

Development Application Committee Meeting



DATE: Tuesday, 17 October 2023

TIME: Following the Public Voice Committee

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

11 October 2023

Please note:

Meetings of City of Newcastle (CN) are webcast. CN accepts no liability for any defamatory, discriminatory or offensive remarks or gestures made during the meeting. Opinions expressed or statements made by participants are the opinions or statements of those individuals and do not imply any form of endorsement by CN. Confidential matters will not be webcast.

The electronic transmission is protected by copyright and owned by CN. No part may be copied or recorded or made available to others without the prior written consent of CN. Council may be required to disclose recordings where we are compelled to do so by court order, warrant or subpoena or under any legislation. Only the official minutes constitute an official record of the meeting.

Authorised media representatives are permitted to record meetings provided written notice has been lodged. A person may be expelled from a meeting for recording without notice. Recordings may only be used for the purpose of accuracy of reporting and are not for broadcast, or to be shared publicly. No recordings of any private third-party conversations or comments of anyone within the Chamber are permitted.

In participating in this Meeting, Councillors are reminded of their oath or affirmation of office made under section 233A of the Local Government Act 1993, and of their obligations under City of Newcastle's Code of Conduct for Councillors to disclose and appropriately manage conflicts of interest.

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

Agenda

1. ATTENDANCE	
2. ACKNOWLEDGEMENT OF COUNTRY	
3. PRAYER	
4. APOLOGIES / LEAVE OF ABSENCE / REQUEST TO ATTEND BY AUDIO VISUAL LINK	
5. DISCLOSURES OF INTEREST	
6. CONFIRMATION OF PREVIOUS MINUTES.....	3
6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 19 SEPTEMBER 2023.....	3
7. DEVELOPMENT APPLICATIONS	9
7.1. DAC 17/10/23 – 317 WHARF ROAD NEWCASTLE - MA2022/00238 - SEC 4.55(2) MODIFICATION TO DA2013/1236 - DEMOLITION OF BUILDINGS, ERECTION OF EIGHT (8) STOREY HOTEL AND CONFERENCE CENTRE - CHANGES TO DESIGN	9
7.2. DAC 17/10/23 – 810 HUNTER STREET NEWCASTLE WEST - DEMOLITION OF EXISTING COMMERCIAL BUILDING AND CONSTRUCTION OF AN ELEVEN STOREY COMMERCIAL DEVELOPMENT - DA2022/01424.....	51

[For documents marked 'Distributed under Separate Cover' refer to Council's website at http://www.newcastle.nsw.gov.au/](http://www.newcastle.nsw.gov.au/)

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

6. CONFIRMATION OF PREVIOUS MINUTES

6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 19 SEPTEMBER 2023

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 230919 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

Minutes

Development Application Committee Meeting



Council Chamber, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West, Tuesday, 19 September 2023 at 6:02pm.

1. ATTENDANCE

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

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

2. ACKNOWLEDGEMENT OF COUNTRY

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

3. PRAYER

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

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

MOTION

Moved by Cr Barrie, seconded by Cr Mackenzie

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

Nil requests for audio visual link.

5. DISCLOSURES OF INTEREST

Councillor Adamczyk

Councillor Adamczyk declared a non-pecuniary significant conflict of interest in Item 7.1 - 805 Hunter Street Newcastle West - DA2022/00846 - Mixed Use - Commercial Premises and Shop-Top Housing, Includes Demolition, stating that she had a close friend who was involved with the Developer and 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 7.3 - 25 Mounter Street, Mayfield East - DA2023/00142 - Dwelling House - Change of Use and Alterations and Additions, Includes Demolition, stating that he was part owner of a property in the general vicinity leased at below market rent to a community housing provider. As the property was not directly connected to the development application or there was any foreseeable benefit, he would manage the conflict by remaining in the Chamber for discussion of the item.

6. CONFIRMATION OF PREVIOUS MINUTES

6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 15 AUGUST 2023

MOTION

Moved by Cr Duncan, seconded by Cr Barrie

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

**Carried
unanimously**

7. DEVELOPMENT APPLICATIONS

7.1. 805 HUNTER STREET NEWCASTLE WEST – DA2022/00846 - MIXED USE - COMMERCIAL PREMISES AND SHOP-TOP HOUSING, INCLUDES DEMOLITION

Councillor Adamczyk left the Chamber for discussion on the item.

MOTION

Moved by Cr McCabe, seconded by Barrie

- 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 (NLEP 2012), against the development standard at Clause 4.3 'Height of buildings', and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the MU1 Mixed Use zone in which the development is proposed to be carried out; and

- B. That the Development Applications Committee as the consent authority note the objection under Clause 4.6 Exceptions to development standards of the NLEP 2012, against the development standard at Clause 7.4 'Building separation', and considers the objection to be justified in the circumstances and to be consistent with the intent of Clause 7.4 and the objectives for development within the MU1 Mixed Use zone in which the development is proposed to be carried out; and
- C. That DA2022/00846 for the demolition of existing buildings and erection of a mixed-use development, comprising retail / commercial on ground floor, podium level car parking and a residential flat building (shop top housing) located above at 8 Denison Street, 799 Hunter Street and 805 Hunter Street, Newcastle West be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- D. That those persons who made submissions be advised of CN's determination.

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

Against the Motion: Nil

Carried

Councillor Adamczyk returned to the Chamber at the conclusion of the item.

7.2. 5/21 BOLTON STREET, NEWCASTLE - DA2023/00185 - ALTERATIONS AND ADDITIONS TO OFFICE PREMISES INCLUDING DEMOLITION

MOTION

Moved by Cr McCabe, seconded by Cr Barrie

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the MU1 Mixed Use zone in which the development is proposed to be carried out; and
- B. That DA2023/00185 for alterations and additions to office premises including demolition at 21 Bolton Street, Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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

Against the Motion: Nil.

**Carried
unanimously**

7.3. 25 MOUNTER STREET MAYFIELD EAST - DWELLING HOUSE - CHANGE OF USE AND ALTERATIONS AND ADDITIONS, INCLUDES DEMOLITION - DA2023/00142

MOTION

Moved by Cr Mackenzie, seconded by Cr Winney-Baartz

- A. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2023/00142 for dwelling house - change of use and alterations and additions, including demolition at 25 Mounter Street Mayfield East be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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

Against the Motion: Nil.

**Carried
unanimously**

7.4. 15 HELEN STREET, MEREWETHER - DA2022/00789 - DUAL OCCUPANCY - INCLUDING ONE INTO TWO LOT SUBDIVISION, ANCILLARY DEVELOPMENT (POOL) AND DEMOLITION OF EXISTING ANCILLARY DEVELOPMENT (GARAGE)

MOTION

Moved by Cr Barrie, seconded by Cr McCabe

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2022/00789 for Dual Occupancy including one into two lot subdivision, swimming pool and demolition of garage at 15 Helen 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 who made submissions be advised of Council's determination.

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

Against the Motion: Nil.

**Carried
unanimously**

The meeting concluded at 6.19pm.

7. DEVELOPMENT APPLICATIONS

7.1. DAC 17/10/23 – 317 WHARF ROAD NEWCASTLE - MA2022/00238 - SEC 4.55(2) MODIFICATION TO DA2013/1236 - DEMOLITION OF BUILDINGS, ERECTION OF EIGHT (8) STOREY HOTEL AND CONFERENCE CENTRE - CHANGES TO DESIGN

APPLICANT: THE TRUSTEE FOR THE NAVON PLANNING TRUST
OWNER: WHARF ROAD DEVELOPMENTS PTY LTD
REPORT BY: PLANNING & ENVIRONMENT
CONTACT: EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

PART I

PURPOSE

A Modification Application (MA2022/00238) has been received seeking to modify the original Development Consent (DA2013/1236) for approved demolition of buildings and erection of eight storey hotel and conference centre at 317 Wharf Road Newcastle.

The Section 4.55(2) modification application seeks various changes to improve the layout of the building, reflect the repositioning of columns and structural elements, and to ensure compliance with relevant Building Code of Australia (BCA) requirements.



Subject Land: 317 Wharf Road Newcastle

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

The application is referred to the Development Applications Committee (DAC) for determination, due to the number of public submissions received. A total of 34 submissions (30 unique) objecting to the proposal were received.

The main categories of objection include:

- 1) Building design and appearance
- 2) Lack of separation / setbacks
- 3) Traffic, parking and access
- 4) Visual and acoustic privacy

- 5) Solar access
- 6) View loss

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

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

The proposal was considered at the Public Voice Committee Meeting held on 26 April 2023. Issues raised were consistent with original objections and are addressed in Section 3.0 and as part of the Planning Assessment at Section 5.0.

Issues

- 1) Amendments to traffic, access and parking configuration.
- 2) Overall built form, bulk and scale of the development.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under section 4.55(2) – Other Modifications and section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is considered to remain 'substantially the same' development as originally approved and is acceptable subject to compliance with appropriate conditions.

The relevant conditions to be amended and new conditions recommended to be imposed on the modified development consent include:

Condition 2, amended to include the current plans and documentation, to be included in the Approved documentation - schedule.

Condition 3, amended to include payment before the issue of the first Construction Certificate for building works.

Condition 5, amended to read as follows:

5. On-site parking accommodation is to be provided for a minimum of 100 vehicles and such be set out generally in accordance with the minimum parking layout standards indicated in Section 7.03 'Traffic, Parking and Access' of Council's adopted Newcastle Development Control Plan 2012. Full details are to be included in documentation for the first Construction Certificate application for building works. **(Amended by MA2022-00238)**

Condition 28a - new condition to read as follows:

- 28a. Before the issue of the first Construction Certificate for building works for the development, the acoustic performance of all mechanical plant and equipment

associated with the building, is to be assessed by an appropriately qualified acoustic consultant. Appropriate acoustic treatment as recommended by the acoustic consultant is to be designed and submitted to the Principal Certifier and Newcastle City Council. This must also be consistent with the recommendations set out in the Noise Assessment prepared by Atkins Acoustics Pty Ltd, dated April 2014 and as amended by the Addendum Acoustic Letter for s4.55 prepared by Atkins Acoustics and dated 24 March 2023. **(Amended by MA2022-00238)**

Condition 59, amended to read as follows:

59. The development and associated works must be undertaken in accordance with the Statement of Heritage Impact prepared by NBRS+ Partners (Final) and dated 17 October 2013, and as amended by the Heritage Impact Statement prepared by HBRS and dated 16 August 2022. **(Amended by MA2022-00238)**

Condition 65, amended to read as follows:

65. Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the Noise Assessment prepared by Atkins Acoustics Pty Ltd, dated April 2014 and as amended by the Addendum Acoustic Letter for s4.55 prepared by Atkins Acoustics and dated 24 March 2023.

Written final certification confirming the recommended acoustic treatment has been implemented in accordance with the requirements of the above report is to be submitted to the Principal Certifying Authority and Council prior to the issue of the first Occupation Certificate.

Note: The acoustic consultant may need to be involved during the construction process in order to ensure final certification is achieved. **(Amended by MA2022-00238)**

Condition 65a - new condition to read as follows:

- 65a. Before the issue of the first Occupation Certificate, written certification from an appropriately qualified acoustic consultant, is to be submitted to the Principal Certifier and Council, confirming that noise from all mechanical plant and equipment achieves the required acoustic attenuation to comply with the conditions of this consent and the requirements of the *Protection of the Environment Operations Act 1997*. **(Amended by MA2022-00238)**

Condition 69 amended to read as follows:

69. The hours of operation or trading of the premises are to be not more than from:

Use / Component	START	FINISH	
Hotel and Carpark	24 Hours	24 Hours	Monday to Sunday
Function Centre/ Restaurant	7.00am	12.00 midnight	Monday to Sunday
Function Centre Terrace/Cafe/ Café Terrace	7.00am	10.00pm	Monday to Sunday

unless a separate application to vary the hours of operation or trading has been submitted to and approved by Council.

NOTE: The Plan of Management is to be consistent with the approved hours of operation stated in this condition. **(Amended by MA2022-00238)**

Condition 85 – new condition to read as follows:

85. Appropriate arrangements are to be made for the on-site collection of garbage (recyclable and non-recyclable). Under no circumstances are any waste bins to be presented to the kerb in Centenary Road or Wharf Road for collection.

Conditions 4 to Condition 28a – have been amended to include reference to ‘issue of the first Construction Certificate for building works’.

RECOMMENDATION

- A. That MA2022/00238 for Section 4.55(2) modification to DA2013/1236 – Demolition of buildings and erection of eight storey hotel and conference centre at 317 Wharf Road Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

Section 10.4 of the *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 site is a single allotment, known as 317 Wharf Road Newcastle (Lot 16 DP 1259851). The site is predominately level, located on the southern side of Wharf Road, with dual frontage to Wharf Road (102.9m) and Centenary Road (106m) and site area of 4,090m².

To the north is an existing commercial / residential waterfront development, including the Rydges Hotel. To the east is 'Argyle House', a single storey building, corner of Wharf Road and Argyle Street. To the west is an existing mixed use multi-storey building, with commercial on ground and residential apartments above. To the south are low rise industrial type buildings and recently constructed mixed use developments on the corner of Merewether Street.

The site is zoned MU1 Mixed Use (an equivalent zone to B4 Mixed Use) under the Newcastle Local Environmental Plan 2012 (NLEP). The site is affected by mine subsidence, flooding, acid sulfate soils (Class 3) and contamination. The site is within a 'sensitive coastal location', in the Newcastle City Centre and in the Newcastle City Centre Heritage Conservation Area and adjoins a 'listed' heritage item (Argyle House).

2.0 DEVELOPMENT HISTORY

Development consent (DA2016/1236) was granted on 6 May 2016 for the demolition of buildings and erection of an eight-storey hotel and conference centre. The consent was granted a two-year extension in response to the COVID-19 pandemic, where the Government introduced changes to allow economic recovery, with the consent now expiring on the 6 May 2023. A Construction Certificate (CC2022/00809) for demolition, removal of in-ground services and installation of new in-ground services was approved on the 23 September 2022.

CN was notified on the 31 March 2023 of the commencement of demolition works and the applicant provided owners/occupiers of neighbouring properties with seven days notice of the commencement of the works.

Further advice has been received from the applicant in response to CN's requests regarding physical commencement of the development. The information below outlines the preparatory and physical works undertaken, which all contributes toward demonstrating physical commencement of the development consent over a period of time.

'The development has already been physically commenced on the land, and so the development consent can no longer lapse. Specifically, further geotechnical investigations necessary to inform the structural design of piers and footings, as well

as pavement design, were carried out by Douglas Partners between 8 October 2019 and 16 October 2019. This work constituted the drilling of 4 boreholes on the land, and installation of monitoring wells within two of those boreholes.

