

Development Application Committee Meeting



DATE: Wednesday, 26 April 2023

TIME: To follow the Public Voice Committee Meeting

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

18 April 2023

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City of Newcastle
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Agenda

- 1. ATTENDANCE**
- 2. ACKNOWLEDGEMENT OF COUNTRY**
- 3. PRAYER**
- 4. APOLOGIES / LEAVE OF ABSENCE / REQUEST TO ATTEND BY AUDIOVISUAL LINK**
- 5. DISCLOSURES OF INTEREST**
- 6. CONFIRMATION OF PREVIOUS MINUTES3**
 - 6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 21 MARCH 20233
- 7. DEVELOPMENT APPLICATIONS 14**
 - 7.1. 30 VILLA ROAD, WARATAH WEST - DA2022/01085 - DWELLING HOUSE - ALTERATIONS, ADDITIONS AND ANCILLARY DEVELOPMENT (CAR PORT, GARAGE AND RETAINING WALLS) INCLUDING DEMOLLITION 14
 - 7.2. 38 POWER STREET ISLINGTON - DA2022/01239 - SEMI-DETACHED DWELLINGS - INCLUDING DEMOLITION OF EXISTING DWELLING AND BOUNDARY ADJUSTMENT.....30
 - 7.3. 26 SCOTT STREET, NEWCASTLE EAST - DA2022/00809 - DWELLING HOUSE ALTERATIONS AND ADDITIONS.....51
 - 7.4. 14 SCOTT STREET NEWCASTLE EAST - DA2022/01049 - DWELLING HOUSE - ALTERATIONS AND ADDITIONS.....70
 - 7.5. 35 ADDISON STREET BERESFIELD - DA2022/01100 - DEMOLITION OF STRUCTURES AND ERECTION OF NEW FROZEN FOOD STORAGE BUILDING97
 - 7.6. 111 DAWSON STREET COOKS HILL - DA2022/00936 - DWELLING HOUSE - ALTERATIONS AND ADDITIONS INCLUDING DEMOLITION114
 - 7.7. 182 HUNTER STREET NEWCASTLE - DA2021/01505 - MIXED-USE DEVELOPMENT (COMMERCIAL AND SHOP TOP HOUSING) - INVOLVING ALTERATIONS AND ADDITIONS TO LOCALLY LISTED HERITAGE BUILDING 133
 - 7.8. 4 TIGHE STREET NEWCASTLE WEST - RE2023/00001 - COMMERCIAL CAR PARK AND RETAIL PREMISES 195

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

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

6. CONFIRMATION OF PREVIOUS MINUTES

6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 21 MARCH 2023

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 230321 Development Applications Committee Meeting Minutes

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

Minutes

Development Application Committee Meeting



Council Chamber, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West, Tuesday, 21 March 2023 at 6:04pm.

1. ATTENDANCE

The Lord Mayor (Councillor N Nelmes), Councillors E Adamczyk, J Barrie, D Clausen, C Duncan, J Mackenzie, C McCabe, C Pull (*arrived 6.07pm*), D Richardson, K Wark and P Winney-Baartz.

J Bath (Chief Executive Officer), D Clarke (Executive Director Corporate Services), L Duffy (Acting Director Community and Creative Services), J Rigby (Executive Director City Infrastructure), M Bisson (Interim Executive Director Planning and Environment), A Jones (Interim Executive Director & Manager Waste Services), E Kolatchew (Executive Manager Legal and Governance), S Moore (Executive Manager Finance, Property and Performance), M Murray (Chief of Staff), P Emmett (Development Assessment Section Manager), L Barnao (Councillor Services/Meetings Support), A Ryan (Development Coordinator), A Knowles (Councillor Services/Meetings Support), R Garcia (Information Technology Support) and A Paule-Font (Information Technology Support).

2. ACKNOWLEDGEMENT OF COUNTRY

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

3. PRAYER

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

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

MOTION

Moved by Cr Adamczyk, seconded by Cr Barrie

The request to attend by audio visual link submitted on behalf of Councillor Richardson and the apology submitted on behalf of Councillor Wood be received and leave of absence granted.

Carried unanimously

5. DISCLOSURES OF INTEREST

Councillor Church

Councillor Church declared a significant, non-pecuniary interest in Item 7.1 - DA2022/00858 - 94 Rodgers Street, Carrington and Item 7.3 - DA2022/00502 - 67 Gipps Street, Carrington stating that he had a close family member who owned property in the vicinity and would manage the interest by leaving the Chamber.

6. CONFIRMATION OF MINUTES

6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 21 FEBRUARY 2023

MOTION

Moved by Cr Adamczyk , seconded by Cr McCabe

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

Carried

7. DEVELOPMENT APPLICATIONS

7.1. 94 RODGERS STREET CARRINGTON - DA2022/00858 - DWELLING HOUSE – ALTERATIONS AND ADDITIONS

Councillor Church left the Chamber for discussion on the item.

MOTION

Moved by Cr McCabe, seconded by Cr Mackenzie

1. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
2. That DA2022/00585 for dwelling house alterations and additions at 94 Rodgers Street Carrington be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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

Against the Motion: Nil.

Carried unanimously

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

7.2. SUPPLEMENTARY REPORT - 37 STEVENSON PLACE, NEWCASTLE EAST - DA2022/00611 - DWELLING HOUSE - ALTERATIONS AND ADDITIONS

MOTION

Moved by Cr Wark, seconded by Cr McCabe

1. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out; and
2. That DA2022/00611 for alterations and additions at 37 Stevenson Place Newcastle East be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
3. That those persons who made submissions be advised of CN's determination.

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

Against the Motion: Councillor Mackenzie.

Carried

7.3. 67 GIPPS STREET, CARRINGTON - DA2022/00502 - DWELLING HOUSE ALTERATIONS INCLUDING ADDITIONS

Councillor Church left the Chamber for discussion on the item.

MOTION

Moved by Cr McCabe, seconded by Cr Mackenzie

- That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density zone in which the development is proposed to be carried out; and
- That DA2022/00502 for dwelling house – alterations and additions including demolition at 67 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**.

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

Against the Motion: Nil.

Carried

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

7.4. 50 HOWE STREET, LAMBTON (LAMBTON POOL SITE) - DA2022/01099 - ONE INTO TWO LOT SUBDIVISION

MOTION

Moved by Cr Winney-Baartz, seconded by Cr Clausen

1. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.1 Minimum subdivision lot size, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the RE1 - Public Recreation zone in which the development is proposed to be carried out; and
2. That DA2022/01099 for one into two lot subdivision at 50 Howe Street Lambton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
3. That those persons who made submissions be advised of CN's determination.

PROCEDURAL MOTION

Moved by Cr Pull, seconded by Cr Mackenzie

That Council lay the item on the table to allow for a Public Briefing.

For the Motion: Councillors Church, McCabe, Pull, McKenzie and Wark.

Against the Motion: Lord Mayor, Cr Nelmes, Councillors Adamczyk, Barrie, Clausen, Duncan, Richardson and Winney-Baartz.

Defeated

After the procedural motion was defeated, Councillors Clausen and Adamczyk moved a Part B that was accepted by the Lord Mayor into the motion.

Part B:

1. Reiterate and support Council's resolution of 25 October 2022, Item 35 – Newcastle needs a year round aquatic facility:

That Council:

- 1 Notes Council's continued investment of more than \$3million to upgrade local pools, while ensuring affordable entry fees for equity in access for residents, including:

Mayfield Pool

- Connecting pathways to new undercover picnic and accessible barbecue area
- Three grandstands with shade
- New playground
- Family change room
- Installation of new shade at deep end of the pool
- New lane ropes
- Installation of two umbrella shade shelters adjacent to learners pool
- Installation of brighter lighting in change rooms
- New pace clock

Stockton Pool

- Major works to reduce water use
- New boundary fencing on western side
- Rectification of roof in main pavilion
- Three new blanket rollers to store heat blankets
- Relining main lines to the pool
- Replace learners pool blanket

Lambton Pool

- Replace 120m long water slide
- Upgrade to water play area
- Repaint of facility
- New starting blocks and covers to protect the blocks for the 50m pool
- Safety works on stairway access platform to water slide
- Design investigations to more adequately heat the pools

- Painting of all changerooms and non-slip at entrances
- New lane ropes
- Installation of Cantilever shade structure at water slide

Beresfield Pool

- New starting blocks for the 50m pool
- Five new shade umbrellas
- New large pool inflatable
- Additional bench seating
- Additional permanent shade off changeroom pavilion

Wallsend Pool

- New shade above seating along pool deck
- New shade at starting block end
- Replacement of large shade structure in open space
- Removal of unsafe shade structure on western side
- Replacement of playground
- Relocation and new pace clock on South end
- Repair/maintenance of plumbing in amenities
- General tidy up of gardens and open space, clean of scum lines
- Relocation of ducks
- External garden beds mulched
- Linemarking of car park
- New lane ropes
- Scheduled pressure clean of pool pre-opening

- 2 Notes the Council's commitment to providing a modern year-round public aquatic facility in Newcastle.
- 3 Notes that a year-round facility requires substantial investment. Elsewhere, the NSW Government has provided significant funding for

pool upgrades or redevelopments. Projects that received funding from Governments include:

- City of Sydney: \$106 million
- North Sydney: \$64 million
- Parramatta: \$87 million
- Eurobodalla: \$69 million

- 4 Notes that an aquatic facility is being considered in the Venues NSW Business Case for Hunter Park in Broadmeadow. Writes to Venues NSW seeking confirmation that land will be preserved within the Hunter Park precinct to enable a year-round aquatic facility.
- 5 Develops and promotes via all appropriate channels a public petition to the NSW Legislative Assembly calling on the NSW Government and Opposition to invest in a new year-round swimming facility in Newcastle

2. Notes funding commitments to pools elsewhere in NSW announced during this NSW election campaign:

Pool	Electorate	Funding	Commitment
Blacktown Pool	Liberal - Winston Hills	\$77,000,000	Liberals
Carnes Hill Aquatic Centre	Labor - Leppington	\$53,400,000	Liberals
Enfield Aquatic Centre	Labor - Strathfield	\$52,400,000	Liberals
Mt Druitt Pool	Labor - Mt Druitt	\$41,000,000	Liberals
Carss Park Pool	Labor - Kogarah	\$40,000,000	Labor (March 2022) Liberal (March 2023)
Hammondville Aquatic Facility	Liberal - Holsworthy	\$21,800,000	Liberal
Tamworth Regional Aquatic Facility	Nationals - Tamworth	\$15,000,000	Nationals
Moree Artesian Aquatic Centre	Nationals - Northern Tablelands	\$4,900,000	Nationals

Pool	Electorate	Funding	Commitment
Swansea Swim Centre	Labor - Swansea	\$900,000	Labor
Crookwell Aquatic Centre	Nationals - Goulburn	\$800,000	Nationals
TOTAL		\$310 million	

- Reiterates its call and multiple previous requests for State funding to deliver an upgrade to Lambton Pool.

The motion moved by Councillor Winney-Baartz and seconded by Councillor Clausen, as amended, was put to the meeting.

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

Against the Motion: Councillor Church, Mackenzie, McCabe, Pull and Wark.

Carried

PROCEDURAL MOTION

Moved by Cr Clausen, seconded by Cr Adamczyk

Item 7.2 be recommitted to confirm voting on the resolution.

Carried unanimously

7.2. SUPPLEMENTARY REPORT - 37 STEVENSON PLACE - DA2022/00611 - DWELLING HOUSE - ALTERATIONS AND ADDITIONS

MOTION

Moved by Cr Barrie, seconded by Cr Adamczyk

- That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out; and
- That DA2022/00611 for alterations and additions at 37 Stevenson Place Newcastle East be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
- That those persons who made submissions be advised of CN's determination.

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

Against the Motion: Councillor Mackenzie.

Carried

PROCEDURAL MOTION

Moved by Cr Mackenzie, seconded by Cr McCabe

Item 7.1 be recommitted to confirm voting on the resolution.

Carried unanimously

**7.1. 94 RODGERS STREET CARRINGTON - DA2022/00858 - DWELLING HOUSE
– ALTERATIONS AND ADDITIONS**

Councillor Church left the Chamber for discussion on the item.

MOTION

Moved by Cr Mackenzie, seconded by Cr McCabe

1. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
2. That DA2022/00585 for dwelling house alterations and additions at 94 Rodgers Street Carrington be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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

Against the Motion: Nil.

Carried

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

7.5. 16 REAY STREET HAMILTON - DA2022/01196 - ONE INTO TWO LOT SUBDIVISION

MOTION

Moved by Cr McCabe, seconded by Cr Barrie

1. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.1 Minimum Subdivision Lot Size, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the R3 zone in which the development is proposed to be carried out; and
2. That DA2022/01196 for one into two lot subdivision at 16 Reay Street Hamilton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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

Against the Motion: Nil.

Carried unanimously

The meeting concluded at 6.40pm.

7. DEVELOPMENT APPLICATIONS

7.1. 30 VILLA ROAD, WARATAH WEST - DA2022/01085 - DWELLING HOUSE - ALTERATIONS, ADDITIONS AND ANCILLARY DEVELOPMENT (CAR PORT, GARAGE AND RETAINING WALLS) INCLUDING DEMOLLITION

APPLICANT: PERCEPTION PLANNING
OWNER: J P EDWARDS
REPORT BY: PLANNING AND ENVIRONMENT
CONTACT: INTERIM EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

PART I

PURPOSE

A development application (DA2022/01085) has been received seeking consent for alterations and additions to an existing dwelling house at 30 Villa Road, Waratah West.

The submitted application was assigned to Development Officer, Ebony Pavy, for assessment.

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



Subject Land: 30 Villa Road Waratah West

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

The application was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) with no submissions being received in response.

Issues

- 1) Height of Buildings – The proposed development has a height of 10.28m and does not comply with the maximum height of building development standard of 8.5m as prescribed under Clause 4.3 of Newcastle Local Environmental Plan 2012 (NLEP 2012). The variation equates to an exceedance of 1.78m or 20.9%.

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density zone in which the development is proposed to be carried out; and
- B. That DA2022/01085 for alterations and additions to the existing dwelling house at 30 Villa Road, Waratah West be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject property is a single allotment known as 30 Villa Road Waratah West and has a legal description of Lot 108 in Deposited Plan 21085. The site is rectangular in shape and has a total site area of 498.7m².

The site has an easterly aspect and a frontage to Villa Road. The site has a severe western slope from the east (frontage) to the west (rear) and contains one large palm tree.

The site is occupied by a single storey weatherboard dwelling and a small single car garage. The surrounding area consists of predominately single storey weatherboard cottages. Existing development on adjoining sites include a single storey weatherboard dwelling house to the north, split-level weatherboard house to the west, the Calvary Mater Hospital to the east and a Council reserve to the south (23A Angus Avenue).

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to the existing dwelling house, including internal works to the lower and upper floor. The development comprises the following works:

- i) The lower floor will contain a new master bedroom, ensuite, laundry, power room, mudroom, rumpus room and new garage and carport.
- ii) The upper floor will contain a new bedroom, bathroom, study nook, kitchen and living area, and new rear deck and staircase at the rear.
- iii) Retaining walls are proposed to the north, south and west.

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

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

3.0 PUBLIC NOTIFICATION

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

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of land

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

The subject site does not have a history of development uses that were likely to cause significant contamination of the land. 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 Chapter 4 SEPP R&H.

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," (i.e.: contains one or more dwelling).

Accordingly, the provisions of the SEPP apply to the current development proposal. The applicant submitted a valid BASIX Certificate which lists the commitments to achieve appropriate building sustainability. A condition is recommended to be included in the development consent requiring such commitments to be fulfilled.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

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

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

- i) To provide for the housing needs of the community within a low-density residential environment.*
- ii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

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

The proposed alterations and additions to the existing dwelling house maximises residential amenity by reconfiguring the lower and upper floor levels to provide additional bedrooms and living spaces to cater for the needs of the owners. The design retains the existing dwelling which supports the character of the surrounding development.

The proposed development is consistent with the objectives of the R2 zone by accommodating the housing needs of the resident within a constrained site while respecting the amenity and character of surrounding development.

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a height of buildings development standard of 8.5m. The proposed development will result in a maximum height of 10.28m, equating to an exceedance of 1.78m or 20.9% above the height of buildings development standard for the subject land.

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

Clause 4.4 - Floor Space Ratio (FSR)

Under the NLEP 2012 the site has a FSR development standard of 0.6:1. The submitted FSR is approximately 0.4:1 and complies with this requirement.

Clause 4.6 - Exceptions to Development Standards

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

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

The applicant seeks a building height of 10.28m, equating to an exceedance of 1.78m or 20.9% above the height of buildings development under Clause 4.3. As such, the

application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

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

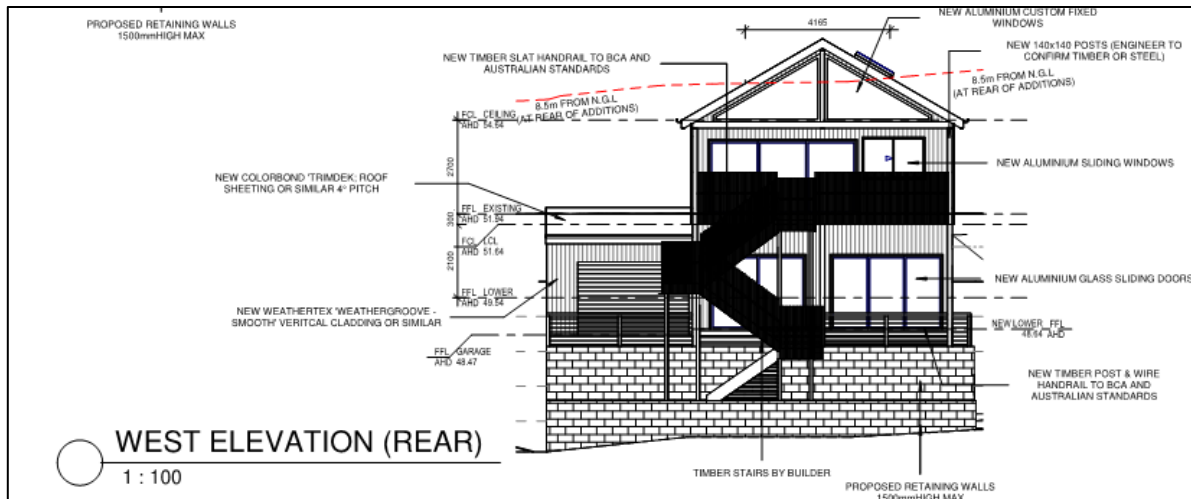


Figure 1: Extent of building height non-compliance. Note that red dashed outline is 8.5m height.

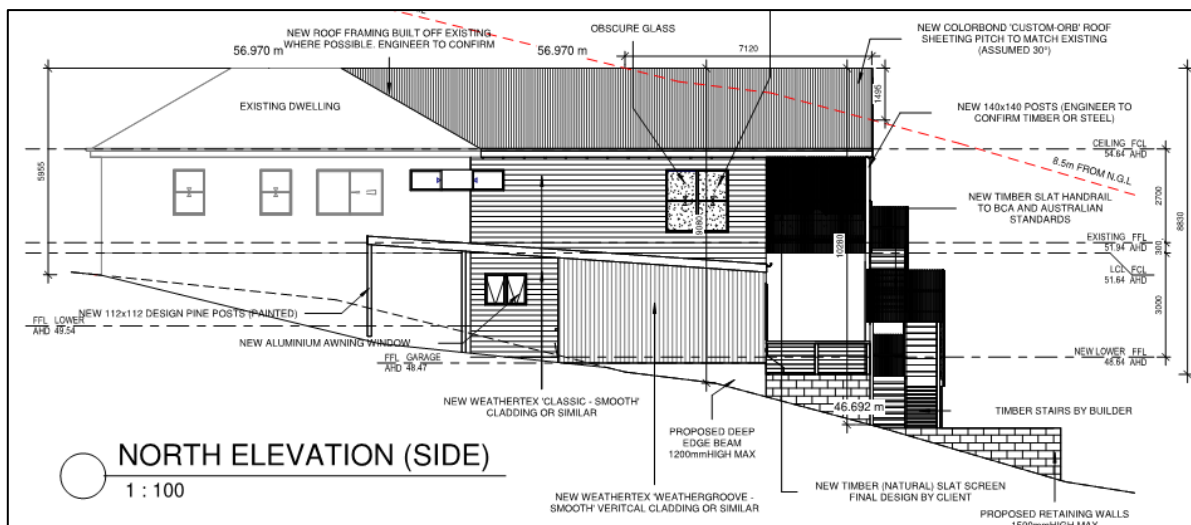


Figure 2: View of proposal from the east.

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

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

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

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

The submitted 'Clause 4.6 Variation to Building Height', prepared by Perception Planning dated 7 March 2023 constitutes a written request for the purposes of clause 4.6(3). (**Attachment D**)

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

The applicant's clause 4.6 Variation Request written response seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable, stating that strict compliance with the objectives of the development standard would compromise the objectives of the development standard.

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

- i) *Strict adherence to the numerical height of building development standard would be unreasonable and unnecessary as required under the Five Part Test (Wehbe vs Pittwater Council);*
- ii) *The proposed building height is appropriate when considering it in relation to the existing features of the site;*
- iii) *The non-compliant portion of the development does not impact on the architectural merits of the site. The roof section which varies the building height requirement will not increase the overall bulk and scale of the existing and results in a high-quality architectural outcome on-site;*
- iv) *The proposed development has taken measures to increase privacy for adjacent properties such as altering window locations and glazing properties.*
- v) *The proposed development integrates in with the desired contemporary built form of the area and will have no additional impact on the 'views' held by existing properties;*

- vi) *Despite of the variation the proposed development will achieve the objectives of the development standard and the objectives of the relevant land use zone being R2 – Low Density Residential; and*

There are no identified environmental or social impacts as a result of the proposed variation.

CN Officer Comment

The proposed development provides for alterations and additions to an existing dwelling to improve the functionality of the dwelling and overall amenity of the site for the resident. The variation results due to the site topography and the proposed development has been designed to comply with privacy, overshadowing and setback requirements.

As a result, the alterations and additions are considered to improve the functionality of the dwelling without compromising the amenity of surrounding residential properties. The variation is considered relatively minor in respect to the overall context of the development proposal.

It is noted that part of the applicant's clause 4.6 variation requests suggests that CN has abandoned the development control. This aspect of the applicant's submission is not accepted as insufficient evidence to the required threshold has been provided to demonstrate this aspect of the applicant's argument. However, the applicant's variation request provides sufficient justification for the variation in respect to the particular unique site constraints, particularly topography, and the overall design of the development.

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

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

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

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

"The development has demonstrated compliance with other primary design controls, including privacy, overshadowing and setback controls, showing that the height exceedance does not result in negative impacts when considered in the context of the site and local area.

The proposed development incorporates architectural features which results in an articulated design that minimises the building bulk and positively contributes to the locality. The development has been identified to be consistent with the relevant objectives, which provides sufficient environmental planning grounds under the NLEP (Clause 4.3) for a variation to the numerical development standard."

CN Officer Comment

The written request outlines environmental planning grounds which justify the contravention to the development standard. In particular, the proposed alterations and additions will not be visible when viewed from Villa Road, the proposed development will not result in adverse impacts to the amenity of adjoining properties and the bulk and scale of the development is compatible with the existing and future character of the locality. The reasons outlined above are considered to provide sufficient justification to contravene the development standard.

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

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

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

The applicant’s response to the satisfaction of the objectives of the Height of Buildings standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, *‘the proposed development will be in the public interest because it is consistent’*, with the relevant objectives.

Objectives of Clause 4.3 ‘Height of buildings

The development is consistent with the objectives of Clause 4.3 ‘Height of buildings’ as the proposed alterations and additions will be to the rear of the site and will be a similar height as the existing building height. Furthermore, the development will allow adequate solar access to the subject dwelling and surrounding properties.

Objectives of the R2 Low Density Zone

The development is consistent with the objectives of the R2 zone as the proposed development maximises residential amenity within a low-density residential environment and increases the internal spaces and useability of the dwelling to meet the day to day needs of residents while maintaining a scale and height that is compatible with the character of the locality and there will be no significant adverse impacts on the amenity of any existing nearby development. Further, the development is a type of land use permitted with consent within the above land zone.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the R2 zone. The proposal is satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

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

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

Conclusion

The requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation to the height of buildings development standard.

The Clause 4.6 variation request has demonstrated that the proposed height is acceptable and therefore strict compliance with the prescribed height of buildings standard would be unreasonable in this instance. In this regard, the Clause 4.6 variation request is supported.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils (ASS) and the proposed development is considered satisfactory in this regard. The proposed development does not comprise significant earthworks and is therefore unlikely to expose or drain potential acid sulfate soils within the site. Accordingly, an ASSMP is not necessary, and the proposed development is considered satisfactory regarding Acid Sulfate Soils.

Clause 6.2 - Earthworks

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

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

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

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

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

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: 'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

Single Dwellings and Ancillary Development - Section 3.02

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

Street frontage appearance (3.02.03)

The proposed development retains the existing front setback of the dwelling house. Further, the addition is proposed at the rear of the subject site therefore not viewable from the street frontage.

Side / rear setbacks (building envelope) (3.02.04)

Side setbacks are a minimum of 900mm from each boundary up to a height of 4.5m, then at an angle of 4:1 up to a height of 10.28m. Rear setbacks are a minimum of 3m for walls up to 4.5m in height and over 6m for walls greater than 4.5m height.

Landscaping (3.02.05)

The subject site has an area of 498.7m² and therefore the acceptable solutions require 20% of the site (99.74m²) to be landscaped. A landscape area of 124.7m² or 25% of the site is to be retained which meets the acceptable solutions within this section.

Private open space (3.02.06)

The proposed development will retain a principal area of private open space which will be directly accessible from the main living area via the new external staircase. The proposed retaining walls will create a flat and level section of the yard that is usable and suitable for the needs of the occupants.

Privacy (3.02.07)

The proposed development will include new windows on the northern, western and southern elevations. A new alfresco balcony is also included on the western elevation adjoining the new living area. The site slopes towards the rear, therefore, to minimise overlooking impacts into nearby dwellings and private open space privacy screening has been implemented.

Timber slat privacy screening will be installed on the northern, and western elevations of the proposed alfresco balcony. The privacy screening is not required on the southern elevation although, notwithstanding has been implemented. Further, the proposed living room window (W04) on the eastern elevation will have obscure glazing.

A condition will be imposed in the consent to ensure the privacy measures indicated on the approved plans are implemented. Subject to conditions, the development is considered to meet the acceptable solutions of the NDCP 2012 with respect to privacy.

Solar access (3.02.08)

Due to the orientation of the site, the proposed development does not significantly overshadow living area windows and principal areas of private open space of adjacent dwellings. The shadows cast as a result of the development are focused on the private open space of the subject site and the adjoining Council reserve to the south. The

proposed development is considered to meet the acceptable solutions of the NDCP 2012 with respect to solar access.

View sharing (3.02.09)

The proposed development will not obscure any important views or vistas of adjoining properties. The development is considered to meet the acceptable solutions of this section within NDCP 2012.

Car parking and vehicular access (3.02.10)

The proposal includes a carport and garage located within the existing driveway to replace the existing car parking and vehicular access arrangements at the site and are considered 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 acceptable in relation to the abovementioned NDCP 2012 sections and achieves compliance with relevant acceptable solutions and performance criteria for building form, building separation and residential amenity.

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

Ancillary development (3.02.12)

The proposed development includes the erection of a garage and attached carport on the north side of the existing dwelling house. The carport is extending from the front of the garage to provide additional parking. The structures will replace the existing garage and will have a maximum height of 4.5 metres above the existing ground level. The proposal complies with the acceptable solutions under Section 3.02.10 Car Parking and Vehicular Access.

The proposed garage and carport are located 12.6 metres from the property boundary of the road frontage and setback 190mm from the northern side boundary. Therefore, it does not comply with the minimum setback of 900mm in the acceptable solutions of the abovementioned DCP section. However, the proposal is considered to meet the performance criteria within this section.

The proposed structures are not considered to dominate the existing streetscape as there is a substantial setback from the front property boundary. The structures will not detract from the character of the existing streetscape. Further, the structure is of a similar bulk and scale to existing garages within Villa Road therefore is appropriate for its location. The existing driveway will be retained, and it is considered the vehicles can enter and exit the site in a safe manner.

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

Soil Management - Section 5.01

Retaining walls are to be implemented to the north, west and south at a height of 1.5 metres. The proposed south and west facing retaining walls maintain a minimum 1m side setback from their respective boundary. The proposed north retaining wall has a setback of 190mm from the northern side boundary.

It has been assessed that the proposed height and the setback of the north retaining wall does not comply with the requirements in this section. Therefore, a variation is requested for the non-compliance. The retaining walls are proposed above the maximum retaining wall height of 1 metre to provide a flat section of private open space and amenity for the occupants to utilise. The proposed northern retaining wall encroaches the 1 metre side setback in order to preserve most of the landscaped area.

Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site or within 50m of the site.

Landscape Open Space and Visual Amenity - Section 7.02

The site will improve the existing landscaping area by providing a flat section for the occupants to utilise. The existing site comprises of a severely sloping yard with minimal landscaping. The proposed landscaping is considered reasonable due to the constraints of the site. The development is considered to meet the Performance Criteria of the NDCP 2012 with respect to landscaped area.

Traffic, Parking and Access - Section 7.03

The proposal includes a carport and garage located within the existing driveway to replace the existing car parking and vehicular access arrangements at the site and are considered satisfactory.

Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed development will discharge into the existing stormwater system. Standard conditions relating to stormwater details will be included in the consent to ensure the stormwater system complies with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

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

Public Participation – Community Participation Plan (CPP)

The proposed development was publicly notified to neighbouring properties for 14 days in accordance with the CN's CPP and no submissions were received in response.

Development Contributions

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

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

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 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. 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 located within an existing residential area and within proximity to essential urban services, commercial centres, medical facilities, community facilities and education establishments. The site has

existing connection to water, sewer, telecommunications, electricity and gas, and Villa Street is currently serviced by CN's waste services.

The constraints of the site have been considered in the proposed development and the site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development. As such, the subject site is suitable for the proposed development.

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

The application was publicly notified in accordance with CN's Community Participation Plan (CPP) and no submissions were received.

5.9 The public interest

The proposed development is consistent with the aims and design parameters contained in the NLEP 2012 and the NDCP 2012 and other relevant Environmental Planning Instruments discussed within this report. The development is consistent with the objectives of the R2 Low Density Residential Land use zone.

The proposed development will not have an adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjacent properties or the streetscape. The proposed development is in the public interest as it provides for modernised low-impact residential accommodation within an established residential area.

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

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

6.0 CONCLUSION

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

ATTACHMENTS

- Attachment A:** Submitted Plans – 30 Villa Road, Waratah West
- Attachment B:** Draft Schedule of Conditions – 30 Villa Road, Waratah West.
- Attachment C:** Processing Chronology – 30 Villa Road Waratah West
- Attachment D:** Clause 4.6 written exception to development standard – 30 Villa Road Waratah West

7.2. 38 POWER STREET ISLINGTON - DA2022/01239 - SEMI-DETACHED DWELLINGS - INCLUDING DEMOLITION OF EXISTING DWELLING AND BOUNDARY ADJUSTMENT

APPLICANT: WILSON PLANNING PTY LTD
OWNER: WALLABY GULLY ROAD PTY LTD
REPORT BY: PLANNING AND ENVIRONMENT
CONTACT: INTERIM EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

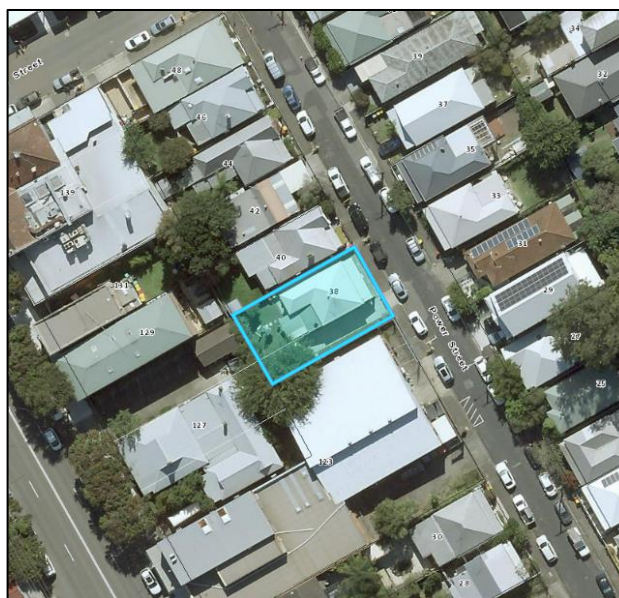
PART I

PURPOSE

A development application (DA2022/01239) has been received seeking consent for the construction of two semi-detached dwellings and subdivision by way of boundary adjustment of the land located at 38 Power Street, Islington.

The submitted application was assigned to Development Officer, Alex Hunter, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to Clause 4.1 Minimum Lot Size development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.



Subject Land: 38 Power Street Islington

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

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

Issues

1. Minimum Lot Size - The proposed two-into-two lot (boundary alteration) Torrens title subdivision does not comply with the minimum lot size development standard of 400m² as prescribed under Clause 4.1 of the Newcastle Local Environmental Plan 2012 (NLEP 2012). The proposed lot size for both Lot 1 and Lot 2 is 167m² which equates to 58% variation to the minimum lot size standard.

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.1 Minimum Subdivision Lot Size, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the R3 Medium Density Residential Zone in which the development is proposed to be carried out; and
- B. That DA2022/01239 for the construction of two semi-detached dwellings and two-into-two lot (boundary alteration) subdivision at 38 Power Street, Islington, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

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

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

The applicant has answered 'No' to the following question on the application form:

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

PART II

1.0 THE SUBJECT SITE

The site is known as 38 Power Street Islington and comprises two allotments being legally known as Lot 1 in Deposited Plan 104831 and Lot 22 Section B in Deposited Plan 2331.

The site has a total area 334.5m² with a total frontage to Power Street of 13.715m.

The site accommodates an existing single-storey weatherboard dwelling and ancillary garage. Each separated allotment is rectangular in shape. The site is generally flat land and accommodates five established trees to the rear of the dwelling and garage.

Table 1 below provides an overview of each allotment:

Allotment	Area	Frontage	Improvements
Lot 22 Sec B DP 2331	223m ²	9.145m to Power St.	Single Dwelling
Lot 1 DP 104831	111.5m ²	4.57m to Power St.	Ancillary garage.

Table 1: Existing Lot Schedule

The development site is located in an existing residential suburb in close proximity to the commercial services along Beaumont Street and public recreation facilities in Islington Park. The surrounding neighbourhood is characterised by a fine-scale subdivision pattern comprising mostly 200-300m² lot sizes. Road widths in the locality are also small with Power Street comprising a 12.5m wide road reserve and 8m wide carriage way.

Dwellings within the locality are predominately single storey workers cottages with two storey forms intermittently located along the streetscape (including opposite the subject site). Surrounding residences have typically adopted a 1.5-2m front setback and 500mm to 900mm side boundary setbacks. Adjoining the site to the south is an industrial warehouse and to the north is a single-storey workers cottage. Adjoining the site to the rear are commercial premises which front Maitland Road.

2.0 THE PROPOSAL

The applicant seeks consent for the construction of two semi-detached dwellings and subdivision by way of boundary adjustment. The development comprises the following works:

- i) Demolition of the existing built form within the site.
- ii) Construction of two semi-detached, two storey dwellings comprising:
 - a) Ground floor living, kitchen and dining areas, bathroom and laundry, single car garage and outdoor private open space.
 - b) Upper-level master bedroom with ensuite, walk-in robe and small balcony, two additional bedrooms and bathroom.

- iii) Two-into-two lot subdivision (i.e., boundary adjustment) to create two Torrens title allotments of 167.26m² and 167.24m² to accommodate each proposed dwelling.

The proposed development comprises a substantial departure from the applicable minimum lot size requirement under the NLEP 2012 as part of the proposed boundary alteration due to the existing lot arrangement.

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

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

3.0 PUBLIC NOTIFICATION

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

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environment Planning Policy (Resilience and Hazards) 2021 (SEPP R&H)

Chapter 2 Coastal management

Chapter 2 of the SEPP R&H seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the Coastal Management Act 2016 (the Act). The 'coastal zone' is defined in the Act as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability.

The site is in a coastal environmental area. The subject site is within the established metropolitan suburb of Islington and is situated approximately 375m from the nearest receiving waters (Throsby Creek). The proposed development will satisfactorily manage stormwater run-off by capturing roofwater and conveying to an underground rainwater tank for detention before being discharged to public stormwater systems within Power Street.

Accordingly, it is not anticipated that the proposed development will result in any significant coastal hazards to the subject site or to other lands. The proposed development is not inconsistent with the provisions of Chapter 2 of SEPP R&H.

Chapter 4 Remediation of land

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

The subject site does not have a history of development uses that were likely to cause significant contamination of the land. 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 Chapter 4 SEPP R&H.

State Environmental Planning Policy (Building and 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," (i.e.: contains one or more dwelling).

Accordingly, the provisions of the SEPP apply to the current development proposal. The applicant submitted a valid BASIX Certificate which lists the commitments to achieve appropriate building sustainability. A condition is recommended to be included in the development consent requiring such commitments to be fulfilled.

