2023. The key concerns raised by the objectors within the submissions have been considered previously in this report.

The following table provides a summary of all key concerns raised, highlighting the section of the report where that matter is discussed in addition to the other issues raised and a response to those issues.

ISSUE	DESCRIPTION	RESPONSE
<p>Inconsistency with Plan of Management (POM).</p>	<p>The objectors raised concern regarding the proposed operational hours and land use being inconsistent with the plan of management prepared by Doma Group dated January 2020.</p> <p>The Doma Group POM at Clause 5 states that <i>‘the retail and restaurant component of the development will operate between 7am and 11:30pm. All outdoor seating activities must cease at 10:30pm’</i>.</p>	<p>The subject POM is a supporting document for the overall management of the building and is not considered a POM for the purposes of this assessment. The POM document referenced by the objectors was not approved or incorporated into the development consent (SSD 8999) and cannot be jurisdictionally enforced.</p> <p>The applicant has sought development consent under Part 4 of the EP&amp;A Act for the (first use) as a food and drink premises which includes alterations and additions to the ground floor of the building and outdoor dining.</p> <p>Food and drink premises are permitted with consent within the B4 Mixed Use Zone under NLEP 2012. The proposal includes a Venue Management Plan which is specific to the operation of the proposed food and drink</p>

		premises and will be considered as part of the assessment. It would be a requirement of any consent granted that the premises are operated in accordance with a Venue Management Plan.
State Significant development	Objections have raised concern that the development is considered a 'State Significant Development' and should be assessed by the State Government.	The Honeysuckle Precinct is recognised as a State Significant Site, as identified under Schedule 2 of the State Environmental Planning Policy [SEPP] (Planning Systems) 2021. Under the SEPP, development that has a capital investment value (CIV) of more than \$10 million and is located within the Honeysuckle Precinct is considered as State Significant Development. The proposal does not have a CIV of over \$10 million, therefore the application is not considered a State Significant Development, and CN is the appropriate consent authority.
<b>Noise</b>	Objections have raised concern over unreasonable impacts on residential receivers by way of noise. These concerns appear to predominantly derive from the proposed hours of operation, seated patronage within the outdoor areas including within the 'breezeways' situated between the subject building and buildings to the east and west, the general increase of patronage within the surrounding public domain, and	The revised architectural plans have removed seating from the 'breezeways' which are considered public rights of carriageway for pedestrian access.  As discussed within Section 5.6 of this Report, an Acoustic Report was submitted with the application which has been revised throughout the assessment process to

	<p>the changes to the existing ground floor facade, which include the removal of fixed double-glazed windows with operable glazing.</p>	<p>address concerns raised in the submissions. The latest revised Acoustic Report dated 18 August 2023 has been reviewed and is considered to be acceptable. It is noted that the addendum report dated November 2023 discusses the impact on sleep disturbance and the August report focuses on noise modelling.</p> <p>To minimise impacts the development will be providing additional acoustic measures, including double glaze doors and windows, closing vent louvers and installing acoustic baffles.</p>
<p><b>Anti-social behaviour</b></p>	<p>The objections have raised concern that the proposed licensed premises would lead to an increase in anti-social behaviour both within the premises and it's the immediate vicinity.</p>	<p>The applicant has submitted a Venue Management Plan which includes measures to be implemented by the operators of the venue to mitigate any impacts from the sale of alcohol at the premises. The Plan includes a commitment to 'soft closure' of the venue by ceasing service 30 minutes prior to closure, allowing for a gradual dispersal of patrons into the public domain which would likely aid in mitigating anti-social incidents through reduced likelihood of congregation and loitering nearby the premises. The Plan also states that staff will monitor common areas and thoroughfares in high-vis attire for 30 minutes after cease of trade to ensure that</p>

		<p>patrons do not congregate within the public domain.</p> <p>In order to further mitigate potential adverse impacts and ensure the dispersal of patrons in a staggered manner prior to the closure of the premises, a condition has been imposed on the consent that requires all music to cease 30 minutes prior to closure of the venue.</p>
<p>Safety and security impacts</p>	<p>Objections have raised concern that the establishment of a new licensed premises would lead to an increased risk to public safety and security.</p>	<p>As discussed within Section 5.3 of this Report the applicant has submitted an analysis of the principles of <i>Crime Prevention Through Environmental Design</i> (CPTED) with the development application.</p> <p>The CPTED analysis reviews the proposal against the applicable principles and concludes that the proposed development has had due regard to the safer by design principles and subject to operational measures, there is no reason to suspect an increased risk to public safety or reduced security as a direct result of the proposal.</p> <p>The safety measures proposed include: the presence of increased surveillance within the immediate surrounds of the</p>

		<p>venue, controlled and monitored access throughout the majority of the day and into the night, territorial reinforcement through occupying and displaying clear private ownership to a currently vacant space and managing that space in accordance with the terms of a management plan. These key elements are likely to increase public safety and security to nearby residential properties.</p> <p>The NSW Police have reviewed the proposal with regard to public safety and have recommended conditions be imposed on any consent issued regarding the installation of CCTV, hours of operation, plan of management and noise.</p>
<p>Cumulative impacts on residential amenity</p>	<p>The objections have raised concern over a decrease in residential amenity and subsequent quality of life resulting from the cumulation of all of the above-mentioned impacts (noise, anti-social, safety and security).</p>	<p>As discussed within Sections 5.1.4, 5.3 and 5.6 of this report, the proposed development is not considered likely to create significant adverse impacts by way of noise, anti-social behaviour or safety and security subject to compliance with recommended conditions of development consent and subject to the on-going reasonable management of the premises.</p>

		<p>It is acknowledged that the Newcastle City Centre includes Commercial, retail and residential uses and the proposed development has included appropriate mitigation measures having regard to its surrounding context, demonstrative of implementing the 'agent of change' principle.</p> <p>The mitigation measures intended allows for the differing land uses to be managed together effectively within the Newcastle City Centre context.</p>
<p><b>Architectural plan amendments</b></p>	<p>The objections have raised concern over the proposed alterations and additions to the existing building. The concerns were regarding the fixed shade structures over the external space and the removal of the existing fixed glazed windows and doors and replacement with operable glazed windows and how these alterations would impact upon the appearance of the building and required noise attenuation.</p>	<p>The applicant has submitted revised plans which no longer include fixed shade structures on the sides of the building and there is no proposed work to the outdoor seating area to the east nor the existing double height glazing.</p> <p>The applicant seeks consent to replace the fixed glazed doors to the northern elevation with operable glazed doors, however this is limited to the central portion of that elevation, with the operable portions limited to underneath the existing awning roof structure and solid portion of roof.</p> <p>The impact of the operable glazing as a pathway for noise emission has been</p>

		considered as part of the assessment and is not considered to result in the creation of significant adverse impact on sensitive receivers by way of noise.
Signage	The objections have raised concern that the detail of proposed signage has been purposely omitted from the development application.	<p>The applicant has now sought consent for signage.</p> <p>As discussed within Sections 5.1.2 &amp; 5.3 of this report, the signage (6x 600mm x 600mm signs) has been assessed against the relevant assessment criteria of the applicable planning regime and is considered to be acceptable.</p> <p>Conditions are recommended to be imposed on the consent having regard to signage.</p> <p>Further, it is noted that some types of signage may qualify as exempt development under the provisions of <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>.</p>
Appropriateness of sanitary facilities	Objections have raised concern regarding the appropriateness of the sanitary facilities intended to be utilised by the premises.	The sanitary facilities are common property as identified by the strata plan and able to be utilised by the ground floor tenancies.



		<p>The sanitary facilities have been confirmed as compliant with the requirements of the Building Code of Australia in relation to the intended capacity of the premises and there are two dedicated accessible sanitary facilities (male and female) which both have an ambulant cubicle.</p>
<p>Proposed operational hours inconsistent with established venues in Honeysuckle Precinct</p>	<p>Objections have raised concern that the proposed operating hours are inconsistent with the operating hours of existing licensed premises within the Honeysuckle precinct, including the proposed use of the outdoor space after 10pm.</p>	<p>There are existing licensed premises within the Honeysuckle precinct that are afforded operating hours until 12 midnight through development consent.</p> <p>The use of the outdoor dining area after 10pm has been assessed and is considered unlikely to create adverse impact upon the locality, subject to the reasonable on-going management of the premises and compliance with recommended conditions of development consent.</p>
<p>Marketing of Venue/Huntington Development</p>	<p>Objections have raised concern that marketing material for the Huntington development includes reference to a range of dining options.</p>	<p>Consent is sought for use of the ground floor of the building as a food and drink premises which would allow for multiple dining options under the terms of the NLEP 2012 as permitted by consent and does not distinguish between the type or number of dining options.</p>

Management of operational waste	Objections have raised concern for the management of operational waste generated by the proposed development.	An operational waste management plan has been submitted with the development application and commercial waste will be collected by a private contractor from within the site, with no bins to be presented to the kerbside.
Non-Compliance with the <i>Strata Schemes Development Act 2015</i>	Objectors have raised concern that the proposal is not a valid application as there has been no involvement with the residential strata for consultation and agreement as required under the Strata Management Statement.	<p>The subject site is located within the commercial stratum legally known as SP105458; this allotment is separate from the residential stratum legally known as SP105377.</p> <p>The proposal is wholly located within the commercial stratum allotment, and it is confirmed that the required owner's consent has been provided with the application. In this respect, the application has been validly made under the requirements of the EP&amp;A Act.</p> <p>Neither the requirements of the <i>Strata Schemes Development Act 2015</i> or the provisions of the specific Strata Management Statement, are matters for consideration under the development application.</p> <p>Public consultation of the application has occurred in accordance with CN's Community Participation</p>

		Plan, satisfying the notification requirements of the EP&A Act with respect to development applications.
Detrimental impact on property value	Objectors raised concern regarding the proposed development decreasing the value of nearby residential properties.	This is not a matter for consideration under Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .

The issues and concerns raised in the submissions do not warrant the refusal of the application in its present form or require any further amendments. The proposed development does not raise any other significant public interest issues beyond matters already addressed in this report.

### 5.9 The public interest

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

The proposal is consistent with CN's strategic intent for the night-time economy, with the proposed food and drink premises situated in a location desired by CN in contributing to the growth of the night time economy, and with reasonable intended hours of operation.

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 proposed development includes on-going management measures that will minimise amenity impact to nearby residences to a level considered to be satisfactory for a City Centre location.

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

### 6.0 CONCLUSION

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

### ATTACHMENTS

**Attachment A:** Submitted Plans - 2/29 & 3/31 Honeysuckle Drive Newcastle

- Attachment B:** Draft Schedule of Conditions - 2/29 & 3/31 Honeysuckle Drive Newcastle
- Attachment C:** Processing Chronology - 2/29 & 3/31 Honeysuckle Drive Newcastle
- Attachment D:** Venue Management Plan - 2/29 & 3/31 Honeysuckle Drive Newcastle
- Attachment E:** Amended Acoustic Assessment Report - 2/29 & 3/31 Honeysuckle Drive Newcastle
- Attachments A - E:** **Distributed under separate cover**

### 7.3. 775 HUNTER STREET NEWCASTLE WEST - COMMERCIAL PREMISES - INCLUDING DEMOLITION OF EXISTING STRUCTURES, GROUND FLOOR COMMERCIAL/RETAIL TENANCY, SECURE GROUND FLOOR END OF TRIP FACILITIES AND 6 LEVEL COMMERCIAL/OFFICE PREMISES- DA2022/00923

**APPLICANT:** ADW JOHNSON  
**OWNER:** SPARTOHORI PTY LTD  
**REPORT BY:** PLANNING & ENVIRONMENT  
**CONTACT:** EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

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## PART I

### PURPOSE

An application has been received seeking consent to Commercial premises - including demolition of existing structures, ground floor commercial/retail tenancy, secure ground floor end of trip facilities and six level commercial/office premises at 775 Hunter Street Newcastle West.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the Floor Space Ratio development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation. The development results in 71% variation, or 1485.9m<sup>2</sup> exceedance.

The application was assigned to Senior Development Officer, Iain Watt, for assessment.

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) between 26 August and 14 September 2022 and in response three submissions of objection have been received.

Amended plans were provided twice during the assessment of the application. Each amendment did not require renotification in accordance with provision in the CPP. The



**Subject Land: 775 Hunter Street Newcastle West**

objectors have been afforded an opportunity comment on each iteration by informal notice of the amendments. The additional objections from existing objectors have been considered within this report.

The key concerns raised by the objectors in respect to the development include:

- i) Breach to floor space ratio
- ii) Impact from loss of solar access
- iii) Obstruction of views
- iv) Noise Impacts

Further details of the submissions received are addressed as part of the Planning Assessment at Section 5.0.

### **Issues**

1. The proposed development has a floor space ratio of 5.13:1 increased from the existing building at 0.60:1, which is approximately a 71% variation from the development standard of 3:1 under Clause 7.10A of NLEP 2012. This is based on the gross floor area exceedance being 1485.9m<sup>2</sup> and the site area of 697.7m<sup>2</sup>. The applicant has submitted a written request in accordance with Clause 4.6 of the NLEP 2012 to vary the floor space ratio development standard.

### **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 NLEP 2012, against the development standard at Clause 7.10A 'Floor Space Ratio for certain other development' in the Newcastle City Centre, and considers the objection to be justified in the circumstances and to be consistent with the assumed objectives of Clause 7.10A, together with the objectives for development within the B3 Commercial Core zone in which the development is proposed to be carried out; and
- B. That DA2022/00923 for Commercial premises. including demolition of existing structures, ground floor commercial/retail tenancy, secure ground floor end of trip facilities and six (6) level commercial/office premises at Part Lot 121 DP 526578 known as 775 Hunter 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

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

### **Political Donation / Gift Declaration**

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

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

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

### **Affiliations and Pecuniary interests**

The applicant has acknowledged on an amended application form that there is a relationship between the owner of the subject land 775 Hunter Street and Newcastle City Council as the owner also owns the building on occupied by City of Newcastle offices.

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## **PART II**

### **1.0 THE SUBJECT SITE**

The subject property is described as 775 Hunter Street, Newcastle West. Its legal description is Lot 121 DP 526578.

The lot is generally rectangular fronting Hunter Street and narrows at the southern end splay for King Street also to the southern end of the lot. It is located on the corner of Hunter Street and Stewart Avenue, Newcastle West. The lot is at the end of the city block and has limited frontage to King Street.

The site has a frontage of 10.017m to Hunter Street, approximately 80m to Stewart Avenue, with a total site area of 697.7m<sup>2</sup>. The site is generally flat with an overall fall to the south, is devoid of any vegetation and is within the Newcastle City Centre Heritage Conservation Area. Currently a vacant double storey building formerly used as a hotel is on the site and is proposed for demolition with this application.

The site is bound on three sides by roads, the remaining eastern boundary is adjoined by existing development. This includes the three storey Rundle tailoring building to the northern half of the site and the eight storey Holiday Inn Express opposite the southern portion being separated by a right of way from the subject site. The general form of development in the immediate area consists predominantly of high rise and lower scale commercial.

## 2.0 THE PROPOSAL

The development application seeks consent for the demolition of the existing 419.57m<sup>2</sup> gross floor area vacant building and construction of a seven storey commercial premises. The proposed development for a single commercial tower will take advantage of the prominent location being a major intersection in the West End of Newcastle City Centre.

The proposed development comprises:

- i) A ground floor commercial/retail tenancy (specific tenant yet to be confirmed) with direct street access to Hunter Street, and secure ground floor end of trip facilities comprising 47 bicycle lockers.
- ii) Six levels of commercial/office premises (tenant yet to be confirmed).
- iii) Provision for parking to be provided via arrangement with nearby off-site multistorey carpark facility (12 Stewart Avenue).
- iv) Building signage

This provides for commercial premises with a total gross floor area (GFA) of 3579m<sup>2</sup>.

The proposal has been amended during the assessment process in response to assessment matters, including issues raised by CN's Urban Design Review Panel (UDRP) and concerns identified by CN officers. These changes have included:

- i) An increase in the ground floor level to enable on-site flood refuge for the ground floor.
- ii) Increased size altered shape of end of trip facilities for additional amenity and safety.
- iii) Refined awning to ensure no conflict with traffic signals and light posts now provided with setback to 600mm from all kerbs to Hunter Street and Stewart Avenue.
- iv) Amended eastern façade material and design to not present a blank façade.
- v) Reduced scale of building signage.



- vi) Provision of a mechanical zone to facilitate changes of use into the future.

Further clarification was also sought regarding the proposed use of the parking facilities on 12 Stewart Avenue in association with the proposal.

A copy of the current plans as amended are included at **Attachment A**.

### **3.0 PUBLIC NOTIFICATION**

The original application was publicly notified in accordance with CN's Community Participation Plan (CPP) between 26 August 2022 and 14 September 2022. Three submissions of objection were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

- i) Breach to floor space ratio
- ii) Impact from loss of solar access
- iii) Obstruction of western view
- iv) Insufficient provision of parking
- v) Setbacks from lot boundaries
- vi) Design inconsistent with the desired character of the area
- vii) Proposal doesn't retain the existing building or reference its use within Heritage Conservation Area
- viii) Noise impacts

The plans have been amended twice since lodgement and each time it was considered that the amended plans did not require re-notification with the minor changes, addressing concerns, being consistent with the terms of CN's CPP. While no formal re-notification was conducted the amended plans, including the current iteration to which this report addresses, have been made publicly available via the online DA tracking portal on CN's website and the submitters being made aware of the amended plans by CN officers.

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 integrated development pursuant to Section 4.46 of the EP&A Act as approval is required from the Subsidence Advisory NSW under the Coal Mine Subsidence Compensation Act 2017. The Subsidence Advisory NSW granted their '*General Terms of Approval*', on 16 September 2022 at **Attachment D**.

