



City of
Newcastle



CITY OF NEWCASTLE

Development Applications Committee

Councillors,

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

DATE: Tuesday 20 April 2021

TIME: Following the Public Voice Committee Meeting

VENUE: Council Chambers
Level 1
City Administration Centre
12 Stewart Avenue
Newcastle West NSW 2300

J Bath
Chief Executive Officer

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

14 April 2021

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**DEVELOPMENT APPLICATIONS COMMITTEE
20 April 2021**

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FOR DOCUMENTS MARKED 'DISTRIBUTED UNDER SEPARATE COVER' REFER TO COUNCIL'S WEBSITE AT www.newcastle.nsw.gov.au

NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 16 MARCH 2021

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 210316 Development Applications Committee Minutes

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

Attachment A

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West on Tuesday 16 March 2021 at 7.20pm.

PRESENT

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

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), B Smith (Director Strategy and Engagement), F Leatham (Director People and Culture), K Liddell (Director Infrastructure and Property), A Jones (Director City Wide Services), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), S Moore (Acting Chief Financial Officer), M Murray (Chief of Staff), J Vescio (Executive Officer), K Sullivan (Councillor Services/Minutes), A Knowles (Councillor Services/Meeting Support) and G Axelsson (Information Technology Support).

APOLOGIES

MOTION

Moved by Cr Mackenzie, seconded by Cr Winney-Baartz

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

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor White

Councillor White declared a less than significant, non-pecuniary interest in Item 4 – 24A Janet Street, Merewether DA2020/01057 - Dwelling House - Alterations and Additions, stating that as the town planner and their broader family were close associates she would manage the conflict by leaving the Chamber for discussion on the item.

Councillor Clausen

Councillor Clausen declared a less than significant, non-pecuniary interest in Item 4 – 24A Janet Street, Merewether DA2020/01057 - Dwelling House - Alterations and Additions, stating that an objector to the development application was a member of the same political party and that he would manage the conflict by remaining in the Chamber for discussion on the item.

Councillor Duncan

Councillor Duncan declared a less than significant, non-pecuniary interest in Item 4 – 24A Janet Street, Merewether DA2020/01057 - Dwelling House - Alterations and Additions, stating that an objector to the development application was a member of the same political party and that she would manage the conflict by remaining in the Chamber for discussion on the item.

Councillor Winney-Baartz

Councillor Winney-Baartz declared a less than significant, non-pecuniary interest in Item 4 – 24A Janet Street, Merewether DA2020/01057 - Dwelling House - Alterations and Additions, stating that an objector to the development application was a member of the same political party and that she would manage the conflict by remaining in the Chamber for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING 16 FEBRUARY 2021

MOTION

Moved by Cr Mackenzie, seconded by Cr Luke

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

**Carried
unanimously**

DEVELOPMENT APPLICATIONS

ITEM-3 DAC 16/03/21 - SUPPLEMENTARY REPORT - 15 DUNCAN CLOSE, ELERMORE VALE - DA2018/01331 - STAGED DEVELOPMENT - RESIDENTIAL - MULTI DWELLING HOUSING (49 DWELLINGS) AND 50 LOT COMMUNITY TITLE SUBDIVISION

MOTION

Moved by Cr Mackenzie, seconded by Cr Byrne

- A. That DA2018/01331 for the staged residential redevelopment comprising the erection of 49 dwellings and a 50 lot community title subdivision at 15 Duncan Close, Elermore Vale be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
- B. That those persons who made submissions be advised of Council's determination.

For the Motion:

Councillors Byrne, Church, Clausen, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion:

Lord Mayor, Cr Nelmes.

Carried

ITEM-4 DAC 16/03/21 - 24A JANET STREET, MEREWETHER - DA2020/01057 - DWELLING HOUSE - ALTERATIONS AND ADDITIONS

Councillor White left the meeting for discussion on the item.

MOTION

Moved by Cr Mackenzie, seconded by Cr Church

- A. That the Development Applications Committee, as the consent authority note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, against the development standard at clause 4.4 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 DA2020/01057 for dwelling house – alterations and additions at 24A Janet 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.

AMENDMENT

Moved by Cr Clausen, seconded by Cr Byrne

The Officers recommendation be adopted with an additional condition added that *“At no time during construction shall the Right of Carriage Way have any restricted access unless prior agreement with owners of 24B Janet Street, Merewether has been provided”*.

For the Amendment: Lord Mayor, Cr Nelmes and Councillors Byrne, Clausen and Mackenzie.

Against the Amendment: Councillors Church, Duncan, Elliott, Luke, Robinson, Rufo and Winney-Baartz.

Defeated

The motion moved by Councillors Mackenzie and seconded by Councillor Church was put to the meeting.

For the Motion: Lord Mayor, Cr Nelmes and Councillors Church, Elliott, Luke, Mackenzie, Robinson and Rufo.

Against the Motion: Councillors Byrne, Clausen, Duncan and Winney-Baartz,

Carried

Councillor White did not return to the meeting prior to close of the meeting.

The meeting concluded at 7.40pm.

DEVELOPMENT APPLICATIONS

**ITEM-5 DAC 20/04/21 - 54 REGENT STREET, NEW LAMBTON -
DA2020/00158 - INFRASTRUCTURE - INSTALLATION OF A
TELECOMMUNICATIONS FACILITY (MONOPOLE AND
ANCILLARY EQUIPMENT 26.3M)**

**APPLICANT: TELSTRA CORPORATION LTD C/- KORDIA SOLUTIONS
AUSTRALIA**

OWNER: AUSTRALIAN TELECOMMUNICATIONS COMMISSION

**CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

PART I

An application has been received seeking consent for a telecommunications facility with associated antennas and equipment at Lot 11 DP 786193, 54 Regent Street, New Lambton.

The submitted application was assigned to Development Officer Alexandra Tobin for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the application being called in by Councillor Clausen, Councillor Elliot and Councillor Rufo and the number of public submissions received.



Subject Land: 54 Regent Street, New Lambton

The original application was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan. A total of 264 submissions objecting to the proposal were received, including two Public Voice requests. The main categories of objection include:

- i) Character
- ii) Visual impact
- iii) Health
- iv) Property value

- v) Electromagnetic emissions
- vi) Locality
- vii) Flora and fauna
- viii) Public interest

On 16 June 2020, the development application (DA) for the telecommunications facility (construction of a new 25m concrete monopole with a double stack turret headframe (overall height 31.8m)) was considered at a Public Voice Committee Meeting.

In response to the topics of discussion at the Public Voice Committee Meeting CN sent the applicant a request for further information on:

- i) Capacity and site selection
- ii) Opportunities for co-location
- iii) Visual Impact Assessment

On 18 September 2020, the applicant provided a set of amended development plans and a response to CN's request for information.

The amended development plans and additional information were re-notified on 28 September to 12 October 2020 with 156 submissions being received. The submissions received expressed continued concerns regarding the proposal. Concerns raised in these further submissions are consistent with original concerns.

The concerns raised by the objectors (in both notification periods) include:

- i) Character
- ii) Visual impacts
- iii) Health
- iv) Electromagnetic emissions
- v) Co-location
- vi) Social impact
- vii) Public interest

While not required under the Public Voice Policy, given the level of continued community interest, the application was referred again to the Public Voice Committee Meeting on 17 November 2020.

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

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

Issues

- 1) State Environmental Planning Policy (Infrastructure) 2007
- 2) Matters raised in submissions including local character, visual impact, health, property value, electromagnetic emissions, locality, flora and fauna and public interest.

Conclusion

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

RECOMMENDATION

- A. That DA2020/00158 for a telecommunications facility with associated antennas and equipment at 54 Regent Street, New Lambton be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 11 DP 786193 and is an irregularly shaped allotment with frontages to Victoria Street to the south, Regent Street to the east and Russel Road to the north.

The development application relates to the portion of the subject site adjacent to Regent Street. The subject property has a frontage of 20.15m to Russell Road, an 18.41m frontage to Regent Street, a 16.25m frontage to Victoria Street and a total land area of 1,533m².

The site is devoid of vegetation, relatively flat and is occupied by the Telstra Exchange compound which contains existing Telstra telecommunications equipment which is mounted to the walls of the exchange compound. The existing building is bounded by hardstand area, with vehicle parking available at the front of the site from Regent Street. The vehicular parking on the site is primarily used by vehicles associated with the Telstra exchange compound.

The site is located within the commercial precinct of New Lambton which runs along Regent Street and Lambton Road, and is characterised by a mixture of commercial and residential uses.

Land adjoining the site to the north, east and south is Zoned B2 Local Centre and is characterised by development of a commercial nature, including several food and drink premises, retail premises, small business premises and a supermarket. The development typically varies in height from one to two storeys except for a few buildings that are three storeys. The existing building on the subject site is three storeys in height.

Land adjoining the site to the east is Zoned R2 Low Density Residential comprising of residential dwellings. The nearest residential dwelling is located approximately 40m to the west of the subject site. There is estimated to be 20 dwellings located within 100m of the subject portion of the site.

2.0 THE PROPOSAL

The application as amended, seeks consent to install a telecommunications facility comprising a monopole and ancillary equipment with a total height of 26.3m. Particulars of the proposal are listed below:

- 1) Installation of a new 25m concrete monopole with a double stack turret headframe (overall height 26.3m reduced from 31.8m).
- 2) Installation of six new panel antennas mounted on the headframe.
- 3) Replacement of existing shelter with new shelter on existing concrete slab.

- 4) Removal and decommissioning of the existing wall mounted installation on the exchange.
- 5) Installation of ancillary equipment including transceivers, remote radio units, amplifiers, antenna mounts, cable trays, feeders, cabling, combiners, diplexers, splitter, couplers, jumpers, filters, electrical equipment, signage, and other associated equipment.

The proposed development is intended to replace the existing telecommunication infrastructure, namely Telstra antennas, which are located on the walls of the existing Telstra exchange compound.

The existing antennas are proposed to be removed upon completion of the proposed development. The application outlines the proposed telecommunications facility will provide the necessary coverage and service objectives within the area.

The additional information supplied by the applicant identifies that co-location with other facilities within the New Lambton area was investigated, however co-location was not deemed to be practical in this instance as it would not improve coverage to the New Lambton area.

The applicant also provided information on the site selection process and the suitability of other sites within the New Lambton area. The information concludes that the zoning of the New Lambton area is largely residential and that the search for an alternative site was limited to sites within the New Lambton Commercial Centre identified as B2 Local Centre zoned land.

3.0 PUBLIC NOTIFICATION

The original development application was publicly notified in accordance with CN's Community Participation Plan. A total of 264 submissions were received in response.

The revised DA was publicly re-notified. A total of 156 submissions were received. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

a) Statutory and Policy Issues

- i) Newcastle Local Environmental Plan 2012 (NLEP 2012) does not include provisions for telecommunication towers.
- ii) The proposed telecommunications tower exceeds the maximum prescribed height limit for the subject site as specified in the NLEP 2012.
- iii) The NSW Government Department of Education has a policy requiring that telecommunications facilities are not installed on school property and that an adequate separation distance between a proposed

telecommunications facility and a school is maintained. The Department of Education prefers a distance of at least 500m from the boundary of the property.

b) Amenity Issues

- i) The proposed telecommunications tower has not been designed or sited to reduce the impact on the amenity of the surrounding area.
- ii) The telecommunications tower is not in keeping with the character of the New Lambton Commercial Centre.
- iii) The telecommunications tower detracts from the amenity of the New Lambton Commercial Centre.
- iv) The telecommunications tower obstructs views from private land.
- i) The telecommunications tower will detract from the heritage value of the nearby heritage item formally known as “New Lambton School.”
- ii) Reducing the overall height of the telecommunications facility from 31.8m to 26.3m does not reduce the visual impact and bulk and scale of the proposal.

c) Design and Aesthetic Issues

- i) Character – The proposed telecommunications tower is not compatible with the character of the New Lambton Commercial Centre.
- ii) Visual impact – The visual impact assessment and photomontages do not accurately represent the true visual impact of the proposed telecommunications tower.

d) Miscellaneous

- i) Health – Concerns regarding the impacts on the health of residents and school children within close proximity to the proposed telecommunications tower.
- ii) Location – The proposed telecommunications tower should not be located within the New Lambton Commercial centre, instead, somewhere else in the New Lambton area.
- iii) Land Tenure – The subject site is owned by Telstra therefore it is in their best interest to locate the proposed telecommunications tower on a site Telstra owns and not elsewhere.
- iv) Co-location – Opportunities for co-location within the vicinity of New Lambton have not been thoroughly explored. More specifically, the

recently approved Optus tower in bushland at Queens Road and Mahogany Drive. Furthermore, other telecommunications providers will be able to co-locate their telecommunications infrastructure with the tower once it is constructed.

- v) Electromagnetic Energy (EME) – There is not enough information available on the effects of prolonged exposure to EME.
- vi) Educational Institutions – The New Lambton Public School is located within close proximity to the telecommunications tower.
- vii) Notification – Not all residents within the New Lambton area were notified. Visitors to the New Lambton Commercial Centre should have been notified of the proposal.
- viii) Social Impact – The social impacts of the proposal have not been satisfactorily addressed.
- ix) Visual Impact Assessment – The visual impact assessment and photomontages do not accurately represent the visual impacts of the proposed telecommunications facility.
- x) Existing and Desired Coverage Objectives – The applicant has not submitted diagrams indicating the existing and the desired coverage objectives of the existing and proposed telecommunications infrastructure on the subject site and broader New Lambton area.

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

Public Voice Committee

The original proposal was considered at the Public Voice Committee Meeting held on 16 June 2020. Residents raised concerns with regards to the visual impact, character, co-location and amenity of the proposal.

In response to the topics of discussion at the Public Voice Committee Meeting the applicant was sent a request for further information seeking additional information on capacity and site selection, opportunities for co-location and a Visual Impact Assessment of the proposed development.

On 18 September 2020, the applicant provided a set of amended development plans and a response to CN's request for information. The proposed amendments involved reducing the overall height of the tower from 31.8m to 26.3m and included further information supporting the proposed location.

The amended development plans and additional information were publicly re-notified between 28 September to 12 October 2020. The submissions received expressed

continued concerns regarding the proposal. Concerns raised in these further submissions are consistent with original concerns detailed above.

The current proposal was considered at the Public Voice Committee Meeting held on 17 November 2020. Residents raised concerns with regards to co-location, coverage, the towers proximity to an educational institution and visual impact.

In response to the topics of discussion at the Public Voice Committee Meeting regarding further explanation on why the tower cannot be co-located elsewhere and why existing telecommunications infrastructure could not be upgraded, the applicant considered these had been addressed previously and no further information was provided. Therefore, the development assessment report is based upon the proposed development that was the subject of the Public Voice Committee Meeting held on 17 November 2020, as outlined previously under Section 2 of this report.

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

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

This policy applies to the proposed development and contains planning controls for the remediation of contaminated land.

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

The subject land is currently being used for commercial purposes and CN's records do not identify any past contaminating activities on the site. The proposal is acceptable having regard to this policy.

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

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) is one of a suite of Land Management and Biodiversity

Conservation (LMBC) reforms that commenced in New South Wales (NSW) on 25 August 2017. The Vegetation SEPP works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW. Part 3 of the Vegetation SEPP contains provisions similar to those contained in clause 5.9 of the NLEP 2012 (now repealed) and provides that the Newcastle Development Control Plan 2012 (NDCP 2012) can make declarations with regards to certain matters, and further that CN may issue a permit for tree removal.

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

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

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

The ISEPP as amended by the SEPP (Infrastructure) Amendment (Telecommunications Facilities) 2010 is of specific relevance to the proposal as the provisions of clause 113 and clause 115 establish the permissibility of the proposed development at the subject location and forms the basis for lodging and seeking CN consent for the development.

The exempt and complying development provisions of the ISEPP are not relevant to the development application as the subject property is not within the allowable zones for which exempt or complying development may be carried out. The development is subject to the following clauses of the policy:

Clause 113

Clause 113 of the ISEPP defines a "Telecommunications Facility" as;

- “(a) any part of the infrastructure of a telecommunications network, or*
- (b) any line, cable, optical fibre, equipment, apparatus, tower, mast, antenna, dish, tunnel, duct, hole, pit, pole or other structure in connection with a telecommunications network.”*

Clause 115

Clause 115(1) determines development, for the purpose of telecommunications facilities other than development in clause 114 or development that is exempt development under clause 20 or clause 116, may be carried out by any person with consent on any land. Telecommunications facilities are therefore permissible in all zones within the Newcastle Local Government Area (LGA) with consent from CN.

As such, the proposed development is permissible on the subject site in accordance with clause 115(1).

Clause 115(3) provides that before determining a DA for development to which this clause applies, the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Director-General for the purposes of this clause and published in the Gazette.

In this respect, the NSW Telecommunications Facilities Guidelines including Broadband (July 2010) has been issued by the Director-General. The principles that must be taken into consideration are outlined in section 2.2 of the Guidelines. The Statement of Environmental Effects (SEE) submitted with the development application outlined the proposals consistency with the Guidelines principles.

Assessment of the proposed developments consistency with the Guidelines principles is provided in **Table 1** below.

