



City of  
Newcastle



## CITY OF NEWCASTLE

# Development Applications Committee

Councillors,

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

**DATE:** Tuesday 21 July 2020

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

**VENUE:** Audio Visual Platform Zoom

J Bath  
Chief Executive Officer

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

14 July 2020

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**DEVELOPMENT APPLICATIONS COMMITTEE**  
**21 July 2020**

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

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING 16 JUNE 2020**

**RECOMMENDATION**

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

**ATTACHMENTS**

**Attachment A:** 200616 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](http://www.newcastle.nsw.gov.au)*

**Attachment A**

**CITY OF NEWCASTLE**

**Minutes of the Development Applications Committee Meeting held via video conferencing platform Zoom on Tuesday 16 June 2020 at 7.35pm.**

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**PRESENT**

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

**IN ATTENDANCE**

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

**APOLOGIES**

Nil.

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

**Councillor Duncan**

Councillor Duncan declared a significant non-pecuniary interest in Item 17 – DA2019/01284 – 16 Northwood Street, Adamstown Heights as family members lived in the immediate vicinity and managed the conflict by leaving the meeting for discussion on the item.

**Councillor Winney-Baartz**

Councillor Winney-Baartz declared a significant non-pecuniary interest in Item 20 DA2019/01255 – 25 Llewellyn Street, Merewether and managed the conflict by leaving the meeting for discussion on the item.

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 19 MAY 2020**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Clausen

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

**Carried  
unanimously**

**DEVELOPMENT APPLICATIONS**

**ITEM-17                    DAC 16/06/20 - DA2019/01284 - 16 NORTHWOOD STREET  
ADAMSTOWN HEIGHTS - MULTI DWELLING HOUSING -  
DEMOLITION OF DWELLING, ERECTION OF FOUR TWO  
STOREY DWELLINGS, AND ONE LOT INTO FOUR LOT  
TORRENS TITLE SUBDIVISION**

Councillor Duncan was removed to the waiting room facility within Video conferencing platform Zoom at 7.38pm for discussion on the item.

**MOTION**

Moved by Cr Clausen, seconded by Cr Robinson

- A. That the Development Applications Committee, as the consent authority note the objection under Clause 4.6 Exceptions to Development Standards of the Local Environmental Plan 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2019/01284 for multi dwelling housing, including the demolition of the existing dwelling house, erection of four, two-storey townhouses, associated retaining walls, landscaping and one lot into four lot Torrens title subdivision at 16 Northwood Street Adamstown Heights be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

**For the Motion:**                    Lord Mayor, Councillor Nelmes and Councillors Byrne, Church, Clausen, Luke, Robinson, White and Winney-Baartz.

**Against the Motion:**            Councillors Elliott, Mackenzie and Rufo.

**Carried**

Councillor Duncan was returned to the meeting from the waiting room facility in Video conferencing platform Zoom at 7.46pm.

**ITEM-18                    DAC 16/06/20 - DA2020/00044 - 304/464 KING STREET  
NEWCASTLE WEST- SERVICED APARTMENT - TOURIST  
AND VISITOR ACCOMMODATION**

**MOTION**

Moved by Cr Clausen, seconded by Cr Robinson

- A. That DA2020/00044 for serviced apartment (change of use), at 304/464 King Street, Newcastle West, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

**PROCEDURAL MOTION**

Moved by Cr Mackenzie, seconded by Cr Rufo

That the item lay on the table pending a Public Voice session where objectors and applicants are enabled to present their positions on the development application.

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

**Against the Motion:** Nil.

**Carried**

**ITEM-19                    DAC 16/06/20 - DA2019/01231 - 503/464 KING STREET  
NEWCASTLE WEST - TOURIST AND VISITOR  
ACCOMMODATION - CHANGE OF USE**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Luke

- A. That DA2019/01231 for serviced apartment (change of use), at 503/464 King Street, Newcastle West be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

**PROCEDURAL MOTION**

Moved by Cr Clausen, seconded by Cr White

That the item lay on the table pending a Public Voice session where objectors and applicants are enabled to present their positions on the development application.

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

**Against the Motion:** Nil.

**Carried**

**ITEM-20                    DAC 16/06/20 - DA2019/01255 - 25 LLEWELLYN STREET,  
MEREWETHER - COMMERCIAL - PART CHANGE OF USE  
FITOUT AND SIGNAGE**

Councillor Winney-Baartz was removed to the waiting room facility within Video conferencing platform Zoom at 7.49pm for discussion on the item.

**MOTION**

Moved by Cr Clausen, seconded by Cr Duncan

- A. That DA2019/01255 for Veterinary Hospital – change of use from a commercial premise at 25 Llewellyn Street Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and
- B. That those persons who made submissions be advised of CN's determination.

**For the Motion:** Lord Mayor, Councillor Nelmes and Councillors Byrne, Church, Clausen, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo and White.

**Against the Motion:** Nil.

**Carried  
unanimously**

Councillor Winney-Baartz was returned to the meeting from the waiting room facility in Video conferencing platform Zoom at 7.54pm.

**The meeting concluded at 7.54pm.**

**DEVELOPMENT APPLICATIONS**

**ITEM-21                    DAC 21/07/2020 - DA2018/00037 - 291 KING STREET  
NEWCASTLE - CAR PARKING, SERVICED APARTMENTS,  
CHILDCARE CENTRE AND COMMERCIAL PREMISES**

**APPLICANT:                JW PLANNING  
OWNER:                    WALLALONG LAND DEVELOPMENTS PTY LTD  
NOTE BY:                 GOVERNANCE  
CONTACT:                 DIRECTOR GOVERNANCE / MANAGER REGULATORY,  
PLANNING AND ASSESSMENT**

**PART I**

**PURPOSE**

An application (DA2018/00037) has been received seeking consent to carry out alterations and additions to an existing car parking station (known as Civic West Parking Station), including three additional levels (one level of car parking (an additional 48 spaces in total), and two levels of open plan commercial space for use as commercial premises), 60 serviced apartments (sleaving the front of the existing building), and a childcare centre on the ground floor for 116 children at 291 King Street, Newcastle.



**Subject Land: 291 King Street Newcastle  
NSW 2300**

The proposal initially sought consent for four additional levels of parking, 111 serviced apartments, a rooftop restaurant / bar and modifications to the childcare centre.

The proposal was reviewed by the Urban Design Consultative Group (UDCG) and was amended on several occasions during the assessment process. The amendments relate to a significant reduction in height and FSR, increased setback of upper floors, external screening of the building facade, safety and security measures and additional street trees. Final details of all materials, colours and finishes must be approved by CN, in consultation with CN's Urban Design Consultative Group, prior to issue of a Construction Certificate.

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

The submitted application was assigned to Principal Development Officer, William Toose, for assessment.

The application is referred to the Development Applications Committee for determination, due to:

- i) The construction value of the proposed development, being \$19,790,723 which exceeds the staff delegation limit of \$10M; and
- ii) The proposed variation to the FSR development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.

The proposed development was publicly notified for 14 days in accordance with the notification requirements contained within the Newcastle Development Control Plan 2012 (NDCP 2012). Accordingly, the application was placed on public notification from 30 January 2018 – 14 February 2018, and three submissions were received.

The submissions raised concerns regarding building height, FSR, overshadowing, heritage, traffic and noise. The amended plans were not renotified as the amended design resulted in a lesser impact to surrounding properties and the environment.

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

The site has been the subject of past development approvals which include:

- 1) DA2013/0167 - Alterations and additions to existing carpark, including an additional four levels of commercial space. Building upgrade works to the existing carpark station commenced, however the additional levels were not constructed.
- 2) DA2016/01106 - Alterations and additions to a car parking station, including an additional five levels of car parking, and provision for a childcare centre and cafe on ground floor level. The development consent is still active, however no physical works have commenced.

## **Issues**

- 1) Floor Space Ratio - The proposed development has an FSR of 5.28:1 and does not comply with the FSR development standard of 2.5:1 of the NLEP 2012. However, it is noted that the existing building has a FSR of 3.6:1 and the current existing approval allows for an FSR of 6.75:1, which does not comply with the FSR development standard.

- 2) Traffic - Submissions have raised concerns relating to the potential for vehicles utilising Cooks Hill residential streets when exiting the parking station. This issue arose with the former application DA2016/01106, resulting in a resolution from the Development Applications Committee Meeting held on 16 May 2017 to “*explore and develop a solution for suitable traffic devices to channel traffic to the major street*”.

The submitted traffic assessment, and the assessment undertaken by City of Newcastle (CN), confirm that the proposed development does not warrant the installation of any traffic devices.

### **Conclusion**

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

The proposal is consistent with previous approvals to redevelop the site for commercial purposes, childcare and additional car parking. The proposal will contribute to the revitalisation of Newcastle, combining serviced accommodation with childcare and commercial uses within an existing end of trip facility which is conveniently located within walking distance to employment and education areas of the Newcastle CBD.

The proposal will improve the visual appearance of the existing car park building and will provide renewed vitality through increased social and economic activity in a location close to the City Centre.

