



City of
Newcastle



CITY OF NEWCASTLE

Development Applications Committee

Councillors,

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

DATE: Tuesday 20 July 2021

TIME: 6.00pm

VENUE: Audio visual platform Zoom

J Bath
Chief Executive Officer

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

13 July 2021

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DEVELOPMENT APPLICATIONS COMMITTEE
20 July 2021

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

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

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING 15 JUNE 2021

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 210615 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

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West on Tuesday 15 June 2021 at 8.55pm.

PRESENT

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

IN ATTENDANCE

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

COUNCILLOR REQUEST TO ATTEND BY AUDIO VISUAL LINK

Nil.

APOLOGIES

MOTION

Moved by Cr Rufo, seconded by Cr Byrne

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

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Nil.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 18 MAY 2021

MOTION

Moved by Cr Mackenzie, seconded by Cr Byrne

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

DEVELOPMENT APPLICATIONS

ITEM-10 DAC 15/06/21 - 99 FREDERICK STREET, MEREWETHER - DA2020/01212 - PUB ALTERATIONS, ADDITIONS AND SIGNAGE

MOTION

Moved by Cr Clausen, seconded by Cr Mackenzie

- A. That DA2020/01212 for pub - alterations, additions and signage 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 Church, seconded by Cr Winney-Baartz

That Council lay the item on the table to allow;

- 1 the applicant to consider and address resident's concerns which include trading hours, noise and the proposed deck area along Ridge Street, Merewether;
- 2 a review of the conditions of consent provided in the report;
 - i. condition 10 that proposes the plan of management be provided to the certifier; and
 - ii. condition 28 hours of operation, with consideration of any previous operations after midnight;
- 3 a review of conditions of consent, the recommendations and reports of previous Development Applications where reference to previous hours of operation are given;
- 4 consideration for the drafting of a Plan of Management addressing concerns raised with the operations for submission and approval by Council;
- 5 the issue of proposed hours of trading from 12am to 3am downstairs be addressed and communicated with the community; and
- 6 the applicant to provide Council with a revised development application.

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

Against the Motion: Nil.

The meeting concluded at 9.12pm.

DEVELOPMENT APPLICATIONS

ITEM-11 **DAC 20/07/21 - 110 ELIZABETH STREET, TIGHES HILL - DA2020/00011 - COMMERCIAL - ERECTION OF FOOD AND DRINK PREMISES, HARDWARE AND BUILDING SUPPLIES, VEHICLE SALES OR HIRE PREMISES AND ASSOCIATED SITE WORKS**

APPLICANT: **TIGHES HILL PROJECT PTY LTD**
OWNER: **TIGHES HILL PROJECT PTY LTD**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

PURPOSE

An application (DA2020/00011) has been received seeking consent to the erection of two take away food and drink premises, two hardware and building supplies buildings and two vehicle sale or hire premises at 110 Elizabeth Street Tighes Hill NSW 2297.

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

The application is referred to the Development Applications Committee (DAC) for determination as the construction value of the proposed development (\$18.6 million) exceeds the staff delegation limit of \$10M.

It is further advised that the proposal was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP) and no submissions were received in response to the first notification period and eight were received during the second notification period (associated with further amended plans).

The main categories of objection include:

- i) Traffic impacts,
- ii) Heavy vehicle access and vehicular access impacts,



Subject Land: 110 Elizabeth Street Tighes Hill

iii) Loss of on-street parking

As detailed within the assessment report, the amended plans submitted by the application address the issues arising from the second notification round and those issues which had been raised by assessment staff.

A copy of the plans for the final amended plans are at **Attachment A**.

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

The proposal has been referred to the Development Applications Committee (DAC) for determination based on its cost value and did not receive sufficient submissions to require a Public Voice Committee Meeting.

Issues

- i) Traffic impacts and ramifications for access at Industrial Road and Elizabeth Street, Tighes Hill.
- ii) Land Contamination
- iii) Visual Appearance/Streetscape
- iv) Stormwater/Drainage

Conclusion

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

RECOMMENDATION

- A. That the erection of two *takeaway food and drink premises*, two *hardware and building supplies* buildings and two *vehicle sale or hire premises* at 110 Elizabeth Street Tighes Hill be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 BACKGROUND & THE SUBJECT SITE

Subject Site

The subject property comprises Lot 1 DP 327092 and is known as 110 Elizabeth Street, Tighes Hill.

The site is irregular in shape and has a total area of 35,514 m². The site is located on the north-western corner of the intersections of Elizabeth Street and Industrial Drive (i.e. Hannell Street roundabout). The existing site adjoins Elizabeth Street to the south and Industrial Drive forms the eastern and northern boundaries as Industrial Drive bends to the west adjacent the northern end of the site. The site has a frontage of 142.5 metres to Elizabeth Street (being the unsubdivided frontage), approximately 177.8 metres to the east and 134.25 metres to the north, both being Industrial Drive.

The site has approval for a two-lot subdivision and erection of service station (DA2019/00857). The two-lot subdivision is not yet registered but the subdivision layout is extracted below, see Figure 4. The current development will be located within the approved northern allotment (Lot 2) with a site area of 2.931 hectares.

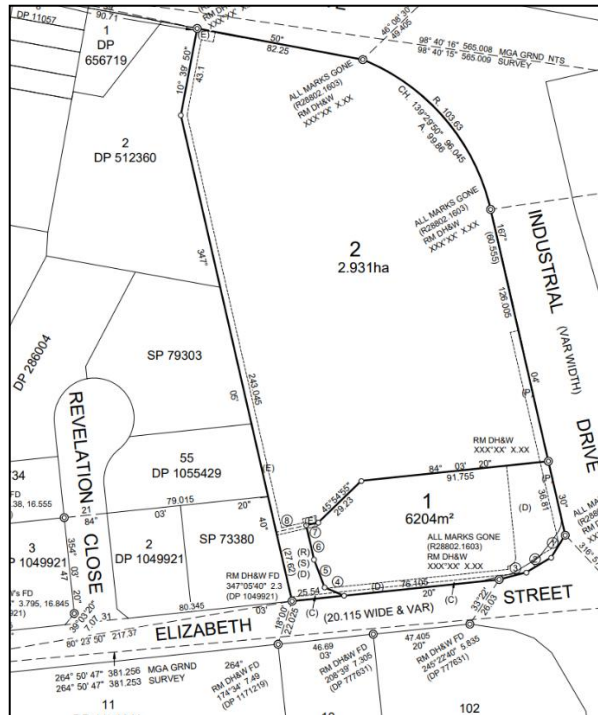


Figure 1 – Approved two lot subdivision (DA2019/00857)

The site is relatively flat but has a cross fall to the west and south-west as the result of previously approved earthworks on the site. The subject site is vacant and largely devoid of any notable vegetation. There is a spread of existing street trees along the Industrial Drive frontage of the site.