Table 1: Compliance with the Principle of NSW Telecommunications Facilities Guidelines including Broadband (2010)

Principle 1 - Facility must be designed and sighted to minimise visual impact	
Specific Principle	CN Officer Comment
(a) As far as practical, a telecommunications facility that is to be mounted on an existing building or structure should be integrated with the design and appearance of the building or structure.	Guidelines 1(a) is not applicable to the DA as the DA proposes a freestanding monopole and associated facilities.
(b) The visual impact of telecommunications facilities should be minimised, visual clutter is to be reduced particularly on tops of buildings, and their physical dimensions (including support mounts) should be sympathetic to the scale and height of the building to which it is to be attached, and sympathetic to adjacent buildings.	Since lodgement of the application, the height of the tower has been reduced from 31.8m to 26.3m. The applicant detailed that the design change is a direct response to the concerns raised regarding the overall height of the proposed facility and visual impacts to nearby residents, as raised during the consultation period. A Visual Impact Assessment has been submitted as part of the DA. The Visual Impact Assessment includes a series of photomontages from seven viewpoints taken from the New Lambton Commercial Centre and

<p>(c)</p>	<p>surrounding residential area. Receptors of these viewpoints include residents, motorists, pedestrians and businesses within the New Lambton Commercial Centre and surrounding residential area.</p> <p>The proposed height of the development will result in the structure being visible from several locations within the surrounding area.</p> <p>Views of the telecommunications tower vary, however the views are distant and are generally limited due to the presence of intervening vegetation and buildings between the site and these receivers.</p> <p>The nature of telecommunications facilities requires that they be located at an elevated position to gain the best coverage possible. The application identifies a number of methods have been integrated into the design of the proposed telecommunications facility to mitigate the visual impacts of the structure including; locating the structure in proximity to existing vertical elements such as buildings, and the use of neutral / non-reflective grey colours to blend into the skyline.</p> <p>Towers of this nature are becoming an expected element of the modern landscape. The visual impact is consistent with the intentions of a telecommunications facility and the proposed facility has incorporated a number of design elements to reduce its visual impact and minimise its effect on the landscape.</p>
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<p>Where telecommunications facilities protrude from a building or structure and are predominantly backgrounded against the sky, the facility and their support mounts should be either the same as the prevailing colour of the host building or structure, or a neutral colour such as grey should be used.</p>	<p>The development application identifies a number of methods have been integrated into the design of the proposed telecommunications facility to mitigate the visual impacts of the structure including; locating the structure in proximity to existing vertical elements such as buildings, and the use of neutral / non-reflective grey colours to blend into the skyline, opting for a slimline monopole rather than a lattice tower which can be far more visually prominent and reducing the overall height of the structure.</p>
<p>(d) Ancillary facilities associated with the telecommunications facility should be screened or housed, using the same colour as the prevailing background to reduce its visibility, including the use of existing vegetation where available, or new landscaping where possible and practical.</p>	<p>The development application proposes to utilise the existing Telstra Exchange building to house the new telecommunications equipment.</p> <p>Given the distance of the proposed facility from surrounding residential developments and the location of the facility surrounded by vertical buildings, the visual impact of the telecommunications facility is suitably minimised and considered acceptable. The ancillary equipment is considered unlikely to have any significant visual impact when viewed from the surrounding properties.</p>
<p>(e) A telecommunications facility should be located and designed to respond appropriately to its rural landscape setting.</p>	<p>Guidelines 1(e) is not applicable to the DA as the proposed facility is not located in a rural landscape setting.</p>
<p>(f) A telecommunications facility located on, or adjacent to, a State or local heritage item or within a heritage conservation area, should be sited and designed with external colours, finishes and scale sympathetic to those of the heritage item or conservation area.</p>	<p>The subject site is not identified as being a heritage item or being located within a Heritage Conservation Area. It is noted that the subject site is located within close proximity to New Lambton Public School on Russell Road which is identified as a local</p>

	<p>heritage item. However, the development site has frontages to Regent Street, therefore, it is considered that the proposed facility does not detract from the heritage significant of the New Lambton Public School site.</p>
<p>(g) A telecommunications facility should be located so as to minimise or avoid the obstruction of a significant view of a heritage item or place, a landmark, a streetscape, vista or a panorama, whether viewed from public or private land.</p>	<p>The proposed facility has been located to minimise the impacts on significant viewing corridors, streetscapes and landmarks.</p> <p>It is considered that the location of the proposed facility does not detract from visual corridors or panoramas of any sensitive uses in the area and will not detrimentally affect the surrounding streetscape.</p> <p>There are no identified heritage places or landmarks within close proximity to the development site that will be affected by the location of the proposed facility.</p>
<p>(h) The relevant local government authority must be consulted where the pruning, lopping, or removal of any tree or other vegetation would contravene a Tree Preservation Order applying to the land or where a permit or development consent is required.</p>	<p>Guidelines 1(h) is not applicable to the DA as no pruning, lopping or removal of trees are proposed.</p>
<p>(i) A telecommunications facility that is no longer required is to be removed and the site restored, to a condition that is similar to its condition before the facility was constructed.</p>	<p>The DA proposes the removal of the existing telecommunications infrastructure on the subject site upon commissioning of the new facility.</p>
<p>(j) The siting and design of telecommunications facilities should be in accordance with any relevant Industry Design Guides.</p>	<p>The submitted application details the siting and design process undertaken for the proposed telecommunications facility, with reference to the relevant Industry Design Guides. This is considered acceptable.</p>

Principle 2 - Telecommunications facilities should be co-located wherever practical	
Specific Principle	CN Officer Comment
<p>(a) Telecommunications lines are to be located, as far as practical, underground or within an existing underground conduit or duct.</p>	<p>Guidelines 2(a) is not applicable to the DA.</p>
<p>(b) Overhead lines, antennas and ancillary telecommunications facilities should, where practical, be co-located or attached to existing structures such as buildings, public utility structures, poles, towers or other radiocommunications equipment to minimise the proliferation of telecommunications facilities and unnecessary clutter.</p>	<p><u>Co-location</u></p> <p>The applicant undertook a detailed site selection process as part of the application with due consideration given to a range of issues including but not limited to:</p> <ul style="list-style-type: none"> i) Consistency with the applicable Commonwealth and State and Local planning policies and regulatory instruments. ii) Minimal impact on the environment during the construction and operation of the facility. iii) Avoiding areas of environmental significance or heritage listed sites or any sites of heritage significance. iv) Meeting the radio frequency objectives of Telstra's networks. v) Opportunities for co-location with other existing telecommunications facilities / utility structures wherever possible. <p>The applicant explored options for co-location with two Optus telecommunications facilities located within the suburb of New Lambton including the Optus tower approved</p>

through DA2019/01113 located at 123 Lookout Road, New Lambton (Blackbutt Reserve).

The information concludes that co-location with the Optus towers is not feasible as the Telstra coverage objectives cannot be met.

Candidate sites

The applicant advises that no other suitable candidate areas within the New Lambton area were identified. The search for an alternative location was limited to an area located within close proximity to the existing site which is largely characterised by low density residential development which is generally not conducive to telecommunications facilities.

The applicants search for an alternative site was limited to other sites within the New Lambton Commercial Centre. Alternative sites outside of the New Lambton Commercial Centre would not achieve the coverage objectives.

The applicant advises that several alternative locations within the New Lambton Commercial Centre were considered, these include the rooftops of the Ritchies IGA building, Lambton Uniting Church and the existing exchange building, and the Ritchies IGA car park.

The rooftops of these existing buildings were deemed unsuitable as the buildings are not tall enough to achieve the coverage objectives. The Ritchies IGA carpark was not deemed suitable by the applicant as locating the tower in the car park would result in a loss of car parking and landscaping. Furthermore, the area

	<p>provides no screening for the new telecommunications facility and the visual impact would be unreasonable.</p> <p>Alternative sites outside of the New Lambton Commercial Centre that are not identified as residential were considered not suitable as the coverage objectives could not be met.</p> <p>In summary, the applicant advises that no other suitable candidate areas within the suburb of New Lambton were identified. The search for an alternative location was limited to an area within close proximity to the existing site which is largely characterised by low density residential development. The subject site was therefore deemed the most suitable location for the proposed facility.</p>
<p>(c) Towers may be extended for the purposes of co-location.</p>	<p>Guidelines 2(c) is not applicable to the DA as an extension to an existing tower is not proposed. Should approval be granted to this proposed new telecommunications facility, further applications for co-location onto this facility could be reasonably anticipated.</p>
<p>(d) The extension of an existing tower must be considered as a practical co-location solution prior to building new towers.</p>	<p>Guidelines 2(d) is not applicable to the DA as an extension to an existing tower is not proposed.</p>
<p>(e) If a facility is proposed not to be co-located the proponent must demonstrate that co-location is not practicable.</p>	<p>A search of the Radio Frequency National Site Archive (RFNSA) indicates that there are no co-location opportunities available in the suburb of New Lambton.</p> <p>As discussed previously, the applicant has provided information regarding</p>

	<p>the feasibility of co-location with two existing Optus towers within the suburb of New Lambton as well as the Optus tower recently approved through DA2019/01113 located at 123 Lookout Road, New Lambton. The information concludes that co-location with the Optus towers is not feasible as the Telstra coverage objectives cannot be met.</p> <p>The additional information submitted to CN suitably demonstrates that co-location is not feasible in this instance as the coverage objectives are not achieved.</p>
<p>(f) If the development is for a co-location purpose, then any new telecommunications facility must be designed, installed and operated so that the resultant cumulative levels of radio frequency emissions of the co-located telecommunications facilities are within the maximum human exposure levels set out in the Radiation Protection Standard.</p>	<p>Guidelines 2(f) is not applicable to the DA as the proposal is not for co-location.</p>
<p><i>Principle 3 - Health standards for exposure to radio emissions will be met.</i></p>	
<p>Specific Principle</p>	<p>CN Officer Comment</p>
<p>(a) A telecommunications facility must be designed, installed and operated so that the maximum human exposure levels to radiofrequency emissions comply with Radiation Protection Standard.</p>	<p>Telecommunications facilities generating Electromagnetic Emissions (EME), such as the proposed facility, are required to comply with EME standard mandated by the Australian Communication and Media Authority (ACMA), which includes a maximum exposure limit expressed as a percentage value of 100%.</p>
<p>(b) An EME Environmental Report shall be produced by the proponent of the development to which the Mobile Phone Network Code applies in terms of design, siting of facilities and notifications. The Report is to be in the format required by</p>	<p>The EME report submitted with the DA demonstrates that the maximum predicted EME levels of the proposed development will equate to 3.18% of the maximum exposure limit at a distance of 64m from the location,</p>

<p>the Australian Radiation Protection Nuclear Safety Agency. It is to show the predicted levels of electromagnetic energy surrounding the development and comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard and demonstrate compliance with the Mobile Phone Networks Code.</p>	<p>which is 96.82% below the allowable exposure limit under the Australian Standard. The existing telecommunications infrastructure located on the subject site has a maximum EME level of 5.94% at a distance of 53m from the location. The proposed development will result in a reduction of the maximum predicted EME level at the subject site. In addition to the facility being located further away, the height of the proposed telecommunications facility also contributes to these reductions.</p> <p>The application outlines: <i>“As one moves away from a base station at ground level, the levels first increase before reaching a maximum and then get less as you move further away. Typically, the maximum ELE level at ground level will occur between 75m and 200m from the base of the antenna.”</i></p> <p>The proposal and report are considered satisfactory and relevant conditions will be included in any future development consent.</p>
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Principle 4 - Minimise disturbance and risk, and maximise compliance

Specific Principle	Comment
<p>(a) The siting and height of any telecommunications facility must comply with any relevant site and height requirements specified by the Civil Aviation Regulations 1988 and the Airports (Protection of Airspace) Regulations 1996 of the Commonwealth. It must not penetrate any obstacle limitation surface shown on any relevant Obstacle Limitation Surface Plan that has been prepared by the operator of an aerodrome or airport operating within 30 kilometres of the proposed development and reported to the Civil Aviation Safety Authority Australia.</p>	<p>The proposed development is not located within 30km of Newcastle International Airport and RAAF Base Williamstown. As such reporting to the Civil Aviation Safety Authority Australia is not required.</p> <p>Lake Macquarie Airport (formally Belmont Airport) is a small airfield located in the lake Macquarie suburb of Marks Point approximately 20km south from the location proposed for the telecommunications facility. Lake Macquarie Airport is a small airport with small planes operating on a short</p>

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	<p>east west runway. The proposed telecommunications facility will have minimal relevance to the operation of the Lake Macquarie Airport.</p> <p>The DA is considered acceptable in this regard.</p>
<p>(b) The telecommunications facility is not to cause adverse radio frequency interference with any airport, port or Commonwealth Defence navigational or communications equipment, including the Morundah Communication Facility, Riverina.</p>	<p>The submitted SEE provided the following comment:</p> <p><i>“The proposed equipment at the subject site is licensed as per ACMA regulations. As a result, there is to be no interference with other civil and military communications facilities.”</i></p> <p>The DA is considered acceptable in this regard.</p>
<p>(c) The telecommunications facility and ancillary facilities are to be carried out in accordance with the applicable specifications (if any) of the manufacturers for the installation of such equipment.</p>	<p>The proposed facility is to be installed in accordance with applicable specification (if any) of the manufacturers for the equipment. CN’s Environmental Protection Officer has considered the submitted EME Report as Satisfactory.</p>
<p>(d) The telecommunications facility is not to affect the structural integrity of any building on which it is erected.</p>	<p>Guidelines 4(d) is not applicable to the DA as the development proposes a freestanding monopole and associated facilities.</p>
<p>(e) The telecommunications facility is to be erected wholly within the boundaries of a property where the landowner has agreed to the facility being located on the land.</p>	<p>The submitted SEE provided the following comment;</p> <p><i>“The subject land is owned by Telstra Corporation and is to be erected wholly within the boundaries of the land. The new structure will not encroach on surrounding property boundaries.”</i></p> <p>Consent from the landowner was</p>

	provided with the DA and the proposed development is contained wholly within the boundaries of the subject site.
(f) The carrying out of construction of the telecommunications facilities must be in accordance with all relevant regulations of the Blue Book – ‘Managing Urban Stormwater: Soils and Construction’ (Landcom 2004), or its replacement.	The proposed development is considered unlikely to impact the existing stormwater management onsite. A condition is recommended to be placed on the consent to ensure adequate sediment and erosion control measures are in place for the construction period.
(g) Obstruction or risks to pedestrians or vehicles caused by the location of the facility, construction activity or materials used in construction are to be mitigated.	Pedestrians or vehicles are not considered to be impacted by the proposal as the development site is not generally accessible by pedestrians or vehicles. The DA is considered acceptable in this regard.
(h) Where practical, work is to be carried out during times that cause minimum disruption to adjoining properties and public access. Hours of work are to be restricted to between 7.00am and 5.00pm, Mondays to Saturdays, with no work on Sundays and public holidays.	Any future development consent will be conditioned in accordance with CN’s standards which restricts the hours for construction work that generates noise that is audible at residential premises to: i) Monday to Friday, 7:00am to 6:00pm, and ii) Saturday 8:00am to 1:00pm
(i) Traffic control measures are to be taken during construction in accordance with Australian Standard S1742.3-2002 Manual of uniform traffic control devices – Traffic control devices on roads.	It would be expected that appropriate traffic control measures would be separately applied for if required.
(j) Open trenching should be guarded in accordance with Australian Standard Section 93.080 – Road Engineering AS1165 – 1982 – Traffic hazard warning lamps.	Any future development consent will be conditioned accordingly.

<p>(k) Disturbance to flora and fauna should be minimised and the land is to be restored to a condition that is similar to its condition before the work was carried out.</p>	<p>The DA does not propose the removal of any vegetation in order to facilitate the development, no tree clearing is required to access the site or construct the proposed facility.</p>
<p>(l) The likelihood of impacting on threatened species and communities should be identified in consultation with relevant state or local government authorities and disturbance to identified species and communities avoided wherever possible.</p>	<p>Furthermore, the subject site is not mapped as containing biodiversity values nor within proximity to land identified as containing biodiversity values.</p> <p>The DA is considered acceptable in this regard.</p>
<p>(m) The likelihood of harming an Aboriginal Place and / or Aboriginal object should be identified. Approvals from the Department of Environment, Climate Change and Water (DECCW) must be obtained where impact is likely, or Aboriginal objects are found.</p>	<p>A search of the Aboriginal Heritage Information Management System (AHIMS) and NSW Atlas of Aboriginal Places maintained by the Office of Environment and Heritage was undertaken to determine the presence of any listed Aboriginal heritage items within the subject site. No indigenous heritage items were identified on or within 200m of the subject site. As such, construction of the proposed facility would not impact any aboriginal heritage items as all works would be undertaken within the boundaries of the subject site.</p> <p>The DA is considered acceptable in this regard.</p>
<p>(n) Street furniture, paving or other existing facilities removed or damaged during construction should be reinstated (at the telecommunications carrier's expense) to at least the same condition as that which existed prior to the telecommunications facility being installed.</p>	<p>Any future development consent will be conditioned accordingly.</p>

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the B2 Local Centre zone under the provisions of the NLEP 2012.

The proposed development is consistent with the objectives of the B2 Local Centre zone, which are:

- i) To provide a range of retail, business, entertainment and community uses that service the needs of people who live in, work in and visit the local area.
- ii) To encourage employment opportunities in accessible locations.
- iii) To maximise public transport patronage and encourage walking and cycling.
- iv) To provide for residential development that maintains active retail and business frontage in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.
- v) To maintain the hierarchy of an urban centre throughout the LGA and not prejudice the viability of the Newcastle City Centre.