Douglas Partners subsequently produced a Report on Geotechnical Investigation, dated January 2020. The work constitutes engineering work for the purposes of s4.53(4) of the EPA Act (and s95(4) as it was at the date the consent was granted): Refer to Hunter Development Brokerage Pty Ltd v Cessnock City Council; Tovedale v Shoalhaven City Council (2005) 63 NSWLR 124 at [91]. This work was necessary to the development as a result of conditions 2 and 9 of the consent.

Condition 2 requires the development to be implemented in accordance with, among other documents, a geotechnical report that accompanied the development application, being a report entitled Geotechnical Investigation and Acid Sulfate Soil (ASS) Assessment - 317 Wharf Road, Newcastle for Schwartz Family Co. Pty Limited prepared by SMEC Testing Services Pty Ltd and dated April 2014.

The geotechnical report recommends, at s5.2, that the building be founded on pad and/or strip footings, but with all loads to be transferred to the underlying weathered shale bedrock using piers. Whilst SMEC go on to provide some limited parameters for future structural design the detail is limited. Accordingly, to comply with the recommendations of the SMEC report, as required by condition 2, further geotechnical investigation was necessary to inform the structural design of the foundations. The introduction to the Douglas Partners report makes explicit that the investigation work was carried out “in order to provide geotechnical pile design parameters for soil and underlying rock”. Sections 7.5 and 7.6 of the report go on to provide those parameters, having regard to the results of the investigation. In short, the geotechnical work was necessary to comply with condition 2, and to prepare detailed structural plans for construction.

In addition to condition 2, condition 9 requires all parking and manoeuvring areas “to be constructed with a basecourse of adequate depth to suit design traffic”, be sealed in certain ways, and be designed in accordance with particular Council standards. This raises the question as what an adequate depth is to suit design traffic, which requires determination of a CBR value for pavement design, which requires an understanding of the subsurface material. The Douglas Partners report states in the introduction that the purpose of the investigations was to assess the subsurface conditions in order to provide “site preparation measure and pavement thickness design parameters (design CBR)”. Section 7.4 of the report goes on to provide those parameters, having regard to the results of the investigation. In short, the geotechnical work was necessary to comply with condition 9.

As the purpose of the work is to inform design specification necessary for a Construction Certificate (CC) application, a CC could not have been issued (or required) before that work was done.

Although the EPA Regulation was amended to prevent geotechnical investigation from being sufficient to constitute physical commencement (cl 96) that clause does not apply to this consent, as it does not apply to consents granted before 15 May 2020 (cl 96(2)).

We are continuing to progress the development, however, after some difficult COVID delays, and are working toward further soil and groundwater testing to satisfy the requirements of the RAP, which is required to be implemented by condition 2, and to have substantially demolished existing structures on site before the end of the month. CN's Traffic section have now approved our Construction Traffic Management Plan (CTMP). In addition, a hoarding approval has been obtained, to ensure that we can work on all areas of the site and progress demolition expeditiously.

CN has received written notification on 31 March 2023 of the commencement of demolition works in accordance with relevant conditions of consent (specifically Condition 32d). In addition, CN were advised of the owners/occupiers of neighbouring properties being notified by letter drop on 31 March 2023, giving seven days' notice, with information contained in Condition 32d.

A summary of progress since CC2022/00809 was issued (23 September 2022) and details have been submitted by the applicant.

3.0 THE PROPOSAL

The proposal (i.e. the proposed modified development) seeks to improve the layout of the building, repositioning of columns and structural elements, and compliance with relevant Building Code of Australia requirements, resulting in a reduction in GFA and number of car parking spaces. In summary, the main areas of change include:

Ground Level (Level 1)

- i) Reconfiguration of carparking layout on ground level to satisfy relevant requirements and Australian Standards and removal of valet parking. Electric vehicle parking spaces nominated on ground level. Entry boom gate setback 6.0m from boundary.
- ii) Accessible ramp to cafe / entrance and amended landscaping scheme.
- iii) Fire escape stairs adjacent to lifts, mechanical and hot water plant room.
- iv) Hydrant and sprinkler pump room and enlarged electricity substation and amendments to landscaping plan.
- v) Grease arrestors and enlarged loading dock.
- vi) Reconfiguration of ancillary rooms, provision of WC's.

Level 2

- i) Reconfiguration of parking layout and vehicle circulation.
- ii) Fire escape stairs adjacent to lifts.

Level 3

- i) Reconfiguration of parking layout and vehicle circulation.
- ii) Fire escape stairs adjacent to lifts and enlarged west facing fire stairs.

Level 4

- i) Airlocks between function rooms and fire stairs. Enlarged WC facilities and reconfiguration of kitchen layouts.
- ii) Mechanical plant room, fire escape stairs adjacent to lifts and enlarged west facing fire stairs.

Level 5

- i) Linen room, mechanical plant room and additional mechanical plant.

Level 6 to 8

- i) Linen room, mechanical plant room and enlarged east facing fire stairs.

Roof Plan

- i) Solar panel system – 180 panels on western roof and 175 panels on eastern roof.
- ii) Acoustic screening / enclosure around roof top plant located within roof under-croft area.

In conclusion, there are no significant changes to the façade. Any changes are due to additions of structural and service elements and the colour and materials scheme remains as per the original development consent. No other changes are proposed to the approved development.

Amendment to Terms of Development Contributions (timing for payment)

The application originally sought to amend Condition 3 of DA2013/1236 to defer the timing of infrastructure contribution payments until the Occupation Certificate stage. The amendment to timing was sought through a Ministerial Direction from the Minister of Planning and Public spaces allowing payment of contributions at Occupation Certificate stage for developments over \$10 million.

This component is no longer being sought as part of this application.

Refer to Section 5.3 of this report, under 'Development Contributions' for further information.

Public Voice Committee

The proposal was considered at a meeting of the Public Voice Committee held on 26 April 2023 and the following summary of concerns were raised during Public Voice:

- i) Non-compliance with maximum building height
- ii) Heritage impacts due to setback reduction towards the heritage listed Argyle House
- iii) Proposal moves the building closer to 335 Wharf Road
- iv) Inclusion of additional bicycle spaces
- v) Deferred payment of development contributions
- vi) Noise from the loading dock
- vii) Pollution from the loading dock
- viii) View loss
- ix) Outside terrace for function centre
- x) Noise from function centre
- xi) Privacy screens were conditioned in original DA
- xii) Poor design of building
- xiii) Aesthetics of the approved western wall that apartments at 335 Wharf Rd are facing
- xiv) Poor architecture - same size as the refused boarding house
- xv) Street activation will be impacted by the hydrant booster and substation
- xvi) Reduction of approved car parking
- xvii) Current site being used as valet parking for nearby hotel
- xviii) New traffic study needed as original DA approval was in 2016

In response to the Public Voice meeting on 26 April 2023, the applicant provided a letter of Response to Public Voice Issues, prepared by Navon Planning and dated 30 June 2023 and this is provided in **Attachment C**.

Further amendments to the architectural plan set (Issue D) dated 24-08-23, now show '*without prejudice*' information relating to Condition 27 of DA2013/1236 (ie. privacy

screens to all western balconies adjoining 335 Wharf Road to satisfy consent condition 27).

In addition, the plans provide for an acoustic screen / enclosure proposed to screen the roof top plant located under the roof croft area. An amended landscaping plan (Issue B) has been submitted providing for additional landscaping around the hydrant and sprinkler pump room and electricity substation.

During assessment of information submitted in response to Public Voice matters, the applicant was requested to provide an updated Traffic Impact Assessment (TIA) with guidance given as to what this updated TIA should address. An updated TIA, prepared by SECA Solutions and dated August 2023 was submitted with the application.

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

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

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with CN's Community Participation Plan (CPP), for a period of 14 days and closed on 17 August 2022. In response, 34 submissions were received (30 unique submissions).

Several amended plans (refer Sheet 101-D – Ground Floor + Site Plan / Sheet 102-D – Level 2 Plan / Sheet 103-D – Level 3 Plan), a supplementary Parking Impact Assessment and Addendum Acoustic advice were submitted during the assessment process, responding to matters raised by CN staff. These amendments were not required to be notified in accordance with CN's CPP. However, the amended plans and additional information were made available on the 'DA tracker' portal on CN's website.

Following the Public Voice (PV) meeting on 26 April 2023, the applicant was requested to respond to the matters raised during PV, and a formal response was provided and updated plans 'without prejudice' identifying the privacy screens (as required in Condition 27 of DA2013/1236). In addition, an amended landscaping plan and updated Traffic Impact Assessment prepared by SECA Solutions, dated August 2023 were submitted.

The updated architectural plans (Issue D), identify the privacy screens to satisfy Condition 27 of DA2013/1236 required at construction certificate stage and propose an acoustic screen / enclosure around the roof top plant to be located under the roof under croft area.

The amended landscaping plan provides additional landscaping within the areas of hydrant and sprinkler pump room and substation. Updated plans and additional information were not required to be notified in accordance with CN's CPP. However, plans and additional information were made available on DA Tracker.

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

5.1 Environmental Planning and Assessment Act 1979 (EP&A Act)

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

Pursuant to Section 4.55(2) of the EP&A Act, the consent authority, when considering a request to modify a determination under the clause, must:

- a) be satisfied that the development as modified is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and;
- b) consult the minister, the public authority, approval body or Minister, as a result of:
 - i) a condition imposed as a requirement of a concurrence to the consent, or
 - ii) in accordance with the general terms of an approval proposed to be granted, and
- c) notify the application in accordance with the regulations and City of Newcastle's Community Participation Plan, and
 - i) consider any submissions made; and
 - ii) take into consideration the matters referred to in Section 4.15 as are of relevance to the development the subject of the application.

In consideration of the subject s4.55(2) application to modify consent DA2013/1236, the assessment is limited to only those matters that are relevant to the proposed changes to the approved development. Other aspects of the approved development, which do not form a part of the proposed modification were considered as part of the original assessment.

The relevant matters relating to clause 4.55 are discussed below:

Section 4.55(2)(a) – Substantially the same development

The applicant states that '*...the proposed modifications are in response to further design development and to ensure compliance is achieved with relevant Australian*

standards and the Building Code of Australia. There is no change to the approved use, nor general configuration of the site that would otherwise challenge the aspect that the proposed modifications is substantially the same development.

Following the Public Voice meeting on 26 April 2023, the applicant provided a further response prepared by Pikes & Verekers Lawyers...*addressing the legal issue regarding the scope of the power to modify the consent, noting that many of the merit concerns raised by members of the public, and queried by Councillors, go to aspects of the already approved development which are not sought to be modified by the current application*'.

The letter contends that:

'With respect to the first matter of 'scope of power to modify' it is a well-established principle of planning law and trite to say that a consent authority can only grant approval of the application before it. In AQC Darkbrook Management Pty Ltd v Minister for Planning and Public Spaces (2021) 247 LGERA 318 Preston CJ of LEC, sitting in the Court of Appeal, held (at [239]).

'The power to modify a development consent or an approval must be exercised in relation to the particular modification sought in the particular application or request that has been made to the relevant decision maker. An exercise of the power will not be valid unless it constitutes a determination of that application or request: see similarly, as to the need for a consent to be given to the application that has been made: Hunter Industrial Rental Equipment Pty Ltd and Dungog Shire Council (2019) 101 NSW LR1; [2019] NSWCA 147 at [297] [57]'

It also cites, in the Hunter Industrial Rental Equipment Pty Ltd vs Dungog Shire Council case, that whilst this matter was dealing with a development application it is relevant on the basis that a consent authority can only consider the particular development described in the application.

Further, it is argued that:

'... whilst Council is obliged to consider all the matters of relevance to the development identified in s4.15 of the Environmental Planning and Assessment Act (the Act), pursuant to s4.55(3) of the Act, it is only in the context of assessing and determining the specific modification application that is made.

The current application is narrow in scope and seeks to include in the detail of the approved plans specific revisions addressing the requirements of the current edition of the Building Code of Australia, with a specific view to ensuring the structural integrity of the building, appropriate paths of egress and necessary plant rooms. Importantly, no modification is proposed to the loading dock, the number of rooms, the western facade of the building, the balcony spaces or physical relationships between the development and other residential properties, nor does any modification sought result in any different view, privacy, solar access or other amenity impact.

It is apparent concerns raised by submissions and at the Public Voice meeting, are not concerns with the proposed modifications themselves but rather the already approved and commenced development.

It must be borne in mind that Council's role is to determine, either by approval or refusal, the modification application that is before it. There is no opportunity for Council to retrospectively refuse the approved development or otherwise void the existing consent, nor is there any opportunity for Council to require or impose further modifications beyond those which are sought by the applicant. This position is reinforced by the decision of the then Chief Judge of the Land and Environment Court McClellan J in 1643 Pittwater Road Pty Ltd v Pittwater Council [2004] NSWLEC 685.

In conclusion, whilst the original development application and consent may have given rise to issues with respect to noise and odours arising from the operation of the loading dock and waste disposal, view loss, overshadowing and privacy the present modification application does not touch on, impact or go to these matters in any way. They are simply not relevant to the present application and do not give rise to any basis for consideration of those matters, refusal of the application or the imposition of conditions dealing with those matters.

The built form, height, bulk and scale of the proposed modified development remain unchanged, with only relatively minor changes proposed to meet current standards, which do not present any unreasonable impacts, to that originally approved. The site continues to provide for the development of a hotel and conference facility in the same configuration as originally approved and the operational aspects of the approved development remain unchanged.

Therefore, the development being modified is considered to be substantially the same development as the development for which consent was originally granted.

Section 4.55(2)(b) - Consultation

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

The proposal as originally approved was not considered '*integrated development*' pursuant to Section 4.46 of the Environmental Planning & Assessment Act, therefore this subsection does not apply.

Section 4.55(2)(c)(i) &(ii) - Notification

The application was publicly notified for a period of 14 days, with notification closing on 17 August 2022 in accordance with CN's Community Participation Plan.

Section 4.55(2)(d) - Submissions

Thirty-four (34) submissions of objections were received (30 'unique' submissions) during the notification period.

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

When determining an application for modification of a consent, the consent authority must take into consideration the matters referred to in Section 4.15(1) that are of

relevance to the development the subject of the application, which includes the following:

- a) The provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations.
- b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.
- c) The suitability of the site for the development.
- d) Any submissions made in accordance with this Act or the regulations.
- e) The public interest.

An assessment of the modification against the matters for consideration under Section 4.15 of the EP&A Act is provided below.

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 -Coastal Management

This policy has replaced State *Environmental Planning Policy (Coastal Management) 2018*. Not unlike the aim of SEPP Coastal Management 2018, the aim of this chapter is to promote an integrated and coordinated approach to land use planning in the coastal zone in a manner consistent with the objectives of the *Coastal Management Act 2016*. The policy is supported by mapping of the following coastal management areas that comprise the coastal zone:

- i) Coastal wetlands and littoral rainforests area
- ii) Coastal vulnerability area
- iii) Coastal environmental area
- iv) Coastal use area

The site is located within a Coastal 'environment area' and a 'coastal use area' under the provisions of Division 3 (Clause 2.10) and Division 4 (Clause 2.11). Part 2.2 of the Policy indicates the development controls applicable to development on land in each of the above areas, as well as development in the coastal zone generally. Clause 2.12 requires that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to '*cause increased risk of coastal hazards on that land or other land.*'

In the assessment of the Development Application (DA2013/1236) due consideration was given to SEPP 71 – Coastal Protection, with the site identified as within the coastal zone and located within a '*sensitive coastal location*' under the provisions of the SEPP. The original development was considered to be consistent with the provisions of *Clause 8 Matters for consideration under the SEPP*.

