



City of  
Newcastle



## CITY OF NEWCASTLE

# Development Applications Committee

Councillors,

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

**DATE:** Tuesday 18 February 2020

**TIME:** Following the Public Voice Committee Meeting

**VENUE:** Council Chambers  
2nd Floor  
City Hall  
290 King Street  
Newcastle NSW 2300

J Bath  
Chief Executive Officer

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

11 February 2020

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<b>DEVELOPMENT APPLICATIONS COMMITTEE</b> <b>18 February 2020</b>
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**NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER**

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 3 DECEMBER 2019**

**RECOMMENDATION**

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

**ATTACHMENTS**

**Attachment A:** 191203 Development Applications Committee

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

**Attachment A**

**CITY OF NEWCASTLE**

**Minutes of the Development Applications Committee Meeting held in the Council Chambers, 290 King Street, 2nd Floor City Hall on Tuesday 3 December 2019 at 7.06pm.**

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**PRESENT**

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

**IN ATTENDANCE**

J Bath (Chief Executive Officer), D Clarke (Director Governance), F Leatham (Director People and Culture), A Jones (Interim Director City Wide Services), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), J Rigby (Manager Assets and Projects), M Murray (Chief of Staff, Lord Mayor's Office), A Knowles (Council Services/Minutes) and K Sullivan (Council Services/Webcasting).

**APOLOGIES**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Byrne

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

**Carried**

**DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS**

**Lord Mayor, Councillor Nelmes**

The Lord Mayor, Councillor Nelmes, declared a significant non-pecuniary interest in Item 23 – DA2019/00588 - 6 Bavin Road, Broadmeadow stating that she had previously, for the last four years been a Director on the Westpac Rescue Helicopter Service. The Lord Mayor left the Chamber for discussion on the item.

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING  
19 NOVEMBER 2019**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Byrne

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

**Carried**

**DEVELOPMENT APPLICATIONS**

**ITEM-18 DAC 03/12/19- DA2018/01191 - 144 MARYLAND DRIVE, MARYLAND - ALTERATIONS/ADDITIONS TO MARYLAND SHOPPING CENTRE AND NEW TAVERN**

**MOTION**

Moved by Cr Byrne, seconded by Cr Robinson

- A. That DA2018/01191 for alterations and additions to Maryland shopping centre and a new tavern at 144 Maryland Drive Maryland be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

**For the Motion:**

Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Clausen, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo and Winney-Baartz.

**Against the Motion:**

Nil.

**Carried**

**ITEM-19 DAC 03/12/19 - DA2017/00789 - 9 BELFORD STREET, BROADMEADOW - ALTERATIONS TO BUILDING FOR CHANGE OF USE TO DWELLING, ERECTION OF FIVE X THREE-STOREY ATTACHED DWELLINGS, ASSOCIATED SITE WORKS AND ONE LOT INTO SIX LOT SUBDIVISION**

**MOTION**

Moved by Cr Robinson, seconded by Cr Mackenzie

- 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 R4 High Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2017/00789 for alterations to the former Hamilton Fire Station for a change of use to a dwelling, erection of five attached three-storey dwellings, tree removal and subdivision at 9 Belford Street, Broadmeadow 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 Council's determination.

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**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Clausen, Duncan, Luke, Mackenzie, Robinson, Rufo and Winney-Baartz.

**Against the Motion:** Councillor Elliott.

**Carried**

**ITEM-20 DAC 03/12/19 - DA2018/01248 - 64 BRUNKER ROAD BROADMEADOW - RETAIL PREMISES (NEIGHBOURHOOD SUPERMARKET), FOUR SIGNS AND MINOR BUILDING ALTERATIONS**

### **MOTION**

Moved by Cr Mackenzie, seconded by Cr Byrne

- A. That DA2018/10248 for a retail premises (neighbourhood supermarket), four signs, minor building alterations and reconfiguration of the existing car park at 64 Bruncker Road, Broadmeadow 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 Council's determination.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Clausen, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo and Winney-Baartz.

**Against the Motion:** Nil.

**Carried**

**ITEM-21 DAC 03/12/19 - DA2019/00339 - 48/56 HUNTER STREET, NEWCASTLE - ALTERATIONS AND ADDITIONS TO A HERITAGE LISTED BUILDING, INCLUDING AN ADDITIONAL STOREY FOR USE AS A SINGLE RESIDENTIAL DWELLING**

### **MOTION**

Moved by Cr Duncan, seconded by Cr Mackenzie

- 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 4.3 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 B4 Mixed Use zone in which the development is proposed to be carried out; and

## CITY OF NEWCASTLE

- B. 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 B4 Mixed Use zone in which the development is proposed to be carried out; and
- C. That DA2019/00339 for alterations and additions to a heritage listed building, including an additional storey for use as a single residential dwelling at 48-56 Hunter Street, Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.
- D. That those persons who made submissions be advised of CN's determination.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo and Winney-Baartz.

**Against the Motion:** Councillor Clausen.

**Carried**

### **ITEM-22 DAC 03/12/19 - DA2015/0876.02 - 29 LAMAN STREET, COOKS HILL - MODIFICATION - CHANGES TO FLOOR PLAN LAYOUT, WINDOWS AND ELEVATIONS**

#### **MOTION**

Moved by Cr Luke, seconded by Cr Duncan

- A. That DA2015/0876.02 to modify the development for works that have been completed at 29 Laman Street, Cooks Hill be approved, and a modified consent be granted, subject to compliance with the conditions set out in the Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of Council's determination.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Clausen, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo and Winney-Baartz.

**Against the Motion:** Nil.

**Carried**

**ITEM-23 DAC 03/12/19 - DA2019/00588 - 6 BAVIN ROAD BROADMEADOW - RECREATION FACILITY (INDOOR), CARPARKING AND AMENITIES BUILDING**

The Lord Mayor, Councillor Nelmes left the Chamber for discussion on the item.

The Deputy Lord Mayor, Councillor Clausen assumed the Chair.

**MOTION**

Moved by Cr Winney-Baartz, seconded by Cr Rufo

- A. That DA2019/00588 for a recreational facility (indoor), car parking and amenities at 6 Bavin Road Broadmeadow 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 Council's determination.

The Director Governance advised Council that at approximately 5.15pm Tuesday 3 December 2019, the Land and Environment Court in Sydney granted an injunction until 10 December 2019, restraining Council from determining the Development Application.

**PROCEDURAL MOTION**

Moved by Cr Luke, seconded by Cr Mackenzie

To lay the matter on the table to an Extraordinary Development Applications Meeting, Tuesday 10 December 2019, after the Ordinary Council meeting.

**For the Procedural Motion:**

Deputy Lord Mayor, Councillor Clausen and Councillors Byrne, Church, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo and Winney-Baartz.

**Against the Procedural Motion:** Nil.

**Carried**

The Lord Mayor, Councillor Nelmes returned to the Chamber at the conclusion of the item and resumed the Chair.

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### **ITEM-24 DAC 03/12/19 - DA2018/01301 - 59 DARBY STREET COOKS HILL - DEMOLITION OF STRUCTURE, ERECTION OF 6 STOREY MIXED USE DEVELOPMENT INCLUDING COMMERCIAL, SERVICED APARTMENTS AND RESIDENTIAL APARTMENTS**

#### **MOTION**

Moved by Cr Mackenzie, seconded by Cr Clausen

- A) That DA2019/01301 for demolition of the buildings on the site, erection of a six-storey mixed use development, including commercial premises, serviced apartments and residential apartments at 59 Darby Street Cooks Hill be refused for the reasons in **Attachment B**.
- B) That those persons who made submissions be advised of Council's determination.

#### **For the Motion:**

Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Clausen, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo and Winney-Baartz.

#### **Against the Motion:**

Nil.

**Carried**

**The meeting concluded at 7.49pm**

**MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE 10  
DECEMBER 2019**

**RECOMMENDATION**

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

**ATTACHMENTS**

**Attachment A:** 191210 Extraordinary Development Applications Committee

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

**Attachment A**

**CITY OF NEWCASTLE**

**Minutes of the Extraordinary Council Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on Tuesday 10 December 2019 at 5.42pm.**

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**PRESENT**

The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen (*Deputy Lord Mayor, Chair Item 23*), C Duncan, K Elliott, B Luke, J Mackenzie, A Rufo and P Winney-Baartz.

**IN ATTENDANCE**

J Bath (Chief Executive Officer), D Clarke (Director Governance), K Liddell (Director Infrastructure and Property), F Leatham (Director People and Culture), A Jones (Interim Director City Wide Services), E Kolatchew (Manager Legal), S Moore (Acting Chief Financial Officer), M Bisson (Manager Regulatory, Planning and Assessment), L Duffy (Manager Parks and Recreation), S Gately (Manager Libraries and Learning), S Grierson (Manager Transport and Compliance), D Manderson (Manager Civil Construction and Maintenance), J Rigby (Manager Assets and Projects), D Moldrich (Manager Customer Experience), A Vine (Manager Property and Facilities), P Dickson (Chief Information Officer), K McKellar (Manager Depot Operations), D O'Hara (Manager Civic Services), P McCarthy (Urban Planning Section Manager), N Kaiser (Media & Stakeholder Relations Manager), E Dowswell (Media and Communications Advisor), M Murray (Chief of Staff, Lord Mayor's Office), K Sullivan (Council Services/Minutes) and A Knowles (Council Services/Webcasting).

**APOLOGIES**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Rufo

The apologies submitted on behalf of Councillors Dunn, Robinson and White be received and leave of absence granted.

**Carried**

**DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS**

**Lord Mayor, Cr Nelmes**

The Lord Mayor declared a significant non-pecuniary interest in Item 23 - DA2019/00588 - 6 Bavin Road, Broadmeadow, stating that she had previously, for the last four years been a Director on the Westpac Rescue Helicopter Service. The Lord Mayor stated that she would leave the Chamber for discussion on the item.

**CONFIRMATION OF PREVIOUS MINUTES**

Nil.

**DEVELOPMENT APPLICATIONS**

**ITEM-23 EDAC 10/12/19 - DA2019/00588 - 6 BAVIN ROAD BROADMEADOW - RECREATION FACILITY (INDOOR), CARPARKING AND AMENITIES BUILDING**

The Lord Mayor, Councillor Nelmes, left the Chamber for discussion on the item.

The Deputy Lord Mayor, Councillor Clausen, assumed the Chair for discussion on the item.

A supplementary report on DA2019/00588 - 6 Bavin Road, Broadmeadow - Recreation Facility (Indoor), Carparking and Amenities Building, consisting of amended plans and conditions of consent, was distributed to Councillors.

Councillors were given time to read the report.

**MOTION**

Moved by Cr Rufo, seconded by Cr Winney-Baartz

- A. That DA2019/00588 for a recreational facility (indoor), car parking and amenities at 6 Bavin Road Broadmeadow 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 Council's determination.

**For the Motion:** The Deputy Lord Mayor, Councillor Clausen and Councillors Byrne, Church, Duncan, Elliott, Mackenzie, Luke, Rufo and Winney-Baartz.

**Against the Motion:** Nil.

**Carried  
unanimously**

The Lord Mayor, Councillor Nelmes, did not return to the Chamber prior to conclusion of the meeting.

**The meeting concluded at 5.52pm.**

**DEVELOPMENT APPLICATIONS**

**ITEM-1                    DAC 18/02/20 - DA 2019/00962 - 65 GIPPS STREET,  
CARRINGTON - ALTERATIONS AND ADDITIONS TO  
DWELLING HOUSE**

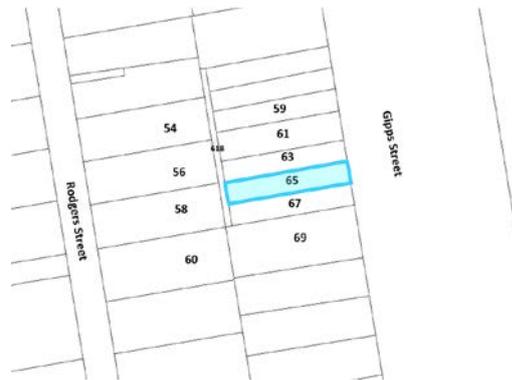
**APPLICANT:            CURIOUS PRACTICE  
OWNER:                R M ROSIER  
NOTE BY:              GOVERNANCE  
CONTACT:              DIRECTOR GOVERNANCE / MANAGER REGULATORY,  
PLANNING AND ASSESSMENT**

**PART I****BACKGROUND**

An application has been received seeking consent for alterations and additions to dwelling house at 65 Gipps Street Carrington.

The submitted application was assigned to Development Officer Michael Peisley for assessment.

The application is referred to the Development Applications Committee 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 (36% variation).



**Subject Land:** 65 Gipps Street Carrington

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

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

**Issues**

- 1) The proposed variation to the FSR development standard, under the NLEP 2012.
- 2) The proposed development suitability with respect to the relevant provisions of the Newcastle Development Control Plan 2012 (NDCP 2012).

## Conclusion

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

## RECOMMENDATION

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.4 FSR, 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 DA2019/00962 for alterations and additions to dwelling house at 65 Gipps Street Carrington be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

## Political Donation / Gift Declaration

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject site comprises Lot 2 DP 12197. The lot is rectangular in shape, located on the western side of Gipps Street, with a road frontage of 4.065 metres, a depth of 24.395 metres and a total area of 100 m<sup>2</sup>. The site slopes slightly towards Gipps Street from the rear boundary, which adjoins a 1.22 metre wide right of way that has the Hunter Water sewer within it.

The site is currently occupied by an attached two storey terrace with an associated single storey addition to the rear. The terrace is one of seven built from 55 to 67

Gipps Street. The general form of development in the immediate area consists of a mixture of original dwellings, newly renovated dwellings and modern architectural designed dwellings up to two stories in height. They range in architectural style, reflecting the ongoing development since the establishment of Carrington as a suburb.

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

## 2.0 THE PROPOSAL

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

The architect has provided a detailed description of the proposal in the statement of environmental effects.

*The proposal is for the demolition of the existing single storey extension at the rear and the construction of a new single storey addition which will house new kitchen, living and dining spaces.*

*This new addition serves to relocate these core living areas from within the existing terrace to the rear of the lot and maximise the connection with the garden and natural light. The bathroom and laundry are relocated to within the existing terrace and will occupy the space currently functioning as a small kitchen and dining spaces. The proposal will provide greater amenity and outdoor connection for the residents.*

*The planning diagram is to provide a single contemporary 8.0m x 4.0m volume with a single pitched roof to replace the existing addition. The proposed addition will be separate from the existing terrace, linked by a hall and forming a void with an internalised garden to provide valuable natural light into the lower south west windows.*

*The proposed floor height is approximately 0.4 metres above the existing floor height of 1.84 metres (AHD) to allow services to be installed within the terrace without requiring significant adjustment to the existing structure and finishes.*

*The proposed addition considers and is informed by the immediate context of the neighbour at 63 Gipps Street, which extends 9.2m from the existing terraces toward the rear of the block. This provides a contextual rear boundary that supports the variation to the floor space ratio.*

*The proposed addition will have high ceilings with floor to ceiling glazing protected by deep eaves at the rear to allow western light to provide a light filled space, additionally, skylights will provide excellent daylighting and outlook year-round.*

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

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

### **3.0 PUBLIC NOTIFICATION**

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

### **4.0 INTEGRATED DEVELOPMENT**

The proposal is not '*integrated development*' pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*.

### **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 *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

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

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

SEPP55 requires that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

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

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

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

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

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

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

### **Newcastle Local Environmental Plan 2012 (NLEP 2012)**

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

#### Clause 2.1 - Land Use Zones

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

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

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

#### Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the existing single storey additions located to the rear of the original terrace on the site. Conditions are recommended to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

#### Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum building height of 8.5 metres. The submitted height is approximately 4.1 metres and complies with this requirement.

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

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

The proposed development has an FSR of 0.815, exceeding the prescribed maximum FSR by 36% (21.56m<sup>2</sup> gross floor area).

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

Clause 4.6 - Exceptions to development standards

The application involves a proposed building that exceeds the maximum FSR under Clause 4.4 of NLEP 2012.

The proposed development has an FSR of 0.815, exceeding the prescribed maximum FSR by 36% (21.5m<sup>2</sup> gross floor area).

The objectives of clause 4.4 of NLEP 2012 are:

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

Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard. In assessing the proposal against the provisions of Clause 4.6, it is noted that:

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

The applicant's request to vary the development standard is summarised as follows:

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

*An objection to a development standard can be supported by the following:*

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*

3. *The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*

4. *The development standard has been virtually abandoned or destroyed by the CN's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

The first consideration, demonstrating that the objectives of the FSR standard can be achieved notwithstanding noncompliance, is most important to the assessment of this objection. The compliance of the proposed development and variation with the objectives of the FSR standard in Clause 4.3 of the NLEP 2012 is demonstrated below.

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

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

*Strict compliance with the development standard in this case is unreasonable as the zoning of the lot does not consider the historical deficiency of the 100m<sup>2</sup> lot size and its variation from the prescribed minimum 400m<sup>2</sup> lot size for the zone. It is unreasonable to prevent reasonable and sustainable small building upgrades to existing housing stock due to zoning oversight.*

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

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

*An established building character of attached terrace housing on small lots exists along Gipps Street and many other lots within the Carrington locality. The proposal does not seek to change the street character by altering, bulk, density and scale.*

*The proposed changes will only contribute to the existing building by aligning itself to the established neighbouring buildings density, bulk and scale. The existing building profile from the street is maintained. This ensures no greater impact to the street and public domain is generated.*

*On this basis, the proposed variation to the FSR is reasonable and is not encouraging uncoordinated or non-cohesive development in the LGA.*

***How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?***

*The consideration of Part 1.3 Objects of Act from the Environmental Planning and Assessment Act 1979 are necessary in assessing a variation to a development standard. These are:*

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

*The proposed variation will not contravene the Objects of the Act. Management of the existing dwelling to achieve better environment and economic welfare of the occupant will be improved by providing a design solution that allows better use for the site. Strict compliance with the standard would inhibit this outcome and would not result in the orderly and economic use and development of land. To prevent the proposed extension would devalue the property and would not align with the NSW Government initiative to support more housing diversity that suits NSW's changing and growing population.*

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

*The proposed alterations are consistent with the established building character that exists along Gipps Street and many other lots within the Carrington locality. The deviation is representative of a reasonable investment and development for the established area, strict compliance with the standard would devalue the property potential due to the historical deficiency of the lot size.*

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

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

*The proposed variation is the result of a design process for the site which recognises the unique characteristics of 65 Gipps Street. It will allow an improved design response for occupants amenity and will not result in unreasonable amenity and environmental impacts to neighbours or street frontage.*

*The proposed alterations and additions to 65 Gipps Street are not excessive. The proposed variation will provide modest room sizes for basic family habitation. The proposed variation will total 84 square metres.*

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

*Based on the information in this Objection to Development Standard, the Statement of Environmental Effects (SEE) and the associated drawings included with this DA submission, it is considered that the proposed alterations and additions are not inconsistent with the character of the immediate area. The design complies generally with all the building design criteria of the NDCP 2012 and the NLEP 2012 for the R2 zoning.*

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

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

- a) It adequately addresses the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012; and
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives

for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

- c) The Secretary's concurrence to the exception to the FSR development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per NSW Planning and Environment circular PS 18-003 of 21 February 2018; and
- d) The proposed FSR exceedance is considered to be a reasonable variation and it will have minimal impact on neighbouring properties in terms of bulk, scale, privacy, overshadowing and view loss. The proposed exceedance of the FSR does not add unnecessary bulk and scale to the development. The proposed scale of the development is not out of character with existing dwellings within Gipps Street and the wider surrounding area; and
- e) The FSR of the proposed development is supported and that compliance with the development standard is unreasonable and unnecessary in this case.

#### Clause 5.10 - Heritage Conservation

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

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

Subclause 5.10(5)(c) permits the consent authority to require a heritage assessment to be undertaken by the applicant to identify the impacts of the proposed development on the heritage items. The term "in the vicinity" is defined, within Section 5.05 Heritage Items of the NDCP 2012, as "the surrounding context, environment or setting of a heritage item".

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

#### Clause 6.1 – Acid Sulfate Soils

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

A condition of consent is recommended in respect of the management of acid sulfate soils.

The proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

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

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

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

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

**5.3 Any development control plan**

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

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

Single Dwellings and Ancillary Development - Section 3.02

The following comments are made concerning the proposed development and the relevant provisions of Section 3.02.

*Density - Floor Space Ratio (3.02.01)*

The maximum permissible FSR for the site is 0.6. The proposed development has a nominated FSR of 0.815. Refer to Section 5.1 of this report for details of the applicant's request for the proposed FSR variation and the assessment of that request.

*Height of Buildings (3.02.02)*

Under the NLEP 2012 the site has a maximum height of 8.5 metres. The submitted height is approximately 4.1 metres and complies with this requirement.

*Street frontage appearance (3.02.03)*

The existing setback is retained.

*Side / rear setbacks (building envelope) (3.02.04)*

The proposed development meets the acceptable solutions of Section 3.02.04, except for those relating to the height of the boundary walls. Both boundary walls are 3.7m to 4.1m high, exceeding the acceptable solution of 3.3m.

The proposed development is considered to achieve the relevant performance criteria within Section 3.02.04 of the NDCP 2012. That is, the bulk and scale of the proposed development:

- (a) Is consistent with that of the existing built form prevailing in the street and locality.
- (b) Does not create overbearing development for adjoining dwelling houses and their private open space. The relative location of windows and physical separation between the proposed dwelling and the neighbours' living areas and principal areas of private open space is considered to be sufficient to not create unreasonable impacts.
- (c) Does not unduly impact on the amenity of adjoining dwelling houses. The location of windows is considered to be sympathetic to the adjoining dwelling houses and satisfactorily protects the privacy of neighbours.
- (d) Does not result in the loss of significant views or outlook from adjoining premises. The proposed development meets the acceptable solutions of Section 3.02.09 of the NDCP 2012. That is, adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development.
- (e) Provides for natural light, sunlight and breezes. It is acknowledged that the solar access to the adjoining neighbours will be reduced by the proposed development, however, it is considered that the extent of the impact is reasonable.

*Landscaping (3.02.05)*

The site area is 100m<sup>2</sup>, generating a requirement for 10% (ie. 10m<sup>2</sup>) of the site to be provided with landscaping. The total area of proposed landscaping is approximately 10m<sup>2</sup> and is considered to meet the NDCP 2012 requirements.

*Private open space (3.02.06)*

The proposed private open space area is considered to be satisfactory and to meet the NDCP 2012 requirements.