### **RECOMMENDATION**

- A. That the Development Applications Committee, as the consent authority, note the objection under clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at clause 4.4 FSR, and considers the objection to be justified in the circumstances and to be consistent within the B4 Mixed Use zone; and
- B. That DA2018/00037 for alterations and additions to an existing car parking station, including three additional levels (one level of car parking and two levels of commercial space), sixty serviced apartments and a childcare centre at 291 King Street, Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; 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 site is located within the Newcastle City Centre, on land legally described as Lot 1 DP 1082633, and known as 291 King Street, Newcastle. The site has a frontage to King Street of 67.74m and a depth of 50m, with a total area of 3589m<sup>2</sup>. A six-storey public car park currently operates on the site, with the main access being from Gibson Street to the rear.

The site adjoins the existing Newcastle Permanent Building Society Bank to the west, with a Heritage item known as '*Cooks Hill Special School*' to the south (now a centre for WEA adult education). On the northern side of the site is the Newcastle City Centre and to the south east is the residential area of Cooks Hill.

The existing building is set back approximately 9.78m from the front property boundary, in comparison adjoining buildings are built to the front boundary. A zero setback is typical for commercial buildings located within the City Centre. Similarly, the existing building is currently 6 storeys and considerably lower in height than the adjoining Newcastle Permanent Building, although approvals to build to a similar height are in place for the subject site.

### **2.0 THE PROPOSAL**

The site has been the subject of previous development approvals DA2013/0167 and DA2016/01106 for alterations and additions to the existing car parking station, which included the construction of additional levels. The previously approved developments enabled much larger developments to that proposed under the current application, for example the development approved under DA2016/01106 has an approved height of 35.07m which exceeds the maximum permissible height limit of 30m for the site. It is noted that development approval DA2016/01106 is an active consent, however no physical works have commenced.

The proposed application initially sought consent for four additional levels of parking, 111 serviced apartments, a rooftop restaurant / bar and changes to the childcare

centre. However, following review by the UDCG on several occasions, amended plans were provided by the applicant to address the concerns raised during the assessment.

The applicant now seeks development consent for the following development:

- i) Demolition and alterations to the existing building to accommodate the redevelopment of the site, including demolition of existing ramps and stairwells.
- ii) Construction of an additional three storeys, increasing the building height to 29.447m and nine storeys, comprising:
  - a) One additional level of car parking facilitating a total of 524 car spaces, comprising 337 public parking spaces and 187 spaces allocated to the uses (111 for the commercial, 66 for the serviced apartments and 10 for the childcare centre); and
  - b) Two commercial floor levels (level 7 – 2,343m<sup>2</sup> and level 8 – 2,343m<sup>2</sup>).
- iii) Sixty serviced apartments, facilitated through an extension outward to the front property boundary from the existing northern façade; and
- iv) Childcare centre on the ground floor for 116 children. Proposed hours of operation between 6:00am and 7:00pm, Monday to Friday.

### **3.0 PUBLIC NOTIFICATION**

The application was publicly notified in accordance with CN's Public Notification Policy for a period of 14 days between 30 January 2018 and 14 February 2018. Three submissions were received in response. The concerns raised within the submissions in respect of the proposed development are summarised as follows:

- i) Building height
- ii) Floor space ratio
- iii) Overshadowing
- iv) Impact on the heritage conservation area, in particular the former Cooks Hill Special School
- v) Increased traffic in surrounding residential area

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

### **4.0 INTEGRATED DEVELOPMENT**

The site is located in a Mines Subsidence District. The proposed application is '*integrated development*' pursuant to Section 4.46 of the *Environmental Planning and*

*Assessment Act 1979*. Subsidence Advisory NSW issued their General Terms of Approval on 16 February 2018.

## **5.0 PLANNING ASSESSMENT**

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

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

#### **State Environmental Planning Policy No 55 - Remediation of Land (SEPP55)**

Clause 7(1)(b) and (c) of SEPP55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

A Preliminary Site Assessment was undertaken to investigate potential site contamination due to the associated childcare use and contamination was identified which exceeded the appropriate land use criteria.

A Remedial Action Plan has been provided outlining a remedial approach consisting of excavation of the areas of identified soil contamination at the front of the premises (King Street) for disposal off site, followed by validation and backfilling with appropriately validated material. It is noted that the site will be predominantly hardstand and that opportunities for potential soil access will be minimal. Conditions of consent have been recommended to be placed on the consent regarding the Remedial Action Plan.

The proposal is considered acceptable in relation to the requirements of SEPP55.

#### **State Environmental Planning Policy No 64 – Advertising and Signage**

No signage is proposed as part of this application. Accordingly, any future signage not erected in accordance with exempt development provisions, would be subject to a separate Development Application.

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

The site is mapped as being within the Coastal environment area however, there are no impacts associated with the redevelopment of the existing building.

The proposed development is not inconsistent with the SEPP.

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

Provisions of the ISEPP relating to traffic generating development require certain applications to be referred to Roads and Maritime Services (RMS). The

development is considered '*traffic generating*' development for the purposes of the ISEPP. The application was referred to RMS and written advice was received raising no objection to the proposal. As detailed in this assessment report, it is considered that the proposal is satisfactory in relation to traffic.

The site has frontage to a classified road and the ISEPP provisions are addressed as follows:

101 *Development with frontage to classified road*

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

(a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*

Comment: The potential impact on the function of the classified road has been addressed by the Traffic Impact Assessment, which demonstrates that the development will not have any impact on the operation of the classified road.

(b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

Comment: An acoustic assessment was submitted with the application which demonstrates that the proposed development is not adversely impacted by traffic noise. Further, the proposed additions to the existing car park and subsequent increase in vehicle movements will not unreasonably increase noise and vehicle emissions adversely affecting the classified road.

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

(a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*

Comment: The main access for the site will be maintained from Gibson Street, with the existing access points along King Street proposed to be removed.

(b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*

- i. the design of the vehicular access to the land, or*
- ii. the emission of smoke or dust from the development, or*
- iii. the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

Comment: No direct access to the classified road is proposed by this application.

(c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or*

*vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment: The submitted acoustic assessment submitted with the application demonstrates that the development will not be noticeably impacted by traffic noise, subject to inclusion of suitable acoustic fencing.

*Clause 104 Traffic-generating development*

*(1) This clause applies to development specified 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.*

Comment: The application was referred to the RMS for comment due to the proposed total on-site parking numbers. The RMS provided a response on 21 April 2018, raising no objections to the development.

**State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (SEPP Education and Child Care) aims to improve efficiency and certainty through the planning regime. Relevant Clauses of SEPP Education and Child Care are discussed below.

Clause 22 requires the concurrence of the Regulatory Authority if:

- a) the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the [Education and Care Services National Regulations](#), or
- b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.

Regulation 107 requires 3.25m<sup>2</sup> of unencumbered indoor space for every child being educated and cared for within a facility. The proposal complies with this requirement by providing approximately 460m<sup>2</sup> of unencumbered indoor space for 116 children in total.

Regulation 108 requires 7m<sup>2</sup> of unencumbered outdoor space for every child being educated and cared for within a facility. The proposal complies with this requirement by providing approximately 838m<sup>2</sup> of unencumbered outdoor space for 116 children in total.

Clause 23 states that before determining a development application for development for the purpose of a centre-based childcare facility, the consent authority must take into consideration any applicable provisions of the *Child Care Planning Guideline*, in relation to the proposed development.

The applicant has provided an assessment of the Child Care Planning Guidelines and it has been demonstrated that the proposal is consistent with the relevant Regulations and Guidelines and with the applicable matters contained in the NDCP 2012.

The development is considered '*traffic generating*' development in accordance with Clause 57 of the SEPP. The application was referred to Transport for NSW (TfNSW) and written advice was received raising no objection to the proposal. As detailed in this assessment report, it is considered that the proposal is satisfactory in relation to traffic.

**State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP65)**

The provisions of SEPP65 apply to residential flat buildings, shop top housing, mixed use developments with a residential component where the building is three or more storeys and four or more dwellings. The proposed development contains serviced apartments which are not a category of development which requires assessment under the provisions of the SEPP.

Notwithstanding, the proposed development has been reviewed by CN’s UDCG on four occasions as detailed within the Processing Chronology contained at **Attachment C**. A summary of the UDCG’s advice and the design response is provided in the table below.