In considering the current application under the provisions of SEPP (Resilience and Hazards) 2021 an assessment has been undertaken in relation to the site being located in both the 'coastal environment area' and 'coastal use area'.

Coastal environment area

The modified development is not considered to pose any impacts on the biophysical, hydrological (surface and groundwater) and ecological environment of the surrounding area. Further, it is not considered to have any significant impacts on coastal processes and coastal hazards. No detrimental impacts are likely on marine vegetation, native vegetation and fauna or their habitats and the site is not located on or near an undeveloped headland or rock platform.

The modified development is not likely to impede public and safe access to and along the foreshore and the opportunity, as originally approved is presented by improving public access to coastal foreshore by providing access between the ground floor retail and cafe areas of the approved development.

The original development application was accompanied by a Statement of Heritage Impact prepared by NBRIS Partners. The current modifications are relatively minor in regard to any potential impact upon aboriginal and cultural heritage, practices and places.

Coastal use area

The current modifications do not alter what was originally approved under DA2013/1236, as it relates to maintaining existing and safe access along the foreshore area. In addition, the proposal is not considered to result in any additional significant impact on views from public places or create wind tunnelling impacts.

The proposed modified development will not result in any significant additional detrimental visual impact on the scenic qualities of the area, then that originally approved under DA2013/1236.

As discussed above, the proposal is not considered to have any potential impact upon aboriginal cultural heritage, practices and places, or cultural and built environment heritage.

The proposed modified development is considered to remain acceptable in relation to bulk, scale and size in relation to the surrounding coastal environment and that, which was approved under DA2013/1236.

Chapter 4 – Remediation of land

This SEPP has replaced State *Environmental Planning Policy No.55 – Remediation of Land* (SEPP 55). Not unlike SEPP 55 the policy contains planning controls for the remediation of contaminated land.

Clause 4.6 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

Due consideration was undertaken with the original Development Application (DA2013/12360), as the site was previously used for commercial / industrial purposes. The application was accompanied by a Geotechnical Report, a Detailed Site Investigation Report, a Proposal for Contamination Site Audit and Remediation Action Plan and the site was considered acceptable, adequately able to be remediated subject to relevant conditions imposed on the development consent.

The modification application does not propose any changes to, or additional excavation or other works that require further consideration of the SEPP. The proposed modified development is considered to remain consistent with the provisions of the SEPP.

State Environmental Planning Policy (Transport and Infrastructure) 2021

This SEPP has replaced State *Environmental Planning Policy (Infrastructure) 2007* and *State Environmental Planning Policy (Three Ports) 2013*. This policy facilitates the effective delivery of infrastructure across the State.

Chapter 2 *Development in or adjacent to road corridors and road reservations*, section 2.122 *Traffic-generating development* is the relevant section under the provisions of the SEPP.

The approved development has a total of 113 parking spaces. The impact of the approved development on traffic flows was considered in the traffic report as part of the development application.

The modification application originally proposed a total of 107 parking spaces. It is noted that the application also proposes a reduction in gross floor area (GFA) due to an increase in plant / support areas in particular on levels 1 (ground) and 4 (conference), which results in a reduced car parking requirement. During assessment of the modified development, further amendments were made to achieve greater compliance with relevant Australian Standards (AS) for car parking layout, circulation / aisle widths and vehicle access arrangements, accompanied by further traffic impact assessments, prepared by SECA Solution.

The current modified development proposes on-site carparking for 100 vehicles, comprising 78 car spaces for guests and 22 spaces for staff. There is no change proposed to the site servicing over that approved under the development application.

An updated Traffic Impact Assessment (TIA), prepared by SECA Solution and dated 28 August 2023 was submitted in support of the application and to address the concerns raised at Public Voice and following, as requested during the assessment.

The updated TIA provides an assessment of local traffic and parking conditions per CN's requirements. Further discussion is provided on traffic and parking matters under Section 5.3 of this report.

The proposed modified development is considered to remain consistent with the relevant provisions of the SEPP.

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 site is located in the MU1 Mixed Use zone (equivalent zone to previous B4 Mixed Use zone) under the provisions of NLEP 2012. The proposed development is defined as a *'hotel or motel accommodation'* with *'commercial and retail premises'* and *'food and drink premises'* components of the application all of which are permissible land uses with consent.

The proposed modified development does not result in any change of use of the approved development and will remain consistent with the zone objectives, as originally assessed in this regard.

Clause 2.07 – Demolition requires development consent.

The demolition of existing structures was approved under the development application. Relevant conditions were included in the development consent. The modification application does not involve any changes to demolition aspects of the approved development. Therefore, no further consideration required in relation to Clause 2.07.

Clause 4.3 and Clause 7.9 - Height of Buildings

The site is located within the Newcastle City Centre Area but is not a 'key site' within the Centre (Clause 7.9 does not apply). The 'Height of Buildings' Map under Clause 4.3 NLEP 2012 nominates a maximum height limit of 30 metres for the site.

The development was approved with a building height of 28.7m or RL 30.10m (RL 31.25m to Lift overrun), (less than the 30-metre height limit above existing ground level at approximately RL2.00), complying with the height limit.

The modification application includes the installation of solar panels on the roof expanse of the building, resulting in a 200mm increase in maximum building height for the development. The proposed maximum building height of 28.9m or RL30.30m (RL31.25m to Lift overrun) and remains compliant with the height limit.

Having regard to the objectives of clause 4.3 and the relevant zone objectives in NLEP 2012, the scale of the development will continue to contribute towards the desired character. The minor addition in height to accommodate solar panels, will not result in unreasonable additional shadowing to adjoining developments or to the public domain, allowing for continued amenity and solar access to these areas. The building and development as modified will remain substantially the same as that originally approved.

Clause 4.4 and Clause 7.10 - Floor Space Ratio

The site is located within the Newcastle City Centre Area but is not located within 'Area A' within the Centre (Clause 7.10 does not apply). The 'Floor Space Ratio' Map under Clause 4.4 of the NLEP 2012 nominates a maximum floor space ratio (FSR) of 2.5:1 for the site. The property has an area of 4,099m².

The approved development complied with the FSR requirement, with a maximum floor space ratio of 1.63:1.

The modification application reduces the approved FSR from 1.63:1 to 1.54:1 and remains compliant with this development standard.

The proposed gross floor area (GFA) of the building and the variations sought in comparison with the approved DA2013/1236 is provided in the table below.

Level	DA Area (m2)	MA Area (m2)
Level 1 – (Ground Floor)	860	780
Level 2 – (2 x additional car spaces)	-	27
Level 4 – (function rooms + restaurant)	1520	1454
Levels 5 – 8 (4 x guest room levels – 176 rooms)	4320	4052
Total:	6700	6313
FSR	1.63:1	1.54:1

Notes

- i) On the Ground Floor, the wall on the Northern side of the driveway ramp has been shifted inwards for the columns to be in line with the columns / structure of the tower levels above. This has contributed to the reduction in GFA.
- ii) The Eastern fire stair has increased in width due to BCA requirements (overall stair width including wall thickness was 2640mm / setback 8590mm from eastern

- boundary). Now proposed with overall width of 3490mm / setback 7745mm from eastern boundary.
- iii) No real change to the western fire stair, other than the western wall has been extended to achieve BCA requirements.
 - iv) On Level 2, the additional two car parking spaces (total 47 spaces) on the S4.55, plans dated 22 June 2022 results in an additional 27m². Though Level 2 and 3 plans were further amended in response to CN's request for information.
 - v) The parking schedule for the approved development application (DA), the original modification application (MA) and amended MA, prepared by the applicant is provided under section 5.3 of this report.
 - vi) On Level 4, the amenities adjacent to function rooms have been moved inwards to carve out more room for the mechanical plant and comms room. This has contributed to the reduction in GFA.
 - vii) On Levels 5 to 8 (guest room levels), mechanical plant rooms have taken the place of housekeeping, plus the addition of all service risers, amount to a difference in GFA on these levels.
 - viii) Having regard to clause 4.4 objectives and the relevant zone objectives in NLEP 2012, the design amendments (which include some reduction in GFA) do not result in any significant change to the development footprint or building envelope. The proposal essentially maintains the overall building form, location and massing on site, as originally approved, notwithstanding a small increase in the eastern fire stairwell footprint to achieve BCA requirements. The development, as modified, will continue to contribute towards the desired character. The modifications to the fire stairs are unlikely to contribute to any unreasonable additional shadowing to adjoining developments or to the public domain, allowing for continued amenity and solar access to these areas. The building and development overall will remain substantially the same as that originally approved.

Clause 5.10 - Heritage Conservation

The site is located within the Newcastle City Centre Heritage Conservation Area (HCA) and is not listed as a heritage item, but adjoins to the east, 'Argyle House' a 'state' listed heritage item at 311 Wharf Road Newcastle. The original DA was supported by a Statement of Heritage Impact (SHI), prepared by NBRS Partners, which demonstrated an acceptable design outcome for the site.

An SIA has been submitted with the modification application, prepared by NBRS and dated 16 August 2022. The internal modifications to the hotel development are minor design changes and the increase in plant / support areas in particular on levels 1 (ground) and 4 (conference). These modifications will only affect the interior of the building and will not be visible from the public domain, therefore will have no material effect on the character or significance of the heritage conservation area or heritage items in the vicinity of the site.

The HIA states:

'The proposed modifications to the exterior of the building are minor in scope and are the result of design development changes to accommodate services and building code requirements'.

The proposed mechanical plant, grease arrestor and hydrant and pump room additions are relatively minor additions in the context of the approved development and do not constitute a substantial Increase to the size of the new building. They will be read as contemporary and a part of the hotel development. These additions will not increase the overall height of the approved development.

Externally, the proposed additions to the southern facade will comprise materials from the approved schedule of materials and finishes. The hotel will continue to be read as a contemporary development from Centenary Road.

All new external elevations will retain adequate physical and visual separation from Argyle House and are to be located within the hotel site, primarily located on the rear elevation behind the approved building'.

It is considered that the proposed modifications are minor in the context of the Newcastle City Centre HCA and the existing setting of Argyle House. The majority of external modifications are located on the rear (southern) elevation of the building which will not be visible in conjunction with the primary elevations of the adjacent heritage item. Significant views of Argyle House will remain substantially as approved.

The proposed modification application is considered acceptable in this regard.

Clause 5.21 – Flood planning

The site is affected by ocean, flash and riverine flooding during both the 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) events.

The proposed modification application shows the ground floor of the building remains at 2.90 Australian Height Datum (AHD) and the exterior parking area will be no lower than 2.50m AHD. The application is therefore consistent with the flood management requirements identified in the assessment of the original application.

Conditions imposed on the original development consent will remain unchanged.

Further details on flooding are provided under Section 5.3 of this report.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 3 acid sulphate soils – *Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.*

As originally assessed under the development application, the proposal does not propose significant ground works other than for excavation associated with footings

and therefore, does not pose a threat to exposure of acid sulfate soils and remains consistent with this clause.

Conditions imposed on the original development consent will remain unchanged.

Clause 6.2 - Earthworks

The proposal does not increase the approved excavation and no basement level is proposed in this development. The level of earthworks proposed to facilitate the development has been considered to be acceptable having regard to this clause under the original DA2013/1236. The proposal is consistent with this clause.

Conditions imposed on the original development consent will remain unchanged.

Clause 6.5 Public safety – licensed premises

The current application does not propose any changes to the operational aspects of the approved development. The original DA2013/1236 was referred to both the Liquor Licensing Group and NSW Police and support was given subject to recommended conditions.

Conditions imposed on the original development will remain unchanged.

Part 7 Additional Local Provisions—Newcastle City Centre

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the city centre, which includes promoting the economic revitalisation of the city centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The modified development is considered to remain consistent with the objectives of Part 7 of the NLEP 2012.

Clause 7.5 – Design Excellence

The original development application was considered on several occasions by the former Urban Design Consultative Group (UDCG) as plans were further developed and refined. The modification application was not considered to warrant referral to the Urban Design Review Panel given the nature and scale of the proposed modifications. The proposed modified development remains consistent with the originally approved development and consideration of design excellence.

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.

Flood Management - Section 4.01

The information provided in the Newcastle City-wide Floodplain Risk Management Study and Plan (BMT WBM June 2012), identifies the site as affected by ocean, flash, and riverine during both the 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) events.

The site is known to be affected by fringe riverine flooding however the full extent and behaviour of this flooding has not been investigated in flood studies of this area. Data may become available in the future.

The following requirements were determined in the engineering assessment of the development application based on the available flood information and Section 4.01 of the Newcastle Development Control Plan (2012):

- a) Floor levels of any occupiable rooms in a new development on this site shall not be lower than the flood planning level (2.90m AHD).
- b) Surface levels of the exterior car park are set no lower than the 1% Annual Exceedance Probability flood level (2.50m AHD).

A review of modified architectural plans confirms the ground floor of the building remains at 2.90m AHD and the exterior parking area will be no lower than 2.50m AHD.

The modified development will continue to be compliant with flood management requirements stipulated in the assessment of the development application. The proposal is acceptable in relation to flooding, and conditions imposed on the original development consent will remain unchanged.

Mine Subsidence - Section 4.03

The site is identified within a Proclaimed Mine Subsidence District. The Mine Subsidence Board granted approval to the original proposal and issued their concurrence to the proponent dated 14 November 2013, prior to lodgement of the development application.

Given multiple amendments made during the assessment process and the lapsing of the Board's original approval, the proponent resubmitted the last round of amended plans to the Board for their approval. The Mine Subsidence Board issued a letter dated 29 March 2016 confirming 'conditional approval' of the amended proposal subject to a number of conditions requiring various engineering requirements to be fulfilled. This 'conditional approval' remained valid for two years.

Condition 23 of the development consent was included that requires the plans for the Construction Certificate application to be reviewed and approved by the Mine Subsidence Board prior to lodgement of a Construction Certificate.

The development application and the current modification application have not been lodged as an 'integrated development' and therefore, the responsibility remains with the applicant to ensure they have the relevant approval required from Subsidence Advisory NSW (formerly Mine Subsidence Board).

Condition 23 imposed on the development consent will remain unchanged.