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

Chapter 2 Vegetation in non-rural areas

Chapter 2 of SEPP B&C aims 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 proposed development proposes the removal of two trees as follows:

- i) One x *Callistemon viminalis* (Bottlebrush) tree located in the rear yard of the subject site.
- ii) One x *Alnus glutinosa* (Black Alder) located in the side setback for the adjoining property to the south (123 Maitland Road, Islington). Owner's consent of the adjoining landowners for the removal of this tree has been provided.

As required under SEPP B&C an assessment has been completed in accordance with the Newcastle Development Control Plan 2012 (NDCP 2012) and the development

meet the objectives of Section 5.03 (Tree Management). The proposal is acceptable having regard to this policy.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The site is located in the R3 Medium Density Residential and the proposed development is defined as semi-detached dwellings which are permitted with consent in the R3 Medium Density Residential Zone.

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

- i) To provide for the housing needs of the community within a medium density residential environment.*
- ii) To provide a variety of housing types within a medium density residential environment.*
- iii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- iv) To allow some diversity of activities and densities if—*
 - a) the scale and height of proposed buildings is compatible with the character of the locality, and*
 - b) there will be no significant adverse impact on the amenity of any existing nearby development.*
- v) To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development—*
 - a) has regard to the desired future character of residential streets, and*
 - b) does not significantly detract from the amenity of any existing nearby development.*

The proposed development will maximise the use of existing land resources in the existing urban footprint through the demolition of the existing single dwelling and the construction of two self-contained, three-bedroom, semi-detached dwellings. The development facilitates increased population levels and dwelling densities in a location near to the commercial centre of Beaumont Street.

Whilst the proposed development seeks to create lots less than the minimum lot size, the application details that the proposed dwellings can be suitably sited and oriented within the site without significant adverse impacts to surrounding land or internal

amenity. The proposed dwellings are of a scale that is consistent with the desired future character of the area as implied by the R3 Medium Density Residential zoning.

The development is therefore considered to be consistent with the objectives of the R3 zone.

Clause 2.6 - Subdivision—Consent Requirements

The development proposal includes a two-into-two lot Torrens title residential subdivision (i.e., a boundary adjustment). Clause 2.6 provides that the subdivision of land, other than exempt or complying subdivision, requires development consent.

The applicant has sought development consent for the proposed subdivision under the subject development application.

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 4.1 - Minimum Subdivision Lot Size

The applicable minimum lot size to the site is 400m². The existing subdivision arrangement comprises two allotments which are both under the minimum lot size, and the proposed boundary alteration will result in two allotments under the minimum lot size as detailed within **Table 2** below.

Existing		Proposed	
Lot	Area	Lot	Area
Lot 22 Sec B DP2331	223m ²	Proposed Lot 1	167.26m ²
Lot 1 DP 104831	111.5m²	Proposed Lot 2	167.24m²

Table 2: Existing and Proposed Subdivision Arrangement

The proposed lot sizes represent a 58.2% variation to the minimum lot size requirement of 400m² for each resulting allotment. A Clause 4.6 Request to Vary a Development Standard has been submitted by the applicant in relation to Clause 4.1 of the NLEP 2012.

This report is further discussed below.

Clause 4.1A - Exceptions to Minimum Lot Sizes for Certain Residential Development

The provisions of Clause 4.1A enable an exception to the minimum lot size standard for residential zoned land in instances where the resulting allotments are greater than 200m² and the construction of a dwelling within each resulting lot is proposed under the same development application as the subdivision.

The applicants cannot rely on the provisions of this clause, as the subject application seeks to create two lots below 200m² in area. It is noted that Clause 4.1A is not a development standard which can be varied under Clause 4.6 (see *Elimatta Pty Ltd v Read and Anor* [2021] NSWLEC 75).

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a height of buildings development standard of 10m. The proposed maximum height is 8.8m and the development complies with the maximum height applicable to the site and achieves the objectives of the control.

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a Floor Space Ratio (FSR) development standard of 0.9:1. The proposed development will result in a total FSR of 0.88:1 and complies with this requirement.

Clause 4.6 - Exceptions to Development Standards

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

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

The applicant seeks to create two allotments approximately 167.2m² in area which represents a 58.2% variation to the minimum lot size development standard of 400m² under Clause 4.1. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

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

sufficient environmental planning grounds to justify contravening the development standard.

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

The minimum lot size development standard in the NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act and is not expressly excluded from the operation of Clause 4.6.

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

The applicant has prepared a written request for the purpose of Clause 4.6(3), refer to **Attachment D**.

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

The applicants' Clause 4.6 Variation Request written response seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable or unnecessary; namely that the objectives of the standard have been met notwithstanding noncompliance with the standard.

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

"Lot 1 and 22 are two existing lot titles with both having a dwelling entitlement, one containing a dwelling and one containing a garage, and meeting community expectations. The proposed boundary adjustment allows both legal titles to contain a dwelling, thereby encouraging housing diversity without impacting on the amenity of adjoining land.

The proposed boundary adjustment would result in creating orderly lots that would result in creating additional housing rather than remaining as is. This results in a superior outcome for the site that through quality design and consistency with the objectives of the zone objectives."

CN Officer Comment

The proposed development will result in two legally separated allotments that are of a suitable size and configuration to support two self-contained semi-detached dwellings. The development can be established without significant adverse impacts on adjoining land, the surrounding environment, and the public realm.

The area of each existing allotment is less than the 400m² minimum lot size. Furthermore, the combined area is 334.5m² and thereby also less than the minimum lot size. Therefore, even with the consolidation of each allotment, it is not possible to

achieve a compliant lot size. Strict compliance with the standard is therefore considered unnecessary and unreasonable.

In addition to the above, each existing allotment is currently benefitted by a dwelling entitlement. However, the current size and configuration of Lot 1 is prohibitive to efficient residential development. The proposed development adequately demonstrates that the site has the capacity to accommodate two well-appointed, semi-detached dwellings within the existing urban footprint in proximity to utilities, transport, commercial centres and other urban services without significant adverse impact to the surrounding natural and built environment. Accordingly, strict compliance with the minimum lot size standard is unreasonable as it will hinder the orderly and efficient development of land.

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

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

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

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

"Lot 1, as amended, represents a 58% variation to the minimum lot size. As it is not possible to achieve compliant lots due to the two current legal titles only equalling a total of 334.5m², the proposed boundary adjustment would facilitate the best possible outcome at the site, whilst achieving the clause and zone objectives.

The proposal enables the development of each legal title for a valuable home in an area of high demand. It does so without compromising the objectives of Clause 4.1 and the R3 zone and maintains a medium density residential environment. The boundary adjustment will retain the existing number of lots and will enable the orderly development of both legal titles. Both lots, when amended, can accommodate an attached dwelling, which is permissible.

The proposal does not create any new dwelling entitlements or an increase in the number of undersized parcels. It has no material impact outside of the site."

CN Officer Comment

The proposed subdivision will facilitate the efficient development of the site for residential use in accordance with the R3 Medium Density Residential zone objectives

and the objectives of the Clause 4.1 of the NLEP 2012. The written request outlines environmental planning grounds which adequately justify the contravention.

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

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

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

The applicant's response to the satisfaction of the objectives of the minimum lot size development standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, 'the proposed development will be in the public interest because it is consistent', with the relevant objectives.

Objectives of Clause 4.1 'Minimum subdivision lot size'

The proposed development provides subdivision lot sizes which meet community and economic needs as well as facilitating greater diversity in housing choice, consistent with the objectives of Clause 4.1 'Minimum subdivision lot size'.

Objectives of the R3 Medium Density Zone

The development is consistent with the objectives of the R3 Medium Density Zone as it will result in an additional residential dwelling in a medium density format. The proposal will facilitate the orderly development of both allotments without significant adverse impacts to the surrounding natural and built environment or to the public streetscape. The proposed attached dwellings are permissible within the zone and are consistent with the desired future character of the area.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for the development in the relevant zone. Therefore, the test of Clause 4.6(4)(a)(ii) of NLEP 2012 is satisfied.

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

The Secretary's concurrence to the exception to the minimum lot size development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 of 5 May 2020.

Conclusion

The states of satisfaction required by Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the minimum subdivision lot size development standard.

The Clause 4.6 variation request has demonstrated that the proposed lot size is acceptable and therefore that strict compliance with the prescribed lot size would be unnecessary in this instance. Further, it is considered that the Clause 4.6 variation request is well founded.

Clause 5.21 – Flood Planning

According to information provided in the Newcastle City-wide Floodplain Risk Management Study and Plan (BMT WBM June 2012), the subject allotment is affected by Local Catchment Flooding (flash) during both the 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) events.

The application has been referred to CN's Development Officer (Engineering) who has confirmed that the minimum flood planning levels have been achieved and the development as proposed is consistent with the requirements of Clause 5.21 of the NLEP 2012 and is generally in accordance with the relevant controls of Section 4.01 of the NDCP 2012.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils which requires that earthworks greater than 2m below natural ground surface require the preparation of an Acid Sulfate Soils Management Plan. The proposed development does not comprise significant earthworks and is therefore unlikely to expose or drain potential acid sulfate soils within the site. Accordingly, an ASSMP is not necessary, and the proposed development is considered satisfactory regarding Acid Sulfate Soils.

Clause 6.2 - Earthworks

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

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

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

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

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

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: 'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

Subdivision - Section 3.01

The proposed development comprises a two-into-two lot subdivision of the site (i.e. a boundary alteration) to create two allotments of 167.2m². Whilst the proposed allotments are small, the application demonstrates that they are suitably sized to facilitate residential development without significant adverse impact on internal amenity and neighbouring land uses. Furthermore, the proposal will result in a more

efficient use of land by amending the geometry of Lot 1 DP 104831 to a useable size and layout.

The existing site has connection to relevant urban services and utilities such as water, sewer, electricity and telecommunications which can be extended to each resulting allotment. Each allotment will have 6.859m frontage to Power Street and access via a 3m wide verge crossing.

Residential Development - Section 3.03

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

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

Principal controls (3.03.01)

Frontage widths

Attached dwellings within the R3 zone are required to have a minimum site frontage width of 12m. The proposed development will establish a site frontage width of 6.859m for each allotment. This is considered acceptable in the subject case as the existing allotments each do not meet the 12m requirement (Lot 22 has 9.145m width and Lot 1 has 4.57m width).

Furthermore, the application demonstrates that suitably sized and functional dwellings can be constructed on each allotment. A draft condition has been applied requiring the completion of the proposed attached dwellings to 'lock-up' prior to the release of the subdivision certificate.

Front setbacks

The proposed development seeks a one metre front setback which is consistent with the establish building line along Power Street.

Side and rear setbacks

The proposed development includes the following side and rear setbacks for each dwelling:

- a) North-west Boundary Side Setback – 254mm.
- b) South-east Boundary Side Setback – 254mm.
- c) South-west Boundary Ground Level Rear Setback – 4.7m.
- d) South-west Boundary Upper-Level Rear Setback – 8.8m.

Whilst not strictly compliant with side setback requirements, the proposed side setbacks are not out of character with the surrounding neighbourhood with surrounding development being setback between 250mm and 900mm from side boundaries.

Furthermore, the proposed setbacks are consistent with the performance criteria of the control in the proposal as; the development maintains sufficient area for landscaping at the rear of the site, is consistent with the desired built form in the street and will not significantly impact on the privacy or amenity of adjoining dwellings.

Landscaped Area

The proposed development will result in approx. 45m² or 13% soft landscaping, containing a deep soil zone of approx. 45m² or 13% of the site area. The proposed development results in a non-compliance with the landscaped area requirement, however the minimum deep soil zone requirement is achieved.

Notwithstanding, the proposed landscaping is consistent with the performance criteria of the control as the proposal generally maintains existing, established vegetation within the site to provide visual buffers to adjoining development to maintain privacy and amenity.

Further, the landscaped areas are large enough to facilitate outdoor private open space for each dwelling and there is sufficient area for future domestic style landscaping to give overall residential scale to the development. The proposed development is satisfactory with respect to landscaped area within the site.

Siting the development (3.03.02)

Local character and context

The architectural form of the proposed development is consistent with the desired future character of the neighbourhood as sought by the R3 Medium Density Residential Zone. Furthermore, there is precedent within the existing streetscape for double storey single dwellings. Accordingly, the development is satisfactory regarding this clause.

Public domain Interface

The proposed development addresses the street front through the provision main pedestrian entry to the building closest to the boundary. The garage area of each dwelling is setback further within the site to not visually dominate presentation to public areas. Variation in facade materials create modulation and articulation in design which thereby avoids unrelieved expanses of walls fronting the public. No fencing is provided forward of the building line and direct visibility to the street is achieved from the front door of each dwelling. The development is satisfactory regarding this clause.

Pedestrian and vehicle access

The proposed parking arrangement is compliant with AS2890.1 and pockets of landscaping have been provided within the front setback. The development is satisfactory regarding this clause.

Orientation and siting

Each proposed dwelling is oriented towards Power Street and external windows have been located and designed to avoid overlooking impacts to adjoining land. The proposed development may result in some overshadowing impacts to adjoining land to the south, however, the site to the south is a large industrially used building with no private open space and proposed impacts are considered acceptable.

Amenity (3.03.03)

Solar and daylight access

The internal ground floor living areas will achieve late afternoon solar access through the sliding patio doors and kitchen servery windows. In addition, the private open space areas of each dwelling will achieve direct sunlight between 12-noon and 3pm.

Shadows will fall predominately within the rear yard of the site or over the roof area of the adjoining commercial warehouse to the south. Accordingly, overshadowing is not expected to have a significant adverse impact to adjoining land users. The development is satisfactory regarding this clause.

Natural ventilation

The ground floor of each dwelling achieves cross ventilation from the front door to the rear patio. All upstairs bedrooms are equipped with a window directly to the outside for ventilation. In addition, each bathroom will be mechanically ventilated by internal fans. The development is satisfactory.

Ceiling heights

Each floor of each dwelling comprises internal floor to ceiling heights of 3m which exceeds the minimum requirement of 2.7m for ground floor habitable rooms and 2.4m for first floor bedrooms. The development is satisfactory regarding this clause.

Dwelling size and layout

Each dwelling is a three-bedroom format and has a total GFA of 147.58m². The development is satisfactory regarding this clause.

Private open space

Each dwelling has been provided with approximately 32m² of private open space which exceeds the minimum requirement of 16m².

Storage

The proposed development has sufficient storage regarding this clause.

Car and bicycle parking

Each dwelling has a single car garage space and an undercover stack parking space. The garage is of sufficient size and configuration to facilitate the onsite storage of bicycles.

Visual privacy

The upper floor levels achieve views over Power Street or to the rear of the site. Accordingly, the proposal will not have a significant adverse impact on the visual privacy of adjoining land.

Configuration (3.03.04)

Universal design

The finished floor level of the site is required to be slightly raised to due to the floor risk of the site, and as such, two stairs will be necessary to access each dwelling.

Notwithstanding, each dwelling includes ground level bathroom facilities and free unimpeded movement between ground floor spaces. Internal bathrooms can readily be made consistent with the Liveable Housing Design Guide. The development is satisfactory.

Visual appearance and articulation

The proposed development is highly modulated and articulated in form to provide a visually amenable building.

Environment (3.03.05)

Energy efficiency

There is sufficient area in the rear yard of each dwelling for a clothesline. The development is satisfactory regarding this clause.

Water management and conservation

The proposed development includes appropriate stormwater management processes prior to discharging from the site.

Waste management

Each unit will be provided with a three-stream waste management system that will be collected by weekly Council pick up.

Flood Management - Section 4.01

The proposed development complies with the applicable minimum flood planning levels and accordingly, the proposal is acceptable in relation to flooding.

Soil Management - Section 5.01

Erosion and Sediment Control has been proposed in accordance with the relevant requirements of 'Managing Urban Stormwater: Soils and Construction' (the 'Blue Book'). Appropriate conditions have been recommended.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP R&H. The subject site is not listed on CN's contaminated lands register and has been used for residential purposes for several years. The proposed development is therefore suitable regarding Section 5.02.

Vegetation Management - Section 5.03

The proposed development proposes the removal of two trees as detailed SEPP B&C discussion above.

In support of the proposed works, the applicant has submitted an arborist's report that details species, location, size, health, and value. The report is prepared generally in accordance with CN tree assessment requirements, and it is considered that the proposed tree removal is acceptable.

The amenity of the area will not be significantly impacted in respect of the local character and appearance.

Aboriginal Heritage - Section 5.04

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

Heritage Items - Section 5.05

The subject site is not mapped as a heritage item nor is it located in a heritage conservation area.

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*'.

Landscape Open Space and Visual Amenity - Section 7.02

The proposed development is a 'Category 1' Landscape Category, meaning that a Concept Landscaping plan is not necessary for the proposed development application. Notwithstanding, as compensatory planting is required, a condition has been recommended for the provision of a detailed landscaping plans to be prepared and submitted as part of detailed design documentation.

Traffic, Parking and Access - Section 7.03

Vehicle Access, Driveway Design and Crossing Location

The proposed access is generally acceptable within the boundary of the lots and designed in accordance with AS2890.1.

Further, parking requirements have been satisfied. Each dwelling has been provided with two car parking spaces via a single garage and an undercover stacked parking space. This is consistent with the requirements for three-bedroom dwellings under the NDCP. In addition, Power Street and the surrounding road network has the capacity to absorb the traffic generated from the proposed additional dwelling.

The TfNSW Guide to Traffic Generating Developments, the low-density residential dwelling is generally expected generate 0.78 and 0.71 vehicle trips per hour during the evening and morning peaks respectively. It is expected that the scale and nature of the infill development, which will remain residential, will not have an adverse impact on the capacity of the local traffic network based on the fact the increase is considered negligible.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The plans indicate that the below ground rainwater tank outlets are charged between the overflow and surface inlet pits (SIP) at the boundary, with a gravity system used between the SIP and kerb in the road reserve.

Stormwater management plans detail a segregation of the rainwater tank overflow and site drainage systems, minimising backflows into the rainwater tank from the hardstand areas. The proposed stormwater management plan is supported.

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

Waste Management - Section 7.08

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

Ongoing waste will be managed via weekly Council kerbside pick. Each dwelling will be provided a three-stream waste management system comprising three 240L moveable garbage bins. This is acceptable.

Community Participation Plan

The proposal was notified to neighbouring properties for fourteen days in accordance with the NDCP 2012. In response, no submissions objecting to the proposal were received.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development does not attract a development contribution to CN, as detailed in CN's Development Contributions Plans.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations. The development is compatible with the existing character, bulk, scale and massing of development in the immediate area. The proposal will not have any negative social or economic impacts.

5.7 The suitability of the site for the development

The site is suitable for the proposed development as it is located in close proximity to essential urban services, commercial centres, medical facilities, community facilities and education establishments. The site provides easy accessibility to nearby public transport through the bus services provided to Maitland Road and the nearby Hamilton Train Station. The site has existing connection to water, sewer, telecommunications, electricity and gas, and Power Street is currently serviced by CN's waste services.

The constraints of the site have been considered in the proposed development, which includes flooding, and potential acid sulfate soils. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development. As such, the subject site is suitable 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 consistent with the aims and design parameters contained in the NLEP 2012 and the NDCP 2012 and other relevant Environmental Planning Instruments discussed within this report. The development is consistent with the objectives of the R3 Medium Density Residential zone.

The proposed development will not have an adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjacent properties or the streetscape. The proposed development is in the public interest as it provides for modernised low-impact residential accommodation within an established residential area.

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

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

6.0 CONCLUSION

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

ATTACHMENTS

Attachment A:	Submitted Plans – 38 Power Street, Islington
Attachment B:	Draft Schedule of Conditions - 38 Power Street, Islington
Attachment C:	Processing Chronology - 38 Power Street, Islington
Attachment D:	Clause 4.6 written exception to development standard – 38 Power Street, Islington

Attachments A - D distributed under separate cover

7.3. 26 SCOTT STREET, NEWCASTLE EAST - DA2022/00809 - DWELLING HOUSE ALTERATIONS AND ADDITIONS

APPLICANT: ZUGAI STRUDWICK ARCHITECTS
OWNER: V F ALEXANDER
REPORT BY: PLANNING AND ENVIRONMENT
CONTACT: INTERIM EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

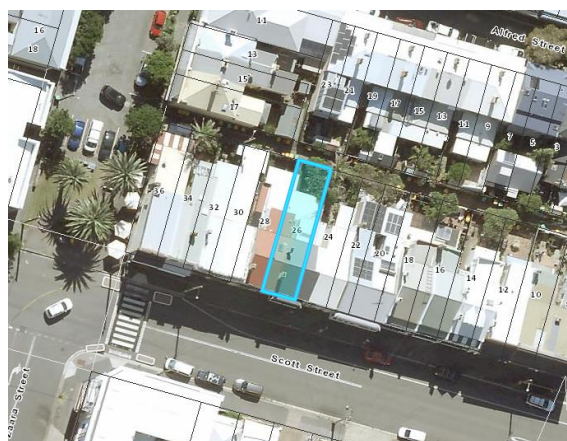
PART I

PURPOSE

A development application (DA2022/00809) has been received seeking consent for dwelling house – alterations and additions at 26 Scott Street Newcastle East.

The submitted application was assigned to Development Officer, Fiona Stewart, for assessment.

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



Subject Land: 26 Scott Street Newcastle East

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

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

The objector's concerns included:

- i) Amenity impact – visual bulk, privacy, overshadowing.
- ii) Floor space ratio exceedance.
- iii) Heritage impact.
- iv) Impact on vegetation.

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

Issues

- 1) Floor Space Ratio (FSR) – The proposed development has a maximum FSR of 1.2:1 and does not comply with the maximum FSR development standard of 1:1 as prescribed under Clause 4.4 of Newcastle Local Environmental Plan 2012 (NLEP 2012). The variation equates to an exceedance of 24.88m² or 21.9%.

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R3 Medium Density zone in which the development is proposed to be carried out; and
- B. That DA2022/00809 for dwelling house – alterations and additions at 26 Scott 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 CN's determination.

Political Donation / Gift Declaration

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

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject site is known as 26 Scott Street, Newcastle East and has a legal description of Lot 2 in Deposited Plan 406063. The site is located on the northern side of Scott Street, Newcastle East within an established residential area comprising predominantly "terrace" style housing. The site is regular in shape, level typography and extends through to the rear boundary adjacent to a narrow laneway. The site has a boundary of approximately 5.2m to Scott Street and a total area of 113.8m².

The property is currently occupied by a two-storey terraced dwelling house that comprises one of a row of five terraces that share a common roof plane, general built form and presentation to the streetscape of Scott Street. The dwelling occupies a majority of the site, with a small paved courtyard at the rear. Existing development on adjoining sites comprises attached "terrace" style dwelling houses, many with evidence of alterations and additions to the rear, and also residential flat buildings located on the opposite side of Scott Street.

2.0 THE PROPOSAL

The applicant seeks consent for partial demolition of an existing single storey rear addition to the dwelling and construction of a two-storey rear addition, including reconfiguration of the internal floor plan of the existing dwelling and provision of a small covered alfresco area to the rear. No works are proposed to the front facade of the dwelling.

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

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

3.0 PUBLIC NOTIFICATION

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

- i) Floor space ratio – exceedance of maximum prescribed FSR
- ii) Visual impacts – building bulk
- iii) Amenity impacts – privacy, solar access
- iv) Impact to heritage conservation area

v) Vegetation impacts

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

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R&H)

Chapter 2 Coastal Management

Chapter 2 of SEPP R&H seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the *Coastal Management Act 2016* (the Act). The 'coastal zone' is defined in the Act as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability.

The site is identified as being located within the coastal use area. The proposed development is not inconsistent with the provisions of this chapter of the SEPP.

Chapter 4 Remediation of Land

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

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

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R3 Medium Density zone under the provisions of NLEP 2012.

The proposed development is defined as alterations and additions to a dwelling house which is a type of 'residential accommodation' and is permissible with consent within the R3 Medium Density Residential zone under NLEP 2012.

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

- i) *To provide for the housing needs of the community within a medium density residential environment.*
- ii) *To provide a variety of housing types within a medium density residential environment.*
- iii) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- iv) *To allow some diversity of activities and densities if-*
 - a) *The scale and height of proposed buildings is compatible with the character of the locality, and*
 - b) *There will be no significant adverse impact on the amenity of any existing nearby development.*
- v) *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development-*
 - a) *Has regard to the desired future character of residential streets, and*
 - b) *Does not significantly detract from the amenity of any existing nearby development.*

The provision of additional floor area maximises residential amenity in an appropriate dwelling form complementary to the medium density residential environment. The proposed development provides for a dwelling addition over two levels within an existing housing type contained within the medium density residential environment.

The proposed single dwelling development does not impede on other land uses. The proposed development is of a scale compatible with the character of the area and would not result in significant adverse impact on the amenity of adjacent development.

The proposed development would support increased population levels in a form that is compatible with the desired future character of the area and does not significantly detract from the amenity of adjacent development. The development is therefore considered to be consistent with the objectives of the R3 zone.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes partial demolition of existing structures on the site to facilitate the works proposed. 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 height of buildings development standard of 10m. The existing building reaches a maximum height of approximately 9.3m, with the additions proposed to be built to a maximum height of approximately 7m. The existing building and proposed development are compliant with the maximum building height applicable to the site and the objectives of the control.

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 1:1. The proposed development will result in a total FSR of 1.2:1, equating to an exceedance of 24.88m² or 21.9% above the prescribed maximum FSR for the subject land.

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

Clause 4.6 - Exceptions to Development Standards

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

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

The proposed development contravenes Clause 4.4 'Floor Space Ratio' of NLEP 2012. The floor space ratio map provides for a maximum floor space ratio of 1:1.

The proposed development comprises a total gross floor area of 138.68m² resulting in an FSR of 1.2:1, which exceeds the floor space ratio development standard for the

site by 21.9%. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012 (refer **Attachment D**).

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

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

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

The floor space ratio development standard is not expressly excluded from the operation of Clause 4.6.

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

The submitted 'Clause 4.6 Variation: Floor space ratio standard in Clause 4.4', prepared by Piper Planning (dated 22 February 2023) **Attachment D** constitutes a written request for the purposes of Clause 4.6(3).

The document provided by the applicant addresses Clause 4.6 (3)(a), submitting that compliance with the development standard is unreasonable given the circumstances of the proposal. A summary of the key points of the applicant's variation request is detailed below:

- i) *A maximum floor space ratio development standard of 1:1 applies to the Land. The Land displays an overall area of 113.8m² and presents a narrow lot width of 5.302m according to the plan set. Due to the limited area and dimensions presented upon the subject allotment, the formation of a development typology commensurate with modern dwelling standards is challenging. However, the site is located within an R3 zone and is bounded by substantial single dwellings with built forms similar to the proposal. Within this context, the proposal does not detract from the surrounding context and remains compatible within the locality.*
- ii) *The development seeks to balance critical design elements to facilitate an outcome consistent with the development context, in view of the development standard and prescriptive DCP provisions. The design is informed by the existing*

floor plate, structural elements and wall alignments. The addition is aligned to those existing portions of the building that provide structural support and internal vertical circulation. Given that logical and orderly alignment, the resultant floor plate has resulted in a minor exceedance to the development standard.

- iii) The exceedance equates to 24.88m² of floor area, being an exceedance that we submit, would not be visually discernible from a compliant outcome within its development context. Whilst the exceedance is above 10%, we note the restricted lot size (113.8m²) and lot width (5.302m), following the 10% restriction will provide a gross floor area addition of 11.38m². This restriction will be unreasonable in this context especially with neighbouring single dwelling houses displaying a floor space ratio exceeding the proposal.*
- iv) The exceedance does not result in substantial amenity or visual dominance impacts to adjoining premises. Solar access levels are preserved to the neighbouring premise throughout the day. The building scale directly reflects that of the surrounding context. In balancing all relevant amenity, area and function provisions of both the LEP and DCP, the design has resulted in an exceedance to the development standard. The design continues to adhere to the prescriptive landscape area requirement and retains considered, consolidated landscape elements that preserves its existing proportional landscape response to the development scale.*
- v) In this instance the departure is discretely formed within a considered outcome, with no apparent distinction to the variation in standard within the built form context. Conversely, if the building was made to comply, it would have lesser function (in terms of stair placement and circulation), be of lesser architectural merit (in terms of articulating off the existing wall alignments) and require intrusive structural works that are otherwise not necessary, within the proposed form.*
- vi) Having regard to these points and the nature of the departure, it would be unreasonable to strictly apply the standard in the particular circumstances of the case.*

CN Officer Comment

The proposed development provides for a modernised and enlarged residential dwelling in a medium density, low impact form complementary to the existing and future desired character of the locality and streetscape. Furthermore, the proposal retains the existing housing type and predominant built form and is consistent with the medium-density objectives of the land.

The proposed variation to the development standard does not result in any undue adverse environmental impacts, including impacts on adjacent properties in terms of bulk, scale, overshadowing or privacy, indicating the proposed development is suitable for the site. The non-compliance does not result in any additional unreasonable impacts compared to a compliant design as the proposal is generally compliant with the relevant planning controls.

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

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

The documentation provided by the applicant addresses Clause 4.6(3)(b), and demonstrate sufficient environmental grounds to justify the non-compliance, as follows:

We submit that the proposal displays sufficient environmental planning grounds to warrant variation to the development standard.

- a) *By varying the standard in a balanced and discrete manner throughout the overall form, the proposal will have a superior design outcome rather than including a reduction for the sake of compliance.*
- b) *The proposed variation to the development standard is 21.9%. Notwithstanding the variation, the proposed works represent a well-considered development that addresses the site constraints, streetscape and relevant objectives of both the standards and the Zone. The proposal will maintain high levels of amenity within the development and to the surrounding context.*
- c) *The proposal provides for a better environmental planning outcome as the development provides a considered outcome appropriate for the development context and results in a higher quality form. A compliant outcome would have reduced internal amenity and function, being a limited or lesser architectural result.*

CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the additional floor area proposed does not result in any inconsistency with the desired built form of the locality and is generally consistent having regard to the combination of relevant controls under NLEP 2012 and NDCP 2012. The written request provides sufficient justification to contravene the development standard.

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

As outlined above, the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012. It follows that the test of Clause 4.6(4)(a)(i) is satisfied.

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

The applicant's response to the satisfaction of the objectives of the floor space ratio development standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, 'the proposed development will be in the public interest because it is consistent', with the relevant objectives.

Objectives of Clause 4.4 'Floor space ratio'

The development is consistent with the objectives of Clause 4.4 'Floor space ratio' as the proposed development is of an appropriate scale which is consistent with existing development in the locality and the proposed density, bulk and scale would not impact on the existing streetscape or adjacent sites. The development is of an appropriate density consistent with the established centres hierarchy.

Objectives of the R3 Medium Density Zone

The development is consistent with the objectives of the R3 Medium Density Zone as the proposed development maximises residential amenity of an existing medium density housing type, compatible with the existing character and does not significantly impact on amenity of nearby development. The development type is also a permissible development within the land use zone.

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

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

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

Conclusion

The states of satisfaction required by Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the floor space ratio development standard.

It is considered that the applicant has demonstrated that the standard is unreasonable in this instance and that the proposed scale of development is in character with the host building and surrounding locality.

It is considered the proposal facilitates the ongoing use of an existing residential site in a single dwelling house capacity, providing for increased population within a medium density residential environment whilst suitably respecting the amenity, heritage and character of surrounding development and the quality of the environment, in accordance with the relevant R3 zone objectives. Further, it is considered the clause 4.6 variation request is well founded.

Clause 5.10 - Heritage Conservation

The proposed development comprises alterations and additions to a dwelling located within the Newcastle East Heritage Conservation Area. The site does not contain a heritage item.

Appropriate documentation has been submitted in support of the proposal and to allow assessment of the potential effect of the development on the heritage conservation area. Subject to recommended conditions of consent, the proposed development is not considered to result in an adverse impact on the significance of the existing contributory building within the heritage conservation area.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils, as the proposed development does not comprise significant earthworks and is therefore unlikely to expose or drain potential acid sulfate soils within the site. Accordingly, an ASSMP is not necessary, and the proposed development is considered satisfactory regarding Acid Sulfate Soils.

Clause 6.2 - Earthworks

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

Part 7 Additional Local Provisions—Newcastle City Centre

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

Clause 7.10A - Floor Space Ratio for Certain Other Development

The proposed development has a site area of less than 1,500m². Accordingly, the provisions of this clause apply to the proposal. This clause specifies that the maximum

FSR of a building is whichever is the lesser of the FSR identified on the FSR map or 3:1. In this case the applicable FSR is that identified on the map as 1:1 and is discussed in detail in this report.

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

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

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

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

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: 'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply'.

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

Single Dwellings and Ancillary Development - Section 3.02

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

Street frontage appearance (3.02.03)

There is no change proposed to the street setback of the existing dwelling or presentation to the streetscape. The proposed additions are to the rear and the new two-storey addition would not be visible from Scott Street.

The streetscape presentation of the dwelling would remain as existing, addressing the street and providing for passive surveillance via windows and a balcony to the front facade.

Side / rear setbacks (building envelope) (3.02.04)

Side setbacks are required to be a minimum of 900mm from each side boundary up to a height of 5.5m then at an angle of 4:1. Rear setbacks are required to be a minimum of 3m for walls up to 4.5m in height and 6m for walls greater than 4.5m high. Buildings on lots with a width less than 8m can be built to both side boundaries, with a boundary wall maximum height of 3.3m and length of 20m or 50% of the lot depth (whichever is the lesser).

The site comprises a narrow allotment (approx. 5.2m width) with the existing dwelling being one in a row of five terraces, and the principal-built form extending the width of the site from boundary to boundary, typical of the building type. The two-storey addition, with a height greater than 3.3m, would replace an existing single storey building element to the rear which currently also comprises roof structure extending across the extent of the site. A rear setback of 5m is proposed to the new upper level of the rear addition, which would not extend beyond the line of existing rear additions to dwellings within the row.

The side and rear setbacks are consistent with those of existing rear additions evident to other terraced dwellings along this section of Scott Street and also with existing additions to dwellings across the rear lane, fronting Alfred Street.

It is noted that NDCP 2012 allows variations to the acceptable solutions where it can be demonstrated that the performance criteria can be achieved. An assessment of the proposed development against the performance criteria of this control has been undertaken.

The bulk and scale of the proposed development is consistent with and complementary to the built form in the street and the local area, as well as the desired future character. It is considered the proposed development is designed and sited to not unreasonably impact the amenity of adjoining dwellings or associated principal areas of private open space, having regard to privacy, solar access and prevailing breezes, and subsequently the numerical non-compliances to side and rear setbacks are acceptable.

Landscaping (3.02.05)

The development does not result in the reduction in landscaped area of the site as a result of the development, with the rear addition extending over an existing built upon area. It is also noted a large area of existing paving to the rear courtyard is proposed to be replaced by soft landscaping under the proposal, resulting in a compliant landscaped area being less than 10% of the site area.

Private open space (3.02.06)

Private open space for the development is retained within the rear courtyard of the site, with a new ground level deck also proposed under the application, directly accessible from the main living area of the dwelling. The proposal provides for relatively generous and usable private open space.

Privacy (3.02.07)

The design of the proposed development, including window openings at the upper level restricted to a bedroom and a bathroom window to the rear elevation, ensures the dwelling house does not unreasonably overlook living rooms or principal area of private open space of neighbouring dwellings within the medium density environment.

Solar access (3.02.08)

Shadow diagrams submitted for the proposed development illustrate acceptable resultant overshadowing impact to adjacent sites, with minimal additional shadow cast to the private open space of the adjacent site (24 Scott St), between 9am and 3pm at the winter solstice.

View sharing (3.02.09)

There are no existing views or vistas to water, city skyline or iconic views that would be obscured by the proposed development. As such, the proposed development meets the acceptable solutions of this control.

The proposed development is considered acceptable in relation to the abovementioned DCP section and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The development establishes a scale and built form that is appropriate for its location. The proposal does not impact on the heritage significance of the streetscape and provides good residential amenity, while maintaining privacy for adjoining neighbours.

Soil Management - Section 5.01

Any earthworks (cut and fill) will be completed in accordance with the relevant objectives of this section. A condition will ensure adequate sediment and erosion management will remain in place for the construction period.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report under *State Environmental Planning Policy (Resilience and Hazards) 2021* – Chapter 4 Remediation of Land. The site is not considered to have any contamination constraints that will impact on the development of the site.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees or declared vegetation.

Aboriginal Heritage - Section 5.04

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

Heritage Items - Section 5.05

The site is in the vicinity of 'The Carlton (residential units)' – NLEP heritage Item 487 – 19 Scott Street Newcastle East, however, the proposed additions will not be visible from Scott Street. The proposed development will not result in any adverse impacts to the heritage item. In this regard, the proposal is satisfactory with respect to Section 5.05 Heritage Items of the NDCP.

Part 6.00 Locality Specific Provisions

Newcastle City Centre - Section 6.01

The site is located within the Newcastle City Centre and specifically within the Newcastle East Heritage Conservation Area, characterised by an intact heritage streetscape in an area primarily residential with terrace housing dating from the late nineteenth century. The proposed development is consistent with this existing character and the principles for development within the area identified under this part.