*Privacy (3.02.07)*

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

The relative location of windows and physical separation between the proposed dwelling and the neighbours' living areas and principal areas of private open space is considered to be sufficient to create a reasonable level of privacy between those premises.

*Solar access (3.02.08)*

The proposed development is considered to be satisfactory and to meet the NDCP 2012 requirements as it does not significantly overshadow north facing living area windows and the principal area of private open space of adjacent dwellings.

The only property considered to be relevant to the overshadowing cast by the proposed development is 67 Gipps Street, located to the south and adjoining the subject site. The windows facing towards the rear yard of 67 Gipps are not "north facing", as prescribed in the NDCP 2012. That is, they face approximately 28 degrees west of true north.

The existing solar access to the principal area of private open space at 67 Gipps is overshadowed by the existing buildings and fencing. Given the narrow width of 65 Gipps (4.0 metres) it is considered virtually impossible to develop the site without creating overshadowing of 67 Gipps.

The applicant has provided shadow diagrams that illustrate the overshadowing by the existing dwelling and the proposed development. The shadow diagrams are presented on drawings A901 and A902 and can be found at **Attachment A**.

*View sharing (3.02.09)*

The proposed development meets the acceptable solutions of Section 3.02.09 of the NDCP 2012. That is, adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development.

*Car parking and vehicular access (3.02.10)*

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

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

The proposed development is considered acceptable in this regard.

*Development within a Heritage Conservation Areas (3.02.11)*

The subject site is not located within a Heritage conservation area.

Flood Management - Section 4.01

The subject site is identified as land susceptible to flooding and subject to requirements relating to the management of development within flood prone areas.

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

The proposed development is considered acceptable with respect to Section 4.01.

Mine Subsidence - Section 4.03

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

Soil Management - Section 5.01

The proposed development is considered satisfactory with respect to this section of the NDCP 2012.

Land Contamination - Section 5.02

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

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Heritage Items - Section 5.05

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

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

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

Traffic, Parking and Access - Section 7.03

The proposed development is required to provide on-site car parking in accordance with the rates set out in Table 1 of Section 7.03.02 of the NDCP 2012, to have a minimum of 1 car parking space per dwelling.

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

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed stormwater drainage system includes a rainwater tank for water re-use within the dwelling, with the rainwater tank overflow connected to the street kerb and gutter. The proposed stormwater management plan is considered to be satisfactory and in accordance with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

The applicant has prepared a detailed waste management plan, which addresses waste minimisation and litter management strategies. Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued. Based on the submitted information, the proposal is considered to be acceptable.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the provisions of the NDCP 2012. No submissions were received.

**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 Environmental Planning and Assessment Regulation 2000 (EPR).

As consent is being sought for the demolition of the existing rear additions, Clause 92 of the EPR requires CN to take into consideration the provisions of AS2601 - *Demolition of Structures*. The proposed demolition is considered satisfactory and compliance with AS2601 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 NLEP 2012 and NDCP 2012 considerations.

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

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

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

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

The constraints of the site have been considered in respect of the proposed development, including contamination, acid sulfate soils and flooding. The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

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

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

The application was publicly notified and no submissions were received.

#### **5.9 The public interest**

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development. The development is in the public interest and will allow for the orderly and economic development of the site.

#### **6.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

**ATTACHMENTS**

**Item 1 - Attachment A:** Submitted Plans - 65 Gipps Street Carrington - Under Separate Cover

**Item 1 - Attachment B:** Draft Schedule of Conditions - 65 Gipps Street Carrington - Under Separate Cover

**Item 1- Attachment C:** Processing Chronology - 65 Gipps Street Carrington - Under Separate Cover

**Attachments A-C - Distributed Under Separate cover**

**ITEM-2                    DAC 18/02/20 - DA2018/00968 - 37 ALFRED STREET  
NEWCASTLE EAST - ALTERATIONS AND ADDITIONS TO  
DWELLING**

**APPLICANT:            SALLY SCARBOROUGH  
OWNER:                SALLY SCARBOROUGH  
REPORT BY:            GOVERNANCE  
CONTACT:              DIRECTOR GOVERNANCE / MANAGER REGULATORY,  
PLANNING AND ASSESSMENT**

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**PART I**

**BACKGROUND**

An application has been submitted seeking consent for alterations and additions to a dwelling house at 37 Alfred Street Newcastle East.

The submitted application has been assigned to Development Officer Mark McMellon for assessment.

The original application was referred to the Development Applications Committee Meeting held on 25 June 2019 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 a 28% variation.



**Subject Land: 37 Alfred Street Newcastle East**

At the time of the meeting, it was resolved to defeat the motion put forward to approve the subject application. As no alternate recommendations to refuse the application were put to the meeting, the subject application remained undetermined.

The applicant subsequently lodged a revised proposal for consideration on 11 September 2019. The revised scheme has been reduced in scale substantially and now proposes a 7% variation to the FSR development standard of NLEP 2012.

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

The amended application was publicly notified in accordance with the Newcastle Development Control Plan 2012 (NDCP 2012).

One submission has been received.

The submission raised concerns regarding:

- i) Bulk and scale
- ii) Building envelope exceedance on side boundaries
- iii) Overshadowing impacts due to wall height
- iv) Inadequate landscaping area

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

It is also noted that the previous objector did not lodge a submission in respect of the revised proposal.

The original proposal was considered at the Public Voice Committee Meeting held on 21 May 2019 and a Development Applications Committee Meeting held on 18 June 2019, where the application remained undetermined.

The amended proposal was considered at the Public Voice Committee Meeting held on 3 December 2019.

### Issues

- 1) Whether the proposed variation to the FSR development standard of NLEP 2012 is justified.
- 2) Whether the proposed development is suitable with respect to the relevant provisions of the NDCP 2012.

### Conclusion

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

### RECOMMENDATION

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of 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 in the R3 Medium Density Residential zone in which the development is proposed to be carried out; and

- B. That DA2018/00968 for alterations and additions to a dwelling at 37 Alfred Street Newcastle East 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 the Council's determination.

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

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

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

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

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## **PART II**

### **1.0 THE SUBJECT SITE**

The subject property comprises Lot 1 in DP 303507 and is a small rectangular allotment located on the southern side of Alfred Street. The site has a frontage of 3.426m to Alfred Street, an average depth of 20.118m and a total area of 69m<sup>2</sup>. The site is relatively flat, with road frontage to Alfred Street and a rear boundary to a laneway that is connected to Telford Street and Zaara Street.

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

Development in the immediate area predominantly consists of dwelling houses that are mostly of a similar scale and style to that of the subject property.

The site is located within the Newcastle East Heritage Conservation Area.

### **2.0 THE PROPOSAL**

The applicant seeks consent for alterations and additions to a dwelling house, consisting of:

- i) Demolition of the rear single-storey structures (existing kitchen, laundry and bathroom)
- ii) Demolition of the internal stair and chimney structure
- iii) Extend the existing two storey dwelling by 1.395m and construction a single storey rear addition as detailed on the accompanying plans
- iv) Reinstatement of the open verandah overhanging the Alfred Street footpath (verandah in this location is currently enclosed), with detail to match 33 Alfred Street (at the end of the row of terraces).
- v) Construction of ground level deck to the rear of the proposed addition
- vi) Kitchen and bathroom fit outs
- vii) Installation of two new skylights (operable skylight) into the existing gable roof

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

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

### **3.0 PUBLIC NOTIFICATION**

The amended application was publicly notified on 13 September 2019 for a period of 14 days in accordance with the NDCP 2012 and one submission was received in response. It is noted that the previous objector did not lodge a submission in respect of the revised proposal.

The concerns raised by the objector in respect of the amended development are summarised as follows:

#### **a) Amenity Issues**

- i) Solar access impacts on neighbouring area of private open space.

#### **b) Design and Aesthetic Issues**

- i) The proposed length of the single storey rear addition located on the side boundary exceeds the numerical requirements as stated in the NDCP 2012.
- ii) The height of the proposed single storey rear addition is not in keeping with the existing built form (single storey) of the area.

**c) Miscellaneous**

- i) Inadequate landscaping area.

The objector's concerns are addressed under the relevant matters for consideration in Section 5.0 of this report.

**4.0 INTEGRATED DEVELOPMENT**

The proposal is not '*integrated development*' pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*.

**5.0 PLANNING ASSESSMENT**

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

**5.1 Provisions of any environmental planning instrument**

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

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

City of Newcastle's (CN) records do not identify any past contaminating activities on the site. The subject land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site.

The proposal is acceptable having regard to this policy.

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

The Vegetation SEPP is one of a suite of Land Management and Biodiversity Conservation reforms that commenced in New South Wales on 25 August 2017.

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

The proposal has been assessed in accordance with the NDCCP 2012 and is considered to be satisfactory.

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

SEPP Coastal Management applies to the subject site. Having regard to the relevant aims of the policy, the proposed development will not detrimentally impact the coastal zone or the environmental assets of the coastal environment area.

The proposed development will not adversely impact the biophysical, hydrological or ecological environment, nor geological coastal processes and features. The proposed development will not impact the water quality of sensitive coastal areas, and will not impact native flora, fauna or Aboriginal heritage.

A suitable stormwater design has been incorporated into the proposed development and effluent will be conveyed to the mains sewer. The proposed development satisfies the relevant provisions of SEPP Coastal Management.

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

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

**Newcastle Local Environmental Plan 2012 (NLEP 2012)**

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

Clause 2.1 - Land Use Zones

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

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

1. *To provide for the housing needs of the community within a medium density residential environment.*
2. *Provide a variety of housing types within a medium density residential environment.*
3. *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
4. *To allow some diversity of activities and densities if:*

- (i) the scale and height of proposed buildings is compatible with the character of the locality, and*
  - (ii) there will be no significant adverse impact on the amenity of any existing nearby development.*
5. *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development:*
- (i) has regard to the desired future character of residential streets, and*
  - (ii) does not significantly detract from the amenity of any existing nearby development.*

#### Clause 2.7 - Demolition Requires Development Consent

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

#### Clause 4.3 - Height of Buildings

The objectives of Clause 4.3 of NLEP 2012 are:

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

Under NLEP 2012 the site has a height of buildings development standard of 10m. The existing dwelling has a ridge height of 8.9m.

The roof line of the proposed two storey rear addition connects to the existing building below the gutter line of the main roof and is 6.83m above ground level. The proposal complies with the NLEP 2012 development standard.

#### Clause 4.4 - Floor Space Ratio

The objectives of Clause 4.4 of NLEP 2012 are:

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

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

The proposed development has an FSR of 1.07:1, exceeding the prescribed development standard by 7% (approximately 4.91m<sup>2</sup> of gross floor area).

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

Clause 4.6 - Exceptions to development standards

The applicant has submitted a written request that seeks to vary the FSR development standard (Clause 4.4) 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 this clause are:

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

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

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

The applicant's request to vary the development standard makes the following points:

- 1) *Strict compliance would be unreasonable in this case as the existing terrace is modest in size, and already slightly exceeds the Floor Space Ratio of the site. The proposed development represents only a 4.91m<sup>2</sup> increase in floor area. The proposed development is consistent with the bulk / scale of existing development in the immediate surrounding area.*

- 2) *Strict compliance with the standard would not allow any additional floor area (and in fact would require some demolition to reduce the existing floor area) and would hinder the economic use of the site and the existing dwelling.*
- 3) *The objectives of the R3 Medium Density Residential zoning and the Floor Space Ratio control is to provide appropriate density consistent with that of the locality. The size of the proposed development is consistent with the size of neighbouring development and will not unreasonably affect the amenity of surrounding properties.*

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

- a) It adequately addresses the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012.
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the FSR development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per NSW Planning and Environment circular PS 18-003 of 21 February 2018.
- d) The proposed FSR exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing, view loss, bulk and scale. The FSR exceedance is consistent with similar development in the area. The proposal also provides for an improvement to the functionality, liveability and amenity for building occupants.
- e) It is considered that the exceedance proposed is an acceptable planning outcome and strict compliance with the development standard is unreasonable in this case.

#### Clause 5.10 - Heritage Conservation

Although the proposal incorporates some minor demolition works to the rear of the dwelling, it is considered that the design respects the heritage context of the site and locality.

The proposed additions would be visible from the rear lane adjoining the site. It is noted that there is considerable variation in the laneway presentation of dwellings in the locality, with the modernisation of living standards in dwellings in the area commonly being achieved through alterations and additions located toward the rear of sites.

It is considered that the building contributes to the significance of the heritage conservation area, principally with respect to its streetscape presentation, where it is proposed to reverse the enclosure of the front verandah and make it consistent with the verandahs of adjoining terraces.

It is considered that the proposed development will not detrimentally affect the heritage significance of the heritage conservation area and is satisfactory with respect to heritage merit.

#### Clause 6.1 - Acid Sulfate Soils

The site is affected by Class 5 acid sulfate soils and the proposed development is considered satisfactory in this regard.

#### Clause 6.2 - Earthworks

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

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

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

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

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

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

#### Single Dwellings and Ancillary Development - Section 3.02

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

The format of Section 3.02 of the NDCP 2012 is set up in such a way that each of the controls has an acceptable solution and performance criteria, described as follows:

#### ***Acceptable Solutions***

*The acceptable solutions provide a certain outcome of achieving compliance with Council controls for this section. To achieve the acceptable solution the applicant must demonstrate that they have satisfied the required control/s within each section. Any variation from the acceptable solution will mean the application will be required*

*to meet the performance criteria for that section and the application will become a performance-based assessment.*

**Performance Criteria**

*The performance criteria permit applicants to be flexible and innovative in responding to the DCP requirements. Applications which meet the performance criteria are assessed on merit and it is the applicant's responsibility to demonstrate how the performance criteria have been met. Compliance with the performance criteria can be undertaken through the use of 3D montages, 3D models, constraints mapping and other forms of visual representation.*

Street frontage appearance (3.02.03)

The proposed development does not alter the front setback of the dwelling to Alfred Street. The existing verandah overhanging the Alfred Street footpath is currently enclosed, forming part of the front bedroom. The existing veranda is inconsistent with the two matching terraces at 33 and 35 Alfred Street, both of which have open fronted verandahs.

The proposed development includes the reinstatement of an open verandah, with detailing to match the neighbouring verandah of 35 Alfred Street.

The proposal is considered satisfactory in accordance with Section 3.02.03.

Side / rear setbacks (building envelope) (3.02.04)

The built form of the locality is predominantly single storey and two-storey boundary to boundary terrace housing. This form of development is fundamentally inconsistent with the numerical acceptable solution controls within this section of the NDCP 2012.

As such, the proposed design was considered against the performance criteria of this Section of the NDCP 2012. The existing two-storey terrace dwelling is built to both side boundaries, with the existing single storey kitchen, laundry and bath structure located on the southern side of the terrace being built to the eastern side property boundary.

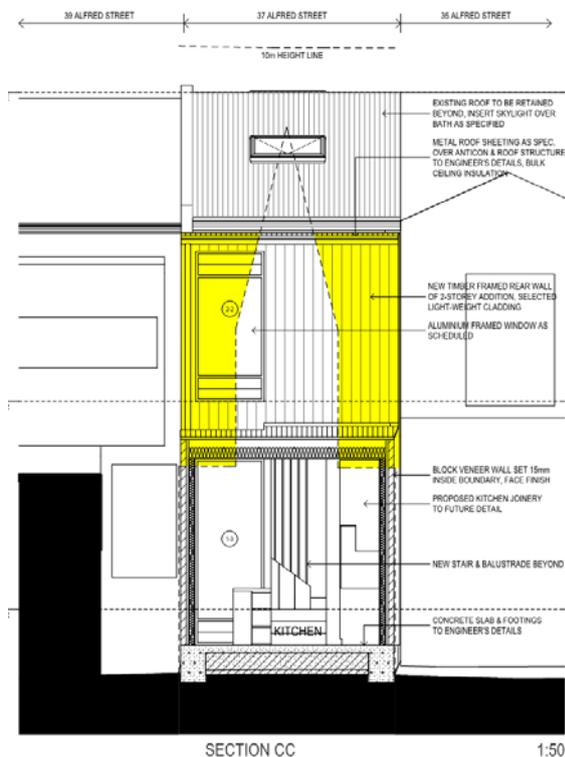
The proposal seeks to demolish the existing rear single storey skillion addition and replace it by extending the two-storey terrace (Level 1 and Level 2) by 1.395m. A single storey addition will then replace the single storey component that is to be demolished and will extend south in approximately the same location.

The eastern side of the proposed additions will replace the existing walls that are located on the boundary, with an overall length of 8.11m. The western side of the existing dwelling will be extended in length by 1.395m, then will be stepped in approximately 1.33m, over a distance of 1.7m, before returning to the boundary with a single-storey wall extending for a length of 4.99m.

The height of the proposed two storey addition is 6.83m, and the height of the proposed single storey addition is 3.8m.

As mentioned above, the typical pattern of existing development along Alfred Street and the general locality does not comply with the building envelope acceptable solutions prescribed by the NDCP 2012.

The acceptable solution controls for walls on boundaries also limit wall heights to 3.3m or to match an existing adjoining wall and have a maximum length of 20m or 50% of the lot depth (whichever is the lesser). For comparison purposes, the following extract from the architectural plans depicts the permissible building envelope when measured from side boundaries:



*Building envelope departure from side boundaries*

The proposed development has been assessed and is considered to be consistent with the relevant performance criteria within Section 3.02.04 as detailed below:

The bulk and scale of the proposed development:

- (a) Is consistent with that of the existing built form prevailing in the street and locality.

Comment - The proposed development is consistent in terms of height, width and roof type in Alfred Street and the general form of development in the locality.

- (b) Does not create overbearing development for adjoining dwelling houses and their private open space.

Comment - The stepped in elements forming part of the western side rear addition, along with varied materiality have also aided in breaking up the visual impact along this elevation.

The relative location of windows and physical separation between the proposed dwelling addition and the neighbours' living areas and principal areas of private open space is considered to be sufficient to not create unreasonable impacts.

- (c) Does not unduly impact on the amenity of adjoining dwelling houses.

Comment - The location of windows is considered to be sympathetic to the adjoining dwelling houses and satisfactorily protects the privacy of neighbours.

- (d) Does not result in the loss of significant views or outlook from adjoining premises.

Comment - The proposed development meets the acceptable solutions of Section 3.02.09 of the NDCP 2012. That is, adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development.

- (e) Provides for natural light, sunlight and breezes.

Comment - The orientation of the allotment is generally north-south, therefore the proposal will not unduly impact adjoining properties in respect of overshadowing impacts.

Existing boundary to boundary terrace construction, south facing rear yards and the presence of large trees in the locality also mean that solar access is already significantly impacted.

Notwithstanding, the combination of setting in the western wall and maintaining a reasonable rear setback will still permit access to light and breezes to adjoining properties.

Landscaping (3.02.05)

The existing site does not allow for any landscaped area, as the entirety of the rear yard area is paved.

The proposed development incorporates soft landscaping in the western side courtyard (2.8m<sup>2</sup> with a minimum dimension of 1.2m), and between the proposed rear deck and the rear boundary (3.26m<sup>2</sup> with a minimum dimension of 0.95m).

Although not compliant with the DCP, this represents an improvement on the existing situation, and is similar with landscaping on other sites in the local area.

This represents an improvement on the existing situation and is considered to be satisfactory with respect to the performance criteria of Section 3.02.05.

Private open space (3.02.06)

The site currently has a rear paved private open space area of 3.6m x 2.7m that is not directly adjacent to any living area.

The proposed development includes a rear deck directly adjacent to the new kitchen / dining area, measuring 2.5m x 2.5m.

Although less than the NDCP 2012 acceptable solution criteria of 3m x 4m, the proposed arrangement represents a much more usable space compared to existing arrangements.

Alternative private open space is also available in the middle of the site towards the western side boundary and is also visible from level 1 living areas.

The proposed areas of private open space are considered satisfactory with respect to the performance criteria of Section 3.02.06.

Privacy (3.02.07)

The proposal will not result in any significant privacy impacts.

The proposed development locates all living areas on the ground floor (depicted as level 1 on plans), while the upper floor (level 2) contains only bedrooms and bathrooms. Given the limited use of such upper floor rooms, this is not expected to have a significant impact on the privacy of adjoining premises.

The amended proposal does not include a deck in the side courtyard area. It is considered that the proposed 1.8m high timber boundary fence (refer West Elevation, DA-05) will adequately screen views towards the neighbouring property to the west.

A condition requiring the provision of a 1.7m high privacy screen to the western side of the proposed rear deck is also proposed to minimise any potential privacy and overlooking impacts.

It is considered that the proposed development meets the acceptable solutions of Section 3.02.07.

Solar access 3.02.08)

Given the north-south orientation of the allotment, additional overshadowing impacts are considered to be minor. The proposed alterations and additions will not

significantly overshadow north facing living area windows and principal areas of private open space of adjacent dwellings.

*View sharing (3.02.09)*

The proposed development will have minimal to no impact on the existing outlook from neighbouring properties.

Adjoining properties do not have views or vistas to water, city skyline and iconic views that will be obscured by the proposed development.

As such, the proposal is considered acceptable in accordance with the acceptable solutions of Section 3.02.09.

*Car parking and vehicular access (3.02.10)*

There is no provision for on-site car parking. On-site car parking is considered a historical deficiency and the proposal is satisfactory as proposed.

*Development within a Heritage Conservation Areas (3.02.11)*

The design respects the heritage context of the site and locality and results in an improvement to the functionality, liveability and amenity for building occupants.

It is considered that the proposed alterations and additions to the dwelling will not adversely impact upon the established streetscape in this part of the heritage conservation area and is satisfactory in accordance with the relevant objectives of Section 5.07.

*Ancillary development (3.02.12)*

The proposed new fence located on the rear boundary is replacing the existing fence at the same height and is considered to be satisfactory.

In conclusion, when assessed against the relevant provisions of the Single Dwellings and Ancillary Development Section of the NDCP 2012, the proposed development is considered to be acceptable and achieves compliance with acceptable solutions and performance criteria for building form, building separation and residential amenity.

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

*Soil Management - Section 5.01*

The earthworks proposed as part of this application are minimal and are consistent with the requirements of the NDCP 2012.

The proposed development is satisfactory with respect to the relevant soil management objectives.

Newcastle City Centre - Section 6.01

The proposed development is located in the Newcastle East Heritage Conservation Area character area and is considered to be satisfactory with respect to the relevant principles of this section.

Heritage Conservation Areas - Section 6.02

The terrace building on the site contributes to the heritage significance of the Newcastle East Heritage Conservation Area.

The proposed alterations and additions will not detrimentally affect the existing or desired amenity, streetscape and character of the Newcastle East Heritage Conservation Area.