Telecommunications towers are not permissible in the B2 Local Centre zone under the provisions of the NLEP 2012. The application has been lodged pursuant to the provisions of State Environmental Planning Policy – Infrastructure 2007. The proposed development is permissible with CN's consent in this zone in accordance with this policy.

The development will provide better coverage and enhanced mobile service capabilities which will assist those who live in, work in and visit the local area which is considered would support the Local Centre Zone.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the subject site is allocated a maximum building height of 11m.

The proposed telecommunications facility will have a maximum height of 26.3m which represents a 139.09% variation to this development standard.

Provided below is the definition 'Building Height' under the NLEP 2012:

building height (or **height of building**) means —

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

A clause 4.6 written variation to the maximum building height development standard is not required for a telecommunications facility as the building height definition contained within the NLEP 2012 excludes *communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

However, in this instance a clause 4.6 written variation request has been submitted as part of the DA and a merit-based assessment of the proposals non-compliance has been undertaken, outlined further below.

Clause 4.4 Floor Space Ratio (FSR)

Under the NLEP 2012 the site has an FSR development standard of 1.5:1. The proposed development does not affect the FSR of the subject site as it is replacing infrastructure existing on the subject site.

Clause 4.6 Exceptions to Development Standard

The applicant has made a request under the provisions of this clause to vary the maximum Building Height development standard set out under clause 4.3 of the NLEP 2012.

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

- 1) *The objectives of this clause are as follows:*
 - a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development.*
 - b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- 2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

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

An assessment of the applicant's clause 4.6 variation request to the maximum Building Height development standard is provided below.

- i) Is the provision to be a varied development standard

The maximum building height development standard in the NLEP 2012 is a development standard in that it is consistent with the definition of development standards under section 1.4 of the EP&A Act.

- ii) Is the development standard excluded from the operation of clause 4.6?

The maximum building height development standard is not expressly excluded from the operation of clause 4.6.

- iii) What is the applicable numerical standard and what is the variation proposed?

The applicable maximum building height is 8.5m. The proposal has a maximum building height of 26.3m which represents a 139.09% variation to this development standard.

- iv) Has it been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

In the Land and Environment Court Judgement of *Wehbe vs Pittwater Council [2007] NSW LEC 827*, 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. At paragraph 43 of this judgement, Preston CJ noted:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

In this judgment, Preston CJ established five circumstances in which it could be reasonably argued that the strict application of a development standard would be unreasonable and / or unnecessary. These are as follows:

- “(1) Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?”*
- “(2) Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?”*
- “(3) Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?”*
- “(4) Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?”*
- “(5) Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning also unreasonable or unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.”*

In their justification of the proposed variation, the applicant has relied upon the first circumstance described above being the development standard objectives. Provided below is a discussion addressing this first circumstance.

The objectives of the maximum building height development standard are as follows:

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

The argument put forward in the applicant's clause 4.6 variation request demonstrates that the first circumstance applies and that the underlying planning objectives are satisfied notwithstanding the numerical non-compliances and includes the following points:

"The telecommunications facility is considered to be consistent with the objectives of this clause despite contravening the development standard."

"The height proposed for the telecommunications facility is appropriate for the New Lambton locality given the requirements to achieve 'line of sight' to other telecommunications facilities."

"...The New Lambton locality predominantly consists of low-density commercial development and low-density dwellings and infrastructure..."

"The proposed facility is the smallest facility capable to accommodate the coverage objectives..."

"...There will be limited effects on the built form of the locality."

"It will have minimal if any impact on the daylight access."

An analysis of the maximum building height limits allocated to land within the suburb of New Lambton indicates that a large proportion of land is allocated a maximum building height limit of 8.5m with the exception of land located within the New Lambton Commercial Centre which is allocated a maximum building height of 11m.

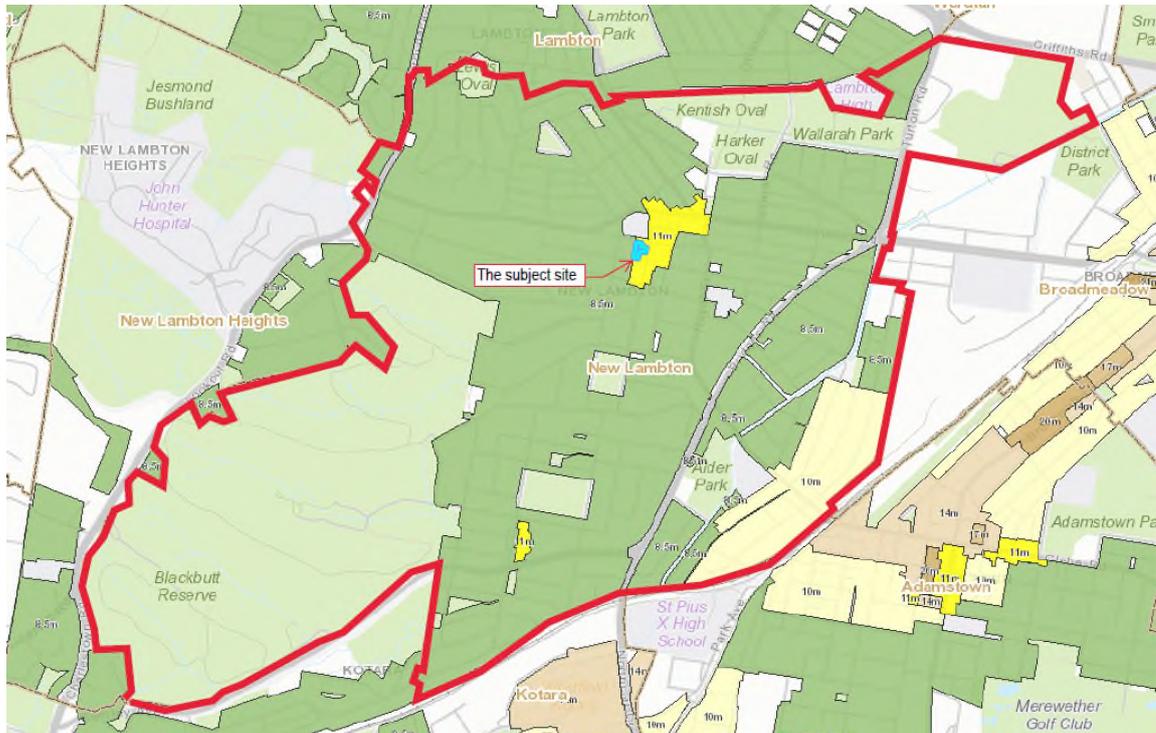
It is noted that land located to the north, north east, north west, south and south west of the subject site is not allocated a maximum building height limit as shown in Figure 1 below.

Notwithstanding the height of the structure exceeds the numerical height limit the bulk of the telecommunications tower is minimal and therefore the additional

height is not of such a magnitude as to be inconsistent with the centre hierarchy.

Figure 1: Maximum building height limits for the suburb of New Lambton

The bulk of the telecommunications tower is minimal and will not result in any undue visual impact, disruption of views, loss of privacy or loss of solar access



for any existing development within or external to the subject site. Furthermore, the tower height is necessary for the functionality of the infrastructure. A compliant 11m structure could not reasonably achieve the coverage objectives. Given this, requiring strict numerical compliance would be both unnecessary and unreasonable.

It is considered that this development has been amended to a sufficient degree to appropriately address the objectives of the maximum Building Height standard, along with other relevant planning objectives. It is noted that the height of the proposed telecommunications tower is a critical design component that allows for the successful operation of the proposal and locating it in an area with similar vertical structures is in the public interest.

The application of the flexibility of clause 4.6 is appropriate to enable the approval of this development. This would be consistent with the objectives of clause 4.6.

The applicant has also submitted an argument against the objectives of the B2 Local Centre zone. The objectives of the B2 Local Centre zone are as follows:

- i) To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- ii) To encourage employment opportunities in accessible locations.*
- iii) To maximise public transport patronage and encourage walking and cycling.*
- iv) To provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.*
- v) To maintain the hierarchy of urban centres throughout Newcastle CBD and not prejudice the viability of the Newcastle City Centre.*

The applicant has submitted the following justification in response to the objectives of the B2 Local Centre zone:

“The facility will support local retail, business, entertainment and community uses.”

“It will also facilitate employment opportunities in New Lambton by providing businesses that are well connected.”

“The proposal is in the public interest as the facility will be providing an essential service to residents, businesses and visitors in the New Lambton area.”

The above points are noted and, as previously stated in commentary under the maximum Building Height development standard objectives above, the proposal is compatible with the objectives of the B2 zone in terms of the proposals scale as well as being an appropriate form of development within the B2 zone.

Given the above, it is concluded that requiring the development to comply with the Building Height control would service no purpose as the underlying objectives of the maximum Building Height control and the zone objectives are already achieved by the current version of the proposal notwithstanding numerical non-compliance. The first circumstance to prove that strict compliance is unreasonable has been adequately demonstrated.

- v) Has it been demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard?

Given the above discussion, it is considered that there are sufficient environmental planning grounds to justify the proposed variation to the maximum Building Height development standard in the circumstances of this case.

- vi) Is the development in the public interest because it is consistent with the objectives of the particular standard and, the objectives for development within the zone?

The above assessment has demonstrated that the proposed development is consistent with the objectives of the maximum Building Height development standard and it is consistent with the objectives of the B2 Local Centre zone. Consequently, the development is considered to be in the public interest.

- vii) Has the concurrence of the Secretary been obtained?

The Department of Planning and Environment advised via Planning Circular PS20-002 on 5 May 2020 that concurrence of the Secretary could be assumed for a variation to a maximum FSR development standard that is not greater than 10%. Concurrence is therefore assumed in this case.

- viii) Is this clause.4.6 request to vary a development standard supported?

Yes, it is concluded that the applicant's clause 4.6 variation request has satisfied the relevant tests under this clause. The clause 4.6 variation request is therefore supported and the proposed height acceptable.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils, subject to provisions regarding:

“Works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m Australian Height Datum and by which the watertable is likely to be lowered below 1m Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.”

The proposed development is considered satisfactory in this regard as it will not impact on the watertable or involve works below 1m on adjacent Class 1, 2, 3 or 4 land.

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

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

5.3 Any development control plan

Newcastle Development Control Plan (NDCP 2012)

There are no controls within the NDCP 2012 that apply to telecommunications facilities.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act and the Environmental Planning and Assessment Regulation 2000. In addition, a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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

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

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

Electromagnetic Emissions

Telecommunications facilities generating Electromagnetic Emissions (EME), such as the proposed development, are required to comply with EME standards mandated by the Australian Communication and Media Authority (ACMA), which includes a maximum exposure limit expressed as a percentage value of 100%. It is noted that the reduced height of the proposed telecommunications tower does not result in a reduction of EME.

The Environmental EME Report submitted with the application demonstrates that the maximum predicted EME levels of the proposed development will equate to 3.18% of the maximum exposure limit at a distance of 64m from the location, which is 96.82% below the allowable exposure limit under the Australian Standard. The existing telecommunications infrastructure located at the subject site has a maximum EME level of 5.94% at a distance of 53m from the location. The application outlines:

“As one moves away from a base station at ground level, the levels first increase before reaching a maximum and then get less as you move further away. Typically, the maximum EME level at ground level will occur between 75m and 200m from the base of the antenna.”

Figure 2 below provides a two-dimensional view of what happens to the EME around a base station. The EME transmitted from small cells (existing on the subject site) is more localised and, depending on its configuration, may not follow the same emission profile as a larger base station (proposed telecommunications facility). Typically, the EME levels are very low and they decrease rapidly with distance away from the source much like the larger base stations.

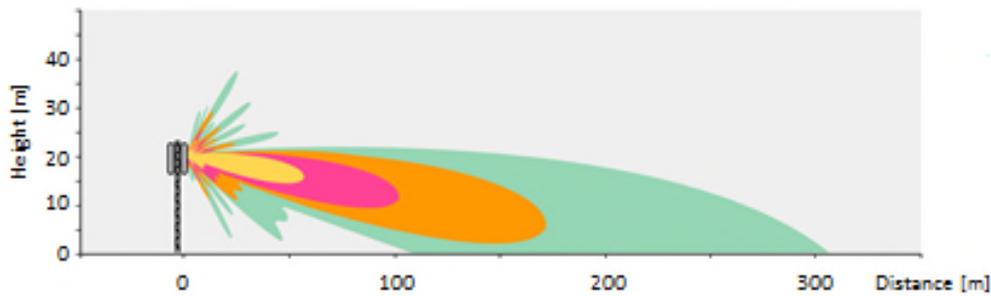


Figure 2: How EME levels vary as you move away from a base station tower.
 Source: Australian Radiation Protection and Nuclear Safety Agency

Table 1 below provides a comparison of the EME levels associated with the existing telecommunications infrastructure located on site and the proposed development.

Distance from the site	Existing configuration			Proposed configuration		
	Electric field (V/m)	Power density (mW/m ²)	Percentage of the public exposure limit	Electric field (V/m)	Power density (mW/m ²)	Percentage of the public exposure limit
0-50m	12.022	383.36	5.94%	10.72	304.69	3.17%
50-100m	12.069	386.34	5.94%	10.73	305.36	3.18%
100-200m	7.3	141.29	2.39%	8.49	191.0	1.94%
200-300m	3.62	34.7	0.59%	6.3	105.31	1.38%
300-400m	2.42	15.58	0.27%	4.3	49.0074	0.64%
400-500m	1.81	8.71	0.15%	3.18	26.81	0.35%

Table 1: Comparison of EME levels extracted from EME report.

There are approximately 20 dwellings located within 100m of the proposed facility, the EME Report has identified a predicted maximum EME level of 4.022% as measured at the nearest residence. This equated to 95.978% below the allowable exposure limit under the Australia Standard.

Table 2 below provides the EME level reading for areas of interest such as the New Lambton Public School and St Therese’s Catholic Primary School.

Location	Height range	Electric field (V/m)	Power density (mW/m ²)	Percentage of the public exposure limit
Nearest residence on Russell Rd	0-3 m	12.061	385.85	4.022%
Public School	0-2 m	9.62	245.63	2.5%
St Therese's Catholic Primary school	0-2 m	3.48	32.059	0.4%

Table 2: Proposed EME levels at areas of interest extracted from EME report

Visual Impact

The proposed location is visually sensitive due to the New Lambton Commercial Centre which runs along Regent Street and Lambton Road. Land adjoining the subject site to the north, east and south is Zoned B2 Local Centre and provides a supermarket and mixed business facilities including banks, cafes and restaurants.

A Visual Impact Assessment has been submitted as part of the development application. The Visual Impact Assessment includes a series of photomontages from seven viewpoints taken from the New Lambton Commercial Centre and surrounding residential area. Receptors of these viewpoints include residents, motorists, pedestrians and businesses within the New Lambton Commercial Centre and surrounding residential area.

A Zone of Theoretical Visibility (ZTV) has also been submitted as part of the Visual Impact Assessment comparing the potential visibility of an 11m versus 31.8m telecommunications facility. ZTV mapping is a computer-generated analysis which identifies land from which it is theoretically possible to view the telecommunications facility.

The results show that the visual impact of a telecommunications tower with a height of 31.8m is theoretically no different to a telecommunications tower with a height of 11m. Furthermore, it is considered that reducing the overall height of the proposed telecommunications facility from 31.8m to 26.3m has assisted in reducing views of the structure from residential receivers.

The proposed height of the development will result in the structure being visible from several locations within the surrounding area.

The visual impact of the proposed telecommunications tower, as shown in the photomontages, suitably demonstrates that the proposed installation would not significantly detract from the landscape from most of the perspectives from its surroundings. Whilst the proposed telecommunications facility is not expected to be invisible, the fact that it is visible does not necessarily mean it will have a negative impact on the visual amenity of the area.

Views of the proposed telecommunications facility from residential receivers to the north, west and south of the subject site have been considered however it is believed that views of the facility are generally limited due to the presence of intervening buildings, infrastructure, vegetation between the site and these receivers as well as the topography and lay of the land.

The nature of telecommunications facilities requires that they be located at an elevated position to gain the best coverage possible. The application identifies a number of methods have been integrated into the design of the proposed telecommunications facility to mitigate the visual impacts of the structure including; locating the structure in proximity to existing vertical elements such as buildings, and the use of neutral / non-reflective grey colours to blend into the skyline.

Towers of this nature are becoming an expected element of the modern scenic landscape. It is considered that the visual impact of the proposed facility will be consistent with the intentions of a telecommunications facility and that the proposed facility has been designed to minimise its visual impact and minimise its effect on the landscape. Furthermore, the level of exposure and visibility anticipated from the development is considered acceptable when balanced against the benefits the infrastructure would provide to the locality.

Character

As previously mentioned, the subject site is located within the New Lambton Commercial Centre.

The subject site is not identified as being a heritage item or being located within a Heritage Conservation Area. It is noted that the subject site is located within close proximity to New Lambton Public School which is identified as a local heritage item. The application outlines the proposal does not detract from the heritage significance of the New Lambton Public School site.

Bulk and Scale

The telecommunications tower will be a slimline monopole which will help in reducing the visual impact associated with the proposed facility. Neutral / non-reflective grey colours have been used to blend into the skyline and further reduce the bulk and scale of the proposal.

Privacy

The proposal is not considered to pose a significant adverse impact on the visual or acoustic privacy of adjoining properties.