To the north, east, west, and south-west of the subject site are existing industrial developments including a fuel storage facility on the eastern side of Industrial Drive. Directly south of the site is the CN owned building and further south Throsby Creek. Further west of the subject site, beyond the existing industrial development, is the existing residential area of Tighes Hill. There are no heritage items or conservation areas within the vicinity of the subject site. The surrounding industrial development is a varied mix of uses with the buildings predominately being single to two-storey in scale.

Site background

The subject site has historically been used as a bulk fuel terminal and depot for Mobil Australia which has contributed to a history of contamination on the site.

There have been several notable development applications approved on the subject site in recent the past as follows:

- i) DA2017/00198 – Interim Remediation Works (Site Capping). The application was lodged to address concerns by the NSW Environment Protection Authority regarding the potential for exposed land contamination to be blown off the site. The development involves the regrading of the site to ensure runoff was controlled towards the west and south-west of the site plus the capping of the existing site with an interim soil cap. This was not proposed as a full remediation of the site, as no actual use of the land was intended as part of the application and was pursued as a temporary solution to concerns raised regarding the contamination exposure.
- ii) DA2019/00857 - Service station food and drink premises (24 hours) associated signage and one lot into two lot subdivision. This proposal approved a service station at the southern end of the current larger site. The application also proposed a two-lot subdivision with the proposed southern lot to contain the service station and the remaining northern lot to be utilised by the current proposal on consideration. The associated subdivision has been approved but has not been registered.

Development application background

The current proposal (DA2020/00011) has undergone several amendments and two notification periods. The majority of the amendments have been in relation to traffic and access issues.

The originally lodged proposal, as publicly notified, was designed with its main access as left-in/left-out via Industrial Drive and a secondary access to Elizabeth Street (see **Figure 2** extracted below). Transport for NSW objected to the use of Industrial Drive by the proposal, and it is noted that no public submissions were otherwise received.

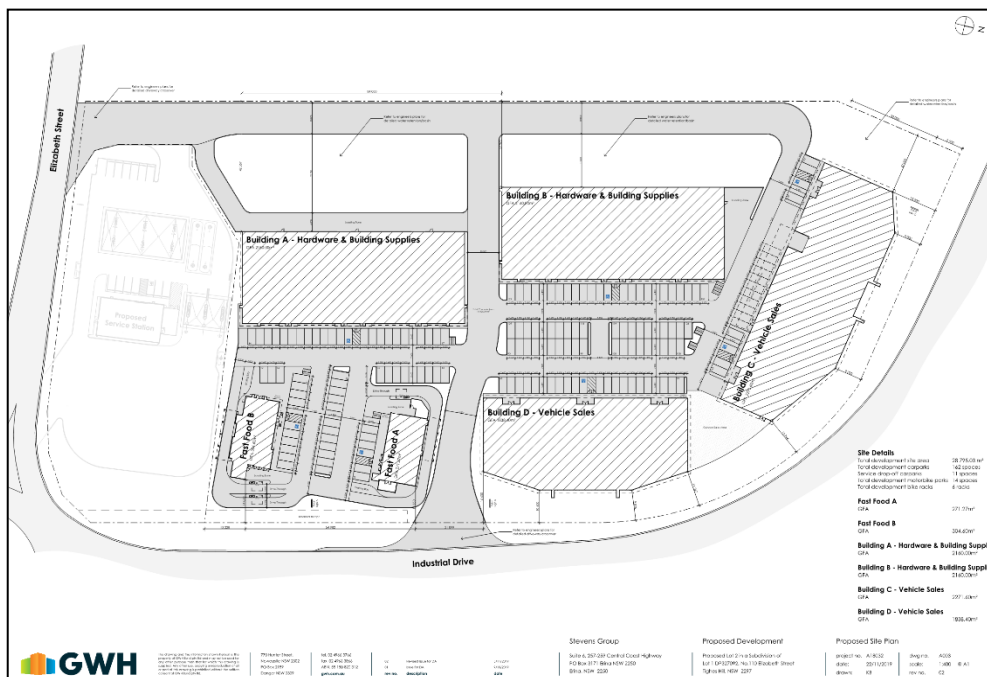


Figure 2 – Originally lodged design relying on combination of Industrial Drive (left-in/left-out) & Elizabeth Street access.

The proposal was amended with the redesign having access solely via Elizabeth Street (see **Figure 3** extracted below). The amended proposal was notified, and eight submissions were received raising concerns regarding vehicular access, traffic, and loss of on-street parking issues.

This amended proposal was the subject of significant assessment and investigation of various design options by the applicant and CN's engineers to determine whether an acceptable solution could be found based on sole access to Elizabeth Street.

Ultimately it was determined that there were no options which could be supported due to the extent of impacts within Elizabeth Street.