The proposed development is consistent with the principles for development in a heritage conservation area, in accordance with the provided Statement of Heritage Impact and the relevant objectives of this section.

Traffic, Parking and Access - Section 7.03

Given the historical subdivision pattern, no on-site car parking is available. In this instance, car parking is considered a historical deficiency in accordance with this section of the NDCP 2012.

Stormwater- Section 7.06

Stormwater from the existing roofed areas and all new roofed areas will be piped to CN's kerb gutter fronting the property, in accordance with the submitted stormwater management plan. The proposed development is satisfactory in accordance with the relevant aims and objectives of this section.

Waste Management - Section 7.08

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

Public Participation - Section 8.0

The amended development application was publicly notified on 13 September 2019 in accordance with Section 8.0 Public Participation of the NDCP 2012.

One submission objecting to the proposal was received.

Further comments are provided in Section 5.8 below.

#### **5.4 Planning agreements**

No planning agreement is relevant to the proposal.

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

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*. In addition, compliance with AS2601 – Demolition of Structures will be required in the recommended conditions of consent, for proposed demolition works.

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

The proposed development will not have any undue adverse impact on the natural or built environment and is compatible with the existing character, bulk, scale and massing of development in the immediate area.

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

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

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

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

The development application was publicly notified in accordance with Section 8.0 Public Participation of the NDCP 2012.

One submission was received during the notification period.

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

- i) Bulk and scale
- ii) Building envelope exceedance
- iii) Overshadowing impacts
- iv) Inadequate landscaping area

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

### **5.9 The public interest**

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

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

### **6.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under section 4.15 of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

### **ATTACHMENTS**

**Item 2 - Attachment A:** Submitted Plans – 37 Alfred Street Newcastle East - Under Separate Cover

**Item 2 - Attachment B:** Draft Schedule of Conditions – 37 Alfred Street Newcastle East - Under Separate Cover

**Item 2 - Attachment C:** Processing Chronology – 37 Alfred Street Newcastle - Under Separate Cover

**Attachments A-C - Distributed Under Separate Cover**

**ITEM-3                    DAC 18/02/20 - DA2002.1583.01 - 31 THROSBY STREET WICKHAM - MODIFICATION TO DEMOLITION OF WAREHOUSE AND ERECTION OF TWO X THREE-STOREY, THREE BEDROOM DWELLINGS - CHANGES TO FLOOR PLANS, ROOF DESIGN, FACADE TREATMENT AND FENCING**

**APPLICANT:            SHADE DESIGN**  
**OWNER:                J D HUNTER & J M HERSEE**  
**NOTE BY:              GOVERNANCE**  
**CONTACT:              DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

## PART I

### BACKGROUND

An application has been received seeking consent to modify the approved demolition of a warehouse and erection of two x 3-storey, 3-bedroom dwellings at 31 Throsby Street, Wickham. Development consent was originally granted on 8 January 2003. The modification seeks changes to floor plans, roof design, facade treatment and fencing.

The submitted application was assigned to development officer Fiona Dowler, for assessment.

The application is referred to the Development Applications Committee for determination, due to the proposed variation to the height of buildings development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (proposed variation of 19.7%).

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

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

### Issues



**Subject Land:** 31 Throsby Street Wickham

- 1) The proposed variation to the Height of Buildings development standard under NLEP 2012.

**Conclusion**

The proposed modification to the approved 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* and is considered acceptable subject to compliance with appropriate conditions.

**RECOMMENDATION**

- A. That the Development Applications Committee note the variation to the height of buildings development standard under NLEP 2012 and consider the variation to be justified in the circumstances, and to be consistent with the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and
- B. That DA2002/1583.01 to modify the approved development by changes to floor plans, roof design, facade treatment and fencing be approved, and modified consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

**Political Donation / Gift Declaration**

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject property comprises a single allotment known as 31 Throsby Street Wickham, with frontages to Throsby Street, Union Street, and Furlong Lane. The site is relatively flat, devoid of vegetation, and currently contains a warehouse building.

Existing development on adjoining sites includes residential flat buildings and shop top housing. The general form of development in the immediate area consists of three storey residential accommodation with some ground floor commercial.

### 2.0 THE PROPOSAL

The applicant seeks consent to modify the approved development which includes demolition of warehouse and erection of two x 3-storey, 3-bedroom dwellings by changes to floor plans, roof design, facade treatment and fencing.

The approved development consists of a detached dual occupancy. The plans submitted for the modification originally included two external staircases extending from the ground floor rear yards of the dwellings to a proposed rooftop with pergolas; and was in excess of the building height standard. In response to concerns raised by CN officers the proposal was amended to provide rooftop access from the internal stairs. Once amended, the proposed rooftop included a pergola 2.8m in height. The pergola height was reduced to a height of 2.6m, and the rooftop development amended to reinstate planter boxes to provide separation and privacy. The stairs and the pergola are in excess of the building height standard by 1.97m (19.7%).

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

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

### 3.0 PUBLIC NOTIFICATION

The modification was publicly notified in accordance with Newcastle Development Control Plan 2012 (NDCP 2012). No submissions were received as a result of the notification process.

### 4.0 INTEGRATED DEVELOPMENT

The proposal is not '*integrated development*' pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*.

## **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 *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

In the consideration of the application, the assessment is limited to 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 proposed modification involves changes to floor plans, roof design, facade treatment and fencing.

The modification application was lodged under Section 4.55(2) of the EP&A Act which requires that the consent authority be “satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted”. An assessment of the modification application has been made and it is considered that the current proposal is substantially the same as the originally approved development.

The change in height due to the introduction of the rooftop terrace and associated stairs and pergola, is located towards the Union Street boundary. Internal floor plans are proposed to be reconfigured, and the facade updated. Having regard to the context and scale of the overall proposed development, it is considered to be substantially the same development to that originally approved and the proposed physical changes are considered to be substantially the same to the development as approved.

Due to the determination date of the original application, the applicant was requested to demonstrate that physical commencement has occurred on the site to ensure that the consent had not lapsed. A construction certificate was issued prior to the expiration date of the determination, and evidence of physical commencement of works which included core hole drilling and beam removal has been provided. These works are considered to satisfy the requirement for physical commencement.

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

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

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

CN's records do not identify any past contaminating activities on the site. The proposal is considered acceptable having regard to this policy.

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

The Coastal Management State Environmental Planning Policy ('SEPP') came into effect on 3 April 2018. The SEPP seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the *Coastal Management Act 2016* (the Act).

The 'coastal zone' is defined in the Act as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability. The proposed development is consistent with the provisions of the SEPP.

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

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

The provisions of the SEPP did not apply at the time of the original application. The current modification relates to changes to the floor plans, roof design, facade treatment, and fencing. In relation to the proposed modifications, a BASIX Certificate is not required.

**Newcastle Local Environmental Plan 2012 (NLEP 2012)**

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

Clause 2.1 - Land Use Zones

The subject property is located within the B4 zone under the provisions of NLEP 2012. The proposed development is not permissible in the zone. However, at the time of determination of DA2002/1583, the site was zoned 3(d) Low Intensity Commercial under Newcastle Local Environmental Plan 1987. In addition, the draft Newcastle Local Environmental Plan 2002 was adopted by Council on 25 June 2002 under which the land was identified to be within 3(d) Mixed Uses. It was determined at the time of the original assessment, that the proposed development was permitted within the zone and within the draft LEP.

Clause 4.3 - Height of Buildings

Under NLEP 2012 the site has a height of buildings development standard of 10m. The proposed development will result in a maximum height of 11.97m, equating to an exceedance of 1.97m or 19.7% above the height of buildings development standard for the subject land.

The objectives of clause 4.3 of NLEP 2012 are:

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

The applicant has submitted a NLEP 2012 Clause 4.6 variation request to support the current modification, which has been reviewed as part of the assessment (notwithstanding that there is no formal requirement for a development standard variation request to be made under a S4.55 modification application).

The applicant's request stated:

- i) *The overall building mass is within the LEP height limit with architectural features or required BCA elements such as parapet height, stair overruns and pergolas departing this envelope. The location is central to the building with the stair overrun occupying around 4% of the overall built form.*
- ii) *The pergola is visually a lightweight unobtrusive structure.*
- iii) *The stair overrun is a continuation of the architectural feature of the stairs below forming a contiguous curved architectural element complementing and enhancing the other curved elements of the buildings design.*
- iv) *The extent of the height non-compliance is limited centrally to the built form and does not impose any overshadowing or privacy issues.*
- v) *The addition of additional open space and outdoor area greatly increases the occupant's amenity and wellbeing whilst providing passive surveillance over the street and intersection.*
- vi) *Across the site the departure will not affect adjoining development or the development itself in terms of excessive bulk and is a continuation of rooftop entertainment areas as approved throughout the Wickham area including the adjoining No29 Throsby Street.*

*With respect to above, there are sufficient environmental planning grounds to justify contravening the development standard in this instance. In addition to the height non-compliance not affecting the amenity of adjoining properties, or having a significant visual impact when viewing the development from the street, the proposal in its current form represents a considered solution to the opportunities and constraints presented by the site and will reinforce the emerging area.*

*It is considered that the departure from the LEP maximum height limit of 10m is complementary to the streetscape within Throsby Street and central to the buildings form. Given the minor nature of the non-compliance, there are no material impacts that result from the non-compliance, then a fully compliant development would still result. In addition, there are no detrimental amenity impacts resulting from the rooftop addition when considered in its entirety. The proposal adds considerable*

*amenity in the form of a rooftop shaded BBQ and seating area strengthening the amenity of the residents within the building by allowing greater social interactions.*

*On this basis, the proposal is consistent with the objectives of CN and State Planning objectives. Strict compliance would simply deprive the residents of the opportunity to better utilise the rooftop space as others have within the street.*

*The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3 and the zone by providing a mixture of compatible land uses and integrate uses. By allowing the slight building height departure it provides a contextual transition from the 10m LEP height to the 14m LEP height limit to the south west of the site. The proposal will, furthermore, complement and enhance the core functions of the Wickham Masterplan creating jobs and residential density and precinct activation.*

An assessment of the request has been undertaken and it is considered that the applicant has demonstrated that the standard is unreasonable and unnecessary in this instance, and that the proposed development is not out of character with the surrounding and established built form of the area. It is further considered the proposal respects the general residential amenity of the area, and the quality of the environment, in accordance with the relevant B4 zone objectives. A merit assessment of the proposed development confirms that the likely resultant impacts in terms of privacy, overshadowing, streetscape, character of the locality, bulk, scale and context are acceptable. The variation in height is not anticipated to create any additional adverse impacts on the adjoining neighbors or immediate streetscape.

## **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**

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

### Residential Development - Section 3.03

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

The modifications improve the relationship of the development with the public domain, including a boundary treatment that activates the street frontage and permits casual surveillance. The proposed fencing does not detract from the street character and provides privacy while still allowing views to the public domain. The

dwellings are suitably orientated, and the proposed modifications are not considered to impact upon neighbouring views.

The frontage and setbacks remain unchanged, with large landscaped areas proposed to the rear of each of the dwellings, which are appropriately sited.

The proposed roof modification which includes an accessible rooftop terrace area, has been setback from the side boundaries, with privacy screens to the north to provide visual privacy to neighbouring and adjacent properties.

The proposal is consistent with the relevant sections of the NDCP 2012.

*Principal controls (3.03.01)*

- A. *Frontage widths*
- B. *Front setbacks*
- C. *Side and rear setback*
- D. *Landscaped Area*

The current proposal does not propose any significant changes to these aspects.

*Siting the development (3.03.02)*

- A. *Local character and context*
- B. *Public domain Interface*
- C. *Pedestrian and vehicle access*
- D. *Orientation and siting*
- E. *Building Separation*

The proposed facade provides greater consistency with the character of the street and is considered reasonable in terms of the local character and context. The proposed change to the height of the building to provide rooftop access is considered acceptable as the impact of the height and bulk of the building is largely contained to the western boundary on Union Street.

*Amenity (3.03.03)*

- A. *Solar and daylight access*
- B. *Natural ventilation*
- C. *Ceiling heights*
- D. *Dwelling size and layout*
- E. *Private Open Space*
- F. *Storage*
- G. *Car and bicycle parking*
- H. *Visual privacy*
- I. *Acoustic privacy*
- J. *Noise and pollution*

The modified proposal provides improved amenity for future occupants with increased ceiling heights, an improved layout, larger areas of private open space, and adequate visual privacy.

*Configuration (3.03.04)*

- A. *Universal design*
- B. *Communal area and open space*
- C. *Architectural design and roof form*
- D. *Visual appearance and articulation*
- E. *Pools and ancillary development*

The proposed modifications provide an improved design and roof form, and the elements that exceed the height control are broken up thereby reducing potential visual bulk.

*Environment (3.03.05)*

- A. *Energy efficiency*
- B. *Water management and conservation*
- C. *Waste management*

The modified proposal is consistent with the performance criteria in relation to energy, water, and waste and is considered satisfactory.

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

Flood Management - Section 4.01

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

*While the subject application is a modification to an existing consent CN is required to reconsider relevant planning matters in its assessment, particularly given the extent of the modification. In this regard the flood planning information for the area has been updated since the time of the original application (Newcastle City Wide Flood Management Plan 2012). As previously advised the flood planning requirements for the site would generally be 2.2m AHD for the garage and 2.5m AHD for the floor level.*

*Notwithstanding CN could consider a balance between minimum floor level and additional flood proofing to mitigate the risk to property damage. It is considered that some freeboard above the 1% AEP flood level of 2.2m AHD needs to be provided. The following could be considered acceptable:*

- i) *Garage floor level – 2.2m AHD (at the 1% AEP flood level and as per existing slab level)*
- ii) *Habitable floor level – 2.35m AHD (providing 150mm freeboard)*
- iii) *Flood proofing up to 2.5m AHD – in this regard it is recommended that all ground floor walls, including internal, be constructed of masonry with all electrical fittings and fixtures installed above the required level. Floor finishes should be compatible such as tile, polished concrete or the like.*

*This would enable reasonable flood protection but would appear to also accommodate adequate floor to ceiling heights.*

Amended plans were submitted complying with the above requirements.

#### Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW. There is a condition in the consent in this regard.

#### Soil Management - Section 5.01

The original proposal was found to be acceptable regarding soil management and no changes are proposed in relation to this section.

#### Aboriginal Heritage - Section 5.04

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

#### 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*'.

#### Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the NDCP 2012. No submissions objecting to the proposal were received.

### **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 *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and*

*Assessment Regulation 2000.* A requirement to comply with AS2601 – Demolition of Structures is included in the original consent.

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

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

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

Acoustic Impacts

The proposed rooftop area is accessed by an enclosed / internal set of stairs; and the accessible portion of the rooftop has a buffer of approximately 0.9m from the boundaries provided by garden beds and associated vegetation, thereby minimising potential acoustic impacts on the adjoining neighbour.

Bulk and Scale

The modification maintains the existing approved built form except for the increased height to the portion of the building accommodating the stairs to the rooftop. The additional height is confined to the western side of the building, fronting Union Street, which is considered acceptable.

Overshadowing

The proposed modifications do not result in increased overshadowing, relative to the approved development and this is considered acceptable.

Privacy

Privacy to adjoining and neighbouring properties is maintained through the addition of rooftop privacy screens and garden beds, providing a buffer of 0.9m which is considered satisfactory.

View Loss

The proposed modifications do not impact upon current views from adjoining and neighbouring properties.

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

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

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

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

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

At grade access to the site will be available for pedestrians, from adjacent roads and public transport. Having regard for the Newcastle 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 site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

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

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

### **5.9 The public interest**

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

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

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

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

### **6.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

**ATTACHMENTS**

**Item 3 - Attachment A:** Submitted Plans - 31 Throsby Street Wickham - Under Separate Cover

**Item 3 - Attachment B:** Draft Schedule of Conditions - 31 Throsby Street Wickham - Under Separate Cover

**Item 3 - Attachment C:** Processing Chronology – 31 Throsby Street Wickham - Under Separate Cover

**Attachments A - C - Distributed Under Separate Cover**

**ITEM-4                      DAC 18/02/20 - DA2018/01251 - 150 DARBY STREET,  
   COOKS HILL - MIXED USE DEVELOPMENT**

**APPLICANT:                ROBERT ADRIAN DAWSON**  
**OWNER:                    THE PROPRIETORS OF STRATA PLAN 88552**  
**REPORT BY:              GOVERNANCE**  
**CONTACT:                DIRECTOR GOVERNANCE/ MANAGER REGULATORY,  
   PLANNING AND ASSESSMENT**

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**PART I**

**BACKGROUND**

An application has been received seeking consent for the demolition of a commercial / residential building and construction of a mixed-use development comprising a commercial space on the ground floor and nine residential units above including associated car parking and a roof top terrace.

The submitted application was assigned to Senior Development Officer, David Paine, for assessment.

The application is referred to the Development Applications Committee for determination due to the proposed variation to the building height control of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (proposed variation of 21.5%).

The proposal was considered at a Public Voice Committee Meeting held on 20 August 2019. The Public Voice Committee heard from two objectors raising their concerns regarding heritage status, mine subsidence, roof top terrace, parking, privacy, noise, bulk and scale, solar access and waste collection. The applicant also presented a response to the issues raised.

The concerns discussed at the Public Voice Committee are addressed as part of the Planning Assessment at Section 5.0.

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



**Subject Land: 150 Darby Street Cooks Hill**

The application was publicly notified in accordance with the City of Newcastle's (CN) Public Participation Policy and eight submissions were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

**a) Statutory and Policy Issues**

- i) Non-compliance with the height control
- ii) Bulk and scale (including floor space ratio)

**b) Amenity Issues**

- i) Privacy impacts, mainly due to the communal rooftop terrace
- ii) Overshadowing
- iii) Noise impacts, mainly due to the communal rooftop terrace

**c) Traffic and Parking Issues**

- i) Parking – the proposal will have insufficient parking and will impact on surrounding streets
- ii) Traffic – the proposal will have negative traffic and congestion impacts along with potential safety impacts for pedestrians

**d) Miscellaneous**

- i) Heritage – concerns were raised that the modern design of the proposed building does not suit the character of the area and regarding the lack of a Statement of Heritage Impact
- ii) Character and potential impact on the Cooks Hill Heritage Conservation Area
- iii) Garbage collection
- iv) Electricity Kiosk
- v) Mine Subsidence approval

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

**Issues**

- 1) Compliance with the relevant provisions of the NLEP 2012 and Newcastle Development Control Plan 2012 (NDCP 2012), in particular the height development standards of the LEP.
- 2) Heritage impact of the proposed building and its potential impact on the Cooks Hill Heritage Conservation Area.

- 3) Public submissions raised concern that the building is a 'contributory' item and should be retained because of its heritage values. This issue was raised during the Public Voice Meeting held on 20 August 2019.

### 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* and is considered to be acceptable subject to compliance with appropriate conditions.

### RECOMMENDATION

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of 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 B4 Mixed Use zone in which the development is proposed to be carried out;
- B. That DA2018/01251 for demolition of the existing building and construction of a mixed use development comprising a commercial space on the ground floor and nine residential units above including associated car parking at 150 Darby Street Cooks Hill be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and
- C. That those persons who made submissions be advised of CN's determination.

### Political Donation / Gift Declaration

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The site comprises a single allotment with a frontage of 12.2m to Darby Street and a depth of 34.8m, with a total area of 427m<sup>2</sup>. A two-storey commercial / residential building (containing two dwellings and a restaurant and small commercial unit on the ground floor) currently stands on the site.

The site is located on the north western side of Darby Street adjacent to an unnamed public laneway that provides access to a public at-grade car park at the rear of the site. To the south of the site, at No.152 Darby Street, is a small two-storey terrace building that is used as commercial offices, and to its north is a free standing two-storey building that is used as a restaurant. The Delany Hotel is located further to the north of the site on the corner of Council Street and Darby Street.

The subject site is located in the Cooks Hill Heritage Conservation Area.

### 2.0 THE PROPOSAL

The proposal involves the demolition of the building on the site and the construction of a mixed-use development with a roof top terrace.

The proposed development comprises ground floor commercial space (112m<sup>2</sup>) fronting Darby Street, ground floor parking for 13 cars, nine dwellings on the upper floors and a roof top terrace. The proposed dwellings will consist of six one-bedroom dwellings and three, three-bedroom dwellings.

Car parking at the ground floor is provided via a local road adjacent to the south-western side of the site (ie. a laneway). Provisions for vehicle parking will consist of 12 car parking spaces provided via double car stackers, one accessible car parking space, one motorbike space and bicycle spaces.

The plans were amended in response to concerns raised by CN officers, CN's Urban Design Consultative Group (UDCG), public submissions and at the Public Voice meeting. The amended plans were not renotified, as it was considered that the amended application differs only in minor respects from the original application and did not result in greater environmental impact. A copy of the amended plans is included at **Attachment A**. The various steps in the processing of the application to date are outlined in the Processing Chronology included at **Attachment C**.

### 3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days in accordance with CN's Public Participation Policy. Eight submissions have been received.

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

**a) Statutory and Policy Issues**

- i) Non-compliance with the height control
- ii) Bulk and scale (including floor space ratio)

**b) Amenity Issues**

- i) Privacy impacts due to the communal rooftop terrace
- ii) Overshadowing
- iii) Noise impacts due to the communal rooftop terrace

**c) Traffic and Parking Issues**

- i) Parking – the proposal will have insufficient parking and will impact on surrounding streets
- ii) Traffic – the proposal will have negative traffic and congestion impacts

**d) Miscellaneous**

- i) Heritage – concerns that the modern design of the proposed building does not suit the character of the area and regarding the lack of a Statement of Heritage Impact
- ii) Character and potential impact on the Cooks Hill Heritage Conservation Area
- iii) Garbage collection
- iv) Electricity kiosk
- v) Mine Subsidence approval

**4.0 INTEGRATED DEVELOPMENT**

The proposal is not '*integrated development*' pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*.

**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 *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

**5.1 PROVISIONS OF ANY ENVIRONMENTAL PLANNING INSTRUMENT**

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

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

The land is currently developed and the site is not listed as potentially contaminated on CN's Contaminated Land Register. The site does not have a history of potentially contaminated uses.

Having due regard to the provisions of SEPP 55 and the nature of the proposal, the site is considered to be suitable for the proposed development.

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

A BASIX Certificate was lodged with the application, demonstrating that the development has achieved the required water and energy reduction targets, as required by the SEPP. A condition of consent has been recommended, referencing the BASIX Certificate.

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) was introduced in August 2017. This SEPP seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the state, and to preserve the amenity of non-rural areas of the State through the appropriate preservation of trees and other vegetation.