Design Quality Principles	Comment
<p><b>Principle 1: Context and Neighbourhood Character</b></p> <p><u>UDCG comments:</u></p> <p><i>“The existing structure sits adjacent to Newcastle Permanent Building Society commercial building, which is considerably higher. It sits well set back from the King Street frontage and is partially screened from the road by mature trees. It adjoins lower-scale residential buildings to the east and a former school and playground to the south. Additional height of approximately the order proposed could possibly be acceptable - as it was with the previously approved application for additional commercial floors - subject to detailed study of potential visual impacts and overshadowing. However, it does exceed the DCP height control of 30m and is marginally higher than the approved development. Perhaps the most critical issue in this context is overshadowing of the buildings and spaces</i></p>	<p><u>Officer’s response:</u></p> <p>The applicant has provided amended plans. The submitted maximum height of the proposed development is 29.4m which complies with the maximum allowable height control.</p>

<p><i>to the south.”</i></p>	
<p><b>Principle 2: Built Form and Scale</b></p> <p><u>UDCG comments:</u></p> <p><i>“The proposed north facade is located on the site boundary, with no significant landscape buffer. The form of the southern face of the building in relation to the additional floors could be accepted in principle, since its height is approximately one floor lower than the LEP control, and the top three levels are to be set back approx. 2.5 metres more than the existing facade of the parking levels below.</i></p> <p><i>Some setback from the northern boundary to allow for landscaping would be extremely desirable.”</i></p>	<p><u>Officer’s response:</u></p> <p>The site currently has no vegetation between the front boundary and the existing building. The front setback comprises a sealed carpark with no landscaping.</p> <p>A landscape plan is provided, which illustrates suitable vegetation on the ground floor of the site. These improvements will be complemented by additional landscaping (street trees) within the public domain. The plans also incorporate suitable watering systems for the gardens on the site.</p> <p>Appropriate design changes and refinements have been achieved, as recommended.</p>
<p><b>Principle 3: Density</b></p> <p><u>UDCG comments:</u></p> <p><i>“As noted above the density is of concern, because of the resulting mass of the building. As proposed it is 5.43:1 which would be more than double the LEP control of 2.5:1. (However it should be noted that the existing structure has an FSR of 3.6:1, and the development which was approved in 2017 which had a high component of car parking, had a density of 6.75:1).”</i></p>	<p><u>Officer’s response:</u></p> <p>The existing approval DA2016/01106 enables a significantly higher FSR and of a greater bulk and scale.</p> <p>An exception to the development standard is provided as part of the application.</p>

<p><b>Principle 4: Sustainability</b></p> <p><u>UDCG comments:</u></p> <p><i>“Provision of extensive area of photovoltaic panels on the roof is commended.</i></p> <p><i>It is strongly recommended that rainwater should also be collected and utilised for irrigation of landscaped areas and toilet flushing.”</i></p>	<p><u>Officer’s response:</u></p> <p>Rainwater storage tanks will be part of the civil documentation at construction stage.</p>
<p><b>Principle 5: Landscape</b></p> <p><u>UDCG comments:</u></p> <p><i>“Almost the entire site area would be covered by the building, leaving minimal opportunity for any landscape planting, that proposed is all beneath structure. No new landscape plan was provided. As recommended some setbacks should be included, at least from the northern boundary to allow substantial tree planting and landscaping of this space.”</i></p>	<p><u>Officer’s response:</u></p> <p>The site currently has no vegetation between the front boundary and the existing building. The front setback comprises a sealed carpark with no landscaping.</p> <p>Setback of ground level childcare is generally consistent with the existing approval.</p> <p>A landscape plan is provided, which illustrates suitable vegetation on the ground floor of the site. These improvements will be complemented by additional landscaping (street trees) within the public domain.</p> <p>Appropriate design changes and refinements have been achieved, as recommended.</p>
<p><b>Principle 6: Amenity</b></p> <p><u>UDCG comments:</u></p> <p><i>“Amenity of the serviced apartments would be in principle of good standard, with their northern orientation, communal space at each floor, and setback from the main road. The two proposed commercial levels would also have reasonable amenity, although floor</i></p>	<p><u>Officer’s response:</u></p> <p>Amended plans have provided external light shading along the facade of the serviced apartment windows.</p> <p>Plans have been amended to</p>

*plates are very big and opportunities for introducing additional natural light via the roof should be pursued.*

*The following issues should be addressed:*

- **• Serviced Apartments**

*There is little protection from the sun, particularly given their full exposure to the north. There are horizontal projections shown only at alternate levels, which appears to be an aesthetic rather than an effective functional device. The extent of glazing also appears excessive, and the amenity of the apartments could readily be enhanced by reducing the glazed area and providing adequate solar protection. It would also be very desirable to allow for opening of windows for natural ventilation, minimising the need for air- conditioning for much of the year.*

- **• Commercial Levels**

*There would be minimal access to daylight or outlook in the central area of the large floors, although this could be ameliorated to some extent both by providing lighting via the roof-top for Level 8 and exploring the option of some fixed small windows in the east and west walls.*

- **• Child Care**

*The planning and location of both the enclosed rooms and the covered outdoor play areas appear to be the same as in the previous submission.*

**Impacts on Neighbouring Properties**

*The main concerns relate to the noise and headlight glare resulting from constant vehicle movements in the parking levels. It is noted that there is now no external ramp as previously proposed, and this is a significant improvement. However as previously it is again strongly recommended that external screens be provided.”*

incorporate two central light shafts through the centre of the commercial floor plates providing natural light deep within the building to alleviate this concern.

Updated plans incorporate vertical privacy screens to south, west and east facades to help minimise the light and noise impacts caused by the current and ongoing carpark operation.

Appropriate design changes and refinements have been achieved, as recommended.

<p><b>Principle 7: Safety</b></p> <p><u>UDCG comments:</u></p> <p>The childcare entrance should be designed to ensure that there is no access by visitors to the play areas without approval at the reception desk.</p> <p>The necessity for access to the common circulation areas and elevators to be shared by users of the childcare, residents of serviced apartments, and all users of the public / private car park does raise security concerns, as noted in the previous report. It is assumed that the elevators will be accessible 24 hours / day, and after hours access by any potentially disruptive persons does continue to pose security concerns, particularly for residents in the apartments.</p>	<p><u>Officer's response:</u></p> <p>The childcare entrance is designed to ensure that there is no access by visitors to the carpark (as per previous approval).</p> <p>A Crime Risk Assessment addressing the Crime Prevention through Environmental Design principles has been submitted. Specific operational details of the access and egress arrangements for each use are discussed in this report.</p>
<p><b>Principle 8: Housing Diversity and Social Interaction</b></p> <p><u>UDCG comments:</u></p> <p><i>"No comment."</i></p>	<p><u>Officer's response:</u></p> <p>Noted.</p>
<p><b>Principle 9: Aesthetics</b></p> <p><u>UDCG comments:</u></p> <p><i>"The architectural character of the design requires reconsideration to ensure that it better relates to its context and its function. The highly assertive coloured pattern applied to the north facade in particular is inappropriate, and also appears to serve no functional purpose."</i></p>	<p><u>Officer's response:</u></p> <p>Appropriate design changes and refinements have been achieved, as recommended.</p> <p>The colour scheme has been revised. Large vertical and horizontal screens provide functionality through sun protection while adding to the aesthetics and articulation of the building and assist in reducing visual bulk and scale.</p> <p>Final details of all materials, colours and finishes must be approved by CN, in consultation with CN's Urban Design Consultative Group, prior to issue of a Construction Certificate.</p>

<b>Amendments Required to Achieve Design Quality</b>	
<p><u>UDCG comments:</u></p> <p><i>The most critical issues relate to:</i></p> <ul style="list-style-type: none"> <li>• <i>Setback and landscape to northern boundary</i></li> <li>• <i>Solar protection of apartments</i></li> <li>• <i>Screening of carpark facades</i></li> </ul>	<p><u>Officer's response:</u></p> <p>Amended plans incorporate vertical privacy screens to south, west and east facades to help minimise the light and noise impacts caused by the current and ongoing carpark operation.</p> <p>Setback of ground level childcare is consistent with the existing approval and additional street tree planting is proposed.</p> <p>Large vertical and horizontal screens provide functionality through sun protection, while adding to the aesthetics and articulation of the building and assist in reducing visual bulk and scale.</p>

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

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

Clause 2.1 - Land Use Zones

The subject property is included within the B4 Mixed Use zone under the provisions of the NLEP 2012. The proposed additional car parking, childcare centre and commercial offices are permissible uses with consent in the zone.

The proposed development is consistent with the objectives of the B4 Mixed Use zone, which are:

- 1) *To provide a mixture of compatible land uses.*

Comment

The proposed mix of land uses provide a compatible range of services that will benefit residents and visitors to Newcastle City Centre.

- 2) *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.*

Comment

The site is near several public transport modes including buses and light rail. In addition, the site is within the City Centre. Walking and cycling will be a viable means of transport for users of the development.

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

Comment

Through the provision of complementary land uses, the development will support the City Centre without impacting on the viability of the centre. The proposed development provides for a mixture of compatible land uses, providing services that support the viability of the City Centre.

Clause 2.6 - Subdivision—consent requirements

No subdivision is proposed as part of the proposed application.

Clause 2.7 - Demolition Requires Development Consent

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 30m.

The current approved development of the site has a maximum building height of 35.07m.

The submitted maximum height of the proposed development is 29.4m which complies with this requirement.

Clause 4.4 Floor Space Ratio (FSR)

Under the NLEP 2012 the site has an FSR development standard of 2.5:1.

The existing carpark has an FSR of 3.6:1, which exceeds the 2.5:1 requirement of the NLEP 2012. The current approved development of the site also exceeds the maximum FSR, being 6.75:1.

The submitted FSR of the proposed development is 5.28:1. It should be noted that car parking (to meet CN's requirements) is generally excluded from the calculation of the floor area. However, given that the development largely comprises a commercial car park, the car parking component of the development is included in the calculation of floor space, which results in a high floor space ratio for the development.