Heritage Conservation Areas - Section 6.02

The proposal comprises alterations and additions to a dwelling located within the 'Newcastle East' Heritage Conservation Area, listed as a contributory building. Contributory buildings are required to be retained, recycled, and adaptively reused. The proposed development retains the contributory building and maintains its existing use as a residence, with the alterations and additions proposed considered to not result in any adverse impact to the contribution of the existing dwelling to the streetscape or broader conservation area.

The proposed development will not be visible from Scott Street, and it is considered unlikely that the development would result in adverse heritage impacts to the rear pedestrian laneway.

The development is consistent in form, bulk, and scale with recent approved developments to nearby terraces in the locality, has generally followed the recommended guidelines for extending a middle terrace set out in CN's Heritage Technical Manual and is acceptable with respect to heritage conservation. Subject to the recommended conditions of consent the proposal is acceptable.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed development will result in a minor increase in roof area, although no increase in impervious areas to the ground level of the site, with the rear courtyard currently paved. Stormwater disposal can be addressed by way of recommended conditions of consent to direct overflows to the existing stormwater management system on the site.

Waste Management - Section 7.08

Demolition and waste management will be subject to recommended conditions of consent.

Development Adjoining Laneways - Section 7.11

The laneway to the rear of the site is considered a Type A laneway which is for pedestrian use only. The proposed development is setback a minimum of 3m from the rear boundary to the laneway and the principal entrance will be via the front of the site. The development is considered to meet the Acceptable Solutions of the NDCP 2012 with respect to Development Adjoining Laneways.

Development Contributions

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

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

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations. The proposed development will not result in any undue adverse impact on the natural or built environment. The development is located within a site suitably zoned for residential development and of a size able to cater for such development. The development is compatible with the existing character, bulk, scale and massing of the existing built form in the immediate area and broader locality. The proposal will not result in any negative social or economic impacts.

The development has been designed to generally satisfy the requirements of NDCP 2012 and as a result, the proposed development is unlikely to adversely impact upon the amenity of adjoining properties.

5.7 The suitability of the site for the development

The site is located within an R3 Medium Density Residential zone and the proposed development is permissible within the zone. The proposed single dwelling development consists of residential alterations and additions, including a two-storey rear addition that is of a bulk and scale consistent with the existing and desired future character of the locality. Furthermore, the site is of sufficient land size to enable the proposed development, whilst minimising the impact to neighbouring properties.

The site is located within an established residential area with good connectivity to a range of services and facilities. The constraints of the site have been considered in the proposed development which is acceptable in regard to impact on the heritage conservation area and 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 to neighbouring properties between 28 July and 16 August in accordance with the CN's Community Participation Plan.

One submission was received during the notification period.

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

Issue	Comment
Floor Space Ratio non-compliance and zone objectives	As discussed within section 5.1 of this report, the proposed FSR of the development exceeds the maximum allowable for the site under the NLEP 2012. A written request under clause 4.6 (exceptions to development standards) of the NLEP 2012 has been submitted and is well founded and sufficient to allow

	<p>for the exception to be granted as the objectives of clause 4.4 of the NLEP 2012 and the R3 zone are achieved.</p> <p>Further, the development as proposed is compatible with the character of the locality and does not result in any unacceptable amenity impacts to adjacent sites. Accordingly, the proposed FSR is considered acceptable.</p>
Boundary Setbacks/building envelope non-compliance	As discussed within section 5.3 of this report the proposed boundary setbacks and relationship to applicable building envelopes are considered acceptable having regard to the performance criteria of the NDCP 2012.
Privacy impacts	As discussed within section 5.3 of this report the proposed development is considered acceptable having regard to the acceptable solutions and performance criteria of section 3.02.07 of the NDCP 2012. The proposed development would not provide opportunities for unreasonable overlooking of living room windows or private open space of neighbouring dwellings.
Overshadowing impacts	<p>As discussed within section 5.3 of this report the proposed development is considered acceptable having regard to the performance criteria of section 3.02.08 of the NDCP 2012. The neighbouring site to the south is moderately shadowed by existing development at June 21, however the shadow diagrams submitted illustrate there is only minor additional shadow cast by the proposed development from midday onwards.</p> <p>The development does not significantly overshadow living area windows and principal areas of private open space of adjacent dwellings.</p>
Heritage conservation	Appropriate documentation has been submitted in support of the proposal and to allow assessment of the potential effect of the development on the heritage conservation area. The proposed development is not considered to result in an adverse impact on the significance of the existing contributory building within the heritage conservation area.
Vegetation management	Although there is an existing frangipani tree located in the far rear corner of the courtyard of the site to the south, there would be limited excavation undertaken for the proposed development and impact on the tree unlikely. An arborist report is not warranted in this instance.

5.9 The public interest

The proposed development is consistent with the aims and design parameters contained in the NLEP 2012 and the NDCP 2012 and other relevant Environmental Planning Instruments discussed within this report. The development is consistent with the objectives of the R3 Medium Density Residential zone.

The proposed development will not have an adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjacent properties or the streetscape. The proposed development is in the public interest as it provides for modernised low-impact residential accommodation within an established residential area.

The development is satisfactory having regard to the principles of ecologically sustainable development and will not result in any disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

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

6.0 CONCLUSION

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

ATTACHMENTS

Attachment A:	Submitted Plans – 26 Scott Street, Newcastle East
Attachment B:	Draft Schedule of Conditions – 26 Scott Street, Newcastle East
Attachment C:	Processing Chronology – 26 Scott Street, Newcastle East
Attachment D:	Clause 4.6 written exception to development standard – 26 Scott Street, Newcastle East

Attachments A – D Distributed under separate cover

7.4. 14 SCOTT STREET NEWCASTLE EAST - DA2022/01049 - DWELLING HOUSE - ALTERATIONS AND ADDITIONS

APPLICANT: KEN LAFFAN
OWNER: K M LAFFAN & F A LAFFAN
REPORT BY: PLANNING & ENVIRONMENT
CONTACT: INTERIM EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

PART I

PURPOSE

A development application (DA2022/01049) has been received seeking consent for alterations and additions to an existing dwelling house at 14 Scott Street, Newcastle East.

The submitted application was assigned to Development Officer, Bianca Fyvie, for assessment.

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



Subject Land: 14 Scott Street Newcastle East

It is noted that the development also results in a 3% variation to the height of buildings development standard, this variation being less than 10% does not trigger the delegation requirement of DAC. However as the application is being reported due to the FSR variation it is a relevant matter for consideration.

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

The application was publicly notified in accordance with City of Newcastle's (CN) Community Participation Policy (CPP), with one late objection being received.

The objector's concerns included:

- 1) Privacy

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) Height of Buildings – The proposed development has a height of 10.3m and does not comply with the maximum height of building development standard of 10m as prescribed under Clause 4.3 of Newcastle Local Environmental Plan 2012 (NLEP 2012). The variation equates to an exceedance of 0.3m or 3%.
- 2) Floor Space Ratio (FSR) – The proposed development has a maximum FSR of 1.4:1 and does not comply with the maximum FSR development standard of 1:1 as prescribed under Clause 4.4 of Newcastle Local Environmental Plan 2012 (NLEP 2012). The variation equates to an exceedance of 40.6m² or 40%.
- 3) Matters raised in the submissions including privacy of adjoining property.

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R3 Medium Density Zone in which the development is proposed to be carried out; and
- B. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R3 Medium Density Zone in which the development is proposed to be carried out; and
- C. That the development application for alterations and additions at 14 Scott St 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
- D. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The site is a single allotment known as 14 Scott St Newcastle East and has a legal description of Lot 1 in Deposited Plan 924899. The site is rectangular in shape and has a total site area of 120.1sqm. The site is classified as a contributory 1 heritage building located within the Newcastle East Heritage Conservation Area. The dwelling is one of six terraces in a row with a pedestrian laneway at the rear. The site steps down at the rear of the property and contains one mature frangipani tree in the rear courtyard.

The site is occupied by an existing two level terrace with attic and no car parking. The surrounding area consists of a variety of residential and commercial land uses including single dwelling houses, terrace houses, cafes/restaurants, multi-dwelling developments and residential flat buildings.

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to an existing terrace house.

Further details of the proposed development are provided below:

- i) Demolition of the existing rear single-storey structure, lane fencing, gate and steps.
- ii) Removal of the existing dormer windows to allow the original roofline facing Scott Street to be reinstated.
- iii) Restoration of the facade.

- iv) Construction of a new two-storey brick veneer addition to the rear of the existing terrace containing a living area at Level 1 and a bedroom at Level 2.
- v) A new kitchen fitout to Level 1 and new bathroom and ensuite fitout to the existing Level 2.
- vi) Construction of a new rear dormer window addition to Level 3 and deck.
- vii) Construction of a new courtyard area, shed, entry and fencing to the rear lane.

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

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

3.0 PUBLIC NOTIFICATION

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

- i) Privacy

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

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R&H)

Chapter 2 - Coastal Management

Chapter 2 of SEPP R&H seeks to balance social, economic, and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the *Coastal Management Act 2016* (the Act). The '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.

Chapter 2 applies to the development as the site is identified as a Coastal Environment Area. Clause 2.10 and 2.11 requires the consent authority to consider the surrounding coastal, natural, and built environment.

The bulk, scale and size of the proposed development has been considered in the assessment of the application. It has been satisfactorily demonstrated that the development has been designed, sited, and will be managed to avoid, minimise, or mitigate any adverse impacts on the Coastal Environment Area and Coastal Use Area.

Having regard to the relevant aims of the policy, the proposed development will not detrimentally impact the environmental assets of the Coastal Environment Area and Coastal Use Area. The proposal is acceptable having regard to this policy.

Chapter 4 - Remediation of land.

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

The site has been subdivided and prepared for residential development. Additionally, the site is not listed on CNs land contamination register. The site is considered suitable for the proposed development and contaminated land investigation is not warranted in this instance. The proposal is acceptable having regard to this policy.

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

In accordance with the requirements of the B&C SEPP the application has been assessed in accordance with Section 5.03 (Tree Management) of the Newcastle Development Control Plan (NDCP 2012).

An arborist report was provided by the applicant which identifies one frangipani tree within the site that will be adversely impacted upon by the proposed development. The tree has been identified as having a low retention value and is recommended for removal. A replacement tree is not required given the tree has a low retention value.

Through the imposition of conditions of consent, the proposed development is acceptable having regards to the objectives of both the NDCP 2012 and the B&C SEPP.

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

The proposed development is located within 5m of an exposed overhead electricity power line. In accordance with Clause 2.48 (Determination of development applications – other development) of the T&I SEPP, the proposal was referred to Ausgrid. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been provided to the applicant for their information and future action.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R3 Medium Density Residential Zone under the provisions of NLEP 2012. The proposed development is defined as a 'dwelling house' which is permissible with CN's consent.

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

- i) *To provide for the housing needs of the community within a medium density residential environment.*
- ii) *To provide a variety of housing types within a medium density residential environment.*
- iii) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- iv) *To allow some diversity of activities and densities if—*
 - a) *the scale and height of proposed buildings is compatible with the character of the locality, and*
 - b) *there will be no significant adverse impact on the amenity of any existing nearby development.*
- v) *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development—*
 - a) *has regard to the desired future character of residential streets, and*
 - b) *does not significantly detract from the amenity of any existing nearby development.*

The proposed alterations and additions to an existing two-level terrace house maximises residential amenity by reconfiguring the lower and upper floor levels to

provide the dining, lounge, kitchen and living on the lower floor level and three bedrooms on the upper floor level with new additions to expand living and kitchen areas and provide an additional bedroom. The alterations and additions include restoration of the front facade and upgrading materials and finishes and outdoor area.

The proposed development is consistent with the objectives of the R3 Medium Density Residential zone by accommodating the housing needs of the resident within a constrained site while respecting the amenity and character of surrounding development.

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 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 10m. The submitted height is approximately 10.3m equating to an exceedance of 0.3m or 3% above the height of buildings development standard for the subject land.

It is noted that the existing roof ridge height is approximately 10.2m and the existing building parapet height to either side of the roof are approximately 10.7m from the ground level.

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

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 1:1. The proposed development will result in a total FSR of 1.4:1, equating to an exceedance of 40.6m² or 40% above the prescribed maximum FSR for the subject land.

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

Clause 4.6 - Exceptions to Development Standards

The proposed development seeks a variation to both the maximum building height and floor space development standards. The development application is accompanied by a written Clause 4.6 variation request. The objectives of Clause 4.6 'Exceptions to development standards', are (subclause (1) and outlined below:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

Clause 4.6 Variation Request - Height of buildings (Clause 4.3 NLEP 2012)

The maximum height of buildings development standard applicable to the site is 10m. The existing building parapet heights are approximately 10.7m and the existing roof ridge height is approximately 10.2m. The proposed dormer window will replace the existing rear roof plane resulting in a building height of approximately 10.3m. As such, the proposed dormer window will be a similar height to the existing roof line of the dwelling house and not discernible when viewed from Scott St as demonstrated in Figure 1 below.

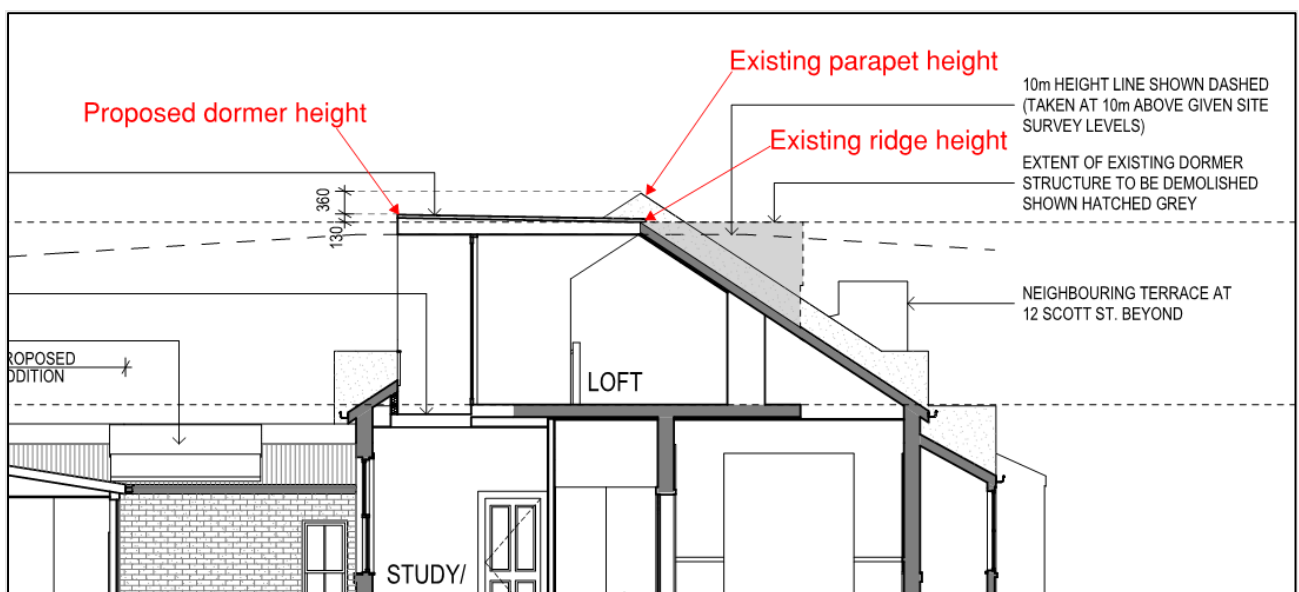


Figure 1: extract of section plan submitted by the applicant demonstrating proposed dormer window height, existing parapet and ridge height.

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

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

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

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

The submitted 'Clause 4.6 Variation to Building Height', prepared by Lighthouse Planning dated 8 February 2023 constitutes a written request for the purposes of clause 4.6(3). (**Attachment D**)

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

The applicant's clause 4.6 Variation Request written response seeks to rely on the first Wehbe consideration to demonstrate that compliance with the development standard is unreasonable, stating that strict compliance with the objectives of the development standard would compromise the objectives of the development standard.

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

- i) *The existing terrace dwelling currently exceeds the prescribed 10m maximum building height. The dwelling has a maximum height of 10.73m, located at the top of the parapet/common walls on both sides of the dwelling. The dwelling has an existing ridge height of 10.27m.*
- ii) *The building height variation, proposed as part of this DA, is limited to the rear, north-facing dormer at the existing loft level of the dwelling.*
- iii) *While removal of the existing south-facing dormers enhances the dwelling's contribution to the Scott Street facade, the proposed introduction of dormers to the north (rear) allows enhanced solar access, natural ventilation, and amenity to the loft, without adverse impacts to the locality's heritage significance, or the amenity of adjoining properties.*
- iv) *The proposed rear dormer will not be visible when viewed from Scott Street. While the proposed dormer has a ridge height 13cm above the existing ridgeline for drainage, the minor nature of the height difference, coupled with the design and location to the rear at loft level means it is not seen from the public domain at the street frontage.*
- v) *There are no material amenity impacts on adjoining properties as a consequence of the height variation. The dormer is still of a respectful scale that is similar to other developments within the street. The surrounding dwellings within the locality adopt a similar, non-compliant ridge height. Shadow diagrams prepared by Bourne Blue demonstrate compliance with the Newcastle DCP notwithstanding the variation.*

- vi) *Despite numerical non-compliance, the proposal remains consistent with the relevant environmental and planning objectives of the R3 Zone and Building Height development standard. This is explored further in Section 3.4 of this report.*
- vii) *A development compliant with the building height development standard contained in the NLEP 2012 would not achieve a perceivably different or better planning outcome.*
- viii) *Strict compliance with the development standard would result in either poor amenity to the existing loft area or retention of the dormers to Scott Street, to the detriment of the heritage character of Scott Street.*

CN Officer Comment

The proposed development provides for alterations and additions to an existing terrace house to improve the functionality of the dwelling and overall amenity of the site for the resident. The new dormer window to the roof improves solar access and expands the loft space to accommodate a small, enclosed deck. The proposed dormer window will not be visible when standing at the front of the site, it will remain within the existing building footprint of the attic level and will be generously setback from both side boundaries (refer to Figure 2 below).

Given the site constraints of the 5.4m wide lot, the alterations and additions are considered to improve the functionality of the dwelling without compromising the amenity of surrounding residential properties. The front facade is proposed to be restored with the new additions to be at the rear of the dwelling. In this regard, the development is not expected to result in any negative impacts to the streetscape. Furthermore, the proposed neutral colour palette will maintain cohesion with the heritage conservation area and surrounding development.

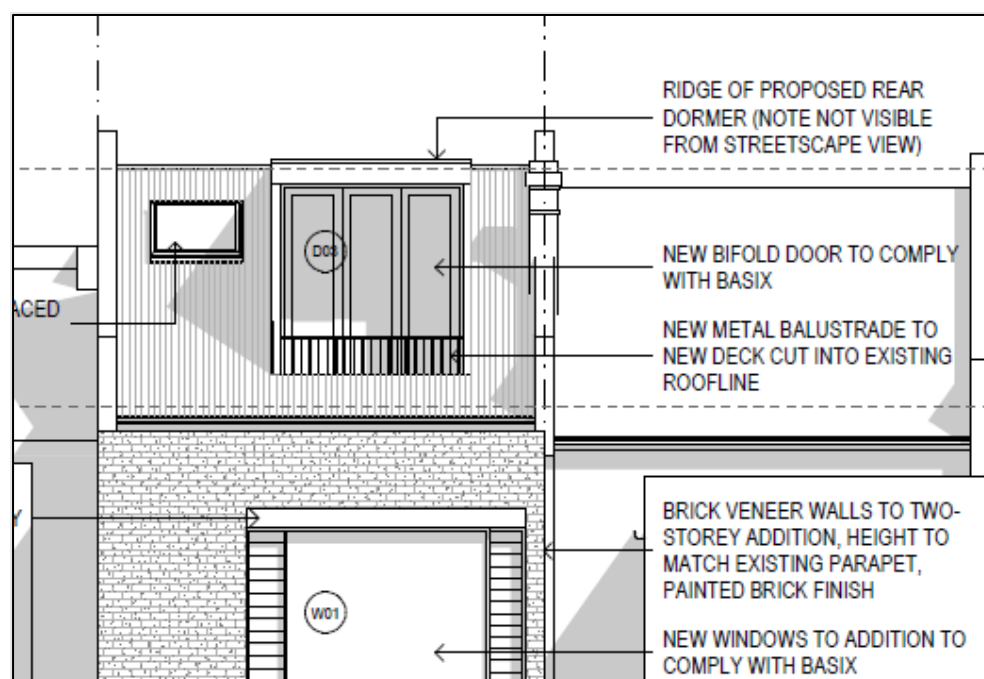


Figure 2: Extract of rear elevation demonstrating the proposed dormer window submitted by applicant.

It is agreed that the dormer window addition is in keeping with the height of the existing development which does not result in any additional unreasonable impacts to adjoining properties. The variation is considered minor and the applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable in the circumstances of the case.

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

The applicant has addressed objectives under Clause 1.3 of the *Environmental Planning and Assessment Act 1979* and aims of the NLEP 2012 have been addressed to demonstrate sufficient environmental grounds to justify the non-compliance, as follows:

- a) *The proposed additions remain below the maximum height of the existing building. The rear dormer connects at the existing ridge height and will not be discernible from the public domain at Scott Street.*
- b) *The proposal allows reinstatement of the original roof form to Scott Street which contributes to the Heritage Conservation Area. The rear dormer allows continued and enhanced amenity to the loft area of the existing dwelling.*
- c) *The proposal does not result in adverse impacts to adjoining properties or the locality in terms of visual impact, overshadowing or view loss. The design also limits opportunity for visual privacy impacts and overlooking.*
- d) *The public interest is better served by supporting the variation as it allows the reinstatement of the original roofing to Scott Street while retaining amenity for the occupants at the loft level, resulting in an enhanced contribution to the heritage significance of the area without associated adverse impact.*
- e) *The proposal satisfies the objectives of the R3 Medium Density Residential zone and the objectives of the Height of Buildings development standard, having regard to the particular nature of the development and the particular circumstances of the Site.*
- f) *The non-compliance with the standard will nevertheless result in a scale of development that is compatible with both the existing and future character and heritage significance of the locality.*
- g) *The proposed variation to the building height standard will not have a visual impact from the public domain at Scott Street.*

CN Officer Comment

The written request outlines environmental planning grounds which justify the contravention to the development standard. In particular, the proposed dormer window will not be discernible when viewed from Scott St, the proposed development will not result in adverse impacts to the amenity of adjoining properties and the bulk and scale of the development is compatible with the existing and future character of the locality. The reasons outlined above are considered to provide sufficient justification to contravene the development standard.

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

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

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

The applicant’s response to the satisfaction of the objectives of the Height of Buildings standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, *‘the proposed development will be in the public interest because it is consistent’*, with the relevant objectives.

Objectives of Clause 4.3 ‘Height of buildings’

The development is consistent with the objectives of Clause 4.3 ‘Height of buildings’ as the proposed alterations and additions will be to the rear of the site and will be a similar height as the existing building height. Furthermore, the development will allow adequate solar access to the subject dwelling and surrounding properties.

Objectives of the R3 Medium Density Zone

The development is consistent with the objectives of the R3 zone as the proposed development maximises residential amenity within a medium density residential environment and increases the internal spaces and useability of the dwelling to meet the day to day needs of residents while maintaining a scale and height that is compatible with the character of the locality and there will be no significant adverse impacts on the amenity of any existing nearby development. Further, the development is a type of land use permitted with consent within the above land zone.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the R3 zone. The proposal is satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

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

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

Conclusion

The requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation to the height of buildings development standard.

The Clause 4.6 variation request has demonstrated that the proposed height is acceptable and therefore strict compliance with the prescribed height of buildings standard would be unreasonable in this instance. In this regard, the Clause 4.6 variation request is supported.

Clause 4.6 Variation Request - Floor Space Ratio (Clause 4.4 NLEP 2012)

The proposal seeks consent to vary the FSR development standard (Clause 4.4) in accordance with Clause 4.6 of the NLEP 2012. The applicable maximum FSR development standard is 1:1.

The existing site area is 120.1m² and the total allowable gross floor area (GFA) under the 1:1 FSR control is 120.1m². The existing GFA of the property is approximately 132m² or 1.1:1 having a historical exceedance of the prescribed maximum FSR by approximately 11.9m² or 10%.

The proposed development will result in a GFA of 168.7m² and a total FSR of 1:40:1. This equates to an exceedance of approximately 40.6m² or 40% above the prescribed maximum FSR for the subject land, with an addition of approximately 36m² to the current dwelling size.

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

The FSR development standard in NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act. The FSR development standard is not expressly excluded from the operation of Clause 4.6.

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

The submitted 'Clause 4.6 Variation to Floor Space Ratio', prepared by Lighthouse Planning dated 8 February 2023 constitutes a written request for the purposes of Clause 4.6(3) (**Attachment E**)

The Applicants 'Clause 4.6 Variation to Floor Space Ratio' written response provides justification for the non-compliance and adequately demonstrates that compliance with the development standard is unreasonable stating that strict compliance would compromise the objectives of the development standard.

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

- a) *The proposed works are primarily for the construction of a two-storey rear addition that connects to the existing terrace. This rear addition sits well below the existing ridgeline and adopts an appropriate rear setback that reflects other properties along the rear lane.*
- b) *The existing terrace building has an FSR of 1.1:1, resulting in an existing variation to the development standard. Development within the surrounding area provides numerous examples of terraces with a similar bulk and scale, with similar existing variations to the FSR standard.*
- c) *The site is identified as part of the Newcastle East Heritage Conservation Area. The dwellings which contribute to the heritage significance of the area, particularly along Scott Street are usually 2-3 storeys, built to both side boundaries and provide a small courtyard to the rear. Accordingly, an FSR of 1:1 does not reflect the current bulk and scale of the contributory buildings in the area.*
- d) *The subdivision pattern within the locality is comprised of relatively small lots. The subject site has a total site area of 120.1m². The proposal results in an additional Gross Floor Area (GFA) of 36.76m² and an increased building footprint of only 10.7m². Despite being a modest addition in terms of GFA, the small site area exacerbates the percentage of variation.*
- e) *The proposed addition is located to the rear of the existing dwelling and is not visible from the Scott Street frontage. It adopts a rear setback that reflects other dwellings along the laneway, particularly 20-22 Scott Street which includes a recently approved rear addition. Given the northern orientation of the rear addition, the proposal does not result in adverse amenity impacts, in terms of overshadowing, visual impact or overlooking.*
- f) *Due to historic development within the area, there are many examples of dwellings that are currently non-compliant with the FSR development standard.*

This extends to approval of recent alterations and additions to these dwellings that reflect similar variations to the FSR development standard as proposed under this DA. It is noted that the terraces at 20 and 22 Scott Street have a similar FSR to that proposed.

- g) The proposal results in an architecturally designed rear addition that allows a considered upgrade to the existing dwelling, while retaining and enhancing its heritage contribution to Scott Street. The proposal results in no material adverse amenity impacts and is accordingly appropriate despite numeric non-compliance with the FSR development standard.*
- h) A development compliant with the floor space ratio development standard contained in the NLEP 2012 would not achieve a perceivably different or better planning outcome.*
- i) The proposed built form outcome seeks to retain and enhance the heritage character within the conservation area while allowing a considered upgrade to the dwelling. Due to the existing non-compliance with the FSR standard, strict compliance with the development standard would likely serve to hinder a successful and thoughtful upgrade to the terrace dwelling.*

CN Officer Comment

The proposed development provides for alterations and additions to an existing terrace house increasing the gross floor area to expand the internal spaces and improve amenity of the dwelling within a narrow site.

The proposed gross floor area of the dwelling is not considered to be excessive given the site constraints, existing non-compliant FSR and bulk and scale of surrounding development. The proposed variation to the development standard will not result in any unreasonable impacts to the amenity of adjoining properties in terms of bulk and scale, overshadowing, privacy, or view loss subject to conditions of consent.

Furthermore, the non-compliance does not result in any additional unreasonable impacts compared to a compliant design as the proposal is generally compliant with all other relevant planning controls within the NLEP 2012 and NDCP 2012. As such, the applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable in the circumstances of the case.

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

The applicant's response to Clause 4.6(3)(b) is addressed, and provides the following environmental planning grounds to justify the breach of the standard:

- a) The variation results in a scale and character that remains compatible with the surrounding locality. There are numerous examples of dwellings within the*

locality that are non-compliant with the FSR standard due to the historic nature of the buildings and the prevalence of terrace housing on smaller lots.

- b) The proposal does not result in adverse impacts to adjoining properties or the locality in terms of visual impact, overshadowing or view loss. The design also limits opportunity for visual privacy impacts and overlooking.*
- c) The proposal satisfies the objectives of the R3 Medium Density Residential zone and the objectives of the Floor Space Ratio development standard, having regard to the particular nature of the development and the particular circumstances of the Site. The site remains consistent with the objectives for the Newcastle City Centre.*
- d) The non-compliance with the standard will nevertheless result in a scale of development that is compatible with both the existing and future character of the locality.*
- e) The rear addition and associated GFA increase will not have unreasonable visual impact from the public domain. The addition is below the ridge height at the rear of the building and retains the heritage significance of the residential precinct.*

CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the additional FSR will not negatively impact the streetscape, privacy, view sharing or solar access of adjoining properties and is a similar bulk and scale of surrounding development.

The reasons outlined above are considered to provide sufficient justification to contravene the development standard.

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

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

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

The applicant’s response to the satisfaction of the objectives of the FSR standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does

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

Objectives of Clause 4.4 'Floor space ratio'

The development is consistent with the objectives of Clause 4.4 'Floor Space Ratio' as the proposed development is of an appropriate density which is consistent with the established centres hierarchy.

The development for alterations and additions to the existing terrace house is of a low-density bulk and scale and is consistent with the built form as identified by the centres hierarchy.

Objectives of the R3 Medium Density Zone

The development is consistent with the objectives of the R3 zone as the proposed development maximises residential amenity in an appropriate dwelling form complementary to the medium-density residential environment. Further, the development is a type of land use permitted with consent within the above land zone.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the R3. The proposal is satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

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

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

Conclusion

The requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation to the floor space ratio development standard.

The Clause 4.6 variation request has demonstrated that the proposed height is acceptable and therefore strict compliance with the prescribed floor space ratio development standard would be unreasonable in this instance. In this regard, the Clause 4.6 variation request is supported.

Clause 5.10 - Heritage Conservation

The site is located in the Newcastle East Heritage Conservation Area (HCA) and is identified as a contributory 1 dwelling. The proposed development involves altering the exterior of an existing terrace dwelling, therefore consideration must be given to the effect of the proposed development on the heritage significance of the heritage conservation area.

The contributory building is retained and its contribution to the Scott Street streetscape will be enhanced by the proposed rectification works to the facade. Traditional building elements associated with the architectural style of the dwelling visible from the public domain are retained.

The proposed addition will not be visible from the principal elevation of the building. The height of the two-storey addition is significantly lower than the ridge height of the existing terrace.

The roof over the addition follows the roofline of the existing dwelling. The scale of the building will not be impacted from either Scott Street or from the rear pedestrian laneway. The special character of Scott Street will not be affected by the development due to the terraced nature of the site and its neighbours.

In this regard, the proposal is satisfactory in terms of Clause 5.10 of the NLEP 2012.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils, as the proposed development does not comprise significant earthworks and is therefore unlikely to expose or drain potential acid sulfate soils within the site. Accordingly, an ASSMP is not necessary, and the proposed development is considered satisfactory regarding Acid Sulfate Soils.

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.

Part 7 Additional Local Provisions—Newcastle City Centre

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

Clause 7.10A - Floor Space Ratio for Certain Other Development

The proposed development has a site area of less than 1,500m². Accordingly, the provisions of this clause apply to the proposal. This clause specifies that the maximum

FSR of a building is whichever is the lesser of the FSR identified on the FSR map or 3:1. In this case the applicable FSR is that identified on the map and discussed in detail in this report.

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

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

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

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

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: 'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply'.

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

Single Dwellings and Ancillary Development - Section 3.02

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

Street frontage appearance (3.02.03)

The setback of the proposed development to the street frontage boundary remains unchanged under this application.

Side / rear setbacks (building envelope) (3.02.04)

The building envelopes in Part 3 of the Newcastle Development Control Plan 2012 do not apply in heritage conservation areas. The building envelope has been assessed under 6.02 of this report.

Landscaping (3.02.05)

The development will upgrade the existing paved courtyard with pavement and provide a roof garden above the proposed shed. Given the site constraints of the site, the proposed roof garden is considered an improvement to the landscaped area of the site.

The development is considered to meet the Performance Criteria of the NDCP 2012 with respect to landscaped area.

Private open space (3.02.06)

The development provides approximately 3m x 3.4m for private open space directly accessible from the living area which is considered reasonable given the narrow width of the site. The development is considered to meet the Performance Criteria of the NDCP 2012 with respect to private open space.

Privacy (3.02.07)

The development will increase the size of the rear window openings to improve solar access to the dwelling. Given the large size of the upper floor window and close proximity to the rear boundary it is recommended that a privacy screen be provided on to window opening W01 in the form of obscure glazing or screening.

A condition will be imposed in the consent to ensure privacy measures are implemented to the development. Subject to conditions, the development is considered to meet the Performance Criteria of the NDCP 2012 with respect to privacy.

Solar access (3.02.08)

The shadow diagrams provided by the applicant indicate that minor additional overshadowing will be cast over the ground floor level roof of the adjoining property at

12 Scott St between 12pm and 3pm, however it is noted that the private open space is already overshadowed between 12pm and 3pm during the winter solstice.

Furthermore, the shadow diagrams indicate that the subject site and adjoining properties are currently overshadowed from 12am to 3pm during the winter solstice due to the existing built environment. The proposed development will still allow adequate sunlight to north facing windows of adjoining properties. The development is considered to meet the Acceptable Solutions of the NDCP 2012 with respect to solar access.

View sharing (3.02.09)

The proposed development will not obscure any important views or vistas of adjoining properties. The development is considered to meet the Acceptable Solutions of the NDCP 2012 with respect to solar access.

Ancillary development (3.02.12)

The proposed development will replace boundary fencing along the rear and western side boundaries. The rear boundary fence will be a height of approximately 2.5m to 2.8m which is consistent with the existing rear fencing along the laneway. The development is considered to meet the Performance Criteria of the NDCP 2012 with respect to privacy.

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

Soil Management - Section 5.01

Cut and fill will be completed in accordance with the relevant objectives of this section. A condition will ensure adequate sediment and erosion management will remain in place for the construction period.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with *SEPP (Resilience and Hazards) 2021*. The site is not considered to have any contamination constraints that will impact on the development of the site.

Vegetation Management - Section 5.03

To facilitate the proposed works there will be an impact on an existing frangipani tree in the rear courtyard.

In support of the proposed works, the applicant has submitted an arborist's report that details species, location, size, health, and value. The report is prepared generally in accordance with CN tree assessment requirements, and it is considered that the proposed tree removal is acceptable and due to the low retention value a replacement tree is not required.

The amenity of the area will not be significantly impacted in respect of the local character and appearance.

Aboriginal Heritage - Section 5.04

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

Heritage Items - Section 5.05

The site is in the vicinity of 'The Carlton (residential units)' – NLEP heritage Item 487 – 19 Scott Street Newcastle East, however, the proposed additions will not be visible from Scott Street. The proposed development will not result in any adverse impacts to the heritage item. In this regard, the proposal is satisfactory with respect to Section 5.05 Heritage Items of the NDCP.

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*'.

Part 6.00 Locality Specific Provisions

Newcastle City Centre - Section 6.01

6.01.02 Character Areas

The proposed development will restore the front facade of the existing terrace dwelling which will improve the appearance of the site and contribute positively to the heritage conservation area. The proposed development will not result in any adverse impacts to heritage items or public spaces and will not obscure any views, vistas or places of historic and aesthetic importance.

The development is considered to meet the principal objectives of the NDCP 2012 with respect to Character Areas.

F. East End

The proposed development will:

- 1) Maintain the historic character of the site by restoration of the existing facade and using materials and finishes that are consistent with the Newcastle East Heritage Conservation Area.

- 2) Not obstruct any views or vistas of protected Churches, heritage buildings, Streets or rivers.
- 3) Respond to the existing height and massing of the terrace house and row.

The development is considered to meet the principal objectives of the NDCP 2012 with respect to the East End.

Heritage Conservation Areas - Section 6.02

The proposed addition will not be visible from the principal elevation of the building. The height of the two-storey addition is significantly lower than the ridge height of the existing terrace. The roof over the addition follows the roofline of the existing dwelling. The scale of the building will not be impacted from either Scott Street or from the rear pedestrian laneway. The special character of Scott Street will not be affected by the development due to the terraced nature of the site and its neighbours.

The simple and contemporary detailing distinguishes the extension as new work, consistent with Burra Charter principles, and maintains the simplified character of built forms presenting to the laneway compared to the more finely detailed character presenting to Scott Street.

The rear addition will be visible from the pedestrian laneway at the rear of the site. It is noted that similar first floor extensions have been carried out at nearby properties (23 Alfred Street; 20 Scott Street; 35 Stevenson Place). The materials palette proposed for the addition reflects the typical materials palette seen throughout the precinct (weatherboard wall cladding; exposed brick). It is considered that the proposed addition will not have an unreasonable visual impact on the laneway.