The subject site is within a well-established commercial area precinct. This application does not seek consent for the removal of any trees on the site.

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

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

CN's UDCG reviewed the application on two occasions (15 November 2017 and 17 April 2019). The first meeting in 2017 was seeking preliminary feedback regarding the initial design from CN's UDCG prior to lodgement. A summary of the UDCG's advice in relation to the ten design principles is provided in the table below.

<b>Issue Raised</b>	<b>Design Response / Assessment</b>
<p><b>Principle 1: Context and Neighbourhood Character</b></p> <p><b><u>UDCG comments:</u></b></p> <p>15 November 2017</p> <p><i>'The site is located on the north western side of Darby Street adjacent to an unnamed public laneway / narrow road accessing a public at-grade car park at the rear of the site.</i></p> <p><i>The Delany Hotel is a large structure incorporating the original hotel on the Council Street corner and has a relatively new substantial two storey addition at No.156 Darby Street. The overall hotel development takes up the remainder of the street block extending to Council Street.</i></p> <p><i>Darby Street retains a number of attractive terrace buildings which contribute to the heritage character of the area. The site is currently occupied by a nondescript mid 20th century brick and tile commercial building, which is not considered to contribute to the heritage character of the area'.</i></p>	<p><b><u>Officer's Comments</u></b></p> <p>CN's UDCG is made up of a number of specialised consultants from Urban Design, Landscape Architects and a Heritage Consultant. The issue regarding the proposed building and its location within the heritage conservation area was discussed at length during both meetings. The group considered the existing building and made the following observation:</p> <p><i>'The site is currently occupied by a nondescript mid 20th century brick and tile commercial building, which is not considered to contribute to the heritage character of the area'.</i></p> <p>This issue will be discussed in further detail under Clause 5.10 Heritage Conservation and 6.09 Darby Street Cooks Hill.</p>
<p><b>Principle 2: Built Form and Scale</b></p> <p><b><u>UDCG comments:</u></b></p> <p>15 November 2017</p> <p><i>'The proposal is for a four storey structure with roof terrace. The built form takes up almost all of the site, but a useful area of deep soil planting is proposed at the rear of the development, which offers something of a visual buffer to the unattractive at-grade car park adjoining. A 112m<sup>2</sup> commercial space is proposed facing Darby Street at Ground level.</i></p> <p><i>The site planning is necessarily quite tight given the limited site area, and</i></p>	<p><b><u>Applicant Response</u></b></p> <p><i>The response is noted and it is acknowledged the parking is tight and therefore the proposal has adopted the use of stackers and a traffic report submitted in support of the parking configuration.</i></p> <p><b><u>Officer's Comments</u></b></p> <p>The proposed new building is of a form, scale and massing that is generally compatible with the future character of the area. The proposed palette of materials, colours and textures are acceptable having regard to the tones of the area. As such, it is considered that the proposed development will not</p>

<p><i>amalgamation with the terrace site immediately to the north would leave the building at No.154 Darby Street as an isolated site. It was therefore considered appropriate that the subject site be developed singly as proposed. The design response to the constraints of the site has generally been quite positive, although several aspects require further development’.</i></p> <p><i>‘The car parking arrangement as proposed appears to be problematic in respect to getting waiting vehicles off the public roadway, and the turntable may involve a conflict between the fire stair structure and any large vehicle attempting a rotation. The accessible car parking space may not comply with the standards.</i></p>	<p>diminish the cultural significance of the surrounding heritage conservation area of Cooks Hill.</p>
<p><i>The street setback above the first floor has been reduced from the 3m nominated in the controls to only 2m. The Group was of the opinion that a complying setback would produce a better outcome. It was noted that the small light well at the northern end of the residential corridor has windows opening onto the space. This would require addressing in respect to compliance with the BCA’.</i></p> <p><b>Additional comments provided on the 17 April 2019</b></p> <p><i>‘The car park consists on a double car stacker for 4 cars equipped with a parklift (Wohr 440), with a total of 9 car park areas and one additional accessible space. The Group suggests to review whether an accessible car park space is required. The garbage’s location has been questioned as it is partly located on the accessible car’s required circulation space.</i></p> <p><i>The location of both motorbike and bike park seems to be too constrained. Similarly, the storage and vertical bicycle storage on the corridor connecting the lobby and the car park requires further</i></p>	<p><b><u>Applicant Response</u></b></p> <p><i>‘The plans have been amended to comply with the 3m setback of the DCP 2012.</i></p> <p><i>In relation to the lightwell this will be appropriately treated with fixed glass bricks to achieve required fire rating’.</i></p> <p><i>Note: There is no turntable proposed on the DA plans or on the amended plans.</i></p> <p><b><u>Officer’s Comments</u></b></p> <p>The use of car stacking machines is becoming more popular with the redevelopment of smaller sites. A number of similar developments in our LGA have been approved with car stackers and appear to have been successful. Conditions have been included in the draft schedule of conditions to ensure that the car stacker is maintained to an appropriate level.</p> <p>The issue around the queuing vehicles and pedestrian safety is discussed in Traffic Parking and Access – Section 7.03.</p> <p>The ground floor plans have been amended to address the other issues of garage layout, motorcycle parking and lobby layout.</p> <p>The amended design has also increased the</p>

<p><i>development.</i></p> <p><i>Natural ventilation in the car park area has not been resolved, and it would reduce mechanical ventilation cost and maintenance creating a more sustainable proposal.</i></p> <p><i>Building façades on level 2,3, and roof, have been moved to comply with DCP Setbacks.</i></p> <p><i>Door opening from the fire stair intrudes into the main access at ground level and requires adjustment.</i></p> <p><i>The lack of dimensions in plans do not allow checking whether all bedrooms satisfy the Apartment Design Guide’.</i></p>	<p>setback on levels 2 and 3 to comply with CN’s DCP Section 6.09 Darby Street, Cooks Hill. The issue will be discussed in further detail under Section 6.09 Darby Street, Cooks Hill.</p>
<p><b>Principle 3: Density</b></p> <p><b><u>UDCG comments:</u></b></p> <p>15 November 2017</p> <p><i>‘The proposed density appears potentially acceptable, providing the issues relating to parking, setbacks and amenity are satisfactorily resolved. A moderate intrusion above the height plane was considered to be potentially supportable, providing that any enclosed areas at the upper level were for communal use’.</i></p>	<p><b><u>Applicant Response</u></b></p> <p><i>‘The proposal has maintained the same density and retained the rooftop common area which presents a minor departure to the height control which is associated with the rooftop common area and associated lift and stair access structures’.</i></p> <p><b><u>Officer’s Comments</u></b></p> <p>The subject site is located within the Darby Street, Cooks Hill precinct. Having regard to the density of development envisaged for this precinct under the provisions of Newcastle Local Environmental Plan 2012, the density of the proposed development is considered acceptable.</p>
<p><b>Principle 4: Sustainability</b></p> <p><b><u>UDCG comments:</u></b></p> <p>15 November 2017</p> <p><i>‘No information provided on any provisions beyond mandatory BASIX provisions at this stage.</i></p> <p><i>The following sustainable measures have been achieved in the proposal:</i></p>	<p><b><u>Applicant Response</u></b></p> <p><i>‘The plans and apartments include the following sustainability issues:</i></p> <ul style="list-style-type: none"> <li>▪ <i>BASIX (mandatory)- ABSA energy rating 6.7,</i></li> <li>▪ <i>Cross flow ventilation to <u>all</u> the apartments (SEPP 65 requires 60%),</i></li> <li>▪ <i>Solar Access to 7 apartments (meets SEPP 65 requirements),</i></li> </ul>

<p><i>In accordance with DCO 7.06, a detention / retention tank (10 KL) has been provided on the basement (underneath the car park area), to collect stormwater; PV panels are allocated on the roof; Cross ventilation is provided in all the apartments; external sun control screens to the east and west elevation were incorporated, ensuring both solar protection and privacy’.</i></p>	<ul style="list-style-type: none"> <li>▪ <i>Rooftop clothes drying area,</i></li> <li>▪ <i>External shutters to the east and west facades of the apartments, and</i></li> <li>▪ <i>An allocated area for Photo-Voltaic cells has been provided in the DA submitted design’.</i></li> </ul> <p><b><u>Officer’s Comments</u></b></p> <p>This response is considered acceptable.</p>
<p><b>Principle 5: Landscape</b></p> <p><b><u>UDCG comments:</u></b></p> <p>15 November 2017</p> <p><i>‘The Group suggested that it might be a more interesting view from the rooftop communal open space if it were orientated towards the street but acknowledged that this was a poorer solar orientation for afternoon winter sun.</i></p> <p><i>It is recommended that a small enclosed area should be provided adjacent to the roof deck that included a sink, and that could make the space potentially useable in colder weather’.</i></p> <p><i>The area of decking should be reduced, in favour of a greater provision of planting area that defines a welcoming space. The area should not encourage large, potentially noisy gatherings. Some shade from summer sun should also be provided.</i></p> <p><i>Any opportunity for street tree planting or use of green wall elements in the development were encouraged. CN should be consulted in respect to the former.</i></p> <p><b><u>Additional comments 17 April 2019</u></b>  <i>A ‘green’ pergola is provided on the roof decking, together with a planting strategy surrounding the deck which will perform a good role in avoiding</i></p>	<p><b><u>Applicant Response</u></b></p> <p><i>‘A landscape plan now accompanies the development application with deep soil plantings along the western boundary adjacent to the public car park.</i></p> <p><i>The UDCG noted concerns about the size of the rooftop communal open space and suggested that the space be reduced in favour of additional planting. This idea was accepted and changes made to the design submitted for DA included additional planters to the northern and southern sides of the space. The effect of these changes include; considerably reducing the decking space, providing additional buffering for privacy and increasing the ‘green’ aesthetic of the building. The ‘green’ pergola in the DA design also will appease the groups’ concerns about providing shade for the users of the space.</i></p> <p><i>The UDCG also commented on the possible inclusion of an enclosed space that may include a sink. The design was amended to include a covered space and includes a sink’.</i></p> <p><b><u>Officers Comments</u></b></p> <p>The amended landscape plan incorporates tree planting, along the western boundary, that would assist in reducing the perceived bulk of the development and would provide for increased screening for adjoining properties. The additional planting on the roof top terrace should further reduce potential privacy impacts</p>

<p><i>noise and ensuring privacy. Communal facilities are included in an enclosed space including a sink and access to the clothes drying yard, which is visually screened.</i></p>	<p>and provide a useable space for future residents. On balance, it is considered that the proposed landscaping for the site is of a good quality design and would complement the aesthetic quality and amenity for the development and surrounds.</p>
<p><b>Principle 6: Amenity</b></p> <p><b><u>UDCG comments:</u></b></p> <p>15 November 2017</p> <p><i>'The units facing Darby Street are unlikely to receive any winter sun, with the possible exception of the upper floor, which can make use of a clearstory.</i></p> <p><i>Placement of landscaping at Ground level and at Level 1 was supported, as this helps filter views to the adjacent car park.</i></p> <p><i>The proposed solid balustrades and adjustable screens to balconies are commended: these would ensure that balconies would have adequate privacy are fully useable for drying of washing etc. Cross flow ventilation to units with Kitchens sharing the light well needs to be considered carefully in terms of acoustic as well as visual privacy.</i></p> <p><i>The awning over the street frontage appears to be suggested as glazing, which is not desirable since it does not provide adequate protection to pedestrians and shopfronts from summer sun'.</i></p> <p><b><u>Additional comments 17 April 2019</u></b></p> <p><i>Group's suggestions regarding the south elevation (9. Aesthetics) can be applied to ensure light in kitchens and a better cross ventilation to apartments.</i></p>	<p><b><u>Applicant Response</u></b></p> <p><i>'The upper level makes use of a lightwell over the 3 Bedroom Unit on L3 to achieve solar access.</i></p> <p><i>Provision of windows in the kitchens are for cross flow ventilation and additional light as noted above. The windows are off-set to provide visual privacy from the opposing units. The bottom panes will be fixed translucent glazing.</i></p> <p><i>Further consideration will be made in respect to acoustic concerns and the 3-Bed apartments could utilise fixed translucent windows, as cross flow ventilation is achieved through the bedrooms.</i></p> <p><i>We note that the northern window to the lobby will be constructed in a translucent glass to provide visual privacy to the adjoining units and the neighbouring property'.</i></p> <p><b><u>Officer's Comments</u></b></p> <p>Adequate separation has been provided between the subject building and those on adjacent sites. This issue is discussed in further details under privacy section 3F Visual Privacy.</p> <p>Privacy screens have been included in the design for the units that are orientated across the car park (western elevation). It is considered the issue of amenity has been adequately addressed by the applicant.</p>
<p><b>Principle 7: Safety</b></p> <p><b><u>UDCG comments:</u></b></p> <p>15 November 2017</p>	<p><b><u>Officers Comments</u></b></p> <p>The issue of pedestrian safety is discussed in</p>

<p><i>'The car parking arrangement as proposed appears to be problematic in respect to getting waiting vehicles off the public roadway, and the turntable may involve a conflict between the fire stair structure and any large vehicle attempting a rotation.'</i></p>	<p>Safety and Security Section 4.04, and under Traffic, Parking and Access – Section 7.03. The application proposes an adequate response to safety and security issues associated with the development.</p>
<p><b>Principle 8: Housing Diversity and Social Interaction</b></p> <p><b><u>UDCG comments:</u></b></p> <p>15 November 2017</p> <p><i>Given the limited size of the development, and the stated intention that the units would most probably be used for serviced apartment letting, the mix was considered to be appropriate.</i></p> <p><i>See comments above in relation to communal roof-top facilities. The inclusion of a drying yard is commended.</i></p> <p><i>Additional comments 17 April 2019 The proposed mix is considered to be appropriate.</i></p>	<p><b><u>Applicant Response</u></b></p> <p><i>'Noted and a drying yard is provided at the rooftop level'.</i></p> <p><b><u>Officer's Comments</u></b></p> <p>The amended design has addressed this suggestion, with the provision of a communal area on the roof level for future residents.</p> <p>The proposal provides a good mixture of apartments with 3 x 3 bedrooms units and 6 x 1-bedroom units. The proposed development provides for a mix of residential accommodation which supports social mix and housing affordability.</p>
<p><b>Principle 9: Aesthetics</b></p> <p><b><u>UDCG comments:</u></b></p> <p>15 November 2017</p> <p><i>'The Group supported the adoption of a simple, modernist approach to the design. The angled roof element above the Darby Street façade was thought to be somewhat out of keeping with this, and a flat roof was suggested as being more sympathetic with the remainder of the building.'</i></p> <p><i>It was suggested that the facades needed to be broken down into elements that were more sympathetic with the scale of the original development of the area, as typified by the terrace next door. Large, unbroken</i></p>	<p><b><u>Applicant Response</u></b></p> <p><i>'The UDCG's advice in regards to the building aesthetic included; eliminating the angled roof over the front apartments in favour of a flat roof, breaking down facades into elements, increasing layering and texturing and recommendations for finishes and materials. These comments were taken into consideration and changes reflecting these concerns were implemented into the design that was submitted for DA. These changes include:</i></p> <ul style="list-style-type: none"> <li><i>• The angled roof at the front of the building was deleted and the flat roof as suggested by the group was implemented into the design that was submitted for DA.</i></li> </ul>

*wall planes were considered out of scale and unnecessarily dominant as depicted, especially if finished in white render as implied. A greater use of textures and layering was considered warranted, which could also assist with sun control, in addition to selection of materials and colours. Face brick was suggested as a possibility for appropriate inclusion.*

**Additional comments 17 April 2019**

*The Group suggests a revision of the south elevation, facing the public road. Design of the façade should be developed to ensure kitchen and living-room illumination, internal plan layouts and a more attractive corner-façade to the public road and Darby street.*

*Equally further development of the blank wall at the north elevation would benefit appearance of the building along Darby Street.*

*The Group supports the proposed mix palette and balance of materials: OFC concrete, brick, aluminum balustrades, metal and timber’.*

- *The UDCG had concerns about the external finishes of the building and suggested face brick be included in the pallet of materials. This advice was taken on board and the major building elements were identified and subsequently defined by the use of (two types) of face brick and a metallic sheet finish. This was submitted for DA. The mix of materials assist in breaking down the building into smaller elements, deemed more appropriate by the UDCG. The use of masonry and the ‘zinc’ like metallic finish are also materials that have a historical context but still enable the building to maintain it’s modern aesthetic.*

- *The UDCG’s concerns about textures and layering were also considered and changes were implemented into the design that was submitted for the DA. The design presented at the UDCG meeting did include sun control screens that creates a layering and depth to the front and rear facades but the inclusion of a mixed pallet of materials assists in reducing the overall impact of the elevations and the additional detail and differentiation of surfaces helps in breaking down the building further’.*

**Additional comments from the Applicant after the second meeting**

*‘Windows added to the south-western facade of the residential floors to permit extra light, as suggested by UDCG (April meeting),*

*Louvre windows added to the north-western wall to the carpark, to permit ventilation to the carpark, as suggested by UDCG (April meeting)’*

**Officer’s Comments**

The applicant has submitted an amended material board which has selected a lighter tone to reflect the comments and concerns raised by the UDCG.

The amended proposal is considered satisfactory with regard to the built form, including street presentation and building

	<p>envelope. It is considered that the overall design, including colours and materials is consistent with those within the Cooks Hill Conservation Area.</p>
<p><b>Principle 10: Amendments Required to Achieve Design Quality</b></p> <p><b><u>UDCG comments:</u></b></p> <p>15 November 2017</p> <p><i>Resolution to the practical issues identified above would be essential to the development moving forward. This includes car parking and maneuvering.</i></p> <p><b><u>Additional comments 17 April 2019</u></b></p> <p><i>The Development Application is of good quality, incorporating recommendations by the Group and following a commended pathway of design development. Remaining detailed issues should be resolved to the satisfaction of Council.</i></p>	<p><b><u>Officer's Comments</u></b></p> <p>The amended development is considered acceptable in relation to comments from CN's UDCG in relation to built form. The development establishes a scale and form appropriate for its location within the Cooks Hill precinct. The proposal provides good presentation to the street and adjacent laneway.</p> <p>The proposal also provides for appropriate building depth and bulk and affords a reasonable level of landscaping whilst maintaining privacy to adjoining properties.</p> <p>The amended plans have addressed all the outstanding issues that have been raised by CN's UDCG. The proposal is considered a good design on a constrained site.</p>

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

The ADG provides benchmarks for designing and assessing a residential apartment development. The following section contains an assessment of the development against key aspects of the ADG.

***2A Primary Controls***

The proposed amended development is considered acceptable in relation to the above guidelines on building form. The development establishes a scale and form appropriate for its location within the B4 Mixed Use zoning. The proposal provides good presentation to the street and adjacent laneway. The proposal provides for appropriate building depth and bulk, and also affords a reasonable level of landscaping.

***2B Building Envelopes***

The amended design has increased the setback on the second and third level fronting Darby Street, Cooks Hill. The proposed amended development is considered acceptable in relation to building envelopes.

*2C Building Height*

The proposed development exceeds the height limit. This issue is discussed under Clause 4.3 Height of Buildings and Clause 4.6 Exception to Development Standards. The height of the proposed building and the variation to the 14 metre development control is considered acceptable and no objections were raised by CN's UDCG.

*2D Floor Space Ratio*

The proposed development complies with the Floor Space Ratio (FSR) development standard specified by NLEP 2012, being 2:1.

*2E Building Depth*

The depth of the building envelope provides a variety of articulating elements to ensure that the massing and bulk of the building is reduced and responsive to the context of the site. The depth of apartments is considered acceptable under the ADG and was supported by the UDCG.

*2F Building Separation*

Building separation is the distance measured between the building envelopes or buildings. The separation distances between the buildings contribute to the urban form and ensure reasonable and appropriate levels of amenity and open space between buildings, having regard to the nature of the development, its character and location within the Cooks Hill area. The development is considered acceptable in terms of building separation.

*2G Street Setbacks*

Most of the buildings in the vicinity have been built to the boundary along the street frontage, with the exception of some older style building to the south that have an increased setback from the property boundary. It is expected that the sites will be redeveloped over the next couple of years.

The zero setback to the street edge is consistent with the current zoning. The upper levels (two and three) have been setback 3 metres from the front property boundary facing Darby Street, Cooks Hill. This setback is consistent with requirements of CN DCP Section 6.09 Darby Street, Cooks Hill.

*2H Side and Rear Setbacks*

The side and rear setbacks as proposed are considered appropriate and reasonable having regards to the existing streetscape and the adjoining built environment.

*Part 3 Siting and Development*

The proposed development responds appropriately to the existing streetscape and is compatible with the future desired character of the area.

### *3C Public Domain interface*

The proposal includes some public domain works which encompass the reconstruction of a new pedestrian footway across Darby Street and new driveway off the public lane way. Refer to conditions of consent.

### *3D Communal and Public open space*

The roof top terrace contains a large area for communal open space. The area is landscaped and contains a small pergola, sink and seating with a view of the city. The inclusion of the roof top terrace will provide an area for good social interaction for the future residents.

### *3E Deep Soil Zones*

Most of the proposed landscaping is located on the roof top terrace and accordingly is not considered to be 'deep soil' landscaping. However, the proposal is acceptable noting the constraints of the site and the style of the development, ie. mixed development in an urban area.

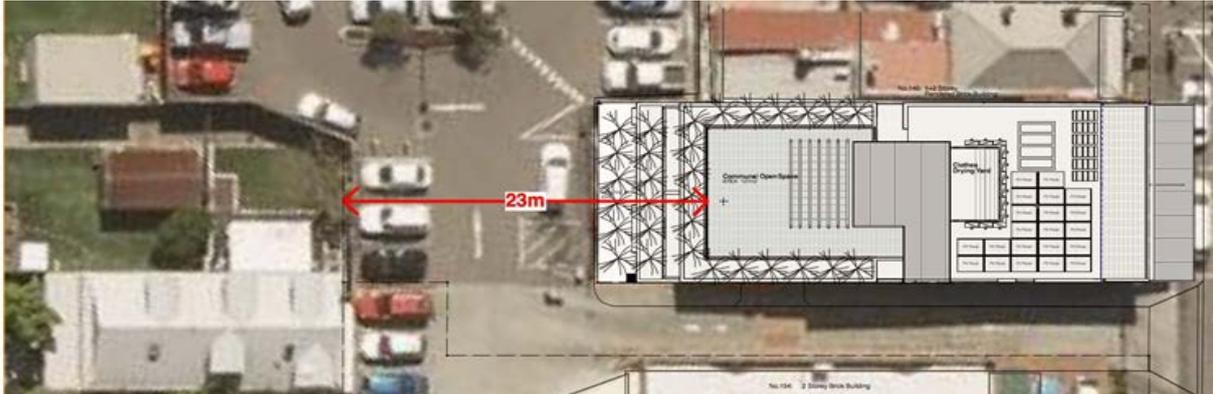
The proposal includes a strip of landscaping along the western elevation which is adjacent to the public car park. The planting will provide some screening and visual buffer from the car parking and adjoining properties.