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 objective of clause 4.6 is to provide a degree of flexibility in applying certain development standards to achieve better outcomes from the development. Subclause (2) enables consent to be granted for development even though the development would contravene a development standard.

The proposed development will result in:

- i. A FSR of 5.28:1, which exceeds the maximum FSR of 2.5:1 shown on the FSR map under Clause 4.4 of the NLEP 2012.

The applicant has submitted a written request contending that enforcing compliance with the FSR development standard would be unreasonable or unnecessary in this case, for the following reasons.

The proposed development exceeds the maximum FSR under Clause 4.4(2) of the NLEP 2012 by up to 2.78:1.

The objectives of Clause 4.4(2) (Floor Space Ratio) are outlined within the NLEP 2012 as follows:

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

The applicant's written submission contends that enforcing compliance with the 2.5:1 FSR development standard is unreasonable or unnecessary in the circumstances for the following reasons.

*...it is submitted that compliance with the 2.5:1 FSR development standard is unreasonable and unnecessary in the circumstances for the following reasons:*

- i. *Unless the increase in density is permitted, the site will be artificially limited in terms of its role in the urban renewal of Newcastle City.*

- ii. *There is considerable logic in intensifying the use of the land for car parking purposes which would otherwise need to be provided elsewhere in the City, potentially displacing other more appropriate land use in those locations.*
- iii. *Enabling the increase in density is an efficient way to achieve the significant increase in parking capacity required to support the intensification and renewal of Newcastle City, maintaining the City predominance in the centres hierarchy.*

*We submit that the proposed variation to the standard is unlikely to be perceptible when viewing the proposal from King Street or other surrounding streets. The suitability and capability of the site for the proposed additions enable all other requirements of the LEP and DCP to be met to an extent that is reasonable and practical.*

*The following exhibits that there are sufficient formal grounds to justify the contravening of the development standards:*

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

*The matters required to be demonstrated by subclause 3 are provided above.*

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*"The proposed development is within the public interest where it responds directly to the objectives for development within the Newcastle City Centre, providing parking capacity within the city to support additional land use and employment activity whilst sustainably retaining an existing structure."*

- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
  - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning*

*"The contravention of the development standard will not raise any matters of significance for state or regional environmental planning given the minor nature of the exception and the proposals compliance with all other relevant planning instruments."*

- (b) *the public benefit of maintaining the development standard*

*“There is no public benefit from maintaining the development standard given the FSR and height variation of the proposed additions will be imperceptible from occupiers of other buildings and from the streetscape”.*

*(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

*“It is considered that there are no other matters that are required to be taken into consideration by the Director-General before granting concurrence. Strict compliance with the development standard in this case is unreasonable and unnecessary and therefore should be supported.*

*Council support for this exception to the FSR standard is justifiable.”*

Comment: The exceedance in FSR is considered acceptable and appropriate in this instance given the nature, location and scale of the proposed development. The development is in the public interest and is consistent with the objectives of clause 4.4 of the NLEP 2012 (floor space ratio).

The development will make a positive contribution towards the desired built form of the City Centre as it will assist with maintaining the hierarchy of urban centres throughout the city of Newcastle.

#### Clause 5.5 - Development within the Coastal Zone

The proposed development will not impact on access to the foreshore. It also will not impact on the amenity of the foreshore through overshadowing or loss of views from a public place.

The site contains little vegetation at present and, therefore, the development will not have a significant negative impact on existing ecosystems or biodiversity in the area.

#### Clause 5.10 - Heritage Conservation

The site is located within the City Centre Heritage Conservation area. The heritage significance of this area relates to the mix of commercial, retail and civic buildings as a reminder of the city's past economic and social history.

The existing building is not an item of any heritage significance. The site is also located adjacent to a local heritage listed item - Cooks Hill Special School, at 100 Laman Street Cooks Hill. The site also adjoins the border of the Cooks Hill Heritage Conservation Area. It is recognised that the existing building, being a car park and utilitarian in its design and construction, is not a contributory element to the heritage conservation listing of this area. As such, the modernisation of this building would be an expected outcome.

The bulk and scale of the proposal is in keeping with the adjoining Newcastle Permanent Building Society, which is of a modern design. The proposal will not alter or change the heritage significance of any heritage item, or the heritage conservation

area, and it will not impact on identified heritage significant fabrics, settings or views. The proposal will not impact any archaeological sites, Aboriginal objects or places of heritage significance.

Clause 6.1 – Acid Sulfate Soils

The site is identified as comprising acid sulfate soil class 4. As the proposal will not impact on the water table or require earthworks greater than 2m deep, an acid sulfate soils assessment is not required.

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 include promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle.

The proposed development aims to promote adaptive reuse of existing building stock rather than demolition of existing, and erection of a completely new built form. The existing car parking station will be retained and improved.

The proposed development offers improvements to the public domain and will improve the existing streetscape, along with encouraging additional activity and movement at the pedestrian level. These improvements will be complemented by additional landscaping and street trees.

It is also considered that the refurbished facade will add visual interest to the streetscape and provides an improved streetscape and urban design outcome than that which presently exists on the site. Final details of all materials, colours and finishes must be approved by CN, in consultation with CN's Urban Design Consultative Group, prior to issue of a Construction Certificate.

The amended proposal is considered to adequately address the main concerns of the UDCG and CN's officers' assessment and is considered an acceptable form of development in the context of the site and its locality.

Clause 7.4 - Building Separation

The proposal does not exceed 45m in height, therefore this clause does not apply.

Clause 7.5 - Design excellence

The proposal does not generate a requirement to undertake an architectural design competition as the height of the proposed building is not greater than 48m, and the site is not identified as a key site within the Newcastle City Centre.

The plans were subsequently amended in line with the recommendations from the UDCG. It is considered that the amended plans have adequately addressed the recommendations of the UDCG.

**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 key requirements of NDCP 2012 of relevance to the proposed development are discussed below.

Section 3.10 - Commercial Uses

The development meets the aims and objectives of this section of the NDCP 2012 as it encourages commercial development that will have a positive contribution to the surrounding locality.

3.11 Community Services

The location is considered accessible, convenient and well located to service the needs of the immediate and broader community.

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

A Crime Risk Assessment addressing the Crime Prevention Through Environmental Design (CPTED) principles was submitted with the application. With respect to safety and security a key consideration during the assessment related to the manner in which the design and operation would ensure legitimate and safe access / egress between the public carpark, the Kings Street lobby, the childcare centre, and serviced apartments. Details regarding the access and egress arrangements for each use are detailed as follows:

1. Serviced apartments

Comment: Guests will need to make a reservation on-line in or by phone in advance. This will provide guests with a bar code or pin-code to enter a dedicated secure foyer, the car park, and / or their apartment.

From King Street, guests will enter on foot via the secure entry foyer (shared with the childcare centre) which will be under CCTV coverage and accessed only via a bar code or pin code sent via SMS or web link.

Guests will access rooms via lift no.1 which will be restricted to accessing carpark levels 2, 4, 6 and 8 along with all serviced apartment levels. When departing lift no.1 to the carpark levels, the guest will exit the lift into a dedicated secure foyer that will also be covered by CCTV.

From the public carpark, guests will enter a dedicated secure foyer on levels 2, 4, 6 and 8 of the car park level via QR bar code or pin code preventing public access.

2. Childcare

Comment: From King Street, childcare attendees will enter on foot via the secure entry foyer (shared with the serviced apartments) which will be under CCTV supervision and accessed by fingerprint scanner available only to registered childcare guests. The applicant operates a childcare facility at Bolton Street with this technology in use, and an intercom is linked to the childcare phone system in case of scan failure or other unregistered guests.

On proceeding through the secure primary entry, access by childcare attendees is via secondary entry doors with fingerprint scanner. The secondary entry doors can be overridden by the childcare Director if or as required preventing any access without the Director physically providing access

To and from the public carpark, access will be via lift no.1 (shared with serviced apartments) which will be limited to accessing carpark levels 2, 4, 6 and 8. When departing lift no.1 in the carpark, the childcare guest will exit the lift into a secure foyer that will be supervised by CCTV. Entry to that foyer from the carpark will be via fingerprint scanner.

3. Commercial tenancy and public carpark

Comment: From King Street, carpark guests, employees and visitors will enter the public entry foyer which will be under CCTV supervision. Access to the commercial floors will be via lift no.2, which also affords access to all carpark levels. When accessing and departing the commercial floors to the carpark, guests and employees use lift no.2 and will enter / exit the lift into a public foyer that will be under CCTV supervision.

The above measures ensure that legitimate and safe access / egress between the proposed uses can be managed on site. Furthermore, the submitted Crime Risk Assessment demonstrates that the proposed development is satisfactory having regards to the provisions of Section 4.04 NDCP 2012.

Social Impact - Section 4.05

The proposed development complies with the requirements of Section 4.05 NDCP 2012 regarding social impact. A Social Impact Assessment has been submitted with the application which identifies that the sleaving of the car parking with serviced apartments with windows overlooking King Street will provide passive surveillance over the street whilst the commercial levels increases pedestrian activity entering and exiting the building as well as provide passive surveillance of the street.