The proposed dormer window to the northern (rear) roof plane of the existing dwelling will also be visible from the laneway and will more obviously present the building as three levels. However, it is noted that relocation of a dormer form to the rear roof plane and rectification of the primary facade is a significant improvement from the existing situation. Dormers in the rear roof planes of terraces on the northern side of Scott Street are not uncommon, with a variety of dormer styles represented on neighbouring terraces in the street blocks between Parnell Place and Telford Street. The proposed dormer will have limited visibility from the pedestrian level in the lane due to the existing laneway boundary walls/fences. The contemporary nature of the dormer and the addition are aligned with the eclectic nature of additions that characterise the laneway and as such is not considered to be an unreasonable response to the site constraints.

The proposed development will not be visible from Scott Street, and it is considered unlikely that the proposed development would result in adverse heritage impacts to the rear pedestrian laneway. The built form and mass of the proposed addition is consistent with recent approved developments to nearby terraces in the locality. The development will result in a positive outcome for the principal elevation of the dwelling, including rectification works to the front facade. Further, traditional building elements associated with the architectural style of the building are required to be retained.

The application includes removal of the existing intrusive dormer windows at the front of the roof and reinstatement of roof sheeting to match existing. This will greatly improve the appearance of the dwelling and will be more consistent with the typical roof form and presentation of nearby contributory terraces. The application also includes replacement of the existing timber street-level balustrade with a cast iron balustrade in keeping with the Victorian style of the dwelling. Other existing traditional/original features of the dwelling that are visible from the street are noted as being retained, including the sunroom timber windows and chimneys.

Subject to conditions of consent, the development is considered to meet the objectives of the NDCP 2012 with respect to heritage conservation areas.

Landscape Open Space and Visual Amenity - Section 7.02

The site will improve the existing landscaped area by providing a green roof above the shed. The existing site comprises a paved courtyard and due to the constraints of the site the proposed green roof is considered reasonable. The development is considered to meet the Performance Criteria of the NDCP 2012 with respect to landscaped area.

Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed development will discharge into the existing stormwater system. Standard conditions relating to stormwater details will be included in the consent to ensure the stormwater system complies with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

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

Development Adjoining Laneways - Section 7.11

The laneway to the rear of the site is considered a Type A laneway which is for pedestrian use only. The proposed development is setback a minimum of 3m from the rear boundary to the laneway and the principal entrance will be via the front of the site. The development is considered to meet the Acceptable Solutions of the NDCP 2012 with respect to Development Adjoining Laneways.

Development Contributions

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

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

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

Hunter Water stamped plans were provided with the applicant that indicate the development is over Hunter Water assets. A condition will be included in the consent for the applicant to comply with the requirements of Hunter Water.

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations. The proposed development will not result in any undue adverse impact on the natural or built environment. The development is located within a site suitably zoned for residential development and of a size able to cater for such development. The development is compatible with the existing character, bulk, scale and massing of the existing built form in the immediate area and broader locality. The proposal will not result in any negative social or economic impacts.

The development has been designed to generally satisfy the requirements of NDCP 2012 and as a result, the proposed development is unlikely to adversely impact upon the amenity of adjoining properties.

5.7 The suitability of the site for the development

The site is located within an R3 Medium Density Residential zone and the proposal is permissible with consent. The proposed alterations and additions to the existing terrace dwelling, is of a bulk and scale that is consistent with the existing and desired future character of the locality. Furthermore, the site is of a sufficient land size to enable the proposed development whilst minimising the impact to neighbouring properties.

The site is located within an established residential area with good connectivity to a range of services and facilities. The constraints of the site have been considered in the proposed development. The proposal is acceptable in regard to impact on the

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

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

The application was notified in accordance with Community Consultation Plan. One submission was received. The following table provides a summary of the issues raised and a response to those issues.

Issue	Comment
Privacy impact due to new windows and doors	<p>A condition will be included in the consent for the applicant to incorporate privacy screening to the rear window of level 2.</p> <p>It is noted that there will be a glass door on the rear elevation of the dormer window servicing an attic level and glass doors servicing level 1.</p> <p><u>Attic level</u></p> <p>The attic room is not considered to be a high usage room and is not expected to result in unreasonable overlooking impacts considering the small size of the deck and distance of the window to the usable space of the room.</p> <p><u>Level 1</u></p> <p>The rear window at level 1 will be setback approximately 10m to the rear building line of 9 Alfred St and approximately 8m to the rear building line of 7 & 5 Alfred St. The rear adjoining properties are separated by a 3m pedestrian lane and high rear boundary fencing. In this regard, the window is not expected to result in any further unreasonable privacy impacts to adjoining properties.</p> <p>Furthermore, the addition of larger windows is considered to improve the amenity of the dwelling by allowing sunlight into all levels of the dwelling that comprises no side windows. The privacy matters are considered resolved by conditions of consent.</p>

5.9 The public interest

The proposed development is consistent with the aims and design parameters contained in the NLEP 2012 and the NDCP 2012 and other relevant Environmental Planning Instruments discussed within this report. The development is consistent with the objectives of the R3 Medium Density Residential zone.

The proposed development will not have an adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjacent properties or the streetscape. The proposed development is in the public interest as it provides for modernised low-impact residential accommodation within an established residential area.

The development is satisfactory having regard to the principles of ecologically sustainable development and will not result in any disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment

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

6.0 CONCLUSION

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

ATTACHMENTS

- Attachment A:** Submitted Plans – 14 Scott St, Newcastle East
- Attachment B:** Draft Schedule of Conditions - 14 Scott St, Newcastle East
- Attachment C:** Processing Chronology - 14 Scott St, Newcastle East
- Attachment D:** Clause 4.6 written exception to development standard – Height of Buildings – 14 Scott Street, Newcastle East
- Attachment E:** Clause 4.6 written exception to development standard – Floor Space Ratio – 14 Scott Street, Newcastle East

Attachments A – E: Distributed under separate cover

7.5. 35 ADDISON STREET BERESFIELD - DA2022/01100 - DEMOLITION OF STRUCTURES AND ERECTION OF NEW FROZEN FOOD STORAGE BUILDING

APPLICANT: PSA CONSULTING AUSTRALIA
OWNER: STEGGLES POULTRY PTY LIMITED
REPORT BY: PLANNING & ENVIRONMENT
CONTACT: INTERIM EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

PART I

PURPOSE

A development application (DA2022/01100) has been received seeking consent to the demolition of existing structures and alterations and additions to an existing livestock processing industry - construction of frozen food storage building at 35 Addison Street, Beresfield.

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

The application is referred to the Development Applications Committee (DAC) for determination as the construction value of the proposed development (\$24.97 million) exceeds the staff delegation limit of \$15 million.

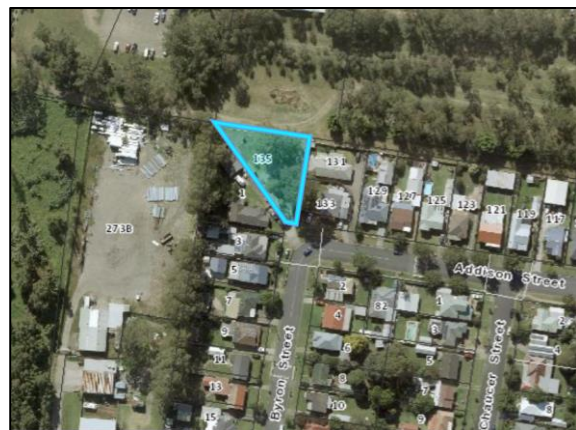
A copy of the plans for the proposed development is at **Attachment A**.

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

The objector's concerns included:

- i) Amenity impacts due to increased traffic and noise.

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



Subject Land: 35 Addison Street Beresfield

Issues

1. Traffic Impacts
2. Environmental Impacts
3. Stormwater and water quality impacts
4. Amenity Impacts

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee (DAC) notes under Schedule 3, Clause 48 Alterations and Additions to Existing or Approved Development of the *Environmental Planning and Assessment Regulations 2021*, that the proposed development does not significantly increase the environmental impacts of the existing development and that the current proposal does not constitute designated development; and
- B. That DA2022/01100 for the demolition of existing structures and alterations and additions to an existing livestock processing industry - construction of frozen food storage building at 35 Addison Street Beresfield be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 2 DP 1026291 & Lot 1 DP 1020911, known as 35 Addison Street, Beresfield. The proposed allotment is irregular in shape but is generally triangular.

The site has two small frontages at Anderson Drive and Hawthorne Street Beresfield and a total area over 45 hectares.

The site is relatively flat with an overall slope towards to north. The proposal involves the demolition of the eastern end of the existing processing building. There are several groups of trees and shrubs located at the northern, southern and western sides of the development site.

To the west and east of the development site are further buildings associated with what is commonly known as the overall Steggles complex. To the north, running east-west, is the internal heavy vehicle access road for the site. To the south is the existing light vehicle access road and predominately vacant area further to the south towards the existing residential properties.

The nearest residential properties are approximately 230 metres away from the development area.

2.0 THE PROPOSAL

The applicant seeks consent for the partial demolition of existing structures and alterations and additions to an existing livestock processing industry - construction of frozen food storage building.

The current proposal results in an increase to the frozen food storage area/volume from 1938 m² to 6280 m². The existing operational details remain unchanged as follows:

- i) Hours of operation - 24 hours,
- ii) Number of staff – 14 staff, and
- iii) Heavy vehicle trips per day – 16 movements.

The increased storage capacity removes the need for double handling and other inefficiencies as the additional stock had been previously stored at separate external warehouses.

The applicant proposes that the frozen storage and distribution facility will be constructed immediately adjacent to Steggles Foods with palletised product to be transferred to the site via a new enclosed transport tunnel linking to the new frozen store. Processed and packaged goods will be packed and palletised in the existing Steggles Foods building before being transported to the frozen storage building via a new pallet conveyor.

The development consists of the following components:

- i) Frozen store (approximately 4,020 m²).
- ii) A dock and labelling area (1,300 m²).
- iii) Amenities (230m²).
- iv) Services with a 6m ceiling (140 m²).
- v) Pallet awning (storage) and fork charging station (150 m²).
- vi) A loading dock.
- vii) Pallet Conveyor.

The racking system of the proposed frozen store will have an internal height of 11.5m and a maximum roof height of 15m above the floor level. The building will step down to the office and amenities area which will have a maximum height of 3m above ground level.

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

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

3.0 PUBLIC NOTIFICATION

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

- i) Amenity impacts due to increase traffic and noise.

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

4.0 INTEGRATED DEVELOPMENT

The proposal was referred to the NSW Environment Protection Authority (NSW EPA) under the *Protection of the Environment Operations Act, 1997* as integrated development pursuant to Section 4.46 of the EP&A Act. The existing site already

operates under an existing Environmental Protection Licence (EPL) 1329 for carrying out of agricultural processing and livestock (poultry) processing.

The NSW EPA have advised that they have no objections to the proposal and do not require any additional conditions to be applied as part of the current proposal (noting that the proposed development is required to comply with the terms of the existing EPL, particularly in terms of noise).

A copy of the NSW EPA's advice is provided at **Attachment D**.

5.0 PLANNING ASSESSMENT

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

Designated Development

The existing operation on the overall site constitutes designated development as a livestock processing industry under Clause 31 of Schedule 3 of the *Environmental Planning & Assessment Regulations 2021* (EP&A Regs). The proposal, as described above, intends to erect alterations and additions to an existing livestock processing industry - construction of frozen food storage building to increase the capacity from 1938 m² to 6280 m².

Notwithstanding that the existing overall development is considered to constitute designated development, under the provisions of clause 48 – 'Alterations or additions to existing or approved development' of Schedule 3 of the EP&A Regs, a consent authority can form the opinion that, if the additions and alterations to a proposal "...do not significantly increase the environmental impacts of the existing or approved development..", the proposal then does not constitute designated development.

The applicant has addressed the provisions of clause 48 of the EP&A Regs, in detail, as extracted at **Attachment E**. An assessment of this information in the context of the proposal overall has been undertaken and has been determined that the proposed "...alterations or additions do not significantly increase the environmental impacts of the existing or approved development.." and, as such, it is considered that the current proposal does not itself constitute *designated development* and would not need the submission of an Environmental Impact Study. The proposed development is therefore satisfactory in this regard.

5.1 Provisions of any environmental planning instrument

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

Chapter 2 Vegetation in non-rural areas

Chapter 2 of SEPP B&C aims 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. Clause 2.3 confirms that this Chapter of the SEPP applies to Newcastle and the IN2 Light Industrial zone and it is not excluded or inconsistent with other environmental planning instruments under Clause 2.4.

The applicant has submitted an arborist report which has assessed 50 trees within the vicinity of the proposed development. Fourteen of the existing trees will be retained and 36 trees/shrubs are proposed to be removed. Sixteen of the trees being removed are of moderate retention value, while the remaining twenty are low/very low retention value. Overall, it is considered that the tree removal is acceptable having regard to the position of the trees and the industrial nature of the site, subject to the recommended conditions of consent requiring compensatory planting as detailed within **Attachment B**.

Having regard to the provisions of SEPP (B&C) and Section 5.3 – Vegetation Management under NDCP 2012 the proposal is acceptable in context of the proposed tree removal.

State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R&H)

Chapter 2- Coastal Management

Chapter 2 of the SEPP R&H seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the Coastal Management Act 2016 (the Act). The '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 overall site is affected by both coastal wetlands (clause.2.7) and lands in proximity to coastal wetlands (clause.2.8) at the north-western corner of the site. The current proposal is more centrally located within the Steggles site and, as such does not have any impacts in this respect and is acceptable.

Accordingly, it is not anticipated that the proposed development will result in any significant coastal hazards to the subject site or to other lands. The proposed development is not inconsistent with the provisions of Chapter 2 of SEPP R&H.

Chapter 3 Hazardous and Offensive Development

The proposal is considered to be acceptable in terms of hazardous and offensive development under Chapter 3 of SEPP R&H. The current proposal does not involve any use or storage of hazardous/offensive materials and the development is not

considered to constitute offensive development having regard to the terms of its operation (i.e., odour and/or air quality impacts).

Chapter 4 - Remediation of land

Chapter 4 SEPP R&H 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 proposal does not involve any change of use. The applicant undertook a contamination assessment including a Detailed Site Investigation which concluded that the site is considered suitable for the intended land use and no land contamination was found in the area of the proposed development which exceeded the required health levels (National Environmental Protection (Assessment of Site Contamination) Measure (NEPM 2013) – Schedule B1, Table 1A(1), Column D – Commercial Industrial).

Overall, the proposal is considered suitable for the intended land use and to be acceptable subject to conditions of consent recommended at **Attachment B**.

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

Transport for NSW (TfNSW)

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The site has a split zoning being IN2 - Light Industrial and C3 - Environmental Management under the NLEP2012. The majority of the site is zoned IN2, with the C3 land located in the north western part of the site. The portion of the site for the proposal is zoned IN2- Light Industrial.

The development is defined as a *livestock processing industry* and is not permissible with consent in the IN2 Light Industrial zone under the NLEP 2012. It is noted that

'livestock processing industries are a type of 'rural industry'. Rural industry is also a use which is not permissible in the IN2 Light Industrial Zone.

The NLEP2012 defines both 'livestock processing industry' and 'rural industry' as follows:

"livestock processing industry means a building or place used for the commercial production of products derived from the slaughter of animals (including poultry) or the processing of skins or wool of animals and includes abattoirs, knackeries, tanneries, woollscours and rendering plants.

Note—

Livestock processing industries are a type of **rural industry**—see the definition of that term in this Dictionary."

"rural industry means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following:

- (a) agricultural produce industries,
- (b) livestock processing industries,
- (c) composting facilities and works (including the production of mushroom substrate),
- (d) sawmill or log processing works,
- (e) stock and sale yards,
- (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.

Note.

Rural industries are not a type of industry—see the definition of that term in this Dictionary."

The following is an extract from the zoning provisions contained in Newcastle Local Environmental Plan 2012:

"Zone IN2 Light Industrial

Objectives of zone

- i) To provide a wide range of light industrial, warehouse and related land uses.
- ii) To encourage employment opportunities and to support the viability of centres.
- iii) To minimise any adverse effect of industry on other land uses.
- iv) To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- v) To support and protect industrial land for industrial uses.

Notwithstanding, it is considered that the proposal is consistent with the zone objectives for the IN2 - Light Industrial zone. The proposal contributes to the encouragement of employment opportunities and has limited adverse impacts.

As the proposed use is not permissible within the zone, the applicant has sought to rely on existing use rights to facilitate the proposal as discussed in further detail below.

Existing Use Rights (Part 7, clause 163 of the EP&A Regs)

The applicant has submitted that the proposal is permissible under the *existing use right* provisions of Part 7, clause 163 of the EP&A Regs. The existing use rights provisions afforded under the EP&A Regs provide certain protections to landowners from changes to planning laws that apply to their land, including LEP amendments which result in previous permitted uses being no longer listed as permissible. Existing use rights only apply to uses that have been lawfully commenced on the site prior to the use being prohibited.

In this respect it is accepted that the Steggles **livestock processing industry** benefits from existing use rights having operated on the site continuously for over 50 years and supported by numerous Development Applications. The relative scale of the proposal's intensification, in context of the overall site, and the environmental and amenity impacts of the development, is considered to be satisfactory, as demonstrated within this assessment report. The proposal is considered to be acceptable in terms of its intensification and the provisions of *existing use rights*.

The proposal is considered not to involve any significant impacts. The site already operates on a 24-hour basis, 7 days a week. The traffic, noise, air and odour aspects will not significantly be increased. The number of staff and heavy vehicle movements remains the same. The traffic impacts have been assessed and are acceptable with no adverse traffic impacts. The proposal is acceptable and does not involve a significant intensification of that existing use and meets the requirements of cl.163 of the EP&A Regs.

Overall, the proposal is considered to be acceptable subject to conditions of consent recommended at **Attachment B**.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the existing structures on the site. Conditions are recommended at **Attachment B** 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 there is no height standard within the IN2 Light Industrial Zone.

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 there is no FSR standard within the IN2 Light Industrial Zone.

Clause 5.10 - Heritage Conservation

The proposal does not trigger any specific provisions under this clause.

The subject property:

- 1) is not listed as a heritage item under the LEP,
- 2) is not located within the vicinity of a heritage item,
- 3) is not located within a Heritage Conservation Area,
- 4) is very unlikely to be affected by any items of Aboriginal heritage or archaeological items due to the disturbed nature of the site.

Clause 6.1 – Acid Sulfate Soils

The site is mapped as being affected by Class 3 acid sulphate soils. The applicant has undertaken an acid sulphate soil investigation which has demonstrated that there are no acid sulphate soils within the intended zone of construction and therefore an acid sulphate soil management plan is not required in this instance.

Clause 6.1(4)(b) requires that the consent authority provide written notice to the applicant that a acid sulphate management plan is not required in this instance. Should Council determine to approve the application, this requirement would be facilitated by the issuing of the consent for the proposal where the development is approved.

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 2012 (NDCP 2012)

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: 'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.'

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration. The main planning requirements of relevance in the NDCP 2012 are discussed below.

Industrial Development - Section 3.13

The proposal is centrally located within the existing Steggles complex of industrial buildings. The proposed development will be a height of 15 metres which is consistent with the adjoining development on the site, noting that the feed and grain soils on the site are approximately 25 metres. The area of the current development is a minimum of 230 metres from the nearest residential properties. The character and appearance of the proposal is consistent with the other existing buildings located within the Steggles complex.

The proposal will not have any unreasonable visual appearance or setback impacts as the industrial activity and storage is located within the proposed building, only having an external loading dock at the north eastern corner of the design, and being located at significant distance from residential properties.

The proposal, due to its position, and the site of the size, has sufficient vehicular access, loading/servicing and parking provision. Overall, the proposal is acceptable in terms of Section 3.13 subject to conditions of consent as recommended at **Attachment B**.

Flood Management - Section 4.01

According to information provided in the Newcastle City-wide Floodplain Risk Management Study and Plan (BMT WBM June 2012), the subject allotment is affected by Hunter River and Ocean Flooding during both the 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) events. The pertinent characteristics of this flooding are as follows:

Hunter River Flooding:	
Is any part of the site a floodway?	No
Is any part of the site a flood storage area?	No
1% AEP Level / Velocity / Property Hazard	4.5m AHD / 0.08ms ⁻¹ / P3 with some P4 in the area of the new building
PMF Level / Velocity / Life Hazard	7.62m AHD / 0.08ms ⁻¹ / L1 (H4)

Ocean Flooding:	
Is any part of the site a floodway?	No
Is any part of the site a flood storage area?	No
1% AEP Level / Velocity / Property Hazard	2.2m AHD / 0.14ms ⁻¹ / P2
PMF Level / Velocity / Life Hazard	3.4m AHD / 0.14ms ⁻¹ / L1 (H3)

In accordance with Section 4.01 '*Flood Management*' of the Newcastle Development Control Plan (NDCP 2012), this development is subject to the following requirements:

- a) Floor levels of any occupiable rooms in a new development on this site shall not be lower than the flood planning level (5m AHD).
- b) Garage floor levels are set no lower than the 1% Annual Exceedance Probability flood level (4.5m AHD).
- c) Frozen Storage be constructed in materials and finishes that are resistant to flood damage below the 1% AEP flooding level of 4.5m AHD. In addition, any new machinery or equipment, electrical circuitry or similar items likely to be damaged by flood waters being of a similar design.

The proposed flood level of the freezer is set at 5m and as such is considered acceptable with regards to flood requirements. No flood refuge is required for this development.

Accordingly, the proposal is acceptable in relation to flooding subject to conditions of consent recommended at **Attachment B**.

Bush Fire Protection - Section 4.02

The overall site is affected by bush fire prone land (Vegetation Buffer) but the proposal's development area, and the majority of the site, is not affected and it is considered that the proposal is acceptable in terms of bushfire protection.

Social Impact - Section 4.05

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

Land Contamination - Section 5.02

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

Vegetation Management - Section 5.03

Vegetation Management has been considered in this assessment report, in accordance with State Environmental Planning Policy (Biodiversity and Conservation) 2021 above.

Aboriginal Heritage - Section 5.04, Heritage Items - Section 5.05, Archaeological Management - Section 5.06

A search of Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that there are no Aboriginal sites on, or within the property and no aboriginal places have been declared in or near the location.

Traffic, Parking and Access - Section 7.03

Vehicular Access, Driveway Design and Crossing Location

The swept paths of B-doubles entering and exiting the loading docks are accessible and the proposed layout of the loading docks and manoeuvring area is considered to be satisfactory.

The current swept paths are accepted, however the plans should be updated showing differentiation in line marking between the extent of access road changes and swept paths for turning vehicles. A condition to address this aspect has been included within the conditions of consent recommended at **Attachment B**.

Parking Demand

There are no changes to the existing staff parking areas, bike parking, and motorbike parking and no additional staff proposed as part of the development.

Traffic Generation

There are no changes to trip generation proposed as part of this development with approximately 16 heavy vehicle trips per day being maintained.

Accordingly, the proposal is acceptable in relation to Traffic, Parking and Access subject to conditions of consent recommended at **Attachment B**.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

Stormwater & Stormwater Quality

A Stormwater Management Plan (SWMP) was prepared by Costin Roe Consulting identifying the existing operation of the site and detailing a strategy for stormwater management at the new development.

The existing site is serviced by a pits and pipes system connecting to a grassed swale drain conveying stormwater 500m to the north to be discharged directly to a Coastal Wetland area linked to Woodberry Swamp.

Stormwater Quantity Control

Stormwater from the new development is proposed to be discharged via the existing grassed swale. The proposal to provide no on-site retention at the development is supported in this instance provided coastal wetland catchment requirements are met for the roof area equivalent of the new impervious area. This can be satisfied via the provision of a nominal 35kL leaky rainwater tank.

Stormwater Quality Control

The Applicant has undertaken MUSIC modelling to demonstrate the proposed treatment train is compliant with pollutant reduction targets set out in Section 7.06 of the NDCP 2012. The outcomes of this modelling are summarised below.

Pollutant (kg/yr)	Source (Developed)	Residual Load	Reduction %	Target Reduction %
Total Suspended Solids	3460	68.8	98	85
Total Phosphorus	5.79	0.635	89	65
Total Nitrogen	23.6	7.37	68.8	45
Gross Pollutants	263	0	100	90

The proposed treatment train is therefore compliant with pollutant management requirements set out in the NDCP 2012. The proposed stormwater management plan can be supported.

Hydrocarbon Pollutants

There is some concern the level of daily heavy and light vehicle traffic through the site result in non-negligible hydrocarbon pollutant load being discharged to the proposed sedimentation basin and grassed swale.

A condition of consent is recommended requiring that the concentration of total petroleum hydrocarbons in stormwater discharged to the proposed sediment basin does not exceed 5 parts per million. Accordingly, the proposal is acceptable in relation to stormwater and water efficiency subject to conditions of consent recommended at **Attachment B**.

Waste Management - Section 7.08

It is proposed that the frozen store will be managed in accordance with the submitted Site Waste Minimisation and Management Plan, which provides that all waste streams are recycled or reused wherever possible. Waste is collected on site in skip bins for collection and disposal by a licensed contractor.

Demolition and waste management is considered to be acceptable subject to conditions of consent recommended at **Attachment B**.

Development Contributions

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

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

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

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

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

Acoustic Impacts

The applicant has submitted an acoustic report by Reverb Acoustics, which has been subject to a detailed assessment. The proposal has been determined to be acceptable in terms of acoustic impacts subject to conditions of consent recommended at **Attachment B**.

It is further advised that the proposal is the subject of an Environment Protection Licence issued by the NSW EPA which will control the environmental impacts of the proposed development, in combination with the overall Steggles complex, including the acoustic impacts.

5.7 The suitability of the site for the development

The site is not within a Mine Subsidence District. The constraints of the site have been considered in the proposed development, which includes flooding, contamination, bushfire and acid sulfate soils. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

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

The application was notified in accordance with CN's Community Participation Plan (CPP) between 12 to 26 October 2023. One submission was received in response during the notification period.

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

Issue	Comment
Amenity impacts within Addison Street due to increased traffic and noise impacts from the increased traffic.	<p>The current proposal does not result in any increase in traffic movements to the nearby residential street (e.g. Addison and Hawthorne Street) and all proposed heavy vehicle movements will continue to be via the existing entry/exit at the western most portion of the site with Anderson Drive which is separated from residential properties.</p> <p>Heavy vehicles travel to the west to access routes such as the New England Highway/Maitland Road and the M1 Motorway and would not typically travel through existing residential areas.</p> <p>The existing number of heavy vehicle movements, and number of staff employed, will not change as part of this proposal and, as such, it will not increase acoustic/amenity impacts on existing residents due to increased traffic noise.</p> <p>Overall, it is considered that the current proposal will be reasonable in terms of acoustic impacts within the residential areas.</p>

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 EP&A Act and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

- Attachment A:** Submitted Plans – 35 Addison Street Beresfield
Attachment B: Draft Schedule of Conditions – 35 Addison Street Beresfield
Attachment C: Processing Chronology – 35 Addison Street Beresfield
Attachment D: Advice of the NSW Environment Protection Authority – 35 Addison Street Beresfield
Attachment E: Applicants response to Schedule 3 Clause 48 of the EP&A Regs – '*Alterations or additions to existing or approved development*' – 35 Addison Street Beresfield

Attachments A - E distributed under separate cover.

7.6. 111 DAWSON STREET COOKS HILL - DA2022/00936 - DWELLING HOUSE - ALTERATIONS AND ADDITIONS INCLUDING DEMOLITION

APPLICANT: COL O'REILLY
OWNER: G E MASON & C M O'REILLY
REPORT BY: PLANNING & ENVIRONMENT
CONTACT: INTERIM EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

PART I

PURPOSE

An application (DA2022/00936) has been received seeking consent for alterations and additions to the existing dwelling house located at 111 Dawson Street, Cooks Hill.

The submitted application was assigned to Development Officer, Bianca Fyvie, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination as the application has been called in by Cr Charlotte McCabe and Cr John Mackenzie to be determined by the Development Applications Committee (DAC).



Subject Land: 111 Dawson Street Cooks Hill

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

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and two submissions have been received in response.

The objector's concerns included:

- i) Character
- ii) Materials and finishes

- iii) Burra Charter
- iv) Sunlight and views

Issues

- 1) The impact of the proposed alterations and additions to the streetscape, adjoining Heritage Item and Cooks Hill Heritage Conservation Area.
- 2) Matters raised in the submissions including contemporary use of materials and finishes, shared boundary wall, sunlight and view loss.

Conclusion

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

RECOMMENDATION

- A. That DA2022/00936 for alterations and additions at 111 Dawson St, 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
- B. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The site is a single allotment known as 111 Dawson St Cooks Hill and has a legal description of Lot 1 in Deposited Plan 924899. The site is rectangular in shape and has a total site area of 164.4sqm. The site is listed as a local heritage item located within the Cooks Hill Heritage Conservation Area. The site adjoins St Johns Church Hall listed as a State Heritage Item and is opposite the Lowlands Bowling Club. The site is located in a prescribed mines subsidence district and is identified as being flood prone. The site is relatively flat with no declared vegetation.

The site is occupied by an existing two level terrace with a two storey garage at the rear. The dwelling is one of seven terraces in a row with a 'right of way' separating 113 and 115 Dawson St. The surrounding area consists of a variety of residential land uses including single dwelling houses, terrace houses, multi-dwelling developments and residential flat buildings.

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to an existing terrace house.

Further details of the proposed development are provided below:

- i) The front elevation of Dawson Street is to remain as existing.
- ii) Demolition of rear single storey extension (previous addition).
- iii) Demolition of rear wall of two storey terrace to make way for new addition which will accommodate an open plan kitchen and dining room at ground floor and a new bedroom, bathroom and powder room to the first floor.
- iv) Cosmetic updates to existing garage (previous addition) to tie into new works.
- v) Minor extension to garage to accommodate second bathroom and laundry.
- vi) New covered outdoor deck and landscaped garden to improve the private outdoor area.

A request for information was sent to the applicant on 29 September 2022, 6 October 2022, 20 December 2022 and 2 February 2023 in relation to overshadowing, bulk and scale, fencing, materials and finishes, garage and conservation works. Amended plans and documentation were received on 21 November 2022, 1 February 2023 and 15 February 2023 addressing the abovementioned matters. The amended plans received on 15 February 2023 will form the basis of the following assessment.

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

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

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with CN's Community Participation Plan. Two submissions were received in response.

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

1. Character

The objection raised concern that the contemporary additions will have a significant negative impact on the heritage significance of St Johns Church and streetscape and are not consistent with the principles of the Australia ICOMOS Burra Charter.

2. Materials and finishes

The objection raised concern that the contemporary materials and finishes will not maintain cohesion with the existing heritage listed terrace, church and heritage conservation area.

3. Sunlight and view loss

The objection raised concern in relation to the new brick boundary wall between 111 and 113 Dawson St on the original plans submitted. The amended plans have removed the new brick wall and retained the existing shared boundary fence. However, a new brick fence is proposed on the northeast boundary of 111 Dawson St which is considered acceptable.

It should be noted that the private space of 113 Dawson St is already overshadowed by existing buildings and the views of St Johns Church enjoyed by 113 Dawson St are through a side boundary directly over the private space of 111 Dawson St.

The current amended plans were not publicly notified as the amendments result in a lower impact than the original development.

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

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021 (R&H SEPP)

Chapter 4 - Remediation of land.

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

The site has been subdivided and prepared for residential development. Additionally, the site is not listed on City of Newcastle's land contamination register. The site is considered suitable for the proposed development and contaminated land investigation is not warranted in this instance. The proposal is acceptable having regard to this policy.

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

Chapter 2 - Vegetation in non-rural areas

In accordance with the requirements of the B&C SEPP the application has been assessed in accordance with Section 5.03 (Tree Management) of the Newcastle Development Control Plan (NDCP 2012).

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

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R3 Medium Density Residential zone under the provisions of NLEP 2012. The proposed development is defined as 'terrace housing' which is a type of 'residential accommodation' and is permissible with consent within the R3 Medium Density Residential zone under NLEP 2012.

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

- i) *To provide for the housing needs of the community within a medium density residential environment.*
- ii) *To provide a variety of housing types within a medium density residential environment.*
- iii) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- iv) *To allow some diversity of activities and densities if—*
 - a) *the scale and height of proposed buildings is compatible with the character of the locality, and*
 - b) *there will be no significant adverse impact on the amenity of any existing nearby development.*
- v) *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development—*
 - a) *has regard to the desired future character of residential streets, and*
 - b) *does not significantly detract from the amenity of any existing nearby development.*

The proposed alterations and additions to an existing two-level terrace house maximises residential amenity by providing an additional bedroom at the upper floor level, reconfiguring the ground floor level to provide an open plan kitchen and living area, upgrading materials and finishes, and refurbishing the covered outdoor area and associated landscaping. The proposed alterations and additions are consistent with the bulk and scale of surrounding development which includes other forms of multi-dwelling housing. Furthermore, the alterations and additions will only be visible when walking past a small portion of the southwest corner of St Johns Church along Dawson Street.

The proposed development is consistent with the objectives of the R3 Medium Density Residential zone by accommodating the housing needs of the resident within a narrow site while respecting the amenity and character of surrounding development.

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 4.3 - Height of Buildings

As the allotment is located in a heritage conservation area, no building height development standard applies. The existing primary roof will be maintained and not exceeded by the proposed works. The submitted height of the rear addition is approximately 6.85m. It is considered the proposal is satisfactory in this regard.

Clause 4.4 - Floor Space Ratio

As the allotment is located in a heritage conservation area, no floor space ratio development standard applies. The proposed additions will increase the gross floor area to approximately 150sqm in a 164.4sqm site. The proposed bulk and scale of the dwelling house is consistent with surrounding development and the additions are considered reasonable given the constraints of the site. It is considered the proposal is satisfactory in this regard.

Clause 5.10 - Heritage Conservation

The site is part of listed heritage item, 'Terraces', Item 84 on Schedule 5 of the NLEP 2012. It is also located in the Cooks Hill Heritage Conservation Area (HCA) (C1). The proposed development involves altering the exterior of an existing terrace dwelling, therefore consideration must be given to the effect of the proposed development on the heritage significance of the heritage conservation area. The application was referred to CN's Heritage Officer who provided a detailed heritage assessment of the site which has been summarised under section 6.02 of this report. It has been assessed that the proposed development will not detrimentally affect the heritage significance of the subject heritage item, adjoining state heritage item St John's Church, Heritage Conservation Area and surrounding heritage items that are within the vicinity of the proposed development. The proposed development is considered satisfactory in this regard.

Heritage NSW

The application was referred to Heritage NSW for comment as the site adjoins a state heritage item. The key advice received from Heritage NSW was to retain the existing first floor building profile to minimise adverse impacts to the setting and views to and from St John's Church, Hall and Grounds. The applicant provided amended plans reducing the bulk and scale of the rear addition retaining the original first floor roof profile and the new design distinguishes between new and original building elements. The advice from Heritage NSW stated that no further comment was required from Heritage NSW *"unless the design changes in a way that would impact the state*

significant values of St John's Church, Hall and Grounds". It is considered that the amended plans do not result in adverse impacts to the significance of the heritage item and further consultation is not required. Further details of the amended plans have been discussed under section 6.02 of this report.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils, however the proposed alterations and additions will not require any works two metre below the natural ground surface. 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 2012 (NDCP 2012)

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

Single Dwellings and Ancillary Development - Section 3.02

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

Street frontage appearance (3.02.03)

The setback of the proposed development to the street frontage boundary remains unchanged under this application. Therefore, this section is not applicable to the proposed development.

Side / rear setbacks (building envelope) (3.02.04)

The proposed rear addition to the upper floor level will provide a nil setback to the northeast side boundary which is consistent with the existing dwelling house and provide approximately a 0.9m setback to the southwest side boundary. The proposed ground floor level will be setback approximately 17m to the rear boundary and the upper floor level will be setback approximately 20m to the rear boundary. The development meets the Acceptable Solutions of the NDCP 2012 with respect to side and rear setbacks.

Landscaping (3.02.05)

The proposed development provides approximately 14sqm of landscaped area for a 164sqm site which equates to 8.5% of the site. Given the constraints of the site, it is considered that the proposed development will provide usable and proportionate landscaping to the allotment, that will improve the amenity of the subject site and the area. The proposed performance solution is considered satisfactory to the relevant Performance Criteria of this section.

Private open space (3.02.06)

The proposed development provides approximately a 4m x 3.5m area for private open space accessible from the living area. The development meets the Acceptable Solutions of the NDCP 2012 with respect to private open space.

Privacy (3.02.07)

The new ground floor bathroom addition to the garage will comprise privacy screening to the window opening (W03). The new window opening W102 at the upper floor level of the dwelling will service a bedroom and is considered a standard domestic sized window. In this regard, the proposed development is not expected to result in any unreasonable privacy impacts to adjoining properties. The development meets the Acceptable Solutions of the NDCP 2012 with respect to privacy.

Solar access (3.02.08)

The proposed addition will result in additional minor overshadowing to a portion of the rear yard of adjoining property 113 Dawson St at approximately 12pm, however it is noted that the private open space of 113 Dawson St is currently overshadowed from 9am to 3pm during the winter solstice. The living area of adjoining property 113 Dawson St is at the front of the property and no additional overshadowing will be cast to the front living room windows. The development meets the Acceptable Solutions of the NDCP 2012 with respect to solar access.