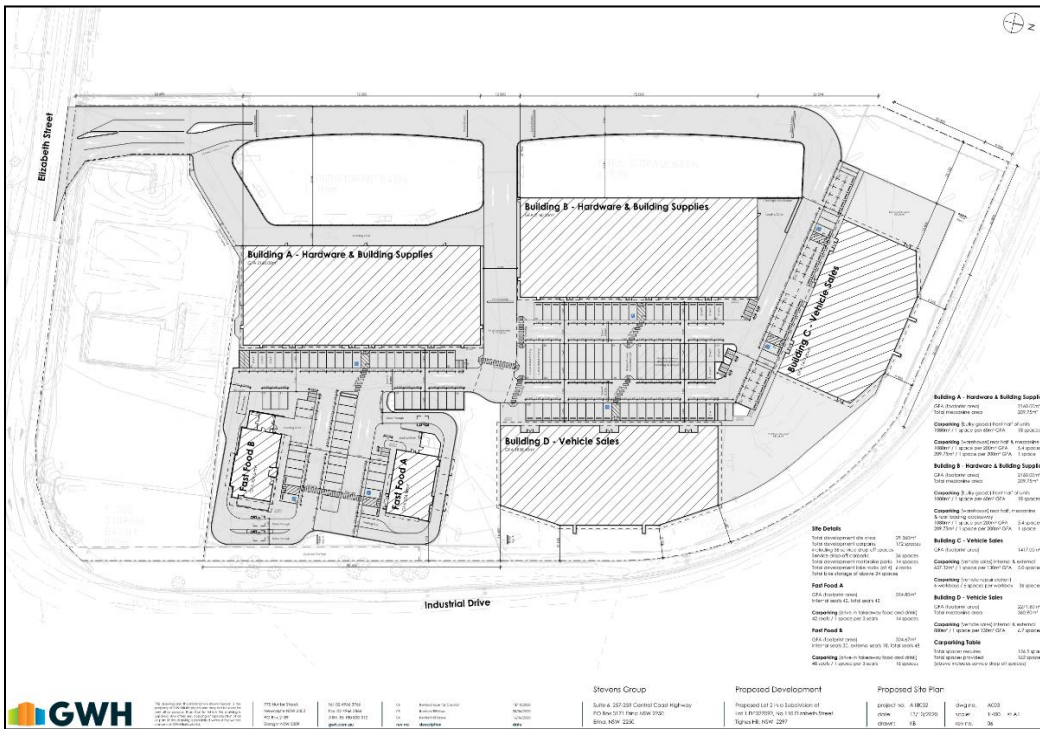


Figure 3 – Elizabeth Street sole access design.

The current amendment is the version reported to the DAC for approval (see figure 4 below). This design is a combination of access to both Industrial Drive and Elizabeth Street.

The Industrial Drive access is solely for left in with no exit, which has now been supported by TfNSW. This redesigned proposal has also resolved the impacts within Elizabeth Street raised within submissions in terms of traffic, vehicular access, and loss of on- street parking.

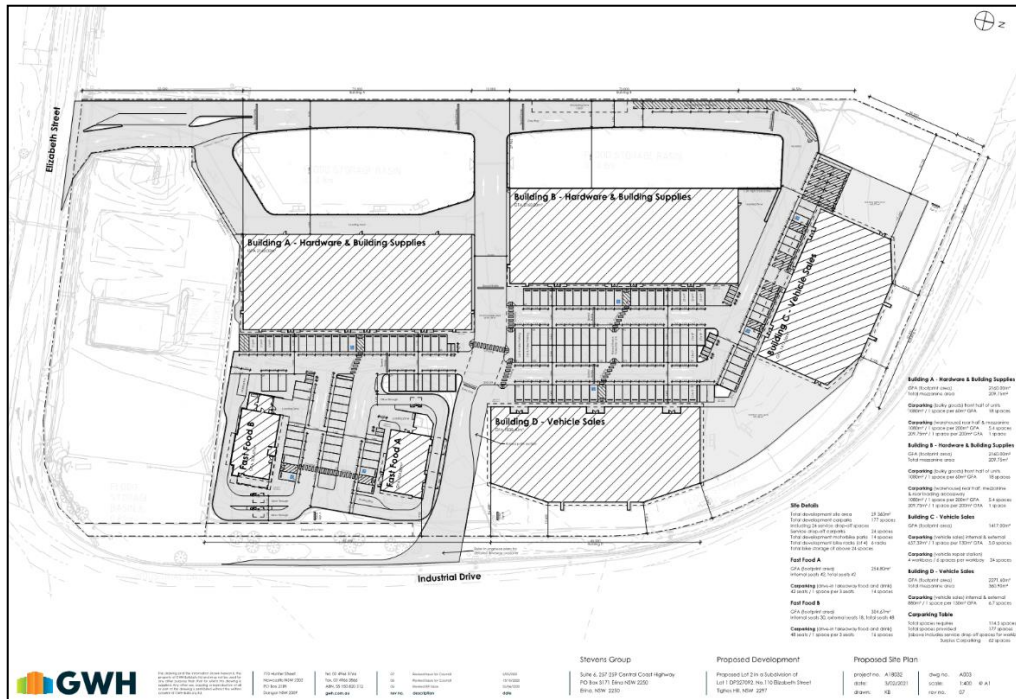


Figure 4 – Current proposal - Elizabeth Street and Industrial Drive left in only access.

2.0 THE PROPOSAL

The applicant’s amended proposal seeks consent to the erection of two take away food and drink premises, two hardware and building supplies buildings and two vehicle sale or hire premises. The proposal will also involve associated engineering and roadworks including a deceleration lane to facilitate the left-in entry to the site from Industrial Drive.

Food and Drink Premises

The two take away food and drink premises are separate buildings approximately 255m² and 305m² in area. Each building has its own drive through and separate associated parking. Each building includes seating for customers. The actual operators of each of the premises is not known at this time. These two buildings are located towards the south-eastern corner of the site adjacent Industrial Drive. It is proposed that these premises would operate 24 hours per day.

Hardware and Building Supplies Buildings

The two hardware and building supplies premises involve two separate buildings each of 2160m² with three proposed tenancies within each building (i.e. total of six tenancies). No specific tenants are proposed as part of the current application. These two buildings are proposed to be located towards the western side of the subject site.

Vehicle Sale or Hire Premises

The two-vehicle sale or hire premises involve two separate buildings involving showrooms, workshops, and customer care areas. These two buildings are located around the north-west 'bend' of the Industrial Drive. No specific tenants are proposed as part of the current application.

The submitted plans illustrate indicative signage locations for all future tenancies of the development. The applicant has been advised that future signage will be subject to a separate application. Conditions of consent have been recommended (**Attachment B**).

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Participation Policy (CPP) on two occasions.

The first public notification period involved a design which proposed main access via entry/exit to Industrial Drive plus access to Elizabeth Street. No submissions were received during this first notification period. However, TfNSW objected to the access to Industrial Drive and would not support the proposal under the provisions of *State Environmental Planning Policy (Infrastructure) 2007* (Clause 101). The applicants subsequently amended the proposal to address the objection by TfNSW.

The second notification period involved an amended design that proposed a sole access via Elizabeth Street. A concurrent *Roads Act 1993* notification was also undertaken at this time due to the extent of proposed changes required within Elizabeth Street. This design received eight submissions.