The landscaping area has been amended during the process of the development and now provides sufficient landscaping for this form of development in an urban area.

### *3F Visual Privacy*

The issue of visual privacy was raised as a significant concern during the public notification period. The issue of privacy was also discussed at the public voice meeting of 20 August 2019. The applicant has provided the following response:

*'Concern was raised in the objectors submission of potential loss of visual privacy caused by the rooftop outdoor communal space. We presume the concerns relate to the residential building directly behind 150 Darby St on the other side of the carpark. We note that the distance from the proposed rooftop terrace to the boundary of this property will be 23m (see figure below). We consider this to be a reasonable distance of separation in respect to noise and visual privacy.'*



*Visual privacy for neighbouring properties was taken into consideration in the design of the space and we note that the inclusion of the planter boxes was specifically aimed at addressing this issue. We note that the combined height of the planting in the planter boxes will provide adequate privacy for neighbouring properties, as the sightline will be above 180deg making it impossible to look down over the parapet onto neighbouring properties.*



*Privacy concerns were also directed at the balconies to the western facing apartments. We note that the distance from these balconies to the boundary of the above mentioned property is in excess of 20m, which in an urban context would be deemed considerable'.*

The proposed development is unlikely to have any significant privacy impact on the adjoining neighbours given the separation distances. The amended design has increased the setback of the roof top terrace, along with providing additional landscaping in the form of planter boxes. The planter boxes are of sufficient width and depth to minimise any potential overlooking of adjacent properties.

Privacy concerns were also raised with the units that have been orientated west, towards the public car park which is located at the rear of the site. The balconies on level one which contain 2 x 1-bedroom units are setback approximately four metres from the property boundary. The next two levels (two and three) have a setback of around five metres from the property boundary. The setback to the western property boundary is considered acceptable given the adjacent public car park. The design includes a solid balustrade for these units along with a number of moveable privacy

screens. The inclusion of these design elements further assists in minimising potential privacy impacts on adjacent residents.

### *3G Pedestrian Access and Entries*

A readily identifiable and accessible entry is provided to the building from the street frontage which enables clear orientation and accessibility by visitors.

### *3H Vehicle Access*

The vehicular entry point provides adequate separation from the pedestrian entry. The width of the driveway crossing is considered adequate and functional to cater for vehicle movement.

### *3J Bicycle and Car Parking*

The traffic response compiled by CN's Senior Traffic Engineer advises that compliance is achieved with the necessary NDCP 2012 requirements regarding car parking rates.

### *4A Solar and Daylight Access*

The ADG indicates that it is desirable for 70% of units receive a minimum of three hours of sunlight in mid-winter. In dense urban areas, two hours may be acceptable.

All units in the proposed development have good solar access and would achieve a reasonable level of solar access. It is considered that the design has good overall solar access.

### *4B Natural Ventilation*

The ADG indicates that it is desirable that 60% of residential units are naturally cross ventilated and 25% of kitchens should have access to natural ventilation. The proposed apartments have good access to natural ventilation.

### *4C Ceiling Height*

All rooms within the residential component of the development are designed with a floor to floor height of 3 metres which complies with the minimum ceiling height of 2.7m.

### *4D Apartment Size and Layout*

The ADG outlines desirable unit depths to promote improved solar access and cross ventilation. In this regard the ADG nominates a maximum depth of 8m for single aspect apartments. All apartments comply with these depths.

*4E Private Open Space and Balconies*

The ADG indicates that balconies should be a minimum depth of 2m. The balconies of all units are at least 2m deep in part.

*4F Common Circulation and Spaces*

Satisfactory.

*4H Acoustic Privacy*

The proposed development is considered acceptable in relation to the guidelines of the ADG and has minimised potential noise transfer between dwellings through the siting of the development. Further comment on acoustics is provided below.

*4J Noise and Pollution*

The proposed development is considered acceptable in relation to the guidelines of the ADG. A noise impact assessment for the proposed development was carried out by a qualified acoustic engineer. The report has demonstrated that the site is suitable for the intended purpose, providing the recommendations of the report are implemented to address external noise, including road noise, and noise from nearby restaurants/cafés. An appropriate condition of consent is recommended to ensure compliance with the recommendations of the acoustic report.

The proposed development is considered acceptable in relation to the guidelines of the ADG and in general terms is considered a good residential flat development design.

**Concluding Comments**

The application has been carefully considered by CN's UDCG on two occasions. The applicant has responded to all the issues that have been raised by CN officers and by the UDCG. The design is considered to be a good quality outcome and is generally compliant with SEPP 65 and Apartment Design Guidelines.

**Newcastle Local Environmental Plan 2012 (NLEP 2012)**

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

The subject site is zoned *B4 Mixed Use* under the provisions of NLEP 2012. The objectives of this zone are:

- i) To provide a mixture of compatible land uses.*
- ii) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

*iii) To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

The proposed development is defined as a mixed-use development, being commercial with residential units above which is a permissible use in accordance with the land use tables for the zone with development consent.

It is considered that the proposed development is generally consistent with the zone objectives and is compatible with the future character of the area.

#### Clause 4.3 - Height of Buildings

Under NLEP 2012 the site has a height of buildings development standard of 14m. The submitted maximum height of the proposal is 17.02m which exceeds this requirement by appropriately 3.02m (21.5% variation). The exceedance is mainly due to the inclusion of the rooftop terrace, the lift overrun and a drying area.

The applicant has lodged a clause 4.6 Exception to development standard.

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

The site has a maximum FSR limit of 2:1. The application proposes a maximum FSR of approximately 2:1 and complies with this requirement.

#### Clause 4.6 Exception to Development Standards

The applicant has submitted a detailed request for the variation of the height (Clause 4.3) development standards under Clause 4.6 of the NLEP 2012. The applicant's Clause 4.6 variation request is included in full at **Attachment D**.

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

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

#### *Preliminary*

Firstly, it is noted that the subject site has a height standard under the current NLEP 2012 provisions, Clause 4.3, of 14 metres and the submitted proposal is 17.02 metres.

#### *Clause 4.6(3)*

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

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.'*

It is considered that the applicant's Clause 4.6 variation request meets these requirements as detailed above. The proposed building height exceedance is considered to have only minor impacts on neighbouring properties in terms of privacy, overshadowing and view loss due to the separation distances. The proposed exception to the height of buildings development standard of NLEP 2012 is considered a minor variation in the context of the site and its locality and therefore strict compliance would be unreasonable.

#### *Clause 4.6(4)*

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

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

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

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

#### *Height Standard Variation (Cl4.6(3))*

The applicant's written submission contends that the variation to the height standard should be supported as the resultant impacts are acceptable and it would be unreasonable and unnecessary in this instance to require strict compliance in this instance.

The applicant has argued that the current development proposal is consistent with the underlying intent of the control based on the following:

- i) 'The proposal will provide a high quality urban form that relates well to the context of the site in terms of the natural topography and adjoining developments;*
- ii) The overall height of the development presents as a compatible form of development with the development present a 4 storey form to downplay visual dominance as viewed from the public domain and adjoining properties- noting the 4 storey built form is desired in the Cooks Hill chapter of the DCP and the proposal meets the staggered front setback whereby the upper levels contain a 3m recess to present a 2 storey street wall and recessed levels above.*
- iii) The proposal has been designed to comply with the maximum permitted FSR on the site and also complies with key controls pertaining to setbacks, open space, and car parking which indicates an appropriate scale of development on the site;*
- iv) The proposal has been designed with an architectural roof form to complement the building form, noting that the removal of this feature roof would significantly detract from the design quality of the development. Further the variation facilitates the rooftop communal open space area which is a positive planning outcome for the development and presents environmental planning grounds to support the departure;*
- v) The proposal is consistent with the established centres hierarchy and allows reasonable daylight access to adjoining developments and the public domain noting the shadow cast from the non-compliant part of the building is limited to the lift and recessed communal rooftop structure which generates limited additional overshadowing as compared to the main building itself'.*

Overall, the proposed increase in height relates to a relatively small part of the roof terrace and does not have any significant impact on adjoining neighbours through overshadowing or privacy. The proposed development is considered acceptable in relation to the exceedance in height as compliance with the standard is unreasonable in this instance and there are sufficient environmental planning grounds for the variation.

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

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

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

*Height Standard Objectives*

The height objectives under Clause 4.3 are as follows:

#### 4.3 Height of buildings

(1) *The objectives of this clause are as follows:*

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

The applicant has further argued that adherence to the 14 metre height limit is unnecessary for the following reasons:

*'The design of the building ensures that the habitable floor space is contained below the maximum building height line which indicates that the variation is not simply a means of achieving additional development yield on the site, but a site specific design response and the provision of the rooftop common area.*

*Given that no part of the habitable floors of the building exceed the maximum building height and the roof structure including the fire / stair and lift over-run is designed as an architectural feature that has been carefully sited and designed to prevent any negative amenity, streetscape or overshadowing impacts the extent of variation is considered acceptable.*

*It is further noted that the proposal is predominantly compliant with the setback controls and density controls and is an appropriate scale of development on the site'.*

Following an assessment of the proposal under the provisions of the Apartment Design Guideline (ADG) and the objectives of the NLEP 2012 (ie. zone and height objectives), it has been determined that the scale of the development (ie. 17.02m high) makes a positive contribution to the desired form intended under the adopted planning controls and the hierarchy of the area.

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

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

Lastly, the issue of the proposed height variation was also examined and discussed at length by the Urban Design Consultative Group. The group raised no objections to the inclusion of the roof top terrace and considered it a positive space for social interaction.

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

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.

Clause 5.10 - Heritage Conservation

The subject property is not listed as an item of local heritage significance. However, it is located within the Cooks Hill Heritage Conservation Area (HCA) as identified in Schedule 5 of the NLEP 2012. It is also in the vicinity of heritage item 183, 'Normanton' (residence) at 37 Dawson Street, Cooks Hill. A Heritage Impact Statement (HIS), prepared by Martine Craswell, accompanied the development application and assessed the proposal's impact on the conservation area.

A number of objections raised significant concerns about the potential impact of the proposed development on the Cooks Hill HCA. The issue was also raised during Public Voice. The submissions indicated that:

*'We are extremely concerned that the heritage status of the existing building has been misrepresented in the applicant's heritage impact statement, which incorrectly claims that the building is non-contributory and fails to account for the impact of the proposed building on the neighbourhood heritage conservation zone.'*

The applicant's heritage consultant provided the following response after it was also raised during public voice:

*'The updated heritage technical manual under which this DA is being assessed does not have a contributory buildings map so 150 Darby Street is not incorrectly identified in the heritage impact assessment.'*

*Many sites along Darby Street would have previous layers of European development, this does not mean that the existing building is significant and worthy of retention. It also does not mean that remnants of earlier buildings are significant and worth of retention. The integrity or intactness of a place is one of the key criteria for assessing heritage significance. The remnant walls from the Old Oak Hotel or Lord Cardigan Hotel that were previously on the site are not significant for the following reasons:*

- a) The earlier building/s have been substantially altered and the integrity of the remaining elements is very poor. They are not recognisable as an earlier phase of development as they have been so altered.*
- b) The remaining elements of the previous buildings on the site have lost their context, the walls do not provide any evidence or improve our understanding of the former buildings on the site.*
- c) Their original finish has been lost. The existing rendered finish relates to later changes that are not considered significant. Removing the render will*

*not reinstate the original wall finish and is likely to further damage the building fabric. Cement render is difficult/impossible to remove.*

- d) Historical information pertaining to the earlier development on the site is interesting but does not translate into providing physical connections or heritage significance to the existing building on the site which is not related to the former hotel use. The current building on the site did not operate as a hotel.*

*In my expert opinion, the retention of this compromised early fabric would not provide any benefit to the local community as it is not visually recognisable'.*

CN's Heritage Planner conducted further investigation into this site in relation to its history. It was determined that the current Gilronan Court building replaced the Cardigan Hotel Building which was demolished in June 1938. Therefore the current building is likely to have been constructed on or after 1940, with the likelihood it was built after 1945 due to the outbreak of WWII in 1939-40. With reference to the definitions section of DCP Section 6.02, the existing building can therefore be categorised as 'neutral' because the evidence available suggests it was likely to have been constructed after the Key Period of Significance for the Cooks Hill HCA (c.1850 to 1940).

Whilst the subject site is located in close proximity to the heritage item Normanton at 37 Dawson Street, and 92-94 Railway Street Cooks Hill, it does not have any streetscape relationship to the listed items. The proposed demolition of the existing building and the construction of the mixed use development will not have any impacts on these items. The HIS states that the impact will be negligible as:

- i) There are no direct sightlines between either of these heritage items and the subject site.*
- ii) There is no visual relationship between the subject site and either of these heritage items*
- iii) No significant views to and from these heritage items will be affected by the proposed new building at 150 Darby Street.*

Consideration has been made to the extent that the development would affect the heritage significance of the HCA as per the requirements of the LEP. The HIS states that the demolition of the building will have no adverse impacts on the HCA as:

- i) The building is not considered to meet the criteria for individual heritage listing at either a local or state level.*
- ii) Its demolition will not be detrimental to the overall heritage significance of the conservation area because it is an altered post World War Two building that does not date from a key development period with the Cooks Hill area.*
- iii) The building is not associated with a significant historical period of Cooks Hill.*
- iv) The proposal does not alter any elements that are recommended for preservation in the Cooks Hill Heritage Conservation Area as outlined in Section 6.02 of the Newcastle DCP.*

- v) *150 Darby Street is located within a retail hub where redevelopment and change has happened at a faster rate than the residential streets of the heritage conservation area. This is evidenced by the variety of architectural styles along Darby Street as well as the relatively high number of post war building in the retail/commercial precinct.*
- vi) *As a group, the buildings on the western side of Darby Street in the vicinity of no. 150, do not demonstrate similar architectural characteristics or make a distinctive streetscape contribution to the conservation area.*
- vii) *Development along the commercial sections of Darby Street is quite diverse, this continued adaptation and renewal has supported its sustained vibrancy as a retail hub.*

The HIS has also stated that the new infill development will have a minor impact on the HCA for the following reasons:

- i) *The setback of the new building to Darby Street is informed by the existing buildings at nos. 146 and 144 Darby Street to ensure a continuous retail frontage.*
- ii) *It is recognised that the height of the proposed building is greater than the adjacent buildings to the north and south. However, recent buildings of a similar height have successfully assimilated within the commercial precinct of the Cooks Hill Heritage Conservation Area. The impact of the additional height will be minimal because:*
  - a) *the projecting shop awning will create a physical separation between the ground and upper levels of the building*
  - b) *the residential levels of the building have been set back 3m from the front building line to visually differentiate between the retail and residential sections of the building. The upper levels will read as a separate building in the overall streetscape.*
  - c) *the modulation and detailing of the east elevation reinforces the scale of the existing buildings in vicinity*
  - d) *the exterior materials, finishes and colour scheme compliment and respond to the character of the area and aim to be visually recessive by utilising darker tones*
  - e) *the flat roof minimises the height and bulk of the building.*
- iii) *The existing subdivision pattern will remain unchanged. Site consolidation and resultant large scale development has the potential to adversely affect the pattern of building arrangement as well as the unique variety of architectural styles and forms along Darby Street.*
- iv) *Vehicular access to the proposed building will not involve the introduction of any additional driveways or crossovers on Darby Street. The existing private road will be utilised for access to parking from the side (south) elevation. This maintains the full width of the property for retail frontage along Darby Street which reinforces the historic arrangement of retail strip shopping in this precinct.*

As such, the proposed development has been adequately assessed regarding the impact of the development on the heritage significance of the HCA.

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils and the proposed development is considered satisfactory in this regard. The proposal includes only minor excavation for the car stacker and footing works associated with the development.

#### Clause 6.2 - Earthworks

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

### **5.2 ANY DRAFT ENVIRONMENTAL PLANNING INSTRUMENT THAT IS OR HAS BEEN PLACED ON PUBLIC EXHIBITION**

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

### **5.3 ANY DEVELOPMENT CONTROL PLAN**

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

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

#### Commercial Uses - Section 3.10

The NDCP 2012 encourages commercial development that attracts pedestrian traffic and activates street frontages. The inclusion of retail / commercial uses on the ground level of the development will provide an active street frontage to Darby Street and the adjacent lane way and will encourage pedestrian movement around and through the building.

#### Mine Subsidence - Section 4.03

Separate approval is required from Subsidence Advisory NSW under the *Coal Mine Subsidence Compensation Act 2017*, due to the site being located within a proclaimed mine subsidence district.

The applicant had the opportunity to seek to have the application processed as integrated development, pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*, invoking a process whereby CN refers the application to relevant State agencies to seek their '*General Terms of Approval*'. The submitted application form does not nominate Subsidence Advisory NSW as a relevant agency.

Notwithstanding that the applicant did not nominate Subsidence Advisory NSW as a relevant agency for integrated development on the application form, a referral was sent to Subsidence Advisory NSW, who requested that a geotechnical desktop assessment report be provided by the applicant for further assessment. The applicant submitted the requested geotechnical desktop assessment report on 25 September 2019 to the Subsidence Advisory NSW. At the time of preparation of this report, no further response has been received from Subsidence Advisory NSW.

It is considered that any response that is received from Subsidence Advisory NSW can be provided to the applicant separately to the determination of this application. A condition of consent is recommended in the draft conditions, requiring the development to meet Subsidence Advisory NSW requirements. As such, the proposed development is considered acceptable in relation to the above section.

Safety and Security - Section 4.04

The proposed development provides for passive surveillance of the street and communal areas. The internal driveway design should ensure low speed traffic movements to facilitate pedestrian safety. As such, the proposed development is considered acceptable in relation to safety and security.

Social Impact - Section 4.05

The proposed development provides for a mix of residential accommodation which supports social mix and housing affordability.

Soil Management - Section 5.01

A Sediment and Erosion Management Plan has been submitted with the application to minimise sediments being removed from the site during the construction period. A condition has been placed on the consent to ensure such measures are in place for the entire construction period.

Land Contamination - Section 5.02

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

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Aboriginal Heritage - Section 5.04

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

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 6.02

It is acknowledged that the Cooks Hill Conservation area is a significant part of Newcastle heritage and the retention of contributory buildings in the streetscape is an important issue for the redevelopment of sites within the conservation area. However, in this instance, the applicant has demonstrated that the building is not worthy of retention given the amount of change in the building over the last 82 years. The building is not considered to be a contributory item as discussed under clause 5.10 of the LEP. This view is also supported by CN's UDCG who made the following comments during the initial meeting:

*The site is currently occupied by a nondescript mid 20th century brick and tile commercial building, which is not considered to contribute to the heritage character of the area'.*

The application is considered to be an infill development, where the intent is to respect the design of its neighbours and character of the area generally. The objectives and controls of this Section of the NDCP 2012 have been considered in detail with the following comments provided against the relevant controls and objectives of the NDCP 2012.

*Infill development respects the design of its neighbours and the character of the heritage conservation area*

The proposal is a modern design that is compatible with existing development in the street. The setback at ground level of the proposed building is consistent with adjoining buildings and provides an active retail frontage along Darby Street. The proposed development has been designed to respect the character of the area by providing a setback on levels two and three that comply with the specific control under Section 6.09 Darby Street, Cooks Hill, which requires a 3m back above two storeys.

*Infill development achieves a harmony of character; sympathy of scale; appropriateness of form; appropriate orientation and setback, and sympathetic materials and details within heritage conservation areas.*

While it is acknowledged that the building will be taller than the adjacent buildings, the impact of the additional height is considered appropriate given the commercial nature of precinct and the variety of building styles in the surrounding area. In addition, the proposed palette of materials, colours and textures are compatible with the heritage conservation area.

*Infill development demonstrates a good fit within its setting that respects the neighbouring buildings and the character of the heritage conservation area.*

Consideration has been given to the compatibility of the development to the local street context and the broader Darby St area. The development is not out of character for the area and the materials have been selected to be sympathetic to the existing streetscape.

*The benign contribution of neutral buildings to the area or streetscape is maintained. Depending on the building's context and heritage significance, it is preferable to retain and restore neutral buildings.*

The proposed demolition of the existing building at 150 Darby Street will not adversely affect the heritage significance of the Cooks Hill Heritage Conservation area as the building is not considered to contribute to the character of the area. This is reflected in the submitted HIS that accompanied the application and supported by CN's Heritage Planner.

The surrounding buildings, especially to the south, contain a number of commercial buildings that have been setback from the property boundary. These existing buildings do not contribute to the streetscape and it is expected that these buildings will be redeveloped in the near future.

The proposed bulk and scale of the development is considered to be an appropriate response within the context of the site. The design of the buildings is considered to be of good quality and would enhance the streetscape.

*The character of an infill building harmonises with the style of its neighbours. In particular, the proposed building should avoid becoming a dominant element within the streetscape or being deliberately modern.*

The proposed bulk and scale of the development is considered to be an appropriate response within the context of the site. The design of the buildings is considered to be of good quality and would enhance the streetscape. While the building is a modern mixed-use development, the proposed development is considered appropriate within the B4 zoning and the Cooks Hill Heritage Conservation Area. In addition, the top two storeys are setback 3m from the street to minimise the impact of the development from the street level.

*Infill buildings must reflect the general scale of streetscapes within the heritage conservation area. In particular, infill buildings should respect and be similar to the scale of neighbouring contributory buildings in the vicinity.*

The built form and character within the subject block comprise predominantly of older style single or two storey dwellings and two storey mixed used commercial buildings. The demolition of the existing building and the construction of a new mixed-use development will contribute to the future development of the area. However, it is noted that the height of the proposed development is greater than the existing buildings in this part of Darby St. However, there is a 14m height limit in this area, which is greater than the existing built form.

*The predominant height of contributory buildings in the street should be used as the starting point for the scale of infill buildings, rather than the highest building in the street (especially where the highest building is non-contributory or intrusive).*

In respect of the proposed development, the proposed new building is of a form, scale and massing that is generally compatible with the anticipated future character of the area. The development has been setback from the street edge to minimise any impacts of the height of the building on the adjoining properties.

*Consideration must be given to the relative scale of the components of a building. Infill development must be designed with elements that reflect the scale of building elements in contributory buildings. For example, window proportions and the height of major elements such as parapets and eaves lines relative to neighbouring buildings, balustrades and roof lines.*

The built form and scale of the development is considered to be acceptable. The upper levels of the building have been set back 3m from the front building line to distinguish between the commercial and residential section of the building.