Furthermore, the provision of childcare in an inner-city environment will increase the availability and accessibility of this service to parents working in the city. The proposed development will create jobs for the childcare centre and serviced apartments and further full-time and part-time employment for the commercial levels of the building.

Consideration of the proposed social impacts to the residential community south of the site has identified that this community is unlikely to be adversely affected by the proposed development.

Land Contamination - Section 5.02

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

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 the NLEP 2012.

The subject site is adjoined by a heritage item of local significance identified as the Cooks Hill Special School by the NLEP 2012.

Located immediately to the south of the site is the locally listed heritage item known as Cooks Hill Special School (100 Laman Street). The view of the proposed development will be mainly from the open grounds of the school site, which is utilised as a car park. There are already views of the existing car park structure and the

enhancement and modernisation of the existing structure would improve the visual outlook from this site.

The additional storeys will add to the height of the existing car park structure. Being located to the immediate north of the listed item the building will create further overshadowing. The applicant has demonstrated that this impact would be limited to the car park and not extend so far as to impact on the heritage listed building itself.

The proposal will not impact on the aesthetic significance of the adjoining heritage item when viewed from Laman Street, as the surrounding built form and the existing vegetation does not allow for the heritage item and the subject site to be viewed together from many perspectives. Further, the proposed works will not physically impact on the adjoining heritage item or diminish its cultural values.

### Archaeological Management - Section 5.06

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

### Heritage Conservation Areas - Section 5.07

The site is also located within the Newcastle City Centre Heritage Conservation Area and directly adjoins the Cooks Hill Heritage Conservation Area. The heritage significance of this area relates to the mix of commercial, retail and civic buildings as a reminder of the city's past economic and social history.

The existing building does not contribute to the significance of the heritage conservation areas and it is considered that the proposed development will not detract from the heritage significance of the area.

### Newcastle City Centre - Section 6.01

The proposed development is for the redevelopment of the site and is generally consistent with this section. A summary of compliance with the relevant controls of this section is provided below.

The subject site is within the *Civic* character area. The sub-section outlines that:

*"The Civic is the administrative, cultural and educational centre of Newcastle. It includes facilities that reflect Newcastle's importance as a major regional city such as Newcastle Museum, Newcastle Regional Art Gallery and City Hall. It is the location of major public assets such as Wheeler Place and the Civic Theatre.*

*The relocation of the courts to Civic and the introduction of more educational facilities associated with the University of Newcastle will have a major effect on the future character and activity within this area. Smaller commercial spaces will redevelop as support services for the courts and the university, and an increased student population will create flow-on demand for housing, retail and other services."*

Several key principles for the *Civic* character area are outlined within this section and while a number do not have direct relevance to the proposed site, overall, the proposal is consistent with the *Civic* character area.

The design has taken into consideration the comments and issues raised at various UDCG meetings. The upper levels have been recessed 3m from the main facade to reduce visual bulk and scale. In addition, the proposed development reduces the dominance and presence of the existing car parking structure as a result of the proposed serviced apartments forming the streetscape elevation, and by way of the installation of screening materials around the entire building.

The proposed additions will result in a front setback that responds to the adjacent buildings. Side and rear setbacks remain consistent with the existing building on the site.

The overall bulk and scale of the proposal would not detract from the adjacent Newcastle Permanent Building Society building. As a result, the proposed street frontage height is in keeping with the immediate surrounding area and is acceptable.

The site is not identified as being within a view corridor to the waterfront or prominent landmarks, however the facade treatment will improve the visual amenity of King Street as viewed from the surrounding area. The proposal will have no impact on sunlight availability to public places as listed in the NDCP 2012.

The proposal addresses the street by providing an activated facade fronting King Street. This treatment, in combination with the proposed landscaping and removal of at grade car parking within this area, has the combined effect of significantly improving street activation consistent with the NDCP 2012.

The proposal involves the retention, modernisation and extension to the existing car park to create a useable building that would contribute to the streetscape and character of the area.

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

The proposed landscaping scheme for the development is consistent with the relevant aspects of this section by providing landscaping appropriate to the context of the site and setting and is acceptable given the nature of the development.

Street tree planting, consistent with existing large-scale street trees in the immediate area have been included as part of the overall landscape design. These trees will also assist in the visual break-up of the facade of the structure.

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

The proposed development has been the subject of a Traffic Impact Assessment submitted with the application. The assessment investigated the possible impact on the existing road network from the additional vehicles entering and leaving the site

and concluded that the performance of all nearby intersections and roads will not be impacted by the proposed development.

The proposed parking spaces and access arrangements within the site, comply with the appropriate Australian Standards and have been assessed as being safe for all users.

The development is acceptable having regard to the provisions of Section 7.03 of the NDCP 2012.

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 stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012. Accordingly, the proposal is acceptable in relation to water management.

Waste Management - Section 7.08

All waste will be managed on site with a waste chute provided on the eastern facade of the building providing access to all floors in the building. The chute will empty into large waste bins housed in a bin storage facility. The bins will be collected throughout the week by a private contractor. This is consistent with the existing waste collection practice on site and the proposed development is satisfactory with respect to waste management.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the NDCP 2012. A total of three submissions objecting to the proposal were received. A detailed assessment of the concerns raised by objectors is contained within Section 5.8 below.

Development Contributions

The *Environmental Planning and Assessment Act 1979* 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 (refer to **Attachment B**).

**5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

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

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

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

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

### **a) Streetscape, Urban Design, Height, Bulk and Scale**

The application was considered by the UDCG and the final amended plans are considered to adequately address the main comments of the UDCG. Overall, it is considered that the design is appropriate having regard to its character, streetscape, appearance, height, bulk and scale.

### **b) Amenity**

#### Overshadowing

Shadow diagrams for the proposal indicate a small increase in the overshadowing of the rear of the former school buildings of the Cooks Hill School and associated car park. The impacts are relatively minor in nature and on merits are acceptable. Furthermore, the proposed development results in an improved outcome with respect to overshadowing in comparison to the existing approvals on site (DA2013/0167) and is therefore an improved outcome.

#### Views

The proposal will not have an adverse impact on any public or private views. The development will alter the general outlook due to the proposed changes in size and scale, however this is reasonable having regard to the height and scale of adjacent developments and other approved developments in the area.

### **c) Traffic, Access and Parking**

Traffic generation

The existing car park (Civic West Parking Station) comprises 470 vehicle parking spaces. This application proposes an increase of 48 spaces to a total parking provision of 524 spaces. The car park caters for both public and allocated local business parking although under this application there is a net reduction in the public parking by approximately 133 spaces. Ticket data from 2016 confirmed that around 60% of vehicles parking in the station stay around 7 to 10 hours and is considered to be reflective of today's operations of the car park. Peak hour flows for the car park occur between 8am - 9am and 5pm - 6pm aligning with typical business hours.

Overall, the additional daily vehicle trips estimated to be generated by this application equates to approximately 868 trips (434 inbound / 434 outbound). This represents a net reduction of some 73 vehicle trips from the original development approval under DA2016/01106 with 941 vehicle trips. The proposed development is acceptable.

It is noted that submissions received in response to this application raised concerns relating to vehicles utilising Cooks Hill residential streets when exiting the Civic West Parking Station. The Traffic Assessment submitted with the application has assessed the daily exit routes likely to be utilised by vehicles leaving the car park. This analysis estimated around 35% of vehicles (195 cars) turn left at John Street and exit onto King Street, while the remaining 55% of vehicles (239 cars) turn right and exit onto Laman Street. Of those vehicles exiting onto Laman Street the majority 90% (215 cars) turn right and travel towards Union Street, a collector road linking the Newcastle CBD to Glebe Road and outer southern / western suburbs. This leaves around 10% of vehicles (24 cars) turning left onto Laman Street and exiting through the local residential streets of Cooks Hill. As this represents a small number of vehicles Cooks Hill local road network has capacity to cater for the demand and it is unlikely that the development will result in adverse impacts to residential amenity in this area. It is not identified that traffic control devices are required as part of the development.

Vehicular access and parking

The site currently has vehicular access to Gibson Street via John Street and Laman Street. The development seeks to upgrade this boom-gate controlled access by providing an additional access lane that can be rotated as an entry or exit depending on the peak movement into or out of the site. The access arrangements are supported and are noted to be similar to the existing conditions on site. However, the proposed access is slightly better located and from an operational point of view allows more entry and exit capacity thereby reducing the risk of and therefore occurrence of queueing.

The development is considered acceptable with respect to impacts on local traffic conditions, pedestrian safety and traffic management measures, subject to draft conditions included in **Attachment B**.

**d) Stormwater**

Stormwater Management

The proposed development results in a marginal increase to the impervious area on the site and therefore would not be required to meet the NDCP 2012 requirements for stormwater within Section 7.06 of the NDCP 2012. Notwithstanding the proposal seeks to improve stormwater management from the site by providing retention tanks and introducing stormwater re-use. The resulting impact on the stormwater regime in the area therefore is positive and the concept stormwater management plan is supported.