The concerns raised by submissions with respect to the proposed development are summarised as follows:

- i) Traffic/Hannell Street Roundabout – Concern that the proposed changes within Elizabeth Street will have flow-on effects to traffic using the Hannell Street roundabout. As traffic is slowed down or stopped with Elizabeth Street, due to the changes proposed by this application, it will have flow-on traffic impacts to the Hannell Street roundabout. Elizabeth Street should not be the only access point for such a large site and it should be allowed to have a left in/left out access to Industrial Drive. The 'Elizabeth Street access only' proposed by the amended design will also potentially result in George and William Streets (residential streets) being increasingly used for access to the site when drivers realise too late there is no access via Industrial Drive.

- ii) Traffic/Driveway Access – Submissions identified that the proposal would impact the arrival and departure of large trucks and customers to neighbouring businesses as the design of the amended development directly restricts access three driveways (i.e. preventing movement altogether or limiting extent of vehicular access).
- iii) Heavy Vehicle Access – Concerns that the proposed changes may restrict the access of semi-trailers and B-Double trucks accessing our site. Any changes to the position of existing on-street parking and bus stops will also impact on safe access and sight lines.
- iv) Parking – Concerns that the amended development results in the loss of on-street parking which will negatively impact neighbouring businesses.
- v) Traffic Assessment – Submissions noted that the applicant's traffic assessment does not address traffic counts of heavy vehicles movements within Elizabeth Street or vehicular access impacts (turning diagrams) for adjoining businesses and their driveways affected by the proposal.

Following the detailed assessment of the second amended design, CN assessment staff did not support the amended proposal due to the traffic, vehicular access, and loss of on-street parking, which arose because of the sole access to Elizabeth Drive. During this assessment significant investigation of many design options was pursued by both CN staff and the applicant.

Ultimately, the applicant further amended the proposal to the current design being reported to DAC, involving a left-in only from Industrial Drive and access to Elizabeth Street. This design addresses the concerns raised within the submissions as there are no impacts to the road conditions within Elizabeth Street which affects the neighbouring businesses in terms of traffic, vehicular access, and on-street parking. The road design elements of the current design for the Elizabeth Street are the same as the original design which did not receive any public submissions. In addition, TfNSW supports the amended proposal.

Further public notification of this latest amendment was not required having regard to the proposed design changes in context of the issues previously raised in submissions.

4.0 INTEGRATED DEVELOPMENT

The proposed stormwater works connecting drainage to Throsby Creek constitutes a controlled activity approval under Section 91 of the *Water Management Act 2000*. It is also possible that dewatering of ground waters on site may be required.

However, the applicants did not elect to obtain an integrated approval as part of the application and, as such, the proposal is not classified as '*integrated development*' pursuant to Section 4.46 of the EP&A Act.

A condition requiring that the required approvals be sought is recommended within the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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 as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

CN's records identify the site as being contaminated land. In addition, it is noted that DA2017/00198 approved interim remediation works (i.e. site capping) to address pollution concerns raised by the NSW Environment Protection Authority – NSW EPA. In accordance with the provisions of the SEPP and Section 5.2 of the Newcastle Development Control Plan 2012 (NDCP 2012) the applicant has undertaken the required contamination investigations.

The subject site was formerly used as a fuel storage tank farm and depot. It has been substantially remediated as part of an NSW EPA regulated voluntary remediation agreement. Residual contamination remains in predominately terms of hydrocarbons and buried asbestos fragments across parts of the site. Risks posed by this residual contamination has been addressed via the submission of a contamination environmental management plan, interim site auditor advice and soil vapour risk and building design report. In respect to soil vapour risks the Soil Vapour Risk and Building Design report indicates the area of most concern is the northern part of the site where building C (vehicle dealership) is proposed.

A detailed assessment of risk by a soil vapour risk expert from EP Risk Management has indicated that risks are low and no additional soil vapor management controls (such as slab vapour barriers or positive pressure air conditioning and ventilation systems) are required. It was identified that areas of the proposed building will have air conditioning and ventilation systems for staff and customer comfort (including large roller door opening to service area) which will further reduce any potential risks, however reliance on such systems have been identified as not required to address the vapor risks.

The proposal and supporting documentation have been assessed by and is considered to be satisfactory subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**. It is noted that a validation report, site audit statement and final long term management plan will be required by conditions of consent prior to occupation to ensure the site has been made suitable for the proposed land use.

As such, subject to the recommended conditions the proposal is satisfactory, and the provisions of the SEPP 55 have been met.

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

The proposal will result in the loss of street trees within Industrial Drive due to the position of the proposed crossing from Industrial Drive. The development has been assessed and, having regard to the nature and health of the existing street trees, plus impact on the tree protection zones, is considered satisfactory subject to the provision of fourteen compensatory street trees. The proposal is considered to be acceptable subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**

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

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

The 'coastal zone' is defined in the Act as comprising four coastal management areas: coastal wetlands and littoral rainforest, coastal environment, coastal use, and coastal vulnerability. The Newcastle Local Government Area (LGA) has no areas identified in the coastal vulnerability map.

Clause 5 – Land to which the policy applies – The policy applies to land the whole or any part of which is within the 'coastal zone'. The subject site is located within both the coastal environment and coastal use areas under the provisions of the SEPP.

Clause 14 - Development on land within the coastal use area: Clause 14 provides that development consent must not be granted to development on land that is within the coastal use area unless the consent authority is satisfied that the proposed development will not cause an adverse impact on:

- i) existing, safe access to and along the foreshore, beach, headland, or rock platform for members of the public, including persons with a disability.
- ii) overshadowing, wind funneling and the loss of views from public places to foreshores.
- iii) the visual amenity and scenic qualities of the coast, including coastal headlands.
- iv) Aboriginal cultural heritage, practices, and places.
- v) cultural and built environment heritage.

The site is located within a well-established urban setting, with development existing on the site for many years, there are no likely impacts to this environment, particularly in relation to the biophysical environment and coastal processes and maintaining public access to the foreshore.

Clause 15 - Development in coastal zone generally – development not to increase risk of coastal hazards: Clause 15 specifies that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposed development as a result of its siting is not considered likely to cause increased risk of coastal hazards.