Safety and Security - Section 4.04

The original development was considered to have adequately addressed safety and security consistent with this section, with the development achieving good surveillance by providing clear sight lines between private and public spaces, effective lighting of public places, attractive landscaping adjacent to Wharf Road and activation of the Wharf Road street frontage. Activation was considered on the following basis:

- 1) Location of retail space and main entry to the Hotel and conference centre.
- 2) Proposed CCTV to the car park areas and entry foyers of the Hotel and external cameras to the at-grade car parking areas.
- 3) Restricted access to internal high-risk areas.
- 4) An overall building design and functionality with frontage to two public streets which allows increased casual surveillance of all surrounding footpath areas.
- 5) The provision of a public pedestrian connection through the site from Centenary Road through to Wharf Road which provides for good connectivity and safety and security for pedestrian connection through street blocks.

The modified development remains consistent with the originally assessed development and consideration of 'Crime Prevention through Environmental Design' (CPTED) principles. The proposed modifications that include increased landscaping, sprinkler hydrant pump room and a re-located and resized electrical substation, within each street frontage are not considered to significantly alter acceptable levels of safety and security achieved under the development as originally approved.

Soil Management - Section 5.01

The current application has considered earthworks in this assessment report, in accordance with Clause 6.2 Earthworks of NLEP 2012.

Land Contamination - Section 5.02

The current application has been considered in this assessment report, in accordance with State Environmental Planning Policy (Resilience and Hazards) 2021 and remains acceptable.

Newcastle City Centre - Section 6.01

The site is identified as within the Newcastle City Centre and is within the *Civic* character area.

The following extracts from the original assessment report demonstrate how the approved development responded to - Building Form and Public domain under Section 6.01.03-General Controls:

Building Form

A1. Street wall height - The site does not have an identified street wall height as shown on the street wall height plan within this section. However, a typical street wall height of 16 metres and typical 6 metre upper-level setback is intended to assist in ensuring a consistent building scale in streets that have a mix of uses, heritage items and infill development.

The development is not proposed to be built to the street boundary at any point and has an articulated setback along both street frontages in Wharf Road and Centenary Road consistent with other development within the streetscape. Increased setbacks both from Wharf Road and along the eastern side boundary in respect to the heritage item 'Argyle House' have been provided to lessen the impact and given respect to the value of the heritage item. Argyle House is well forward of the proposed building in close proximity to the Wharf Road boundary. The proposal also maintains a consistent front setback from Wharf Road to the adjoining property to the west to ensure some consistency with built form along this road frontage and without significant adverse impact to this adjoining mixed-use development on the western side property.

A2. Building setbacks - The controls require a minimum setback for side and rear boundaries - Below street wall height: requirement is zero setback and between street wall height and 45m: requirement is a 6 metre setback.

The proposal provides an articulated design with varying setbacks along both side and rear boundaries. A zero setback along the western side boundary (toward the Wharf Road front portion of the site) is provided for wall lengths ranging from 7 metres - Level 1 Ground Floor up to 13.02 metres - Level 2 Floor Plan, then decreases to 8.970 metres - Level 3 & Level 4 Floor Plan and decreases to 4.6 metres - Level 5 & 7 and Level 6 & 8 Floor Plans.

Essentially, the zero setback for Level 5 & 7 and Level 6 & 8 relates to the stair well only. The remainder of the building is setback along the western boundary 2.6 metres with the maximum wall length at this setback being 20.015 metres.

The proposal does seek a variation to the western side setback, as it relates to between street wall height and 45m, as the building when it reaches 16 metres up to approximately 28 metres (outermost point of roofline) is only setback 2.6 metres. The typical street wall height diagram within the NDCP 2012 suggests a 6 metre setback.

Setbacks are provided along the eastern side boundary (adjoining Argyle House) without any part of the building located with a zero setback. The minimum setback to

this side boundary is 11.230 metres (to stair well 8.590 metres) and the maximum wall length along the boundary provided with setbacks as outlined is 13.340 metres. These increased setbacks and reduced built form is to assist in respecting the heritage item on the adjoining site which is located in close proximity to both Wharf Road and the side boundary.

The minimum rear (Centenary Road) boundary setback is 3.450 metres toward the eastern end of the site and increases to approximately 19 metres at its closest point and increase to approximately 33 metres for upper Levels 5 & 7 and Levels 6 & 8 at the western end of the site.

Whilst the proposal does not meet the 6 metre setback requirement for building height 'between street wall height and 45m', the proposal provides an increased setback for the majority of the building rather than zero 'below street wall height' and varies in building depth along the western boundary to ensure adequate separation is achieved between the site and the adjoining mixed use / residential development at 319 Wharf Road, Newcastle.

Overall, in considering the built form and massing, setbacks provided and articulation and depth of building along this boundary, the reduced setback is considered acceptable.

A4. Building depth and bulk - The proposal is consistent with this element as the design of the building has provided articulation and as the building increases in height, the depth and floor plate of the building reduces.

A5. Building exteriors - the proposal is consistent with this element providing building design with materials and finishes that are in keeping with the character of this precinct.

A6. Heritage buildings - the site is located within the Newcastle City Centre Heritage Conservation Area, but is not a listed heritage item. The adjoining property to the east is a listed heritage item known as Argyle House.

A Statement of Heritage Impact was lodged with the application, and subsequent amendments were made to the proposed plans which seen an increased setback to both Wharf Road and along the eastern boundary so as not to detrimentally affect the heritage item.

The proposal is considered acceptable within the existing streetscape and context within which the site is located.

A8 Design of parking structures - the proposal makes provision for at grade and above ground carparking within the building accessed from the rear (Centenary Road) site frontage.

The majority of car parking is incorporated into the building, with only seventeen (17) spaces outside along the (rear) Centenary Road frontage. This section of carparking has been appropriately incorporated into the landscape design for the entire site. The primary frontage to the site is the Wharf Road frontage and no access, traffic or parking

is proposed off Wharf Road. However, the Centenary Road frontage is proposed to facilitate access, parking and service vehicles as well as achieving presentation to this street frontage with pedestrian entry into the lobby area and also public access through a terrace walkway through the building to gain access to the retail premise and out onto the forecourt at street level on Wharf Road. The provision of this pedestrian public connection between Centenary and Wharf Road is a positive contribution and of public benefit.

Public Domain

B1. Access network - the proposed development will not impact on the city access network.

The development does make a positive contribution to public pedestrian access by providing through-site connections in the form of an arcade / terrace within the site / building from Centenary Road onto Wharf Road being the main frontage. This connection complies with the minimum width requirement, open to the air and is both a connection and active frontage for the proposed café and retail premises within the main building on the site.

B2. Views and vistas - the proposed development will not significantly impact on existing views and vistas.

B3. Active street frontage - the site is not identified on the active street frontages plan contained within this section. However, the development incorporates an active street frontage along the full length of the primary frontage of Wharf Road and also provides public / pedestrian connection from Centenary Road through an arcade / terrace area through the building to the active café and retail premises and out onto the forecourt and public domain on Wharf Road.

The proposed modified development will remain consistent with the development as originally approved with only relatively minor changes to setbacks as follows, which are not considered to present any significant adverse impacts on surrounding properties or within the public domain.

- i) Eastern fire stair - is wider than originally approved (ie. approved overall stair width 2.640m and setback 8.590m from eastern boundary), proposed at width of 3.490m & setback 7.745m from eastern boundary.
- 2) Western fire stair - no obvious change, except that the western wall has been extended (extension of wall alone - not fire stair) for fire rating purposes. Wall extended from 4600mm wide to 7690mm wide along the western boundary and then reduces back down to 4700mm from Level 2. The wall extension is not obvious as it relates to an area that adjoins a solid wall on the adjoining property.

Heritage Conservation Areas - Section 6.02

The current application has considered heritage aspects in this assessment report, in accordance with Clause 5.10 Heritage conservation of NLEP 2012.

Landscape Open Space and Visual Amenity - Section 7.02

The application includes some modifications to the landscape design of the approved development, due to changes in the Building Code of Australia (BCA) that requires additional services at ground floor level. However, the modified development remains consistent with the number of tree plantings that formed part of the approved development. Accordingly, the landscaped setting to the adjacent heritage item 'Argyle House' remains as originally approved.

The services at ground level required to be provided relate to the relocation and enlargement of an electrical substation located on the Wharf Road frontage and a new Hydrant and Sprinkler Pump Room located on the Centenary Road frontage. These facilities are required to achieve BCA compliance, with both their location and size dictated by BCA and *Ausgrid* requirements.

While the development as proposed to be modified is considered to remain acceptable in the context of the site and surrounding area and provisions of this section, additional landscaping was required around these service structures to assist in visually screening and softening of these structures within view of the public domain. Following the outcome of Public Voice and in response to assessment matters raised, an amended landscaping plan has been submitted which provides for additional landscaping within these locations, negating the need to include this requirement as a recommended condition of consent.

The amended landscaping proposal is considered acceptable, and results in an improved outcome for the site, surrounding streetscape and public domain.

Traffic, Parking and Access - Section 7.03

Vehicular Access, Driveway Design and Crossing Location

The original modifications included the following changes to the layout of the parking on levels 1 to 3:

1) Level 1 (Ground):

- a) Total number of car parking spaces (21) remains unchanged from the approved development.
- b) Hardstand parking in the south building setback has been reconfigured as a two-sided blind aisle approx. 6.0m wide.
- c) Proposed ground floor parking comprises 17 Class 2 (hotel & entertainment centres) and four accessible parking spaces, compared to 19 and 2 spaces, respectively.

2) Level 2

- a) Total number of car parking spaces (47) remains unchanged from the approved development.

- b) The proposed revised layout consists of a circulation aisle loop of variable width 4.55m-6.5m around the vehicle ramp with a blind aisle extending out to the east. The total parking inventory contains:
 - i) 32 x 90-degree parking spaces
 - ii) Nine parking spaces in a tandem configuration
 - iii) Six parallel parking spaces.

3) Level 3

- a) Total number of car parking spaces (39) reduced from the 45 car spaces of the approved development.
- b) The proposed revised layout consists of a circulation aisle loop of variable width 4.5m-6.5m around the vehicle ramp with a blind aisle extending out to the east. The total parking inventory contains:
 - i) 31 x 90-degree parking spaces
 - ii) Six parallel parking spaces
 - iii) Two accessible parking spaces.

4) Valet Parking

- a) Tandem parking spaces (18 spaces) on Level 2 are proposed to be managed as part of a valet parking service at the development.
- b) User Class 1 parking spaces (25 spaces) on building levels 2 and 3 are proposed to be used for staff parking or will form part of the valet parking service.

During the assessment, the applicant submitted a supplementary Parking Impact Assessment and amended plans to address concerns raised by CN officers with regards to the previously proposed valet service (request plan of management), amendments to ensure that parking (except accessible spaces subject to AS/NZS 2890.6:2009) proposed on level 1 (ground) are fully compliant with AS/NZS 2890.1:2004 requirements for User Class 2 parking and turning path information demonstrating vehicle circulation on levels 2 and 3 (showing all turns entering/existing the ramps), with all circulation aisles to be clearly indicated on plans as being one-way or two-way.

Further changes were made to the layout of on-site car parking in response to CN's request for information dated 18 November 2022, as outlined in summary above.

- a) Valet parking no longer proposed as part of the modified development.
- b) On the ground floor (Level 1):

- i) Parking capacity reduced from 21 to 20 car spaces.
 - ii) Six car spaces have been nominated for electric vehicle parking.
 - iii) All parking spaces have been made compliant with dimensional requirements in AS/NZS 2890.1:2004 for User Class 2 parking (min. 5.8m aisle, space dimensions 2.5m x 5.4m).
 - iv) The entry boom gate has been set back 6.0m from the boundary to allow a vehicle to stand entirely within the property while waiting to enter.
- c) On level parking (Levels 2 & 3)
- i) Parking capacity reduced from 86 to 80 car spaces.
 - ii) All parking spaces have been made compliant with dimensional requirements in AS/NZS 2890.1:2004 for User Class 2 parking (space dimensions 2.5m x 5.4m). The north parking aisle remains non-compliant at 5.15m wide (5.8m required).
 - iii) Turn path diagrams have been submitted demonstrating access to the proposed tandem car parking spaces via a reverse-in movement. These spaces are proposed to be signposted for reverse-in only parking.
 - iv) Residual space remaining from the reconfiguration of parking have been designated for motorbike parking.

Valet Service

As indicated above, valet parking is no longer proposed at the development. The 22 (increased from 18) tandem parking spaces are proposed to be managed as staff parking and this arrangement is considered acceptable.

Parking Class

The development for *hotel and conference centre* is required to provide parking suitable for the User Class 2 category which, in accordance with Table 1.1 of AS/NZS 2890.1:2004, are appropriate for uses such as '*...long-term city and town centre parking, sports facilities, entertainment centres, hotels, motels, airport visitors (generally medium-term parking).*'

Typical 90-degree parking spaces of the User Class 2 category must be 2.5m wide, 5.4m in length, and be accessed from a circulation aisle at least 5.8m wide.

A number of car spaces in the modified parking layout of Level 1 (ground) and in previously approved parking areas in levels 2 and 3 do not meet the minimum dimensional requirements of User Class 2 parking. The Traffic Impact Assessment (TIA) proposes that these narrower spaces '*...with widths of 2400mm (including columns) would be suitable for staff parking or can form part of a valet service or provide for long-stay guest parking rather than high turnover spaces.*'

Car parking spaces on the ground floor would likely be utilised by visitors/customers for brief stays or to drop off vehicles for the proposed valet service, generating a high turnover. Parking spaces on the ground floor must therefore fully comply with dimensional requirements of User Class 2 parking.

During assessment, the applicant was requested by CN officers to amend the proposed architectural plans such that parking (excepting accessible spaces, which are subject to AS/NZS 2890.6:2009) proposed on Level 1 (ground) are fully compliant with AS/NZS 2890.1:2004 requirements for User Class 2 parking.

All parking spaces on the ground floor have been made fully compliant with AS/NZS 2890.1:2004 for User Class 2 parking (minimum 2.5m x 5.4m w/ 5.8m aisles). The proposal is now acceptable regarding this issue.

Aisle Width

The layout of parking on levels 2 and 3 have been reconfigured in the proposed modification application.

It is noted the northern row of 90-degree parking spaces on levels 2 and 3 are accessed via a circulation aisle that is only 5.09m wide, which is short of the 5.80m width required for User Class 2 parking and Clause 2.3.2(a) of AS/NZS 2890.1:2004.

The Statement of Environmental Effects (SEE) acknowledges this non-compliance in the context of the tandem parking spaces on Level 2 quotes advice from their traffic engineer:

'Aisle width on L2 and L3 to be 6300mm but only allows 5088mm to parallel space. Autoturn demonstrates that the 90-degree tandem parking spaces can function with vehicles reversing in. As these tandem spaces are to be managed as part of the valet parking this is considered acceptable.'

The same issue is noted on Level 3, wherein the northern row of 90-degree parking spaces is accessed via a non-compliant 5088mm wide circulation aisle. CN officers requested the applicant to clarify if the northern row of 90-degree parking spaces on Level 3 will also be managed as valet parking.