## 5.0 PLANNING ASSESSMENT

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

### 5.1 Provisions of any environmental planning instrument

#### State Environmental Planning Policy (Resilience & Hazards) 2021

##### Chapter 2- Coastal Management

Chapter 2 of the SEPP R&H 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 site is located in the Coastal Environment Area under the mapping of coastal management areas.

Clause 2.12 requires that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to '*...cause increased risk of coastal hazards on that land or other land.*'

The site is currently a high disturbed environment with existing built form. The new built form with limited changes to existing levels will not detrimentally impact the coastal zone or the environmental assets of the coastal environment area. The proposal is acceptable having regard to this policy.

##### Chapter 4 - Remediation of land

Chapter 4 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to 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.

CN's records identify the site as being contaminated land. The policy and section 5.2 of the Newcastle Development Control Plan 2012 (NDCP 2012) require a preliminary site investigation to be carried out in accordance with the '*Guidelines for Consultants Reporting on Contaminated Sites*'.

The relevant provisions of Chapter 4 and the DCP have been considered in the assessment of the application, as discussed below.

A Preliminary Site Investigation (PSI) for the subject site was prepared by EP Risk dated 18 January 2023. Initially, ten soil samples and one water sample were taken. Soil was composed of gravel fill over sand with some slag present, review of these samples required further sampling which was conducted.

The submitted assessment concluded that the site can be made suitable for the proposed commercial/industrial use providing the recommendations in the report are

conditioned and adhered to. Further investigation into contamination is not warranted. However, as there is potential for historic fill materials to extend beneath the current building footprint which could not be accessed during the PSI, an unexpected find protocol is required.

Having regard to the methodology used and the findings of the report, it is considered that the land is suitable for the proposed commercial land use, however provisions will need to be given to any disposal of material from the site, waste and any fill entering the site.

It is recommended that an Environmental Management Plan (EMP) is to be prepared and submitted to Council prior to the commencement of site development works to ensure appropriate methods are used in the construction to maintain the suitability of the site. Accordingly, the site is considered suitable for the proposed development and contaminated land investigation is acceptable, subject to compliance with the draft conditions included in **Attachment B**.

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

#### Transport for NSW (TfNSW)

Stewart Avenue is a 'classified road' under the provisions of the *Roads Act 1993*. Accordingly, consideration must be given to the requirements of Clause 2.119. As the development has frontage to this classified road. The site is proposed with no vehicular access and is of a type that is not sensitive to traffic noise or emissions as such is acceptable with the requirement of development fronting classified road.

The development achieves servicing via the use of a loading bay within the indent bay on Stewart Avenue. The proposal was referred to TfNSW for comment and in response it was advised no concerns are raised in relation to the proposed arrangement, provided the temporary loading zone is restricted between the hours of 12 midnight to 5am and the indented bay is signposted accordingly.

### **State Environmental Planning Policy (Industry and Employment) 2021 — SEPP (I&E)**

#### Chapter 3 - Advertising and signage.

Chapter 3 aims to regulate signage and provide signage that is compatible with the desired amenity and visual character of an area. The chapter applies to all signage, except for signs deemed to be exempt development, that can be displayed with or without development consent, and is visible from any public place or public reserve.

The site is located within a heritage conservation area under the Newcastle Local Environmental Plan (NLEP 2012). Clause 3.8 - Prohibited advertisements of the policy provides that in a 'heritage area' (excluding railway stations) despite the provisions of any other environmental planning instrument (such as the NLEP) the display of an advertisement is prohibited. An advertisement does not include business identification signs, building identification signs, signage that is exempt development under an environmental planning instrument or signage on vehicles.

Proposed signage relates to building identification signage to Hunter Street and Stewart Avenue frontages on the top level and to the ground floor. The maximum dimensions of the signage proposed is 6m in length and 3m in height, being internally lit to ensure no unacceptable glare.

The objectives of this chapter of the SEPP are to ensure that signage (including advertising) is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high-quality design and finish. The proposed signage is consistent with the objectives of this SEPP and is acceptable.

### **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

On 26 April 2023 new employment zones took effect in the NLEP 2012 and the zoning of the subject site changed from B3 Commercial Core to E2 Commercial Centre. However, as the lodgement of the application in August 2022 predates the above amendment to the NLEP consideration is given to the zoning of the property as applied at the time of lodgement. In the B3 Commercial Core, the proposed development is permitted with consent.

The proposed development is consistent with the objectives of the B3 Commercial Core zone, which are:

- 1) To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- 2) To encourage appropriate employment opportunities in accessible locations.
- 3) To maximise public transport patronage and encourage walking and cycling.
- 4) To provide for commercial floor space within a mixed-use development.
- 5) To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.
- 6) To provide for the retention and creation of view corridors.

The proposed commercial development is ideally located with respect to public transport (neighbouring the Newcastle Transport Interchange). The development will provide employment opportunities in an accessible location and will assist in

strengthening the role of the Newcastle City Centre as a regional business centre for the Hunter Region.

#### Clause 2.7 - Demolition Requires Development Consent

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

#### Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum building height of 90m. The height of the development is approximately 30m and complies with this requirement.

#### Clause 4.4 - Floor Space Ratio (FSR) & Clause 7.10A - Floor Space Ratio for Certain Other Development

Under the NLEP 2012, the subject site is identified as having a prescribed floor space ratio of 8:1. However, Clause 7.10A of NLEP 2012 details additional provisions relating to development with a site area of less than 1,500m<sup>2</sup>. This clause specifies that the maximum FSR of a building is whichever is the lesser of the FSR identified on the FSR map (i.e., 8:1) or 3:1. Accordingly, the maximum floor space ratio for the subject site is reduced to 3:1.

The proposed development will result in a total FSR of 5.13:1, equating to an exceedance of 1485.9m<sup>2</sup> or 71% above the prescribed maximum FSR for the subject land. This exceedance is discussed in more detail under Clause 4.6 - Exceptions to Development Standards below.

#### Clause 4.6 - Exceptions to Development Standards

The applicant has submitted written requests that seek to vary the Floor Space Ratio (Clause 7.10A) development standards in accordance with Clause 4.6 of NLEP 2012.

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

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

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

As outlined above, the proposed development has a floor space ratio of 5.13:1, which is approximately a 71% variation from the development standard of 3:1 under Clause

7.10A. 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 requests 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.

An assessment of the Applicant's Clause 4.6 Variation Request to the floor space ratio standard imposed by Clause 7.10A of NLEP 2012 (Development Standard) is provided below:

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

The floor space ratio in Clause 7.10A is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act and is not expressly excluded from the operation of Clause 4.6.

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

The submitted 'Clause 4.6 Variation Request' (**Attachment D**), prepared by ADW Johnson on the 24 November 2023 and constitutes a written request for the purposes of clause 4.6(3) of the NLEP 2012.

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

The applicants' Clause 4.6 Variation Request written response seeks to rely on the first of the five tests established via the *Wehbe* decision. Being to demonstrate that compliance with the development standard is unreasonable or unnecessary.

Should an application meet any of the tests detailed in *Wehbe* then compliance with a development standard may be considered unreasonable or unnecessary with regards to Clause 4.6(3)(a) of LEP 2012.

**Test 1: The Objectives of the Standard are Achieved Notwithstanding Non-Compliance with the Standard.**

**The Objectives of Clause 7.10A**

The Clause 4.6 Variation relates to an exceedance of the FSR set out in cl.7.10A, clause 7.10A does not have stated objectives within the development standard, the objectives therefore are to be assumed via the proper interpretation of the text and the context of the standard.

The applicant has provided discussion for the assumed objectives of the development standard with of cl.7.10A.

The context of the development standard is best interpreted from the Clause 7.1 which sets the objectives of Part 7- Additional local provisions –Newcastle City Centre which applies to the subject site. There are six development standards within Part 7 with only cl.7.9-Height of Buildings containing a specified objective within the text of the standard. It is therefore reasonable to assume that the objectives of Clause 7.1 are to inform the context of any development standard with the part.

With relation to the specific text of cl 7.10A it is stated:

*'The maximum floor space ratio for a building that is located on land with a site area of less than 1,500 square metres is whichever is the lesser of—  
(a) the floor space ratio identified on the Floor Space Ratio Map, or  
(b) 3:1.'*

The applicant has provided the following interpretation.