Clause 16 - Development in coastal zone generally – coastal management programs to be considered: Clause 16 prescribes that development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land. There are no applicable coastal management programs which apply to the subject site.

The proposed development is acceptable and not inconsistent with the SEPP.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

This policy facilitates the effective delivery of infrastructure across the State. The development is subject to the following requirements of the ISEPP.

Ausgrid

The proposal effectively triggers the provisions of the ISEPP (i.e. Clause 45) due to the required relocation of the existing power poles within Industrial Drive to allow for the proposed driveway crossing. The application did not require further referral to Ausgrid as the applicant's had already sought prior approval for the electrical works associated with the proposed development including the relocation of power poles and the provision of a required electrical kiosk.

Transport for NSW (TfNSW)

The subject site has a frontage to a classified regional road. Under the ISEPP (Clause 101):

'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*
- (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*

- (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.'*

The proposal is also considered to be traffic generating development, requiring referral to TfNSW, under the provisions of the ISEPP (Clause 104).

The original proposed design was referred to TfNSW and they did not support the proposal. TfNSW advised that Industrial Drive is a Controlled Access Road (i.e. it is also a classified road) and support would not be given to it being used as the primary access considering the alternative of Elizabeth Street is available having regard to the potential impacts and the provisions of Clause 101.

A series of design options were investigated for the site using Elizabeth Street as the sole access but none of these were considered to be acceptable by CN staff due to traffic impacts, heavy vehicle access impacts and loss of on-street parking within Elizabeth Street. Ultimately, support was not given to the design relying on sole access to Elizabeth Street.

The final design approach, as reported to DAC, involves a combination of a left-in Industrial Drive and secondary access to Elizabeth Street. This design removes the issues occurring on Elizabeth Street and was also supported by TfNSW and was considered to be satisfactory by CN staff.

Overall, it is considered that the proposal is satisfactory in terms of the ISEPP and required provisions have been addressed.

State Environmental Planning Policy No 33 - Hazardous and Offensive Development (SEPP 33)

Based on the speculative uses proposed it is not probable that the provisions of SEPP 33 would be likely triggered. Notwithstanding, a condition requiring further planning approval for any development that excessive the trigger thresholds for SEPP 33 is recommended within the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

State Environmental Planning Policy No 64—Advertising and Signage (SEPP 64)

Indicative signage locations for future tenants have been indicated on the submitted plans. However, the future signage will be subject to a separate development application when final tenants are known for the site.

A suitable condition in this respect is included within the conditions set out in the Draft Schedule of Conditions at **Attachment B**. The applicant has been advised of this requirement.

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 IN2 Light Industrial under the provisions of NLEP 2012. The proposed land uses of *hardware and building supplies, take away food and drink premises* and *vehicle sales or hire premises* are all permissible with CN's consent within the IN2 zone.

The following respective definitions apply to these land uses:

“hardware and building supplies means a building or place the principal purpose of which is the sale or hire of goods or materials, such as household fixtures, timber, tools, paint, wallpaper, plumbing supplies and the like, that are used in the construction and maintenance of buildings and adjacent outdoor areas.

Note

*Hardware and building supplies are a type of **retail premises**—see the definition of that term in this Dictionary.”*

“take away food and drink premises means premises that are predominantly used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises.

Note

*Take away food and drink premises are a type of **food and drink premises**—see the definition of that term in this Dictionary.”*

“vehicle sales or hire premises means a building or place used for the display, sale or hire of motor vehicles, caravans, boats, trailers, agricultural machinery and the like, whether or not accessories are sold or displayed there.

Note

*Vehicle sales or hire premises are a type of **retail premises**—see the definition of that term in this Dictionary.”*

The proposed development is consistent with the objectives of the IN2 Light Industrial Zone, which are:

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

Clause 4.1 - Minimum Subdivision Lot Size

The two-lot subdivision was approved under DA2019/00857 but is not as yet registered. The current application does not propose any subdivision.

Clause 4.3 - Height of Buildings

There is no height standard applicable within the IN2 Light Industrial zone.

Clause 4.4 - Floor Space Ratio

There is no floor space ratio standard applicable within the IN2 Light Industrial zone.

Clause 5.10 - Heritage Conservation

The proposal does not trigger any other specific provisions under this clause. The subject property:

1. is not listed as a heritage item under the NLEP 2012,
2. is not located within the vicinity of a heritage item,
3. is not located within a Heritage Conservation Area,
4. is very unlikely to be affected by any items of Aboriginal heritage or archaeological items due to the disturbed nature of the site.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 2 acid sulphate soils. A site-specific acid sulfate soils management plan (ASSMP) has been prepared for the development. The proposal was assessed by CN's Senior Environment Protection Officer and is considered to be satisfactory subject compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B** including a requirement to comply with the ASSMP.

Clause 6.2 - Earthworks

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

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Commercial Uses – Section 3.10

Notwithstanding the nature of some of the land uses proposed, this Section of the NDCP 2012 does not apply to the site as the IN2 – Light Industrial zone is not one of the applicable zones under this Section.

Industrial Development - Section 3.13

The proposal been assessed having regard to this Section of the NDCP 2012 and is considered to be acceptable. The proposed design is considered to meet provisions within this Section having regard to the site coverage, character, amenity, setbacks, loading/servicing, parking, and vehicular access.

The proposed site coverage is consistent with industrial developments within the area with possibly greater open areas due to the extent of landscaping and need for large stormwater ponds towards the western boundary. The proposed buildings cover approximately 29% of the subject site (i.e. based on the approved Lot 2 in the two lot subdivision) and the proposal has an approximate FSR of 0.32:1 which is considered acceptable.

The design of the development provides for acceptable character and streetscape appearance of the proposed buildings involve a mix of materials and articulation. The development is compatible with the existing character, bulk, scale, and massing of industrial development in the immediate area. This is complimented by the provision of landscaping along the Industrial Drive frontage which screens and softens the proposed buildings via a combination of trees, shrubs, and ground covers.

The setbacks of the proposal vary due to the bend within Industrial Drive but are between 9-16 metres and predominately over 10.0 metres. It is considered that these setbacks are appropriate in combination with the design of the development and landscaping proposed.

The proposal has been assessed and is considered to be acceptable in terms of amenity and acoustic impacts including 24-hour operation of the takeaway food and drink premises (see acoustic impacts section below within the report).