In addition, the applicant was also requested to submit the turning-path diagrams referenced in the SEE. Additional turning paths were also to be provided demonstrating vehicle circulation on Levels 2 and 3 (showing all turns entering/exiting the ramps). All circulation aisles were to be clearly indicated on plans as being one-way or two-way.

Car parking on Levels 2 and 3 have been reconfigured to comply with AS/NZS 2890.1:2004 for User Class 2 parking with the exception of the north aisle, which remains non-compliant at a width of 5.15m (5.8m required).

The submitted turn path diagrams (i.e. B85) demonstrate that, despite the narrow aisle, vehicular access to the northern row of 90-degree parking spaces on Levels 2 and 3

is possible via reverse-in parking. The applicant proposes the use of appropriate signage to designate these spaces as reverse-in only.

Circulation between floors and within floors is demonstrated via the use of turn path diagrams using the standard B85 vehicle template.

The amended vehicular access arrangement is now considered acceptable.

Access points

The major vehicular and pedestrian access points of the approved development will remain unchanged by the proposed modification application. Vehicle access to the development will only be provided from a 7.3m wide two-way driveway crossing to Centenary Road. The hotel building and adjacent arcade will have main pedestrian entry points to both Centenary Road and Wharf Road.

The modified development will increase the number of service and emergency pedestrian access points. Three new doorways are proposed to the Centenary Road frontage for access to new plant rooms on the ground floor. One new access doorway is proposed to the Wharf Road frontage to provide a second pedestrian entrance to the Loading Dock.

A new fire escape stairwell is proposed leading to a new emergency access doorway adjacent to the main hotel pedestrian entrance in Centenary Road.

These changes are not expected to result in a significant increase to pedestrian and vehicle traffic generated by the development.

Plug-in Electric vehicle charging stations

During the assessment, it was recommended that the applicant consider current and future demand for plug-in electric vehicle (EV) charging points and integrate EV charging infrastructure to proposed parking areas where warranted.

Where charging points are not provided, allowances were required for future installation (with minimal disruption) of charging points and associated electrical infrastructure to a minimum of 5% of parking spaces (five spaces).

In response, the design of the modified development now includes six car spaces on the ground floor, nominated for EV parking.

Parking for servicing

During assessment, it was recommended that the applicant consider designating at least two car parking spaces for use by servicing and trades parking at the development.

The applicant's traffic engineer notes that peak parking activity at hotels tend to be before 10am when guests depart, and after 2pm when guests typically arrive. It is also noted that servicing at hotels typically occur during the day and will have little conflict

with peak parking activity. As such, the traffic engineer has indicated that the reservation of parking for servicing and trades will not be necessary. This response is considered acceptable.

Boom gate setback

During assessment, it was recommended that the applicant consider relocating the entry boom gate to provide a standing area at least 6.0m in length from the boundary to allow a vehicle to egress the public roadway completely while waiting for the boom gate to open.

The entry boom gate has now been setback 6.0m from the boundary allowing at least one vehicle to stand entirely within the property while awaiting entry.

Parking demand

The modified development, as originally proposed, included the following:

Use	NDCP Parking Rate	Relevant Quantity	Parking Requirement
Non-residential use, city centre	1 space per GFA	Level 1 (G): 788m ² Level 4: 1500m ² Levels 5 - 8: 4 x 1045m ² Total: 6468m ²	107.8 car spaces
		Provided:	107 car spaces 10 motorbike spaces 10 bicycle parking spaces

The original proposed modification represented an overall reduction of on-site car parking from the 113 spaces approved in DA2013/1236 to 107 spaces. It is noted, however, that the overall GFA of the development will decrease due to an increase on plant/support areas in particular on Levels 1 (ground) and 4 (conference).

A scaled measurement of plans found the new GFA to be 6,468m² however this is an overestimate as partition walls were not carefully excluded from area measurements. The applicant's estimate of 6,313m² is likely to provide a more accurate estimate of GFA in the modified development, generating a car parking requirement of 105.2 car spaces.

The original modified proposal, with provision of 107 car spaces (two in excess), 10 motorbike spaces, and 10 bicycle parking spaces was considered to satisfy parking accommodation requirements for non-residential development in the city centre.

During assessment of the application further amendments were made to achieve greater compliance with relevant Australian Standards (AS) for carparking layout, circulation / aisle widths and vehicle access arrangements, accompanied by further traffic impact assessments, prepared by SECA Solution.

The current modified proposal provides on-site carparking for 100 vehicles, comprising 78 car spaces for guests and 22 spaces for staff. There is no change proposed to the site servicing over that approved. The small reduction in GFA for the retail / commercial space may result in a slight reduction in traffic demands over that previously assessed and approved. The following summary is provided of the originally approved development, original modified development proposed and the current modified development proposal:

DA Parking Schedule	MA Parking Schedule	Amended MA Parking Schedule Rev D Plans - Level 1 (Ground Floor) - retail / hotel lobby service areas / parking (20 spaces)
Level 1 - 21 spaces	Level 1 - 21 spaces	Level 1 - 20 spaces
Level 2 - 47 spaces	Level 2 - 47 spaces	Level 2 - 45 spaces
Level 3 - 45 spaces	Level 3 - 39 spaces	Level 3 - 35 spaces
Total: 113 spaces Parking Rate 1/60m ² GFA	Total: 107 spaces Parking Rate 1/58.75m ² GFA	Total: 100 spaces Parking Rate: 1/63.13m ² GFA Legend: EV1-6 Electric vehicle space

The current proposal will therefore have a parking deficiency of 5-7 spaces based on CN's requirement. This is considered acceptable based on the following reasons:

- a) The proposed level of deficiency is considered minor.
- b) This deficiency was the result of changes necessary to make on-site parking compliant with minimum requirements.
- c) Additional parking cannot be provided without significant changes to the structure, which exceeds the scope of this modification.

- d) A slight reduction to on-site parking is in alignment with goals set out in CN's "On the Street" 2021 parking plan to limit parking in centres where strong public transport exists.

The proposal is now considered acceptable in relation to proposed changes to car parking provision on site. Conditions imposed on the original DA2013/1236 are recommended to be amended where relevant. Refer to **Attachment B**.

Existing utilisation of site for Rydges Hotel parking

Submissions received by CN note the development will displace a considerable level of parking that may have been leased to Rydges Hotel (350 Wharf Road / Lot 5001 DP 1049339) for use in its valet parking service to manage parking overflow. Concern is raised in these submissions that the loss of these parking spaces would exacerbate demand on existing on-street parking in the local area.

Similar concerns were raised during the assessment of the development application. The issue was investigated and addressed in the second engineering referral dated 29/08/2014:

Additional comment: A point has been raised that a section of the existing private carpark on the site is currently used as valet parking for the adjacent Crown Plaza hotel, that will be lost due to this development. Any obligation that Crown Plaza may have to provide off-site parking, however, should be considered as a private arrangement that should not affect the merit assessment of this application.

The original development consent issued by the former Department of Urban Affairs and Planning for the hotel at 350 Wharf Road (DA 211-06-2000) was examined to verify the land at 317 Wharf Road (Lot 16 DP 1258951) was not bound by any condition of consent regarding valet parking. A valet service is referenced only in condition 2.3.1 which stipulated:

2.3.1 The Hotel operator will operate a valet parking service for parking of vehicles of hotel guests in circumstances where the demand of parking exceeds the on-site parking supply.

The condition makes no specific reference to any particular land or location at which the excess parking must be accommodated, only that this excess be managed by a valet service.

A review of DP 1258951 could not locate any easements for parking or access burdening the development site.

The subject site (ie 317 Wharf Road) is therefore not found to be burdened (beyond private agreements) by overflow parking demand from 350 Wharf Road as a result of the operation of the valet parking service required by DA 211-06-2000.

It is acknowledged, however, that the development of 317 Wharf Road may remove a supply of parking utilised by the existing hotel at 350 Wharf Road. The burden and responsibility to manage this shortfall, however, lies with the operator of Rydges Hotel

to seek alternative parking accommodation to manage its parking requirements in accordance with condition 2.3.1 of consent DA 211-06-2000.

Therefore, as the subject site is not burdened by a requirement to provide overflow parking for 350 Wharf Road development, this issue is not relevant for the current modified development.

Traffic Generation

The current modifications constitute a reduction in overall gross floor area and slight reduction to on-site parking provision. These modifications do not include any changes that may significantly alter the level of pedestrian and vehicular traffic generation of the approved development.

Addendum to address issues raised at Public Voice

The traffic and parking impact prepared by SECA Solution (01/07/2022) accompanying the modification application did not provide a reassessment of traffic impacts generated by the development as a whole. It assumed the conclusions of the Intersect Traffic report dated April 2014 in support of the development application were still relevant and concluded a reassessment was not necessary as both the GFA and number of hotel rooms will be reduced in the modification.

A key concern raised by submissions and in Public Voice was that this April 2014 study by Intersect Traffic no longer reflected existing traffic and parking conditions in the Honeysuckle area following significant redevelopment of the city which included the removal of the heavy rail network west of the historic Wickham train station. It is noted the traffic data relied upon in the April 2014 study were linearly extrapolated from older traffic studies from 2005 and 2007.

During assessment, CN staff requested an updated Traffic Impact Assessment (TIA), using current traffic data. The parameters of this new TIA were recommended as follows:

- a) A general review of the existing road network that reflects current conditions (i.e. update of section 3.0 of the April 2014 study).
- b) Traffic movements to be resurveyed at the following intersections during a typical weekday:
 - i) Workshop Way and Merewether Street (Roundabout)
 - ii) Wharf Road and Argyle Street (T-junction)
 - iii) Argyle Street and Centenary Road (T-junction)
 - iv) Merewether Street and Centenary Road (T-junction)

- c) Traffic generation estimates and SIDRA modelling of the above intersections to determine the likely impact of the proposed development on existing levels of service.
- d) A comparison of traffic data and modelling outcomes with the April 2014 study findings to highlight key differences.
- e) A general review of alternate transport modes and pedestrian facilities in proximity to the development (i.e. update of Sections 12.0 and 13.0 of the April 2014 study).
- f) An assessment of existing on-street parking availability in the context of the now-proposed parking deficiency.

Conclusions and recommendations based on updated modelling and findings.

An updated TIA was prepared by SECA Solution and dated August 2023 was submitted, based on the requirements as outlined above. The TIA provided a contemporary assessment of local traffic and transport conditions including:

- a) A general review of the current road, cycling, and pedestrian network following the removal of the heavy rail line.
- b) Current on-street car parking restrictions and availability based on a Monday (21 August 2023) and Thursday (17 August 2023).
- c) Current public transport modes and frequencies including heavy rail, light rail, and bus.
- d) Existing traffic flows, using intersection surveys undertaken during peak AM and PM windows on the 17 of August 2023.

Key findings from the report include:

- a) A high level of short-stay (2P & 1/4P) on-street parking availability in Centenary Road to the south of the development.
- b) Minimal delays (Level of Service A) modelled in SIDRA at all four intersections surveyed as part of the study. This Level of Service remains unchanged at 2023 with inclusion of development traffic (101 peak hour vehicle trips) and 2% per annum background growth.
- c) Significantly lower traffic flows were observed in 2023 survey data than was calculated by Intersect Traffic in their extrapolation of 2005/2007 data out to 2013.

The updated TIA provides a contemporary assessment of local traffic and parking conditions per CN's requirements. Notwithstanding, the development has an approval in place, this updated TIA demonstrates the site remains suitable for this development having taken into account the current environment.

Conditions where relevant have been amended and included in the Draft Schedule of Conditions at **Attachment B**.

Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The stormwater management plan of the approved development has been updated by MPC Consulting Engineers, however the overall system design has not changed. Roof rainwater will be collected to a below-ground 34,000 L retention and reuse tank that will be reticulated back into the development. Tank overflows and runoff over the south car park will drain to pits and pipes system conveying to a 44,600 L retention tank for polishing before being discharged to an existing kerb inlet pit (SW0022961) in Wharf Road.

The modified plans display a stormwater management system largely identical to the system approved under the development consent. The below-ground rainwater tank has been relocated slightly with no consequence to its function.

The proposal is acceptable in relation to water management. Conditions where relevant have been amended and included in the Draft Schedule of Conditions at **Attachment B**.

Waste Management - Section 7.08

The proposal will remain consistent with the approved plans / documentation regarding waste management under the development consent.

Development Contributions

The proposal originally sought to amend Condition 3 (DA2013/1236) to defer the timing of payment for local infrastructure contributions until the Occupation Certificate stage, facilitated by a Ministerial Direction.

It is considered that this consent falls outside of the Ministerial Direction and payment required by condition 3 is required with the first construction certificate of building works, i.e. provided the development has lawfully commenced.

The applicant in response, advised that *'after consulting with our client and solicitor, we accept Council's position in relation to the contributions and therefore, request Council produce an invoice to pay the required contributions.'*

Further email advice was received 8 September 2023 from the applicant confirming *they 'no longer wish to pursue this condition 3 amendment in the application.'*

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The original application was considered pursuant to the provisions of the EP&A Act requirement to comply with AS2601 – Demolition of Structures and appropriate conditions relating to demolition works were imposed on the development consent.

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations. In addition, the following impacts are further discussed, and primarily relate to the approved development.

Acoustic Impacts

Submissions raised concern regarding acoustic impacts primarily from the operations of loading dock, traffic access and parking facilities, operations of the development and the additional plant room facilities.

The original development was supported by an Acoustic Report, prepared by Atkins Acoustics Pty Ltd and dated April 2014 and Plan of Management, which addressed matters including plant and equipment, the hotel's licensed area and conference facilities, deliveries and servicing.

In addition, the following conditions were imposed on the development consent in relation to reduced operating hours to ensure appropriate noise levels are maintained and to reduce the potential for anti-social behaviour associated with late night extended trading hours.

27. That all balconies adjoining 335 Wharf Road on the western elevation have suitable screening to protect the amenity on the neighbouring properties. Full details to be provided with documentation for a construction certificate.

65. Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the Noise Assessment prepared by Atkins Acoustics Pty Ltd, dated April 2014. Written final certification confirming the recommended acoustic treatment has been implemented in accordance with the requirements of the above report is to be submitted to the Principal Certifying Authority and Council prior to issue of an Occupation Certificate.

Note: The acoustic consultant may need to be involved during the construction process in order to ensure final certification is achieved.

There are also conditions that relate to operating hours, maximum patronage within the cafe, restaurant/bar and function rooms and premises to operate in accordance with the Management Plan (ie. Condition 69, 70 and 81). Musical entertainment and amplified sound within the restaurant and function areas to between 7:00am and 10:00pm via Condition- 82.