*"1. First, cl 7.10A applies only to land with a site area less than 1,500m<sup>2</sup>. It therefore does not apply generally to all land in the Newcastle City Centre. Further, the definition of "site area" in the Dictionary confirms the area is not limited to the legal boundaries of an allotment but can refer to contiguous allotments.*

*2. Secondly, cl 7.10A provides a maximum FSR standard for a "building" and therefore applies generally to all development for the erection of a building within the Newcastle City Centre on land with a site area less than 1,500m<sup>2</sup>.*

*3. Thirdly, cl 7.10A adopts two FSR standards. The lesser of the two standards is the applicable standard for development on land with a site area less than 1,500m<sup>2</sup>. The first standard is in paragraph (a) which adopts the FSR for the land on the Floor Space Ratio Map. The Floor Space Ratio Map is the map prescribed under cl 4.4(2) of the NLEP 2012 which contains the general development standard for FSR for all types of development under the NLEP 2012. The second standard is in paragraph (b) which prescribes a FSR standard of 3:1. Paragraph (b) applies to the proposed development because it is less than the FSR standard of 8:1 which is prescribe for the Site on the Floor Space Ratio Map.*

*4. Lastly, while cl 7.10A restricts the FSR for sites under 1,500m<sup>2</sup>, there is no similar restriction on building height. This has the effect of limiting sites with an otherwise*

*significant building height being limited by the allowable FSR. For example, a 3:1 FSR would typically have a height control significantly less than 90m, which is the maximum building height for the Site under cl 4.3."*

As cl 4.4 is impliedly referred to within the text of the standard which adopts the FSR standard prescribed by the Lot Size Map, it is reasonable to assume the provisions of cl 4.4 are relevant to understanding the objective of cl 7.10A

The objectives of Clause 4.4 -Floor Space Ratio are as follows:

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

The first objective is to provide for an appropriate density of development which is consistent with the hierarchy of development. While the second controls building density, bulk, and scale and form.

Having regards to the text and context of the development standard the following objectives are assumed for the development standard described in clause 7.10A.

- a) To provide an appropriate density of development in the Newcastle City Centre.
- b) To ensure building density, bulk and scale makes a positive contribution towards the desired built form in the Newcastle City Centre.
- c) To encourage the consolidation of land in the Newcastle City Centre to achieve desired built form.

The applicant has provided the following specific justifications to the objectives related to the development standard stated above:

- a) It is intended that FSR's throughout the Newcastle City Centre encourage higher density, consistent with urban consolidation objectives and consistent with the Newcastle CBD being the metropolitan city of the region (as identified in the Hunter Regional Plan 2041). The proposed additional FSR sought for the subject site is consistent with this objective. A FSR of 3:1, if enforced, would result in a development outcome that is not consistent with the established hierarchy i.e., the objective of the clause would not be met.*
- b) The proposed additional floor space will ensure a density, bulk and scale more consistent with the desired and emerging character of Newcastle West, particularly along the southern portion of Stewart Avenue. Figure 6 clearly identifies available FSR of (8:1) in proximity of the site and a FSR of only 3:1*



*will be inconsistent with this. A significantly reduced density will not contribute in the same way to making a positive contribution towards the desired built form and this would be inconsistent with the established centres hierarchy.*

- c) *This objective concerns the benefits of consolidating to achieve site areas larger than 1,500m<sup>2</sup> to achieve the benefits of greater FSR and height of building standards which allow for more intense development.*

*As addressed in Section 5.2, consolidation with the adjoining lot (767 Hunter Street – Lot 1 DP 201916) was not possible as the landowner has rejected the offer for consolidation.*

*While the Site cannot be consolidated with adjoining land to achieve a site area greater than 1,500m<sup>2</sup> the development still satisfies the intended purpose of this objective because the same design outcome is achieved for the following reasons:*

*First, as addressed in Section 5.3, a compliant design that attempts to respond to the site and its location would only achieve 3 storeys. If the proposed development was to be scaled back to a FSR of 3:1 it would result in a development that is inconsistent with the scale of development along Stewart Avenue and within the immediate locality. It would also be inconsistent with the scale of development that is emerging in the area and the desired future character of the locality as envisaged in the planning controls for Newcastle West. It would also result in a development that is in stark contrast to the available 8:1 FSR on nearby sites as identified in the figure in section 5.3 which demonstrates the LEP mapped available FSR to other sites within the same city block. In addition, a design that is compliant with FSR would result in a height of development that is well below the site's mapped height under the NLEP of 90m.*

*Secondly, the proposed development including with additional FSR will provide an appropriate level of density, more consistent with the vision for City West and more consistent with the desired future character.*

*Lastly, consistency with the desired character is important in urban design terms to provide stronger building elements to corner sites and more particularly on this site which is a gateway to the CBD. This will not be achieved with a development of limited density.*

#### Officer Comment

The Applicant's written request is considered to satisfy the requirements of Clause 4.6(3)(a) in demonstrating that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case.

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

In *Initial Action*, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, focus must be on the

element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development standard, rather than promoting the benefits of the development.

An extract from the applicant's Clause 4.6 Request is provided as follows:

1. *The proposed development in particular with the additional floor space will promote the social and economic welfare of the community, through the provision of commercial floor space at an appropriate density in a strategic location close to employment, shops, services, public transport and outdoor public recreational spaces.*
2. *The additional floor space will promote the principles of urban consolidation and the resultant ESD benefits by ensuring an appropriate level of density within a key location close to transport and services.*
3. *Promotes orderly and economic use of the site.*
4. *The design responds to the site's unique infill characteristics. The floor space ratio variation will promote a superior built form outcome for the site, consistent with the established density of surrounding commercial premises and consistent with the desired future character of the locality.*
5. *This design outcome cannot be achieved with a compliant built form. It also cannot be achieved without distributing additional bulk across the upper storeys and for the length of the subject site because of the site's prominent location and the massing of nearby buildings. To do otherwise would create a significant and awkward break in urban built form that would be unacceptable given the prominent location of the site and its orientation towards Stewart Avenue.*

#### Officer Comment

The Applicant's written request has demonstrated that there are sufficient environmental planning grounds to justify a contravention to the floor space ratio control.

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

It is considered, based on the assessment outlined above, the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the NLEP2012. It follows that the test of cl.4.6(a)(i) is satisfied.

***Clause 4.6(4)(a)(ii) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is***

***satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.***

It is noted that consideration of the applicant's justifications as to the satisfaction of the objective of the floor space ratio development standard have formed part of the Clause 4.6(3)(a) assessment above.

However, Clause 4.6(4)(a)(ii) does not require consideration of whether the objectives have been adequately addressed within the applicant's written request, rather that, '*...the proposed development will be in the public interest because it is consistent with the relevant objectives of both the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out.*'

#### *Objectives of Clause 7.10A 'Floor space ratio of certain other development'*

Clause 7.10A of the NLEP 2012 does not have an objective. As detailed in the Clause 4.6(3)(a) assessment above, the proposed development has therefore been assessed against the assumed objectives of the development standard, being informed by the text and context of Clause 7.10A of the NLEP 2012.

The development is consistent with the objectives of Clause 7.10A as the proposed building density, bulk and scale makes a positive contribution towards the desired built form and is consistent with the established centres hierarchy. Further, the departure allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

#### *Objectives of the B3 Commercial Core Zone*

Subject to Clause 1.8A of the NLEP 2012 the objectives of the B3 commercial core zone are applicable to the application being lodged but not determined prior to the NLEP amendments dated 26 April 2023.

The development is consistent with the objectives of the B3 Commercial Zone as the proposal provides a mixture of compatible land uses, including retail, business and highly desirable commercial, within an accessible location. The site is well located close to a major public transport system hub and is well serviced and accessed by pedestrians and cyclists alike.

Based on the above, the proposed development is in the public interest because it is consistent with the assumed objectives of the relevant standard and the objectives for development within the B3 zone. The proposal is satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

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

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

The subject application contravenes the numerical development standard imposed by clause 7.10A of the NLEP 2012 by greater than 10%. As such, the application is required to be reported to Development Applications Committee to assume the Secretary's concurrence in accordance with Planning Circular PS20-002.

### Conclusion

The applicant has submitted a written request to vary the floor space ratio development standard applicable to the subject site. The request relies upon the rationale established in the decision of *Webhe v Pittwater Council* (2007) NSW LEC 82 & *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

The request has adequately demonstrated that the proposed development achieves the assumed objectives C17.10A of the NLEP despite the numerical non-compliance and that there are sufficient environmental planning grounds to justify contravening the standard.

The request is considered to meet the provisions of Clause 4.6 and is well founded. Further, the variation to the development standard is considered to exhibit design excellence and considerable economic benefit and is absent of unreasonable environmental impacts.

In addition, the proposed development is in the public interest as it is consistent with the assumed objectives of the development standard and supports the objectives of the B3 Commercial Core zone, in which it is to be carried out. It is therefore considered to be unnecessary to enforce strict adherence to the standard in this instance, it is recommended the Clause 4.6 exception be granted.

### Clause 5.10 - Heritage Conservation

The existing building is not listed as a heritage item under NLEP 2012; however, the subject site is located within the Newcastle City Centre Heritage Conservation Area and is in the vicinity of several heritage items.

The site is not a listed archaeological site and is not identified as an indicative archaeological site within the Newcastle Archaeological Management Plan 1997. Further, the site is not a known Aboriginal Place.

As referenced the site is located in the vicinity of one state listed item 'Former Castlemaine Brewery' and three listed local heritage items, 'Former Army Drill Hall' (I508), 'Birdwood Park' (I509) and 'Fig Tress' (I161). The significance of these items has been assessed in the Statement of Heritage Impact (SoHI) submitted with the application. Along with the nearby items consideration is given to the existing site which contains a two-storey masonry building identified as a Contributory 2 building in CN's Heritage Technical Manual.