The proposed development is considered satisfactory in this regard and can comply with CN's policies relating to storm water management, subject to draft conditions appended at **Attachment B**.

**e) Environmental**

Contamination

A Remedial Action Plan was submitted with the application which outlines a remedial approach consisting of excavation of the areas of identified soil contamination at the front of the premises (King Street) for disposal off site followed by validation and backfilling with appropriately validated material. The site will be predominantly hardstand, accordingly opportunities for potential soil access will be minimal.

Noise

An acoustic report has been submitted assessing noise impacts as a result of the proposal. The report demonstrated that the proposal complies with relevant noise guidelines.

It is noted the carpark entry ramp previously approved has been removed which should mitigate noise impacts from this proposed development. Further, the acoustic report demonstrated that the general operation of the parking and childcare facility is not expected to generate any unreasonable noise impacts upon surrounding land uses and that with an acoustic fence in place along King Street, the internal and external traffic noise levels at the facility will be suitable.

In order to meet appropriate acoustic guidelines, the following acoustic attenuation measures are recommended in the report:

- i) Facade treatments including appropriate glazing and seals.
- ii) Adequate ventilation to meet BCA requirements with windows and doors closed to attenuate noise.
- iii) Acoustic fence (2m height) along King Street frontage of play areas to minimise internal noise levels within the childcare areas from traffic noise from King Street.

The proposed development is considered to not unreasonably impact on the existing noise levels or create vibrations that will adversely impact on the amenity of the area. The proposal is considered satisfactory, subject to draft conditions appended at **Attachment B**.

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

The site is suitable for the proposed development as it is in the Newcastle City Centre, which is well serviced by public transport and community facilities. The constraints of the site, including heritage and mine subsidence, have been considered in the design of the development.

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

The application was notified for a period of 14 days between 30 January 2018 – 14 February 2018, in accordance with the NDCP 2012. Three submissions were received during the notification period. The following table provides a summary key issues raised and a response to those issues.

Issue	Comment
Building height	The proposed development, as amended, complies with the maximum height of 30m prescribed for this site and area.
Floor space ratio	<p>The existing carpark has an FSR of 3.6:1, which exceeds the 2.5:1 requirement of the LEP. The current approved development of the site also exceeds the maximum FSR, being 6.75:1.</p> <p>The submitted FSR of 5.28:1 is acceptable in this instance based upon the nature of the proposed development. A detailed assessment of this matter has been undertaken under clause 4.6 of the NLEP 2012 elsewhere within this report.</p>
Overshadowing	The overshadowing of adjoining buildings and the surrounding area is considered acceptable. The proposed development results in a minor increase in overshadowing, however, results in an improved outcome in comparison to the existing approvals for the site. A detailed assessment of this issue is provided under section 5.6(b).
Impact on the heritage conservation area and the former Cooks Hill Special School	The applicant has satisfactorily addressed heritage as part of their submission. The proposed development does not result in adverse impact upon the heritage conservation area or the former Cooks Hill Special School. Accordingly, the development is considered acceptable having regard to heritage as discussed under

	the sections of this report pertaining to clause 5.10 of the NLEP 2012 and section 5.06 and 5.07 of the NDCP 2012.
Increased traffic in surrounding residential area	The traffic impacts of the proposed development have been assessed and it has been determined that the existing road network has capacity to cater for the proposed development. A detailed assessment of traffic is provided under section 5.6(c) of this report.
View loss	The development will alter the general outlook due to the proposed changes in size and scale, but this is reasonable, having regard for the principal development standards that apply to the site.
Privacy	The proposal does not pose a significant impact on the adjoining properties, in terms of privacy and overlooking.
Noise	It is noted the formerly proposed carpark entry ramp has been removed which should mitigate noise impacts from this proposal compared to that which was previously approved. A detailed assessment of this matter is provided under section 5.6(e) of this report.
Safety and security	The proposal includes sufficient measures to address potential crime and safety issues. A detailed assessment of the measures proposed to address safety and security has been undertaken in respect to section 4.04 of the NDCP 2012 elsewhere within this report.

**5.9 The public interest**

The proposed development involves an enlargement and refurbishment of an existing car park building.

The proposed development would contribute to the revitalisation of Newcastle, by providing uses and facilities which are integral to the function of the City Centre, while providing a significant improvement to the streetscape.

The 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.

**6.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is recommended for approval subject to the conditions contained in **Attachment B**.

**ATTACHMENTS**

**Item 21 - Attachment A:** Submitted Plans - 291 King Street, Newcastle

**Item 21 - Attachment B:** Draft Schedule of Conditions– 291 King Street, Newcastle

**Item 21 - Attachment C:** Processing Chronology - 291 King Street, Newcastle

**Item 21 - Attachments A to C distributed under separate cover.**

**ITEM-22**                    **DAC 21/07/20 - DA2020/00136 - 76 LINWOOD STREET, WICKHAM - DWELLING HOUSE AND ALTERATIONS AND ADDITIONS**

**APPLICANT:**            **K M LAWRENCE**  
**OWNER:**                **K M LAWRENCE**  
**NOTE BY:**              **GOVERNANCE**  
**CONTACT:**             **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

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**PART I**

**PURPOSE**

An application has been received seeking consent for dwelling house – alterations and additions at 76 Linwood Street, Wickham.

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

The application is referred to the Development Applications Committee for determination due to being called in by two Councillors (Cr Mackenzie and Cr Duncan).

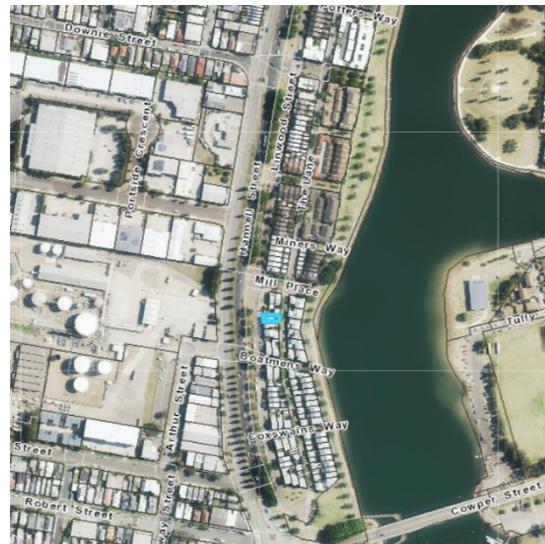
The development proposes a variation to the Floor Space Ratio (FSR) development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (81.7% variation).

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

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

**Issues**

- 1) The proposed variation to the FSR development standard, under the NLEP 2012.



**Subject Land: 76 Linwood Street Wickham**

- 2) The suitability of the development with respect to the relevant provisions of the Newcastle Development Control Plan 2012 (NDCP 2012).

### Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is unsatisfactory.

### RECOMMENDATION

That DA2020/00136 for dwelling house – alterations and additions at 76 Linwood Street Wickham be **refused** for the following reasons:

- 1) The development does not adequately address the matters required to be demonstrated by Clause 4.6(3) of the NLEP 2012. [Section 4.15(1) Environmental Planning and Assessment Act 1979].
- 2) The development is not consistent with the objectives of the FSR development standard (Clause 4.4 of the NLEP 2012). [Section 4.15(1) Environmental Planning and Assessment Act 1979].
- 3) The development will not be in the public interest because it is not consistent with the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out. [Section 4.15(1) Environmental Planning and Assessment Act 1979].
- 4) The development will have substantial impacts on neighbouring properties in terms of bulk, scale, and overshadowing. [Section 4.15(1)(b) Environmental Planning and Assessment Act 1979].

### Political Donation / Gift Declaration

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject property comprises Lot 11 DP 1079338. The lot is irregular in shape and extends from Linwood Street (frontage 7.47m) to The Lane (frontage 6.42m). It has a maximum depth of approximately 19.1 metres and a total area of 135.4m<sup>2</sup>. The site is devoid of vegetation and is relatively flat, with a slight fall to the rear.

The site is currently occupied by an attached two storey terrace with an associated single storey carport to the rear. The existing dwelling was approved by Council under DA2003/0234 - Erect 47 x three bedroom attached and detached dwellings and 13 x one bedroom 'mews' dwellings and subdivide the associated lands into 47 Torrens Title lots.

### 2.0 THE PROPOSAL

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

The proposed development consists of a first floor addition to be constructed over the existing carport at the rear of the site. The proposed additions will comprise a multi-purpose room, bedroom and storage area within the ceiling space.

The existing dwelling contains three bedrooms and two bathrooms on the first floor, with lounge, dining, laundry and kitchen located on the ground floor.

#### Public Voice Committee

As CN did not receive any submissions in response to the notification of the development application, it was not considered at a meeting of the Public Voice Committee.

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

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

### 3.0 PUBLIC NOTIFICATION

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

### 4.0 INTEGRATED DEVELOPMENT

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

## **5.0 PLANNING ASSESSMENT**

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

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

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

SEPP 55 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 has been identified within a Land Contamination Report associated with the original Linwood development. It is understood that appropriate remediation works were carried out prior to the existing development of the precinct proceeding.