The current application includes modifications to plant rooms and additional plant on roof, and in response to CN's request, an Addendum Acoustic advice prepared by Atkins Acoustics dated 24 March 2023 was submitted which gives due consideration to those aspects of the approved development proposed for change, that being the plant rooms, roof plant and amendments to loading dock area. This Addendum Acoustic advice notes the conclusions reached in the Noise Assessment report dated 2014 for DA2013/1238. Mechanical plant associated with the development has not been selected and thus no external noise emissions have been assessed as part of this assessment. The acoustic consultant however has recommended that a detailed assessment be carried out once the plant has been selected so that any potential acoustic treatments can be incorporated into the design of the building to ensure compliance with the relevant noise criteria. This recommendation is supported by CN officers and will be addressed by an appropriate recommended condition of consent.

In addition, the current plans now provide for an acoustic screen enclosure around the roof top plant, proposed to be located under the roof top undercroft area. A condition is recommended to ensure the proposed acoustic screen enclosure is suitable for purpose.

Condition 27 of DA2013/1238 required screening of all western balconies, with details to be provided at construction certificate stage. In response to questions raised regarding screening at Public Voice, the applicant has provided in response, the location of privacy screens (required in Condition 27). This information also includes a solid screen wall at the western end of the function terrace, which will assist with both visual and acoustic privacy in this location (required in Condition 27).

The consultant has also recommended restricting deliveries and waste collection to daytime hours and a recommended condition could be imposed on any modified consent granted that, goods deliveries and waste collection from the premises is to be limited to 7:00am to 6:00pm Monday to Sunday.

Condition 84 of the development consent further restricts the use of the loading bay; however, this could be amended to reference goods deliveries and waste collection from the premises and maintain the existing more limited hours for these operations.

Condition 84 of DA2013/1238 requires:

84. The operational hours of the loading bay are to be not more than Monday to Friday 7.00am to 5.00pm and Saturday between 8.00am and 12.00pm.

An additional condition is recommended to be imposed as follows:

The acoustic performance of all mechanical plant and equipment associated with the building being assessed by an appropriately qualified acoustic consultant prior to the issue of any required Construction Certificate. Appropriate acoustic treatment as recommended by the acoustic consultant being designed prior to the issue of a Construction Certificate. Written certification from an appropriately qualified acoustic consultant being submitted to the Principal Certifying Authority prior to issue of an Occupation Certificate confirming that noise from all mechanical plant and equipment

achieves the required acoustic attenuation to comply with the conditions of consent and the requirements of the *Protection of the Environment Operations Act 1997*.

The proposal and extent of amendments are not considered to give rise to any significant changes in acoustic impacts associated with the original development and remains consistent with the approved development.

Privacy impacts

Submissions raised concern regarding visual privacy impacts associated with the approved development, its proximity to adjoining properties and nature of operations to be carried out on site.

As discussed above, Condition 27 of the development consent requires privacy screening on all western balconies, of which the applicant has now provided positioning of these screens on plans for CN.

The original assessment under DA2013/1238 considered that *'...the proposal would not pose a significant adverse impact on the visual or acoustic privacy of any adjoining property. The mixed-use residential apartments on the property adjoining to the west will continue to be afforded a reasonable level of privacy through setback both on and off site, articulation and building design so as not to introduce intrusive openings within this elevation of the building. As the proposed building increases in height, the building mass and depth reduces which also provides greater relief in terms of privacy provision.*

The proposed modified development is not considered to pose any additional visual privacy impacts.

Overshadowing

The proposed modified development is not considered to present any significant impacts on the solar access for adjoining properties. As discussed within the original assessment under DA2013/1238 considered that *'...shadow diagrams were submitted with the application indicating that whilst some overshadowing will occur during any given day, an acceptable level of solar access will be maintained to adjoining properties consistent with relevant requirements.'*

The proposed amendments to the original approved development will not have any undue adverse impact on the natural or built environment. The proposal remains within an established mixed-use environment, the modifications proposed are considered minor in nature and unlikely to result in any significant adverse impacts on site or on surrounding properties. The scale of the modifications remains consistent with the built form and streetscape of the area. External changes are considered reasonably minor, when compared to that of the original approved development, and not considered to generate adverse impacts to the heritage conservation area and adjoining heritage listed building.

The development will remain compatible with the existing character, bulk, scale and massing of development originally approved for this site under DA2013/1236 and in the immediate area.

View loss

The proposed modified development with extent of change, is considered minimal in the context of overall built form, bulk and scale originally approved under DA2013/1236, and as it relates to any additional significant impact on views from public places or further limit view sharing from surrounding properties to public places.

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 with the original development application.

The site remains suitable for the proposed development as it is located in the Newcastle City Centre, which is well serviced by public transport and community facilities. It is considered that adequate services and waste facilities remain available to the development and consistent with the original development consent.

The constraints of the site have been considered in the proposed development, which includes flooding, contamination, acid sulfate soils and heritage and where relevant discussed elsewhere within this report.

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

The application was notified in accordance with CN's Community Consultation Plan. Thirty-four submissions of objections were received during the notification period (of which 30 were unique submissions).

The proposal was considered at the Public Voice Committee Meeting held on 26 April 2023.

The key issues raised within the submissions have been discussed previously in this report.

5.9 The public interest

Given the nature and scale of the proposed amendments that form part of this modification application, the site context and location, the development as modified does not result in any unreasonable impacts to adjoining properties or the public domain. It will facilitate the construction of the approved development and provide services and facilities within an appropriate location which is also of benefit to the community and is in the public interest.

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 modified consent issued.

ATTACHMENTS

Attachment A: Architectural Plans & Landscape Plans – 317 Wharf Road Newcastle

Attachment B: Draft Schedule of Conditions – 317 Wharf Road Newcastle

Attachment C: Letter from Navon Planning - Response to Public Voice Issues, dated 15 June 2023 – 317 Wharf Road Newcastle

Attachment D: Processing Chronology – 317 Wharf Road Newcastle

Attachments A - D distributed under separate cover

7.2. DAC 17/10/23 – 810 HUNTER STREET NEWCASTLE WEST - DEMOLITION OF EXISTING COMMERCIAL BUILDING AND CONSTRUCTION OF AN ELEVEN STOREY COMMERCIAL DEVELOPMENT - DA2022/01424

APPLICANT: DEWITT CONSULTING PTY LTD
OWNER: BERESFORD LAND COMPANY PTY LIMITED
REPORT BY: PLANNING AND ENVIRONMENT
CONTACT: EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING MANAGER PLANNING, TRANSPORT AND REGULATION

PART I

PURPOSE

A Development Application (DA2022/01424) has been received seeking consent for the demolition of existing commercial building and construction of an eleven-storey commercial development at 810 Hunter Street Newcastle West.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the Floor Space Ratio (FSR) development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation. The development results in 57.56% variation, or 1551.39m² exceedance.

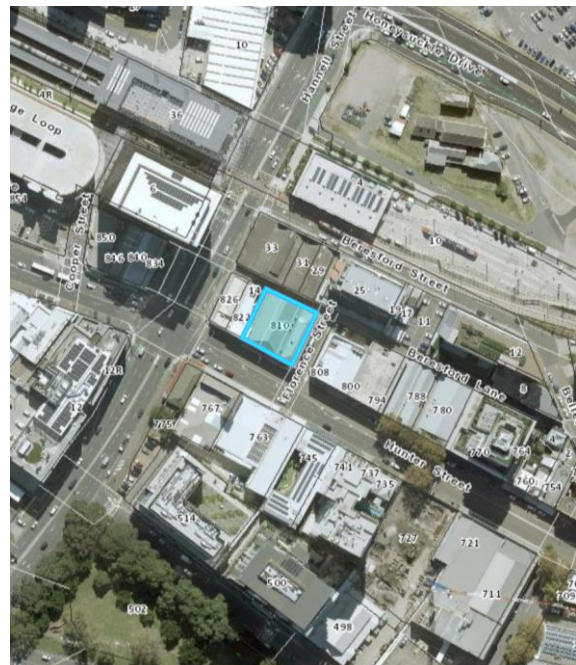
The application was assigned to Senior Development Officer, Iain Watt, for assessment.

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

The proposal was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) between 22 December 22 and 25 January 2023 and in response six submissions were received, three of which raised objection to the development.

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

- i) Impacts during demolition and construction



Subject Land: 810 Hunter Street Newcastle West

- ii) Isolation of lots
- iii) loss of amenity and outlook, and
- iv) Traffic and safety impacts.

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

Issues

The main issues identified in the assessment of the application and raised in the submissions are as follows:

- 1) Floor space ratio – The proposed development has a floor space ratio of 4.7:1, which is approximately a 57% variation from the development standard of 3:1 under Clause 7.10A of NLEP 2012. This is based on the gross floor area exceedance being 1539.34m² and the site area of 903.72m². The applicant has submitted a written request in accordance with Clause 4.6 of the NLEP 2012 to vary the floor space ratio development standard.

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 7.10A 'Floor Space Ratio for certain other development' in the Newcastle City Centre, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clauses 4.4 & the provisions of Clause 7.1, together with the objectives for development within the B3 Commercial Core zone in which the development is proposed to be carried out; and
- B. That DA2022/01424 for Demolition of existing commercial building and construction of an eleven-storey commercial development at Lot 10 Sec B DP 976801 & Lot 12 Sec B DP 976801 & Lot 11 Sec B DP 976801 known as 810 Hunter Street, Newcastle West be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject property is described as 810 Hunter Street, Newcastle West. Its legal description is Lot 10 Sec B DP 976801, Lot 11 Sec B DP 976801, Lot 12 Sec B DP 976801.

The site is located on the northern side of Hunter Street and Florence Street and Beresford Lane adjoin the eastern and northern boundaries of the site, respectively. The site is generally square in shape having a street frontage of approximately 30m to both Hunter and Florence Streets with an area of 903.72m². The site is devoid of vegetation and relatively flat.

Currently the site is occupied by a two storey commercial premises. The general form of development in the immediate area consists of two storey commercial premises, Newcastle City Centre and the West end specifically is an area in transition with 7-15 storey developments being supported for commercial and mixed use development types as seen at 25 Beresford Street adjacent to the site and 727 Hunter Street.

2.0 THE PROPOSAL

The development application seeks consent for demolition of the existing structures and construction of an eleven-storey commercial building with ground floor commercial space and public forecourt, three levels of car parking (total of 56 vehicle and 39 bicycle spaces) and seven levels of commercial floor space, and associated landscaping.

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

- i) Redesign of café location

- ii) Changes to car parks and access
- iii) Increased setback for footpath and improved sightlines
- iv) Additional bike parking provided with amended design to level 3
- v) Inclusion of shade devices for reduced heat loads
- vi) Increased size of planter on podium boundary to increase privacy to the western property.

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

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with CN's Community Participation Plan. Six submissions were received in response of which three raised objections to the development.

The current amended plans did not require re-notification with the minor changes consistent with CN's Community Participation Plan (CPP).

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

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience & Hazards) 2021

Chapter 2- Coastal Management

Chapter 2 of the SEPP R&H seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the *Coastal Management Act 2016* (the Act). The site is located in the Coastal Environment Area under the mapping of coastal management areas.

Clause 2.12 requires that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the

proposed development is not likely to 'cause increased risk of coastal hazards on that land or other land.'

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

Chapter 4 - Remediation of land

Chapter 4 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

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

A Preliminary Site Investigation for the site was prepared by JM Environments dated 23 August 2023. It concluded that the site is suitable for its intended commercial use without the implementation of a remediation action plan.

The consultant concluded from the results of samples collected by hand augers at 2-2.5m depth and the lack of odours from the boreholes indicated the risk of the presence of significant widespread hydrocarbon impact is low.

Having regard to the methodology used and the findings of the report, further investigation is not required. The land is suitable for the proposed commercial land use; subject to the draft conditions contained in the Draft Schedule of Conditions at **Attachment B**.

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

Transport for NSW (TfNSW)

The proposal was referred to TfNSW under clause.2.122 – Traffic Generating Development of SEPP (T&I). TfNSW did not object to the proposal subject to various criteria for CN to consider in its final assessment such as traffic safety, access, road design and management during construction. These matters have been subject to a detailed assessment during the processing of the application and the proposal has been determined to be acceptable subject to conditions.

Development impacted by an electricity tower, electricity easement, substation, power line

Clause 2.48 of the SEPP T&I requires certain development applications to be referred to the relevant electricity supply authority and any concerns raised are to be

considered as part of the assessment. This includes development within or adjacent to an easement for electricity purposes; adjacent to a substation; within 5m of an exposed overhead electricity power line; or a pool within 30m of a structure supporting an overhead transmission line.

A referral was sent to Ausgrid and a response was provided on 8 January 2023 which included no objection to the proposed development.

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3 - Advertising and signage.

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

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

Proposed signage relates to building identification signage to Hunter Street frontage on the Level 3 in association with the carpark. The material of the signage matches that of the feature screens used in on the car park levels. No illumination is proposed for the signage.

The maximum dimensions of the signage proposed is 8.61m in length and 2.65m in height.

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

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 B3 Commercial Core under the provisions of NLEP 2012, within which zone the proposed development is permitted with consent.

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

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

The proposed commercial development is ideally located with respect to public transport (neighbouring the Newcastle Transport Interchange).

The development will provide employment opportunities in an accessible location and will assist in strengthening the role of the Newcastle City Centre as a regional business centre for the Hunter Region.

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 90m. The submitted height is approximately 38m and complies with this requirement.

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

Under the NLEP 2012, the subject site is identified as having a prescribed floor space ratio of 8:1. However, Clause 7.10A of NLEP 2012 details additional provisions relating to development with a site area of less than 1,500m². This clause specifies that the maximum FSR of a building is whichever is the lesser of the FSR identified on the FSR map (i.e.8:1) or 3:1. Accordingly, the maximum floor space ratio for the subject site is reduced to 3:1. The proposed development will result in a total FSR of 4.7:1, equating to an exceedance of 1559.31m² or 57.56% above the prescribed maximum FSR for the subject land.

This exceedance is discussed in more detail under Clause 4.6-Exceptions to Development Standards below.

Clause 4.6 - Exceptions to Development Standards

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

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

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

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

As outlined above, the proposed development has a floor space ratio of 4.7:1, which is approximately a 57.56% variation from the development standard of 3:1 under Clause 7.10A. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

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

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

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

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

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

The submitted 'Clause 4.6 Variation Request' (**Attachment D**), prepared by DWC de Witt Consulting Town Planning 4 May 2023 and constitutes a written request for the purposes of cl.4.6(3) of the NLEP 2012.

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

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

- 1) Namely by showing that the objectives of the development standard are achieved notwithstanding noncompliance with the development standard.
- 2) By establishing that the underlying objective or purpose is not relevant to the development, such that compliance is unnecessary.
- 3) By establishing that the underlying purpose is defeated or thwarted if compliance is required, such that compliance becomes unreasonable.

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

Applicants' justification of the three tests.