View Loss

The proposed development does not result in an unreasonable impact on views or outlook. There are no significant views that will be impacted in this location. The impact on the general outlook is reasonable having regard to the allowable height and scale for development under relevant planning policies.

Social Impact

The overall social impacts are considered to be beneficial, and improved access to internet technology can facilitate a reduction in social isolation, individuals are better able to communicate and operate home based business, and improved opportunities to share and research information.

5.7 The suitability of the site for the development

Site considerations

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

There is already existing telecommunications infrastructure existing on the subject site. The development application is merely an upgrade of the existing telecommunications infrastructure on the subject site.

The subject site is not identified as being Bush Fire Prone or Flood Prone land. Further, the subject site is not mapped as containing biodiversity values nor within proximity to land identified as containing biodiversity values.

The DA does not propose the removal of any vegetation in order to facilitate the development; no tree clearing is required to access the site or to construct the proposed facility.

The constraints of the site have been considered in the proposed development, which includes acid sulfate soils. The subject site is not subject to any other known risks or hazards that would render it unsuitable for the proposed development.

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

The DA was notified in accordance with CN’s Community Consultation Plan. A total of 264 submissions were received during the notification period, including two Public Voice requests. With respect to the amended and current proposal 156 submissions were received.

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

Issue	CN Officer Comment
Newcastle Local Environmental Plan 2012 (NLEP 2012)	<p>The proposed development is defined as a <i>‘telecommunications facility’</i> and is not listed as a permissible use within the B2 Local Centre zone. However, in accordance with clause 115(1) State Environmental Planning Policy (Infrastructure) (ISEPP), development for the purposes of a <i>‘telecommunications facility’</i> is permissible on the subject site with consent. Due to the hierarchy of environmental planning instruments, the provisions of the ISEPP prevail over NLEP 2012, and as such the proposed development is permissible with consent from CN.</p> <p>The applicant has also made a request under the provisions of clause 4.6 Exceptions to Development Standard to vary the maximum Building Height development standard set out under clause 4.3 of the</p>

CITY OF NEWCASTLE

	<p>NLEP 2012. The clause 4.6 variation request has satisfied the relevant tests under clause 4.6. The variation request has been supported.</p>
<p>Electromagnetic Emissions</p>	<p>The applicant advises that EME is non-ionising radiation, meaning that it has the inability to break down chemical bonds or remove electrons. In contrast, ionising radiation (such as X-rays) can remove electrons from atoms and molecules thus leading to damage in biological tissue. The frequencies and energy levels in which mobile technologies operate are heavily regulated by Australian Communication and Media Authority (ACMA) and Australian Radiation protection and nuclear Safety Agency (ARPANSA). These organisations set limits as to how much power and EME emissions a mobile phone base station can produce before resulting in potential harmful impacts to the community.</p> <p>As previously discussed, the proposed development will result in EME levels well within identified safe operating levels.</p>
<p>Educational Institution</p>	<p>Submitters are concerned that the proposed telecommunications tower is located too close to the New Lambton Public School. There is no legislation which states that telecommunications towers are to be located a certain distance away from schools. Furthermore, there is existing telecommunications infrastructure already existing on the subject site and has been for some time. It is noted that this is an upgrade of the existing telecommunications infrastructure on the subject site.</p>
<p>Amenity</p>	<p>Telecommunications towers are an expected feature in the urban landscape comparative with electric light poles and power lines in urban areas. The proposed telecommunications facility is not unreasonably intrusive given its location within the New Lambton Commercial Centre and its proximity to existing vertical elements including buildings, light poles and power lines.</p>
<p>Character</p>	<p>The subject site is not identified as being a heritage item or being located within a Heritage Conservation Area. It is noted that the subject site is located within close proximity to the New Lambton Public School which is identified as a local heritage item. The DA outlines the proposal does not detract from the heritage significance of the New Lambton School site.</p>

<p>Visual Impact</p>	<p>The greatest visual amenity impact by the proposed tower is from viewpoints located closer to the subject site; at elevations above it where the building elements are distant or non-existent; or from lower elevations where the height extends into the skyline and above existing vertical elements.</p> <p>Where there is a reasonable distance between the receptor and the proposed tower, it is generally not visually dominant but can be considered obtrusive when viewed in closer proximity.</p> <p>While the telecommunications facility will be visible from certain locations, it is considered that this does not result in unacceptable visual impacts. The facility will be partially screened by existing buildings within the New Lambton Commercial Centre. Furthermore, a number of methods have been integrated into the design of the proposed telecommunications facility to mitigate the visual impacts of the structure including; locating the structure in proximity to existing vertical elements such as buildings, and the use of neutral / no-reflective grey colours to blend into the skyline.</p>
<p>Health</p>	<p>An EME report has been supplied as part of the DA. Details of the potential health impacts have been provided above.</p>
<p>Location / Site Selection</p>	<p>The applicant submits alternative sites were explored prior to finalising the selected site for the telecommunications facility. Consideration for site selection has included radio frequency efficiency, planning, property and engineering requirements as well as anticipated local community concerns.</p> <p>The alternative sites were limited to other sites within the New Lambton Commercial Centre.</p>
<p>Co-location Opportunities</p>	<p>The viability of co-locating with existing towers in New Lambton has been dismissed by the applicant as co-location would not improve coverage objectives as they are too far from the intended coverage location.</p> <p>Given the thorough search of opportunities to co-locate the telecommunications tower has revealed no alternatives, CN is satisfied that the location at hand is considered as the only viable option to address the service gap.</p>

Impacts on Property Values	This concern is not a matter of consideration pursuant to Section 4.15 of the EP&A Act.
Concerns over length and nature of notification process	The proposal was notified and re-notified in accordance with CN's Community Participation Plan.

Public Voice Committee Meeting held on 16 June 2020

The proposal was considered at a Public Voice Committee Meeting held on 16 June 2020.

Newcastle Local Environmental Plan 2012 (NLEP 2012)	<p>Submitters expressed concern that the proposed telecommunications tower exceeds the maximum building height limit of 11m allocated to the subject site and does not achieve the aims and objectives of the NLEP 2012.</p> <p>As previously discussed in this report under the definition of building height a telecommunications facility is not typically subject to the nominated height limit. Nevertheless, the applicant has made a request under the provisions of clause 4.6 to vary the maximum Building Height development standard set out under clause 4.3 of the NLEP 2012. An assessment of the clause 4.6 variation has been made above.</p> <p>The proposed DA achieves an aim of the NLEP 2012 as the proposal will allow for Newcastle CBD to strengthen its position as a multi-functional and innovative centre which encourages employment and economic growth.</p>
Visual Impact	<p>The submitters expressed concerns regarding the visual impact of the proposal. The submitters advise that the two photomontages of the telecommunications tower included as part of the original application do not accurately represent the potential visual impacts of the proposed facility. The two photomontages submitted as part of the original DA were taken from the northern and southern ends of Regent Street.</p> <p>The amended DA included a Visual Impact Assessment which included seven photomontages taken from various locations in the New Lambton area. As previously discussed, the visual impact of the proposed facility will be consistent with the intentions of a telecommunications facility and that the proposed facility has been designed to minimise its visual impact and minimise its effect on the landscape.</p>

	<p>The level of exposure and visibility anticipated from the development is considered acceptable when balanced against the benefits the infrastructure would provide to the locality.</p> <p>In response to discussions regarding the visual impact of the proposed structure the applicant advised that under the <i>Telecommunications Act 1997</i> the structure could be constructed on the roof of a building up to a height of 5.5m without development consent. However, the coverage objectives would not be achieved.</p>
<p>Is the subject site the only option</p>	<p>The applicant argues that there is already an existing mobile base station existing on the subject site on the existing Telstra exchange building. As previously discussed, given the zoning of the New Lambton area there are limited alternative sites available. Furthermore, the roof heights of buildings within the area are not tall enough to accommodate the proposed infrastructure and achieve coverage objectives.</p>
<p>Alternative Sites</p>	<p>Submitters expressed concern that alternative sites were not considered during the site selection process. Submitters also questioned why the subject site was considered the most appropriate site.</p> <p>In response to the issues raised at the Public Voice Committee Meeting the applicant advised that a number of alternative sites were considered as part of the site selection process. No other suitable candidate areas within the suburb of New Lambton were identified. The search for an alternative location was limited to an area within close proximity to the existing site which is largely characterised by low density residential development. The subject site was therefore deemed the most suitable location for the proposed facility.</p>
<p>Co-location</p>	<p>Submitters questioned whether opportunities for co-location with other towers in the area had been explored.</p> <p>The applicant advised that no suitable opportunities for co-location had been identified in their preliminary search.</p> <p>The applicant advised that opportunities for co-location within the New Lambton area were limited and that of the</p>

	<p>towers existing in the area, none were deemed suitable for co-location.</p> <p>The applicant also considered co-location of the proposal with the Optus towers recently approved through DA2019/01113 located at 123 Lookout Road, New Lambton (Blackbutt Reserve). The information concludes that co-location with the Optus towers is not feasible as the Telstra coverage objectives cannot be met.</p>
<p>Site Determination</p>	<p>Submitters discussed the site selection process with the applicant during the Public Voice session.</p> <p>The applicant advised that alternative sites within the New Lambton area are limited as a large proportion of the surrounding area is zoned R2 Low Density Residential and consists of low-density residential dwellings. The applicant also explained that the existing Telstra exchange is providing coverage to New Lambton and that if it was to be moved outside of the New Lambton area, there would be no Telstra coverage available. Thus, alternative sites are limited to an area within the New Lambton area and an area within the coverage maps submitted as part of the development application.</p> <p>The coverage maps provided in response to the issues of discussion at the Public Voice Committee Meeting indicate that the most appropriate location for the telecommunications tower is within the New Lambton Commercial centre.</p>
<p>Can coverage be achieved with a shorter tower</p>	<p>The applicant advises that a 31.8m high telecommunications tower is required to achieve Telstra's coverage objectives as the existing infrastructure at the subject site is no longer fit for purpose as it is experiencing mobile congestion issues. Thus, an upgrade is required in order to alleviate this congestion.</p> <p>The applicant advised that a tower with a height of 5.5m could be constructed on the rooftop of a building within the New Lambton Commercial centre without development consent. However, the coverage objectives would not be achieved, and more telecommunications infrastructure would be required within the area to achieve these objectives.</p> <p>The applicant has amended the height of the telecommunications tower by 5.5m in response to the</p>

	<p>concerns raised at the Public Voice Committee Meeting. Whilst Telstra’s original coverage objective cannot be achieved it is believed that lowering the height of the telecommunication tower reduces the visual prominence of the structure.</p>
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Public Voice Committee Meeting held on 17 November 2020

The amended design as well as the additional information received in response to the topics of discussion at the 16 June 2020 Public Voice Committee Meeting was considered at a second Public Voice Committee Meeting held on 17 November 2020.

<p>Co-location</p>	<p>Submitters advise that opportunities for co-location within the vicinity of New Lambton have not been thoroughly explored. More specifically, the recently approved Optus tower in bushland at Queens Road and Mahogany Drive.</p> <p>The Councillors requested that additional information be provided explaining why the Telstra tower is unable to be co-located with other Optus, Vodaphone and / or Telstra towers in the New Lambton and / or surrounding area.</p> <p>Submitters advised that co-location with the Optus tower was not satisfactorily addressed in the applicant’s response to CN’s request for additional information.</p> <p>The applicant considers this to have previously been addressed and has not provided further information in this regard however, as discussed at the Public Voice Committee Meeting held on 17 November 2020, the matter of co-location has been adequately considered.</p>
<p>Coverage</p>	<p>Why can’t the technology at the existing tower be upgraded to meet the designer coverage objectives. Why is the additional height required when the technology of the existing telecommunications infrastructure can be upgraded to meet the desired coverage objectives.</p> <p>The applicant considers this to have previously been addressed and has not provided further information in this regard however, as discussed at the Public Voice Committee Meeting held on 17 November 2020, the matter of co-location has been adequately considered.</p>
<p>Educational Establishment</p>	<p>Submitters expressed concerns regarding the proposed telecommunications facilities proximity to the educational establishment on Russell Road. Submitters also advised that the NSW Department of Education has submitted an</p>

	<p>objection to the proposal on the grounds that the telecommunications facility is not located at least 500m from the boundary of the educational establishment.</p> <p>The applicant noted that telecommunications infrastructure is already existing on the subject site and that the proposed telecommunications facility results in a reduction of EME. The applicant also noted that there is no legislation that requires a telecommunications facility to be located a minimum of 500m from an educational establishment.</p>
<p>Visual Impact</p>	<p>Submitters advised that the visual impact assessment submitted as part of the DA does not accurately represent the true visual impact of the proposed telecommunications tower.</p> <p>The applicant considers this to have previously been addressed and has not provided further information in this regard however, as discussed at the Public Voice Committee Meeting held on 17 November 2020, the matter of visual impact has been adequately considered.</p>

5.9 The public interest

The development is in the public interest as it facilitates the provision of critical infrastructure that would benefit community and businesses in the area.

6.0 CONCLUSION

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

ATTACHMENTS

- Item 5 Attachment A:** Submitted Plans - 54 Regent Street, New Lambton
- Item 5 Attachment B:** Draft Schedule of Conditions - 54 Regent Street, New Lambton
- Item 5 Attachment C:** Processing Chronology - 54 Regent Street, New Lambton

Item 5 Attachments A - C distributed under separate cover

ITEM-7 **DAC 20/04/21 - 79 UNIVERSITY DRIVE, WARATAH WEST - DA2020/00903 - RESIDENTIAL ACCOMMODATION - MULTI DWELLING HOUSING (76 DWELLINGS) - CONSTRUCTED IN THREE STAGES**

APPLICANT: **SNL BUILDING CONSTRUCTIONS**
OWNER: **LAMBTON NORTH HOLDINGS PTY LTD**
REPORT BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

PURPOSE

An application has been received seeking consent to residential accommodation – multi dwelling housing (76 dwellings) – constructed in three (3) stages at 79 University Drive, Waratah West.

The site is partially developed, containing residential flat buildings and multi dwelling housing, which was constructed as three stages. The purpose of the development is to replace stages 4, 5 and 6 of the development (DA2015/0701 approved on 16 August 2016 by the Joint Regional Planning Panel) with this proposal.



Subject Land: 79 University Drive, Waratah West

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

The application is referred to the Development Applications Committee (DAC) for determination as the Capital Investment Value of the proposed development (\$27,413,446) exceeds the staff delegation limit of \$10 million.

The development application (DA) is supported by a request to vary the building height development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) by less than 10%.

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Public Participation Policy and one submission was received in response.

The objector's concerns included:

- i) Vehicle access and traffic movement.
- ii) Stormwater management.

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

Issues

- 1. Variation to the Height of Buildings development standard, under the NLEP 2012.
- 2. Proposed front setback to University Drive with regard of the Newcastle Development Control Plan 2012 (NDCP 2012).
- 3. Matters raised in the submission including vehicle access, vehicle movement and stormwater.

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the R2 Low Density zone in which the development is proposed to be carried out; and
- B. That DA2020/00903 at 79 University Drive Waratah 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 (EP&A Act) requires a person to disclose "reportable political donations and gifts made by any person with a financial interest" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

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

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

PART II

1.0 BACKGROUND

On 16 August 2016 conditional development consent was granted by the Hunter and Central Coast Regional Planning Panel (HCCRPP) to a development application (DA2015/0701) for a mixed residential accommodation development on the site. The consent describes the approved development as:

'Staged Development Comprising Erection of 145 dwellings in the Form of Residential Flat Buildings and Multi Dwelling Housing in Six (6) Stages and Consolidation of Two Lots'

Stages 1 to 3 of the development, including the consolidation of previous lots into the current lot (79 University Drive, Waratah West), have been completed. The proposed development involves construction over three stages identified as stages 1, 2 and 3 which will replace stages 3, 4 and 5 of the original approved development. The major difference is removal of the approved residential flat buildings with multi dwelling housing for each stage. The following Figure 1 overlays the footprint of the proposed development over the approved development.

Figure 1: DA2015/0701 Stages 3, 4 and 5 footprint overlayed current proposal Stages 1, 2 and 3.

2.0 THE SUBJECT SITE

The subject property comprises Lot 54 Strata Plan 101015, 9 University Drive, Waratah West. The entire site is northern orientated as is the western portion of the site. The subject of this DA is identified for the purposes of this report as the 'development area'. The northern boundary of the site to University Drive has an approximate frontage of 440 metres. The developed (DA2015/0701 – Stage 1 to 3)

area of the site is occupied by residential flat buildings and multi dwelling housing and associated infrastructure.

Site preparation works have occurred on the development area of the site as a result of current development consent. The topography has been altered, and all vegetation has been removed resulting in exposed soils for the development area that is being managed by temporary stormwater and sediment control measures.

Access from the development area to Stannett Street is via an unnamed laneway through the completed stages 1 to 3 of DA2015/0701 and then between two existing residential properties facing Stannett Street. A signalised intersection exists for Stannett Street and University Drive which provides the access to the University site (Ring Road). There is no access provided directly from University Drive to the site.

The site contains existing infrastructure constructed for Stages 1 to 3 of DA2015/0701 which will extend into the development area.

Figure 2: Aerial view of the site



Surrounding Development

The existing site contains the completed Stages 1 to 3 of DA2015/0701, with development comprising residential flat buildings and multi dwelling housing.