View sharing (3.02.09)

The proposed development will not obscure any iconic or water views of adjoining properties. The development is considered to meet the Performance Criteria of the NDCP 2012 with respect to view sharing. It is noted that a submission raised concern in relation to view loss of St Johns Church, however, this view is not considered of high value and is obtained through a side boundary partly over the private open space of the subject dwelling. In this regard, the proposed development is considered reasonable. Furthermore, the amended plans remove the new shared boundary brick wall and maintain the existing shared boundary fence between 111 and 113 Dawson St. The development meets the Performance Solutions of the NDCP 2012 with respect to view sharing.

Car parking and vehicular access (3.02.10)

The existing single garage will be retained. Given the limited site area and narrow width of the site, the car parking is considered reasonable for the minor additions. The development meets the Performance Solutions of the NDCP 2012 with respect to car parking.

Development within Heritage Conservation Areas (3.02.11)

The proposed development is considered to have minimal adverse impact on the conservation area and meet the requirements of Section 5.05 Heritage Item and Section 6.02 Heritage Conservation area of the Newcastle Development Control Plan 2012. Further details have been discussed under section 5.05 and 6.02.

Ancillary development (3.02.12)

Detached bathroom for existing loft (studio)

The proposed development proposes a bathroom and laundry to service the existing detached garage and loft. The bathroom will not result in any negative impacts to the site or streetscape and is compatible with the bulk and scale of the desired residential character of the locality. Furthermore, the development will incorporate a screen in front of the window servicing the bathroom ensuring privacy is maintained for the principal dwelling and adjoining properties. The development meets the Performance Solutions of the NDCP 2012 with respect to ancillary development.

Conclusion

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

Flood Management - Section 4.01

The site is within flood prone land however the additions are considered minor additions which are allowable without further reference to the provisions of this section, provided that the flood risk is not unreasonably increased. Accordingly, the proposal is acceptable in relation to flooding.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW. Accordingly, the proposal is acceptable in relation to mine subsidence.

Soil Management - Section 5.01

Cut and fill will be completed in accordance with the relevant objectives of this section. A condition will ensure adequate sediment and erosion management will remain in place for the construction period. Accordingly, the proposal is acceptable in relation to soil management.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with *SEPP (Resilience and Hazards) 2021*. The site is not considered to have any contamination constraints that will impact on the development of the site. Accordingly, the proposal is acceptable in relation to land contamination.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees. Accordingly, the proposal is acceptable in relation to vegetation management.

Aboriginal Heritage - Section 5.04

A search of the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site. Accordingly, the proposal is acceptable in relation to aboriginal heritage.

Heritage Items - Section 5.05

The site is part of listed heritage item, 'Terraces', Item 84 on Schedule 5 of the NLEP 2012. It is also located in the Cooks Hill Heritage Conservation Area (HCA) (C1).

The site is located in the vicinity of the following listed heritage items:

- i) 'St John's Church, Hall and Grounds' – 1D Parry Street Cooks Hill – State Heritage Register #00124
- ii) 'Nickimble Terrace Group' – 115–123 Dawson Street Cooks Hill – NLEP Item 85
- iii) 'Former St Hilda's Hostel' – 250 Darby Street Cooks Hill – NLEP Item 82

It has been assessed that the proposed alterations and additions are unlikely to detract from the row of terraces, adjacent heritage item (St John's Church) and other heritage items within the vicinity of the site. The new additions will be mostly visible when walking at the front of St Johns Church towards along Dawson Ave, however, the additions are not visible when walking along Parry St and other surrounding streets due to existing vegetation and Church buildings. In this regard, the proposal is satisfactory with respect to Section 5.05 Heritage Items of the NDCP 2012. Further details have been provided under section 6.02.

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'.

Part 6.00 Locality Specific Provisions

Heritage Conservation Areas - Section 6.02

The application was referred to CN's Heritage Officer and heritage comments have been summarised as follows:

The form of the addition has been broken down into a secondary form with a narrow linking elements to visually distinguish the addition from the host building. The roof line has been changed to sit below the existing skillion roof and maintain the integrity of the roof. The proposal as amended has a sculptural form when viewed from the northern side and will be visually interesting without detracting from the heritage terrace. The length of the addition is modest and well proportioned compared to the heritage building, maintaining the prominence of the existing terrace.

The amended scheme retains the existing roof fabric and scale of the dwelling, with all new work located behind and below the terrace.

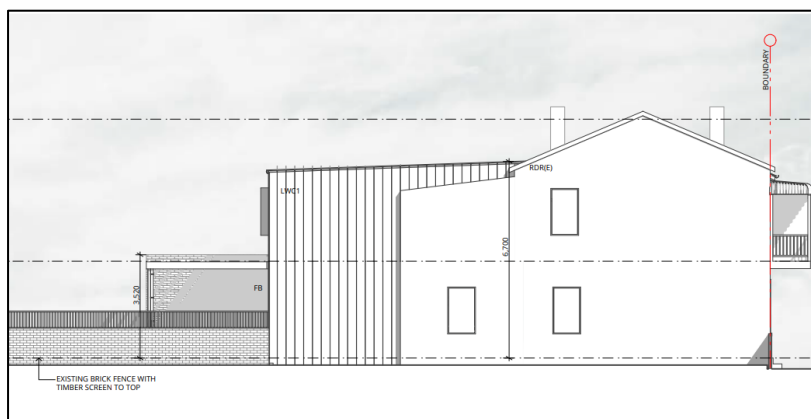


Figure 1 North elevation as originally submitted.

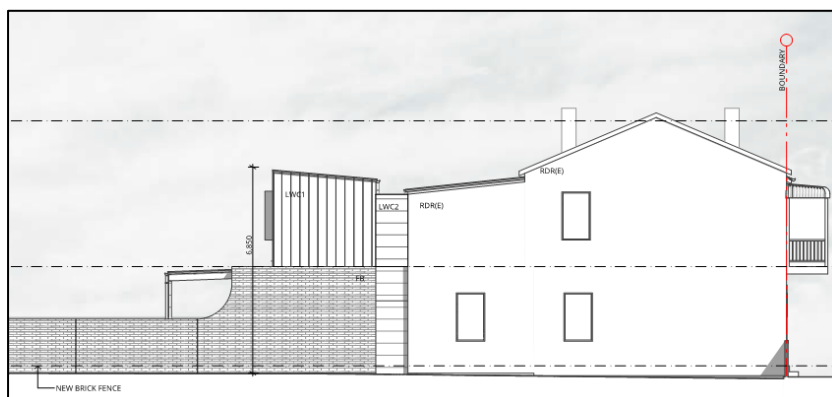


Figure 2 Amended north elevation.

Views to the addition will be achieved in a narrow view from Dawson Street however will be otherwise blocked by the St John's Church School to the north. The addition is set back within the site and is considered unlikely to detract from the adjacent heritage item.

As amended it is considered that the proposal demonstrates a good fit with the eclectic character of the Cooks Hill HCA, maintaining the prominence of the heritage building and suitably minimising bulk and scale. The nature of the streetscape, being characterised by terrace forms, mean that views to the addition will only be noticeable from particular angles on Dawson Street.

The site adjoins heritage-listed St John's Church; however views to the addition are limited. Significant views to the church building will not be impacted. Due to the composition of the church site, buildings and landscaping, the proposed addition cannot be viewed from Parry Street or when standing near to the Church.

The proposed materials and finishes incorporate brickwork as the dominant element at the ground floor. The first floor is proposed to be clad with a lightweight metal cladding in a warm red zinc finish. The proposed brick is consistent with the traditional materials palette of the area but is distinguished as contemporary through the incorporation of rounded forms which is considered to be positive. The use of zinc was recommended by the project heritage consultant and is supported as a durable and high quality material that will not detract from the warm palette of the surrounding area. Traditional details associated with the existing heritage building are to be retained. A condition of consent is recommended in this regard.

Conditions recommended by CN's Heritage Officer will be included in the conditions of consent.

Subject to conditions of consent, the development is considered to meet the objectives of the NDCP 2012 with respect to heritage.

Landscape Open Space and Visual Amenity - Section 7.02

The proposed development will provide usable and proportionate landscaping to the allotment, that will maintain the amenity of the subject site and the area. Accordingly, the proposal is acceptable in relation to landscaping.

Traffic, Parking and Access - Section 7.03

The site will retain the existing single garage and no changes are proposed to the parking arrangements. Accordingly, the proposal is acceptable in relation to car parking.

Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

Alterations and additions within the existing building footprint do not require additional discharge controls. Furthermore, the requirement to manage runoff does not apply for additions less than 50sqm.

The proposed development will discharge into the existing stormwater system which is considered acceptable given the proposed development will result in additions less than 50sqm. Standard conditions relating to stormwater details will be included in the consent to ensure the stormwater system complies with the relevant aims and objectives of the NDCP 2012. Subject to conditions, the proposal is acceptable in relation to stormwater.

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

Development Adjoining Laneways - Section 7.11

The existing two storey garage will be retained and materials and finishes will be updated to match the principal dwelling. Accordingly, the proposal is acceptable in relation to development on adjoining laneways.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the NDCP 2012. A total of two submissions objecting to the proposal were received.

Comments are provided in Section 5.8 below.

Development Contributions

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

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

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

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

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.

It is noted that a firepit is located in the rear yard and is recommended to be deleted from plans as open firepits are not regulated by CN or planning legislation.

5.7 The suitability of the site for the development

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

The constraints of the site have been considered in the proposed development, which includes flooding, 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 notified in accordance with CN's Community Participation Plan. Two submissions were received during the notification period.

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

Issue	Comment
Brick wall on the boundary - impact sunlight and obscure view of St John's Church.	The amended plans delete the brick wall and retain the existing fence. This matter has been resolved through submission of amended plans.
The character of the proposed addition would have a negative impact on the heritage values of St John's Church.	<p>The site adjoins St Johns Church, Hall and Grounds – a heritage item listed on the NSW State Heritage Register. The composition of the St Johns Church site orientates the main church building to Parry Street, in the northern extent of the site, and the church hall in the western extent of the site facing Dawson Street (adjoining the subject property).</p> <p>Due to the exposed northern elevation of the subject site, and the setback of the church hall from Dawson Street and the subject site, the rear addition will be visible from certain points within the church site and from Dawson Street.</p> <p>Reference is made to the Heritage Impact Statement (HIS) (by Contemporary Heritage, 2022) which notes that <i>'the significance of the Church and Hall shall not be diminished as a result of the proposed work to the adjacent building as the setting of the church shall remain essentially as it is, within a predominantly residential context and on generous grounds.'</i></p> <p>A Conservation Management Plan (CMP) (by Carste Studio, 2017) for St John's Church is referenced throughout the HIS. The CMP identifies significant street views and internal views to the church site. The proposed development does not conflict with any identified views. The HIS notes the following: <i>'there are no identified views to, from or between the church and 111 Dawson Street that are of any significance. That being considered, sympathetic development of the subject site should still remain a priority.'</i> The CMP also identifies areas of the church site that could potentially accommodate future development and carparking. The HIS notes that <i>'there is considered to be reasonable justification for development on the southern and eastern sides of the Church. Of course this plan refers to new work relating to and within the church</i></p>

	<p><i>grounds however it is clear that the land between 111 Dawson Street and the hall building is considered among the least impactful areas that could allow development without detracting from the significance of St John's.'</i></p> <p>Since the preparation of the HIS, the design has been amended several times which has resulted in reduced height; reduced bulk and scale; protection and retention of the existing terrace roof form and profile; clear separation between the existing dwelling and the new addition; and revision of proposed materials palette. The amended design was also revised in response to comments from Heritage NSW regarding the setting of St John's Church, discussed in Section 5.1 above.</p> <p>The addition is set back within the site and is considered unlikely to detract from the adjacent heritage item. Significant views to St John's Church, obtained from the corner of Dawson and Parry Street, will not be impacted. Significant views to the Church Hall will also not be impacted, as hall building itself blocks visibility of the addition when viewing from the north, and the existing terrace blocks views of the addition when viewing from the south. Due to the composition of the church site, buildings and landscaping the proposed addition cannot be viewed from Parry Street or when standing near to the Church, which is the principal item of significance within the St John's site.</p> <p>The addition will be visible in certain angles from Dawson Street between the subject site and the Church Hall. For this reason, the amended design presents a high quality architectural outcome. The setback of the addition and the dominance of the existing terrace dwelling ensure that the addition will not have an overbearing or intrusive character. It is also noted that the height of the addition is significantly lower than the height of the existing terrace and lower than the height of the Church Hall building.</p>
<p>The character of the proposed addition would have a negative impact on the heritage streetscape of Dawson Street.</p>	<p>The nature of the streetscape, being characterised by terrace forms, mean that views to the addition will only be noticeable from particular angles on Dawson Street. Views to the addition will be achieved in a narrow view from Dawson Street however will be otherwise blocked by the St John's Church Hall to the north.</p> <p>The design has been amended several times which has resulted in reduced height; reduced bulk and scale; protection and retention of the existing terrace roof form and profile; clear separation between the existing dwelling and the new addition; and revision of proposed materials palette. As amended, the</p>

	addition is modest in size and will be subservient to the character of the existing terrace dwelling.
The contemporary finish and design is incompatible with the existing terrace and would impact the adjoining church and streetscape.	<p>It is established practice for new additions to heritage buildings to avoid faux-heritage details or mimicry to ensure the integrity of the heritage item is retained, and the proposed development is 'of its time'.</p> <p>The amended design is considered to reflect a high-quality finish, which was considered to be important given there are some limited views available between the terrace and the adjoining Church Hall.</p> <p>The proposed form of the addition takes cues from the heritage terrace, in that the roof form mirrors the pitch of the existing roof, and the overall height has been reduced to match the eaves of the original part of the terrace to ensure the prominence of the terrace is retained. The proposed materials palette references the traditional materials of the area. The proposed fence on the northern boundary is to be exposed brick, similar to what is existing. The existing terrace is to be retained as painted brickwork. The use of a warm zinc cladding to the upper level addition is a relatively small area and complements the warm brick tones throughout the suburb.</p> <p>Further, it is noted that contemporary/contrasting forms are supported by Section 6.02 of the NDCP 2012 for pavilion style additions where they are not visible from public areas. Due to the exposed northern elevation, it is not possible for any development to be undertaken on this property that would be invisible from Dawson Street. In this instance, it is considered that the amended design demonstrates sufficient merit as a high quality architectural form, of a modest scale, without jarring with or detracting from the heritage terrace.</p>
The proposed development is inconsistent with the Burra Charter in relation to infill ("new work") within a HCA.	<p>The Burra Charter provides guidance for the conservation and management of places of cultural significance. It is considered that the proposed development is consistent with the principles of the Burra Charter in relation to new work, where it is noted that new work should be readily identifiable as such but must respect and have minimal impact on the significance of a place. The form of the addition at the rear of the dwelling is clearly identifiable as a contemporary structure, however the modest scale, use of sympathetic materials and minimal visibility from Dawson Street limit the potential for adverse impact on the Heritage Conservation Area.</p>

5.9 The public interest

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

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

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

6.0 CONCLUSION

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

ATTACHMENTS

Attachment A: Submitted Plans – 111 Dawson St Cooks Hill
Attachment B: Draft Schedule of Conditions - 111 Dawson St Cooks Hill
Attachment C: Processing Chronology - 111 Dawson St Cooks Hill

Attachments A – C: Distributed under separate cover

7.7. 182 HUNTER STREET NEWCASTLE - DA2021/01505 - MIXED-USE DEVELOPMENT (COMMERCIAL AND SHOP TOP HOUSING) - INVOLVING ALTERATIONS AND ADDITIONS TO LOCALLY LISTED HERITAGE

APPLICANT: SLR CONSULTING AUSTRALIA
OWNER: LITERARY TRADING COMPANY PTY LTD
NOTE BY: PLANNING AND ENVIRONMENT
CONTACT: INTERIM EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING MANAGER PLANNING, TRANSPORT AND REGULATION

PART I

PURPOSE

A development application (DA2021/01505) has been received seeking consent to carry out alterations and additions to a heritage listed building to facilitate a mixed use development (commercial and shop top housing) at 182 Hunter Street, Newcastle.

The submitted application was assigned to Senior Development Officer Ethan Whiteman for assessment.

The application is referred to the Development Applications Committee (DAC) for the following reasons:

- i. The value of the proposed development exceeds \$15 million, being \$16,297,314.
- ii. 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. A 32.45% variation is proposed.
- iii. The proposed variation to the floor space ratio development standard of the NLEP 2012 being a 10.3% variation.



Subject Land: 182 Hunter Street Newcastle

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

The original proposal was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP), between 26 November and 9 December 2021. In response, a total of 16 submissions were received during the first notification period.

In response to issues raised during the assessment process, several amendments to the original proposal were made and the amended proposal was re-notified between 25 July and 8 August 2022. The second round of public notification also resulted in 16 submissions being received.

The concerns raised by the objectors in respect to the amended proposal include view loss, height exceedance, floor space ratio, solar access, traffic and parking, heritage, bulk and scale, noise, streetscape/character, impact on local infrastructure and construction concerns.

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) Height of Buildings – The proposed development has a building height of 26.49m and does not comply with the maximum building height of 20m as prescribed under Clause 4.3 of the NLEP 2012. The Applicant has submitted a cl. 4.6 Variation Request.
- 2) Floor Space Ratio -The proposed development has a floor space ratio of 3.3:1 which does not comply with the maximum FSR of 3:1 as prescribed under Clause 4.4 of the NLEP 2012. The Applicant has submitted a clause. 4.6 Variation Request.
- 3) Matters raised in the submissions including view loss, height exceedance, floor space ratio, solar access, traffic and parking, heritage, bulk and scale, noise, streetscape/character, impact on local infrastructure and construction concerns.
- 4) The subject site is listed for its local heritage significance in NLEP 2012 and is known as I409 - Former School of Arts. The proposal is for the adaptive re-use of the building and addition of floors above the existing built form, with the appearance of the building from the public domain and the streetscape forming key issues in the assessment.

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the

circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B4 Mixed Use Zone in which the development is proposed to be carried out; and

- B. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the B4 Mixed Use Zone in which the development is proposed to be carried out; and
- C. That DA2021/01505 for alterations and additions to a heritage listed building to facilitate a mixed use development (commercial and shop top housing) at 182 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**; and
- D. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 212 in DP 660080 and is a rectangular allotment with three street frontages to Hunter Street, Wolfe Street and Scott Street. The site has a total area of 768.98m², and is relatively flat with a gentle fall to the Scott Street boundary (north). The site has a frontage to Hunter Street Mall to the south.

The site currently contains a two-storey masonry building within an RL of 15.97 that is occupied by a variety of small retail shops at the ground floor and is vacant at the first floor. The site is devoid of any vegetation.

The site is zoned B4 – Mixed Use. The surrounding area over recent years has been undergoing urban renewal, transitioning from generally low scale commercial and retail uses into a mixed-use precinct characterised by ground level commercial uses with medium rise residential apartments above.

2.0 THE PROPOSAL

The development application seeks consent for partial demolition of the existing building and construction of a six-storey mixed-use development comprising ground floor retail tenancies with shop top housing (14 apartments), car parking and associated site works.

The existing heritage building was constructed in three stages, with the original building being the section fronting Hunter Street (the Cox building). The application proposes adaptive reuse of the Cox building as a bookstore, and incorporation of the facades of the rest of the building to the Wolfe and Scott Street frontages with four additional levels of residential units constructed above.

The ground floor comprises the retail bookstore tenancy, two additional smaller retail tenancies facing Wolfe Street, services, waste storage, and a secured parking area with vehicle access provided from Scott Street.

A total of 22 car spaces are provided across the ground and mezzanine levels with access between them provided via a car lift. The proposed development also provides two motorcycle spaces and 18 bicycle spaces.

The development comprises the following elements:

- i) Building height of RL28.79 (26.49m) to the lift over run, RL27.54 to upper floor roof, RL 25.09 to upper floor ground level.
- ii) Four levels of new built form above the parapet of the existing building, with the top-level setback and articulated, massed toward the existing building to the east.
- iii) A total gross floor area of 2,544.8m².

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

A copy of the current plans as amended are 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 original proposal was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP), between 26 November and 9 December 2021. A total of 16 submissions were received during the first notification period.

Amendments and additional information was requested by CN early in the assessment. In response, several amendments to the original proposal and additional information was submitted in July 2022.

The July 2022 amended proposal was re-notified for a period of 14 days between 25 July and 8 August 2022. The second round of public notification also resulted in 16 submissions.

The most recent amendments to the proposal occurred in December 2022, to address ongoing heritage concerns raised by CN in regard to the proportion of heritage fabric to be incorporated into the development.

The most recent set of architectural documentation submitted in December 2022 was not re-notified as the amendments resulted in a lower impact than the original development, related to internal changes and did not affect the building form. However, the amended plans were made publicly viewable via the development tracker on CN's website.

The concerns raised by the objectors in respect of the proposed development are detailed in the following sections of this report.

4.0 INTEGRATED DEVELOPMENT

The proposal is not '*integrated development*' pursuant to Section 4.46 of the EP&A Act, as the applicant has submitted plans stamped by Subsidence Advisory New South Wales, negating the need for general terms of approval to be issued by SANSW through the development assessment process.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R&H)

Chapter 2- Coastal Management

Chapter 2 of the SEPP R&H seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the Coastal Management Act 2016 (the Act). The 'coastal zone'

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

The site is located within the Coastal Use and Coastal Environment Area as identified under the SEPP. The proposal is considered to be consistent with Clauses 2.10, 2.11 & 2.12 of this SEPP.

Accordingly, it is not anticipated that the proposed development will result in any significant coastal hazards to the subject site or to other lands. The proposed development is not inconsistent with the provisions of Chapter 2 of SEPP R&H.

Chapter 4 - Remediation of land

Chapter 4 SEPP R&H provides that prior to granting consent to the carrying out of any development on land the consent authority is required to consider 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 acceptable having regard to this policy. Overall, the proposal is considered suitable for the intended land use and to be acceptable subject to conditions of consent recommended at **Attachment B**.

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

Transport for NSW (TfNSW)

The proposal was referred to TfNSW in accordance with Clauses 2.119 & 2.120 of this SEPP, as the proposed development is proposing vehicular access to a classified road and will likely be affected by noise given the daily traffic volume. A referral has been completed to Transport for NSW, with comments received on 25 January and 27 July 2022. Within the comments the following pertinent detail is noted:

- i) Clause 2.119 of the SEPP encourages that, where practicable and safe, vehicular access is to be provided alternate to the classified road network if available. In this instance, this would encourage access via Hunter and or Wolfe Streets however all three frontages are heritage facades with Scott Street being perhaps the least sensitive. On this basis, TfNSW raised no objection to or requirements for the subject development.
- ii) TfNSW encouraged CN to ensure the applicant is aware of the potential for road traffic noise to impact on the development of the site, particularly noise generated by Scott Street. In this respect the applicant has submitted an acoustic assessment that recommends measures to be implemented into the construction of the building to mitigate noise impacts. Implementation of the recommendations of the Acoustic report will be imposed as a condition of consent.

TfNSW did not raise objection or any requirements for the subject development and therefore the proposal is considered to have met the requirements of this SEPP.

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

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

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 shop top housing 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.

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

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

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

Initially, the development application was reviewed at the meeting of the UDRP held 23 November 2021. In response to matters raised during the assessment process and by the Panel, several amendments to the application were made and the amended application was referred to the UDRP for a second time at the meeting held 25 May 2022.

The most recent amendments to the application occurred in December 2022, taking into account the advice from the 25 May 2022 UDRP meeting.

An assessment of the proposed development, as amended, has been undertaken having regard to the UDRP 25 May 2022 advice in relation to the Design Quality Principles. The most recent amendments and additional information submitted has adequately responded to the matters raised by the UDRP in respect to the previous

iteration. On 10 February 2023 the UDRP confirmed that the revisions and amended plans prepared by the applicant addressed the matters previously raised by the Panel.

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

Further, the application has been assessed for compliance with the required topic areas within Parts 3 and 4 of the ADG pursuant to Clause 6A under SEPP 65. This assessment only addresses compliance with the objective and design criteria of the required topic area.

Where a required topic area is not a specified design criteria, or where it is not possible for the development to satisfy the design criteria, the compliance comments in the following table will have regard to the design guidance relevant to that topic area. Compliance with required topic areas of the ADG is outlined below.

3B Orientation	
Objective 3B-2	
Overshadowing of neighbouring properties is minimised during mid winter	
Comment:	Compliance:
<p>The development is located within an established urban context, with its long axis facing east / west and streets on three of four boundaries. The fourth boundary on the eastern side is shared, with existing neighbouring buildings built to the boundary.</p> <p>The proposed development maintains the existing building footprint and its general orientation to the street frontages. The new floors above are laid out generally to facilitate solar access to the apartments and the streets within its context, having considered proximity of existing developments that already overshadow the site. Proposed new upper floors are set back from the existing heritage listed buildings facades on all three street frontages. The new upper levels are stepped along the north and west facades to increase external wall area and provide northern facing opportunities for balconies and living spaces within apartments.</p> <p>The effect regarding additional overshadowing to the public domain, specifically Wolfe Street and Hunter Street, is negligible within the context of the site, surrounding existing buildings and established trees along Hunter Street. This is demonstrated in the architectural plans.</p> <p>The proposed development is considered satisfactory regarding overshadowing to the public domain and neighbouring buildings.</p>	Complies

3D Communal and public open space		
Objective 3D-1		
An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		
Design Criteria:	Comment:	Compliance:
<p>1. Communal open space has a minimum area equal to 25% of the site.</p>	<p>The 25% of total site area equals 192.3m².</p> <p>The proposed development includes a residential communal meeting space and library area on level 1 located as part of the common circulation / residential access corridor for the floor. This is an internal space with natural light provided via a light well.</p> <p>Previously communal outdoor space for the development was proposed on the upper floor levels. The UDRP recommended strongly that common space be returned to upper levels if not provided for residents in the retail area.</p> <p>The residential communal meeting space and library is the only communal area currently proposed by the development. It has an area of approx. 23m². This equates to 3% of the total site area.</p> <p>A merit based assessment is included below.</p>	<p>Satisfactory (Merit based assessment)</p>
<p>2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).</p>	<p>The communal meeting space and library is approximately in the centre of the eastern side of the building, against the boundary shared with the existing neighbouring building. It is located on Level 1 of the development, with four floors of apartments over. Natural light to the communal space is provided by a light well with glazing over at roof level.</p> <p>In mid-winter the glazing over the light well at roof level will be in direct</p>	<p>Satisfactory (Merit based assessment)</p>

	<p>sunlight for more than 2hrs, however the residential communal meeting space and library will get indirect light only as it is 5 floors below the roof.</p> <p>A merit-based assessment is included below.</p> <p>Merit assessment:</p> <p>The proposed development is relatively small in an urban environment where recent public works provide quality extensive outdoor open space close by. The development is almost exclusively 3+ bed apartments that are tailored to the higher end of the residential market. It does not include high numbers of 1 and 2 bed small sized apartments with little amenity internally, where it is important to provide high quality communal outdoor spaces for the occupants. The apartments in 182 Hunter St generally have better than satisfactory amenity in their living and balcony spaces, which would likely be compromised if the development were to try to squeeze in a communal outdoor area.</p>	
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3E Deep soil zones								
Objective 3E-1								
Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.								
Design Criteria:	Comment:	Compliance:						
<p>1. Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th> <th>Minimum dimensions</th> <th>Deep soil zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td>greater than 1500m²</td> <td>6m</td> <td>7%</td> </tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	greater than 1500m ²	6m	7%	<p>This site has an area of 768.98m², therefore deep soil zones need to have a minimum dimension of 3m and 7% of total site area. This equates to 53.8m².</p> <p>Achieving the design criteria is not possible on the subject site's location and within the constraints of its context. It includes a heritage listed building which occupies the full extent of the side, and there is 100% occupation of site coverage of non-residential uses on the ground floor. The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites due to various circumstances, which are consistent with the subject development's site situation.</p> <p>Alternative planting forms are provided throughout the proposed development, on structures including balconies and podium levels. This is a suggested alternative method of complying with the objectives of the design criteria. In this regard the proposed development is considered acceptable.</p>	<p>Satisfactory (Merit based assessment)</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)						
greater than 1500m ²	6m	7%						

3F Visual privacy														
Objective 3F-1														
Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.														
Design Criteria:	Comment:	Compliance:												
<p>1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Building height</th> <th style="width: 25%;">Habitable rooms & balconies</th> <th style="width: 25%;">Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2). Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms & balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	<p>Streets front three sides of the subject site, west of the site is Wolfe St, south of the site is Hunter St and north of the site is Scott St. The eastern side of site is an existing building built to a zero-boundary alignment. As such separation distances are not relevant to any of the subject site's boundaries as described under the design criteria.</p> <p>The existing heritage building has zero or near-zero alignments to all boundaries and is being maintained with no changes. This has historically set the building separation relationship with the neighbouring buildings.</p> <p>Proposed levels above are set back to varying distances on different facades to be visually recessive from the Heritage building below. These setbacks, while not specifically relating to the design criteria, provide for satisfactory separation considering the context of the streetscape, neighbouring developments and the sites location within it.</p> <p>Additional privacy measures are included in the design, with balcony elements, building facade screening and landscaping providing additional visual privacy to and from the proposed development relative to nearby residential developments under-construction or those recently constructed.</p> <p>It is considered that the development is consistent with the intent of the objective and is acceptable.</p>	<p>Satisfactory (Merit based assessment)</p>
Building height	Habitable rooms & balconies	Non-habitable rooms												
up to 12m (4 storeys)	6m	3m												
up to 25m (5-8 storeys)	9m	4.5m												
over 25m (9+ storeys)	12m	6m												

A4 Solar and daylight access		
Objective 4A-1		
To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space		
Design Criteria:	Comment:	Compliance:
<p>1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</p>	<p>The proposed development has 13 out of 14 apartments achieving a minimum of two hours of sunlight at midwinter to balconies and the internal living space. This equates to 92% of apartments which is more than the 70% requirement.</p> <p>Measures have been taken to provide additional sunlight to apartments on Level 1 by providing openings above the balconies of apartments 1.01 and 1.02, as the first floor is located within the heritage building and maintains existing windows / openings on the facade for both internal and external living spaces. This assists these spaces to be provided more direct sunlight.</p>	Complies
<p>2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter.</p>	Not Applicable	N/A
<p>3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</p>	One apartment does not receive any direct sunlight in midwinter. This equates to 8% of total apartments and is less than the 15% maximum allowable and therefore complies.	Complies

4B Natural ventilation		
Objective 4B-3		
The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.		
Design Criteria:	Comment:	Compliance:
<p>1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p>	<p>A total of 60% of apartments are required to be cross ventilated. The proposed development has 14 apartments, equating to 8.4 apartments being required. The proposed development achieves 9 apartments that are naturally cross ventilated which is 64%.</p> <p>Five apartments are single fronted apartments using stepped facades to enable windows on two sides of the living spaces, in order to maximise ventilation where possible naturally.</p> <p>Layouts of the corner apartments allow for natural ventilation in various pathways.</p> <p>All habitable rooms include operable windows/doors and can be naturally ventilated.</p>	Complies
Design Criteria:	Comment:	Compliance:
<p>2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	Not Applicable	N/A

4C Ceiling heights										
Objective 4C-1										
Ceiling height achieves sufficient natural ventilation and daylight access.										
Design Criteria:	Comment:	Compliance:								
<p>1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="background-color: #cccccc;">Minimum ceiling height for apartment and mixed use buildings</th> </tr> </thead> <tbody> <tr> <td style="width: 30%;">Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use</td> </tr> </tbody> </table> <p>These minimums do not preclude higher ceilings if desired.</p>	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p>The ground floor retail area maintains the existing floor to floor height of 4.85m in the main retail areas. This achieves the minimum required 3.3m ceiling height for the ground level. Floor / ceiling heights have been reduced in the new proposed parking areas within the heritage building, to allow a second floor of parking space.</p> <p>The first floor level apartments include a mixture of utilising the existing heritage building ceiling height of 4.3m, or being above the new car parking structure where the ceiling height is then 3.57m. These are both more than the 3.3m required for first floor ceiling heights in mixed use areas.</p> <p>The four new floors over have a floor-to-floor height of 3.15m. This allows for a 450mm depth for the floor / ceiling structure to achieve the minimum ceiling height of 2.7m which is adequate.</p>	<p>Complies</p>
Minimum ceiling height for apartment and mixed use buildings										
Habitable rooms	2.7m									
Non-habitable	2.4m									
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use									

4D Apartment size and layout												
Objective 4D-1												
The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.												
Design Criteria:	Comment:	Compliance:										
<p>1. Apartments are required to have the following minimum internal areas:</p> <table border="1"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>studio</td> <td>35m²</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> </tr> <tr> <td>2 bedroom</td> <td>70m²</td> </tr> <tr> <td>3 bedroom</td> <td>90m²</td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Apartment type	Minimum internal area	studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>All 14 apartments have internal areas that are in excess of the minimum required. Layouts of apartments after the latest amendments provide better functionality and more usable spaces within the apartment in general for easy living. There are some minor awkward or clunky spaces / areas, however this is generally minimal overall.</p>	Complies
Apartment type	Minimum internal area											
studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											
Design Criteria:	Comment:	Compliance:										
<p>2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	<p>All habitable rooms within the apartments have window or doors within an external wall. There are no situations of borrowed daylight from adjoining rooms.</p>	Complies										
Objective 4D-2												
Environmental performance of the apartment is maximised.												
Design Criteria:	Comment:	Compliance:										
<p>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	<p>All apartments are provided with combined living dining kitchen open-space areas.</p>	Complies										
Design Criteria:	Comment:	Compliance:										

<p>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p>A total of 11 out of 14 apartments have a maximum habitable room depth of less than 8m from a window for an open plan living / dining / kitchen area to the furthest kitchen bench.</p> <p>The 3 non-complying units are:</p> <ul style="list-style-type: none"> • Apartments 2.02, 3.02 and 4.02 – 3 Bed apartment (same internal layout). <p>The maximum distance from a window to the furthest kitchen cabinetry is 8.25m. It is considered that the 0.25m exceedance is nominal and will have minimal impact on the environmental performance of the apartments.</p>	<p>Satisfactory (Merit based assessment)</p>
<p>Objective 4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs.</p>		
<p>Design Criteria:</p>	<p>Comment:</p>	<p>Compliance:</p>
<p>1. Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</p>	<p>All master bedrooms have a minimum area of 10m², and 18 of the 31 remaining bedrooms have a minimum area of more than 9m², excluding the wardrobe space equating to 42%.</p> <p>The 13 non-complying bedrooms are:</p> <ul style="list-style-type: none"> • Apartment 1.01 – 4 Bed apartment. <p>One of the 4 bedrooms has an area of approximately 8.2m². The 3 other bedrooms are in excess of the minimum areas being approximately 10.7m², 11.8m² and 13.1m². It is also noted that this apartment is located within the existing heritage item on the first floor and is configured utilising existing window locations of the heritage building. In this regard it is considered that the non-conforming bedroom is satisfactory.</p> <ul style="list-style-type: none"> • Apartments 2.01, 3.01 and 4.01 – 4 Bed apartment. 	<p>Satisfactory (Merit based assessment)</p>

	<p>Each have one bedroom with an area of approximately 8.5m².</p> <ul style="list-style-type: none"> • Apartments 2.02, 3.02 and 4.02 – 3 Bed apartment. <p>Each have one bedroom with an area of approximately 8.3m², plus 1 bedroom with an area of approximately 8.55m².</p> <ul style="list-style-type: none"> • Apartments 2.03, 3.03 and 4.03 – 3 Bed apartment. <p>Each have one bedroom with an area of approximately 8.85m²</p>	
<p>Design Criteria:</p> <p>2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p>	<p>Comment:</p> <p>A total of 26 of 45 bedrooms in the proposed development have bedrooms with a dimension less than the 3m minimum dimension of the design criteria. This equates to around 58% of the bedrooms in the development.</p> <p>Most of these bedrooms have a dimension of 2.8m or over. It is considered that the 0.2m shortfall is minimal and will have minimal impact on the general livability and performance of the apartments.</p> <p>The 4 non-complying bedrooms with reduced amenity are:</p> <ul style="list-style-type: none"> • Apartment 1.03 – 3 Bed apartment. <p>The proposed new structural column location intrudes into the bedroom and reduces the clear dimension to 2.7m in one direction and approximately 2.15m in the other. It is noted that the new structural column locations are indicative and subject to detailed design. If this column location was to remain unchanged it would restrict the bedrooms overall amenity and function ability. A suggested alternative would be a blade column located partially within the wall</p>	<p>Compliance:</p> <p>Capable of compliance at CC stage</p>

	<p>shared with the main bedroom. This would significantly improve the bedrooms amenity.</p> <ul style="list-style-type: none"> • Apartments 2.03, 3.03 and 4.03 – 3 Bed apartment. <p>The irregular shaped bedroom has a dimension of 2.6m from the wall adjacent to the door and the wardrobe. This restricts the amenity and function of the room.</p> <p>It is noted that some of the non-complying bedroom dimensions may be able to be increased slightly be as part of the detailed design / construction documentation works process.</p>	
<p>Design Criteria:</p> <p>3. Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments. • 4m for 2 and 3 bedroom apartments. 	<p>Comment:</p> <p>All apartments in the proposed development have living rooms or combined living / dining rooms which achieve the minimum distances required for the number of bedrooms provided in the apartment.</p>	<p>Compliance:</p> <p>Complies</p>
<p>Design Criteria:</p> <p>4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</p>	<p>Comment:</p> <p>Not applicable</p>	<p>Compliance:</p> <p>N/A</p>

4E Private open space and balconies																	
Objective 4E-1																	
Apartments provide appropriately sized private open space and balconies to enhance residential amenity.																	
Design Criteria:	Comment:	Compliance:															
<p>1. All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Min. area</th> <th>Min. depth</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Min. area	Min. depth	Studio	4m ²	-	1 bedroom	8m ²	2m	2 bedroom	10m ²	2m	3+ bedroom	12m ²	2.4m	<p>A total of 13 of the 14 apartments have primary balcony areas that achieve the minimum area and depths required.</p> <p>The one non-complying apartment is:</p> <ul style="list-style-type: none"> Apartment 1.03 – 3 Bed apartment <p>The balcony of the apartment has an area of approximately 11.1m². The minimum depth of the balcony is 3.0m which is in excess of the 2.4m minimum requirement. The balcony as proposed is rectangular in shape with dimensions of 3.0m x 3.7m. This shape and size of balcony can provide at least as much amenity as one achieving the minimum area with a maximum depth of 2.4m.</p> <p>It is deemed that the shortfall in area is made up in the resulting configuration that provides for various different uses of the space and is satisfactory.</p>	<p>Satisfactory (Merit based assessment)</p>
Dwelling type	Min. area	Min. depth															
Studio	4m ²	-															
1 bedroom	8m ²	2m															
2 bedroom	10m ²	2m															
3+ bedroom	12m ²	2.4m															
Design Criteria:																	
<p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	<p>All of the apartments located on a podium or similar structure (Second Floor and Fifth Floor) have a private open space in excess of the 15m² minimum requirement and have depth of more than the 3m minimum requirement.</p>	<p>Complies</p>															

4F Common circulation and spaces		
Objective 4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments.		
Design Criteria:	Comment:	Compliance:
1. The maximum number of apartments off a circulation core on a single level is eight.	The maximum number of apartments accessing a circulation core on a single level is four on level one. All other levels apart from Level 5 have three apartments only. Level 5 is a single penthouse apartment.	Complies
Design Criteria:	Comment:	Compliance:
2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not applicable	N/A

4G Storage										
Objective 4G-1 Adequate, well designed storage is provided in each apartment.										
Design Criteria:	Comment:	Compliance:								
1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	It appears that all apartments will be provided with more than the minimum storage volumes required in accordance with the number of bedrooms provided.	Complies								
<table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>1 bedroom</td> <td>6m³</td> </tr> <tr> <td>2 bedroom</td> <td>8m³</td> </tr> <tr> <td>3+ bedroom</td> <td>10m³</td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	1 bedroom	6m ³	2 bedroom	8m ³	3+ bedroom	10m ³	There appears to be adequate additional storage provisions located within each apartment. There are also compartmentalised storage spaces within the car park areas that appear to be for use by each apartment.	
Dwelling type	Storage size volume									
1 bedroom	6m ³									
2 bedroom	8m ³									
3+ bedroom	10m ³									

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

The proposed signage is acceptable having regard to SEPP I&E requirements and the nature of the development.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the B4 Mixed Use Zone under the provisions of NLEP 2012, within which the proposed development is permitted with CN's consent as **Commercial Premises** and **Shop top Housing**.