The design of each of the proposed buildings is considered to have adequate loading/unloading facilities. The applicant has submitted vehicle turning diagrams showing that the site can be serviced by heavy rigid vehicles (HRV) up to 19m semi-trailers. The takeaway food and drink premises have sufficient access for MRV trucks. Overall, the proposal is considered to be acceptable in terms of vehicular access.

The parking and vehicular access aspect of the proposal are considered acceptable and are discussed in detail under Section 7.03 below.

Flood Management - Section 4.01

Flood Analysis

The site is subjected by oceanic and local catchment flooding during both the 1% Annual Exceedance Probability (AEP) and the Probable Maximum Flood (PMF) events. The previous DA2017/00198 which was for the site capping and contamination control was supported by a Flood Study by BMT WBM and analysis by AECOM.

To model the proposed development over such a large site, a site-specific flood study has been subsequently prepared by BMT to model the proposed development building footprint over the land area and is based on the most UpToDate data and modelling techniques and have considered the environmental impact (Climate Change).

A full stormwater analysis has also been undertaken by Northrop Consulting Engineers in collaboration with BMT to define the flood planning for the development and analysis of manage the flooding and a Peer review of the report has been undertaken.

The submitted flood and stormwater reports has demonstrated that the flood risks can be appropriately managed and sustained for the proposed development and the entire overall site.

Flood Planning Level

The flood planning levels for development is generally based on the highest flood level, in this case Ocean flooding. The recommended flood planning level (FPL) is 2.5m Australian Height Datum (AHD).

The NDCP 2012 requires minimum floor level for a new development not to be below the Flood Planning Level (Reduced Level ((RL)) 2.50m AHD). The finished floor level of all buildings is proposed at RL 2.5m AHD, except for Building C which will be at RL 2.6m AHD. The proposal meets CN's NDCP 2012 requirements and State legislation for managing the FPL.

Floodway

The proposed Lot 2 (i.e. land subject of the development) does not have any areas identified as a floodway. However, a small section of land located adjacent Elizabeth Street is identified as a floodway. The section is generally within the proposed access driveway area which has been proposed to be set at a lower level, thus having minimum impact on the flood flows.

Flood Storage

The site is identified as a local catchment flood storage area. The previous approved DA2017/00198 which was for the site capping and contamination control set the framework for managing the flooding and stormwater for the entire site. The proposed development scenario has therefore been compared to the previous planning done at the Site Capping Stage under DA2017/00198 (See Figure 1 below).

The submitted BMT report and Northrop revised submissions has modelled and analysed the flood storage impacts based on the NDCP 2012 requirements and have achieved the intent of the NDCP 2012. The development proposes two flood storage basins and a flood storage channel in proposed Lot 2 and a flood storage basin in proposed Lot 1 with approx. volume of 2,175m³ has been provided, which is approx. 76% of the previous volume. Additionally, 102KL of rainwater tank storage is provided, which means that overall, the development has provided more that 80% of storage volume, which is within the NDCP 2012 requirements.

The flood storage channel is proposed along the north-eastern boundary of the site and the rear of Building C & D has been offset at least 2m from the property boundary and the buildings closer than 3m to the basins will require to be structurally certified.

The applicants consulting engineers Northrop and Flood Consultants BMT have demonstrated that the proposed development does not impact on the surrounding environment and any of the upstream or downstream properties.

Flood Risk Management

The risk to life is rated as Level 4, however a large extend of the site is rated as Level 3, generally being the building footprint area. Generally, the existing streets are much lower in height and in any extreme event, the streets are likely to be closed. It is noted that the PMF level is 2.7m AHD and the FPL is 2.5 & 2.6m AHD, thus a depth of 100-200mm maybe expected into the buildings. The proposed food outlet buildings have been installed with flood gates and mezzanine levels have been provided in the remaining building.

Therefore, safe refuge is available for the overall site to manage the risks to life. The risk to property is generally low and the new building are being set at FPL.