Opposite the subject site to the north (across the divided four-lane University Drive) is the University of Newcastle (UoN) - Callahan Campus. The frontage of the University site is generally undeveloped bushland with the exception of UONs Infrastructure and Services Building.

Low density detached residential housing is located to the west and east of the site in suburbs of Waratah and Callaghan. To the immediate south is a large parcel of land containing remnant vegetation and water supply infrastructure / reservoir owned by Hunter Water Corporation.

Bus stops are within close proximity to the subject site; located at the Stannett Street and University Drive intersection to the east of the site, Stannett Street / Kimian Avenue to the east, and University Drive / UoN roundabout access to the west of the site. The closest railway station is Warabrook located approximately 1.6km to the north of the UoN site.

3.0 THE PROPOSAL

The applicant seeks consent for Residential Accommodation – multi dwelling housing – constructed in three stages.

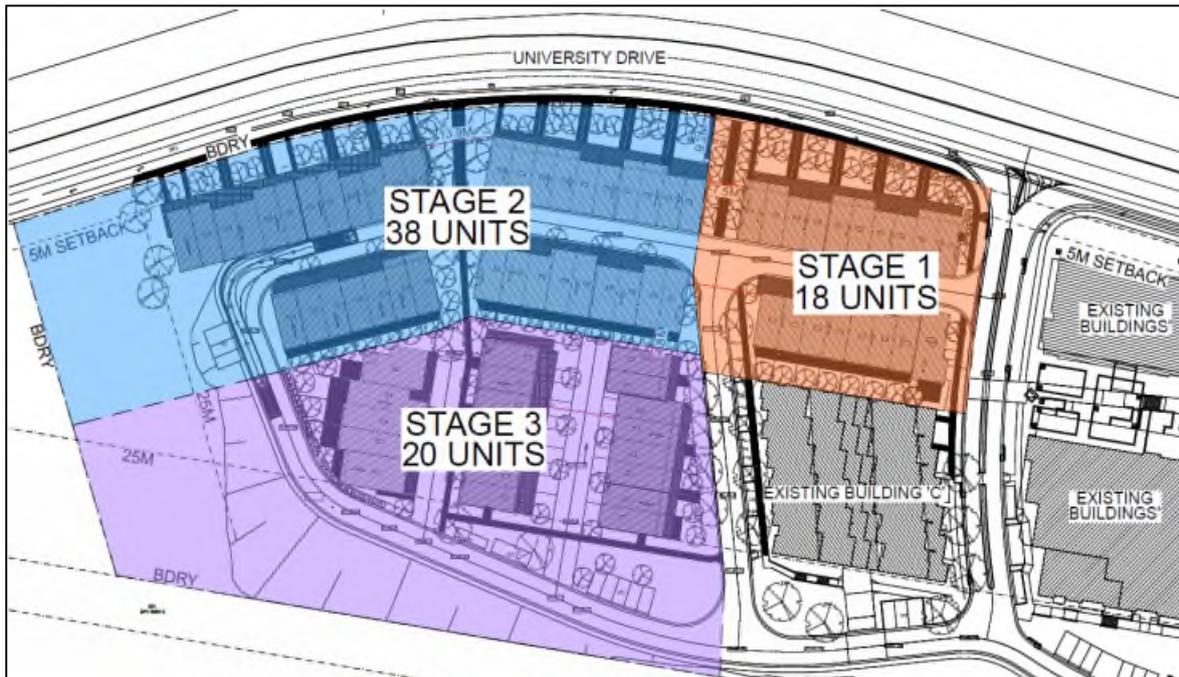
The proposal comprises:

- i) Earthworks.
- ii) Civil works including roads, infrastructure and utility services.
- iii) Construction of 76 multi dwelling housing units.
- iv) Landscaping.

The development will be constructed in three stages and contain dwelling numbers as follows:

- Stage 1 – 18 multi dwelling houses
- Stage 2 – 38 multi dwelling houses
- Stage 3 – 20 multi dwelling houses

Relevant landscaping and civil works will occur in each of the stages (refer to Figure 3 for proposed staging).

Figure 3: Identification of the three construction stages

The proposal does not include any demolition or vegetation removal. The site was previously cleared of vegetation under the terms of the development consent for DA2015/0701.

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

The proposed draft schedule of conditions of consent is included at **Attachment B**.

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

4.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Consultation Plan for 14 days between 4 September and 18 September 2020. One submission was received in response. The concerns raised by the objector in respect of the proposed development are summarised as follows:

- a) Traffic and Parking Issues
 - i) Vehicle access from University Drive onto the site.
 - ii) Traffic movement on the existing laneway from Stannett Street approved under DA2015/0701.

b) Stormwater

- iii) Stormwater on the existing laneway from Stannett Street approved under DA2015/0701.

A response to the issues is discussed in further detail in section 5.8 of the report.

5.0 INTEGRATED DEVELOPMENT

The proposal is integrated development pursuant to section 4.46 of the EP&A Act, as approval is required from the NSW Rural Fire Service under section 100B of the Rural Fires Act 1997. NSW Rural Fire Service granted their 'General Terms of Approval', on 5 January 2021. A copy is at **Attachment D**.

6.0 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.

6.1 Provisions of any environmental planning instrument

State Environmental Planning Policy No.55 (Remediation of Land) (SEPP55)

This policy requires consideration to be given to previous uses on the site and whether the site needs to be remediated for future uses. Clauses 7(1)(b) and (c) of SEPP55 require that where land is contaminated, the consent authority must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation.

The subject land is not identified as contaminated land and CN's records do not identify any past contaminating activities on the site.

A Geotechnical and Contamination Assessment was conducted by Regional Geotechnical Solutions dated February 2015 and was submitted for DA2015/0701. It identified the following contaminants onsite:

- Leakage from batteries and disposal of contaminated material in the central and eastern portion of the site when refuse has been dumped.
- Oil leakage or spillage from machinery in the former borrow pit.

CN's Senior Environmental Protection Officer's confirmed in emailed advice of 7 May 2016 with regard to DA2015/0701 that *'a Council Officer attended the proposed development site and inspected the piles of refuse. The piles were observed to be randomly dumped items such as tyres, electronics and home items and are not considered to contribute to any significant contamination at the proposed development site'*.

This application has been referred to CN's Senior Environmental Protection Officer's, with consideration of the past assessment (DA2015/0701) and submitted Geotechnical and Site Contamination Assessment prepared by Regional Geotechnical Solutions (Report No. RGS00899.1-AB dated 3 February 2015). The recommendations of the report are to be reflected within the Construction Certificate documentation for each stage. A relevant condition is included in the proposed draft schedule of conditions.

The proposal is considered to be acceptable having regard to this policy.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

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

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

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

The proposed development is located within 5 metres of an exposed overhead electricity power line, adjacent to a substation and within proximity to underground power mains. As such, a referral was sent to Ausgrid under clause 45 of the ISEPP. A response from Ausgrid dated 11 November 2020 (**Attachment E**) provides recommendations to satisfy their requirements.

Clause 102 – Impact of road noise or vibration on non-road development

This clause applies to development that is on land in or adjacent to the road corridor for a freeway, tollway or transit way or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on traffic volume data published on the website of the Roads and Maritime Services (RMS)). Residential accommodation is development for the purpose of clause 102. The proposed development is located adjacent to University Drive which is a classified road. However, University Drive is not mapped as being either 'mandatory' or 'recommended' for noise assessment for building on land adjacent to busy roads per the former RMS traffic volume maps.

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

This policy applies to buildings that are defined as 'BASIX affected development', being 'development that involves the erection (but not the relocation) of a BASIX affected building' (ie. contains one or more dwelling).

Accordingly, provisions of the policy apply to the proposed development. In this regard, the applicant submitted a BASIX Certificate 1100621M (dated 7 July 2020) prepared by Building Sustainability Assessments which list the commitments to achieve appropriate building sustainability. A condition is included in the proposed draft schedule of conditions requiring such commitments to be fulfilled.

Regional Environmental Plan

There are no regional environmental plans that are relevant to this proposal.

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 1.3 – Land to which Plan applies

The NLEP 2012 applies to land identified on the 'Land Application Map'. The subject development occurs within this area.

Clause 2.3 Land Use Table - Zoning

The site is zoned 'R2 Low Density Residential' under the NLEP 2012. The proposed development is defined as *residential accommodation – multi dwelling housing*. The proposed land use is permissible with consent in the R2 zone.

The development meets the following objectives of the zone:

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

Clause 4.3 Height of Buildings

The height of buildings map of the NLEP 2012 has a maximum height limit for the site of 8.5 metres. The proposed development has a maximum height of 11.9 metres, resulting in a 3.4 metre variation. The applicant has submitted a

clause 4.6 request for a variation of the height standard which has been assessed under the clause 4.6 discussion below.

Clause 4.4 Floor Space Ratio

The maximum floor space ratio (FSR) for the site is 0.6:1. The proposed development has a FSR of 0.42:1 resulting in compliance with the standard. The proposal is considered satisfactory with regard of the FSR objectives.

Clause 4.6 Exception to Development Standards

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

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

Clause 4.3(2) of the NLEP 2012 specifies that 8.5 metres height applies to the subject site. The proposed development results in a maximum building height of 11.9 metres. The extent of variation is 3.4 metres or 40%.

The applicant has submitted a 'Clause 4.6 Report' (**Attachment F**) prepared by Barr Property and Planning, seeking a variation to the development standard set out in clause 4.3 -Height of buildings and provisions of this clause.

An assessment of the clause 4.6 variation request has been undertaken below. In undertaking the assessment, consideration has been given to both the provisions of clause 4.6 and the relevant Land and Environment Court judgements namely that the request has demonstrated 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 request against the relevant provisions of clause 4.6, has been provided below:

Height of proposed buildings

The applicable maximum building height development standard is 8.5 metres. The proposal has a maximum building height of 11.9 metres which represents a 40% variation to this development standard.

Table 1 Demonstrates the extent of the height exceedances across the site.

Table 1: Units with height exceedances

Unit	Height (metre)	Exceedance (metre)	Exceedance of 8.5m at Highest Point
B01	9.0	0.5	5.8%
D01	11.9	3.4	40%
D02	11.05	2.55	30%
D03	10.7	2.2	25%
D04	10.2	1.7	20%
D05	10.55	2.05	23.5%
D06	10.05	1.55	18.2%
D07	10.75	2.25	26.4%
D08	10.75	2.25	26.4%
D09	10	1.5	23.5%
D10	9.75	1.25	14.7%
D11	9.75	1.25	14.7%
D12	9.4	0.9	10.6%
E06	9.2	0.7	8.2%
E07	8.9	0.4	4.7%
E08	8.9	0.4	4.7%
E09	8.9	0.4	4.7%
E10	8.8	0.3	3.5%

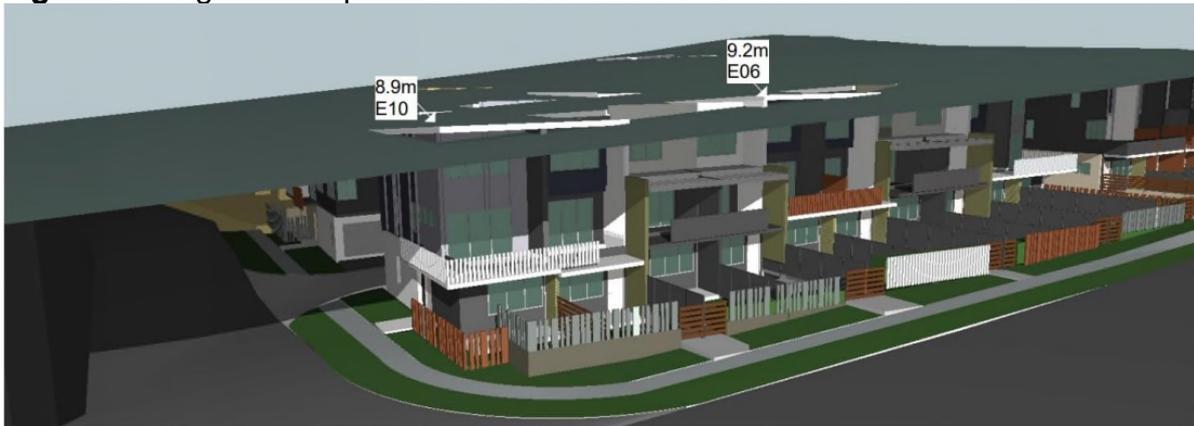
The exceedance represents 560m² of the 14,910m² site area or 3.7% of the site area. Figures 4, 5 and 6 illustrates the height exceedance across the site.

Figure 4: Height envelope and exceedances Units D01, D02, D08, D12 and E10



Figure 5: Height envelope and exceedances Units B01, D01, E06 and E10



Figure 6: Height envelope and exceedances Units E06 and E10

Subclause 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 maximum building height development standard in the NLEP 2012 is a development standard in that it is consistent with the definition of development standards under section 1.4 of the EP&A Act.

The maximum building height development standard is not expressly excluded from the operation of clause 4.6.

Subclause 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 Report Multi-Dwelling Housing', prepared by City Plan (dated 19 August 2019) constitutes a written request for the purposes of clause 4.6(3).

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

- (a) *'Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?*
- (b) *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?*

- (c) *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*
- (d) *Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?*
- (e) *Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning also unreasonable or unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.’*

The applicants written response seeks to rely on the first *Wehbe* considerations to demonstrate that compliance with the development standard is unreasonable or unnecessary, stating that the objectives of the development standard are achieved notwithstanding non-compliance.

The objectives of the maximum building height development standard are:

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

A summary of the justification included in the applicant’s written request is provided below:

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

‘The proposed height of the building is appropriate for the site constraints, development potential and infrastructure capacity of the locality.

The scale of development makes a positive contribution towards the desired built form created by the existing buildings on the site outlined in Section 2. Due to the size and location relative to other nearby development, the site creates its own context and character by establishing its own desired built form that capitalises on the proximity to the university and creates a campus style urban environment. The height reflects the existing height of the development to the east and continues this similar streetscape towards the west to create a cohesive presence to the street.’

Objective: (b) to allow reasonable daylight access to all developments in the public domain:

'The development does not have an adverse impact on reasonable daylight access to the adjoining developments and the public domain. To the east is existing residential development and the shadow diagrams provided with this application show the development will not impact upon solar access for the existing residential development. There is no existing residential development on adjoining lots that will be impacted by overshadowing. The property to the south is zoned SP2 Infrastructure Water Supply and immediately adjoining the site contains remnant vegetation. These will not be negatively affected by any overshadowing that occurs. Immediately adjoining the site to the north is a four-lane road and it is considered any overshadowing onto the road is acceptable. Adjacent to the west is remnant vegetation which will not be negatively impacted by any overshadowing.

The increased height has no adverse impacts that would warrant strict compliance with the development standard. Strict adherence to the height control is considered unnecessary as the development achieves the objective of Clause 4.3 Height of building in its current form and strict compliance would hinder the ability of the development to deliver the desired character and built form.

Adherence to the height control is considered unreasonable as the removal of the storey on the areas of exceedance would cause the loss of 2 bedrooms in each unit, making the development unviable. The loss of a storey in the areas of exceedance would negatively impact the streetscape and desired built form created from the existing development to the east and the complying units along University Drive. The height control is considered unreasonable as the current approved development on the same building footprint is taller in places of proposed exceedance, the proposed development will have less of an impact than the current approved buildings. No greater benefit would be served by modifying the development to adhere strictly to the prescribed numerical standard and because strict adherence will limit the ability of the development to deliver the housing variety.'

Comment

It is agreed that the built form of the development will make a positive contribution to the existing streetscape, consistent with the scale of development already constructed on site under the existing development consent (DA2015/0701). The Urban Design Consultative Group (UDCG) have considered the proposed development and determined that the thoroughness of the design that was presented, combined with input from the UDCG would result in a high-quality design outcome.

Further, the non-compliant portions of the development are located within the rooftop levels of the proposed buildings and setback satisfactory to the lot boundaries and to each block of buildings. The non-compliance is not considered major given the topography of the site and the shadow diagrams submitted with

the application demonstrate that the overshadowing impact of the development on proposed units, adjoining development and the public domain would not be greatly impacted as a result of the additional height. The development does not result in any overshadowing of key public domain areas.

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

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

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole'.

The applicant's response to subclause 4.6(3)(b) is addressed in 5.3.2 of the written requests (pg.14), and provides the following specific environmental planning grounds to justify the breach of the standard:

'Relevant Strategic Plan

Newcastle City Council (NCC) is guided by Hunter Regional Plan 2036 and the Greater Newcastle Metropolitan Plan. The Hunter Regional Plan (HRP) 2036 provides an overarching framework to guide the NSW Government's land use planning priorities and decisions over the next 20 years. The main vision of the plan is to be 'The leading regional economy in Australia with a vibrant new metropolitan city at its heart'.

Goal 4 of the plan is 'Greater housing choice and jobs. It is expected that 70,000 more homes will be required in the region by 2036. The plan expects that there will be a population increase from 732,400 in 2016 to 862,250 by 2036. The site is positioned to the south of the Callaghan Strategic Centre which is a large centre of activity and employment. The development will provide suitable, diverse housing to support the growth of this Strategic centre as it grows in the future.