The NDCP requires that such contributory buildings be retained and adaptively reused. The application proposes demolition of the existing building. Case law for the demolition of a contributory building established in the NSW Land and Environment Court (*Helou v Strathfield Municipal Council* [2006] NSWLEC 66) has been reviewed to determine the suitability of demolishing the existing building and construction of a new development.

In this regard, the heritage values identified with the Statement of Significance for the Newcastle City Centre HCA are more relevant to the eastern end of the precinct. The subject site is located in a highly modified context. Although there are isolated buildings of heritage significance in the vicinity, the immediate context is characterised by mid to late 20<sup>th</sup> century buildings and more contemporary high-rise buildings.

On this basis, it is considered that the context and streetscape lack integrity to the extent that the subject building, which although is of historical interest, is not located in a heritage streetscape that it could contribute value to.

The streetscape is one of mid to late 20<sup>th</sup> century buildings and more contemporary high-rise buildings. Section 6.02.07 (Infill Development) of the NDCP 2012 provides the relevant objectives and controls for new buildings in HCAs. The setting of the site is undergoing a rapid change evidenced through recent approvals for several multi-storey developments in the immediate context. This is reflective of the changing context of the Newcastle West End and the transition from a lower scale industrial/commercial area to a new city centre.

The proposal is consistent with the nature of existing and approved developments surrounding the site and in the vicinity. Further its design excellence is supported via review by CN's Urban Design Review Panel. Although the height of the proposal is greater than existing, it is lower than nearby buildings and is within Council's planning strategy and commensurate with recently approved developments, which will result in a scale that is comfortable with the future west end form.

The proposed development compliments the existing and developing character of the West End and will contribute positively to the existing diversity of built fabric in the conservation area. The proposed 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 proposed development will not significantly affect the heritage significance of the Newcastle City Centre Heritage Conservation Area.

Further, an AHIMS search indicates that there are no known Aboriginal sites recorded on the subject site. It is known that recent developments in the broader context including the nearby Store development have encountered Aboriginal objects. Furthermore, a Due Diligence Assessment Report prepared for a neighbouring site recommended further investigation in the form of an Aboriginal Cultural Heritage Assessment Report due to the environmental and archaeological context of the area.

A condition of consent is recommended to ensure the appropriate investigations are undertaken and any relevant permits are obtained by the applicant prior to ground disturbance commencing. (Refer to **Appendix B**)

Subject to compliance with the recommended conditions the proposal is consistent with the objectives of Part 5.10 of the NLEP 2012.

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils. The proposed works will not protrude two metres below the natural ground level, and it is not anticipated for the works to affect the water table. Should pillars/footings need to be placed deeper than two metres from natural ground level an Acid Sulfate Soils Management Plan will be required via an appropriate recommended condition. Therefore, the proposed development is considered satisfactory in this regard. (Refer to **Appendix B**)

#### Clause 6.2 - Earthworks

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

#### 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 consistent with the objectives of Part 7 of the NLEP 2012.

#### Clause 7.3 - Minimum Building Street Frontage

This clause requires that a building erected on land in the B3 Commercial Core zone must have at least one street frontage of at least 20m. The proposed development is consistent with this standard, having a frontage of 62m to Stewart Avenue.

#### Clause 7.4 - Building Separation

This clause requires that a building must be erected so that the distance "*...to any other building is not less than 24 metres at 45 metres or higher above ground*". The proposal complies with this requirement as it is not proposed to exceed 45m from ground level.

#### Clause 7.5 - Design Excellence

The development meets the design excellence criteria of NLEP 2012 and is of a high standard of architectural quality. An Architectural Design Statement has been submitted with the application that addresses the design principles that have been used to formulate the proposal.

The development does not generate a requirement to undertake an architectural design competition in accordance with this clause, as the height of the proposed building is not greater than 48m and the site is not identified as a key site.

The application was referred to CN's UDRP as part of the assessment of the application. The UDRP provided initial feedback that the original proposal, as submitted, was generally supportive and that it expects the minor requests to be completed and assessment of such would not require expertise beyond that of the assessing officers.

The amended proposal is considered to address the predominant request of the UDRP and CN's assessment and is an acceptable form of development within the context of the site and location. It is considered that design excellence has been achieved, as required by this clause.

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

Design Quality Principles	Assessment
<p><b>Principle 1: Context and Neighbourhood Character</b></p> <p><u>UDRP comments:</u> The site is located on the south-east corner of the intersection of Stewart Avenue and Hunter Street. It currently houses a two-storey former public hotel which was used for a period of time as emergency housing, after which it fell into considerable disrepair.</p> <p>Opposite the site is a new commercial building on the south west side of the intersection, which houses a number of commercial and community organisations, including the City of Newcastle administration. That building has a street wall height of approximately 22m, which is similar to the height of the ME Bank building that is located just to the south on the corner of Stewart Avenue and Parry Street. The ME Bank building is of a similar height to the building that houses the City of Newcastle Admin' functions. Elsewhere around the site developments are approved or are underway for both commercial and mixed-use developments that will in</p>	<p><u>Comment</u></p> <p>The scale of the proposed development is consistent with the desired future character and the prescriptive controls in the NLEP and DCP. A building height limit of 90m and FSR of 8:1 is mapped for the area. These controls, as outlined in the current Local Environmental Plan, are part of a broader strategy to shift the city centre west, where lot sizes and existing built form are more suitable to high density urban development.</p>

<p>some instances make use of the full extent of the 90m height controls pertaining to them.</p> <p>The site is quite narrow across its Hunter Street façade, but extends a distance to the south, to Little King Street. The developer advised that approaches to the owners of the adjacent property in Hunter Street (Rundles) with a view to possible site amalgamation were not fruitful. However, the Panel formed the view that the proposal could be undertaken without any limiting impacts upon the Rundles site, and therefore accepts that it is not a situation in which any site isolation will occur.</p> <p>The issue of buildability on the very constrained site was touched upon, but the Panel deferred to the Applicant and the consultants in respect to resolving this issue."</p>	
<p><b>Principle 2: Built Form and Scale</b></p> <p>UDRP comments:</p> <p>The primary built form matters centre upon achieving a ground floor that is workable, and can provide for convenient and pleasant access, deliveries, waste and recycling management, and bicycle storage and end of trip facilities. This is in addition to ensuring that the ground floor commercial space can accommodate its own needs in respect to back of house, storage and delivery capacity.</p> <p>Eastern façade:</p> <ul style="list-style-type: none"> <li>- The Applicant advised this wall is load bearing, but suitable provisions will be made within the structure for the future potential to remove portions to allow a possible future connection to</li> </ul>	<p><u>Officer Comment:</u></p> <p>The amended proposal will result in a built form that defines the public domain, contributes to the streetscape, and provides a high level of internal amenity and outlook for the public domain. The eastern elevation has utilised pre-cast panels to provide additional interest to the façade. The supporting services of the development have been adjusted to ensure functionality and documentation provided on the effects of wind tunnelling confirms the impact is not inconsistent with city buildings.</p>



<p>the adjoining site, should the opportunity arise.</p> <ul style="list-style-type: none"><li>-</li><li>- Panel encourages articulation in the pre-cast panels, with the façade potentially being quite visible in the streetscape for some time into the future.</li><li>-</li><li>- One suggested possibility was a cast-in pattern similar to the shade element layout on the western façade.</li><li>-</li><li>- It is important this facade reads as a complete building in the round, until future redevelopment of the neighbouring site occurs.</li><li>-</li><li>- The Panel was comfortable with the street wall height on Stewart Avenue – and saw no benefit of a setback in this location and context.</li></ul> <p>Western façade:</p> <ul style="list-style-type: none"><li>- It was noted that the western elevation was quite long, and a possible issue arising may be wind blast at ground level.</li><li>-</li><li>- The solid concrete portion at the southern end of the western elevation should be similarly treated to the eastern façade and will benefit from articulation to introduce shadows to this element.</li></ul> <p>Height:</p> <p>The proposal is well within the height limit control, however, given the modest area of the site, the FSR control has been exceeded. An appropriate density for the site will be determined by a demonstrated capacity to access and service the building, with attractive circulation areas, and adequate back of house facilities for all likely functions to be accommodated.</p>	
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<p><b>Principle 3: Density</b></p> <p><u>UDRP comments:</u></p> <p>The 5.6:1 FSR is Supportable from an urban design outcome point of view.</p> <p>The Panel noted that the proponent currently has some 45 car parking spaces in the development opposite in Stewart Avenue, that are proposed to be assigned to the new building.</p> <p>While its location near the Transport Interchange is of benefit, the Panel’s experience is that commercial spaces in the City without adequate parking are not readily taken up – and therefore the allocation of the referenced spaces was considered essential to the proposal.</p>	<p><u>Officer Comment:</u></p> <p>The proposed development will result in the provision of commercial floor space within an established inner city local suburb with access to public transport, essential community infrastructure and services.</p> <p>The provision of car parking spaces located at 12 Stewart Ave via long term lease will assist in the function and take up of the office space within this development.</p>
<p><b>Principle 4: Sustainability</b></p> <p><u>UDRP comments:</u></p> <p>Façade system</p> <ul style="list-style-type: none"> <li>- West facing glazed façade – heat loading needs to be carefully considered, with an aim of achieving a standard of performance well above mandatory minimum standards. The Applicant advised they have commenced the Section J report, with a high performance double glazing system proposed.</li> <li>-</li> <li>- The Panel recommends tinting to glazing be limited to no darker than a 30% reduction of light transmission.</li> <li>-</li> <li>- The proposed external screening is an overlay system (screening over glazing).</li> <li>-</li> <li>- Panel support provisions for consistent window coverings for the interior – noting that this needs to be considered and designed together</li> </ul>	<p><u>Officer Comment:</u></p> <p>The amended proposal has addressed the UDRP’s concerns including the management of heat load via double-glazed curtain wall system with external sun shading blades and is considered acceptable.</p>