The proposed development is consistent with the objectives of the B4 Zone which are:

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

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

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 20m. The proposed development will result in a maximum height of 26.49m, equating to an exceedance of 6.49m or 32.45% above the height of buildings development standard for the subject land.

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

Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 3:1.

The proposed development will result in a total FSR of 3.3:1 through establishing a Gross Floor area of 2544.8m², equating to an exceedance of 237.8m² or 10.3% above the prescribed maximum FSR for the subject land.

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

Clause 4.6 - Exceptions to Development Standards

The applicant has submitted written requests that seek to vary the Height of Buildings (Clause 4.3) and Floor Space Ratio (Clause 4.4) development standards in accordance with Clause 4.6 of NLEP 2012.

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

The Objectives of 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.*

The requests have been considered and assessed separately as outlined below:

Clause 4.6 Variation to Building Height

The proposed development results in a variation of 6.49m, exceeding the principal development standard for the allotment by 32.45%. **Figure 1** displays the intended breach to building height.

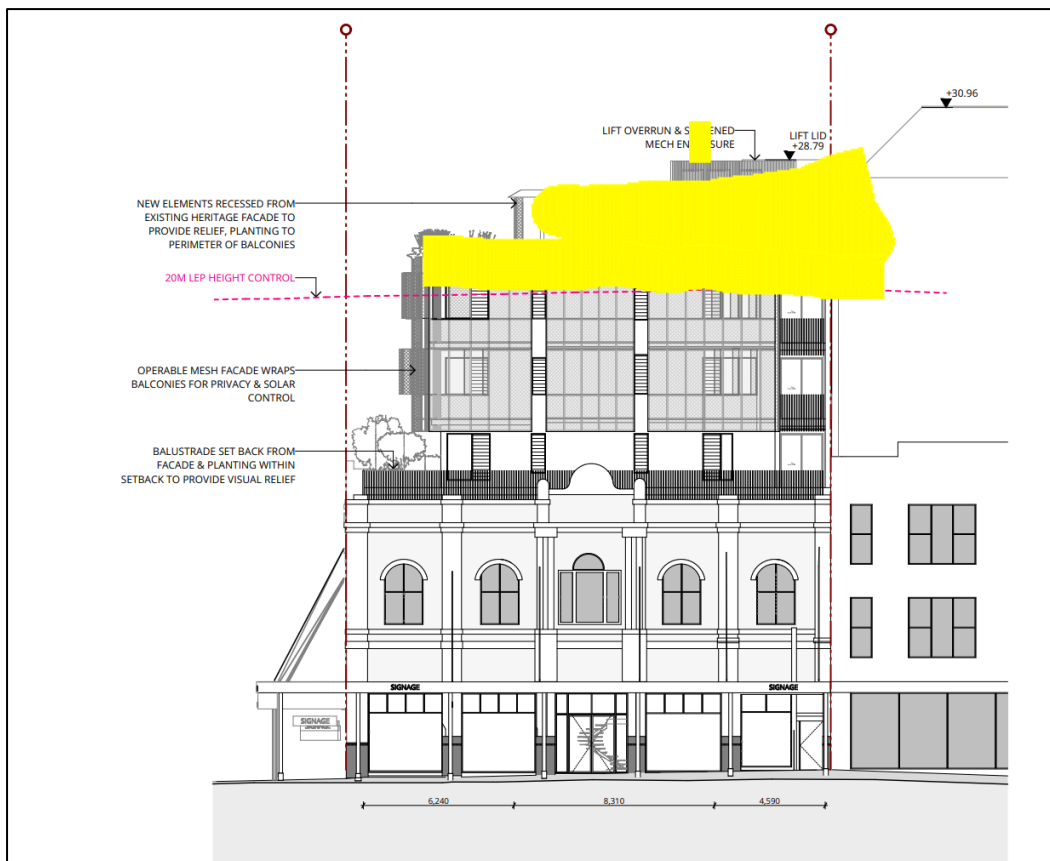


Figure 1: Extent of variation to height control (breach highlighted in yellow).

An assessment of the submitted Clause 4.6 variation request is included beneath. It is also noted that a detailed view impact assessment is included at Section 5.6 of this report.

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

The Height of Buildings (Clauses 4.3) development standard in the NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act.

The Height of Buildings (Clause 4.3) development standard is not expressly excluded from the operation of Clause 4.6.

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

The applicant has prepared a written request (**Attachment D**) which constitutes a written request for the purposes of clause 4.6(3).

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

The applicant's clause 4.6 Variation Request written response seeks to rely on the first Wehbe consideration to demonstrate that compliance with the development standard is unreasonable, stating that strict compliance with the objectives of the development standard would compromise the objectives of the development standard.

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

- i) In the same block a number of approvals have been issued for built form that both exceeds the height standard and seeks to retain the heritage character at street/ground level.*
- ii) The proposed built form reflects that emerging contemporary character of the East End precinct and will ensure the protection, enhancement and sustainable management of the existing heritage building on the site.*
- iii) The projection of the building above the height limit will not result in an overbearing visual or shadow impact.*
- iv) The built form responds to the context of the site with sympathy to the adjoining heritage listed the former Beberfaulds Warehouse building. The brick parapet is identified as an important datum at the adjoining property which the proposed development should not exceed. The design responds*

to this architectural feature where the proposed building, including the lift overrun, will be set below the brick parapet. Accordingly, the heritage significance and aesthetic of Beberfaulds is considered in the design and its superior height is maintained.

- v) *Reasonable daylight access is provided to all surrounding development. The proposed height variation is situated in a location which will not result in any detrimental impact to any sensitive land uses. Shadow diagrams demonstrate the negligible impact caused by the proposed height variation.*
- vi) *The proposed development has been designed with a recessed top level to reduce the overall bulk of the building that sits comfortably in its surrounds and does not result in overbearing visual impact.*
- vii) *The additional height resulting from the non-compliance does not result in any undue impacts on adjoining properties nor the public domain with respect to overshadowing, loss of privacy and loss of views.*

CN Officer Comment

The applicant has demonstrated that the proposed development meets the objectives of Clause 4.3 of the NLEP despite the non-compliance with the numerical standard as the scale of the development would make a positive contribution to the desired built form of the immediate locality, suitably responding to its context and would allow for reasonable daylight access to surrounding development and the public domain.

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

The applicant has addressed objectives under Clause 1.3 of the *Environmental Planning and Assessment Act 1979* and aims of the NLEP 2012 have been addressed to demonstrate sufficient environmental grounds to justify the non-compliance, as follows:

- i) *The proposal has been carefully designed to ensure that there are no unacceptable shadow impacts, streetscape impacts nor impacts on key views and view corridors.*
- ii) *The granting of development consent would enable a high quality, architecturally designed mixed use commercial and residential building to be constructed in Newcastle, allowing the economically viable retention of a socially valuable heritage item within the City.*
- iii) *The height limit controls within the immediate vicinity are largely defined in parcels attributed to the city blocks and appear to respond, principally, to the existing built form and, critically, the protection of certain views, most notable the urban form of "The Hill" and "Christ Church Cathedral" when viewed from the Harbour Foreshore and Stockton. This development site is not visible and has no impact on those key view expectations as detailed in the perspective of the building contained within the architectural plans.*

- iv) *Within the same street block as the proposal, the 20m height limit applies with some 30+% of the block already exceeding this limit- that being the large scale heritage listed (former) Beberfaulds Warehouse building. This building provides a dominant backdrop to the subject site. The proposed design responds to this, whilst addressing the feedback of the Council's UDRP.*
- v) *The heights on the southern side of Hunter Street (24m) reflect the landform step up based on the preservation of the Cathedral views. Figure/s present the various envelopes for buildings surrounding the subject site and show the approved envelopes for the GPT/David Jones building development/s. The proposal does not result in any additional impacts on the view corridors to the Cathedral which are already impacted by the existing development to the south.*
- vi) *The proposal exhibits design excellence. The built form presents as both contemporary and respectful of the heritage of the existing building and provides a modern, contemporary architectural response with the proposed additional levels.*

CN Officer Comment

The request has demonstrated there are sufficient environmental planning grounds to justify contravening the standard as the proposed development presents a high quality, architecturally designed mixed use development which includes the adaptive reuse of a heritage item and that there are no significant adverse environmental impacts caused as a direct result of the intended breach to the standard that would be substantially improved through strict compliance with the 20m height limit afforded to the site.

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

As outlined above, the applicant’s written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012. Clause 4.6(a)(i) is satisfied in this regard.

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

The applicant’s response to the satisfaction of the objectives of the Height of Buildings standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been

adequately addressed, rather that, *'the proposed development will be in the public interest because it is consistent'*, with the relevant objectives.

Objectives of Clause 4.3 'Height of buildings'

The development is consistent with the objectives of Clause 4.3 'Height of buildings' as the design and massing of the proposed development is considered to make a positive contribution towards the existing and desired built form context of the immediate locality. This in a manner not inconsistent with the established centres hierarchy and allows for reasonable daylight access to all potentially impacted developments and the public domain by not create significantly adverse additional overshadowing.

Objectives of the B4 Mixed Use Zone

The proposed development is consistent with the B4 Mixed Use zone objectives as it will integrate a mix of compatible land uses, being residential and retail / business development within a City Centre location. The subject site is ideally located with respect to public transport and will support the viability of the City Centre through increased housing and employment opportunities within the area, in turn encouraging walking and cycling to and from nearby services and employment.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the B4 zone. The proposal is satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

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

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

Conclusion

The applicant has submitted a written request to vary the maximum height of building development standard applicable to the subject site (**Attachment D**). The request relies upon the rationale established in the decision of *Webhe v Pittwater Council* (2007) NSW LEC 827.

The request has adequately demonstrated that the proposed development achieves the standards of Clause 4.3 of the NLEP despite the numerical non-compliance and that there are sufficient environmental planning grounds to justify contravening the standard. The request is further considered to meet the provisions of Clause 4.6 and is well founded.

In addition, the proposed development is in the public interest as it is consistent with the objectives of clause 4.3 and supports the objectives of the B4 Mixed Use Zone, in which it is to be carried out. It is therefore considered to be unnecessary to enforce strict adherence to the standard in this instance and the proposed exceedance to the standard is supported.

Clause 4.6 Variation to Floor Space Ratio

The proposed development results in a Floor space ratio of 3.3:1, exceeding the principal development standard for the allotment by 10.3%. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

An assessment of the Clause 4.6 variation request is included beneath.

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

The Floor Space Ratio (Clauses 4.4) development standard in the NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act. The Floor Space Ratio development standard is not expressly excluded from the operation of Clause 4.6.

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

The applicant has prepared a written request (**Attachment E**) which constitutes a written request for the purposes of Clause 4.6(3).

The Applicants 'Clause 4.6 Variation to Floor Space Ratio' written response provides justification for the non-compliance and adequately demonstrates that compliance with the development standard is unreasonable stating that strict compliance would compromise the objectives of the development standard.

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

- i) *The proposed development is located within the Newcastle City Centre East End precinct and makes a positive contribution towards the desired built form of the precinct. The proposed density of the development is 3.3:1.*
- ii) *The Urban Design Consultative Group (UDCG) was generally supportive of the slight exceedance from LEP provisions stating 'potentially could be supported in this context if this important heritage item is conserved and additions are of high quality.'*

- iii) *The UDCG later stated that the reduction of one floor of the development has moderately reduced the density of the development.*
- iv) *The proposed development meets the underlying intent of the controls and is a compatible form of development.*
- v) *As demonstrated in the Apartment Design Guidelines (SEPP 65 statement), the proposal provides a satisfactory level of amenity, both internally and from the public realm.*
- vi) *The proposal provides for an economically viable and sustainable revitalisation of the existing heritage building and adapts to be more aligned with the endorsed future vision and desired future character of the East End precinct.*
- vii) *The proposal is of an overall scale, bulk, design and external appearance that is in keeping with other similar development approved and/or, being constructed in the immediate area.*
- viii) *The proposed residential development has been designed with an unobtrusive top level to reduce the overall bulk of the building.*

CN Officer Comment

The applicant has demonstrated that the proposed development meets the objectives of Clause 4.4 of the NLEP despite the non-compliance with the numerical standard as the building density, bulk and scale makes a positive contribution to the established centres hierarchy.

The overall scale, bulk, design, and external appearance of the proposed building is in keeping with its immediate surrounds. The additional setbacks and considered articulation to the top floor results in an unobtrusive form that appears subservient in scale to the adjoining building to the east and recently constructed and approved buildings nearby.

A development compliant with the floor space ratio development standard contained in the NLEP 2012 would not achieve a perceivably different or better planning outcome. Furthermore, the non-compliance does not result in any additional unreasonable impacts compared to a compliant design as the proposal is generally compliant with all other relevant planning controls within the NLEP 2012 and NDCP 2012. As such, the applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable in the circumstances of the case.

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

The applicant's response to Clause 4.6(3)(b) is addressed, and provides the following environmental planning grounds to justify the breach of the standard:

- i) *The proposal provides a range of housing types and dwelling sizes, including one, three and four bedroom configurations, thereby providing a range of housing choices for future residents. The additional FSR required under the proposal allows for high quality design of units while also providing for great amenity, such as light wells and ample circulation space.*
- ii) *This assessment and the supporting SEE accompanying this development application, demonstrate that the proposed variation will not result in any unreasonable environmental impacts.*
- iii) *The proposal has been carefully designed to ensure there are no unacceptable shadow impacts, streetscape impacts nor impacts on key views and view corridors.*
- iv) *If made to strictly comply with Clause 4.4, there would be no additional benefit to the streetscape, neighbouring properties and the local area.*
- v) *Strict compliance with the FSR of 3:1 would not result in any significant reduction of environmental impact relating to overshadowing, waste generation, noise or traffic.*
- vi) *As outlined in the reports appended to the SOEE the proposal can accommodate the density of the development without any negative impacts on surrounding development, including public space and road network, or any negative internal impact for the units and commercial spaces.*

CN Officer Comment

The applicant has provided adequate justification there are sufficient environmental planning grounds to justify contravening the standard as the proposed development presents a high quality, architecturally designed mixed use development which includes the adaptive reuse of a heritage item and strict compliance to the standard would not appear to result in any better environmental planning outcome.

The development provides good levels of amenity through considerable floor spaces to each unit and that there are no significant adverse environmental impacts caused as a direct result of the intended breach to the standard that would be substantially improved through strict compliance with the 3:1 maximum Floor Space Ratio standard afforded to the site.

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the additional FSR will not negatively impact the streetscape, privacy, view sharing or solar access of adjoining properties and is a similar bulk and scale of surrounding development.

The reasons outlined above are considered to provide sufficient justification to contravene the development standard.

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

As outlined above, the applicant’s written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012. Clause 4.6(a)(i) is satisfied in this regard.

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

The applicant’s response to the satisfaction of the objectives of the FSR standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, ‘the proposed development will be in the public interest because it is consistent’, with the relevant objectives.

Objectives of Clause 4.4 ‘Floor space ratio

The development is consistent with the objectives of Clause 4.4 ‘Floor Space Ratio’ as the proposed development is of an appropriate density which is consistent with the established centres hierarchy.

Objectives of the B4 Mixed Use Zone

The development is consistent with the objectives of the B4 Mixed Use Zone as the proposal provides a mixture of compatible land uses, including retail and residential, within an accessible location. The site is well located adjacent to a light rail public transport system and is well serviced and accessed by pedestrians and cyclists alike.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the B4 zone. The proposal is satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

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

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

Conclusion

The applicant has submitted a written request to vary the floor space ratio development standard applicable to the subject site. The request relies upon the rationale established in the decision of *Webhe v Pittwater Council* (2007) NSW LEC 827.

The request has adequately demonstrated that the proposed development achieves the standards of Clause 4.4 of the NLEP despite the numerical non-compliance and that there are sufficient environmental planning grounds to justify contravening the standard.

The request is considered to meet all of the provisions of Clause 4.6 and is well founded. Further, the variation to the development standard is a minor variation (10.3%) and is considered to exhibit design excellence and considerable internal amenity and is absent of significant environmental impacts.

In addition, the proposed development is considered to be in the public interest as it is consistent with the objectives of Cl 4.4 and supports the objectives of the B4 Mixed Use zone, in which it is to be carried out. It is therefore considered to be unnecessary to enforce strict adherence to the standard in this instance and the proposed variation to the standard is supported.

Clause 5.10 - Heritage Conservation

The site is a listed heritage item, 'Former School of Arts' (Item 409), on Schedule 5 of the NLEP 2012. The State Heritage Inventory provides the following Statement of Significance for the heritage item:

Forms part of the Hunter Street Mall Group. Historically important due to its civic association as the earliest remaining building constructed for Newcastle Borough Council. Important townscape element in association with extensions by Menkens in 1885. The interiors are of significance.

Heritage items in the vicinity include the following:

- i) 'Former Beberfaulds Warehouse' – LEP Item 459 – 175 Scott Street Newcastle
- ii) 'Former AA Dangar Building' – LEP Item 408 – 176 Hunter Street Newcastle
- iii) 'Municipal building' – LEP Item 406 – 164–170 Hunter Street Newcastle
- iv) 'Former Johns Building' – LEP Item 411 – 200–212 Hunter Street Newcastle
- v) 'David Jones (commercial building)' – LEP Item 407 – 169 Hunter Street Newcastle

- vi) 'Newcastle Railway Station (additional group)' – SHR Item 01212 – Great Northern Railway

The site is also located within the Newcastle City Centre Heritage Conservation Area.

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

Clause 5.10(4) requires Council to consider the effect proposals will have on the heritage significance of heritage item(s), those in the vicinity of a site and the character of the Heritage Conservation Area of which the site is part.

The proposal as originally submitted was not supported on Heritage grounds as the extent of demolition to the item and the height of the proposed development were not considered appropriate and would have created adverse impact upon the item, items in vicinity and on the Newcastle City Centre Heritage Conservation Area.

Amended plans and additional justification has been provided by the applicant in relation to the impact of the proposal on heritage conservation. It is noted that the heritage building has sat generally vacant and deteriorating for a long period of time. Fabric decay was observed particularly in the upper levels as a result of little to no maintenance.

The scope of the proposal has been amended to include retention of the 1875 George Cox-designed building (facing Hunter Street). Elements that are proposed to be retained on the amended plans include the main structure, floors, walls and ceilings of the Cox building; the facades of the Menkens and Yeomans buildings; pendant ceiling lights throughout; timber panelling, architraves and doors; 1886 stairs; 1886 toilet; door arch; all existing timber windows.

The current proposal, as amended, proposes retention of the Cox building including the entirety of the existing volume, floors, external walls, existing ceilings, and reinstatement of details such as plasterwork, pressed metal, light fittings, internal doors, timber panelling and archways. The ground floor is to be converted to a proposed bookstore. The first floor is to be converted to residential apartments, with design details including glazed inserts to internal walls protecting the existing decorative ceiling (also to be restored). The Menkens and Yeomans buildings remain proposed for carparking and residential apartments.

In regard to the proposed change of use, the Heritage Impact Statement notes the following: "the original use for the site is now redundant...The introduction of a bookstore will provide a reference to its earlier use as a public library and centre for learning which is positive whilst also providing continued public access to much of the interior which is ideal. The recycling of the heritage item is encouraged, and significant internal fabric shall be retained for this purpose... There is further opportunity within

the bookstore for interpretation of the building's significant earlier use as a library through the use of historic photographs, interpretation panels and artistic interpretation as an embedded interior design concept." Use of the heritage item as a bookstore is considered to be a good adaptive reuse with links to its original purpose.

The addition above the heritage building has a lightweight appearance which is positive to maintain the dominance of the School of Arts below. The bays of the heritage facade are referenced in the articulation of the lightweight contemporary facade above which has a good visual rhythm.

Upon review of the original application, concern was raised regarding the height of the proposal and the potential adverse impact to the adjoining heritage item, Beberfaulds Warehouse, which is an imposing landmark presence on Scott Street. The height of the proposal has been reduced by one storey and the setback of the upper floors has been increased, which is a preferable outcome and allows the Beberfaulds Warehouse to remain as the most prominent building on this block when viewed from the Foreshore.

Overall, while the amended proposal will result in demolition/removal of a substantial portion of the building, it is noted that elements of high significance are identified as being retained and reinstated where possible. The restoration of the facades of the building is a positive outcome, particularly the reinstatement of traditional shopfronts more appropriate to the architectural style of the building at the ground floor, and provision of a good adaptive reuse for the 1886 Cox Building that will significantly enhance the streetscape.

Furthermore, the proposed development provides long term re-use of the heritage listed item and provides for the security and maintenance of the building fabric into the future. The proposed adaptive reuse and ground floor uses intended is a commendable use of the site having regard to heritage context.

Recommended conditions of consent have been included at **Attachment B**. Accordingly, the proposed development is considered acceptable having regard to Clause 5.10 of the NLEP.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 and 5 Acid Sulphate Soils. The proposed development does not comprise significant earthworks and is therefore unlikely to expose or drain potential acid sulfate soils within the site. Accordingly, an ASSMP is not necessary, and the proposed development is considered satisfactory regarding Acid Sulfate Soils.

Clause 6.2 - Earthworks

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

Part 7 Additional Local Provisions—Newcastle City Centre

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

Clause 7.5 - Design Excellence

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

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

An Architectural Design Verification Statement has been prepared by SDA Architecture (submitted to CN on 18 July 2022) as part of the SEPP 65 requirements and addresses the design principles that have been used to formulate the proposal, as modified.

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

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

Clause 7.10A - Floor Space Ratio for Certain Other Development

The proposed development has a site area of less than 1,500m². Accordingly, the provisions of this clause apply to the proposal. This clause specifies that the maximum FSR of a building is whichever is the lesser of the FSR identified on the FSR map or 3:1.

The *Floor Space Ratio Map* identifies a maximum FSR of 3:1 for the subject site. Accordingly, the maximum permissible FSR remains 3:1 in accordance with clause 4.4. As discussed under the Clause 4.4 and Clause 4.6 NLEP 2012 assessment above, the proposed development will result in an FSR of 3.3:1, which equates to a 10.3% variation to the FSR development standard.

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

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

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

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

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: 'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

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.

This Section is not specifically applicable to Shop Top Housing, with the proposal requiring consistency to the relevant components of the Apartment Design Guide under SEPP 65 as an acceptable solution. This is addressed under the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment in **Section 4.1** of this report above.

Notwithstanding the removed requirement for strict prescriptive adherence to the requirements of this Section it is considered that the proposed development establishes a scale and built form appropriate for its location, with good residential amenity, while maintaining privacy and reasonable views for adjoining neighbours.

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

Commercial Uses - Section 3.10

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

The proposed development includes a 182.2m² ground floor retail component on the corner of Hunter and Wolfe Street and two smaller (12.5m² and 16m²) retail spaces to the Wolfe Street frontage at the ground floor.

The proposed commercial spaces are considered to create suitable active frontages particularly through the provision of the larger retail space to Hunter Street and smaller spaces to Wolfe Street which is secondary in relation to the requirement for activation. The commercial elements are suitably located and integrated into the overall development to provide a positive contribution at street level to the immediate locality and also to the wider East End precinct in order to contribute to enhancing the economic viability of this mixed-use precinct.

The design of the proposal locates utilities and services both hidden from the public domain and easily accessible, ensuring both convenience and that the presence of these elements does not detract from the visual attractiveness of the building nor the streetscape.

Flood Management - Section 4.01

The site is identified as being affected by ocean and local catchment flooding. It is estimated that during the June 2007 flood event in Newcastle, flood levels reached up to 2.2m Australian Height Datum (AHD) in the vicinity of the site.

As part of this application, the existing two storey building and facade is being retained, while internal demolition is proposed. The building has variable ground floor levels, ranging from 2.3m AHD to 3.17m AHD on the south end of the building, rising with the adjacent outdoor levels along Wolfe Street.

In accordance with Section 4.01 Flood Management of NDCP 2012, car parking structures are to be located at the 1% Annual Exceedance Probability (AEP) flood level. This development application proposes a car park entry level of 2.3m AHD, rising to 2.65m AHD which is acceptable as only a small section is below the 1% AEP level and the risk to property category is low, being P1.

In accordance with Section 4.01 of NDCP 2012, occupiable space identified as flood affected during the 1% AEP event is to be located at or above the flood planning level, which is 2.6m for this site. The majority of the development site is not located within the 1% AEP flood extent and the floor levels are acceptable.

The applicant has nominated a floor level of 2.33m AHD for the two small retail spaces fronting Wolfe Street on the north west side of the site. This is 0.13m above the 1% AEP ocean flood level (2.2m AHD) and 0.07m below the local catchment 1% AEP level (2.4m AHD). On merit, this floor level can be accepted for the northern most retail space as it aids pedestrian accessibility and is equal to the existing floor level at this location. The floor level of the other retail space (identified with an area of 19.7m² on the architectural plans) is to have a minimum floor level of 2.4m AHD as the public footpath level fronting the site is higher along this frontage so efficient accessibility is still possible with this slightly higher floor level.

The lift entry and lobby on the ground floor are located at 2.65m AHD which is above the Flood Planning Level (FPL) of 2.6m. This is acceptable.

The car lift is expected to be constructed and installed with a cavity below for part of the mechanical structure. As this is located within the flood planning area, the area surrounding the lift shaft shall be located at the FPL of 2.6m AHD. A review of head-height-clearances confirms this is possible.

The car lift floor level requirement is to be imposed as a condition of consent, as contained in **Attachment B**. Accordingly, the proposal is acceptable in relation to flooding.

Mine Subsidence - Section 4.03

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

Safety and Security - Section 4.04

The applicant has submitted a Crime Risk Assessment (CRA) including an analysis to the principles of Crime Prevention Through Environmental Design (CPTED). The CRA acknowledges the importance of the principles in assisting to design out crime and

makes recommendations for the implementation of elements into the development, which will be included as conditions where appropriate.

The proposal is consistent with the CPTED principles in that it would provide *surveillance* to the public domain, which is currently lacking in a vacant building, *access control* provided to a standard for a mixed-use development, *territorial reinforcement* through the refurbishment of an existing building and further built form elements and *space management* through management of the building which is currently lacking in its dormant state.

Further, the building design appears to be absent of any potential concealment or entrapment areas. The proposed development is acceptable having regard to this Section of the NDCP 2012.

Social Impact - Section 4.05

A Social Impact Assessment is not required for the proposed development however the proposal is considered to include positive social impacts through providing for the conservation and restoration of significant components of an existing heritage building (Newcastle's first public library), which will allow for its on-going appreciation by the public and through increasing the diversity of housing choice within the Newcastle CBD.

Aboriginal Heritage - Section 5.04

An Aboriginal Heritage Information Management System (AHIMS) search found four known Aboriginal sites within the curtilage of the subject site. CN requested additional information from the applicant to demonstrate that the application has followed the due diligence process with regards to Aboriginal cultural heritage.

In response, an Aboriginal Due Diligence Assessment Report was provided, prepared by AMAC (9/11/22). The Due Diligence Assessment found the following:

- i) *It is likely that there are Aboriginal objects and/or deposits of conservation value to be present at the site.*
- ii) *Further investigation into the Aboriginal cultural heritage significance of the site needs to take place, involving community consultation.*
- iii) *Surrounding landscape features indicate that sub-surface Aboriginal objects or deposits are likely in undisturbed areas and are likely to be considered of low to moderate significance.*
- iv) *It is likely that Aboriginal movement and land use would be channelled to this location and therefore the site may hold information regarding cultural activities of the area.*
- v) *Further assessment is required in the form of an Aboriginal Cultural Heritage Assessment (ACHA).*

- vi) *Subsequent to preparation of the ACHA, a program of test excavation should be undertaken to establish the nature and extent of any archaeological objects and/or deposits that may be present.*

Conditions of consent are provided at **Attachment B** to implement the recommendations of the Due Diligence Assessment prior to any ground disturbance. Accordingly, subject to conditions, the proposed development is acceptable having regard to this Section of the DCP.

Heritage Items - Section 5.05

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

Archaeological Management - Section 5.06

The site is identified as an indicative archaeological site in the Newcastle Archaeological Management Plan 1997 ('Former School of Arts', Ref. 0145). At the request of CN, the applicant submitted a Baseline Archaeological Assessment, prepared by AMAC (October 2022), which was identified that the site has two phases of historic use: the public pound and the School of Arts.

The proposed development will likely impact on potential 19th century archaeological remains. To mitigate any unnecessary impacts to undocumented locally significant relics, it is recommended that a qualified historical archaeologist attend the site to open and inspect any original timber floor cavities in advance of the demolition program to check for evidence of archaeological deposits. It is also recommended that archaeological inspection and/or monitoring occur in proposed deeper excavation areas to confirm no harm to relics.

Conditions of consent are to be imposed requiring implementation of the recommendations of the Archaeological Assessment. Subject to the recommended conditions contained at **Attachment B** the application is satisfactory.

Newcastle City Centre - Section 6.01

6.01.02 Character Areas - F. East End

The subject site is located within the Newcastle City Centre and within the East End Precinct. Development within the East End Precinct is guided by the key principles outlined within S6.01.02(F).

The proposed development supports the continuation of Hunter Street as the main retail spine of the area by reactivating a retail use to the Hunter Street frontage at a prominent corner with Wolfe Street. Whilst the proposal also includes retail spaces with frontage to Wolfe Street, these spaces are small, with the predominant activated space being the Hunter Street frontage.

The proposed development provides a rejuvenated ground floor retail use to the Hunter Street frontage which encourages increased pedestrian activity in and around

that space. The proposed development does not include consolidation or amalgamation of lots, seeking to develop an existing fine grain allotment, maintaining, and enhancing the historic fine grain character as a result.

The proposed development does not detract from significant views to and from Christ Church Cathedral. It is noted that views to the Cathedral afforded across the subject site from the public domain are already impacted by the approved development to the immediate south across Hunter Street which is 5m higher than the proposed development (to the upper most projection – lift overrun). Further, the proposed development has no impact on the on-going protection of views to the Hunter River along Market, Watt, or Newcomen Street.

The proposed development does not detrimentally impact upon any vista terminating at a significant heritage building. Further, the proposed development repurposes a distinctive and prominent early corner building which contributes to the character of the area. It is noted that the applicant proposes a zone for public art in the form of a mural on the eastern elevation of the development. This is not a DCP requirement for the development as the proposal is not a public or civic building, located on a key site or over 45m in height, regardless a condition of consent has been recommended at **Attachment B** requiring that any proposed mural is approved by CNs Public Art Reference Group.

The subject site does not adjoin any existing laneway however the existing pedestrian connections through Hunter and Wolfe Streets are enhanced through the proposed replacement awnings. The development is acceptable having regard to Heritage Conservation and accordingly would not impact upon the setting of heritage items.

The proposed alterations and additions within an infill location is considered to respond to the height, massing and proportions of existing buildings including reading as distinct from the host heritage listed building, subservient to the adjoining building to the east in both height and scale and lower than buildings located on the southern side of Hunter Street.

Whilst the proposed development does not seek to establish further public recreational opportunities through the creation of establishment of public space it does increase residential density without any outside communal space which would appear to be likely to increase patronage of these nearby spaces. Further, the proposed development does not impact upon pedestrian connections to these spaces.

6.01.03 *General Controls*

A. Building form

A1 Street wall heights

The proposed development includes alterations and additions to an existing building and retains the existing heritage facade and street wall height.

A2 Building Setbacks

Above the existing facade of the building, which acts as a podium level in this proposal, the setbacks are as follows:

- i) Level 2,3 & 4: 4.25m from the Western boundary, 2.4m from the southern (Hunter St) boundary, 2.3m from the northern boundary.
- ii) Level 5: 7.375m from western boundary, 5.25m from southern (Hunter St) boundary.

The proposed development seeks consent to build to the eastern boundary. The acceptable solution of this Section of the NDCP 2012 requires a 6m setback between the street wall height and 45m.

It is noted that the proposed development does not comply with the acceptable solution, with the exception of the Level 5 western setback. However, the proposal satisfies the applicable performance criteria given the development presents as a highly considered design in response to its surrounding context.

Further, despite the numerical non-compliance, the proposal includes the retention and refurbishment of a heritage item with the intended setbacks proposed for the additional built form allowing for the retention of the existing street wall height of the building and through a combination of landscaping to the podium level and a modern design with materials and colours that differentiate from the item. This design and the setbacks intended therefore allow for the prominent street address of the existing building to be retained, reading as subservient and therefore not detracting from its significance, demonstrating a considered response to context

Further, the massing of the building toward the eastern boundary, with the building on the adjoining site to the immediate east being another heritage item and prominent in scale indicates a further considered response to surrounding context, despite numerical non-compliance with the acceptable solution.

In addition, the proposed side and rear setbacks formed in combination with suitable articulation are considered to break up the bulk and scale and enables adequate amenity and ventilation, reasonable daylight access, view sharing and privacy to adjoining buildings. This is achieved through a combination of consistency to the requirements of SEPP 65 and the associated Apartment Design Guide and with the applicable view sharing principles.

A4 Building depth and bulk

The residential floor plate is appropriate for the site and internal amenity is appropriate.

A5 Building exteriors

The proposed materials and finishes submitted by the applicant are acceptable in complementing the heritage facade of the existing building and ensuring the upper additions are viewed as light weight yet robust.

A6 Heritage Buildings

The proposed development is an acceptable outcome for both the adaptive reuse of a heritage item and the building works intended to ensure the development conserves and enhances the cultural significance of the item.

A7 Awnings

The proposed development includes replacement awnings to the full extent of the Hunter and Wolfe Street facades, where an active street frontage is required under this Section of the NDCP 2012. The awnings are continuous to ensure pedestrian amenity and are of a flat design. The awnings are acceptable.

A8 Design of Parking Structures

The proposed development includes at grade and above ground car parking due to the parking requirements prescribed by S7.03 of the NDCP 2012 and due to the constraints of the site making underground parking feasibility difficult. The visual impact of the parking has been minimised as it is located within the building footprint and is not visible from the public domain.

A9 Landscaping

The proposed development includes landscaping considered to be commensurate to the expectations of a City Centre mixed-use development.