GNMP 2036 helps to achieve the vision set out in the HRP 2036, which is for the Hunter to be the leading regional economy in Australia with a vibrant new metropolitan city at its heart. The desired role of this Catalyst Area is to provide a tertiary education, research, and innovation cluster around UoN, a Student Accommodation Precinct and create a mixed-use centre utilising Warabrook Station. The proposed development will be able to support the increase in student and staff numbers expected at the UoN as it expands and grows.

Strict adherence with the height control would reduce the yield, limiting the ability of this site to contribute to achieving housing targets in the HRP and GNMP. Strict adherence would also restrict the ability to create housing diversity and improve the availability of accommodation to meet the demands associated with the UoN which is directly adjacent to the site and a Catalyst Area in the GNMP.

Relevant Local Environmental Plan

Guided by section 4.15 of the EP&A Act, the development is subject to consent in accordance with the NLEP 2012.

The aims of the NLEP 2012 include:

- (1) This Plan aims to make local environmental planning provisions for land in the City of Newcastle in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) The particular aims of this Plan are as follows:*
 - a) to respect, protect and complement the natural and cultural heritage, the identity and image, and the sense of place of the City of Newcastle.*
 - b) to conserve and manage the natural and built resources of the City of Newcastle for present and future generations, and to apply the principles of ecologically sustainable development in the City of Newcastle.*
 - c) to contribute to the economic wellbeing of the community in a socially and environmentally responsible manner and to strengthen the regional position of the Newcastle City Centre as a multi-functional and innovative centre that encourages employment and economic growth.*
 - d) to facilitate a diverse and compatible mix of land uses in and adjacent to the urban centres of the City of Newcastle, to support increased patronage of public transport and help reduce travel demand and private motor vehicle dependency.*
 - e) to encourage a diversity of housing types in locations that improve access to employment opportunities, public transport, community facilities and services, retail, and commercial services.*
 - f) to facilitate the development of building design excellence appropriate to a regional city.*

The development is not inconsistent with the aims of the NLEP 2012. The development in particular, fulfils the aims of objectives (c), (d), (e) and (f).

The development is consistent with (c) as the development caters for the housing demand generated by the UoN, which is a driver of economic growth and employment for the City of Newcastle. The development is consistent with (d) because it facilitates greater housing diversity in a location well serviced by public transport. The development is consistent with (e) because the housing typology will increase the variety of housing stock available to reinforce the University of Newcastle as an educational facility, an employment centre, and increasingly an urban centre that provides commercial, retail, and recreational needs to support the surrounding community. The development is consistent with (f) as the design is of building excellence designed by a nominated architect, the bulk and scale of the development is what is appropriate for a regional city.'

Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the design process of review via the UDCG supported the consideration and assessment to reach design qualities. This provides sufficient justification to contravene the development standard.

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

Comment

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

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

Comment

The applicant’s response to the satisfaction of the objectives of the height of building standard was considered under the subclause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, ‘*the proposed*

development will be in the public interest because it is consistent', with the relevant objectives'.

Objectives of clause 4.3 'height of buildings'

The development is considered to be consistent with the objectives of clause 4.3 'height of buildings' as the scale of the development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy, as demonstrated by the design excellence process that the application has been through. The development also allows reasonable daylight access to all developments and the public domain.

Objectives of the R2 Low Density Residential Zone

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

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

The development proposal is consistent with objectives of the R2 Low Density Residential Zone because the proposal:

- *Provides for a housing needs of the of low density via multi dwelling housing and providing for a diversity in housing form.*
- *The development has very good access to transport and therefore Stockland Jesmond shopping centre. The University of Newcastle is within very close proximity.*

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

SubClause 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

Comment

The Department of Planning and Environment advised previously Planning Circular PS20-002 (5 May 2020), that concurrence of the Secretary could be

assumed for a variation to a maximum building height development standard that is not greater than 10%. Concurrence is therefore assumed in this case.

Conclusion

The required consideration by clause 4.6 of the NLEP 2012 have been reached and the proposal is satisfactory in this regard. As required, there is power to grant development consent to the proposed development notwithstanding the breach of the building height control.

Clause 6.1 – Acid Sulfate Soils

This clause seeks to ensure that development does not disturb, expose or drain acid sulfate soils (ASS) and cause environmental damage. Certain works outlined within clause 6.1(2) is noted as requiring development consent when carried out on land shown on the Acid Sulfate Soils Map. The subject site is identified as containing Class 5 ASS, according to clause 6.1(2) works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land. The proposal is satisfactory in this regard.

Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause.

6.2 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.

6.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Residential Development - Section 3.03

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

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

Principal controls (S3.03.01)

A. *Frontage widths*

Frontages: The proposal is required to have a minimum frontage of 18 metres. The proposal is satisfactory.

Isolated Lots: The proposal will not result in creation of isolated lots.

B. *Front Setbacks*

The proposed setbacks are 9.2 metres from University Drive. The scale of the development and appropriateness of the setback is consistent with existing development on the site. The setbacks are considered a satisfactory outcome for dwellings for addressing University Drive.

C. *Side and rear setbacks*

The side setbacks have been considered on their merit given the location, type of development and the irregular lot pattern. Each unit block is setback greater than 8 metres from the main lot boundaries. The separation between the unit blocks is generally 1.8 metres. The separation of buildings along the internal road parallel to University Drive has increased from the original design submitted to the UDCG in response to comments received from the UDCG. In this regard, the applicant provided the following comments:

'The revised proposal has increased the building separation between the dwellings suggested. The increase has been applied in several locations up to an additional 3 metres. This provides more amenity and ability for street trees.'

'The separation provided at ground level for buildings is between 11.4 metres to 13.6 metres. At level 1 the building separation is typically 9 metres between the wall of the northern units and the deck edge of the southern units. The separation between wall and wall varies from 10.4 metres to 12.6 metres. It is also noted that the only window in the south wall of the front units is a frosted kitchen splash back window that does not provide any direct privacy impacts.'

The proposed side and rear setbacks are considered to be acceptable.

D. *Landscape Area*

There is a requirement for 30% landscaped area and 15% deep soil zone area for the site. The development provides a total of 40% (6,082m² of 14,910m² site area) of the site as landscaped area majority of this area is

deep soil vegetation. Medium and large trees are distributed throughout the site. The proposed landscaping is considered to meet the requirements of this control and is acceptable.

Siting the development (S3.03.02)

A. *Local character and context*

A site analysis has been included as part of the architectural drawings. The proposed development is consistent with the local character and context. The proposed dwellings are three storey semi basement designs and are to be constructed of a range of lower level brick and upper level varied cladding material types and timber. The scale and materials proposed are compatible with the existing dwellings and development on the campus of the University of Newcastle and new development within the immediate locality. The proposed development is considered to achieve the objectives and controls within this section of the NDCP 2012 and is acceptable.

B. *Public domain Interface*

The proposed development achieves the controls within this section of the NDCP 2012 through the provision of private open space behind the building line and windows overlooking the public domain.

C. *Pedestrian and vehicle access*

Following a design change in response to UDCG requirements, the design ensures that sufficient verge width is provided to accommodate pedestrian movement around the site and separation of buildings. Footpaths will be provided throughout much of the site including providing access from the site to University Drive and through to the existing development on the site onto Stannett Street. The development also provides sufficient roads width and turning circles to accommodate larger vehicles including CN's waste vehicles and fire trucks.

D. *Orientation and siting*

The orientation and siting of the proposed dwellings result in each dwelling achieving the required minimum solar access to the principal area of private open space and living rooms.

The proposed layout and buildings have been designed to minimise the amount of cut and fill required on site. In addition to changes in the floor levels of the proposed dwellings, the development includes retaining walls. Additionally, the development does not propose fill in excess of these requirements.

The majority of dwellings have been orientated north to maximise solar access opportunities to living rooms and private open space areas. The topography of the site benefits sloping from south to north provides an increase benefit for proposed dwellings for positive solar access.

Every dwelling has a frontage to an internal street except for those dwellings fronting University Drive.

E. Building Separation

The design of the development was amended in response to building separation concerns raised by the UDCG. Further comments concerning this issue are within the UDCG table following (Refer to Pg 24). The increase in separation to ensure the buildings have the minimum 1.8 metres and improved privacy separation has achieved above the normal 9 metres and 12 metres minimums in changes of building levels.

Amenity (S3.03.03)

A. Solar and daylight access

Over 70% the dwellings exceed the minimum requirement for solar and daylight access to their living areas and private open space. Full compliance is not achievable due to the orientation and proximity of the dwellings. However, the topography of the site allows for a south to north fall across the site. This improves the solar access for dwellings across the site. All dwellings are designed to ensure cross ventilation can be achieved with windows and doors located on all facades.

B. Natural ventilation

All habitable rooms can be naturally ventilated with openable windows. There are openable windows and sliding doors on the front and rear of each dwelling allowing for cross flow ventilation.

C. Ceiling heights

Ground and first floor levels are 2.7 metres and second floor are 2.4 metres predominantly in the bedrooms. This is satisfactory.

D. Dwelling size and layout

All the dwellings have bedrooms of a sufficient size to provide a functional layout for the number of potential occupants.

Three-bedroom dwellings have an area more than 115m² and the two-bedroom dwellings are larger than 90m². This is satisfactory.

E. Private Open Space (POS)

Each proposed dwelling includes at least a 16m² private open space area accessed directly from a living / kitchen area in accordance with this control.

F. Storage

Every dwelling includes the required storage space in accordance with this control.

G. Car and bicycle parking

The development provides for an acceptable level of car parking in accordance with the required car and bicycle parking rates. This aspect of the development is discussed in detail in the following section of this report addressing Traffic, Parking and Access - section 7.03.

H. Visual privacy

The development will not result in an unacceptable impact on the privacy of dwellings both within the development and existing surrounding properties.

The orientation and setbacks of the proposed dwellings ensure that direct overlooking between proposed properties is unlikely to occur. Where overlooking may be possible from the proposed dwellings, louvred screens are proposed to the private open space area and windows at the rear of the dwellings.

I. Acoustic privacy

All future equipment to be installed in dwellings will be required to meet the relevant Australian Standards for acoustic protection. The proposal is considered to reflect normal residential noise levels.

J. Noise and pollution

The proposed development is not within 100 metres of a road corridor. Accordingly, this control does not apply to this development. University Drive is not identified by the former RMS as a high usage road with regard to traffic noise.

Configuration (S3.03.04)

A. *Universal design*

All proposed dwellings achieve the Liveable Housing Design Guidelines Silver Level universal design features as detailed in the amended architectural plans at **Attachment A**.

B. *Communal area and open space*

A communal open space area has been provided within the site which exceeds 5% of the site area with over 1,000m² provided of the 14,910m² site area. The active communal open space is located more than 3 metres from private open space and 6 metres from the closest habitable windows to the north of the open space area. The proposed communal open space, which is located toward the south and through the centre of development, is surrounded by properties and is visible from habitable rooms and private open space areas.

Due to the orientation of the communal open space area and the scale of surrounding dwellings, the open space area received in excess of 2 hours of direct sunlight between 9am and 3pm to over 50% of the area as demonstrated in the submitted overshadowing plans provided at **Attachment A**. The communal open space area is provided with daylight and natural ventilation in accordance with this control.

The communal open space area has direct access to the internal street network located along the southern, eastern and western edges of the open space area. Further, the communal open space is directly visible from the internal streets to the east, west and south of the site.

The communal open space is shown on the landscape plans provided at **Attachment A**.

C. *Architectural design and roof form*

The roofs of the proposed dwellings are of a low angled, pitched form and are integrated into the roof design.

D. *Visual appearance and articulation*

The proposed dwellings are consistent in form with each other on site and provide a range of materials from strong brick ground levels to mixtures of facades, colours and materials in the upper levels. The development is considered to create a balance of solid and void and a suitable mix of materials and colours.

Environment (S3.03.05)

A. *Energy efficiency*

Each dwelling includes a private open space (POS), landscaped area and suitable areas for clothes drying. The landscaped and POS areas for each property are screened from the public communal areas.

B. *Water management and conservation*

Each dwelling will be provided with an individual meter for hot and / or cold water consumption. In addition, a condition of consent requires that stormwater treatment and disposal will be provided in accordance with section 7.06 of the NDCP 2012.

C. *Waste management*

The design provides sufficient road width and turning areas to accommodate CN's waste vehicle entering and exiting the site in a forward direction. All waste bins will be picked up from the kerb within the development with sufficient street frontage available for each dwelling to utilise kerb pickup. The existing development (DA2015/0701) is currently serviced by CN waste trucks on site in the proposed manner. The movement of CN vehicles on site will improve with the proposed road layouts.

Conclusion

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

Bush Fire Protection - Section 4.02

The site is identified as being bush fire prone land and conditional approval for the proposed development has been granted by NSW Rural Fire Service.

Safety and Security - Section 4.04

The development incorporates the Crime Prevention through Environmental Design (CPTED) Principles into the scheme design and has been considered by the UDCG as satisfactory in this regard. The proposed development is acceptable with respect to safety and security.

Social Impact - Section 4.05

The proposal is considered satisfactory by addressing the need for further quality housing within the immediate location and generated by the nearby University of Newcastle.

Soil Management - Section 5.01

The site conditions and previous earthworks were addressed in DA2015/0701 and works completed on the site. The site contains slopes and grades down toward the north, east and west. The steepest section being located in the central western part of the site. The proposed erosion and sediment control plan are considered satisfactory and is to be conditioned as part of the staged approach to the development.

Land Contamination - Section 5.02

Land contamination has been previously considered in this assessment report, in accordance with SEPP55.

Vegetation Management - Section 5.03

All significant vegetation was removed from the site under the existing development consent (DA2015/0701). Relevant conditions with regard to ecology considerations have been included in proposed draft schedule of conditions.

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.

Landscape Open Space and Visual Amenity - Section 7.02

The proposal is Category 3 development. A landscape plan prepared by a landscape architect has been provided with the DA in accordance with this section of the NDCP 2012. The proposed landscaping accords with the controls in this section and is acceptable.

Conditions of consent have been recommended that require detailed landscape documentation to be prepared and signed off prior to the commencement of construction and prior to the release of any occupation certificate for the development. This is to ensure that the development will provide for high quality landscaping for future residents.

Traffic, Parking and Access - Section 7.03

The approved development on the site (DA2015/0701) was for a higher density of residential accommodation on the site. Accordingly, intersection works were

designed to accommodate a higher level of traffic generation than the proposed development will produce.

No additional intersection treatment works above what was approved previously will be required for the proposed development. A condition in the proposed draft schedule of conditions requires that all intersection and road upgrade works are to be completed prior to the issue of an Occupation Certificate for stage 3.

Parking provisions require a minimum of one carparking space per dwelling and a minimum of one space for the first five dwellings plus one space for every five thereafter or part thereof for visitors. A total of 76 dwellings have been proposed and as such, the development is required to provide 76 residential spaces and 16 visitor spaces.

The subject application has provided for the minimum 76 residential carparking spaces for the dwellings. The application has provided for 16 visitor spaces along the internal road network as part of the proposed development. There is 'stacked parking' available behind some of the dwellings, however 'stacked parking' is not included towards visitor parking for development.

Bicycle parking is compliant with Class 3 (Low Security Level) and is provided in several locations adjacent to open communal spaces and pathways. Five motorbike parking spaces have been provided and this is satisfactory.

The access arrangements for the site have been assessed by CN's Senior Development Officer (Engineering). The proposed road network is of a sufficient width to accommodate all relevant vehicles including CN's waste trucks and fire trucks.

Stormwater - Section 7.06

Following discussions with CN's Senior Development Officer (Engineering), the applicant provided a number of amendments to the originally submitted stormwater management plan.

The Officer subsequently provided the following advice:

'The subject allotment has an existing development approval (DA2015/0701) for a 6-stage mixed residential development. Stages 1-3 of DA2015/0701 have been constructed, while the subject DA has proposed a new design and configuration for the mixed residential units previously approved as part of Stages 4-6.'

'Due to the redesign of Stages 4-6, the stormwater detention and water quality improvement systems were remodelled in order to accommodate the changes proposed as part of the subject application. The proposed development consists of 76 units, most of which drain to the existing culvert to the west located under University Drive. A small portion of the catchment drains east towards the previously constructed Stages 1-3. Accordingly, the proposal is acceptable in relation to water management.'

The proposed stormwater management plan is satisfactory and in accordance with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

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

Waste collection vehicles will be able to stop along the site frontage for pick-up at the driveway location without affecting traffic. CN Development Engineers and Waste Collection Officers have considered the proposal satisfactory and this will improve the current waste collection arrangement occurring on the site associated with the existing development.

Urban Design Consultative Group (UDCG)

Given the nature and scale of the development and the likely impact upon the surrounding locality, the development application was reviewed by the UDCG at its meeting of 30 September 2020. The proposal was supported in principle, with some minor refinements recommended by the UDCG.

Consideration of the UDCG meeting minutes is provided in Table 2 below. The UDCG meeting minutes address the nine Design Quality Principles set out in the Apartment Design Guide 2015 (ADG) under State Environmental Planning Policy No.65. This is also an appropriate format for applications which do not include residential flats.