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

The Objectives of Clause 7.10A

Officers Note: The Clause 4.6 Variation relates to an exceedance of the FSR set out in cl.7.10A, as clause 7.10A does not have objectives, the objectives of clause 4.4 are considered relevant for the purposes of the clause 4.6 request

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

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

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

- *The development is commensurate in scale and density of a development within the Newcastle City Centre, the 'top' of the centres hierarchy. The City*

Centre is identified in the Newcastle Local Strategic Planning Statement and Greater Newcastle Metropolitan Plan 2036 as a Catalyst Area and the focus for economic and development activity. As well, the building density, bulk and scale makes a positive contribution to the desired built form in the City Centre

- *The site mapped under clause 4.4 as having a maximum FSR of 8:1 which would result in a significantly larger built form than what is currently proposed. However, the site's location within the Newcastle City, and its site area of less than 1,500m² results in a reduction in FSR to 3.1. The proposed FSR of 4.5:1 is certainly consistent with the objectives of clause 4.4 and is considered reasonable and appropriate in this context.*
- *The project will provide opportunity for new or established businesses to locate within the City Centre.*
- *The development will attract Section 7.12 contributions which will facilitate CN's delivery of services and infrastructure within the LGA.*
- *The project will deliver A-Grade commercial floor space to the city centre, attracting successful established and emerging businesses and encouraging diversity in the range of businesses occupying the CBD. The proposed FSR results in a feasible, economical development that will make an ongoing positive contribution to the economy.*
- *The proposal protects and enhances the positive elements of Newcastle City Centre, and the quality of life of its local population by responding directly to its urban context...*
- *The development in its current form does not result in impacts to the social, natural or cultural environment that would be avoided if the additional FSR were not proposed.*

Test 2: Establishing that the underlying objective or purpose is not relevant to the development, such that compliance is unnecessary

The standard restricts FSR for sites smaller than 1,500m². This limits development potential of smaller sites and therefore encourages the amalgamation of lots for substantial development sites. However, the purpose of the standard is not relevant in this instance.

The subject site has an area of 903.72m², and bound on three sides by road frontages. As a result, the site is only contiguous with developable land to the west, 822 Hunter Street and 826 Hunter street which are 294.2m² and 285.76m² respectively.

Lot isolation is not a relevant consideration here, as 822 and 826 Hunter Street can be amalgamated (combined area of 579.96m²) and developed independent of 810 Hunter Street.

Notwithstanding, amalgamation has been considered in the context of Clause 7.10A. Analysis was undertaken to determine whether 810 Hunter Street could be

amalgamated with other sites to create a development site of 1,500m² or more, lift the restriction.

The findings are as follows:

- 1) Amalgamation of the subject site with 822 Hunter Street would result in a combined area of 1,197.99m². Being less than 1500m² the amalgamated site would remain subject to the reduced FSR of 3:1.*
- 2) Amalgamation of all three sites would result in a combined area of 1,483.76m². The amalgamated site would remain subject to the reduced FSR.*
- 3) There are no opportunities for an increase to the site sizes. Therefore, the development cannot achieve the intent of Clause 7.10A.*

To summarise the response to the second test established under Wehbe v Pittwater Council (2007) LEC 827, the underlying purpose of Clause 7.10A is to encourage amalgamation of lots to achieve a minimum area of 1,500m² in order to support a larger scale of development typical of a city centre environment. Physical limitations exist that prevent the site from being able to comply with the clause, however, the proposal demonstrates that a suitable scale and form of development can be achieved notwithstanding the clause. The intent of LEP 2012 Part 7 Additional Local Provisions are achieved notwithstanding the variation, resulting in a positive outcome within the context of the City Centre.

Test 3: Establishing that the underlying purpose is defeated or thwarted if compliance is required

Strict compliance with Clause 7.10A would result in outcomes that are both unsuitable to the locality and of lesser or poor quality, and therefore defeat or thwart the underlying purpose of the development standard.

The intent is to restrict floor space for smaller sites, encouraging site amalgamation and more significant built form suited to a city centre context. By encouraging larger sites (and corresponding increased FSR), the clause seeks to avoid situations where otherwise large format-built forms are interspersed with small-scale development creating inconsistent streetscape character and poor visual outcomes. The underlying purpose of the clause is sound, however the clause did not anticipate situations such as this, where the site, landlocked by roadways, has no opportunity to increase the site sizes to above 1,500m² and therefore cannot meet Clause 7.10A.

Designs consistent with the 3:1 FSR result in buildings of squat proportions, that would create a visual gap in the streetscape. It is considered that 3:1 FSR would result in undesirable outcomes for the streetscape and city character.

An 8:1 FSR would result in negative outcomes such as visual impact, overshadowing, privacy, inability to achieve adequate separation and setbacks etc. A FSR of 8:1 would also result in excessive car parking requirements with detrimental impacts to the streetscape at the lower levels and create adverse traffic impacts.

The proposed FSR of 4.7:1 responds appropriately to its context of existing and future streetscape. It is submitted that the proposed FSR is reasonable and appropriate in the context of surrounding development, having regard to: Streetscape, Bulk and scale, Privacy, overshadowing.

A flexible approach to development standard ensures the underlying purpose of Clause 7.10A, that is, to ensure appropriate development of smaller sites within the city centre is successfully implemented.

CN Officer Comment

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

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

In *Initial Action*, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development standard, rather than promoting the benefits of the development.

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

- *The underlying intent of the development standard is to encourage development of a scale and nature commensurate to the site. However, strict compliance with the development standard will result in poorer outcomes than the proposed non-conforming development. Following detailed site analysis and design, a scheme is proposed that creates a positive balance of height, scale and FSR. The intent of the clause can be achieved notwithstanding the numerical variation.*
- *Features such as the substantial green wall on the western façade and landscaping above podium level and at the roof top, along with careful articulation creates visual interest, improves the environmental performance and amenity.*
- *The proposed development is compatible with existing buildings and uses within the surrounding locality. Height, setbacks, views, privacy and streetscape have all been considered and addressed.*
- *The development gives the ground plane back to the public creating a hierarchy of public/private space; a considerable improvement on the existing street level environment. To achieve this, floor area is redistributed from the ground floor to upper levels without impacting views, privacy, height compliance etc.*
- *The additional 1,539.34m² of GFA will not result in unreasonable visual or privacy impacts, including to the adjoining residential property. A compliant*

design would likely have a greater privacy impact due to a lowering of the communal outdoor area above podium level.

- *The Statement of Environmental Effects submitted with the development application demonstrates the development's substantial compliance with all other development standards and planning controls notwithstanding the FSR variation.*
- *The development has received the support of City of Newcastle's Urban Design Review Panel.*

CN Officer Comment

The Applicant's written request has demonstrated that the proposed floor space variation does not result in significant adverse environmental impacts and that there are sufficient environmental planning grounds to justify a contravention to the floor space control.

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

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

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

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

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

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

Clause 7.10A of the NLEP 2012 is not accompanied by an express objective. As detailed in the Clause 4.6(3)(a) assessment above, the proposed development has therefore been assessed against the objectives of the 'base' development standard,

being Clause 4.4 'Floor space ratio' and the 'Section' objectives being Clause 7.1 of the NLEP 2012.

The development is consistent with the objectives of these Clauses 4.4 and 7.1 as the proposed building density, bulk and scale makes a positive contribution towards the desired built form and is consistent with the established centres hierarchy. Further, the departure allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

Objectives of the B3 Commercial Core Zone

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

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

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

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

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

Conclusion

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

The request has adequately demonstrated that the proposed development achieves the objectives for the Floor Space Ratio development standards of the NLEP despite the numerical non-compliance and that there are sufficient environmental planning grounds to justify contravening the standard.

The request is considered to meet all of the provisions of Clause 4.6 and is well founded. Further, the variation to the development standard is considered to exhibit

design excellence and considerable economic benefit and is absent of significant environmental impacts.

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

Clause 5.10 - Heritage Conservation

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

The proposed development is consistent with the objectives of clause 5.10, being to conserve the heritage significance of heritage conservation areas (including associated fabric, setting and views), for the following reasons:

- i) The existing neutral building does not contribute to the character of the HCA and its demolition will not have a detrimental impact on the heritage significance of the area.
- ii) The setting of the site is undergoing a rapid change evidenced through recent approvals for several multi-storey developments in the immediate context. The general streetscape has no consistent heritage character and is characterised by a wide range of building styles.
- iii) The scale of the proposed building, although significantly taller than the scale of the existing two storey commercial building, is appropriate with consideration to the NLEP height limit, the strategic direction of Newcastle West, the distance of the site from nearby heritage items, and the existing and approved multi-storey development in proximity to the site.
- iv) The zero lot setbacks to street boundaries is supported as this is typically a form repeated throughout the HCA on both historical commercial buildings and later developments.
- v) The architectural design of the proposed building is contemporary and is consistent with the changing context of the area. The setting of the existing building and adjoining contributory buildings will not be impacted by the proposal.
- vi) The building at 810 Hunter Street is noted to have served as the first premises for the Newcastle District Co-operative Society for a short time before a larger and permanent location was built nearby at 854 Hunter Street. The development provides an opportunity to interpret the history of uses on the site via a Heritage Interpretation Plan. A condition of consent is recommended in this regard.
- vii) The proposed development compliments the existing and developing character of the West End and will contribute positively to the existing diversity of built fabric

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

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 3 & 4 acid sulphate soils. The proposed works will not protrude two metres(m) below the natural ground level, and it is not anticipated the works will affect the watertable. Should pillars/footings need to be placed at a greater depth than 2m from natural ground level an Acid Sulfate Soils Management Plan will be required via recommended conditions. Therefore, the proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

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

Part 7 Additional Local Provisions—Newcastle City Centre

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the city centre, which includes promoting the economic revitalisation of the centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The proposal is consistent with the objectives of Part 7 of the NLEP 2012.

Clause 7.3 - Minimum Building Street Frontage

This clause requires that a building erected on land in the B3 Commercial Core zone must have at least one street frontage of at least 20m. The proposed development is consistent with this standard, having a frontage of 30.21m to Hunter Street.

Clause 7.4 - Building Separation

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

Clause 7.5 - Design Excellence

The development meets the design excellence criteria of NLEP 2012 and is of a high standard of architectural quality.

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

The application was referred to CN's Urban Design Review Panel (UDRP) on multiple occasions both before the submission of the application 31 August 2022 and on 22 February 2023 as part of the assessment of the application, with a final review conducted August 2023 following submission of amended plans. The UDRP provided feedback to guide the achievement of design excellence in the overall design.

Consideration of the UDRP's advice in relation to the design quality principles follows:

Design Quality Principles

a) Principle 1. Context and Neighbourhood Character

UDRP Comment - 22 February 2023

"The Panel liked the development of the Florence Street interface and opening out of the public domain and its pedestrian interaction. Similarly, the interaction of the forecourt to the lobby was supported allowing interaction between future uses and the forecourt. The design has been very generous in its approach to Florence Street and the public domain considering the constraints of the site on the ground floorplate. The Florence Street entry/public domain will be an attractive pedestrian desire line."

"The Panel considered that the proposal did not unreasonably sterilise future development on the adjacent sites, albeit of a scale less than the height controls would permit. The resulting urban arrangement at all four corners of Stewart Avenue and Hunter Street would be likely to ultimately present as a broadly consistent midscale, which was considered by the Panel to potentially offer a positive urban outcome in the context."

Officer Comment:

The scale of the proposed development is consistent with the desired future character and the prescriptive controls in the NLEP and DCP. A building height limit of 90m and FSR of 8:1 is mapped for the area. These controls, as outlined in the current Local Environmental Plan, are part of a broader strategy to shift the city centre west, where lot sizes and existing built form are more suitable to high density urban development.

Adjoining the proposed site to the West are two lots under different ownerships, and several attempts have been made by the applicant to acquire these lots, however, to date these attempts have been unsuccessful.

Principle 2. Built Form and Scale

UDRP Comment – 31 August 2023

"The activation by way of the corner cafe is a worthwhile and positive inclusion, and the relocation of bike stores is considered a functional improvement. Other internal layouts change to the ground floor are also more rationalised and flow better."

Officer Comment:

The proposal will result in a built form that defines the public domain, contributes to the streetscape, and provides a high level of internal amenity and outlook.

Principle 3. Density

UDRP Comment – 22 February 2023

"Greater demonstration of the overall context, neighbouring sites to the west, around the nearby intersection, and of the broader area should be provided to support the design and bulk in the context of the proposed FSR variation. In this regard, consideration is to be given to the existing, approved and allowable developments (e.g. massing diagrams). This can assist in showing that the design outcomes for the intersection of Hunter Street and Stewart Avenue can be different to what was otherwise permitted. The Panel did not consider the proposed density to have adverse impacts in this instance."

UDRP Comment –31 August 2023

"...the additional 3-d studies are helpful in understanding the proposal and enable the UDRP's to support the proposed building form."

Officer Comment:

The design of the development, as amended, is expected to achieve a high level of amenity for users. The proposed development will result in the provision of commercial space within an established inner city local suburb with access to public transport, essential community infrastructure and services. The amended proposal has addressed the UDRP's concerns and is considered acceptable.

Principle 4. Sustainability

UDRP – 22 February 2023

The Panel provided encouragement for the further provision of future rooftop PV, and further efforts to decarbonise the energy supply.

Officer Comment:

The amended proposal has addressed the UDRP's concerns and is considered acceptable.

Principle 5. Landscape

UDRP Comment – 26 April 2023

"The podium boundary to the western neighbouring property needs an increased planter width to improve privacy protection and prevent overlooking of the western properties outdoor space/pool. This will also need to be extended along the common boundary.

The Panel notes the proposed green wall has a westerly aspect and will require significant maintenance commitment over the long term to remain viable and provide intended cooling relief."

UDRP Comment – 31 August 2023

Raised no concern regarding landscaping with the amended plans.

Officer Comment:

The amended proposal has addressed the UDRP's concerns and is considered acceptable.

Principle 6. Amenity**UDRP Comment – 31 August 2023**

"...sections showing the relationship to the existing low-rise residence (AirBnB) in the property next door confirms the proposed edge treatment and its capacity to prevent overlooking from the communal terrace."

Officer Comment:

The proposed design achieves strong internal amenity without compromise to the neighbouring properties. The amended proposal is considered acceptable.

Principle 7. Safety**UDRP Comment – 22 February 2023**

"The proposed garbage collection area is quite deep. It was not clear as to whether a roller shutter is proposed. Consider potential CPTED issues in this respect. Safety was also addressed above in respect of the rear laneway interaction with the proposal."

UDRP Comment – 31 August 2023

Raised no concern for Safety with the amended plans.

Officer Comment:

The amended proposal has addressed the UDRP's concerns and is considered acceptable.

Principle 8. Housing Diversity and Social Interaction**UDRP Comment – 22 February 2023**

"The ground plane engagement with the three street frontages, each with differing functions and character is supported in principle."

Officer Comment:

The streetscape is further activated by this proposal and will increase social interaction. The proposal is acceptable with regards to this principle.

Principle 9. Aesthetics**UDRP Comment – 22 February 2023**

"The proposed pergola design needs to be simplified.