Buildings in the surrounding area display a range of external colours, generally within the dark to neutral tonal range. Exposed brick, some of which is painted, is common, as well as later buildings incorporating modern cladding, of various colours. As such, the proposed material palette for the 150 Darby Street is appropriate and compatible from a heritage perspective.

*The form of new buildings (ie. massing and overall bulk) is consistent with the prevailing form of contributory buildings within the heritage conservation area.*

As already noted, the proposed new building is of a form, scale and massing that is generally compatible with the future character of the area and of the Cooks Hill Heritage Conservation Area. The proposed palette of materials, colours and textures are acceptable having regard to the tones of the area.

*New development relates to the massing of neighbouring contributory buildings.*

There will be no adverse impact on the established heritage significance of the Cooks Hill Heritage Conservation Area. As discussed, the proposed new building is of a form, scale and massing that is generally compatible with the area and relates to the massing on nearby contributory buildings.

#### *Summary*

In respect of the proposed development, the proposed new building is of a form, scale and massing that is generally compatible with the future character of the area. The proposed palette of materials, colours and textures are acceptable having regard to the character of the area. As such, it is considered that the proposed development will not diminish the cultural and heritage significance of the Cooks Hill Heritage Conservation Area.

The demolition of the existing building and the construction of a new mixed-use development is considered appropriate for the site and surrounding area.

Darby Street Cooks Hill Section 6.09

This Section of the NDCP 2012 includes a number of preferred land uses for this area of Darby Street, including commercial and residential uses. The Section also includes a number of other controls including urban form, setbacks, density, awnings and colour scheme, lighting and public art.

The amended design is consistent with the controls in this section of the NDCP 2012 and achieves a good outcome in terms of compatibility with the existing streetscape. The plans were amended to increase the setback of the upper levels to be consistent with the NDCP 2012, which requires a three metre setback above two storeys.

The proposed development is considered acceptable and achieves a good outcome in terms of building form, building separation and residential amenity. The development establishes a scale and built form appropriate for its location within the Cooks Hill precinct. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours. The proposal is considered acceptable under the above section.

Landscape Open Space and Visual Amenity - Section 7.02

As indicated previously, the proposed landscaping is located at the rear of the site and on the roof top terrace. The additional planting on the roof top terrace is not considered to be 'deep soil' landscaping. However, the proposal is acceptable noting the constraints of the site, the zoning of the land and the style of the development, i.e. mixed-use development in an urban area.

A copy of the Landscape Concept Plan has been included in **Attachment A**.

Traffic, Parking and Access - Section 7.03

CN's Senior Development Officer (Engineering) has considered the proposal to be acceptable and provided the following comments:

*'The proposed development comprises 6 x 1-bedroom units, 3 x 3-bedroom units and 112m<sup>2</sup> of commercial floor space on the ground floor fronting Darby Street. The development therefore has a car parking deficiency of less than 1 space which is considered acceptable.'*

Concerns were raised in public submissions about the potential safety implications given the proposed use of a car stacker for the development. The concerns relate to potential pedestrian safety and the queuing of vehicles on the public road. The issue was discussed with CN's Senior Traffic Engineer who has provided the following advice:

*'The aisle within the carpark will serve as waiting bays suitable for the estimated traffic volume generated by the carpark. The potential for conflict between waiting vehicles and traffic in the adjacent laneway is considered minimal'.*

The proposal enables all vehicles to enter and exit the site in a forward direction. The proposal includes a pedestrian access from Darby Street. The development is not expected to have any significant impact on pedestrian safety given that it is likely to be a low speed environment'.

In summary, the access and parking areas are well integrated into the development and streetscape and are considered acceptable in relation to the NDCP 2012 guidelines.

#### Section 7.05 - Energy efficiency

The proposal is acceptable having regard to this section.

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

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

*'The architectural plans have been revised to include a concept stormwater management plan showing provision of a 10kL rainwater reuse, as requested. Overflows from this tank will be discharged to an existing public drainage pit within the adjacent laneway. The proposed stormwater concept plan is compliant with NDCP 7.06 and is acceptable to Council for DA approval.*

Accordingly, the proposal is acceptable in relation to water management.

#### Waste Management - Section 7.08

A Waste Management Plan has been provided with the application. The applicant has stated that waste will be collected via kerbside pickup on Darby Street, utilising a wheel out / wheel back style service. The applicant has stated that a private contractor shall wheel the bins out to the kerb for collection and wheel bins back to a dedicated enclosed storage within the site when empty as amended after Public Voice.

A condition of consent has been included to ensure that waste is to be collected from the carpark refuse storage area, serviced from Darby Street and returned directly to the refuse storage area and not stored for extended periods at the kerbside.

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

#### Street Awnings and Balconies - Section 7.10

The proposal includes a full awning along Darby Street and will provide adequate shelter for pedestrians.

Development Adjoining Laneways - Section 7.11

The proposed development is considered to be acceptable under the above control. The proposal meets the design criteria by providing a setback that is compatible and consistent with the surrounding built form. The proposal provides good natural surveillance over the adjacent laneway and public car park. The inclusion of retail/commercial uses on the ground level of the development will provide an active street frontage to the lane way and will encourage pedestrian movement around and through the building.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the NDCP 2012. A total of eight submissions objecting to the proposal were received. The issues that have been raised have been discussed within this report and further detailed below in Section 5.8.

Development Contributions

The *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans.

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions (refer to **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 *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. In addition, a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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

**5.6 THE LIKELY IMPACTS OF THAT DEVELOPMENT, INCLUDING ENVIRONMENTAL IMPACTS ON BOTH THE NATURAL AND BUILT ENVIRONMENTS, AND SOCIAL AND ECONOMIC IMPACTS IN THE LOCALITY**

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

- a) Bulk and Scale - The siting, scale, height and appearance of the proposed development is generally suitable as discussed under SEPP 65 considerations and would not unreasonably impact the upon surrounding heritage conservation area.
- b) Traffic and parking – The traffic, access and parking impacts are considered acceptable.
- c) Overshadowing - The overshadowing of adjoining buildings and the surrounding area is considered to be acceptable.
- d) Privacy - The privacy separation distances under the Apartment Design Guidelines are satisfied in relation to surrounding development and therefore privacy impacts are considered acceptable.

**5.7 THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT**

The site is within a Mine Subsidence District and conditions have been included in the draft schedule of conditions to ensure compliance with any requirements that are specified by the Subsidence Advisory NSW.

The site is suitable for the proposed development as it is located within an area which is well serviced by shops, transport and recreational facilities. A higher density residential use of the site is considered appropriate as it would assist with the revitalisation of the precinct and allow people to live within walking distance of local employment.

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

**5.8 ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS**

The application was notified in accordance with CN’s Public Participation Policy and eight submissions were received during the notification period with issues summarised in the table below.

<b>Issue</b>	<b>Comment</b>
Visual privacy	As discussed in this report, it is considered that the proposal does not generate a significant impact on the adjoining properties, in terms of privacy and overlooking.
Views – one of the objectors indicated that ‘it will loom over the	The proposed development is unlikely to have any impacts on views. It is acknowledged that the building will be viewed from the person’s back yard, but the

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back garden of our property and obscure much of the sky'	impacts will be minor given the separation distance between the proposed building and the adjoining property to the west (over 20 metres).
Bulk and scale	The proposed development complies with the maximum floor space ratio for this site. Bulk and scale considerations have been addressed in this report.
Height	The variation to the 14m height limit is discussed within this report and is considered appropriate in the context of the site.
Mine Subsidence	The site is within a mine subsidence area and appropriate conditions have been included in the draft schedule of conditions.
Car parking and pedestrian safety	The issues of car parking and pedestrian safety have been considered and are satisfactory.
Noise - Objection was raised to the proposed development on the grounds that it would result in increased noise impacts upon surrounding properties	The development will clearly lead to an increase in noise levels compared to the existing commercial building. However, the noise expected to be generated from residential use of the roof top terrace is not likely to adversely impact surrounding properties and is considered acceptable.
Waste Management	The applicant has indicated that waste and recycling will be collected by a private contractor from Darby St. A condition has been placed on the consent in relation to waste management.
Heritage Concerns – retention of the contributory building	The building is considered to be a neutral building in the conservation area and is discussed in detail under clause 5.10 of the LEP and sections 6.02 and 6.09 of the DCP.
Concerns that the proposal does not address the specific controls within the DCP Section 5.05 Heritage Item.	The building is not listed as a heritage item and the controls contained within the DCP Section 5.05 are not relevant in the assessment of this application.
Character	The character, suitability and density of the proposal have been discussed in this report, in the context of the NLEP 2012, DCP controls and the surrounding heritage conservation zone. The proposed development is considered acceptable.
No Heritage Impact	The report was requested and submitted after the

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Assessment Report was submitted with the application	application was lodged with CN. The heritage impact assessment report was considered in the assessment of the application.
Impacts on property values	This concern is not a matter of consideration pursuant to Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .
Kiosk	This is an issue for Ausgrid to consider.
Concerns regarding the nature of notification process	The initial notification did not include 45 Dawson Street, Cooks Hill because the property is separated from the subject site by a public car park. The owner of the above property raised concerns about why they were not notified during the initial notification period. The owner is aware of the application and has lodged numerous submissions against the proposed development.

The proposal was considered at the Public Voice meeting on the 20 August 2019. The following table provides a summary of the issues raised at Public Voice and how these issues have been considered during the assessment of the proposal. The applicant provided a detailed response dated 2 October 2019 to the concerns raised at Public Voice and amended plans were lodged which included the provision of an enclosed waste storage area. The amended plans were not renotified as the changes were considered minor.

Issue	Comment
Waste Storage and amenity impact?	Amended plans to include an enclosed waste storage area was lodged after the Public Voice meeting to address the concerns raised. The proposed waste management for the development is acceptable.
Heritage Issues including the adoption of amended DCP Section 6.02 and 6.09	The building is considered to be a neutral building in the conservation area and is discussed in detail under clause 5.10 of the LEP and sections 6.02 and 6.09 of the DCP. Further assessment of the heritage impacts was conducted after the Public Voice meeting, by the applicant's Heritage consultant and Council's Heritage Planner to clarify the status of the building, the original wall in the building and to ensure that there is no significant impact on the heritage significance of the area, with the proposed development.

Notification Process	The initial notification did not include 45 Dawson Street, Cooks Hill because the property is separated from the subject site by a public car park. The owner of the above property raised concerns about why they were not notified during the initial notification period. The owner has lodged a submission and also spoke at Public Voice, with the concerns raised being considered in detail.
Privacy and Noise	As discussed in this report, it is considered that the proposal does not generate a significant impact on the adjoining properties, in terms of privacy, overlooking and noise generation.
Mine Subsidence	The site is within a mine subsidence area and appropriate conditions have been included in the draft schedule of conditions to adequately address this requirement.
Car Parking and Pedestrian Safety	The issues of car parking and pedestrian safety have been considered and are satisfactory.
Property Values	This concern is not a matter of consideration pursuant to Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .
Height and FSR	<p>The variation to the 14m height limit is discussed within this report and is considered appropriate in the context of the site.</p> <p>The proposed development complies with the maximum floor space ratio for this site. Bulk and scale considerations have been addressed in this report and considered acceptable.</p>
Noise from the car stacker	The noise from the car stacker is considered to not adversely impact upon the surrounding neighbours. This is supported by CN's Environmental Officer.
Air Conditioning units	A question was raised in Public Voice regarding the location of the air conditioning units. The air conditioning units are proposed to be located on the eastern side of the roof.

<p>Height controls</p>	<p>A question was raised in Public Voice about the definition of height. The LEP defines building height as:</p> <p>Building height (or height of building) means—</p> <p>(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or</p> <p>(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,</p> <p>including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.</p> <p>As stated above, plant and lift runs are included in building height and this is taken to be the maximum height for the development.</p>
<p>Relocating the roof top terrace to the east towards Darby Street</p>	<p>A question was raised in Public Voice about changing the location of the proposed roof top terrace. It was suggested at Public Voice that the roof top terrace should be relocated to face Darby Street rather than the adjacent car park. The applicant did consider this idea but resolved the current location was preferred. CN staff support this because the design of the roof top terrace provides good separation distances from residential properties on Dawson Street. The roof top terrace also includes design features in the form of large planter boxes to minimise potential privacy impacts on adjacent neighbours.</p>

**5.9 THE PUBLIC INTEREST**

The development is in the public interest and will allow for the orderly and economic development of the site. It will allow for the construction of commercial space and residential apartments in an area that is well serviced by public transport and community facilities and will assist with the revitalisation of Cooks Hill.

**6.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

**ATTACHMENTS**

**Item 4 - Attachment A:** Submitted Plans - 150 Darby Street Cooks Hill - Under Separate Cover

**Item 4 - Attachment B:** Draft Schedule of Conditions - 150 Darby Street Cooks Hill - Under Separate Cover

**Item 4 - Attachment C:** Processing Chronology - 150 Darby Street Cooks Hill - Under Separate Cover

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

**ITEM-5**                    **DAC 18/02/20 - DA2019/00062.01 - 8 LINGARD STREET, MEREWETHER - MODIFICATION - CHANGE TO PARKING NUMBERS AND LAYOUT - CONSENT CONDITIONS - MODIFICATION - CHANGE TO PARKING NUMBERS AND LAYOUT - CONSENT CONDITIONS**

**APPLICANT:**            **VITAL HEALTHCARE AUSTRALIAN PROPERTY PTY LTD**  
**OWNER:**                **NORTHWEST HEALTHCARE AUSTRALIAN PROPERTY PROPRIETARY LIMITED**  
**CONTACT:**             **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

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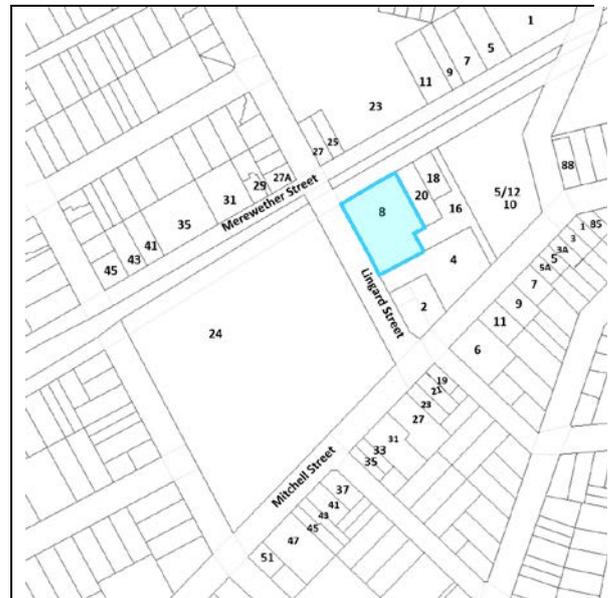
**PART I**

**BACKGROUND**

A modification application has been received seeking approval to modify and delete conditions of the consent for a health services facility at 6-8 Lingard Street Merewether, resulting in increasing car parking on the site.

The submitted application was assigned to Senior Development Officer, Gordon Edgar, for assessment.

The application is referred to the Development Applications Committee for determination, due to the proposed variation to the maximum floor space ratio (FSR) development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation at 24.4%.



## Conclusion

The proposed modification to the approved 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* and is considered acceptable subject to compliance with appropriate conditions.

## RECOMMENDATION

- A. That the Development Applications Committee note the proposed variation to the development standard at Clause 4.4 Floor Space Ratio, and consider the proposed variation to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B5 Business Development zone in which the development is proposed to be carried out; and
- B. That DA2019/00062.01 to modify Development Consent DA2019/00062 for a health services facility at 6-8 Lingard Street, Merewether be approved, and consent granted, subject to compliance with the modified consent set out in the Draft Schedule of Conditions at **Attachment B**.

## Political Donation / Gift Declaration

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

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

The applicant has answered **NO** to the following question on the application form:

*Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two-year period before the date of this application?*

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## PART II

### 1.0 THE SUBJECT SITE

The subject property is known as 6-8 Lingard Street, Merewether. It has a legal description of Lot 100 in DP 1251777. The site is irregular in shape with an area of 2,613sqm. It is located on the south-east corner of Lingard Street and Merewether Street. It has a site frontage of 59.3m to Lingard Street and 45.6m to Merewether

Street. The site is devoid of vegetation and is relatively flat. The approved health services facility over basement parking is under construction.

Existing development on adjoining sites includes the two storey Lingard Private Hospital building on the opposite side of Merewether Street, at 23 Merewether Street. Adjoining the site to the east at 20 Merewether Street is a two-storey industrial building used as a vehicle body repair shop and a largely vacant site at 16 Merewether Street. Adjoining the subject site to the south-east is a two-storey building at 4 Lingard Street that is currently being used as a church. Townson Oval is located to the south-west with Mitchell Park on the opposite side of Lingard Street.

## 2.0 THE PROPOSAL

The applicant seeks to modify the consent DA2019/00062 for a health services facility in the following manner:

1. Modify condition 1 of the consent to replace the approved floor plans for the Basement Levels B1 and B2 with amended plans that enable the conversion of the approved use of Basement Level B2 from 'storage only' to 46 carparking spaces and three motorcycle parking spaces, relocate motorcycle parking to Basement Level B2, minor reconfiguration of ramp access and associated loss of two parking spaces on Basement Level B1.
2. Modify condition 19 to state that the additional parking on Level B2 can be shared between the subject site and Lingard Private Hospital, opposite the site.
3. Delete conditions 55 and 65 as both conditions relate to the use of Basement Level B2 for storage only and they are now redundant.

No other changes to the approved development are proposed under the subject modification application. The proposed modification will result in the increase in the total number of on-site parking spaces provided within the development from 84 parking spaces to 128 car parking spaces.

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

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

## 3.0 BACKGROUND

The parking levels for the subject development were approved under DA2016/0394 and subsequent modifications to that consent. This resulted in a three-level car parking structure with two levels above or partially above ground level and one basement parking level. A subsequent development application was lodged in December 2017 (DA2017/01546) for the addition of another three levels to be used as a health service facility on top of the approved parking structure. This application was refused by the Hunter and Central Coast Joint Regional Planning Panel (JRPP) due to excessive exceedances in the applicable maximum building height and

maximum floor space ratio standards. The intention of the three levels of parking was intended to service this much larger building that was planned.

The proposal under approved DA2019/00062 incorporated a single additional floor, to be utilised as a health service facility, above the approved parking structure. The resultant development exceeded the maximum building height standard by 9%. As this version of the health service facility was much smaller in scale than originally planned, there was a consequent excess provision of on-site parking spaces.

Excess car parking spaces are included as gross floor area when calculating FSR. Storage areas are not included as gross floor area. In order to avoid a potentially significant FSR variation under the application, the applicant proposed that an entire basement level would be utilised as 'storage' rather than parking. Calculation of FSR is discussed in section 6.0 Planning Assessment.

The conditions in the current consent reflect that intention. The subject application is to convert the approved storage area to parking.

#### **4.0 PUBLIC NOTIFICATION**

The application was not required to be publicly notified and no submissions were received in relation to the proposal.

#### **5.0 INTEGRATED DEVELOPMENT**

The proposal is not '*integrated development*' pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*.

#### **6.0 PLANNING ASSESSMENT**

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) and Section 4.55 of the *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

In the consideration of the subject 4.55(1A) application to modify consent DA2019/00062, the assessment is limited to only those matters that are relevant to the proposed changes to the approved development. Other aspects of the approved development, which do not form a part of the proposed modification were considered as part of the original assessment.

Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* sets out particular assessment requirements for modification applications.

Section 4.55(1A)(a) of the *Environmental Planning and Assessment Act 1979* requires Council to be satisfied that the proposed modifications are of minimal environmental impact. In this regard, the conversion of the approved use of a basement level of the development from storage back to parking is considered of minimal environmental impact. Particularly as the level had been originally designed and approved as a part of a parking structure.

Section 4.55(1A)(b) of the *Environmental Planning and Assessment Act 1979* requires Council to be satisfied that the development, as modified, is substantially the same development as the development for which the consent was originally granted.

In this regard, the envelope of the development is considered to be substantially the same although the intensity of the land use has increased when compared to the approved development with respect to the number of parking spaces available within the development and the resultant likely increased traffic generation directly into and out of the development. It is accepted that the use as a medical services facility and the nearby Lingard Private Hospital are generating the demand for parking, whether that be on the surrounding streets or inside the development. This demand would not be changing. The modification would essentially result in the relocation of some of the on-street parking to new parking spaces within the development. On balance, however, the additional intensity of use is not considered to be so significantly different from the approved development such that it could not be considered substantially the same development. The modified proposal is therefore considered substantially the same development as the originally approved development.

Section 4.55(1A)(c) of the *Environmental Planning and Assessment Act 1979* requires that the application be notified in accordance with the relevant development control plan. Section 8.0 of Newcastle Development Control Plan 2012 (NDCP 2012) was still in force at the time that the application was lodged on 16 October 2019. Renotification of the application was not required as it was considered that the use or enjoyment of adjoining land would not be detrimentally affected by the amended development.

Section 4.55(1A)(d) requires submissions to be considered in the assessment of this application. No submissions were received.

Section 4.55(3) of the *Environmental Planning and Assessment Act 1979* is also relevant to the application. It requires City of Newcastle (CN) to take into consideration any relevant matters under the heads of consideration set out in Section 4.15(1). These are discussed below.

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

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

The subject modification application seeks to change the use of Basement Level B2 from storage to carparking.

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

The site was previously identified as being contaminated. Under the original application (DA2019/00062), the site was assessed as being suitably remediated for

the purposes of a health service facility. It is not considered that the proposed modification raises any new issues under the provisions of SEPP 55.

### **State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)**

This policy facilitates the effective delivery of infrastructure across the State. The ISEPP is relevant in the consideration of the proposal in that it is the provisions of this plan that allow a health service facility to be permissible in the B5 Business Development zone pursuant to Clause 57(1). There are no further relevant considerations under the ISEPP in regard to the proposed modification.