Design Quality Principles	Assessment
Principle 1. Context and Neighbourhood Character	
<p><u>UDCG Comment – 30 September 2020 (UD2020/00017)</u></p> <p><i>“The site is opposite the University of Newcastle’s primary Callaghan campus, which is accessed via traffic signal-controlled pedestrian crossing at the adjacent Stannett Street intersection. Prior to the first stage development of the site, it was heavily wooded, and formed part of the Hunter Water reservoir North Lambton site, which falls steeply from the south towards University Drive. The remnant bushland of the Hunter Water site is mapped as a fire hazard to the site’s south and west,</i></p>	<p><u>Applicants response</u></p> <p><i>“The goal of the proposed stages is to provide a more residential character compared to the existing stages. It is considered these stages provide a greater sense of community through the design of what will essentially be a neighbourhood, whilst maintaining the ability for it to be affordable and diverse.”</i></p> <p><u>Officer Comments</u></p> <p>The UDCG comments are noted.</p>

<p><i>which necessitates an Asset Protection Zone on part of the subject site. The entire site was cleared at the time of the earthworks for the first stage of the development, and the vacant site remains devoid of vegetation.”</i></p>	
<p>Principle 2. Built Form and Scale</p>	
<p>UDCG Comment – 30 September 2020 (UD2020/00017) <i>“In contrast with the earlier stage of development on the site, which took its visual cues from the University’s face-brick Residential Halls, the current proposal has a more domestic, less institutional appearance. Unfortunately, the trees that had been proposed to be retained on the site in the original masterplan were removed entirely, and the visual softening afforded to the University residential buildings by their surrounding mature landscape, is notably absent in the three stages of development that has occurred on the site to date. The proposed, more domestic appearing townhouse approach is therefore considered to be a less imposing adjunct to the surrounding low-scale original development in the area, and potentially will also lead to a more successful landscape context.</i></p> <p><i>The UDCG raised some concerns about the nature of the internal street which runs parallel to University Drive on the site, particularly in respect to its relative narrowness and very limited landscape opportunities. Related to this, is the degree to which the University Drive street-front units overshadow their southern neighbours across this internal street. While the topography falls to the north, allowing some solar access to the upper floors of the units on the southern side, their aspect is very urban and is not significantly softened by any soft landscape treatment. It was recommended by the UDCG that either</i></p>	<p>Applicants response <i>“The revised proposal has increased the building separation between the dwellings suggested. The increase has been applied in several locations up to an additional 3 meters. This provides more amenity and ability for street trees. The separation provided at ground level for buildings is between 11.4 meters to 13.6 meters. At level 1 the building separation is typically 9 meters between the wall of the northern units and the deck edge of the southern units. The separation between wall and wall varies from 10.4 meters to 12.6 meters. It is also noted that the only window in the south wall of the front units is a frosted kitchen splash back window that does not provide any direct privacy impacts.</i></p> <p><i>In addition to increasing the street width some breaks have been provided in the buildings. These are not intended for substantial landscape treatment (which is to be addressed by the street widening) but are considered to contribute beneficially to reducing the scale of the building elements form a pedestrian perspective. They also allow for the articulation of the building setbacks which adds to variety in the streetscape.</i></p> <p><i>Front doors for the rear units have been brought forward to assist in way finding, and mailboxes are provided at individual unit entries. Regarding solar access to the southern unit’s additional information is provided showing the excellent access to sunlight available. This is due to the principal private open</i></p>

the street should be widened, or some additional openings be introduced that permit more adequate landscape treatment and that relieve the visually constricted streetscape. Winter solar access should be demonstrated in greater detail and appears to warrant some design development. The entries to some of the townhouses are recessed fairly deeply into the footprint of the building adjacent to the car port spaces, and it was recommended that the entry space should be brought forward closer to the street to make this space more prominent and welcoming.

Way finding was raised as an issue - given the long rows of townhouses of similar appearance. The Architect indicated that this was a matter that had been given some consideration, and a number of opportunities for differentiation were to be pursued.

Some townhouses have limited car parking, which the UDCG considered to be potentially acceptable if some additional shared parking could be discretely provided towards the southern side of the site along the ring-road."

spaces being elevated and generously sized like a courtyard, effectively creating the same shadow and sunlight outcome as would be achieved by a two-storey building. The decks have been designed to be partially covered providing both some weather protection but also for solar shading in summer. Due to their northern aspect the decks and internal living areas achieve direct midwinter sun. The following perspectives show the June 22 sunlight access and shadowing on units."

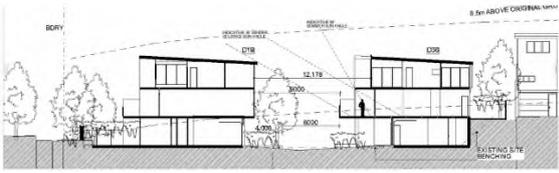
Officer Comments

In response to the comments made by the UDCG regarding removal of trees that had been nominated to be maintained as part of the original landscape masterplan, the applicant has advised as follows:

'I have reviewed landscape documentation and have not located any plan stating proposed retention of trees; apart from the reference below to 'existing landscaping to remain where possible along University Drive frontage'.

'It is my understanding that the two trees shown on plan were removed due to the proximity to the future installation of high voltage power lines overhead. We need to move power poles shortly due to the new RMS intersection to be constructed'.

In response to the UDCG concerns and the amendments the increase separation is considered satisfactory. Figure 7 illustrates the improved outcome with landscaping elements.

	<p>Figure 7: Separation of buildings section</p>  <p>Furthermore, the parking provisions for the proposal is satisfactory, refer to the NDCP 2012 section Traffic, Parking and Access.</p>
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Principle 3. Density

<p><u>UDCG Comment – 30 September 2020 (UD2020/00017)</u> <i>“The proposal, though well designed, is quite “tight” spatially, and apart from the Asset Protection Zones for bushfire, and the street setback, spaces between the proposed blocks of townhouses are fairly compressed. The design has evidently considered and addressed this as an issue and demonstrates some clever responses to this constraint. However, there is a limitation to how far a capable design can go to compensate for the very limited spatial separation of the blocks, and it was recommended that some additional separation be provided – which would most probably bring with it a moderate reduction in density.”</i></p>	<p><u>Applicants response</u> <i>“Consideration has been given to building separation as outlined in the response to item 2. It is noted that the building separation in other areas is retained as it is already substantial for this type of accommodation. For example, between the B units building separation is between 9.3 meters (2 storeys) and 13.4 meters (3 storey dwellings) where most townhouse developments would provide 6 meters to 12 meters across a similar internal driveway. This has been intentionally provided to ensure additional sunlight access into dwellings but also provides opportunities for internal driveway planting and street trees in these areas.”</i></p> <p><u>Officer Comments</u></p> <p>The maximum permissible floor space ratio (FSR) for the subject site is 0.6:1 under clause 4.4 of the NLEP 2012 and proposed is 0.42:1, this is satisfactory.</p> <p>However, in response to the UDCG’s comments the applicant has improved the building separations as noted above and this is a satisfactory outcome.</p>
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Principle 4. Sustainability	
<p><u>UDCG Comment – 30 September 2020 (UD2020/00017)</u></p> <p><i>“Given that the townhouses each have their own roof area, and will be separately metered for electricity, there is an opportunity for providing PV solar generation on the townhouses. The UDCG strongly supported this initiative as part of the construction, but if PV panels are not installed immediately, it was highly desirable for locations to be identified for panels, inverters, and possibly for batteries. Cabling and conduits could be installed at relatively minimal cost to allow for later PG generation.</i></p> <p><i>It is noted that 3 underground detention tanks are proposed, but is would be highly desirable that rainwater is recycled at least for irrigation of the landscape.</i></p> <p><i>Given that University Drive is a busy road at times during the day, it is likely that residents will need to close their windows and rely upon split-system air conditioning on occasions. For more road-exposed units that have the greatest acoustic impacts, it is desirable that mechanical ventilation be provided for fresh air when openings have to be shut down.”</i></p>	<p><u>Officers Comment</u></p> <p>The UDCG's comments are noted. Furthermore, a current BASIX Certificate has been submitted for the development application (Certificate Number: 1100621M) which lists the commitments to achieve appropriate building sustainability.</p> <p>A condition of development consent requires compliance with BASIX commitments to ensure that the development incorporates environmentally sustainable design.</p>
Principle 5. Landscape	
<p><u>UDCG Comment – 30 September 2020 (UD2020/00017)</u></p> <p><i>“The three stages of the overall site development completed to date, do not demonstrate a good landscape outcome – even taking into account that some of the plantings have not yet had time to reach mature sizes. The completed landscape represents a departure from the landscape design presented to the UDCG at the time of the original</i></p>	<p><u>Applicants response</u></p> <p><i>“It is considered that the new stages with their more residential scale of fencing, planting and garden areas will help to soften the existing character while the existing plantings mature over time. It is also hoped that a greater sense of individual ownership over the private garden areas will see these areas become a source of pride and add a sense of ‘homeliness’ or</i></p>

Masterplan application and appears to have lacked good preparation and maintenance during its establishment. Planting is very limited in its extent and its scale and does not provide the level of amenity promised in the original plan.

The proposed three stages offer an opportunity to reverse this unsatisfactory situation. The landscape plans need to be extended to show in detail, the landscape treatment that is proposed for the Asset Protection Zones – which should include as many trees as are permissible under the requirements of the Vegetation Management Plan (VMP).

The site has been substantially altered in its terrain by the excavations and earthworks that have already occurred in the executed stages of the development. Clay subsoils that have been exposed offer very little in terms of favourable growing conditions, and the landscape plan should address the conditioning of existing soils (clay) that have been exposed, and proper integration of any imported topsoil's. Some of the failure to thrive in the existing landscape is likely to have arisen from soil conditions, and particular care should be taken not to repeat this. The site should be provided with automated watering systems.

There are few level or near-level open space areas on the site, due to the intensity of development and the natural terrain. Some additional terracing possibly in the Asset Protection Areas – could provide some useful grassed, level or gently sloping areas for play or active recreation.”

‘neighbourhood’ to compliment the larger communal areas already incorporated. Landscape plans are to be revised to include the asset protection zones including opportunities for communal use and are also to further consider the treatments at the edge of the roadway and retaining areas to the south. The additional setback now provided between the front dwellings and the internal roadway will allow for additional street trees.”

Officers Comment

Detailed landscape documentation was submitted with the development application. It is considered the landscaping is satisfactory for a multi dwelling housing development and as noted by the applicant provides satisfactory landscape areas as required by provisions within the NDCP 2012 section 3.03 Residential Accommodation.

Whilst the landscape documentation submitted with the development application has not incorporated the use of the asset protection zones for communal use, a condition of development consent requires a modification to the detailed landscape plan includes this requirement further enhancing the quality landscaping and communal spaces on the site. on the site as suggested by the UDCG June 2018 advice.

As such, the detailed landscape design submitted with the development application is considered to have suitably addressed the concerns raised and is satisfactory from a CN planning assessment.

Principle 6. Amenity	
<p><u>UDCG Comment – 30 September 2020 (UD2020/00017)</u> <i>“There is some opportunity for greater screening of summer sun, by the inclusion of external sunshades.</i></p> <p><i>While townhouses generally offer good levels of internal amenity, the close juxtaposition of the blocks would be improved by some additional separation between them, and / or some strategically placed openings in the rows.</i></p> <ul style="list-style-type: none"> • <i>Solar access in winter should be further considered in some locations discussed under the headings above. “</i> 	<p><u>Applicants response</u> <i>“Refer to response under item 2, including illustration of solar access. It is also noted that sunhoods are provided over all deck windows to address summer sun.”</i></p> <p><u>Officers Comment</u> Noted. The response to the built form has resulted in an improved outcome for separation particularly regarding privacy, solar access and landscaping internally.</p> <p>The proposal satisfies the UDCG advice and is an appropriate design response in this regard.</p>
Principle 7. Safety	
<p><u>UDCG Comment – 30 September 2020 (UD2020/00017)</u> <i>“The location of the substation on University Drive partially obstructs casual surveillance of a major pedestrian route. This area requires further design development with a focus on CPTED to avoid hiding places and a “pinch point” for pedestrians.”</i></p>	<p><u>Applicants response</u> <i>“The pathway has been adjusted to avoid the kiosk and provide better visual connection.”</i></p> <p><u>Officers Comment</u> The design of the development addresses the UDCG comment. In addition, Ausgrid required further detail regarding infrastructure and landscaping within close proximity to the kiosk. The applicant provided a detailed plan indicating the elements associated with the proposal and the Kiosk. Ausgrid considered the detail and provided support for the proposal, refer to Attachment E.</p>
Principle 8. Housing Diversity and Social Interaction	
<p><u>UDCG Comment – 30 September 2020 (UD2020/00017)</u> <i>“The townhouse proposal has been informed by market demand and is supported by the UDCG. The overall</i></p>	<p><u>Applicants comments</u> <i>“Seating will be incorporated into communal open space areas to facilitate this.”</i></p>

<p><i>site, and particularly the subject dwellings, will provide a flexible and relatively diverse range of accommodation. Some further consideration should be given to creating areas in which residents can socialize – including both larger areas and small areas of seating for casual informal resident interaction.”</i></p>	<p><u>Officers Comment</u></p> <p>The UDCG comments are noted.</p>
<p>Principle 9. Aesthetics</p>	
<p><u>UDCG Comment – 30 September 2020 (UD2020/00017)</u></p> <p><i>“The aesthetic treatment of the townhouses is generally supported, as is the inclusion of areas of brickwork that visually provide some ties with the existing face brick buildings.</i></p> <p><i>Greater consideration should be given to infrastructure placement and its aesthetic impacts – for example, gas and water meters, stormwater, communication and other pits, rainwater tanks and associated plumbing, fire booster connections, air conditioning compressor locations and the like.</i></p> <p><i>The balconies of the existing dwellings have in some instances been modified by occupants in an attempt to make them more private for residents. Screens in the form of cheap woven bamboo mats and plastic “foliage” are some of the materials that residents have utilised to try to overcome a lack of privacy – with adverse aesthetic impacts. Decks and balconies should be provided with an adequate level of screening, with storage or screened areas for items such as barbecues and the like.</i></p> <p><i>Wayfinding and dwelling identification require further development and can potentially add vitality and interest to the development.”</i></p>	<p><u>Applicants response</u></p> <p><i>“Most dwellings are provided intentionally with multiple areas of open space, for example a main deck which is principal private open space (PPOS), a front landscaped area and a rear service garden / courtyard which allow for individual infrastructure and service equipment to be located out of the main PPOS area. The dwellings facing University Drive, are provided with ground level gardens as well as elevated decks. This has also been improved in the revised plans by creating additional breaks for side access between some of these dwellings and assisting with providing locations for services.”</i></p> <p><u>Officers Comment</u></p> <p>The development has addressed the concerns relating to aesthetics identified in the UDCG advice.</p> <p>In response, an assessment of the amended plans notes an improvement to open space and private open space, which was initially considered satisfactory in the superseded plans.</p> <p>The appearance of the buildings has been suitably ‘strengthened’ in comparison to the existing development on the site. The materials are strong and varied by the change of materiality at the very top of the building, creating</p>

	<p>more variation visually across the development.</p> <p>The proposal satisfies the UDCG's advice and is an appropriate design response in this regard.</p>
Amendments required to Achieve Design Quality	
<p><u>UDCG Comment – 30 September 2020 (UD2020/00017)</u> <i>“The issues identified under the headings above should be addressed.”</i></p>	<p><u>Officers Comment</u></p> <p>As detailed in the Officer's comments provided above for each of the nine Design Quality Principles these are a guide for multi dwelling housing development.</p> <p>The amended documentation is considered to address the recommendations of the UDCG and is an acceptable form of development within the context of the site and its location.</p>
Summary Recommendations	
<p><u>UDCG Comment – 30 September 2020 (UD2020/00017)</u> <i>“Given the substantial scale of the development, and the shortcomings evident in the previously completed stages, the UDCG is of the view that previous mistakes should not be repeated in the remaining stages of the development of this site.</i></p> <p><i>Although many aspects of the dwelling design are well executed, the limited spacing between the residential blocks imposes a range of limitations that require addressing prior to the UDCG being able to offer its support for the scheme.”</i></p>	<p><u>Officers Comment</u></p> <p>As detailed in the Officer comments provided above for each of the nine Design Quality Principles, the amended documentation is considered to address the recommendations of the UDCG and CN's assessment and is an acceptable form of development within the context of the site and its location.</p> <p>On balance, the proposed development is considered to have adequately addressed the issues raised above and the proposal is an appropriate design response that achieves acceptable design quality.</p>

Local Infrastructure 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 Newcastle Local Infrastructure Contributions Plan 2019 (updated December 2020).

A condition requiring this contribution to be paid has been included in the proposed draft schedule of conditions (**Attachment B**).

6.4 Planning agreements

No planning agreements are relevant to the proposal.

6.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act and the Environmental Planning and Assessment Regulation 2000.

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations.

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

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

It is considered to provide for additional housing options for the city and in an appropriate location close to transportation options and The University of Newcastle. The proposal is not expected to have any negative social or economic impacts.

6.7 The suitability of the site for the development

At grade existing access to the site will be available for pedestrians, from adjacent roads and public transport.

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

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

The application was notified in accordance with Community Participation Plan. One submission was 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.