It is recommended the façade treatment, involving a green wall with creepers on a frame continues to be developed with a green wall specialist. The green wall needs to be sustainable in the context of western sun and high wind impact."

UDRP Comment – 31 August 2023

Raised no concern for the green wall or pergola design with the amended plans

Officer Comment:

The amended proposal has addressed the UDRP's concerns and is considered acceptable.

Recommendation

UDRP Comment – 31 August 2023

"The Panel considered that the design developments documented addressed the remaining issues identified for resolution by the Panel at its previous consideration at the meeting of 22 February 2023. The proposal was considered to offer a positive urban contribution to the precinct, and to demonstrate excellence in its design."

The design of the development has been amended in line with the recommendations from the UDRP. The amended plans have adequately addressed the recommendations of the UDRP and satisfy the Design Excellence criteria.

Clause 7.6 - Active Street Frontages in Zone B3 Commercial Core

NLEP 2012 requires an active street frontage for land that is zoned B3 Commercial Core. The plans have addressed the above clause with the inclusion of the commercial/retail space at ground level along Hunter Street and the addition of open space and café to Florence Street provides further activation.

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

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

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

The proposed change would require the Applicant to demonstrate that a variation to a development standard 'is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning

outcome when compared with what would have been achieved if the development standard was not contravened.'

For the purposes of Council's assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome. The proposed development includes a Clause 4.6 variation request and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Commercial Uses - Section 3.10

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

Density:

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

Side and rear setbacks:

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

Street activation:

Ground floor commercial tenancy space and café is provided off the public forecourt via the lobby. The design is considered to have significant attention to urban design in terms of street activation and pedestrian movement at the ground level. The forecourt provides much needed activation and vibrancy for Florence Street and Hunter Street. The development will ultimately provide a positive contribution to the area. The development is considered to meet the performance criteria of the NDCP for this section regarding street activation.

Building design and appearance:

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

Views and Privacy:

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

The use of privacy measures such as planters and to limit access to building edges, along with the proposed height of podium level and the existing building separation provided by road and subdivision pattern will ensure that views into and from neighbouring properties are limited.

Utilities and services

Adequate services and waste facilities are available to the development. Services are proposed to be provided by a commercial contractor, which is acceptable as the development does not include a residential component. The proposed development is considered satisfactory in this regard.

The Traffic Impact Assessment submitted in support of the application indicates that servicing will mostly be carried out by small van sized vehicles. A loading bay fronting the laneway has also been included for vehicles up to the size of a medium rigid vehicle to enter the site. This will require the vehicle to reverse into the site and then exit in a forward direction and turn paths have been included to show this movement, which is acceptable under the relevant Australian Standards. The proposal is therefore considered acceptable.

Flood Management - Section 4.01

The subject allotment is affected by Local Catchment and Ocean flooding. The estimated 'Probable Maximum Flood' level is 3.4m Australian Height Datum (AHD). The impact of this hazard on the development has been assessed and it is concluded that the 1% AEP level reaches 2.9mAHD near the site and this is used to inform a flood planning level of 3.4m AHD (500mm above 1% AEP).

The retail/commercial floor level and lobby is proposed at 3.4mAHD which is acceptable. All other parts of the development comply with the minimum flood level requirements. Accordingly, the proposal is acceptable in relation to flooding.

Mine Subsidence - Section 4.03

The subject site is not identified as being located within a proclaimed mine subsidence district. As such, the proposal does not require referral to *Subsidence Advisory NSW*.

Safety and Security - Section 4.04

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

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

Social Impact - Section 4.05

The proposed development is likely to have a positive social impact through providing additional employment opportunities within proximity to local facilities and services.

Soil Management - Section 5.01

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

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

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report-refer to SEPP (Resilience and Hazards) 2021 above.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are sites of Aboriginal significance recorded near the site.

A Due Diligence Assessment (by AMAC, 8/12/22) has been provided with the application.

The report follows the Due Diligence Code of Practice and includes analysis of the environmental and archaeological context, summary of predictive modelling, and archaeological site survey.

The recommendations set out in the report are incorporated as conditions in the recommended Draft Schedule of Conditions (**Attachment B**) and is considered satisfactory as such with the objectives of this section.

Heritage Items - Section 5.05

Heritage considerations as discussed under Clause 5.10 Heritage of NLEP 2012.

Archaeological Management - Section 5.06

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

Heritage Conservation Areas - Section 5.07

Heritage conservation area considerations have been discussed under Clause 5.10 Heritage of NLEP 2012.

Part 6.00 Locality Specific Provisions

Newcastle City Centre - Section 6.01

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

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

The proposed development will reinforce the street edge, promoting street activation and contributing to the overall desired character for the growth and development within the Newcastle City Centre.

The site is not in proximity to any public spaces listed under this section of the DCP and no unreasonable level of overshadowing will result from the proposed development.

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

Landscape Open Space and Visual Amenity - Section 7.02

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

The landscape design provides a high-quality street frontage with improved public domain and increased activation to both frontages.

Traffic, Parking and Access - Section 7.03

Vehicular Access, Driveway Design and Crossing Location

The internal layout of the carparking area is fully compliant with relevant requirements of the AS2890, including internal manoeuvring, car parking aisle width, ramp grades and vehicle clearances. The proposal is acceptable, subject to conditions included in the Draft Schedule of Conditions (**Attachment B**).

Parking Demand

As the site is located in the city centre with higher accessibility, the number of parking spaces required for the development on merit could be less than 85 spaces required by a numerical assessment of GFA. The DCP calls for merit consideration with sites located in the city centre. A total of 56 spaces are proposed.

A Traffic and Parking Assessment, prepared by Seca Solution, has been provided with the development application to justify the proposed parking supply of 56 spaces within the site. The supply of car parking is supported, as it is noted that COVID has resulted in more employees working from home and many employers are supporting a hybrid working arrangement into the future, reducing the car parking demand in office spaces.

Further, the site is located close to bus stops as well as the Newcastle Interchange for easy access to busses, trains, and light rail. The site is well connected by cycle routes where people can easily get into the area using bicycles. A total of 39 secure bike storage spaces have been provided to encourage commuter cycling. End of trip facilities are provided to make it easier for people to commute using self-powered transport modes.

Based on the above, the car parking supply of 56 spaces is to be supported, subject to conditions included in the Draft Schedule of Conditions (**Attachment B**)

Traffic Generation

The submitted Traffic and Parking Assessment also addresses the traffic and parking implications arising from the proposal, and satisfactorily demonstrates that the impacts of the development on surrounding intersection performance will be minimal.

Beresford Lane is currently in poor condition and the additional traffic is expected to increase the rate of degradation and therefore the laneway will require upgrades as part of the development approval.

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

Green Travel

The development is supported by a Green Travel Plan (GTP) to satisfy the NDCP requirement for major developments. The GTP will inform the future end users of 810 Hunter Street the actions that can be implemented to support active transport and reduce single car usage along with the resulting parking demands.

Actions identified in the Plan include measures to encourage active transport use, ranging from developing an online 'transport portal' where various links to external transport providers can be placed, to promoting and encouraging the use of end of trip facilities provided within 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

The amended stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012. Required upgrades of the rear laneway upgrades have been addressed by the imposition of appropriate conditions of consent including the removal of the existing 300mm pipe and replacement with a new 375mm RCP pipe running down the laneway and connecting to the existing kerb inlet pit adjacent Stewart Avenue, thereby enabling the proposed stormwater management. The proposed development is therefore considered to be acceptable subject to conditions included in the Draft Schedule of Conditions (**Attachment B**).

Waste Management - Section 7.08

The proposal has been assessed having regard to Section 7.08 and is adequate. The applicant has prepared a detailed waste management plan, which addresses waste minimisation and litter management strategies. Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

A Waste Management Plan has been provided with the application. The proposal provides for bulk storage bins. The submitted traffic report states that waste will be collected via loading bay pickup off Beresford Lane. Based on the submitted information, the proposal is acceptable subject to the Draft Schedule of Conditions (**Attachment B**).

Advertising and Signage - Section 7.09

The proposal includes a location for signage to the façade of the building on the Hunter Street elevation. The signage was previously discussed against the relevant provisions of requirements of Chapter 3 (Advertising and signage) of SEPP (Industry and Employment) 2021. The proposed signage is consistent with the objectives of the SEPP. Likewise, the signage is considered acceptable against the DCP provisions.

Street Awnings and Balconies - Section 7.10

The awnings proposed as part of the development have been architecturally designed taking into consideration, relevant design requirements, aesthetic presentation, functionality, structural integrity, and safety.

The proposed awnings will not impact on public utilities, traffic signs or signals, or vehicle or pedestrian circulation. The proposed awnings have also been designed to complement the streetscape and take into consideration the surrounding built environment.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 33 days in accordance with the Community Participation Plan (CPP), being extended due to the Christmas New Year holiday period. A total of three submissions objecting to the proposal were received.

Comments are provided in Section 5.8 below.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Section 7.12 Development Contributions Plan, being \$372,593.67.

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

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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.

Lot isolation

It is noted that were the subject site to be amalgamated with the two sites to the west the property would be much closer to the 1500m² envisioned for the development of the city centre. The applicant has provided evidence of the reasonable approaches to both owners with the intent to purchase. These attempts were ultimately unsuccessful for reasons including unreasonable counter offers and a lack of desire to sell or develop at this time.

The UDRP advised that the proposal did not unreasonably sterilise future development on the adjacent sites, albeit of a scale less than the height controls would permit. The resulting urban arrangement at all four corners of Stewart Avenue and Hunter Street would be likely to ultimately present as a broadly consistent midscale, which was considered by the Panel to potentially offer a positive urban outcome in the context.

Therefore, the proposal is not considered to create 'isolated' lots and is acceptable with regards to the urban lot consolidation objectives.

Design, FSR and Character

The proposal has been reviewed by CN's Urban Design Review Panel on three occasions and is acceptable having regard to urban design principles.

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

Further, the overall building form, and bulk and scale of the development does not impede on identified view corridors. The proposal will generate local employment opportunities during the construction and operational phases of the development.

When viewed from the public realm the building appears consistent with the emerging surrounding high-density scale of the locality. The proposed development is considered acceptable having regard for both visual amenity and scenic qualities of the environment.

Social and Economic Impacts

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

5.7 The suitability of the site for the development

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

At-grade access to the site will be available for pedestrians, from footpaths. Having regard for the city centre location and the availability of public transport services, it is considered that the proposed use is satisfactory in respect of its accessibility.

The constraints of the site have been considered in the proposed development, which includes flooding, contamination, acid sulfate soils and heritage.

The variation sought to the FSR development standard is acceptable given the circumstances of the development site. The proposed development is acceptable having regard to built form characteristics and potential impacts. The application has been reviewed and supported by CN's UDRP during the assessment.

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

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

The application was notified in accordance with Community Participation Plan. Six submissions were received during the notification period, three objections and three letters of support. The following table provides a summary of the issues raised and a response to those issues.

Issue	Comment
Safety of pedestrians and vehicles	<p>Beresford lane is intended to provide vehicle access over pedestrian use.</p> <p>The design of the development has been amended to reduce laneway activation to further limit vehicle and pedestrian interactions.</p>
Reduction in solar access	<p>Shadow diagrams were provided with the application. These demonstrate that there will be no change to solar access for the buildings immediately to the north due to the orientation and position of the proposed development with the existing.</p> <p>Due to the site orientation the solar impacts resulting from this proposal will primarily effect Hunter Street. Any impacts to neighbouring properties are minimal and the development is acceptable with respect to overshadowing.</p>
Forecourt Noise	<p>The forecourt is positioned off Florence Street and is largely enclosed. A forecourt of this nature is entirely appropriate for a high-density area within the city centre.</p>
Cumulative impacts of having this development undertake construction at the same time as the Honeysuckle HQ development	<p>This project, like all development within NSW, will be subject to the standard construction hours which limit impacts on sleep for neighbouring properties.</p>
Dangerous emissions and soot from car exhaust fumes, with parking at same level as bedrooms	<p>On site parking is provided for the future occupants of the development. Given the commercial nature of the proposal, it is anticipated that there will not be a high turnover of vehicles during the day and dangerous' levels of fumes.</p> <p>Accordingly, it is considered that the development will not unreasonably impact upon residents because of vehicle emissions.</p>
Restriction on what and scale of development for the neighbouring lots	<p>The development does not unreasonably restrict development on the two lots immediately to the west of the subject site. As the sites are still able to provide midscale development consistent with their lot size.</p>

on the block (826 & 822 Hunter)	
Dust and Waste management during development	Standard conditions of consent have been recommended ensure management of dust and waste consistent with council requirements.
Concern that URDP was not involved in the preparation of the plans and a lack of sufficient detail in plans to understand the vistas being created.	<p>An Urban Design Review Panel meeting did occur following a Pre-DA meeting on 31/08/22 between the applicant and CN officers, with another occurring post lodgement on 22/02/23 and final review with the latest plans provided August 2023.</p> <p>The URDP was satisfied the design has achieved design excellence as discussed above the plans and drawing provided provide sufficient detail to facilitate the development.</p>
The proposal removes the opportunity for the corner of Hunter Street and Stewart Avenue/Hannell Street to realise a substantial gateway building.	The assessment has considered these impacts and consistent with the URDPs recommendation it has found that the development does not unreasonably restrict the corner site and that the development opportunities for the corner are sufficient within the character of the city centre.
Cost of works is below a reasonable assessment.	A detailed cost of works report was prepared by APLAS Group, being suitably qualified quantity surveyors.
Scale of podium level not in keeping development on hunter street or Beresford Lane. .	The proposal is indicative of the emerging future character at the West end of the City.
This civic precinct should see greater consideration to the creation of quality public amenity at street level.	A significant public space is provided at ground level in the form of the forecourt, which is considered acceptable with the development.
Adverse acoustic effect on the neighbouring residence.	The nature of the proposed development is such that day-to-day noise is expected to be minimal given the future commercial use.
Loss of benefits like plantings and art from shared boundary wall.	There is no shared boundary wall as submitted plans show all walls for demolition are separate and fully contained within the subject allotment. The design as proposed is considered an improvement to the streetscape.

5.9 The public interest

The proposed development is satisfactory having regard to the principles of ecologically sustainable development. The proposed development also presents an opportunity to contribute to the revitalisation of the city centre and assist in the transformation of the west end of Newcastle City Centre.

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

The proposed development does not result in unacceptable impacts upon surrounding development. The proposal is not expected to cause unreasonable constraint to the amenity or development potential of the surrounding sites and land uses.

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

6.0 CONCLUSION

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

ATTACHMENTS

Attachment A:	Submitted Plans - 810 Hunter Street Newcastle West
Attachment B:	Draft Schedule of Conditions - 810 Hunter Street Newcastle West
Attachment C:	Processing Chronology - 810 Hunter Street Newcastle West
Attachment D:	Applicant Clause 4.6 Request for Exemption - 810 Hunter Street Newcastle West

Attachments A - D distributed under separate cover