<p>with the façade system, to get the best performance and appearance outcome.</p>	
<p><b>Principle 5: Landscape</b></p> <p><u>UDRP comments:</u></p> <p>Opportunities for landscaping at ground level should be explored, including whether any street tree planting is achievable in Council's view.</p> <p>Opportunity for landscaping to the RMS land should be explored and further consultation with RMS to achieve this is strongly recommended.</p>	<p><u>Officer comment</u></p> <p>Opportunities for street tree planting are restricted by the proposed awning along Stewart Ave and proposed entry point for premises. The proposed planters achieve some greening however the increased southern setback enable onsite landscaping which is to be provided with conditions for tree planting.</p> <p>The applicant has shown a willingness to engage with the TfNSW for planting within the RMS land to the southern end of the building to date no resolution has been reached. The amended proposal is considered acceptable with regards to the landscaping principles for design.</p>
<p><b>Principle 6: Amenity</b></p> <p><u>UDRP comments:</u></p> <p>End of trip facilities:</p> <ul style="list-style-type: none"> <li>- The area needs to be more generous in area - even if this necessitates some reduction in retail space, as the 'dog leg' plan presents potential CPTED concerns. It was recommended to reconfigure the end of trip facilities to avoid the "return" of this space (in plan), adjacent to the east boundary.</li> <li>- The bicycle parking was raised in respect to bikes not being in individual 'cages' – as proposed, the arrangement is quite vulnerable to theft – of bicycle parts particularly. Bikes need to be individually secured.</li> <li>- E-Bikes are heavy and lifting them to a vertical stacking position may present difficulties.</li> </ul>	<p><u>Officer comment:</u></p> <p>The proposed design achieves strong internal amenity without undue compromise to the neighbouring properties. The amended proposal is considered acceptable.</p>

<ul style="list-style-type: none"><li>- There is a potential conflict if this area is used as a thoroughfare for waste services as this seriously compromises security.</li><li>- Good sight lines are needed in these spaces – this needs further consideration when reconfiguring this space.</li></ul> <p>Ground floor (retail premises and commercial lobby):</p> <ul style="list-style-type: none"><li>- Location of services (boosters etc.) – need to be considered and space allocated early in the design. Especially for a site as constrained as this.</li><li>-</li><li>- The Applicant advised they currently have an application to upgrade the existing electric supply kiosk located across the road to achieve certainty that the required power is allocated to the subject site – eliminating need for a kiosk to be provided onsite.</li><li>-</li><li>- Locations for the Mailroom, Letter boxes, and Package delivery need to be considered. This may impact on the signage location, and how this space functions.</li><li>-</li><li>- Existing hotel basement is to be maintained (potential for retail premises to use for storage) – but it is not intended to excavate beyond that.</li></ul> <p>Level 1 – Level 6 (commercial premises):</p> <ul style="list-style-type: none"><li>- A single tenant per floor recommended.</li><li>-</li><li>- The Panel encouraged making provisions within the structure for the future potential for inter-tenancy internal stairs between floor – which</li></ul>	
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<p>the Applicant advised was already in train.</p> <p>-</p>	
<p><b>Principle 7: Safety</b></p> <p><u>UDRP comments:</u></p> <p>URDP had no further comments on safety beyond those that are addressed with amenity of the building (Principle 6) comments above.</p>	
<p><b>Principle 8: Housing Diversity and Social Interaction</b></p> <p><u>UDRP comments:</u></p> <p>No comments made by Panel.</p>	<p><u>Officer Comment:</u></p> <p>The streetscape is further activated by this proposal and replaces a building that is no longer serving the place or community. The amended proposal is acceptable with regards to this principle.</p>
<p><b>Principle 9: Aesthetics</b></p> <p><u>UDRP comments:</u></p> <p>Eastern façade should not be neglected – pre-cast concrete panel construction but with texture and pattern finish. Panel commended the inclusion of a signage strategy for the site.</p>	<p><u>Officer comment</u></p> <p>The amended proposal has addressed the UDRP's concerns and is considered acceptable with greater articulation detail provided in the eastern façade through the inclusion of staggered concrete panels and other concrete finishings.</p>

The Panel was supportive of the proposal and identified that with the expected resolution of the identified minor matters, which the Applicant has since satisfactorily addressed through the submission of amended plans, the Panel considered that the development can be expected to exhibit a high level of design quality, and the completed proposal has good prospect of making a very positive contribution to the area.

#### Clause 7.6 - Active Street Frontages in Zone B3 Commercial Core

NLEP 2012 requires an active street frontage for land that is zoned B3 Commercial Core. The proposed development is consistent with this clause as it provides active street frontages with the inclusion of the commercial/retail space at ground level for Hunter Street and Stewart Avenue.

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

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

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines those amendments to Clause 4.6 will include new criteria for consideration. The revised reforms were introduced through legislative changes made on 15 September 2023 and will come into effect on 1 November 2023.

The proposed change would require the Applicant to demonstrate that a variation to a development standard *'is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.'*

For the purposes of Council's assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome.

The proposed changes will only apply to development applications lodged after commencement of the new clause on 1 November 2023. The proposed development includes a Clause 4.6 variation request and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.

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

#### **Draft Newcastle Development Control Plan 2023 (NDCP 2023)**

The Draft Newcastle Development Control Plan 2023 (DCP) provides updated guidelines and development controls for new development in the Newcastle Local Government Area. The Draft DCP was publicly exhibited from Thursday, 28th September to Friday 27th October 2023. Whilst the Draft DCP has been publicly exhibited, the Plan is yet to be finalised and formally adopted by City of Newcastle. Notwithstanding, the Draft DCP requires consideration in accordance with Section 4.15(1)(a)(ii) of the Environmental Planning & Assessment Act 1979.

Section 11 of Part A - Introduction of the Draft DCP nominates savings and transitional arrangements as follows:

'DCP 2023 does not apply to any development application lodged but not finally determined before its commencement. Any development application lodged before its commencement will be assessed in accordance with any previous development control Plan (DCP).'

As such, the proposed development remains subject to the provisions of the Newcastle Development Control Plan 2012.

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

### Commercial Uses - Section 3.10

The proposed 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.

#### *Density:*

As detailed above the proposed density while non-compliant with the numerical standard is acceptable with regards to the objectives of this standard.

#### *Side and rear setbacks:*

The design of the proposed development is in accordance with the National Construction Code and therefore meets the controls for side and rear setback with the NDCP.

#### *Street activation:*

The design is considered to have given significant attention to urban design in terms of street activation and pedestrian movement at the ground level via the incorporation of retail/commercial space street level. This provision provides additional activation and vibrancy for Hunter Street and Stewart Avenue. The development will ultimately provide a positive contribution to the area. The development is considered to meet the performance criteria of the NDCP for this section regarding street activation.

#### *Building design and appearance:*

The design is consistent with the emerging character of the city and will activate the space. The design of the original proposal has been reviewed by CN's UDRP and exhibits 'design excellence' and is considered acceptable in building design and appearance.

#### *Views and Privacy:*

The objective here is to encourage the sharing of views while not restricting the reasonable development potential of the site. The amended proposal is considered satisfactory in this regard as a reasonable development.

It is acknowledged that while there will be impact on the outlook of neighbouring properties including the Holiday Inn Express (HEIX) which by its nature lacks permanency of occupation for the rooms and therefore it is not subject to the same protection as a dwelling. Further the DCP provides for no specific protection of views from commercial buildings. Despite this the planning principles established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 have been considered in this assessment. The view in question is of another city building and is not considered to be significant though the additional viewing distance over side boundaries has been

enjoyed. The development has been setback from the southern boundary to enable additional viewing corridor from the HEIX. The retention of this separation or further view corridors is not reasonable and would significantly restrict development opportunities.

The windows proposed with the development being to northern and western facades will not have any undue privacy impacts.

#### *Utilities and services*

Adequate services and waste facilities are available to the development. Services are proposed to be provided by a commercial contractor, which is acceptable as the development does not include a residential component. This service relies on the creation of a new Loading Zone within the existing indented lane in the Stewart Avenue frontage of the site. This space is the known site of a bus stop. The bus operator Keolis Downer has confirmed in principle support that this operation is acceptable on restricted hours with the function of the bus stop. In addition to the operator, as the loading bay is to a 'classified road' Transport for NSW (TfNSW) were contacted and have advised that:

*'TfNSW does not raise concerns in relation to the proposed arrangement, provided the temporary loading zone is restricted between the hours of 12 midnight to 5am and the indented bay is signposted accordingly.'*

The impact of noise from waste pick-ups associated with the loading bay within the expected sleeping hours of the nearby tourist and visitor accommodations known as Holiday Express (HEIX) has been carefully considered including the provision of an acoustic noise assessment which has been reviewed by councils' environmental health officers.