### **Newcastle Local Environmental Plan 2012 (NLEP 2012)**

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

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

Under NLEP 2012 the site has a maximum FSR development standard of 0.9:1. As a result of the proposal to change the use of Basement Level B2 from 'storage' to a carpark, the approved gross floor area and resultant FSR will increase. This increase is due to the specified terms regarding what is counted and what is not counted as gross floor area under the definition of 'gross floor area' in the dictionary of NLEP 2012. The definition of gross floor area under NLEP 2012 is as follows:

**gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic

but excludes—

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement, and -
  - i) storage, and
  - ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

Based upon the currently approved health services facility, the originally assessed “*car parking to meet the requirements of Council*” resulted in a gross floor area of 2,280.5sqm, which when compared to a site area of 2,613sqm, resulted in an FSR of 0.87:1. The approved development, therefore, complied with the maximum 0.9:1 development standard. Required parking for the development was assessed as being 84 parking spaces with 34 spaces being allocated to the subject medical services facility development and 50 spaces being allocated for the exclusive use by Merewether Private Hospital, opposite the site at 23 Merewether Street. These 84 spaces were provided on the ground floor parking level and Basement Level B1 with Basement Level B2 being allocated as ‘storage only.’ Required parking also included three motorcycle spaces and 10 bicycle spaces.

As there is no change to the approved medical services facility on the upper floor (and, therefore, the demand for parking) the required parking does not change under the subject modification application, only the amount of parking provided is changing. Consequently, this additional parking technically becomes parking that is surplus to CN’s requirements. Given that the additional parking provided in Basement Level B2 is predominantly surplus to requirements and, consistent with the above definition of gross floor area, the proposed conversion of Level B2 from storage to car parking will result in an additional gross floor area for the development of 637.9sqm.

In this calculation, the proposed motorcycle parking is considered required parking and, therefore, not additional gross floor area. Also, the minor reconfiguration of the parking layout has resulted in 82 of the 84 required spaces being provided on the ground floor parking level and B1 parking level. This means that two spaces in Basement Level B2 are required parking and not gross floor area. In addition, the ramps and access aisles that provide access to the required parking and motorcycle parking are also not included as gross floor area as these areas are considered ‘access to required parking.’

The additional gross floor area of 637.9sqm results in a revised total gross floor area for the development of 2,918.4sqm, which when compared to a site area of 2,613sqm, results in an FSR for the modified development of 1.12:1. This is a 24.4% variation to the maximum FSR development standard applicable to the site.

Land and Environment Court caselaw indicates that for an application to modify a development consent under Section 4.55 where there is a variation to a development standard, a submission under Clause 4.6 of NLEP 2012 would not be required.

The merit of the proposed variation is assessed below.

The objectives of the maximum floor space ratio development standard are set out in Clause 4.4(1) as follows:

*4.4(1)The objectives of this clause are as follows:*

- i) to provide an appropriate density of development consistent with the established centres hierarchy, and

- ii) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.

There is no addition to the approved building envelope proposed under the modification. Thus, the physical bulk and scale of the development is not changing.

In regard to the intensity of land use, the parking element of the subject development is not the primary use that would ordinarily generate a demand for parking. It is the medical services facility that generates that demand and the carparking element of the proposal merely caters for that parking generation. Basement Level B2 was approved as a part of the approved health services facility. Only the use of this level is now being proposed to change. This will generate more vehicle trips directly into and out of the building and relocate some parking from the street to the development but the parking demand generally within the area will remain unchanged. This is considered a positive benefit in terms of relieving the demand for on-street parking in an area where this demand is at a premium. The scale of the development, as modified will remain consistent with the established centres hierarchy.

Given the above, the modified proposal is as consistent with the FSR objectives as the approved development.

The objectives of the B5 Business Development zone under NLEP 2012 are as follows:

- i) *To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of centres.*
- ii) *To accommodate a wide range of employment generating uses and associated support facilities including light industrial, transport and storage activities.*

The proposal to modify the consent to permit the use of Basement Level B2 as a carparking level as opposed to a 'storage' level is not inconsistent with any of the above zone objectives.

Notwithstanding that the provisions of Clause 4.6 do not apply in the assessment of this Clause 4.55(1A) application to modify a consent, the test as to whether requiring strict compliance with the standard would be unreasonable or unnecessary in the circumstances is still a reasonable test of the merit of the proposal. In this regard, given that part of Level B2 will already be permitted to be used for motorcycle parking and parking for two vehicles to meet the requirements of the existing development consent, it would be reasonable to allow the remainder of this level (which was original designed and constructed for the purposes of parking) to also be used for the purposes of carparking rather than barricade the remaining area off which would not be an efficient use of this component of the development.

Numerical development standards have an important part to play in the orderly and economic assessment of development, but numerical compliance should not be sought as the ultimate end in circumstances where a better environmental planning outcome can be achieved with a technical numerical non-compliance. The complex history of the development has resulted in the necessity to support a significant numerical non-compliance with a statutory development standard in order to achieve a logical and workable outcome.

The proposed variation to the maximum FSR development standard is therefore supported. However, it is noted that the adoption of a more strategic approach through master planning the development of the site and seeking appropriate changes to the LEP to facilitate the ultimate vision of the applicant, could have resulted in less complex and more compliant development applications.

#### Clause 4.6 - Exceptions to development standards

The application to modify an approved development does not require a clause 4.6 submission to vary a development standard. Refer to the assessment above in relation to Clause 4.4 FSR.

#### Clause 5.10 - Heritage Conservation

The proposed modification has no heritage conservation implications on any nearby heritage items. The site does not contain a heritage item and is not located within a heritage conservation area.

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

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

### **6.3 Any development control plan**

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

#### Commercial Uses - Section 3.10

The proposed modification raises no issues under this section of the NDCP 2012.

#### Flood Management - Section 4.01

CN's Senior Development Officer (Engineering) has raised no objections on flooding grounds to the modified proposal.

#### Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District and conditional approval for the original approved development has been granted by Subsidence

Advisory NSW. The modification proposal merely alters the use of Basement Level B2.

Traffic, Parking and Access - Section 7.03

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

*"The submitted Traffic and Parking Assessment Report prepared by Intersect Traffic has been reviewed by CN.....The proposal will not impact on the traffic in the local road network. The additional parking will assist in providing parking for the Lingard Hospital Precinct and assist in reducing the demand for on-street parking..."*

It is noted that the existing demand for on-street parking in the locality surrounding the site is at a premium and that the additional on-site parking will provide some public benefit in alleviating this demand. The proposed modification of Conditions 1, 55 and 65 of consent DA2019/00062 to enable Basement Level B2 to be utilised as a carpark is therefore supported.

In addition, the proposed modification of condition 19 of Consent DA2019/00062 to enable the additional parking spaces created in Basement Level B2 to be shared between the subject development and the Lingard Private Hospital opposite the site is considered to be the most efficient use of these additional parking spaces. The modification of this condition is therefore supported.

Public Participation - Section 8.0

The proposal was not required to be notified. No submissions were received.

**6.4 Planning agreements**

No planning agreements are relevant to the proposal.

**6.5 The regulations (and other plans and policies)**

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. No additional issues are raised regarding the proposed modification.

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

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

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

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

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

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

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

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

The application was not publicly notified, and no submissions were received.

### **6.9 The public interest**

The development is considered to be in the public interest in that it will be providing an additional 44 parking spaces above the 84 parking spaces approved under the subject development consent in an area where the demand for on-street parking is at a premium.

## **7.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under section 4.55(1A) and 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the modifications to Development Consent DA 2019/00062 for the construction of a health service facility (alterations and additions) in **Attachment B** are included in any consent issued.

## **ATTACHMENTS**

**Attachment A:** Submitted Plans – 8 Lingard Street Merewether - Under Separate Cover

**Attachment B:** Draft Modified Schedule of Conditions - 8 Lingard Street Merewether - Under Separate Cover

**Attachment C:** Processing Chronology – 8 Lingard Street Merewether - Under Separate Cover

**Attachments A-C - Distributed Under Separate Cover**

**ITEM-6**                    **DAC 18/02/20 - DA2003/2991.01 - 89 PARK AVENUE, KOTARA - MODIFY - OUTSIDE CORE TRADING HOURS AND ACCESS**

**APPLICANT:**            **SCENTRE CUSTODIAN PTY LIMITED**  
**OWNER:**                **SCENTRE CUSTODIAN PTY LIMITED**  
**NOTE BY:**               **GOVERNANCE**  
**CONTACT:**             **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

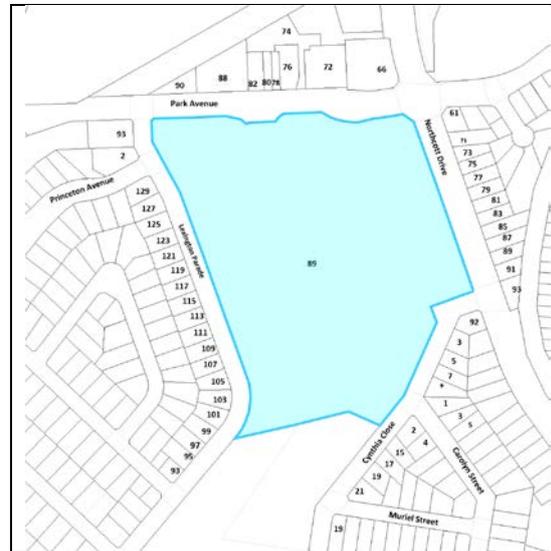
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**PART I**

**BACKGROUND**

In November 2004, development consent was granted in respect of DA2003/2991, to carry out a major expansion of Westfield Kotara, providing for additional retail space, cinemas, additional car parking and a revised vehicular access arrangement.

An application has been received, seeking to modify Condition 2.17 of the consent issued in respect of development application DA2003/2991, which requires the Cynthia Street and Lexington Parade driveways of the shopping centre to be closed to traffic each evening at 6.00pm, except Thursdays, when the driveways are closed from 9:30pm.



**Subject Land:** 89 Park Avenue Kotara

This condition of consent was imposed to ensure that any increased traffic, in connection with the operation of the shopping centre (Westfield Kotara), would not impact upon the residential amenity of dwellings located to the south of the shopping centre, during evening and night-time periods.

The application now seeks approval to extend the closing times of the Cynthia Street and Lexington Parade driveways until 10.00pm, every day.

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

The application is referred to the Development Applications Committee for determination, due to the application being called in by two Councillors being Cr Winney-Baartz and Cr Duncan.

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

A number of developments have occurred on the site since consent was granted to DA2003/2991. These developments have increased the size of the shopping centre and the type of facilities offered, particularly the rooftop precinct of the centre.

In March 2011, development consent was granted in respect of DA2010/0904, to construct a new indoor recreation facility and ancillary entertainment facilities. The consent provided additional car parking spaces within a new car park area.

In March 2017, development consent was granted in respect of DA2016/00733, for alterations and additions to the shopping centre, providing additional retail space, additional car parking spaces, re-configuration of loading dock, ramps and roof top circulation.

The current modification application was publicly notified in accordance with City of Newcastle's (CN) Public Participation Policy and 20 submissions, plus a 73-signature petition, were received in response.

The objector's concerns include:

- i. Residential amenity
- ii. Traffic and parking
- iii. Noise and anti-social behaviour
- iv. Increased traffic
- v. Traffic safety
- vi. Traffic noise
- vii. Vehicle headlight glare
- viii. Miscellaneous issues relating to the history of the imposition of the condition of consent and to the management of the shopping centre.

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 19 November 2019. In response to the concerns raised at the Public Voice Committee, additional traffic and acoustic assessments were undertaken.

The applicant has also proposed a two-year trial period of the proposed arrangements, to allow impacts to be monitored and reviewed.

## Issues

- 1) Traffic impact - A traffic analysis has been provided as part of the application, which demonstrates that the predicted traffic increases associated with the proposal will be relatively minor when compared with existing volumes.
- 2) Noise - A supplementary acoustic assessment has been provided which demonstrates that increased traffic noise generated by the proposal generally complies with State road noise guidelines and is considered acceptable.
- 3) Public submissions - The submissions received in response to public notification of the modification application have raised issues of a nature and extent that contend that the proposal will have adverse and unreasonable impacts on the residents of the area.

## Conclusion

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

## RECOMMENDATION

- A. That DA2003/2991.01 to extend the closing times of the Cynthia Street and Lexington Parade driveways until 10.00pm (daily) be approved and consent granted, subject to a 1-year trial period to monitor and review the ongoing management performance of the complex and any unforeseen impacts, within a limited timeframe.
- B. That those persons who made submissions be advised of CN's determination.

## Political Donation / Gift Declaration

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject property is known as No. 89 Park Avenue Kotara and is occupied by a large multi-level retail and commercial shopping centre, known as Westfield Kotara. The legal description of the site is Lot 19 DP 876517, which has an area of 83,750m<sup>2</sup>.

The site is located on the southern side of Park Avenue, between Northcott Drive and Lexington Parade. It has road frontages to Park Avenue, Northcott Drive, Cynthia Street and Lexington Parade. The centre has vehicular access from each of these frontages.

The southern side of the shopping centre adjoins Hudson Park.

### 2.0 THE PROPOSAL

The application seeks consent to modify Condition 2.17 of the consent issued in respect of development application DA2003/2991, to extend the closing times of the Cynthia Street and Lexington Parade driveways until 10.00pm every day.

The applicant provided the following reasons in support of the proposal:

*“The primary reason for allowing Lexington Parade to be used at night is to allow cinema precinct patrons to leave the carpark in a more direct manner.”*

and

*“Outside of core trading hours, the Cynthia Street driveway is not a convenient egress at night-time given the existing carpark configuration and the availability of alternate existing egress. Scentre Group advises that the height clearance of the Cynthia Street access means that it is primarily used by taxis serving people with disabilities. It has been deemed to be likely used only by a small number of patrons.”*

The proposed modification does not involve any physical change to the approved development. There is no change to the built form of the approved extensions and no change to the approved car parking numbers and layout, landscaping, facilities or services.

The applicant is primarily seeking to remove the restrictions on vehicular access via the Lexington Parade gates, for customers utilising the rooftop precinct.

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

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

### 3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Public Participation Policy (now superseded by the Community Participation Plan) and 20 submissions objecting to the proposal have been received, including a petition containing 73 signatures. It is noted that CN's Public Participation Policy provides that, irrespective of the number of signatories on a petition, petitions will only be considered as a single submission.

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

- i. Residential amenity
- ii. Traffic and parking
- iii. Anti-social behaviour
- iv. Increased traffic
- v. Traffic safety
- vi. Traffic noise
- vii. Vehicle headlight glare
- viii. Miscellaneous issues relating to the history of the imposition of the condition of consent and to the management of the shopping centre.

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

#### **Public Voice Committee**

The proposal was considered at the Public Voice Committee meeting held on 19 November 2019. Residents raised concerns regarding traffic, parking and noise. In addition, the following matters for consideration were also raised:

- a) *"The centre should install clearer signage to address customer inconvenience resulting from closure of the Lexington and Cynthia driveways rather than open these driveways later.*
- b) *There are alternative exits available to two major roads which won't impact residential amenity.*
- c) *Residents are already dealing with significant amenity impacts and any further impacts need to be justified."*

In response to the concerns raised at the Public Voice Committee, additional traffic and acoustic assessments were undertaken. Further, the applicant has proposed a two-year trial period:

*“Should Council consider it necessary, we would be prepared to accept a requirement for a two-year trial period of the new arrangements to allow impacts to be monitored and reviewed. The change to hours for the subject access points can then be reviewed after the two-year trial period.”*

*We believe that the modification proposed will achieve a balanced outcome that facilitates improved functionality of the approved shopping and entertainment complex while making appropriate considerations for local neighbourhood amenity.”*

The additional traffic and acoustic reports have been assessed and it is considered appropriate in this instance to extend the closing times of the Cynthia Street and Lexington Parade driveways until 10.00pm (daily), subject to a one year trial period, instead of the two year trial period proposed by the applicant. During the trial period, it is considered that noise monitoring should be conducted by an acoustic consultant to determine traffic noise impacts at the most affected residential receivers on Lexington Parade. It is recommended that such monitoring be required to be conducted for a period of no less than seven days during the month of November and again in December. The consultant would be required to prepare a report in accordance with the assessment and reporting methodology outlined in Appendix B of the DECCWNSW *Road Noise Policy – measurements and preparing a noise assessment report*. The report would also be required to compare the monitoring results with noise level predictions provided in the acoustic submitted as part of this application.

This approach would allow CN to monitor and review the ongoing management performance of the shopping complex and any unforeseen impacts within a more limited timeframe (refer to **Attachment B**).

#### **4.0 INTEGRATED DEVELOPMENT**

The proposal is not '*integrated development*' pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*.

#### **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 *Environmental Planning and Assessment Act 1979* (the Act), as detailed hereunder.

Under Section 4.55(1A) of the Act, the consent authority must be satisfied that the modification results in "*minimal*" environmental impact. In terms of traffic impact, it is considered that predicted traffic increases associated with the proposal will be relatively minor when compared with existing volumes. In terms of noise impact, it is considered that any additional traffic noise generated by the proposal generally complies with State road noise guidelines. Therefore, the proposed modification

meets this test, as the proposal is considered minor and will result in acceptable impacts when compared to the approved development.

Under Section 4.55(1A) of the Act, the consent authority must also be satisfied that the modification will result in “*substantially the same development*” as that approved. The proposed modification meets this test, as it does not change the land use, built form, car parking, landscaping, facilities or servicing.

In the consideration of the current Section 4.55(1A) modification application, the assessment is limited to only those matters that are relevant to the proposed change to the approved development. Other aspects of the approved development, which do not form a part of the proposed modification have been considered as part of previous assessments.

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

(1) *Matters for consideration—general*

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

(a) *The provision of:*

(i) *Any environmental planning instrument, and*

Comment: The proposal has been assessed against Newcastle Local Environmental Plan 2012 and has been found to be consistent.

(ii) *Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

Comment: There are no relevant proposed instruments that have been subject of public consultation under the Act or have been notified to the consent authority.

(iii) *Any development control plan, and*

Comment: The proposal has been assessed against the relevant objectives and controls of the Newcastle Development Control Plan 2012 (NDCP 2012) and has been found to be consistent.

(iv) *The regulations (to the extent that they prescribe matters for the purposes of this paragraph)*

Comment: There are no prescribed additional matters pursuant to the *Environmental Planning and Assessment Regulation 2000* that relate to this application.

*(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*

Comment: The environmental impacts of the proposal have been considered, and it has been found that the proposal will have acceptable environmental impacts.

*(c) The suitability of the site for the development*

Comment: The site is suitable for the development in that the site has no notable constraints and the use as approved is permitted in the zone.

*(d) Any submissions made in accordance with this Act or the Regulations*

Comment: The application was notified in accordance with CN's Public Participation Policy. The submissions received have been considered in this report.

*(e) The public interest*

Comment: The proposal is within the public interest in that it provides for minor design changes to an already approved development and is consistent with the relevant planning provisions.

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

### **State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)**

Schedule 3 of the ISEPP, relates to traffic generating development and requires certain applications to be referred to Roads and Maritime Services. Previous development applications have been referred to the RMS, without objection. In addition, CN's Traffic Engineer has provided a detailed assessment of the traffic implications of the modified proposal, finding the proposal to be acceptable.

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

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

The site is listed on CN's land contamination register as the site previously contained a service station. As part of a development application for extension to the centre in 1997 the report by Hyder Consulting '*Environmental Site Validation, Former Service Station Garden City Kotara*' dated March 1997, was submitted to CN. The report concluded that the site is suitable for its intended use with negligible risk to human health or the environment.

On this basis, it is considered that the site remains suitable in its current state for the purpose of the proposed modification.

**Newcastle Local Environmental Plan 2012 (NLEP 2012)**

Clause 2.1 Land Use Zones

The site is zoned B2 Local Centre under NLEP 2012. The objectives of this zone are:

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

The modified proposal remains acceptable having regard to the objectives of the zone in that the development will continue to encourage employment opportunities and provide a range of retail and business uses. In addition, there are a number of local and regional strategic planning documents that highlight the importance of Kotara as a local centre.

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

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

**5.3 Any development control plan**

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

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

Commercial Uses - Section 3.10

The modified proposal remains satisfactory having regard to this section of NDCP 2012.

Safety and Security - Section 4.04

The modified proposal remains satisfactory having regard to this section of NDCP 2012.

Social Impact - Section 4.05

The modified proposal remains satisfactory having regard to this section of NDCP 2012.

Traffic, Parking and Access - Section 7.03

The proposal has been assessed by CN's Senior Development Officer (Traffic) and is considered to be acceptable. Details of the traffic and parking assessment are outlined below within Section 5.6 of this report.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties in accordance with the provisions of the Public Participation element of NDCP 2012. A total of 20 submissions, plus a 73-signature petition, were received during the notification period.

Comments are provided in Section 5.8 below.

**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 *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

The modified application was notified in accordance with the Regulations. This report addresses the various concerns raised in the submissions received in response to the public notification and referral procedures under the Act and Regulation.

**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**

There are no significant external impacts associated with the proposal. The application has demonstrated that there will be no significant adverse traffic impacts and it is considered that the proposal results in acceptable levels of noise for nearby properties.

**a) Traffic, Access and Parking**

The proposal has been assessed by CN's Senior Development Officer (Traffic) and found to be acceptable. CN's Senior Development Officer (Traffic) provided the following comments:

*"The existing condition requires these driveways to be closed and gates locked at 6.00pm each evening, except Thursdays, where the driveway is closed at 9.30pm. The application seeks to modify Condition No. 2.17 with an extension of the operating period for these driveways through to 10.00pm each evening. No physical changes are proposed for the driveways under this application. The reason given for this change is one of convenience for cinema and rooftop dining customers with the provision of a more direct route between the site and the public street.*

*A traffic report has been submitted in support of the application estimating the traffic volumes likely to utilise these driveways during the extended operating period.*

*It is acknowledged that the Lexington Parade driveway will experience a higher utilisation than the Cynthia Street driveway due to its proximity to the roof parking area.*

*Driveway operation between the hours of 6.00pm and 10.00pm is outside the peak operating period for the shopping centre and therefore should adequately cater for the traffic generated by the centre during this period.*

*A review of submissions has identified matters of residential amenity and concerns in relation to the operation of these driveways with an increase in the period of on-street parking and potential for accidents.*

*On-street parking for the centre should also be reduced during the extended driveway operating period of 6.00pm to 10.00pm, improving the operational performance and safety of these of the driveways with an increase in driver sight lines for vehicles accessing the site.*

*A review of RMS accident statistics data over the last 5 years from 2014 to 2018 indicates that no accidents have been reported at the Cynthia Street driveway while only one accident was reported at the Lexington Parade driveway in 2016. These statistics would indicate that both driveways are operating within acceptable safety limits.*

*The basis for applying Condition No. 2.17 is essentially stated in the Reason: 'To Limit the opportunities for invasive and offensive noise to affect the residential amenity of the surrounding area'.*

*The traffic engineer assessing DA 2003/2991 at that time was concerned about the operation of the Cynthia Street and Lexington Parade driveways beyond normal business hours and the potential for vehicles at the conclusion of cinema screenings to utilise these driveways as late as midnight, potentially impacting on residential*

*amenity. The issue of residential amenity translates in this case to principally matters of possible noise and vehicle head light glare.*

*The matter of vehicle headlight glare has been assessed and considered unlikely to impact on residential amenity based on the orientation of existing houses at the Cynthia Street frontage being away from the driveway and the Lexington Parade properties being 2 - storey with bedrooms located upstairs.*

*In conclusion, I am satisfied with the proposal on traffic grounds and support the approval of the application."*

Comment: The proposed development is considered to be acceptable with regard to its impacts on local traffic conditions, pedestrian safety and traffic management measures.