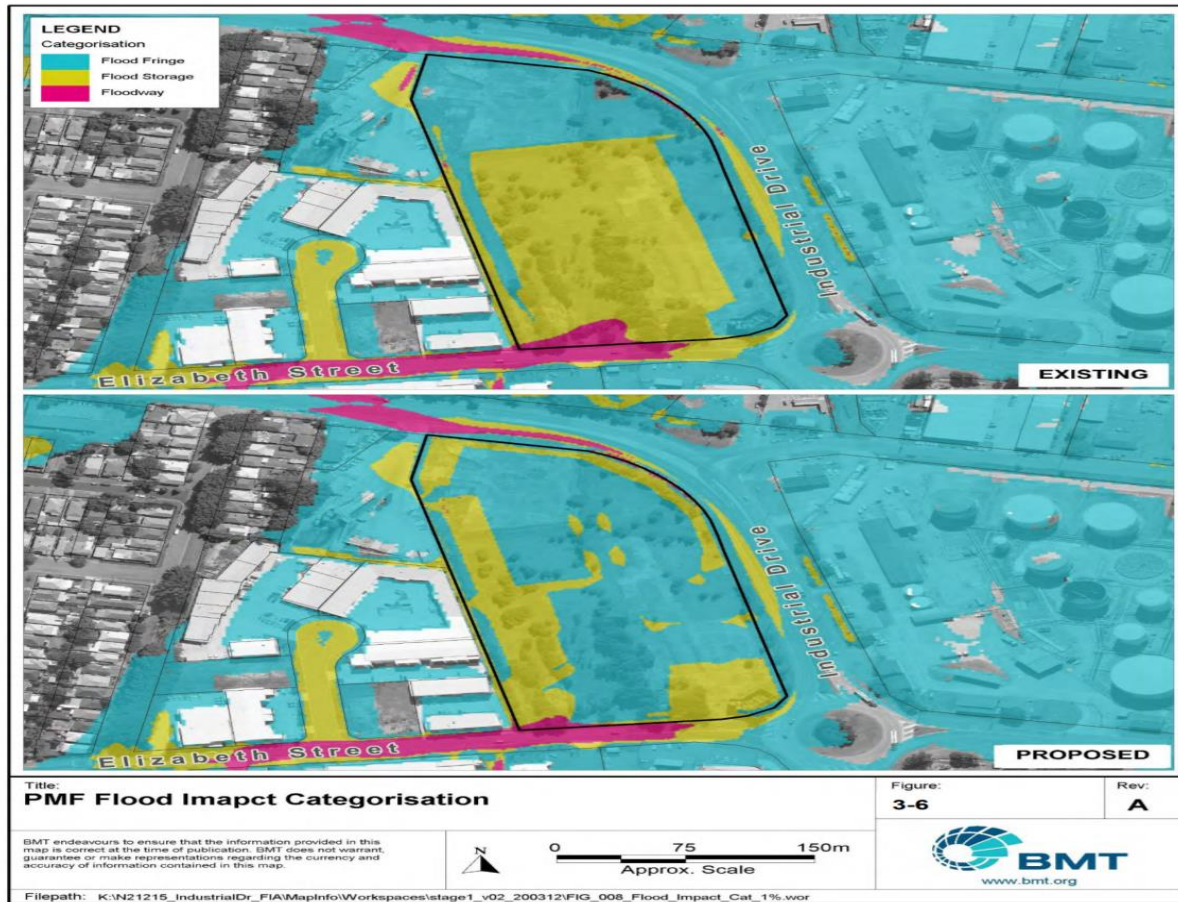


Figure 5 – Flood Storage Comparison Map (Existing Vs Proposed)

The proposal is acceptable in terms of flooding subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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 & Social Impact - Section 4.05

The applicants have submitted a comprehensive crime risk and social impact report to address the respective impacts of the proposal.

The proposal has been designed to adequately address the Crime Prevention Through Environmental Design (CPTED) principles of: -

- i) Surveillance
- ii) Access Control
- iii) Territorial Reinforcement

iv) Space Management

The combination of design and mitigation measures (e.g. including lighting, CCTV, directional signage, active and passive surveillance) is such that the proposal is considered to be acceptable. The proposed take away food and drink premises are intended to operate 24 hours a day, which on balance, is considered to contribute to activity on site and passive surveillance. Further, the proposed 24 hours operation is acceptable from an acoustic impact perspective as detailed elsewhere within this report. The application was referred to NSW Police for comment and no objection was received.

The proposal will have positive economic impact in the area resulting in initial construction jobs and ultimately the redevelopment of industrial land that has otherwise been left vacant for over twenty years.

Overall, having regard to the relative separate of the industrially zoned site from other sensitive locations such as residential areas, it is considered that the proposal is acceptable in terms of CPTED principles and social impacts. CPTED requirements have been incorporated within the Draft Schedule of Conditions at **Attachment B**.

Land Contamination - Section 5.02

Land contamination is considered acceptable as discussed under the SEPP 55 section above within the report.

Vegetation Management - Section 5.03

The existing site is devoid of vegetation. The removal of existing street trees has been discussed above within the Vegetation SEPP section.

Aboriginal Heritage - Section 5.04, Heritage Items - Section 5.05, Archaeological Management - Section 5.06 & Heritage Conservation Areas - Section 5.07

As detailed under Clause 5.10 Heritage of NLEP 2012 the subject site:

- i) is not listed as a heritage item under the NLEP 2012,
- ii) is not located within the vicinity of a heritage item,
- iii) is not located within a Heritage Conservation Area,
- iv) is very unlikely to be affected by any items of Aboriginal heritage or archaeological items due to the disturbed nature of the site.

Landscape Open Space and Visual Amenity - Section 7.02

The proposal falls within Category 3 development under Section 7.02 and a comprehensive landscape plan has been submitted prepared by qualified landscape architects.

The landscaping proposed by the design is predominately located along the Industrial Drive frontage of the development involving a combination of trees, shrubs, and ground covers. The proposed trees included are Spotted Gums (*Corymbia maculate*), Blueberry Ash (*Elaeocarpus reticulatus*) and Weeping Lilly Pilly (*Waterhousia floribunda*).

The landscape design does not propose the same level of landscaping throughout the rest of the site which is considered acceptable given the nature of the development and site constraints.

The landscaping proposed along Industrial Drive will provide the greatest visual appearance outcomes by contributing to the streetscape and softening the appearance of the proposed buildings visible from the street.

The rear of the site is dominated by stormwater ponds and faces the rear of existing industrial buildings with effective setbacks of approximately 27-42 metres to adjoining boundaries. This results in an adequate outcome in terms of landscaping.

Further, the internal areas of the proposed design includes landscaping to the ends of aisles and, although could provide a greater degree of landscaping overall in this area, this would impact the provision of the overall parking and needs to be balanced against the outcomes achieved along Industrial Drive.

A final comprehensive landscape plan will be required within the conditions set out in the Draft Schedule of Conditions at **Attachment B**. The landscaping outcomes for the proposal are considered to be acceptable subject to conditions.

Traffic, Parking and Access - Section 7.03

Vehicular Access Design – Industrial Drive

The proposed development is a *traffic generating development* under the iSEPP and has been referred to Transport for NSW (TfNSW) for comment.

TfNSW has supported the final proposal involving left-in from Industrial Drive and secondary access within Elizabeth Street, and is satisfied with the traffic impacts in terms of Industrial Drive and the operation of the Industrial Drive and Hannell Street roundabout. TfNSW have provided recommended conditions of consent, including the requirement for the applicant to enter into a Works Authorisation Deed (WAD).

CN also support access from Industrial Drive as this will provide a direct access to the gateway development site and reduce the potential additional traffic impact on Elizabeth Street. A concept road design plan has been prepared by Northrop Consulting Engineers in conjunction with the applicants traffic consultants SECA Solutions. The concept design is acceptable.

Vehicular Access Design – Elizabeth Street

The driveway on Elizabeth Street is approximately 17m wide and has a 12m wide splay on the departure side. The driveway is located 100m west of the roundabout and will support turning movements from Elizabeth Street into the proposed development site and the approved Stage 1 Service Station site.

The proposed exit from the Elizabeth Street driveway has been designed to be left-out only towards Industrial Drive roundabout, any vehicles wanting to travel west bound on Elizabeth Street will need to use the Industrial Drive and Hannell Street roundabout as the primary turning facility.

Construction Traffic

Management of the traffic generated from the construction related activity associated with the development will be required. The site is relatively large and therefore it is anticipated that majority of the staff will park within the site. The construction activity may affect the proposed Service Station operation and will be required to be appropriately managed. As such, a condition is recommended to manage the construction process.