Issue	Comment
Vehicle Access	The access arrangement from Stannett Street already exists and has been constructed under DA2015/0701 consent. The vehicle access is designed to manage the required vehicles to access and service the site and to manage larger traffic volumes than what is now proposed. Therefore, the existing arrangements are satisfactory. Further discussion within 5.3 of this report under the NDCP 2012 – Section 7.03 Traffic, Parking and Access.
Traffic Movement	The traffic movements on the site are less than previously approved in DA consent DA2015/0701. Accordingly, the design of roads in the development area will integrate with the existing roads on site and is satisfactory. Further discussion within 5.3 of this report under the NDCP 2012 – Section 7.03 Traffic, Parking and Access.
Stormwater Management	A submission has requested where stormwater is flowing for the house on the corner of Stannett Street and University Drive. The scope of development does not include / require stormwater work associated with this property. The existing development work on site has been completed and the new work is not considered to impact this site. Therefore, the existing flow of the stormwater for the site located on the corner of Stannett Street and University Drive is not relevant to this proposal. Further discussion regarding stormwater management for the development area is within 5.3 of this report under the NDCP 2012 – Section 7.06 Stormwater.

6.9 The public interest

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

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

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

7.0 CONCLUSION

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

ATTACHMENTS

- Item 7 Attachment A:** Submitted Plans - 79 University Drive, Waratah West
- Item 7 Attachment B:** Draft Schedule of Conditions - 79 University Drive, Waratah West
- Item 7 Attachment C:** Processing Chronology - 79 University Drive, Waratah West
- Item 7 Attachment D:** General Terms of Approval – NSW Rural Fire Service (RFS) - 79 University Drive, Waratah West
- Item 7 Attachment E:** AusGrid Requirements - 79 University Drive, Waratah West
- Item 7 Attachment F:** Clause 4.6 Report - 79 University Drive, Waratah West

Item 7 Attachments A-F distributed under separate cover

**ITEM-8 DAC 20/04/21 - 61 GIPPS STREET, CARRINGTON -
DA2020/01248 - DWELLING HOUSE - ALTERATIONS AND
ADDITIONS INCLUDING DEMOLITION**

APPLICANT: **LAND DEVELOPMENT SOLUTIONS P/L**
OWNER: **K D FRIELICK**
REPORT BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

PART I

PURPOSE

An application (DA2020/01248) has been received seeking consent for alterations and additions including demolition to a dwelling house at 61 Gipps Street, Carrington.

The proposed development includes demolition of an existing single storey extension at the rear, and the construction of a new addition comprising of a kitchen and living area.



Subject Land: 61 Gipps Street, Carrington

The submitted application was assigned to Development Officer, Mark McMellon, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination due to the proposed variation to the Floor Space Ratio (FSR) development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% total variation (27.7% variation).

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

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

Issues

- 1) Variation to the FSR Development Standard under the NLEP 2012.

Conclusion

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

RECOMMENDATION

- A. 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 (FSR), 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 DA2020/01248 for alterations and additions including demolition to a dwelling at 61 Gipps Street, Carrington be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 4 DP 499831 and is a rectangular allotment located on the western side of Gipps Street. The site is generally flat, has a frontage of 5.445m to Gipps Street, a depth of 24.535m and a total area of 135.6m².

The subject property is occupied by a two-storey, painted brick, metal roofed terrace-style dwelling house that is part of a row of eight connected terrace-style dwellings. The general built form of the subject property and the surrounding terrace-style dwelling houses comprises of painted brick and weatherboard construction, with elevated timber balconies fronting Gipps Street and metal roof sheeting.

The general form of development in the immediate area predominantly consists of a mixture of original dwellings, renovated single and two storey dwellings and modern architectural designed dwellings up to two stories in height. They range in architectural style, reflecting the ongoing development since the establishment of Carrington as a suburb. There are also a number of light industrial buildings to the northern end of Gipps Street.

Gipps Street is a relatively wide road reserve with a dual carriageway and a central island with several large mature palm trees. The central island within the road reserve is one of two heritage items that exist in the vicinity of the proposed development - "Palms in Gipps Street" and "Mary McKillop Home" (60 Gipps Street). Grahame Park is located south east of the site at the intersection of Gipps and Robertson Streets, providing a relatively large open space and children's play equipment for use by local residents.

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to the rear of the existing dwelling. An older, existing single storey structure will be demolished, and replaced with a new single storey addition containing a new kitchen and living area.

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

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

3.0 PUBLIC NOTIFICATION

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

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

SEPP 55 requires that where land is contaminated, CN must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

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

In this application, the site is already residential, and the application is for a renovation. As the land use is not changing and the site will continue to be used for residential purposes, clause 7(1) of SEPP 55 has been met. In addition, clause 7(2) has not been triggered as no change of use has been proposed. The development is satisfactory under the provisions of SEPP 55.

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

The subject site is located within the coastal zone and is specifically mapped as being within the coastal environment area. The proposed development is considered to have minimal impact with regard to the general development controls of the Coastal Management SEPP and the specific controls in relation to the coastal environment area.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of the NLEP 2012, within which zone the proposed development is permissible with CN's consent.

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

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

Clause 2.7 - Demolition Requires Development Consent

The proposal includes demolition of a single storey structure to the rear of the two-storey terrace to facilitate the proposed alterations and additions. 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 (HoB)

Under the NLEP 2012 the site has a maximum height of 8.5m. The height of the proposed development is approximately 4.5m and complies with this requirement.

Clause 4.4 - Floor Space Ratio (FSR)

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

Under the NLEP 2012 the subject site has a maximum FSR of 0.6:1.

The existing FSR for the site is 0.62:1, exceeding the prescribed maximum FSR by 6% (5.04m² gross floor area).

The proposed development has an FSR of 0.766:1, exceeding the prescribed maximum FSR by 27.7% (22.54m² gross floor area). The proposal seeks to provide an additional 17.5m² of gross floor area in addition to the existing built form on the subject site.

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

Clause 4.6 - Exceptions to Development Standards

The proposal seeks consent to vary the FSR development standard (clause 4.4) in accordance with clause 4.6 of the NLEP 2012.

The proposed development has an FSR of 0.766:1, exceeding the prescribed maximum FSR by 27.7% (22.54m² gross floor area).

The objectives of clause 4.4 of the NLEP 2012 are:

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

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

The objectives of this clause are:

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

In assessing the proposal to vary the FSR development standard against the provisions of clause 4.6, it is noted that:

1. Clause 4.4 of the NLEP 2012 is not expressly excluded from the operation of this clause; and
2. The applicant has prepared a written request, requesting that CN vary the development standard and demonstrating that:
 - a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - b) There are sufficient environmental planning grounds to justify contravening the development standard.

An extract from the applicants request to vary the development standard is:

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

NLEP 2012.

1.2 What is the zoning of the land?”

R2 Low Density Residential.

1.3 What are the objectives of the zone?

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

1.4 What is the development standard being varied? eg. FSR, height, lot size.

Floor Space Ratio.

1.5 Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.4 Floor Space Ratio.

1.6 What are the objectives of the development standard?

- 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.*

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

0.6:1

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

The development proposes a maximum FSR of 0.766:1. The existing building in its current form has an existing FSR of 0.637:1. The proposed FSR of 0.766 exceeds the applicable FSR of 0.6:1 prescribed under clause 4.4. The departure may be expressed as an exceedance of 17.5m² from the existing floor area of 86.4m² (subject site is 135.6m², or a percentage departure of 27.7%).

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

27.7%

1.10 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The first consideration, demonstrating that the objectives of the FSR standard can be achieved notwithstanding noncompliance, is most important to the assessment of this objection.

The compliance of the proposed development and variation with the objectives of the FSR standard in clause 4.4 of the NLEP 2012 is demonstrated below:

a) *To provide an appropriate density of development consistent with the established centres hierarchy*

The purpose of the development application is for the removal of a previous single storey extension that is in very poor condition and replace it with an extension approximately 17.5m² larger than the previous one.

Due to the size of the allotments in the Carrington area the character is of a higher FSR typically just to allow for a standard size family dwelling. The proposed variation is not out of character as recent variations have been approved in the street of 20%, 26% and 36% being 78 Burke Street, 35 and 65 Gipps Street.

The variation to the allowable FSR is not indicative of the overall proposal which represents a sustainable improvement of historic housing stock and provision of an equitable and modest three-bedroom home.

Strict compliance with the development standard in this case is unreasonable as the zoning of the lot does not consider the historical deficiency of the 135.6m² lot size and its variation from the prescribed minimum 400m² lot size for the zone. It is unreasonable to prevent reasonable and sustainable small building upgrades to existing housing stock due to zoning oversight.

The overall building bulk and scale is consistent with neighbouring developments and site zoning.

b) *To ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy*

Several terraces within the area have undertaken similar scale extensions and when assessed against the proposal that the

intention is to only increase the current building by 17.5m² it should be considered favourably by CN.

An established building character of attached terrace housing on small lots exists along Gipps Street and many other streets within the Carrington locality. The proposal does not seek to change the street character by altering, bulk, density and scale. The proposed changes will only contribute to the existing building by aligning itself to the established neighbouring buildings density, bulk and scale. The existing building facade from the street is maintained. This ensures no greater impact to the street and public domain is generated.

On this basis, the proposed variation to the FSR is reasonable and is not encouraging uncoordinated or non-cohesive development in the local government area (LGA).

1.11 How would strict compliance hinder the attainment of the objects specified in section 1.3 of the Act?

Objects of the Act

The objects of this Act are as follows:

- a) To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.*
- b) To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.*
- c) To promote the orderly and economic use and development of land.*
- d) To promote the delivery and maintenance of affordable housing.*
- e) To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.*
- f) To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).*
- g) To promote good design and amenity of the built environment.*
- h) To promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

- i) *To promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.*
- j) *To provide increased opportunity for community participation in environmental planning and assessment.*

The proposed variation will not contravene the Objects of the Act. Management of the existing dwelling to achieve better environment and economic welfare of the occupant will be improved by providing a design solution that allows better use for the site. Strict compliance with the standard would inhibit this outcome and would not result in the orderly and economic use and development of land.

1.12 *Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?*

The proposed alterations are consistent with the established building character that exists along Gipps Street and many other lots within the Carrington locality. The variation is representative of a reasonable development for the established area and rejuvenation to extend the life and functionality of the dwelling, strict compliance with the standard would devalue the property and allow for the continued rejuvenation of the suburb, possibly inhibiting the area and creating less desirable form of housing.

On this basis, strict compliance with the standard is unnecessary as departure is negligible and is not encouraging uncoordinated or non-cohesive development in the suburb.

The consistency with the objectives of clause. 4.4 FSR as outlined above and the absence of any environmental impacts, demonstrates that strict compliance with the building FSR is both unreasonable and unnecessary in this instance.

The proposed alterations and additions to 61 Gipps Street are minor in nature only increasing the current floor area by around 17.5m². The proposed variation will improve the functionality and liability of the dwelling.

Given these unusual considerations, variation to the standard will not undermine the legitimacy or future standing of the NLEP 2012's controls. There are no matters of State or Regional planning which would be affected by the variation.

Based on the information in this Objection to Development Standard, the Statement of Environmental Effects (SEE) and the associated drawings included with this DA submission, it is considered that the proposed alterations and additions are not inconsistent with the character of the

immediate area. The design complies with all the building design criteria of the Newcastle Development Control Plan 2012 (NDCP 2012) and the NLEP 2012 for the R2 zoning.

Based on the above, strict compliance with the development standard is unreasonable or unnecessary in this circumstance.

Conclusion

The relevant considerations of clause 4.6 of the NLEP 2012 have been discussed above, and support contravention of the development standard for this instance. This report has systematically addressed the matters required to be demonstrated by sub clause (3), and satisfied the considerations required to be made by CN under clause 4.6(4)(a)(i).

The deviation from the prescribed FSR is consistent with the zone objectives and the objectives of the development standard in clause 4.4 and CN can be satisfied that it is in the public interest pursuant to clause 4.6(4)(a)(ii).

Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of clause 4.6 of the NLEP 2012 are satisfied as the departure from the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance, and that the use of clause 4.6 of the NLEP 2012 to vary this development controls is appropriate in this instance.

For the reasons set out above, the objectives of the standard are considered to be satisfied and the request to vary the standard should be looked upon favourably by CN.”

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

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of the NLEP 2012.
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 low Density Residential zone in which the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the FSR development standard, as required by clause 4.6(4)(b) of the NLEP 2012, is assumed, as per NSW Planning and Environment circular PS 20-002 of 5 May 2020.

- d) The proposed FSR exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing, view loss, bulk and scale. The FSR exceedance is consistent with similar development in the area.

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

The proposal facilitates the ongoing use of an existing residential site in a single dwelling house capacity, providing for the housing needs of the community within a low density residential environment whilst suitably respecting the amenity, heritage and character of surrounding development and the quality of the environment, in accordance with the relevant R2 zone objectives. The proposal provides for an improvement to the functionality, liveability and amenity for building occupants, consistent with current expectations.

Further, it is considered the clause 4.6 variation request is well founded. The request for the FSR to exceed 0.6:1 is supported.

Clause 5.10 - Heritage Conservation

Under the NLEP 2012, the subject property is not listed as a heritage item nor is it located within a Heritage Conservation Area. It is noted that, pursuant to subclause 5.10(2), the proposed development is not listed as development for which consent is required under clause 5.10.

Two heritage items exist in the vicinity of the proposed development at 60 Gipps Street Carrington "Mary McKillop Home" and within the adjoining road reserve "Palms in Gipps Street", as indicated in Schedule 5 of the NLEP 2012.

It is not considered necessary to require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage items. It is considered that the proposed development is designed and located in such a way that the heritage significance of the heritage items will be conserved.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 2 acid sulfate soils. Due to the limited nature of excavation, the likelihood of potential impacts arising from acid sulfate soils is expected to be limited.

A condition of consent is recommended in respect of the management of acid sulfate soils. The proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

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

Conditions of consent are recommended to address potential sedimentation and erosion control issues.

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Single Dwellings and Ancillary Development - Section 3.02

The following comments are made concerning the proposed development and the relevant provisions of section 3.02:

Street frontage appearance (3.02.03)

The existing street frontage appearance will remain unchanged. The proposed additions are located to the rear of the existing dwelling and will not be seen from the street.

Side / rear setbacks (building envelope) (3.02.04)

Given the width of the site the proposed development is in the building envelope when measured from side and rear boundaries. The proposed development meets the acceptable solutions of section 3.02.04.

Landscaping (3.02.05)

Adequate landscaping areas are available on the site and it is considered that they are satisfactory with the criteria of this section.

Private open space (3.02.06)

Private open space is available as required by the acceptable solution criteria of this section. The proposed development is considered satisfactory in this regard.

Privacy (3.02.07)

The privacy of the proposed development and the adjoining neighbours is considered to be satisfactory and to meet the NDCP 2012 requirements.

The dwelling has adequate privacy to the principal area of private open space and the windows of habitable rooms and does not unreasonably overlook living room windows or the principal area of private open space of neighbouring dwellings.

Solar access 3.02.08)

Given the location of the existing dividing masonry wall on the southern side boundary, on balance solar access impacts on neighbouring properties are considered to be acceptable and have a similar impact when compared to current arrangements.

View sharing (3.02.09)

The proposal will not result in any significant additional view impacts. The proposed development is considered satisfactory in this regard.

Car parking and vehicular access (3.02.10)

An existing historical deficiency exists for many sites in the locality, including the subject site.

No off-street car parking and vehicular access arrangements are proposed nor able to be provided for the proposed development.

The proposed development is considered acceptable in this regard.

The proposed development is considered acceptable in relation to the abovementioned NDCP 2012 section and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity.

The development establishes a scale and built form that is appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

Flood Management - Section 4.01

CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

"The site is flood prone. As the proposed development is classified as a 'Minor Addition', the proposal is considered acceptable as the flood risk is not unreasonably increased."

An advisory condition relating to the provisions of the National Construction Code for Class 1 buildings that are located in a Flood Hazard Area is also proposed in the draft conditions of consent.

The proposed development is considered to be acceptable with respect to section 4.01.

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.

Land Contamination - Section 5.02

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

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Heritage Items - Section 5.05

Section 5.05.06 relates to development in the vicinity of a heritage item.

Two heritage items exist in the vicinity of the proposed development - "Mary McKillop Home" (60 Gipps Street) and the central island within the road reserve "Palms in Gipps Street".

As the development is located to the rear of the existing dwelling, there is not considered to be any impacts generated with respect to the heritage items. The existing space around the heritage items, that enables their interpretation, is retained. Significant views and lines of sight to the heritage items are unaffected by the development.

Traffic, Parking and Access - Section 7.03

The development is required to provide on-site car parking in accordance with the rates set out in Table 1 of section 7.03.02 of the NDCP 2012. That is, "attached dwellings" are required to have a minimum of one car parking space per dwelling.

Section 7.03.02(B)(3) stipulates that where alterations and / or additions of an existing building is proposed, a departure from the rates set out in Table 1 may be considered if a historic parking deficiency applies. In this instance, a historic parking deficiency applies as there are no existing car parking spaces provided on the site.

Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

Stormwater from the additional roof area (6m²) will be connected to the existing drainage system piped to CN's kerb gutter fronting the property.

The development is satisfactory in accordance with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

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

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations.

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

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

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

5.7 The suitability of the site for the development

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

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

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

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

5.9 The public interest

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

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 at **Attachment B** are included in any consent issued.

ATTACHMENTS

Item 8 Attachment A: Submitted Plans – 61 Gipps Street, Carrington

Item 8 Attachment B: Draft Schedule of Conditions – 61 Gipps Street, Carrington

Item 8 Attachment C: Processing Chronology – 61 Gipps Street, Carrington

Item 8 Attachments A - C distributed under separate cover