It is anticipated that the level of noise may as a worst-case scenario cause some minimal impact during late night hours. These impacts are reasonably thought to be unlikely to cause significant or long-term impacts. The impact being mitigated by the location of pick up to the western side, non-operable windows to the Holiday Express, no need for truck reversing movements, and the special relationship between the two sites.

Waste collection is an essential service and must be provided with any development. The noise impact from waste collection is considered acceptable with a commercial development permissible in a Commercial Core zone. Furthermore, a standard ongoing condition regarding offensive noise has been included to ensure that no offensive noise is caused by the development.

The proposed development is considered satisfactory in this regard and suitable conditions are recommended in the Draft Schedule of Conditions at **Attachment B**.

#### Flood Management - Section 4.01



The subject allotment is affected by fringe Local Catchment and Ocean flooding. The estimated 'Probable Maximum Flood' level is 4.05m Australian Height Datum (AHD). The impact of this hazard on the development has been assessed and it is concluded that the 1% AEP level reaches 3.45m AHD near the site and this is used to inform a flood planning level of 3.95m AHD (500mm above 1% AEP).

The ground floor retail premises, as amended is proposed with a finished floor level of 4.05m AHD, which is acceptable and can provide flood free refuge during the local catchment Probable Maximum Flood that is accessible to occupants on the ground floor.

There are some concerns persons in the commercial lobby may be unable to reach the retail premises via internal accessways however this is expected to be addressed in the Flood Emergency Response Plan.

Accordingly, the amended proposal is acceptable in relation to flooding.

#### Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District and General Terms of Approval for the proposed development has been granted by Subsidence Advisory NSW.

#### Safety and Security - Section 4.04

The amended proposal incorporates clear sightlines between public and private space, no landscaping that allows opportunity for offenders to hide or entrap victims and improved casual surveillance opportunities. These spaces incorporate low maintenance materials that have been designed such that they are able to be readily maintained so ensure the building is well kept and therefore deters crime.

The proposed development does not introduce any specific elements likely to encourage crime and has been appropriately designed having regard to 'Safety and Security' and is therefore considered acceptable.

#### Social Impact - Section 4.05

The proposed development will further activate Hunter Street and Stewart Avenue through the provision of retail/business spaces on the ground floor. Bringing additional employment opportunities with the construction and the ongoing commercial functions on the site.

The proposal will not result in any increased social impacts and is considered to be acceptable in this instance.

#### Soil Management - Section 5.01

Temporary measures to minimise soil erosion and appropriate mitigation measures will be implemented prior to any building works commencing on the site, in line with

the recommendations of the erosion and sedimentation plans submitted with the application.

Accordingly, the proposal is acceptable subject to conditions included in the recommended Draft Schedule of Conditions (**Attachment B**) to address soil management and ensure adequate sediment and erosion control measures are in place for the construction period.

#### Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP (Resilience and Hazards) 2021 above.

#### Vegetation Management - Section 5.03

The subject site is devoid of significant vegetation apart from a single mature tree which will be removed. This is considered satisfactory with the type of proposed development providing much needed commercial floor space with the city centre. In addition, the loss of the tree will be compensated by the inclusion of planter boxes for the Stewart Ave façade and landscaping to the southern portion of the site.

#### Aboriginal Heritage - Section 5.04

An AHIMS search indicates that there are no known Aboriginal sites recorded on the subject site. Further detail of this assessment discussed above under Clause 5.10 Heritage of NLEP 2012.

#### 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*'.

#### Heritage Conservation Areas - Section 5.07

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

### Part 6.00 Locality Specific Provisions

#### Newcastle City Centre - Section 6.01

This section applies to land located in the Newcastle City Centre, as identified by the NLEP 2012 City Centre map, and as such is applicable to this development application.

The subject site is located within the 'West End' character area and the proposed development is generally consistent with the main principles for development in the 'West End'. The existing building on the site is not considered to contribute to the emerging character of the area.

The proposed development will reinforce the street edge for the prominent corner site, promoting street activation and contributing to the overall desired character for the growth and development within the Newcastle City Centre. As a corner site for a gateway intersection additional height for the street wall is appropriate with the achieved design excellence.

The design and materials for the building exterior creates visual interest to the streetscape. Detailed architectural treatments, materials, finishes and colour have been used to enhance the building presentation to the street and Birdwood Park public space, these design cues are consistent with the precinct and shall shape the future character of the area.

The site is in proximity to Birdwood Park listed under this section of the DCP, however does not directly front the park by nature of the lot design. No unreasonable level of overshadowing will result from the proposed development. The pedestrian access to the site is via Hunter Street and Stewart Ave, which allows for the activation of the frontage via retail purposes.

The proposed development is acceptable having regard to Section 6.01 of the DCP.

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

The subject site contains a tree that is proposed for removal, The narrow dimensions of the site do not enable a replacement nor is it consistent with the area.

The design provides a high-quality street frontage including a garden bed to the Stewart Ave in association with the building lobby. The building will provide improved public domain and increased activation to both frontages.

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

##### *Vehicular Access, Driveway Design and Crossing Location*

The development proposes no vehicular access or on-site parking. The existing driveway access from Stewart Avenue will be made redundant.

A review of Deposited Plans DP201916, DP526578, and DP563418 found the subject site is not currently burdened by any easements for access or parking.

Minor servicing is proposed to be accommodated in the existing Loading Zone and paid parking on Little King Street immediately to the south of the development, while waste and larger servicing requirements are proposed to be accommodated via the creation a new Loading Zone within the existing indented lane in the Stewart Avenue frontage.

This indented bay is the known site of a proposed bus stop, CN staff have been provided with in principle support from a representative of Keolis Downer for the use of the existing bus zone between midnight and 5:00 AM as a loading zone.

As part of the assessment concurrence was sought from TfNSW with regards to the loading zone TfNSW raised no concerns with the proposed arrangement, provided the temporary loading zone is restricted between the hours of 12 midnight to 5am and the indented bay is signposted accordingly. Further discussion with TfNSW has also confirmed that TfNSW has no planned widening or future need for widening along the Stewart Avenue frontage, including a left turn lane into Little King Street or King Street on the southbound side of Stewart Avenue'.

The proposal is acceptable, subject to conditions included in the Draft Schedule of Conditions (Refer to **Attachment B**).

### *Parking Demand*

The site is located in the city centre with higher accessibility, 300 metres walking distance to the Newcastle Interchange providing connection to trains, buses and light rail and the number of parking spaces required for the development on merit could be less than the 65 spaces required by a numerical assessment of gross floor area (GFA). The DCP calls for merit consideration with sites located in the city centre.

No off-street car parking is proposed at the development site. Instead, parking demand is proposed to be met via the lease of 45 car parking spaces from the existing multideck carpark at 12 Stewart Avenue. It is noted the development will displace the existing informal use of the southern half of the subject site by adjoining developments for car parking (approx. 13 spaces)

A review of previous development consents and provisions for the use of the multideck carparking spaces at 12 Stewart Avenue has been conducted. This review demonstrated that the car park at 12 Stewart Avenue car park has up to 59 spaces that are not subject to use by compliance with the conditions of development consent of nearby developments.

The applicant has proposed to secure 45 of the above car spaces via a long-term lease.

A Traffic and Parking Assessment, prepared by Seca Solution, has been provided with the development application to justify the proposed parking supply of 45 spaces being a numerical shortfall of 20 space or 31% with the proposed GFA. The findings of the submitted Assessment are:

- a) The development site is exceptionally well connected to existing active and public transport links; and
- b) An end-of-trip facility is proposed with bicycle parking (47 spaces) exceeding the NDCP parking requirement by 135%.

Based on the above, the car parking supply of 45 spaces is supported, subject to conditions included in the Draft Schedule of Conditions (Refer to **Attachment B**)

### *Traffic Generation*

The proposed development is not considered to generate a significant level of traffic associated with car parking as it will be borrowing capacity (i.e.45 spaces) from an existing development. The impacts of the borrowed parking capacity have already been considered in the assessment of the DA for the existing development at 12 Stewart Avenue.

Visitor and servicing traffic drawn to the site is expected to be minor and would not significantly impact the existing operation of nearby intersections. The proposal is acceptable subject to conditions, included in the Draft Schedule of Conditions (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 stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012. The provision for collection of rainwater and its reticulation within the development are acceptable. The proposed development is therefore considered to be acceptable subject to conditions included in the Draft Schedule of Conditions (Refer to **Attachment B**).

### Waste Management - Section 7.08

The amended proposal has been assessed having regard to Section 7.08 and is adequate. The applicant has prepared a detailed waste management plan, which addresses waste minimisation and litter management strategies.