B Public Domain

B2 Views and Vistas

The proposed development does not detrimentally impact upon the preservation of any significant views around the city, including vistas that terminate at prominent landmarks.

Figure 6-01-24 (Views and Vistas Map) of this Section of the NDCP 2012 identifies the vistas toward the Harbour (including from the corner of Wolfe and King Street) and toward the Christ Church Cathedral from Stockton Ferry Wharf. The proposed development does not impact these vistas and it is noted that a comprehensive assessment of the visual impact of the proposal is provided at Section 5.6 of this report.

B3 Active Street frontages

The subject site is identified within an activity node and requires an active street frontage to both Hunter and Wolfe Streets. The proposed development provides active street frontages through creating glazed shop frontages for retail uses to at least 70% of each frontage.

6.01.04 Key Precincts

B. Hunter Street Mall

The subject site is located within the Hunter Street Mall precinct. The proposed development includes the reactivation of the Hunter Street frontage through the provision of ground floor retail space which will contribute to the invigoration of Hunter Street in addition to creating residential form above a heritage listed building.

The proposal provides an active frontage to Hunter Street and to the majority of Wolfe Street. Accordingly, the proposal will contribute to strengthening the sense of place and urban character of the East End as a boutique retail and residential destination, facilitates an active street frontage and protects an existing heritage item, demonstrating consistency to the objectives of this Section.

An analysis to the applicable performance criteria is provided below (noting that the subject site does not have frontage to Market Street, does not propose a new lane or through site link and does not propose any servicing or access from Hunter Street).

The proposed development retains the existing street wall height of the heritage building and is suitably articulated to ensure that large expanses of building form are broken down into smaller elements to adequately relate to the fine grain of the precinct.

Heritage Conservation Areas - Section 6.02

The subject site is located within the Newcastle City Centre Heritage Conservation Area and contains an item of local significance.

As discussed with Section 5.1.7 of this report (CI5.10 Heritage Conservation), the proposed development retains and reinstates elements of high heritage significance of the heritage item and is considered to result in a suitable adaptive reuse of the item.

Accordingly, the proposed development would not detract from the significance of the Heritage Conservation Area.

Landscape Open Space and Visual Amenity - Section 7.02

The existing heritage listed building provides no area at ground level for landscaping. As such, the proposed development incorporates landscaping into podium level and to level 5 at the southern, western and northern elevations.

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

Traffic, Parking and Access - Section 7.03

Vehicular access, driveway design and crossing location

Vehicular areas are to be designed to demonstrate compliance with the relevant provisions in AS2890.1 Off-Street Car Parking, AS 2890.2 Off-Street Commercial Vehicle facilities and City of Newcastle's Development Control Plan.

Carparking spaces for the residential component of the development are to comply with the dimensions relevant to Class 1A from AS2890.1, while parking spaces for the retail part of the development are to comply with User Class 2. Car Parking spaces on the architectural drawings are shown to be 2.5m x 5.5m with 6.0m aisle width which complies with AS2890.1.

Reviewing architectural drawing DD301 (sections 02), it appears that at least 2.2m headroom clearance could be achieved within the carpark which complies with AS2890.1. A loading bay for a B99 vehicle has been included on the ground floor and this has been selected as the design servicing vehicle due to head-height constraints. This is acceptable.

Access to the site is proposed via Scott Street which is a "Transitway" and classified road. In accordance with the Transport and Infrastructure SEPP, where a site has access to a classified road and another road that is not classified, vehicle access is not to be granted to the classified road if it is safe and practicable to gain access from the non-classified road. A referral has been sent to TfNSW and their concurrence is required for the access to Scott Street.

TfNSW provided comments on the application and do not raise objection to access being provided from Scott Street. Furthermore, it is noted that given that it is not practicable to access the site via the non-classified frontages due to retention of the heritage facade and TfNSW have raised no objection to access off Scott Street, the proposed vehicular access to Scott Street can be accepted on merit as it meets the requirements of Clause 2.119 of *State Environmental Planning Policy (Transport and Infrastructure) 2021*.

To ensure the vehicular entry is designed in a way that ensures a vehicle is not propped on Scott Street while waiting for the garage door to open, the garage door is required to be setback 2.4m into the property. As the parking area is designed to cater for a B99 vehicle which has a length of 5.2m and the footpath is 2.8m wide, a setback of 2.4m into the property will allow space for a vehicle to fit off the road before the garage door opens.

A car lift is proposed to allow vehicles to move from the ground to the first floor. This is acceptable subject to compliance with conditions of consent included within the Draft Schedule of Conditions (refer to **Attachment B**) regarding an operational and management plan for the car lift be submitted to CN prior to the issue of an occupation certificate

The proposed driveway location on Scott Street conflicts with a recently installed CN smart pole. The applicant will be required to relocate the smart pole to the satisfaction of Council, at their own expense.

Acknowledging the external fabric of the building is being retained, convex mirrors will be required to be erected within the site at the vehicle entry/exit to assist drivers of an egressing vehicle to see a pedestrian in Scott Street. Subject to the recommended conditions contained in **Attachment B** the development is acceptable.

Parking demand

Car parking spaces have been provided as part of the development and the minimum number of spaces were calculated in accordance with the rates in CN's Development Control Plan, Section 7.03 Traffic, Parking and Access.

A total of 25.6 parking spaces are required, without accounting for an existing parking deficiency. The development provides 22 car parking spaces. As the existing building does not have any car parking, the existing deficiency can be used to justify the shortfall of spaces. Therefore, car parking is acceptable. A condition of consent is included at **Attachment B** to facilitate the following requirements:

- i) One space is to be allocated as a loading space.
- ii) Two spaces are to be allocated as retail spaces.
- iii) 20 spaces are to be residential with a minimum of one space allocated to each apartment except the one-bedroom apartment.

It is noted that, visitor car parking is not required, a concession is given to this due to the existing parking deficiency. Two motorcycle parking spaces are provided which meets the demand and is acceptable. Further, the plans show 18 bicycle parking spaces which is acceptable.

Traffic generation

SECA solutions have carried out a traffic survey of the surrounding area and this is included in their Traffic Impact Assessment. Traffic generation values in the TIA are considered reasonable and would be expected for this type of development.

A construction traffic control plan to be reviewed by CN will be required as a condition of consent. Accordingly, the proposed development is acceptable regarding traffic, parking and access, subject to conditions.

Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The development does not propose to increase the impervious area of the site and it is located within proximity of the Hunter River, so detention is not required. A rainwater reuse tank is not required as there is minimal opportunity for reuse on the ground floor and second floor of the development with no green space and only two toilets.

Additionally, the existing building is being retained and CN does not normally require existing buildings to be re-plumbed for reuse.

A stormwater management plan has been prepared by SDA Architecture and nominates a detention tank and connection to a kerb inlet pit on Scott Street. Given that the site is located only 80m from the Hunter River outlet of the public drainage system, it is considered a better design outcome to release rainwater runoff straight into the public system, so it travels through the network before the peak floor of the entire network. If a detention tank is installed, it is likely to release water later and increase the probability of the hydrograph peaks aligning. Therefore, the proposed detention tank is not required, however it can instead be used as a retention tank for reuse in the proposed ground floor toilet. A 4kL tank is considered sufficient for this single toilet and will be included as a condition of consent.

Stormwater discharge from the site is proposed to connect to Scott Street via an existing kerb inlet pit. TfNSW are the asset owner and have raised no objection to the proposed connection in their concurrence letter. Reviewing the stormwater layout in this area, there are parallel pipes on the south side of Scott Street and a 900mm pipe runs underneath the footway. Connection to one of the pits in the footway is required rather than connection to a kerb inlet pit. A condition will be added to the approval requiring the developer to gain S138 approval for the stormwater connection prior to the issue of a Construction Certificate and the exact connection point can be confirmed as part of this approval process. Accordingly, the proposal is acceptable in relation to water management.

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. The proposed development, being both Commercial and Residential in nature has differing requirements for each type of waste being generated by each use.

It is a requirement that residential waste be capable of being serviced by the City of Newcastle whereas the Commercial Waste can be entirely managed by a private entity.

The applicant seeks to have the commercial waste serviced by a private waste contractor. In discussions with CN's Waste and Commercial Collections Manager, it has been resolved that the residential waste is capable of being serviced by CN. CN will effectively collect the bins from the bin store on Scott St, transfer to Wolfe for emptying and return them to the bin store. The path of travel is relatively flat and is not greatly in excess of the recommended 10m distance for servicing.

Waste collection for the residential component will be from Wolfe Street, near the corner with Scott Street and will be conditioned to be outside of peak hours so as to not impact traffic flow. Further, conditions are recommended which require that no bins are permitted for kerbside collection. Waste management needs to be serviced, collected and returned, from within approved waste storage rooms for both residential and commercial waste management services.

The submitted Waste Management Plan has been conditioned to be updated to reflect these arrangements (refer to **Attachment B**). A further condition is also included that no bins are to be presented to the kerb for collection.

There will be servicing required for the site, which would mostly be completed by vans or small commercial vehicles. These vehicles will be able to access the site via the driveway from Scott Street and use the available dedicated loading bay for a B99 Vehicle. Based on the submitted information and subject to conditions, the proposal is acceptable.

Advertising and Signage - Section 7.09

The subject site is located within the Newcastle East End and Newcastle Beach Precinct as identified within this Section of the NDCP 2012. The applicant has submitted a Signage strategy for the proposed development.

The strategy identifies the types and dimensions of signage proposed, which are all considered acceptable as they are of the type allowable within the Newcastle East End and Newcastle Beach Precinct.

Conditions have been included at **Attachment B** identifying that signage is limited to business identification purposes only and are not to be illuminated.

Street Awnings and Balconies - Section 7.10

The proposed development includes the refurbishment of existing street awnings along Hunter and Wolfe Streets at the existing heights. This is acceptable having regard to this Section and in consideration of the heritage significance of the building/s. The awnings provide safety and encouragement to pedestrians to traverse the public domain.

A condition has been recommended regarding lighting within the awnings to comply with the Australian Standard and the requirement for a S138 approval under the *Roads Act 1993* to be obtained.

Community Participation Plan

The proposal was notified to neighbouring properties for 14 days in accordance with the Community Participation Plan (CPP). In response, a total of 16 submissions objecting to the proposal were received.

The amended proposal was renotified for another 14 days from 25 July to 8 August 2022 with a further 16 submissions received. Detailed comments in response to the objections are provided in Section 5.8 below.

Development Contributions

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

The proposed development is subject to City of Newcastle Section 7.11 Development Contribution Plan, being a mixed-use development with more than 10% residential floor area. A contribution of \$198,303.14 is required.

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

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

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

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

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

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

The height of buildings and floor space ratio development standards are exceeded by the proposed development. However, these variations have been considered in the context of adjoining, recently approved and potential future development. The development also does not create significant adverse impacts on surrounding development and is considered to be acceptable.

The proposed setbacks of the upper-level form ensures that additional impact on solar access and public spaces is minimised. Through setbacks and design considerations,

the heritage component remains the dominating element of the proposed development which contributes to the street and the locality.

Amenity - Privacy, Overshadowing and Acoustic Impacts

The proposal achieves adequate visual and acoustic privacy for the proposed residential development and for the surrounding properties and has suitably considered the potential future development of the area.

Given the scale and proximity of existing and proposed developments, some overshadowing of adjoining sites and the public domain already occurs which is beyond the control of this development. It is noted that additional overshadowing due to the proposal occurs only slightly beyond the existing shadows cast by the eastern adjoining and the existing building on the subject site, limited predominantly to the before noon period and to the mid-levels at north-western corner of the proposed building across Hunter Street to the South and at the lower levels at the mid-point of that building around noon at the winter solstice. The proposed development is considered satisfactory in regard to overshadowing to neighbouring buildings and the public domain.

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

An acoustic assessment was carried out in respect of the proposed development and submitted with the application. The acoustic assessment has demonstrated that compliance with internal noise level requirements for the residential component would be achieved, subject to conditions.

Regarding construction noise, any consent issued will include standard conditions restricting hours.

Regarding the potential noise generated from the retail tenancies, hours of operation of 7:00am to 10:00pm for these uses will be imposed as a condition on any consent issued, to limit any potential noise impacts.

Further, CN's standard "*no offensive noise*" standard condition will be imposed on the development consent.

View impacts

Given the height of the proposal, the potential impacts of the proposed development on the views of existing residential development within the vicinity of the subject site have been assessed. View sharing has been considered having regard to the planning principles contained within *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 at 25-29 (Tenacity).

There are currently several high-density residential developments within the vicinity of the subject site, being predominantly the ten-storey 'Washington House' building and the eleven storey 'Fabric House' building, both located to the southwest of the subject site. View impacts to these developments are discussed in further detail below.

'Washington House' building - No. 169 Hunter Street

The city block adjacent the site to the southwest (bound by Hunter and Wolfe Street) is a ten-storey mixed use development consisting of basement level carparking, ground level retail premises and nine levels of residential apartments above (Level 2 to Level 10). Located on the southern side of Hunter Street, No.169 Hunter Street is the second allotment, approximately 52 metres, southwest from the subject site along Hunter Street.

The upper nine levels have several apartments within the building that have their living and primary balcony areas orientated towards the east and northeast which incorporates the subject development site. As such, the proposed development will inevitably to some extent impact on the existing views from these apartments. Existing views from these apartments, facing northeast include water views to Newcastle Harbour, Stockton Break Wall and Nobby's Head and include the interface between land and water at the Stockton foreshore.

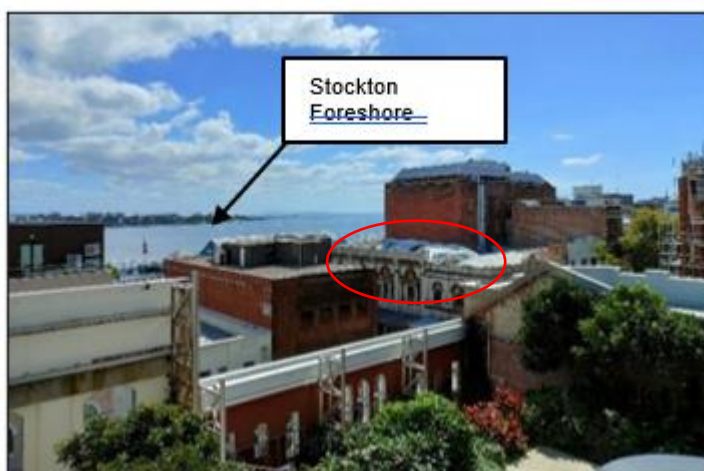


Image 1: Existing view from level 4 balcony of Living Room, looking northeast (Subject Site circled red)

In the broader context, due to the height of the apartments many of these apartments currently have far-reaching views towards the distant mouth of the Hunter River and Stockton Beach/Break Wall. Whilst the proposed development will partially impact this view (limited to a water view of Newcastle Harbour), these apartments benefit from much wider views, approximately 85% of the broader views encompassing the Harbour and Stockton to the north, and/or the Pacific Ocean to the east/northeast are to be retained. The views that have not been impacted including the interface between the water and land to the north (Stockton and Newcastle foreshore) and broader views of the Newcastle Cityscape, with Stockton break wall, Stockton Bight, sand dunes and Worimi Conservation Lands and to Port Stephens beyond.

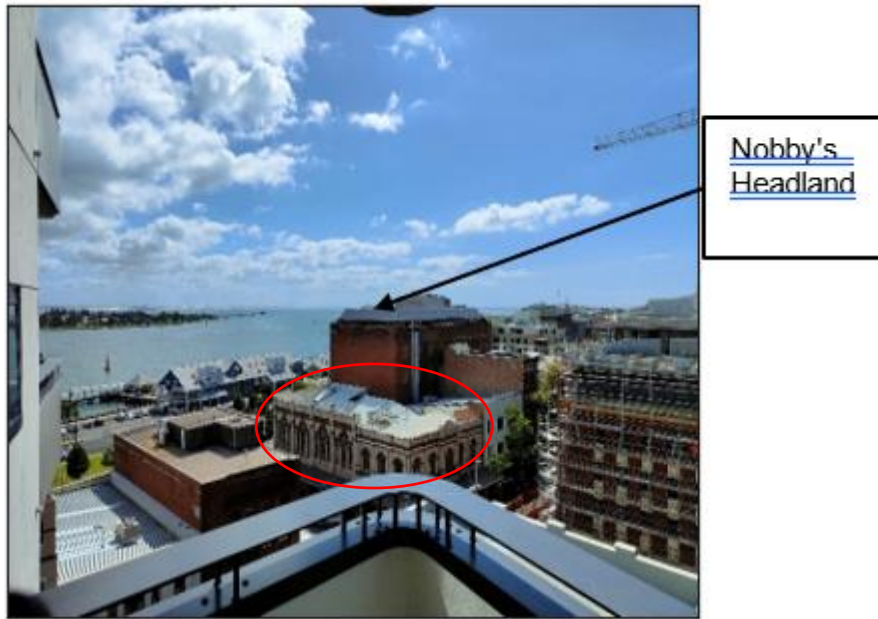


Image 2: Existing view from level 7 balcony of Living Room, looking northeast (Subject Site circled red)



Image 3: Existing view from level 7 Living Room window, looking east (Subject Site circled red)

The design of the Washington House Building provides for prominent views of significant elements of the Newcastle Cityscape, foreshore, and waterways (Ocean and Hunter River estuary/harbour) including interface views between land/water. The views are afforded from both living spaces and PPOS areas (in the form of decks) to the apartments to the northern and eastern elevation of the building, and so the ability to offset any view loss has been designed into the building (possibly in recognition that views were afforded over private sites).

From the main living area some apartments at greater heights have far reaching views to the east/north-east capturing glimpses of Nobby's Headland and Fort Scratchley which can be considered significant views (refer to image 2 and 3). Furthermore, these views are partially dependent upon overlooking the subject site.

It is noted that whilst these views currently afforded may be considered highly valued/significant, they are not iconic.

The proposed development will not exceed the height of the existing built form and brick massing to the northeast at 175 Scott Street. The proposed mechanical enclosure and lift overrun will sit approximately 2.32m below the existing parapet, with the proposed roof form sitting 3.47m below the adjoining parapet, see below images 6 and 7 for detail.

The development does not impact or remove the views north east towards Nobby's and Fort Scratchley, which are to be retained, for example as demonstrated within images for Unit 704, Cityscape views to the east (including distant views to significant elements including Fort Scratchley) are retained from the living room with Harbour and land/water interface views to the north and north east predominantly retained (approx. 85%) from the deck areas servicing the living space (PPOS). Accordingly, any view loss is minor and largely offset by retained views.

The bulk and scale of the proposed development addresses the existing interface of the adjoining building and existing streetscape through location of massing, building height, materiality and articulation of the built form. Increased side boundary setbacks have been provided to increase the integration of the design to the adjoining built form to the east, allowing the proposed development to complement the existing view whilst also providing historical rejuvenation of a historical building, and retaining significant views for residential dwellings to the southwest.

It is acknowledged there is a degree of view loss as a result of the proposed development, however it is minor when considered in context, including that the loss of views being majority water, with interfaces from land to water and significant views of Nobby's Headland and Fort Scratchley being retained. As such, any minor water view loss for the northeast facing apartments of No. 169 Hunter Street, resulting from the proposed development, is not unreasonable and the proposed developments setback and overall building height in respect to the view impact is considered acceptable and the view sharing reasonable.

'Fabric House' building - No. 18 Wolfe Street

Located on the western side of Wolfe Street and approximately 43 metres southwest from the subject site is the 'Fabric House' building; a eleven-storey mixed use development consisting of basement level carparking (Basement), one level of retail (Ground Level), and ten levels of residential apartments above (Level 1 to Level 10).

The upper ten storeys containing the residential component has the majority of the apartments with their living and primary balcony areas orientated towards the north, northeast (refer image 4 below). As such, the proposed development will inevitably have some impact on the existing views from these apartments.



Image 4: Existing view from level 6 Living Room window, looking north (Subject Site circled red)

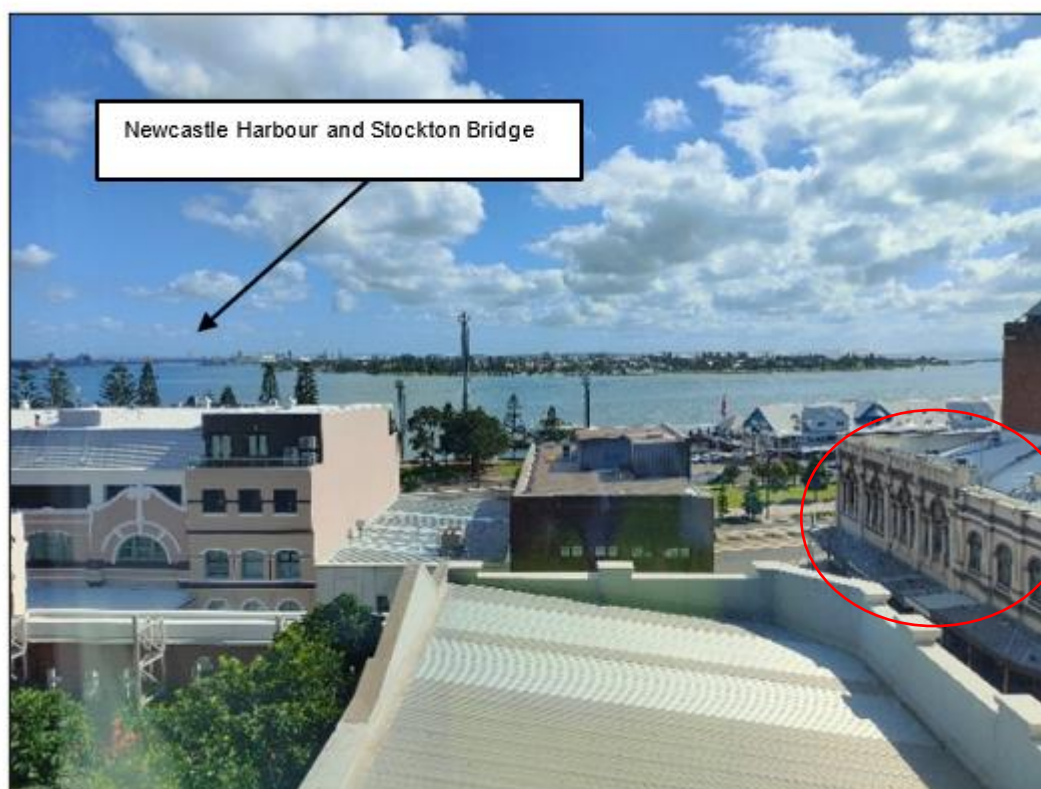


Image 5: Existing view from level 6 Living Room window, looking northeast (Subject Site circled red)

Many of the *Fabric House* apartments currently have far-reaching (distant) views towards the interface between land and water at Stockton Beach and northwest towards the Port of Newcastle, whilst these views may be considered highly valued/significant, they are not iconic.

Whilst the proposed development will impact this view, approximately 15% of the water view, there will be approximately 75% of the broader views towards Stockton and the Harbour to be retained, including the land/water interface, as demonstrated in Image 6. Accordingly, any view loss is minor and are largely offset by retained views. Furthermore, these views are dependent upon overlooking over the subject site.

These apartments benefit from much wider views encompassing views of Stockton to the north and the Harbour/Port of Newcastle to the northwest down to the Hunter River. The proposed development is not considered unreasonable in regard to view loss due to the overall context of view and the percentage of view loss and the degree of significance of the view, in respect to the view impact.

In this regard the proposal is considered acceptable and the view sharing reasonable.



Image 6: Montage - resulting view from Fabric House, looking northeast, demonstrating the predominant retention of interface views between land and water.

East End Stage 2 – 149 Hunter Street

Located on the southern side of Hunter Street and approximately 25 metres south from the subject site is the proposed East End Stage 2 Buildings (north tower) eight-storey mixed use development consisting of basement level carparking (Basement), one level of retail (Ground Level), seven levels of residential apartments above (Level 1 to Level 7) and level 8 communal area.

The upper seven storeys (level 1 to 7) containing the residential component has most of the apartments having living areas to be orientated towards the north and north-west (refer perspective image 7 below). As such, the proposed development will inevitably have some impact on the existing views from these apartments, where they are located toward the western end of the building (those located toward the eastern end of the building will have an outlook directly toward the prominent building to the direct north at 175 Scott Street).

The building is currently under construction and perspectives have been provided for the resulting view from the East End Stage Two development, viewing northwest down the Harbour toward the Port of Newcastle. This perspective provides insight into the wide encompassing views available to the northern quadrant orientated site and how the proposed development, even though it does present an impact to some views it can be considered minor as there are far-reaching views down the Harbour and towards Stockton Bridge in the distance which are retained due to the proposed building bulk, scale and massing favouring the eastern elevation of the proposed building (setback from western boundary of between 4m-7m above the podium level), so where a considered design is implemented into those apartments, any view loss to the direct north is offset by retention of view to the north west.

The retained view corridor to the northwest across public lands and through the considered setbacks to the western boundary is between 13m at Level 2 and 17m at Level 5. It is noted also that this view corridor includes the land/water interface.

It is further noted that the approved RL to the roof top on the East End stage 2 north tower is 32.0, which is 4.51m higher than the proposed building at 182 Hunter St (27.49 to roof top), and any view afforded from a greater height than RL 27.49 would be predominantly retained- and greater than RL 25.09 would likely only be partially impacted due to the increased western boundary setback at level 5.



Image 7: Montage - Resulting view from East End Stage Two, looking northwest, demonstrating retention of harbour and interface views between land and water.

Conclusion

The design of the proposed development is skilful in that it masses toward the higher building to the immediate east at 175 Scott St, with the proposed roof form sitting 3.47m below the adjoining parapet and appears as subservient in scale, form and height to that building. By massing toward this building generous setbacks are afforded to the Western boundary which also benefits in preserving the Wolfe Street view corridor through the public domain.

Overall, the loss of views is acceptable using the methodology outlined under the planning principles contained in *Tenacity* and it is noted that the proposed development allows for the predominant preservation of higher order views (i.e. views of the interface between land and water) when all of the potentially impacted views afforded to residential apartments across the various buildings are considered. The proposed development is considered reasonable for the site and the land is also located within the Newcastle City Centre, which is subject to planning policies that seek to increase the density of development in close proximity to services.

In summary, whilst it is acknowledged that the development will result in some impacts to the views of the nearby residential apartments, following consideration of the impact of view sharing, the site being within the city centre, the proposal is considered reasonable and is supportable on this basis.

5.7 The suitability of the site for the development

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

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

At-grade access to the site will be available for pedestrians, from adjacent roads and public transport. The City Centre location and the availability of public transport services, ensures that the proposed development has a suitable accessibility.

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

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

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

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

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

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

The application was notified through two rounds of public notification in accordance with CN's Community Participation Plan (CPP). A total of 16 submissions were received during each notification period.

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

Issue	Response
Height - The LEP height exceedance is not justified.	As discussed within Section 5.1.7 of this Report, the height of the proposed building is considered to be acceptable noting that this conclusion has been formed on the basis of a well-founded variation request seeking to vary a development standard under Clause 4.6 of the LEP.
View loss - The height will obstruct views of the Harbour, Stockton Beach and the ocean from nearby residential apartments. Impact on views will in turn impact property values.	As discussed within Section 5.6 of this Report, the proposed development is considered to facilitate reasonable view sharing in accordance with the Principles outlined by the NSW Land and Environment Court in <i>Tenacity Consulting vs Warringah</i> . Further, impact on property value is not a matter for consideration under S4.15 of the <i>Environmental Planning and Assessment Act</i> .
FSR - The FSR exceeds the LEP standard, adding to height/bulk issues.	As discussed within Section 5.1.7 of this Report the proposed floor space ratio of the building is considered to be acceptable noting that this conclusion has been formed on the basis of a well-founded variation request seeking to vary a development standard under Clause 4.6 of the LEP.
Heritage - The proposal detracts from and diminishes the overall appearance of the School of Arts building. The proposal detracts from the adjoining heritage item (Beberfaulds Warehouse). The development does not respect the scale, character and	As discussed within Section 5.1.7 of this Report the proposal is considered acceptable having regard to Heritage Conservation as it provides a suitable adaptive reuse of a locally listed item and the additions to the existing building are acceptable with regard to impact upon the subject item and other items within vicinity. The proposed additions read as subservient in scale and consistent to character, ultimately respecting the significance of the items and the heritage context in general (including positioning within the City Centre HCA).

<p>significance of existing buildings. The development proposes substantial demolition of the heritage building.</p>	<p>The requirement for an interpretation plan and schedule of conservation works will be included as conditions of development consent.</p>
<p>Visual impact - The proposal will impact and obstruct views to and from the Harbour from the Cathedral and other sites of significance.</p> <p>Views to the Harbour and foreshore from Wolfe Street corridor will be impacted.</p>	<p>As discussed within Section 5.3 of this report, the proposed development is not identified as located within one of the vista/view corridors to be retained as identified under Section 6.01 of the NDCP 2012. Notwithstanding, when the Cathedral is viewed from the foreshore to the west of the site, the proposed development does not impact that view to the extent that the approved building to the immediate south across Hunter Street already does.</p> <p>The proposed development allows for the Wolfe Street view corridor to the Harbour to be preserved through the public domain and from the corner of Wolfe and King Street.</p>
<p>Privacy - Proposed residential apartments that face Hunter Street will look towards apartments in the neighbouring East End Village. This may cause an invasion of privacy to East End Village residents.</p>	<p>As discussed within Section 5.1.5 of this Report, the proposed development is considered to be acceptable having regard to visual privacy.</p>
<p>Car parking - Two levels of car parking above ground is not sustainable. Car parking within the heritage building is a poor outcome. The overall amount of carparking should be reduced or relocated underground.</p>	<p>As discussed within Section 5.3 of this report, the proposed development is considered acceptable regarding car parking and the parking located within the heritage building is not visible from the public domain.</p>
<p>Design and Aesthetic issues - The perforated mesh screen is not sympathetic to the</p>	<p>As discussed within Sections 5.15, 5.1.7 and 5.3 of this report, the proposed development is considered to be acceptable having regard to design and aesthetics, and</p>

<p>existing facade. The building does not reflect CN's intent to step built form down the Hill to the Harbour. The proposal detracts from and diminishes the overall appearance of the School of Arts building.</p>	<p>considered to exhibit design excellence and is acceptable having regard to heritage conservation.</p> <p>The proposed building is lower than the existing and approved buildings on the southern side of Hunter Street which are located closer to the Hill than the Harbour, indicating the proposal would meet CN's intent in this respect.</p>
<p>Traffic - The extra car traffic will detrimentally add to existing traffic in an area which is moving toward a focus on public transport. Extra vehicle movements will detract from the amenity of the area.</p>	<p>As discussed within Section 5.3 of this Report, the proposed development is considered to be acceptable having regard to traffic.</p>
<p>Construction issues - No consideration has been made to transport of construction materials; vehicle access for heavy vehicles; parking for construction staff; disposal and storage of construction material; dust and debris pollution; construction noise.</p>	<p>These are construction management issues and not considerations under S4.15 of the EP&A Act, however prescribed conditions of consent to the effect of managing impacts through construction phase will be imposed.</p>
<p>Servicing - Servicing of the site will cause traffic issues as Scott Street is one lane.</p>	<p>As discussed within Section 5.3 of this report, the proposed development is considered acceptable having regard to servicing, subject to conditions.</p>
<p>Overshadowing - The development will impact light into Hunter Street, which is already dark. The development will overshadow nearby residences.</p>	<p>As discussed within Sections 5.15 & 5.6 of this report, the proposed development is acceptable having regard to additional overshadowing impacts.</p>

5.9 The public interest

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

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

The development is in the public interest and will allow for the orderly and economic development of the site, in addition to the suitable adaptive reuse of a heritage item.

6.0 CONCLUSION

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

ATTACHMENTS

- Attachment A:** Submitted Plans – 182 Hunter Street Newcastle
- Attachment B:** Draft Schedule of Conditions – 182 Hunter Street Newcastle
- Attachment C:** Processing Chronology – 182 Hunter Street Newcastle
- Attachment D:** Clause 4.6 written exception to height of building development standard – 182 Hunter Street Newcastle
- Attachment E:** Clause 4.6 written exception to floor space ratio development standard – 182 Hunter Street Newcastle

Attachments A-E: Distributed under separate cover

7.8. 4 TIGHE STREET NEWCASTLE WEST - RE2023/00001 - COMMERCIAL CAR PARK AND RETAIL PREMISES

APPLICANT: TATTS GRETA PTY LTD
OWNER: MCCLOY NEWCASTLE WEST PTY LIMITED, TATTS GRETA PTY LTD
REPORT BY: PLANNING AND ENVIRONMENT
CONTACT: INTERIM EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

PART I

PURPOSE

A section 8.2(1) review of determination application (RE2023/0001) has been received seeking to review the reasons for refusal of Development Application (DA2021/01679) for the demolition of the existing building and erection of a 7-storey car park and retail premises at 4 Tighe Street, Newcastle West.

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

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



Subject Land: 4 Tighe Street Newcastle West

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

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

Issues

- 1) Floor space ratio – The proposed development has a floor space ratio of 3.63:1, which is approximately a 21% variation from the development standard of 3:1

under Clause 7.10A of NLEP 2012. This is based on the gross floor area exceedance being 796.79m² and the site area of 1,275.5m². The applicant has submitted a written request in accordance with Clause 4.6 of the NLEP 2012 to vary the floor space ratio development standard.

- 2) Rail corridor - Transport for New South Wales (Sydney Trains) has assessed the potential impacts of the proposed development on existing and proposed rail infrastructure facilities in the rail corridor. TfNSW (Sydney Trains) has granted its concurrence to the amended application subject to Council imposing several Deferred Commencement conditions and operational conditions that need to be complied with before the consent becomes active.

Conclusion

The application for review of determination has been assessed having regard to the relevant matters for consideration under the provisions of Division 8.2(1) Reviews – Section 8.2 and 8.3 of EP&A Act 1979. In addition, the proposal has been assessed under Section 4.15(1) of the EP&A Act, as detailed in the below assessment report. The proposed development is acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 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 B3 Commercial Core zone in which the development is proposed to be carried out; and
- B. That RE2023/00001 for demolition of the existing building and erection of a seven-storey car park and retail premises at 4 Tighe Street, Newcastle West be approved, and a deferred commencement consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject site is described as 924 Hunter Street Newcastle West (known as 4 Tighe Street). Its legal description is Lot 1 DP 445736, Lot 23 & 24 DP 126.

The site is located on the north-eastern corner of Railway and Tighe Streets, Newcastle West. The site is currently occupied by a single storey automotive repair shop. Vehicular access is provided via Tighe Street with separate ingress/egress.

The total area of the site is approximately 1,275.5 m². It is an irregular shaped lot and has limited fall. The site does not contain any significant vegetation and the existing building occupies the entire site. The site has approximate frontages of 27.17 metres to Railway Street and 48.15 metres to Tighe Street.

The broader area surrounding the subject site has a varied character being a combination of older commercial development and recent commercial and mixed-use developments. Recently approved developments are tall buildings (typically 45-90 metres) and commonly mixed use with commercial at ground floor and with upper-level apartments.

To the immediate north of the site is the railway line with the suburb of Wickham further north. The former level-crossing at the northern end of Railway Street has in recent years been permanently closed to motor vehicles at the railway line, as part of the creation of the Newcastle Interchange, which is located approximately 250 metres to the east. The short section of Railway Street to the west of the subject site therefore serves only to access the small number of properties in the immediate vicinity including Tighe Street. Pedestrian access, including recently installed lifts, provide pedestrian access to the northern section of Railway Street across the rail line.

West of the site, 934 Hunter Street, is a 1-2 storey building and associated car sales premises with associated service centre. East of the site, 904-908 Hunter Street, is a self-storage premises (Kennards). This site forms an 'L' shape such that it adjoins the subject site at its western boundary and also extends to Hunter Street at its southern boundary. This premises has vehicular access through its site from Tighe Street to Hunter Street (i.e., private access).

South of the site is 924 Hunter Street known as 'Dairy Farmers Corner'. A development (DA2021-01459) for commercial premises (retail premises & business premises), two residential towers (30 storey & 24 storey) containing 183 dwellings and 237 associated car parking spaces has been approved for this site.

2.0 THE PROPOSAL

The proposal comprises the demolition of the existing structure on the site, and the erection of a seven storey privately operated public car park comprising six storeys of undercover car parking and one level of open rooftop parking. The car park includes 143 spaces, 27 motorcycle spaces and 36 bicycle storage lockers. The proposal also incorporates a ground floor retail premises and business signage.

A Development Application (DA2021/01679) was lodged with Newcastle City Council on 14 December 2021 seeking consent for demolition of existing structures and erection of a carpark & retail premises (ground floor) over seven levels, comprising 145 spaces, 25 motorbike spaces, and 32 bicycle spaces.