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

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

The subject site is located within the coastal zone and is specifically mapped as being within the coastal environment area and coastal use area. The proposed development is satisfactory with regard to the provisions of the 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.

#### **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 zoned R2 Low Density Residential zone under the NLEP 2012, and the proposed development is permissible with CN's consent.

The proposed development is not considered to be consistent with the objectives of the R2 Low Density Residential zone, particularly objectives (a) and (c):

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

The proposed additions do not allow for a low-density environment. The additions also do not respect the character and scale of the surrounding development.

#### Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of a section of the rear wall and roof of the existing dwelling in order to construct the proposed additions. The demolition is acceptable, subject to the demolition works and the disposal of material being managed appropriately and in accordance with relevant standards.

#### Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum building height of 8.5 metres. The submitted height is approximately 8.25 metres and complies with this requirement.

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

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

In its current form, the existing dwelling house on the subject property has a gross floor area (GFA) of 126.8m<sup>2</sup> and FSR of 0.94:1. This equates to an exceedance of 57%, or 45.56m<sup>2</sup> above the mapped FSR for the site.

The proposed development GFA is 147.4m<sup>2</sup>. This is an additional 20.6m<sup>2</sup> above the existing GFA. The proposed development has an FSR of 1.09:1, exceeding the prescribed maximum FSR by 81.7% (66.2m<sup>2</sup>).

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

#### Clause 4.6 - Exceptions to development standards

The application involves additions to an existing building that will result in it exceeding the maximum FSR under Clause 4.4 of the NLEP 2012.

The proposed development has an FSR of 1.09:1, exceeding the prescribed maximum FSR (0.6) by 81.7% (66.2m<sup>2</sup>).

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

The applicant has prepared a written request, as required by Clause 4.6(3), that seeks to justify the contravention of the development standard. Clause 4.6(3) requires the written request to demonstrate:

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

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

*Council is requested to consider the following justification for varying the floor space ratio development standard for the subject site:*

- i) Under Council's LEP the land is zoned R2 Low Density Residential, and the proposed development is a permissible use of the land;*
- ii) The Applicant seeks an increase in FSR. The increase will not increase the building footprint;*
- iii) It is our understanding that Council have received no objections to the proposed development from neighbouring properties;*
- iv) As the proposed development is to occur within an existing building it is unreasonable to comply with current FSR requirements;*
- v) The additional area is to be used to accommodate the needs of the existing family and is not proposed to be used to increase the resident density of the dwelling;*
- vi) Currently the dwelling accommodates parents and children. Grandparents visit to assist in the care of children as the mother has a brain tumour. The additional space will relieve the stress that the family is currently experiencing by trying to accommodate these people in the existing building;*
- vii) Original plans presented to Don Maloney, Duty Planner, Newcastle City Council, included a bigger addition to the building. Mr Maloney suggested a decrease in the proposed development would be more acceptable to Council. The Applicant complied with Mr Maloney's advice;*
- viii) The existing appropriately approved dwelling would have been in excess of Council's FSR when constructed. It is unreasonable for Council to now suggest that there is already an overdevelopment of the site;*

- ix) The proposed development will not create a negative impact upon drainage or flooding of the local area as there is no increase in non-pervious areas;*
- x) The proposed development is of an appropriate height for its location and has been located and designed so as to not have an adverse visual impact;*
- xi) The proposed building design will not create a negative impact on the streetscape;*
- xii) The proposed development will provide a positive environmental impact; and*
- xiii) The variation is not considered to have any adverse amenity outcomes to existing and future uses of surrounding land.*

Clause 4.6(4) of the NLEP 2012 requires CN to be satisfied of certain matters prior to granting consent for development that contravenes a development standard.

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

*(a) the consent authority is satisfied that —*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Planning Secretary has been obtained.*

In assessing this application, consideration has been made of the original approval in order to better evaluate the context of the existing dwelling within the Linwood precinct. As previously noted, the existing dwelling was approved by Council under DA2003/0234 - Erect 47 x three bedroom attached and detached dwellings and 13 x one bedroom 'mews' dwellings and subdivide the associated lands into 47 Torrens Title lots.

The primary planning controls relevant to the original approval were:

- i) 2(c) Mixed Residential-Commercial zone under Newcastle Local Environmental Plan 1987*
- ii) 2(b) Urban Core under Draft Newcastle Environmental Plan 2002.*

The proposed development was permissible with CN's consent under both instruments. A FSR development standard was not included in either of the abovementioned planning instruments.

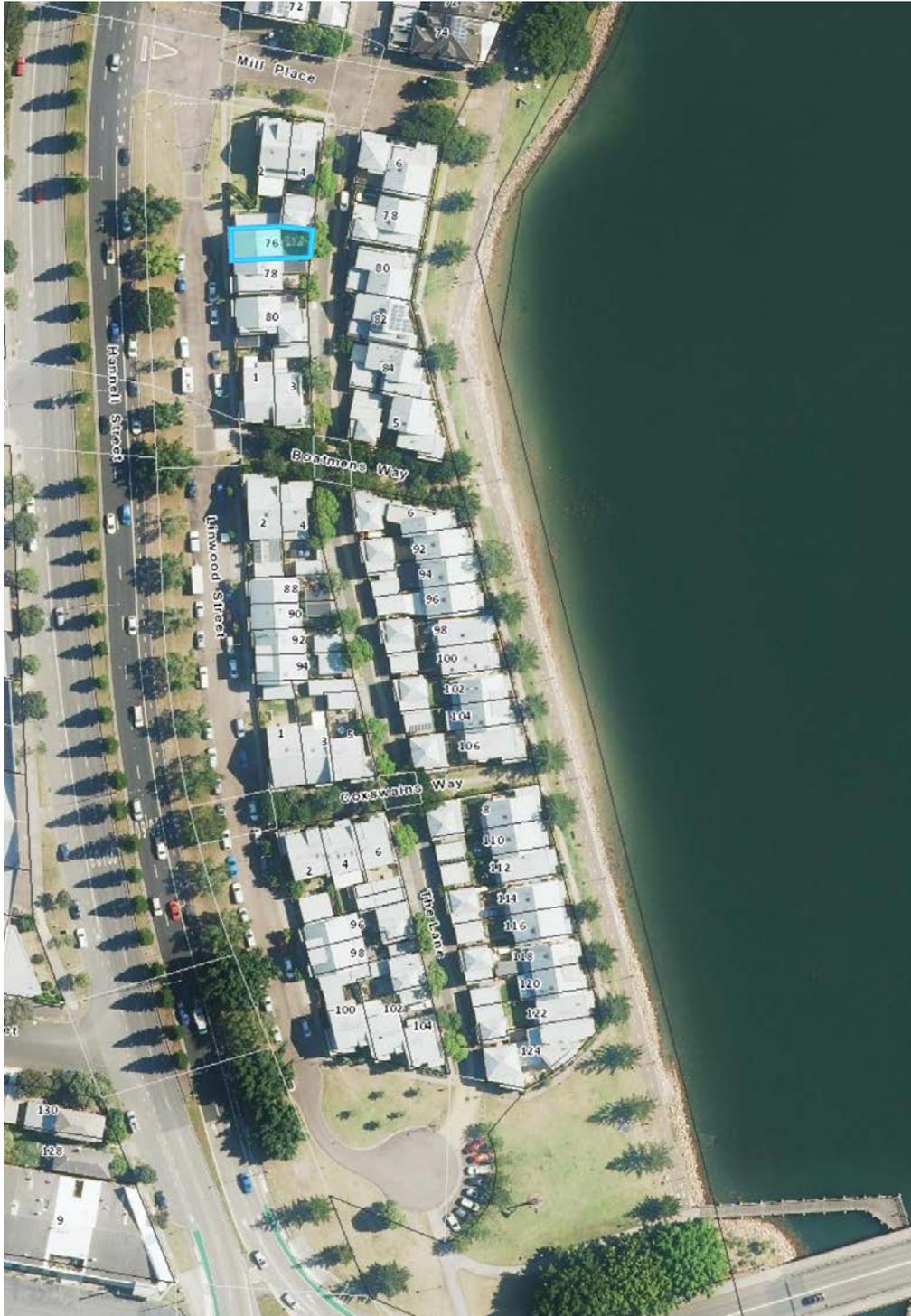
- i) The NDCP 2012 - 39, which incorporated Stage 3 – Linwood Village Urban Design Guidelines.

In the report to Council for DA2003/0234, comments were provided in respect of the FSR of the entire development (being 0.7:1), that it was considered to be appropriate and satisfactory to maximise development of the original site.

As mentioned previously, the existing dwelling house on the subject property has a GFA of 126.8m<sup>2</sup> and FSR of 0.94:1. This equates to an exceedance of 57%, or 45.56m<sup>2</sup> above the mapped FSR for the site.

The proposed development GFA is 147.4m<sup>2</sup>. This is an additional 20.6m<sup>2</sup> above the existing GFA. The proposed development has a FSR of 1.09:1, exceeding the prescribed maximum FSR by 81.7% (66.2m<sup>2</sup>). This is a further variation of 24.7% above the existing FSR exceedance on site. This is significantly higher than the density of the surrounding built form in the locality.