It is considered that the traffic, parking and access aspects of the proposed development are acceptable.

#### **b) Noise**

The proposal has been assessed by CN's Senior Environmental Protection Officer and found to be acceptable. CN's Senior Environmental Protection Officer provided the following comments:

*"A qualified acoustic consultant has concluded that the proposal generally complies with the DECCW NSW Road Noise Policy and that additional traffic noise impacts are within guideline values. Whilst residents along part of Lexington Parade currently experience existing noise levels above the total daytime criteria, the exceedance is marginal (1 dB(A)) and the calculated additional daytime additional impact of the proposal is 0.2 dB(A). When existing noise levels are exceeded, the guideline indicates an additional impact of up to 2 dB(A) is generally considered acceptable when the proposal is otherwise justified.*

*It should also be noted that part of existing traffic noise is a result of general traffic along Lexington Parade which is not associated with Westfield.*

The above assessment demonstrates that the predicted increase in traffic noise as a result of the extended driveway operating times is within acceptable limits and will not affect the night-time (sleep disturbance) noise criteria of nearby residences due to the gates proposed to close at 10:00pm.

A 12-month trial period, instead of the two-year trial period proposed by the applicant, is considered appropriate and is supported on the basis that it will allow for traffic noise and any unforeseen impacts to be monitored and reviewed within a limited timeframe.

The proposed development is considered to have acceptable impacts on residential amenity. It is considered that the proposal will not have any negative social or

economic impacts. The proposal will have benefits for the staff and customers of the shopping centre.

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

The site remains suitable for the proposed development as it is zoned B2 Local Centre and the development will continue to encourage employment opportunities and provide a range of retail and business uses in a suitable location.

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

The application was publicly notified in accordance with CN’s Public Participation Policy and 20 submissions, plus a 73-signature petition, were received during the notification period. The key issues raised within the submissions have been discussed previously in this report and are summarised as follows:

Issue	Comment
Residential amenity	The proposal is considered unlikely to significantly impact on residential amenity. The application has demonstrated that there will be no significant adverse traffic impacts and it is considered that the proposal results in acceptable levels of noise for nearby properties. Traffic generation, traffic noise, on-street parking and safety have been assessed and found to be acceptable.
Increased traffic	Driveway operation between the hours of 6.00pm and 10.00pm is outside the peak operating period for the shopping centre and should adequately cater for the traffic generated by the centre during this period.
On street parking	On street parking demand for the centre should also be reduced during the extended driveway operating period of 6.00pm to 10.00pm, improving the operational performance and safety of the driveways, with an increase in driver sight lines for vehicles accessing the site.
Anti-social behaviour	The approved use of the site remains unchanged. It is considered unlikely that the proposed modification would result in significantly increased opportunities for anti-social behaviour.
Traffic safety	The proposed development is considered to be acceptable with regard to its impacts on local traffic conditions, pedestrian safety and traffic management measures.
Traffic noise	The submitted acoustic reports have been reviewed by

	CN's Environmental Protection Officer. The predicted increase in traffic noise as a result of the extended driveway operating times is found to be within acceptable limits and will not affect the night-time (sleep disturbance) noise criteria of nearby residences.
Vehicle headlight glare	Vehicle headlight glare has been assessed and is considered unlikely to impact on residential amenity.
Miscellaneous issues relating to the history of the imposition of the condition of consent and to the management of the shopping centre.	Other aspects of the approved development, which do not form a part of the proposed modification have been considered as part of previous assessments. Any issues or complaints regarding the management and operation of the complex should be reported to 'Scentre Group' management for investigation.

**Public Voice Committee**

The proposal was considered at the Public Voice Committee Meeting held on 19 November 2019. In addition to the issues summarised above, the following matters for consideration were also raised:

- 1) *"The centre should install clearer signage to address customer inconvenience resulting from closure of the Lexington and Cynthia driveways rather than open these driveways later.*
- 2) *There are alternative exits available to two major roads which won't impact residential amenity.*
- 3) *Residents are already dealing with significant amenity impacts and any further impacts need to be justified."*

In response to the concerns raised at the Public Voice Committee, the applicant provided the following response:

*"Should Council consider it necessary, we would be prepared to accept a requirement for a two-year trial period of the new arrangements to allow impacts to be monitored and reviewed. The change to hours for the subject access points can then be reviewed after the two-year trial period.*

*We believe that the modification proposed will achieve a balanced outcome that facilitates improved functionality of the approved shopping and entertainment complex while making appropriate considerations for local neighbourhood amenity."*

Comment: The application has adequately demonstrated that there will be no significant adverse traffic and noise impacts. The issues and concerns raised in the

submissions and at the Public Voice Committee meeting do not warrant the refusal of the application in its present form or necessitate any further amendments. The proposed development is consistent with the planning controls and does not raise any other significant general public interest issues beyond matters already addressed in this report.

### 5.9 The public interest

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

The proposed modifications do not significantly alter the development for which development consent was granted and will not result in any significant changes to the overall development previously approved by CN. It is considered that the proposed changes will not create any unacceptable impacts on the surrounding locality.

The proposed modification will provide improvements to the internal operations and functionality of the complex and improve the appeal of the existing centre, which has positive economic benefits for the region.

### 6.0 CONCLUSION

The proposed modification to extend the closing times of the Cynthia Street and Lexington Parade driveways until 10.00pm (daily) is found to be acceptable, subject to a one-year trial period, instead of the two-year trial as requested. During the trial period, it is considered that noise monitoring should be conducted by an acoustic consultant to determine traffic noise impacts at the most affected residential receivers on Lexington Parade. It is recommended that such monitoring be required to be conducted for a period of no less than seven days during the month of November and again in December. The consultant would be required to prepare a report in accordance with the assessment and reporting methodology outlined in Appendix B of the DECCWNSW *Road Noise Policy – measurements and preparing a noise assessment report*. The report would also be required to compare the monitoring results with noise level predictions provided in the acoustic submitted as part of this application.

This approach would allow CN to monitor and review the ongoing management performance of the shopping complex and any unforeseen impacts within a more limited timeframe.

The proposal is acceptable against the relevant heads of consideration under section 4.15 of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any modified consent issued.

**ATTACHMENTS**

**Item 6 - Attachment A:** Submitted Plans - 89 Park Avenue Kotara - Under Separate Cover

**Item 6 - Attachment B:** Draft Schedule of Conditions - 89 Park Avenue Kotara - Under Separate Cover

**Item 6 - Attachment C:** Processing Chronology - 89 Park Avenue Kotara - Under Separate Cover

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

**ITEM-7**                    **DAC 18/02/20 - DA2017/00681.01 - 18 GREY STREET, WICKHAM - MIXED USE DEVELOPMENT - MODIFICATION - ADDITIONS COMMUNAL ROOF TOP TERRACE**

**APPLICANT:**            **LAND DEVELOPMENT SOLUTIONS**  
**OWNER:**                **GREY ST HOLDINGS PTY LTD**  
**REPORT BY:**           **GOVERNANCE**  
**CONTACT:**            **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

## PART I

### BACKGROUND

An application has been received seeking consent via a Section 4.55 application for alteration and additions to an approved mixed-use development which includes shop top housing and commercial. The development was approved in 2017 and comprised of ground floor commercial premises, associated car parking and 18 residential units above. The proposed modification is seeking to add a communal roof top terrace which exceeds the height limit for the site.



**Subject Land:** 18 Grey Street Wickham

The submitted application has been assigned to Senior Development Officer David Paine for assessment.

The application is referred to the Development Applications Committee for determination, due to the proposed variation to the building height control of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (proposed variation 34%).

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

The modified development was publicly notified in accordance with the Newcastle Development Control Plan 2012 (NDCP 2012) and one submission has been received in response.

The public submission raised concern about the increase in height with no community benefit.

## Issues

- 1) The proposed variation to the Height of Buildings development standard, under NLEP 2012.

## Conclusion

The proposed modification to the approved 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* and is considered to be acceptable subject to compliance with appropriate conditions.

## RECOMMENDATION

- A. That the Development Applications Committee note the variation to the height of buildings development standard under NLEP 2012 and consider the variation to be justified;
- B. That DA2017/00681.01 to modify the approved mixed use development, including an addition of roof top communal terrace area at 18 Grey Street, Wickham be approved and consent be granted, subject to compliance with the conditions set out in the Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of Council's determination.

## Political Donation / Gift Declaration

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject site comprises Lot 1 in DP 198579 and is known as 18 Grey Street, Wickham. The site is square in shape and has an area of 1294m<sup>2</sup>. The site has

frontages of 36 metres along Bishop Street, Union Street and Grey Street. The site is flat and located approximately 170 metres west of Hannell Street and approximately 270 metres west of Throsby Creek.

The site contains a number of industrial metal sheds, built to the boundary along the western side and occupies approximately 60% of the total site area.

## **2.0 THE PROPOSAL**

This application is seeking to modify the existing approved development by extending the lift shaft and stairwell and adding a small rooftop garden and common area in the centre of the roofline. This outdoor space including foyers, stairwells, lift shaft, BBQ area, outdoor seating and garden beds total in area 115m<sup>2</sup>.

The inclusion of this area will create a communal area for the residents. The useable gross floor area of around 65m<sup>2</sup> will enhance the top floor by providing additional open space without negatively impacting neighbouring views, privacy or overshadowing.

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

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

## **3.0 PUBLIC NOTIFICATION**

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

The concerns raised by the objector in respect of the proposed development are somewhat generic and relate to the overall redevelopment of the Wickham area. The submission did raise concern about the increase in height with no community benefit.

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

**a) Statutory and Policy Issues**

Non-compliance with the height control.

**b) Miscellaneous**

The submission raised a number of concerns with developments in and around the Wickham area.

The submission includes a number of references to the term 'uplift'. The term uplift is included in the Wickham Masterplan and refers to increasing yield resulting in higher land values. The concept of 'uplift' is not relevant to consideration of this

application as the yield for this development is not proposing to change as part of the application.

#### **4.0 INTEGRATED DEVELOPMENT**

The current application is for the modification of the original development. The applicant did not elect to seek approval for integrated development as part of the original application.

#### **5.0 PLANNING ASSESSMENT**

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

In the consideration of the current Section 4.55 modification application, the assessment is limited to matters that are relevant to the proposed amendments to the approved development. Other aspects of the approved development which do not form part of the proposed modification were considered as part of the original assessment. These other issues are not matters for further consideration as part of the S4.55 modification application assessment below.

The proposed modification involves a change to the approved height with the inclusion of a communal roof top terrace.

The modification application was lodged under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, which requires that the consent authority be “satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted”.

Assessment of the modification application has been made and it is considered that the current proposal is substantially the same as the originally approved development.

The proposed development is not seeking to increase the number of units but to provide a communal roof top terrace for the residents of the shop top housing. The proposed roof top terrace is located near the centre of the building and, having regard to the context and scale of the overall proposed development, is considered to be substantially the same development to that originally approved. The proposed physical changes are considered to be not significant.

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

**State Environmental Planning Policy No.65 - Design Quality of Residential Flat Development (SEPP)**

The development is considered to not trigger the requirements of this SEPP as the application is not for the erection of a new residential flat building and is considered to not involve a substantial redevelopment of a residential flat building.

The original development application was referred to CN's Urban Design Consultative Group (UDCG) on two occasions. The UDCG thought the overall design proposal to be '*a well resolved and attractive insertion into the popular area of Wickham, that would provide a high level of amenity to its residents and visitors*'.

The inclusion of a communal roof top terrace is typically supported by CN's UDCG because it encourages social interaction between the residents.

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

A BASIX Certificate was lodged with the original application, demonstrating that the development can achieve the required water and energy reduction targets. The proposed modification does not impact the BASIX Certificate.

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

The aims of this SEPP is to protect the biodiversity value of trees and other vegetation in non-rural areas of the State and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. The Policy applies to the Newcastle Local Government Area. The application does not propose any vegetation removal and is considered consistent with the provisions of the SEPP.

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

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

The original assessment included a detailed contamination assessment phase 1 and phase 2. The assessment concluded that the site was deemed to be suitable for redevelopment, subject to a number of conditions. The proposed modification does not impact on the original assessment.

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

The site is within the coastal management area. The proposal is considered satisfactory with regard to the aim and objectives of the policy.

**Newcastle Local Environmental Plan 2012 (NLEP 2012)**

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

Clause 2.1 - Land Use Zones

The subject property is included within the B4 Mixed Use zone under the provisions of NLEP 2012, within which zone the development is permissible with CN's consent as shop top housing (is a form of 'residential accommodation').

The modified development is consistent with the objectives of the B4 Mixed Use zone, as extracted below, by contributing to a variety of housing types in the locality:

Objectives of zone

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

Clause 4.3 Height of Buildings

Under NLEP 2012 the site has a maximum height of building development standard of 10m. The proposed modification is to increase the height of the building to 13.4 metres for the inclusion of a roof top terrace.

The objectives of clause 4.3 of NLEP 2012 are:

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

The applicant has submitted a NLEP 2012 Clause 4.6 variation request to support the current modification, which has been reviewed as part of the assessment (i.e. notwithstanding that there is no formal requirement for a development standard variation request to be made under a S4.55 modification application).

The applicant's request stated:

- i) The approved development is seeking an additional 1.35m from the approved height to accommodate the lift overrun and small rooftop communal area. The location is central to the building and around 11% of the overall roof area.*

- ii) The extent of the height non-compliance is limited centrally to the built form and does not impose any overshadowing or privacy issues.*
- iii) The addition of additional communal area, open space and landscaping greatly increases the occupants amenity and wellbeing. Across the site the departure will not affect adjoining development or the development itself in terms of excessive bulk.*
- iv) Due to flooding in the area the ground floor has to be raised 750mm above the existing levels which has an impact on the building's height relative to the LEP height.'*

The approved development had an approved maximum height of RL 14.1 AHD. During the second meeting with the UDCG (19 July 2017) the panel requested that the skylights be enlarged to ensure that the proposal provide sufficient light and ventilation for the units on the second floor. The plans were subsequently amended and approved with the enlarged skylights.

The approved skylights are approximately 1.65m above the roofline. There are two bays of skylights each approximately 3 x 17.5m totalling a combined area of 105m<sup>2</sup> or 8% of the building's footprint. The proposed lift overrun, communal area and associated rooftop garden is located in between the two skylights and does not impose any additional impact on surrounding neighbours in terms of overshadowing or privacy impacts.

The criteria provided under NLEP 2012 Clause 4.6 has been used as a guide to the merit assessment of the height of building development standard variation request, for consistency and clarity (noting that there is no formal requirement for such a request).

The bulk of the building maintains the approved height with the current proposal seeking to alter the approved building with the inclusion of a new roof top terrace. The proposed roof top terrace will exceed the height standard by approximately 3.4m (34%). The roof top terrace is setback 6m from Union Street, 16m from the rear of the building and between 12m and 15m Grey and Bishopsgate Street. The setback of the proposed rooftop terrace from the edge of the building will minimise the visual impact from the surrounding streets (refer to Figure Two).



Figure One – Photo montage

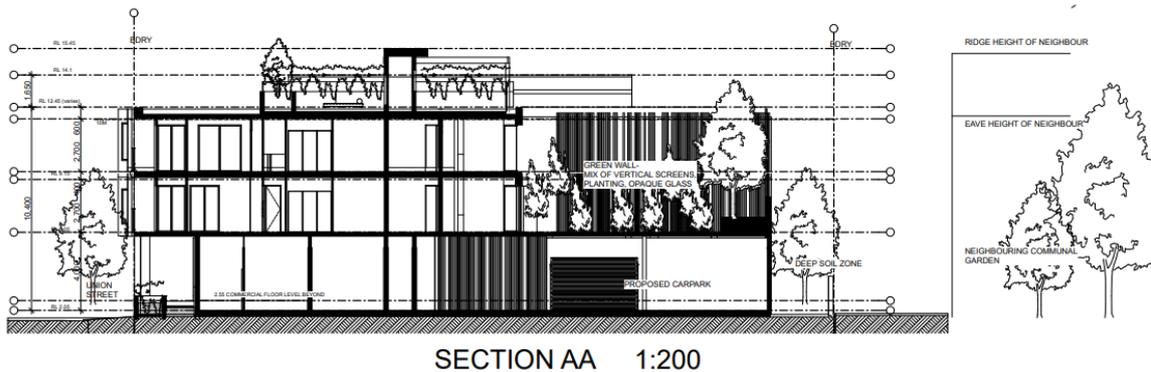


Figure Two – Level Three with setbacks to property boundaries

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

- a) The visual impacts of the modified proposal to the immediately adjoining properties to the north and south are very limited. The roof top terrace has been carefully designed to minimise the visual impact of the exceedance in height (refer to figure one and three). Similarly, the overshadowing and privacy impacts are comparable to the original development and are considered to be acceptable.
- b) It is considered that compliance with the height of building development standard is unnecessary in terms of the modified proposal for the roof top terrace and there are sufficient environmental grounds to justify contravening the development standard in this instance.
- c) The modified proposal is consistent with the public interest as it meets the relevant objectives of the B4 Mixed Use zone, as previously quoted, and is consistent with the objectives of NLEP 2012 Clause 4.3 height of buildings development standard.

Overall, the increase in height of proposed roof top terrace is considered to be reasonable in this instance and is recommended for approval as part of this S4.55 modification application.



**Figure Three – Proposed Height of the amended proposal**

Clause 4.4 Floor Space Ratio

Under NLEP 2012 the site has a maximum 1.5:1 floor space ratio (FSR). The FSR of the approved development was 1.493:1 which complied with the control. The inclusion of the roof top terrace does not impact or increase the FSR for the approved development given that the proposed rooftop area does not provide any internal Gross Floor Area, only vertical circulation and outdoor terrace.

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

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

### 5.3 Any development control plan

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

The main planning requirements of relevance in the NDCP 2012, as applicable to the current application to modify the development, are discussed as follows:

##### Residential Development - Section 3.03

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

The following comments are made concerning the proposed development and the relevant provisions of Section 3.03 of the NDCP 2012:

The amended development is considered acceptable in relation to the abovementioned NDCP 2012 section and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The development maintains a scale and built form that is appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

##### Principal controls (3.03.01)

- a) *Frontage widths*
- b) *Front setbacks*
- c) *Side and rear setbacks*
- d) *Landscaped Area*

The approved development was assessed and considered acceptable in respect to these controls and the Apartment Design Guide under SEPP 65. The current proposal does not propose any significant changes to these aspects.

##### Siting the development (3.03.01)

- a) *Local character and context*
- b) *Public domain Interface*
- c) *Pedestrian and vehicle access*
- d) *Orientation and siting*
- e) *Building Separation*

The approved development was assessed and considered acceptable with respect to these controls and the Apartment Design Guide under SEPP 65. The current modified proposal does not have any notable change to these aspects of site

planning, apart from that arising from the proposed increase to the height for roof top terrace.

The proposed change to the height for the roof top terrace is considered to be acceptable given the setbacks to surrounding properties. The amended proposal is considered reasonable in terms of the local character and context.

Amenity (3.03.03)

- a) *Solar and daylight access*
- b) *Natural ventilation*
- c) *Ceiling heights*
- d) *Dwelling size and layout*
- e) *Private Open Space*
- f) *Storage*
- g) *Car and bicycle parking*
- h) *Visual privacy*
- i) *Acoustic privacy*
- j) *Noise and pollution*

The approved development was assessed and considered acceptable with respect to these controls and the Apartment Design Guide under SEPP 65. The proposed increase in height for the roof top terrace has no impact on the above controls.

Configuration (3.03.04)

- a) *Universal design*
- b) *Communal area and open space*
- c) *Architectural design and roof form*
- d) *Visual appearance and articulation*
- e) *Pools and ancillary development*

The approved development was assessed and considered acceptable with respect to these controls and the Apartment Design Guide under SEPP 65. The proposal does not have any notable effect on these aspects, apart from the visual appearance of the proposed building. As noted above, the inclusion of the roof top terrace is considered to be acceptable with minimal impact on the streetscape given the setbacks from all boundaries.

Environment (3.03.05)

- a) *Energy efficiency*
- b) *Water management and conservation*
- c) *C Waste management*

The approved development was assessed and considered acceptable in respect to these controls and the Apartment Design Guideline under SEPP 65. The current proposal does not have any notable effect on these aspects.

The proposed development is considered to be acceptable in relation to the abovementioned NDCP 2012 section and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The development establishes a scale and built form that is appropriate for its location within the B4 mixed use zone. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

#### **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 *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

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

The proposed development will not have any adverse impacts on the natural or built environment. The development is considered to be compatible with the existing character, bulk, scale and massing of development in the immediate area.

The development will have minimal impacts on the natural environment. The site does not contain any significant vegetation and the proposed development will not have any substantial impact on any natural ecosystems.

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

The constraints of the site have been assessed in the proposed development, which includes flooding, contamination and acid sulfate soils. The proposal is considered to be satisfactory, subject to conditions that were included in the original development consent.

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

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

The application was notified in accordance with CN's Public Participation Policy and one submission was received during the notification period.

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

Issue	Comment
Height Variation	The variation to the 10m height limit is discussed within this report and is considered appropriate in the context of the site
No community benefit and uplift	The submission did include a number of references to the term 'uplift'. The term uplift is included in the Wickham Masterplan and refers to increasing yield resulting in higher land values. The yield for this development is not proposing to change as part of the application. It should be noted that the original approval required extensive public domain work including tree planting and new footpaths around the site. This work will be completed by the applicant.

### 5.9 The public interest

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

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

The proposed modified development does not raise any significant general public interest issues beyond matters already addressed in this report.

### 6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

### ATTACHMENTS

**Item 7 - Attachment A:** Submitted Plans - 18 Grey Street, Wickham - Under Separate Cover

**Item 7 - Attachment B:** Draft Schedule of Conditions -18 Grey Street, Wickham - Under Separate Cover

**Item 7 - Attachment C:** Processing Chronology – 18 Grey Street Wickham - Under Separate Cover

**Attachments A - C - Distributed Under Separate Cover**