On 5 April 2022, the Applicant filed a Class 1 Appeal in the Land and Environment Court against the deemed refusal of the development application. The appeal was subsequently withdrawn, and the application was refused on 31 October 2022. The reasons for refusal are provided below:

- 1) The proposal does not comply with the maximum allowable floor space ratio pursuant to clause 7.10 Newcastle Local Environmental Plan 2012. A clause 4.6 variation request has not been submitted and is a prerequisite to the determination of the application [Section 4.15(a), (b) & (e)].
- 2) Insufficient information has been submitted to demonstrate that the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 and Development Control Plan 2012 ('NDCP')(Section 5.02 – Land Contamination) have been satisfied [Section 4.15(a), (b) & (e)].
- 3) The proposal has not addressed the provisions of Clause 6.1 'Acid Sulfate Soils' under the Newcastle Local Environmental Plan 2012 which requires the submission of an Acid Sulfate Soils Management Plan ('ASSMP') [Section 4.15(a), (b), (c) & (e)].
- 4) The proposed development is inconsistent with Section 6.01 of the Newcastle Development Control Plan 2012 and cl7.6 Newcastle Local Environmental Plan 2012 with respect to active street frontage and of traffic parking and access [Section 4.15(a), (b) & (e)].
- 5) The proposed development is not acceptable in regard to urban design and design excellence under Part 7 of the Newcastle Local Environmental Plan 2012 and Section 6.01 of the Newcastle Development Control Plan 2012 [Section 4.15 (a), (b) & (e)].
- 6) The proposed development is not acceptable in regard to the public domain, vehicular access, crossing design, potential head light glare/lighting/amenity impacts, design of proposed retail premises, proposed end of trip facilities, lift access, on-site deliveries and servicing [Section 4.15 (b) & (e)].

- 7) Insufficient information has been provided to determine whether that the proposed development will be suitable in terms of flooding risk and the requirements of to NDCP 2012 Section 4.01 - 'Flood Management'. [Section 4.15 (b), (c) & (e)].
- 8) Insufficient information has been provided to demonstrate that the development will not have a detrimental impact to heavy rail assets of Transport for NSW (Sydney Trains) and is not in the public interest [Section 4.15 (a), (b) & (e)].
- 9) Insufficient information has been submitted to demonstrate that the proposed development provides satisfactory stormwater management. [Section 4.15 (b), (c) & (e)].
- 10) Insufficient information has been provided to demonstrate that the traffic and pedestrian impacts of the proposal are acceptable. [Section 4.15 (b), (c) & (e)].
- 11) Insufficient and inadequate information has been provided with respect to Crime Prevention Through Environmental Design (CPTED). The development is inconsistent with Section 4.04 – Safety & Security NDCP [Section 4.15 (b), (c) & (e)].
- 12) The proposed development will have an unreasonable impact on potential route of the westward extension of the Newcastle Light Rail network and is not in the public interest [Section 4.15 (a), (b) & (e)].
- 13) Insufficient and inadequate information has been provided with respect to signage and State Environmental Planning Policy (Industry & Employment) 2021. [Section 4.15 (a), (b) & (e)].
- 14) The proposed development is contrary to the public interest with respect to the provisions of NLEP 2012 and NDCP 2012, land contamination, acid sulphate soils, urban design and design excellence, traffic, parking, streetscape, visual appearance, and adverse impacts on residential amenity within this area. [Section 4.15(1)(e) Environmental Planning and Assessment Act 1979]

On 21 February 2023, an application for a review of determination under section 8.2(1) of the *Environmental Planning and Assessment Act 1979* was submitted to Council. The submitted s.8.2(1) application provided amended plans and additional information to address:

- a) the Reasons for Refusal in Schedule 1 of Council's Notice of Determination dated 31 October 2022; and
- b) the matters raised in Council's Statement of Facts and Contentions filed in the Land and Environment Court Appeal; and

- c) the matters agreed between the parties during the conciliation conference in the Appeal.

A summary of the amended plans and additional documentation is set out below.

- i) *Clause 4.6 request to vary Floor space ratio development standard of NLEP 2012*
A clause 4.6 request has been submitted which provides written justification for the contravention of clause 7.10A under NLEP 2012. The submitted clause 4.6 request is based on the floor space ratio of 3.63:1 and is considered acceptable as it satisfies the requirements of cl.4.6 by demonstrating that compliance is unnecessary in the circumstances of the applications. A detailed cl.4.6 assessment is provided at Section 5.1 of this report. e.

This submitted clause 4.6 request satisfactorily addresses **Item 1** in Schedule 1: Reasons for Refusal in the Notice of Determination dated 31 October 2022 (the Reasons for Refusal).

- ii) *Contamination*

A Preliminary Site Investigation (PSI) for the proposed development site identified that the land is contaminated. A Detailed Site Investigation (DSI) has now been provided that confirms that the site is considered suitable for the proposed development and a Remediation Action Plan is not required to facilitate the development.

The submitted contamination reports satisfactorily address **Item 2** in the Reasons for Refusal.

- iii) *Acid Sulfate Soils*

An Acid Sulfate Soils Management Plan has been provided and includes the following Acid Sulfate Soils management strategies; monitoring programs; and contingency plans. The Acid Sulfate Soils Management Plan addresses **Item 3** in the Reasons for Refusal.

- iv) *Amended Plans*

The architectural drawings have been amended to address the issues provided by CN staff during the DA assessment and conciliation conference. To address CN's contentions regarding the design of the building, the proposed signage on Tighe Street has been reduced in size; a one metre setback has been provided between the building and the rail corridor (as recommended by Sydney trains); and the proposed materials and finishes have been amended (as recommended by CN's Urban Design Review Panel).

Several other amendments have been incorporated to address several other issues raised during the assessment process and conciliation, section 34 conference. These amendments are as follows:

- i) 1.4 metre solid balustrades to reduce the impact of headlights on the surrounding buildings.
- ii) The configuration of the retail premise has been adjusted to provide an active street frontage.
- iii) The carpark's boom gate has been moved to the middle of the level 1 ramp to allow an 18-metre setback from Tighe Street.
- iv) A roller door has been included but will only remain shut during the 'off peak' hours.
- v) The carpark now contains 5 electric vehicles spaces.
- vi) End of trip facilities have been removed.
- vii) A waste facility has been included on the Tighe Street frontage consistent with the waste arrangement for the Dairy Farmers Corner proposal.
- viii) A staffroom has been included for the property manager/cleaner on level 1.

The above amendments to the plans satisfactorily address **Items 4, 5 and 6 & 10** in the Reasons for Refusal.

v) *Flooding*

A Flood Impact Assessment report has been provided that satisfactorily addresses **Item 7** in the Reasons for Refusal.

vi) *Heavy Rail corridor and infrastructure*

TfNSW (Sydney Trains) has granted its concurrence to the amended application subject to Council imposing a number of Deferred Commencement conditions and operational conditions that need to be complied with before the consent is activated. Concurrence provided by TfNSW (Sydney Trains) satisfactorily addresses **Item 8** in the Reasons for Refusal.

vii) *Stormwater and drainage*

The civil and stormwater plans have been amended to include the construction of a new drainage network in Railway Street. The new network connects the outlet from the proposed development to Council's existing stormwater network. The amended plans also include the construction of a new kerb inlet pit in Railway Street.

The engineering plans have been amended to demonstrate that a B99 and B85 vehicle can pass on the internal ramps. These amended engineering plans address **Item 9** in the Reasons for Refusal.

viii) Safety & Security

The submitted Statement of Environmental Effects provides an assessment of the proposed development relative 'Crime Prevention Through Environmental Design' (CPTED) principles of surveillance; access control; territorial reinforcement; and space management. This information satisfies **Item 11** in the Reasons for Refusal.

ix) Impacts to Light Rail

TfNSW have considered the possible light rail extension route through the site and, advised that they raised no objections at the time of this assessment. TfNSW has options available to them to ensure future light rail extension route is protected. Based on information in the DA assessment report, the DA was found to be acceptable regarding the possible future light rail extension. This advice satisfies **Item 12** in the Reasons for Refusal.

x) State Environmental Planning Policy (Industry and Employment) 2021

A report to address the requirements of Chapter 3 (Advertising and signage) of SEPP (Industry and Employment) 2021. This report addresses **Item 13** in the Reasons for Refusal.

It is noted that in accordance with s.8.3(2) of the EP&A Act a determination under s.8.2 for (a) a review of determination cannot be reviewed after the period within which any appeal may be made to the Court has expired if no appeal was made, or (b) after the Court has disposed of an appeal against the determination decision. As the Applicant withdrew the appeal the applicable period is that prescribed under s.8.3(2)(a). This period is outlined s.8.10(1) of the EP&A Act and is 6 months after the decision was notified on the NSW planning portal, as the refusal was issued after the COVID prescribed period (which ended on 25 March 2022). As the refusal was issued on 31 October 2022, the current review of the determination must be determined by 1 May 2023.

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

3.0 PUBLIC NOTIFICATION

The original application (DA2021/01679) was publicly notified in accordance with CN's Community Participation Plan (CPP) between 20 December 2021 and 25 January 2022. No submissions were received in response.

The current s.8.2(1) review application has also been publicly notified between 23 February and 14 March 2022 and no submissions were received regarding the amended proposal.

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R&H)

Chapter 2 Coastal management

Chapter 2 of the *State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R&H)* contains planning provisions for land use planning within the coastal zone consistent with the *Coastal Management Act 2016*.

Chapter 2 applies to land the whole or any part of which is within the 'coastal zone'. The 'coastal zone' is defined in the *Coastal Management Act 2016* as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability.

The subject site is mapped within the Coastal Environment Area, as identified by the *Coastal Environment Area Map*. The relevant provisions of Chapter 2 have been considered in the assessment of the Subject Application, as discussed below.

Section 2.10 – Development on land within the coastal environment area:

Section 2.10 of SEPP R&H specifies that the consent authority must not grant development consent on land that is within the coastal environment area unless they are satisfied in respect to whether the proposed development is likely to cause an adverse impact on; (a) the integrity and resilience of the biophysical, ecological and hydrological environment, including surface and groundwater; (b) coastal environmental values and natural coastal process; (c) water quality of the marine estate in particular any sensitive coastal lakes; (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms; (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public including persons with a disability; (f) Aboriginal cultural heritage, practices and places; and (g) the use of the surf zone.

The site is located within a well-established urban setting, with development existing on the site for many years, there are no likely impacts to this environment, particularly in relation to the biophysical environment, coastal processes, and maintaining public access to existing open space and the foreshore.

The proposal would have no material impact on environmental, coastal, native vegetation, surf zone or access issues listed above. Similarly, the long historic usage of the site, and its highly disturbed nature, means that it is unlikely that any evidence of Aboriginal cultural heritage, practices and places would remain on the site.

The bulk, scale and size of the proposed development does not cause undue adverse environmental impacts, including impacts on public domain in terms of wind tunnelling and loss of views to the foreshore (being Newcastle Harbour).

The proposed development has considered the surrounding coastal and built environment. The shadow diagrams submitted with the subject application demonstrate that the overshadowing impact of the proposed development, on adjoining development and the public domain would not be greatly increased and is not unreasonable having regard to the intended desired future character and built form for the area, and the nature of existing and approved development in the vicinity of the subject site.

The proposed development is suitably designed, sited, and able to be managed, to avoid causing an adverse impact referred to in s2.10(1) of the Resilience and Hazards SEPP.

Chapter 4 – Remediation of land.

Chapter 4 of SEPP R&H 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 relevant provisions of Chapter 4 have been considered in the assessment of the Subject Application, as discussed below.

Section 4.6 – Contamination and remediation to be considered in determining development application:

Section 4.6 of SEPP R&H requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, the consent authority must be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, or whether remediation is required.

The site is identified as being potentially contaminated on CN's contaminated land register as vehicle servicing was known to occur on the site. The potentially contaminating activity was identified as engine works. Furthermore, there was a previous milk processing and distribution operation and possible past use as a bus terminal.

A Detailed Site Investigation has been prepared in accordance with SEPP R&H. No sample results were identified above the adopted human health land use criteria for the site. Subject to conditions of consent, the site can be managed, remediated, and validated appropriately so that it does not pose a risk to human health or the environment.

The Subject Application satisfies the requirements and s.4.6 of SEPP R&H, which requires the consent authority to be satisfied that the development site will be suitable for the proposed development. Accordingly, the site is considered suitable for the proposed development and contaminated land investigation is acceptable, subject to draft conditions included in **Attachment B**.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 – Infrastructure

Chapter 2 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (SEPP T&I) contains planning provisions for the delivery of infrastructure across the State such as hospitals, roads, railways, emergency services, water supply and electricity delivery. The relevant provisions of Chapter 2 have been considered in the assessment of the subject application, as discussed below.

Section 2.122 – Traffic-generating development:

Section 2.122(4) of the SEPP T&I requires consent authorities to give written notice to TfNSW of an application for certain development specified as 'traffic generating development' in Column 1 of the Table to Schedule 3, that involves – (a) new premises of the relevant size or capacity; or (b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity – as identified in s.2.122(1) and take into consideration any response received, the accessibility of the site concerned, and any potential traffic safety road, congestion or parking implications of the development.

The application is identified as traffic generating development, being a car park comprising 50 or more car parking spaces with access to a classified road (Hunter Street) within 90m of the site – in accordance with Column 2 and Column 3 of the Table to Schedule 3 respectively.

As such, was required to be referred to TfNSW for comment in accordance with s.2.122(4). TfNSW reviewed the referred information and provided comments to assist CN in making a determination, which are discussed below.

During the DA assessment, TfNSW identified that, in addition to the recently constructed transport interchange, this proposal and the current proposed residential/commercial developments in the vicinity are expected to increase traffic and pedestrian movements on the broader transport network. TfNSW requested that the pedestrian matters and an extended traffic model, to include the bus interchange and Stewart Avenue intersections, should be further addressed in the transport impact assessment to understand the cumulative impacts.

Similar concerns were initially raised in association with the neighbouring 'Dairy Farmer's development site (DA2021/01459) which were ultimately addressed by a revised traffic impact assessment (TIA) that included assumptions and assessment of the cumulative impact of both developments. Final advice was received from TfNSW on 15 March 2023 confirming that the previous concerns raised in the initial referral have since been resolved as a result the revised modelling to support the neighbouring Dairy Farmers development as it has been demonstrated that the development will have no significant impact on the Hunter Street signalised intersections and the development is now supported.

Furthermore, the accessibility of the site, and potential traffic safety road, congestion or parking implications of the proposed development, have been assessed by CN in accordance with s.2.122 of the Transport and Infrastructure SEPP and is considered acceptable.

Section 2.99 – Excavation in, above, below or adjacent to rail corridors

Section 2.99 of SEPP T&I requires consent authorities to give written notice to the rail authority of an application for development on land that is in or adjacent to a rail corridor if the development involves the penetration of ground of at least 2m below ground level (existing) on the ground:

- (a) within, below or above a rail corridor, or
- (b) within 25m (measured horizontally) of a rail corridor, or
- (b1) within 25m (measured horizontally) of the ground directly below a rail corridor, or
- (c) within 25m (measured horizontally) of the ground directly above an underground rail corridor.

Light rail:

Transport for NSW ('TfNSW') is the rail authority for the rail corridors of the Newcastle Light Rail for purpose of the requirements of the Transport and Infrastructure SEPP.

A response from TfNSW, dated 24 January 2022 in respect to the original application (DA2021/01459) identified that TfNSW are investigating options for the possible westward extension of the Newcastle Light Rail and that some of the potential alignments being considered may interact with this development site. It is understood that some of these alignments potentially bisects the site and would have implications for the design of any development on the site.

However, TfNSW subsequently gave further consideration to the possible light rail extension route through the site and, ultimately advised that they raised no objections. Based on this information the DA was found to be acceptable with regard to the possible future light rail extension.

Heavy rail:

Sydney Trains, via Instrument of Delegation from the Secretary of Transport, has been delegated to act as the rail authority for the heavy rail corridor for purpose of the requirements of the SEPP T&I. As such, the application was required to be referred to Sydney Trains for comment in accordance with s.2.99.

Final written advice from Sydney Trains was received dated 19 March 2023, which advised that TfNSW (Sydney Trains) has assessed the potential impacts of the proposed development on existing and proposed rail infrastructure facilities in the rail corridor. TfNSW (Sydney Trains) has granted its concurrence to the amended application subject to Council imposing a number of Deferred Commencement conditions and operational conditions that need to be complied with before the consent is activated.

It is noted that should DAC elect not to impose the Deferred Commencement condition, concurrence from TfNSW (Sydney Trains) would be taken to have not been granted to the Amended Application.

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

The proposed signage is acceptable having regard to SEPP I&E requirements and the nature of the development.

The objective of this SEPP is to ensure that signage (including advertising) is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high-quality design and finish. Consideration of the relevant provisions of requirements of Chapter 3 (Advertising and signage) of SEPP (Industry and Employment) 2021. The proposed signage is considered to be consistent with the objectives of this SEPP.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The following summarises an assessment of the proposal against the provisions of the *Newcastle Local Environmental Plan 2012* ('NLEP 2012') that are primarily relevant to the proposed development:

Clause 2.2 – Zoning of land & Clause 2.3 Zone objectives and Land Use Table:

The subject site is included within the B3 Commercial Core zone as shown on the *'Land Zoning Map'*.

The applicable land use definitions for the proposed development, based on definitions from the NLEP 2012, are 'car park' and 'retail premises'. The proposed 'car park' and 'retail premises' (a type of 'commercial premises') are permissible land uses permissible within land zoned B3 Commercial Core in accordance with Land Use Tables of Clause.2.3 of the NLEP 2012.

The proposed development is consistent with the objectives of the B3 Commercial Core zone, which include the following objectives (pursuant to the Land Use Table in Clause 2.3 of the NLEP 2012):

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

The proposed development comprising carpark and commercial uses is ideally located with respect to public transport (neighbouring the Newcastle Transport Interchange). The development will provide employment opportunities in an accessible location and will assist in strengthening the role of the Newcastle City Centre as a regional business centre for the Hunter Region.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the existing structure 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 subject site is identified as having a maximum permitted building height of 90m. The proposed height of the building is approximately 24.97m and complies with the maximum height applicable to the site and achieves the objectives of the control.

Clause 4.4 – Floor Space Ratio & Clause 7.10A - Floor Space Ratio for Certain Other Development

Under the NLEP 2012, the subject site is identified as having a prescribed floor space ratio of 8:1. However, Clause 7.10A of NLEP 2012 details additional provisions relating to development with a site area of less than 1,500m². This clause specifies that the maximum FSR of a building is whichever is the lesser of the FSR identified on the FSR map or 3:1. Accordingly, the maximum floor space ratio for the subject site is reduced to 3:1.

As shown on the amended architectural plans provided, the proposed development has a floor space ratio of 3.63:1, which is approximately a 21% variation from the development standard of 3:1 under Clause 7.10A. This is based on the gross floor area exceedance being 796.79m² and the site area of 1,275.5m². The applicant has submitted a written request in accordance with Clause 4.6 of the NLEP 2012 to vary the floor space ratio development standard.

The applicant has submitted a written request in accordance with cl.4.6 of the NLEP 2012 to vary the development standard imposed by cl.7.10A of the NLEP 2012. Refer to '*Clause 4.6 - Exceptions to Development Standards*' assessment below.

Clause 4.6 - Exceptions to Development Standards

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

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

As outlined above, the proposed development has a floor space ratio of 3.63:1, which is approximately a 21% variation from the development standard of 3:1 under Clause 7.10A. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

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

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

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

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

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

The submitted 'Clause 4.6 Variation Request' (**Attachment E**) constitutes a written request for the purposes of cl.4.6(3) of the NLEP 2012.

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

The applicants' Clause 4.6 Variation Request written response seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable or unnecessary; namely that the objectives of the standard have been met notwithstanding noncompliance with the standard.

It is submitted that compliance with the development standard is unreasonable because the underlying objective or purpose of the standard would be defeated or thwarted if compliance was required, for the following reasons:

- i) *The objectives of Clause 4.4 of the NLEP aim to provide an appropriate density of development and ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.*
- ii) *If the proposed development is restricted to meet the FSR of 3:1 the proposed development will not be compatible with the scale of development otherwise permitted on adjoining land.*
- iii) *Should the objective of Clause 7.10A be to force consolidation of lots this objective cannot be reasonably achieved in this instance given the pattern of surrounding development and constraints. Given that it cannot be achieved, it is unreasonable and unnecessary to restrict development on the site when the result will be a built form less compatible with that which will surround.*

CN Officer Comment

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

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

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

contravening the development standard, rather than promoting the benefits of the development.

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

- i) *The proposed contravention of the standard does not result in adverse environmental impacts to adjoining properties and the proposal has been designed to respond to the existing and future built form character of the area*
- ii) *The proposed contravention continues to promote good design and amenity of the built environment, resulting in improved urban design and amenity considerations for both the local community and future occupants of the building.*
- iii) *The proposed contravention allows for further density in this key transport orientated location within the emerging commercial core of the Newcastle City Centre (in Newcastle West) and has been designed with strict consideration of the strategic planning framework for this location.*
- iv) *The proposed contravention of the floor space ratio limit does not detract from the development's achievement of the objectives of the floor space ratio development standard and the objectives of the zone.*

CN Officer Comment

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

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

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

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

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

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

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

Clause 7.10A of the NLEP 2012 is not accompanied by an express objective. As detailed in the Clause 4.6(3)(a) assessment above, the proposed development has therefore been assessed against the objectives of the 'base' development standard, being Clause 4.4 'Floor space ratio' of the NLEP 2012. The development is consistent with the objectives of Clause 4.4 as the proposed building density, bulk and scale makes a positive contribution towards the desired built form and is consistent with the established centres hierarchy.

Objectives of the B3 Commercial Core zone

The application is considered consistent with the objectives of the B3 Commercial Core zone as the proposal provides a suitable land use to serve the need of the local and wider community, provides employment opportunities, complements the nearby interchange with park and ride options, includes commercial floorspace and strengthens the role of the Newcastle City Centre.

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

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

The Secretary's concurrence to the exception to the minimum lot size development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 of 5 May 2020.

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

Clause 4.6 - Conclusion

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the proposed development has been designed to respond to the site's unique characteristics being located at the interface of the emerging commercial core of the Newcastle City Centre (in Newcastle West), near the Newcastle Transport Interchange. The proposed development will facilitate the density anticipated within the strategic planning framework without resulting in unreasonable amenity impacts on neighbouring development.

The Clause 4.6 variation request has demonstrated that the proposed floor space ratio is acceptable and therefore that strict compliance with the prescribed development standards would be unreasonable. The Clause 4.6 variation requests are supported.

Clause 5.10 - Heritage Conservation

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

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

- i) The existing neutral building does not contribute to the character of the Newcastle City Centre HCA and its demolition will not have a detrimental impact on the significance of the area.
- ii) The scale of the proposed building, although significantly taller than the scale of the existing warehouse, is appropriate with consideration to the NLEP height limit, the strategic direction of Newcastle West, the distance of the site from nearby heritage items, and the existing and approved multi-storey development in proximity to the site.
- iii) The proposed materials palette is clearly contemporary and of its time, yet references the traditional materials palette of historical buildings in the vicinity through the use of face brickwork and
- iv) Views to the nearby heritage listed buildings will not be affected. The site is sufficiently set back from the nearby Dairy Farmers Building and the proposal appropriately scaled so that views of the clocktower will not be adversely impacted.
- v) The architectural design of the proposed building is contemporary and is consistent with the changing context of the area. The setting of the existing building and adjoining contributory buildings will not be impacted by the proposal.

The proposed development compliments the existing and developing character of the West End and will contribute positively to the existing diversity of built fabric in the

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

Clause 6.1 – Acid Sulfate Soils

The site is mapped as Class 3 and Class 4 Acid Sulfate Soils, which have a high probability of occurrence approximately 1 - 4m below natural ground level. As the development is expected to involve excavations to at least 2.5m below current ground level, a site-specific Acid Sulfate Soils Management Plan (ASSMP) has been prepared in accordance with the NSW Acid Sulfate Soil Manual and Assessment Guidelines 1998. A requirement to comply with the recommendations of the ASSMP is included as a recommended condition (**Attachment B**).

Clause 6.2 - Earthworks

An assessment has found that due to the nature, extent and location of the earthworks, and the proposed mechanisms to be put in place during the work, the level of earthworks proposed to facilitate the development is acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

Part 7 Additional Local Provisions—Newcastle City Centre

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

Clause 7.3 - Minimum Building Street Frontage

This clause requires that a building erected on land in the B3 Commercial Core zone must have at least one street frontage of at least 20m.

The proposed development is consistent with this standard, having frontages greater than 20m to both Tighe Street and Railway Street.

Clause 7.5 - Design Excellence

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

The development will assist with enhancing the quality and amenity of the public domain through excellent street activation, while not adversely impacting on any

identified view corridors. The design of the development has appropriately addressed heritage issues and resolved streetscape constraints and circulation requirements. The proposed building's overall bulk, mass and articulation sit comfortably within the streetscape. The proposal is acceptable having regard to environmental impacts and the principles of ecologically sustainable development.

The proposal has been referred to the CN's Urban Design Review Panel (UDRP) on several occasions during the development assessment and Section 34 conciliation process. The amended proposal is considered to address the predominant concerns of the UDCG and CN's assessment and is an acceptable form of development within the context of the site and location. It is considered that design excellence has been achieved, as required by this clause.

Clause 7.6 - Active Street Frontages in Zone B3 Commercial Core

The objective of this clause is to promote uses that attract pedestrian traffic along street frontages in Zone B3 Commercial Core. The proposed development is consistent with this clause and provides active street frontages to both the Railway Street and Tighe Street with ground floor retail space.

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

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

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

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

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Commercial Uses - Section 3.10

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

Flood Management - Section 4.01

The site is subject to flooding, the applicant submitted a site-specific Flood Impact Assessment (FIA) through the s.34 proceedings (Northrop, NL211626, Rev A dated 1 August 2022).

The submitted FIA recommends the Finished Floor Levels (FFL) of the Retail Tenancy and adjacent ground floor areas be set at 3.6m AHD (PMF level with no freeboard) and the Ground Floor FFL of the carpark being set at 3.4m AHD, which is equal to the estimated 1% AEP flood event and is consistent with CN's DCP. These levels are not shown on the submitted plans and will be included as a condition of consent.

Further, the FIA also identifies heightened risk to life in the public areas around this publicly accessible carpark, it is considered that an appropriate condition be included requiring a Flood Emergency Response Plan be prepared and held on site in an attempt to minimise the risk of persons exiting the relative safety within the carpark structure and moving into areas of high risk. Subject to conditions, as included in **Attachment B**.

Mine Subsidence - Section 4.03

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

Safety and Security - Section 4.04

The proposed development has been considered relative to the 'Crime Prevention Through Environmental Design' (CPTED) principles of surveillance; access control; territorial reinforcement; and space management as documented in the publication "*Crime prevention and the assessment of development applications*" published by the Department of Urban & Transport Planning.

The proposed development will result in the redevelopment of the site and will result in a permanent physical presence with a public car park (operating 24/7) and retail premises and therefore improved casual surveillance over the entire site and surrounding area.

The proposal incorporates clear sightlines between public and private space; no landscaping that allows opportunity for offenders to hide or entrap victims; and improved casual surveillance opportunities.

Appropriate access control has been incorporated into the development. Lighting to the development will animate the façade at night. The spaces have been designed such that they are able to be maintained so that the building appears to be well kept and therefore deter crime. The proposal incorporates low-maintenance materials. The proposed landscaping is also low maintenance, ensuring overgrowth will be avoided.

The proposed development as submitted under the review application, will not introduce any specific elements likely to encourage crime and has been appropriately designed having regard to CPTED principles and is therefore considered acceptable.

Social Impact - Section 4.05

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

The proposed development will activate Tighe Street and Railway Street through the provision of retail spaces on the ground floor. It will also provide employment opportunities with the construction and the ongoing commercial and retail functions on the site.

Soil Management - Section 5.01

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

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

Land Contamination - Section 5.02

Refer to the '*State Environmental Planning Policy (Resilience and Hazards) 2021*' assessment of this report above.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Aboriginal Heritage - Section 5.04

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

Heritage Items - Section 5.05

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

Archaeological Management - Section 5.06

A nearby Archaeological Site has been recently identified in association with a development on Denison Street and a condition of consent was imposed on the 'Dairy Farmers' Corner site (DA2021/01459) requiring the applicant to prepare an Aboriginal Cultural Heritage Assessment report. A condition of consent has been recommended at **Attachment B** requiring An Aboriginal Cultural Heritage Assessment (ACHA) is to be prepared prior to the commencement of any ground disturbance works.

Heritage Conservation Areas - Section 5.07

As discussed under Clause 5.10 Heritage of NLEP 2012, the proposed development will not significantly affect the heritage significance of the Newcastle City Centre Heritage Conservation Area

Newcastle City Centre - Section 6.01

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

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

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

The proposed setbacks are generally consistent with the adjoining development immediately to the east and will not be out of character for the area when considering the proposed future mixed-use development to the south and other existing developments in the locality. A 3m setback along Railway Street is provided for an improved streetscape with sufficient tree canopy and improved pedestrian connections between Hunter Street and the emerging Wickham precinct.

The site is not in proximity to any public spaces listed under this section of the DCP and no unreasonable level of overshadowing will result from the proposed development. Access to the proposed car park will be from Tighe Street, allowing for the activation of Railway Street for retail purposes. The pedestrian access to the site is via Railway Street which allows for the activation of the frontage for retail purposes.

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

Landscape Open Space and Visual Amenity - Section 7.02

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

The widening of the public footpath on Railway Street will allow for landscaping and street tree planting to create visual interest and interaction with the public, while positively contributing to the public amenity of the streetscape.

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

The proposed landscaping includes street tree planting along the Railway Street frontage and smaller groundcovers to soften the Tighe Street façade, as such improving the pedestrian amenity along a currently lifeless Tighe Street.

Traffic, Parking and Access - Section 7.03

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

Traffic generation:

A Traffic and Parking Assessment has been submitted with the amended application and addresses the traffic and parking implications arising from the amended proposal. It is concluded that the proposed development would not create any discernible traffic effect on the surrounding road networks and confirms that the nearby intersections would continue to operate as original planned. The proposal is acceptable subject to conditions, as recommended at **Attachment B**.

Traffic and pedestrian impacts:

During the DA assessment, TfNSW identified that, in addition to the recently constructed transport interchange, this proposal and the current proposed residential/commercial developments in the vicinity are expected to increase traffic and pedestrian movements on the broader transport network. TfNSW requested that the pedestrian matters and an extended traffic model, to include the bus interchange and Stewart Avenue intersections, should be further addressed in the transport impact assessment to understand the cumulative impacts.

It is noted that similar concerns were initially raised in association with the neighbouring 'Dairy Farmers' development site (DA2021/01459), which were ultimately addressed by a revised traffic impact assessment that included assumptions and assessment of the cumulative impact of both developments.

Correspondence was received from TfNSW on 15 February 2023 stating that any concerns previously raised have now been resolved by the revised modelling

submitted to support the neighbouring 'Dairy Farmers' development as it has been demonstrated that the development will have no significant impact on the Hunter Street signalised intersections and the development is now supported.

The proposal is acceptable subject to conditions, as recommended.

Newcastle Light Rail Extension:

A response from TfNSW, dated 24 January 2022 identified that TfNSW are investigating options for the possible westward extension of the Newcastle Light Rail and that some of the potential alignments being considered may interact with this development site. It is understood that some of these alignments potentially bisect the site and would have implications for the design of any development on the site.

TfNSW have considered the possible light rail extension route through the site and advised that they raised no objections at this time. Based on this information and identified in the DA assessment report identified above, the DA was found to be acceptable regarding the possible future light rail extension.

Carpark Design

AS2890.1:2004 – 'Off-street Car Parking' suggests that car parks catering for more than 100 vehicles, as is the case, should have a minimum queue length of three cars (or 18 m) for the single entry lane before the access control structure. The amended application has removed the boom gates previously proposed at the driveway entrance off Tighe Street and relocated the boom gates to be on the ramp between the ground and first floors within the carpark building. This achieves the minimum 18m distance for on-site queuing of vehicles as required and is considered acceptable.

The 'Roller Shutter' access control at the Tighe Street driveway entrance will remain opened between the peak operating hours of 7:00am to 7:00pm daily. This will ensure unfettered access is available to the disabled and commercial parking spaces located on the Ground Floor with boom gate controls in place for access to all other floors and parking spaces. This amended arrangement is considered satisfactory subject to conditions relating to the ongoing operation and management of the development.

The proposal is acceptable subject to conditions, as recommended.

Loading and servicing

The amended plans show one of the ground floor parking spaces as a dedicated 'loading bay' adjacent to the access door to the back of house part of the retail tenancy. This is adequate for the likely future uses of this relatively small tenancy. A new waste enclosure is proposed in association with the Retail Tenancy and this is considered acceptable with private waste collection to occur from Tighe Street.

A condition is recommended requiring these garbage bins not to be presented to the street for collection, with the service provider to access the refuse area, manually

collect the bins and then return them to the on-site refuse area. This waste service arrangement is to be in place prior to occupation of the premises.

Public domain

The application proposes to widen the public domain (footway area) along the Railway Street frontage of the site through registration of an easement giving public right of access over that part of the development site. This approach is the same as was accepted by Council on the neighbouring 'Dairy Farmer's development site (DA2021/01459) and is considered appropriate to be replicated for this development.

Public domain upgrades have been assessed by CN's Senior Development Officer (Engineering) and is acceptable subject to draft conditions of consent, as recommended.

EV Charging:

In accordance with Section 7.03 Traffic, Parking and Access of NDCP2012, all development with a value over \$200,000 is to be constructed with electrical infrastructure that ensures all car parking spaces are "EV Ready". This does not result in all spaces having electrical charging points, however it ensures that suitable infrastructure is installed to enable future placement of electric vehicle chargers on all spaces.

The DCP also requires the provision of 5% of all car parking spaces to have electric vehicle charging points installed. A condition has been included to ensure these electric vehicle charging measures are implemented in accordance with the DCP. The proposal is acceptable subject to conditions, as recommended.

Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The amended stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012. The proposed development is considered to be acceptable subject to conditions, as recommended.

Waste Management - Section 7.08

The submitted Waste Management Plan for the car park and retail premises satisfactorily addresses CN's waste management requirements. Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

Waste collection is proposed to be serviced by a private contractor; however, it has also been demonstrated that the development could be serviced by CN's Waste Services if required in the future. Waste collection vehicles are able to stand on Tighe Street and have bins wheeled to/from the truck from the on-site refuse storage area

on the ground floor, serviced and returned immediately to the refuse storage area. No garbage bins will be presented to the kerb for collection.

Accordingly, the submitted Waste Management Plan satisfies CN's requirements and has satisfactorily demonstrated that the development site is able to be serviced should the future occupants request CN waste services.

Advertising and Signage - Section 7.09

The proposal includes a business identification signage to the façade of the building on the western and southern elevations. The signage was previously discussed against the relevant provisions of requirements of Chapter 3 (Advertising and signage) of SEPP (Industry and Employment) 2021. The proposed signage is considered to be consistent with the objectives of the SEPP. Likewise the signage is considered acceptable against the DCP provisions.

Section 7.10 Street Awnings and Balconies

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

The proposed awnings will not interfere with the new street trees proposed as part of the landscape plan, public utilities, traffic signs or signals, or vehicle or pedestrian circulation. The proposed awnings have also been designed to complement the streetscape and take into consideration the surrounding built environment.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans, being \$234,450.66.

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

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

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

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

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

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

5.7 The suitability of the site for the development

The land is suitably zoned for the development which is permissible. The site is strategically located at the interface of the emerging commercial core of the Newcastle City Centre (in Newcastle West) and is surrounded by a variety of essential services and infrastructure. In particular, the site is located adjacent to the Newcastle Transport Interchange, which is a major public transport node providing access to the Central Coast, Newcastle, Sydney, and Hunter train line, the Newcastle Light Rail, and the Newcastle bus interchange which provides connections throughout the local government area and beyond.

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

The constraints of the site have been considered in the design of proposal. Further, the site is not affected by significant environmental constraints that would preclude development of the site. The site is therefore suitable for the development, as outlined within the detailed assessment contained within this report, and subject to the recommended conditions of consent.

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

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

5.9 The public interest

The proposed development seeks to service the nearby Newcastle transport interchange providing secure long term parking options for commuters as well as

providing secure overflow parking options for the numerous commercial mixed-use developments in the Newcastle West including residential developments in Wickham, commercial buildings on Hunter Street at Stewart Avenue and the proposed neighbouring mixed-use development on the corner of Tudor Street and Hunter Street.

The proposed development also presents an opportunity to contribute to the revitalisation of the city centre and assist in the transformation of the west end of the Newcastle City Centre.

The development is satisfactory, having regard to the provision of additional parking and commercial uses within Newcastle City Centre area and is consistent with the strategic planning outcomes intended for the area.

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

The proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services. The proposed development is in the public interest and will allow for the orderly and economic development of the subject site.

6.0 CONCLUSION

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

The proposal is acceptable having been assessed against the relevant heads of consideration under Section 4.15(1) and Section 8.2(1) of the *EP&A Act*, subject to the recommended conditions contained at **Attachment B**, and should be approved.

ATTACHMENTS

Attachment A:	Submitted Plans – 4 Tighe Street Newcastle West
Attachment B:	Draft Schedule of Conditions – 4 Tighe Street Newcastle West
Attachment C:	Processing Chronology - 4 Tighe Street Newcastle West
Attachment D:	Concurrence Transport for NSW - 4 Tighe Street Newcastle West
Attachment E:	Clause 4.6 written exception to floor space ratio development standard - 4 Tighe Street Newcastle West

Attachments A – E: Distributed under separate cover