Consideration has also been made of any other similar developments within the Linwood precinct.



The above aerial view depicts the subject land at 76 Linwood Street Wickham (highlighted) and the broader Linwood precinct depicting current built form and densities within locality.

CN's public register of variations to development standards indicates that, within the Linwood precinct, no other developments have been granted a variation to the FSR development standard to what was originally approved.

Since the original approvals for development of the Linwood precinct, consent has been granted for the following development; awnings, patio covers (13 development applications); carport (1); sunroom (1); change of use to serviced apartment or short term accommodation (4); and fitout of food premises (1). These developments do not contribute to FSR and are considered different and minor alterations and additions to existing development in the Linwood precinct. The current proposal will create a precedent for this area.

An assessment of the applicant's request to vary the FSR development standard has been completed and it is considered that:

- a) It does not adequately address the matters required to be demonstrated by Clause 4.6(3) of the NLEP 2012.
- b) The proposed development will not be in the public interest because it is not consistent with the objectives of the FSR development standard and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out. The proposed development would undermine the objectives of the development standard, zone objectives and create an undesirable precedent.

The objectives of the particular standard FSR are provided in clause 4.4 of the NLEP 2012.

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

- (1) The objectives of this clause are as follows —
  - (a) *to provide an appropriate density of development consistent with the established centres hierarchy,*
  - (b) *to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.*
- (2) *The maximum FSR for a building on any land is not to exceed the FSR shown for the land on the FSR Map.*
- (2A) *Despite subclause (2), the maximum FSR for a building on land in any zone in this Plan is to be determined as if the area of the access laneway of a battle-axe lot were not part of the area of the lot.*

The objectives for development within the R2 Low Density Residential zone are provided in the Land Use Table of the NLEP 2012.

**Zone R2 Low Density Residential**

**1 Objectives of zone**

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

The proposed FSR exceedance is not considered to be a reasonable variation as it will have substantial impacts on neighbouring properties in terms of bulk, scale, and overshadowing. The proposed exceedance of the FSR adds unnecessary bulk and scale to the existing development. The proposed scale of the development is out of character with existing dwellings within Linwood Street and the wider surrounding area.

The applicant has not provided sufficient environmental planning grounds to justify contravening the development standard.

Clause 5.10 - Heritage Conservation

Under the NLEP 2012, the subject property is not listed as a heritage item nor is it located within a Heritage Conservation Area.

Clause 6.1 – Acid Sulfate Soils

The site is affected by acid sulfate soils (Class 3). Due to the limited extent of excavation, the likelihood of potential impacts arising from acid sulfate soils is expected to be negligible. The proposed development is satisfactory in this regard.

Clause 6.2 - Earthworks

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

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

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

### 5.3 Any development control plan

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

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

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

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

##### *Density - Floor Space Ratio (3.02.01)*

The maximum permissible FSR for the site is 0.6:1. The proposed development has a nominated FSR of 1.09:1. Refer to Section 5.1 of this report for details of the applicant's request for the proposed FSR variation and the assessment of that request.

##### *Height of Buildings (3.02.02)*

Under the NLEP 2012 the site has a maximum height of 8.5 metres. The submitted height is approximately 8.25 metres and complies with this requirement.

##### *Street frontage appearance (3.02.03)*

The existing setback is retained. The proposed development meets the relevant acceptable solutions of Section 3.02.03.

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

The proposed development does not meet all of the acceptable solutions of Section 3.02.04, in particular those relating to the rear setbacks.

The proposed development is not considered to achieve the performance criteria within Section 3.02.04, particularly criteria (a), (b), (c), and (e).

##### *Development is of a bulk and scale that:*

- (a) is consistent with and complements the built form prevailing in the street and local area;*
- (b) does not create overbearing development for adjoining dwelling houses and their private open space;*
- (c) does not impact on the amenity and privacy of residents in adjoining dwelling houses;*
- (d) does not result in the loss of significant views or outlook of adjoining residents;*
- (e) provides for natural light, sunlight and breezes.*

*Landscaping (3.02.05)*

The site area is 135.4m<sup>2</sup>, generating a requirement for 10% (ie. 13.5m<sup>2</sup>) of the site to be provided with landscaping. The total area of proposed landscaping is approximately 25m<sup>2</sup> and is considered to meet the NDCP 2012 requirements.

*Private open space (3.02.06)*

The proposed private open space area is satisfactory and meets the NDCP 2012 requirements.

*Privacy (3.02.07)*

The privacy of the proposed development and the adjoining neighbours is satisfactory and meets the NDCP 2012 requirements.

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

*Solar access 3.02.08)*

The proposed development meets the acceptable solutions of Section 3.02.08 of the NDCP 2012 in relation to the overshadowing of north facing living area windows in adjacent dwellings.

The proposed development does not meet the acceptable solutions of Section 3.02.08 of the NDCP 2012 in relation to the overshadowing of the principal area of private open space of adjacent dwellings. The level of solar access to the principal area of private open space of 78 Linwood is currently compromised by the existing structures on both sites. However, the proposed development will exacerbate the overshadowing and not provide any solar access to the principal area of private open space of 78 Linwood Street, Wickham.

The proposed development does not demonstrate compliance with the performance criteria within Section 3.02.04:

*Development does not significantly overshadow living area windows and principal areas of private open space of adjacent dwellings.*

The applicant has provided shadow diagrams that illustrate the overshadowing by the proposed development. The shadow diagrams are presented on drawing DA07 and can be found at **Attachment A**. The shadows cast at 3pm on June 21 are incorrect and the applicant was requested to provide amended shadow diagrams.

Updated shadow diagrams have not been submitted to CN; however, the assessing officer has undertaken detailed assessment of shadows cast which confirm non-compliance with Section 3.02.04 of the NDCP 2012.

*View sharing (3.02.09)*

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

*Car parking and vehicular access (3.02.10)*

The existing arrangements for car parking and vehicular access are to be retained. The proposed development is considered acceptable in this regard.

*Development within a Heritage Conservation Areas (3.02.11)*

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

Flood Management - Section 4.01

The subject site is identified as land susceptible to flooding and subject to requirements relating to the management of development within flood prone areas. The proposed development is considered to satisfy flood planning requirements and is acceptable with respect to Section 4.01.

Mine Subsidence - Section 4.03

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

Soil Management - Section 5.01

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

Land Contamination - Section 5.02

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

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Wickham - Section 6.03

The subject site is not within the land area that is the subject of Section 6.03.

Traffic, Parking and Access - Section 7.03

The proposed development is required to provide on-site car parking in accordance with the rates set out in Table 1 of Section 7.03.02 of the NDCP 2012. As an “attached dwelling”, the proposed development is required to have a minimum of one car parking space per dwelling. The proposal is satisfactory in this regard.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The impervious area of the proposed development remains similar to the current area and the applicant proposes to direct the roof water to the existing drainage system. The proposed development is satisfactory and in accordance with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

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

Development Adjoining Laneways - Section 7.11

The proposed development is considered satisfactory with respect to Section 7.11 of the NDCP 2012.

Public Participation - Community Participation Plan

The proposed development was publicly notified in accordance with CN's Community Participation Plan and no submissions have been received in response.

**5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

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

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 not compatible with the existing character, bulk, scale and massing of development in the immediate area. The proposed scale of the

development is out of character with existing dwellings within Linwood Street and the wider surrounding area.

The proposed development is not considered to be reasonable as it will have substantial impacts on neighbouring properties in terms of bulk, scale, and overshadowing. The proposed development adds unnecessary bulk and scale to the existing development and set an undesirable precedent.

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

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

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

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

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

### **5.9 The public interest**

The proposed development will not be in the public interest because the applicant's request to vary the FSR development standard is not consistent with the objectives of the FSR development standard and the objectives for development within the R2 Low Density Residential zone.

The proposed development would undermine the objectives of the development standard, zone objectives and create an undesirable precedent.

## **6.0 CONCLUSION**

The proposal is unacceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is not supported on the following grounds:

- 1) The development does not adequately address the matters required to be demonstrated by Clause 4.6(3) of the NLEP 2012. [Section 4.15(1) Environmental Planning and Assessment Act 1979].
- 2) The development is not consistent with the objectives of the FSR development standard (Clause 4.4 of the NLEP 2012). [Section 4.15(1) Environmental Planning and Assessment Act 1979].

- 3) The development will not be in the public interest because it is not consistent with the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out. [Section 4.15(1) Environmental Planning and Assessment Act 1979].
- 4) The development will have substantial impacts on neighbouring properties in terms of bulk, scale, and overshadowing. [Section 4.15(1)(b) Environmental Planning and Assessment Act 1979].

**ATTACHMENTS**

**Item 22 - Attachment A:** Submitted Plans – 76 Linwood Street, Wickham

**Item 22 - Attachment B:** Draft Reasons for Refusal – 76 Linwood Street, Wickham

**Item 22 - Attachment C:** Processing Chronology – 76 Linwood Street, Wickham

**Item 22 Attachments A to C distributed under separate cover.**