The proposal provides for bulk storage bins. The submitted traffic report states that waste will be collected via a new Loading Zone within the existing indented lane in the Stewart Avenue frontage, as discussed above. Based on the submitted information, the amended proposal is acceptable and demolition and waste management will be subject to conditions recommended to be included in the Draft Schedule of Conditions (Refer to **Attachment B**).

### Advertising and Signage - Section 7.09

The proposal includes a business identification signage to the façade of the building on the North and West elevations. The signage was previously discussed against the relevant provisions of requirements of Chapter 3 (Advertising and signage) of SEPP (Industry and Employment) 2021. The proposed signage is considered to be

consistent with the objectives of the SEPP. Likewise, the signage is considered acceptable against the DCP provisions.

### Street Awnings and Balconies - Section 7.10

The awnings proposed as part of the development have been architecturally designed taking into consideration relevant design requirements, aesthetic presentation, functionality, structural integrity, and safety.

The proposed awnings will not impact on public utilities, traffic signs or signals, or vehicle or pedestrian circulation. The proposed awnings have also been designed to complement the streetscape and take into consideration the surrounding built environment.

### Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Section 7.12 Development Contributions Plan, being \$336,862.02.

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

## **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

## **5.5 The regulations (and other plans and policies)**

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

## **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:

### *Overshadowing*

The proposed development at seven storeys within the existing subdivision pattern will generate impacts to the solar access received by nearby premises to the east of the subject site, including 514 King Street, being the Holiday Inn Express (HIEX). Specifically, the site is adjoined to the eastern lot boundary by 767 Hunter Street, the Rundle Tailor building including an access handle. This notwithstanding the western elevation of the HIEX will have reduced solar access to this elevation while retaining it to their remaining northern and eastern elevations.

Neither the LEP nor relevant DCP sections provide for specific protection of the solar access within a commercial setting. Both the subject lot and the HEIX are within the B3 Commercial Core zone as per the LEP where commercial uses are expected and desired.

A review of planning principles for solar access *Parsonage v Ku-ring-gai* [2004] NSWLEC 347 (*Parsonage*) and its successor *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 (*BenSoc*), shows the focus of these principle is in preventing unreasonable impact to residential users. The difficulty of this in commercial zoning is shown by the increased setback requirements with residential flat buildings and 'Shop top' housing developments. The HEIX provides for 'Tourist and visitor accommodation' which is a commercial use and as such not subject to the same level of protection anticipated by residential development nor the increased setbacks in its own design.

During the development assessment process multiple options were investigated to place the bulk further the north of the site, these massing were not considered to achieve design excellence and would have significantly reduced the amenity of the development as proposed. The final amended plans have increased the southern setback to reduce this impact as much as practicable.

It is considered that office space built to boundary is compatible with the existing character, bulk, scale and massing of development in the immediate area and is reasonably expected development. An expectation that the HEIX would be able to retain solar access achieved over two commercial lots is unreasonable and would place significant restriction on development opportunities. The overshadowing is considered acceptable with the commercial context of the site and for the provision of additional office space within the city centre.

### *Design, FSR and Character*

The proposal has been reviewed by CN's Urban Design Review Panel and is acceptable having regard to urban design principles.

The floor space ratio development standard is exceeded by the proposed development. However, this variation has been considered in the context of adjoining and potential future development. The proposed development will not have any undue adverse impact on the natural or built environment.

Further, the overall building form, and bulk and scale of the development does not impede on identified view corridors and seeks to enable views where possible. The proposal will generate local employment opportunities during the construction and operational phases of the development.

When viewed from the public realm the building appears consistent with the emerging surrounding high-density scale of the locality. The proposed development is considered acceptable having regard for both visual amenity and scenic qualities of the environment.

### *Social and Economic Impacts*

It is considered that the development will not have any unreasonable social or economic impacts but rather will provide much needed additional office space to further enable economic growth within the city centre.

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

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

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

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

The constraints of the site have been considered in the proposed development, which includes flooding, contamination, acid sulfate soils and heritage.

The variation sought to the FSR development standard is acceptable given the circumstances of the development site. The proposed development is acceptable having regard to built form characteristics and potential impacts. The application has been reviewed and supported by CN's UDRP during the assessment.

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. Three submissions of objection were received during the notification period.

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

<b>Issue</b>	<b>Comment</b>
Breach of FSR	Addressed in report above and considered acceptable.
The clause 4.6 request submitted doesn't meet the required legal requirement for consideration.	The clause 4.6 request is considered to be consistent with case law of the NSW Land and Environment Court for the preparation of a request to vary a development standard.



<p>That the 4.6 Submitted has not discerned the objective of the development Standard from a proper construction of the text of the provision fixing the development standard and the context of that provision"</p>	<p>The CL4.6 request submitted has determined the objectives of the development standard as prescribed below which is considered accurate as where an objective is not provided with the numerical clause one can be assumed given reasonable argument. As is the case with the 4.6 submitted.</p> <ul style="list-style-type: none"> <li>a) To provide an appropriate density of development in the Newcastle City Centre.</li> <li>b) To ensure building density, bulk and scale makes a positive contribution towards the desired built form in the Newcastle City Centre.</li> <li>c) To encourage the consolidation of land in the Newcastle City Centre to achieve desired built form.</li> </ul>
<p>Obstruction of the Western outlook for the adjoining properties.</p>	<p>The adjoining site is defined as '<i>tourist and visitor accommodation</i>' is not a type of '<i>residential accommodation</i>' and so is subject to fewer protection regarding view sharing. The design achieves the objectives of the zone and is reasonable with regards to the impact and the scale of development.</p>
<p>Reduction in solar access for west facing rooms. And lobby access</p>	<p>The solar access impacted by the development is consistent with commercial development within the city centre.</p>
<p>The Development will prevent adjoining properties from achieving carbon neutral status and sustainability principles.</p>	<p>The additional shadowing to the western façade is anticipated to reduce the required cooling load and associated expenditure from air-conditioning. This facade would receive the greatest solar loading being west facing and in receipt of the greatest external heat loading. Should this require additional heating in the winter the achievement of carbon neutral status can still be satisfied via alternative methods. Continued achievement of this goal being reliant on conditions remaining as existing over two lot boundaries is not reasonable to expect.</p> <p>Further the Applicant has provided comment from Sean Holmes, Associate Director – Sustainability at WSP concluding that, "<i>we don't anticipate the sustainability and carbon neutral status of the Holiday Inn to be impacted negatively by the development</i>".</p>
<p>Financial impact from the loss of amenity while still recovering from the impacts of COVID-19</p>	<p>Amenity impacts on adjoining properties have been assessed as being acceptable as detailed within this report. Financial impacts to adjoining properties are not a relevant matter for consideration under s.4.15 EP&amp;A Act.</p>

Concern that submission was not presented to the Urban Design Review Panel	It should be noted that this panel provide design guidance for the development to Council and is not in itself a consent authority. Their advice has been considered in the presentation of this assessment report for determination by Council. This is consistent with procedural fairness for development applications.
No site setbacks creating overshadowing and wind tunnel for ground level pedestrians	The applicant has provided a wind assessment by a suitably qualified professional. It is concluded that the development will enable the footpath to remain suitable for pedestrian use including standing and walking. The development is considered to meet safety criterion for the footpath in relation to wind tunnel effects.
That the proposal has not been incorporated with 767 Hunter Street to provide greater development.	It is understood the applicant had approached the owners of 767 Hunter Street who at this time didn't wish to sell. While it is recognised that such an amalgamation may have provided additional development opportunities, this development does not isolate the above property and does provide public good in its development.
Lack of car parking with the development.	Parking is to be provided via an arrangement with the parking station at 12 Stewert Ave operated by Knight Frank.
Lack of consideration of the heritage value of the existing onsite building and its use	The heritage impact has been assessed previously in this report and is considered acceptable with Clause 5.10 NLEP 2012 and DCP.
The proposed height will have unreasonable impacts on daylight access and desired built form	The desired built form is acceptable for the Newcastle City Centre being considered by the Urban Design Review Panel as acceptable as designed. The impact on solar access is assessed elsewhere in the report.

### 5.9 The public interest

The proposed development is satisfactory having regard to the principles of ecologically sustainable development. The proposed development also presents an opportunity to contribute to the revitalisation of the city centre and assist in the transformation of the west end of Newcastle City Centre.

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

The proposed development does not result in unacceptable impacts upon surrounding development. The proposal is not expected to cause unreasonable constraint to the amenity or development potential of the surrounding sites and land uses.

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

## **6.0 CONCLUSION**

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

## **ATTACHMENTS**

- Attachment A:** Submitted Plans - 775 Hunter Street Newcastle West
- Attachment B:** Draft Schedule of Conditions - 775 Hunter Street Newcastle West
- Attachment C:** Processing Chronology - 775 Hunter Street Newcastle West
- Attachment D:** General Terms of Approval - Subsidence Advisory NSW - 16 September 2022 - 755 Hunter Street Newcastle West
- Attachment E:** Applicant Clause 4.6 Request for Exemption - 755 Hunter Street Newcastle West

**Attachments A - E: Distributed under separate cover**