Newcastle City Traffic Committee Approval

The proposed development access from Elizabeth Street will largely impact on the traffic movement within the vicinity of the development. The access and the proposed changes to the road layout has been endorsed through the Newcastle City Traffic Committee (NCTC) approval process.

Internal Access and Car Parking Design

The primary circulation roadways providing access to/from Industrial Drive and Elizabeth Street have been generally designed with adequate width to ensure that the proposed vehicles movements and manoeuvres from the site occur in a safe manner. Turning templates have been provided to demonstrate that the largest expected vehicle being Semi Articulated trucks (approximately 19m) can circulate around the main perimeter internal roads.

Swept path diagrams have been provided for B85 percentile, 8.8m medium rigid vehicle (MRV), 12.5m heavy rigid vehicle (HRV) truck and 19m semi-trailer for various locations on site. Intersections of circulation roadways and parking aisles are to be designed for two-way opposing vehicle movements. Swept path diagrams of a B85 percentile vehicle simultaneously passing a B99 percentile vehicle at all intersections between circulation roadways and parking aisles should be provided in accordance with Clause 2.5.2 (c) of AS2890.1. This is acceptable.

Loading Docks Access

The access to loading docks of the takeaway food and drink premises A & B has been assessed with 8.8m MRV swept path diagrams. Further, the access to loading dock of the Hardware and Building Supplies Building A and B are generally accessible and is acceptable.

There are no loading docks proposed for Building C & Building D (vehicle sales). The applicant is not proposing to use car carriers to deliver vehicles on site, these will be individually driven to and from a local holding compound to the proposed vehicle sales buildings separately. This is acceptable.

Pedestrian Access

Pedestrian access to and within the development have been adequately addressed. Safe and practical means for pedestrians to enter the site and to circulate within the site has been provided. The proposed uses are likely to generate pedestrian movements between various buildings and external to the site. Raised pedestrian paths/areas have been proposed outside buildings and have provided interconnected with appropriate crossing facilities such as kerb ramps and at-grade or raised pedestrian crossings across aisles and circulation roadways.

Car, Bike and Bicycle Parking Design

The car park for the proposed development can be classified as a User Class 3A car park as per Table 1.1 of AS2890.1. The proposed parking spaces (2.6m x 5.4m) and aisle widths (7m) meet the minimum requirements of AS2890.1.

The proposed accessible parking spaces have a shared space with pavement marking and seems to be in accordance with AS2890.6.

The proposed motorbike parking spaces is generally compliant with the AS2890.1 requirements and the proposed bicycle parking spaces are in safe areas.

Wheel stops are provided at all parking spaces to prevent vehicles from overhanging raised pedestrian areas outside buildings and into adjoining parking spaces.

Drive-Through

The development proposes two takeaway food and drink buildings with drive-through facility. The drive-through facility has generally met the criteria set in the "*RMS Guide to Traffic Generating Developments*" by providing '*exclusive areas for queuing of cars for the drive through, for cars queued from ordering point and waiting bays for delays.*' The proposal is acceptable.

Access Safety

The internal road network has been designed with traffic calming devices such as speed humps to ensure that the internal access has a slow and safe traffic environment. Line marking as indicated on the plans and sign positing will need to be provided to ensure traffic flows and parking areas are appropriately regulated and managed.

Intersections of circulation internal roadways and parking aisles have been designed for two-way opposing vehicle movements and safe sightlines will be available.

Off-Street Parking Provision

Car Parking

The following table outlines the car parking requirement for the proposed development in accordance with NDCP 2012:

Description	NDCP 2012 Rate	Requirement (car spaces)
Building A – Hardware & Building Supplies (2,160 sq.m)	1 car space per 60 sq.m GFA	36
Building B – Hardware & Building Supplies (2,160 sq.m)	1 car space per 60 sq.m GFA	36
Building C – Vehicle Sales (908.93 sq.m showroom area) plus 6 work bays	1 car space per 130 sq.m of gross display area	7
	6 car spaces per work bay (as per RMS Guide)	36
Building D – Vehicle Sales (879.70 sq.m showroom area) plus no work bays	1 car space per 130 sq.m of gross display area	7
	6 car spaces per work bay (as per RMS Guide)	0
Fast Food A (30 internal seats & 18 external seats)	Greater of 1 car space per 2 seats (internal), or 1 space per 3 seats (internal and external)	16
Fast Food B (30 internal seats & 18 external seats)	Greater of 1 car space per 2 seats (internal), or 1 space per 3 seats (internal and external)	16
Total DCP Requirement		154

The development requires provision of 154 car spaces, including 118 parking spaces for customers and 36 parking spaces associated with work bays under NDCP 2012.

The development proposes a total of 177 car spaces, including 24 service drop-off car spaces and 7 accessible parking spaces, 2 trailer parking spaces and 10 staff spaces are noted on plans. The development has provided 23 car parking spaces in excess of the NDCP 2012 requirement, given the nature of the proposed uses this is acceptable.

Accessible Parking

The proposed development can be classified as a Class 6 development in accordance with the Building Code of Australia which should provide one accessible car space for every 50 car spaces provided. The development proposes seven accessible car spaces which exceeds the minimum requirement. The accessible spaces are evenly distributed throughout the site which is considered acceptable.

Bicycle Parking and End User Facility

The development is required to be provided with 21 bicycle parking spaces.

The following table outlines the bicycle parking requirement for the proposed development.

Description	NDCP 2012 Rate	Requirement (bike spaces)
Building A – Hardware & Building Supplies (assumed 20 staff)	1 bike space (Class 2) per 20 staff	1 (Class 2)
Building B – Hardware & Building Supplies (assumed 20 staff)	1 bike space (Class 2) per 20 staff	1 (Class 2)
Building C – Vehicle Sales (assumed 20 staff)	1 bike space (Class 2) per 20 staff	1 (Class 2)
Building D – Vehicle Sales (assumed 20 staff)	1 bike space (Class 2) per 20 staff	1 (Class 2)
Fast Food A (271.27 sq.m)	1 space (Class 2) per 100 sq.m GFA for staff 1 space (Class 3) per 50 sq.m GFA for visitors	3 (Class 2) 5 (Class 3)
Fast Food B (304.60 sq.m)	1 space (Class 2) per 100 sq.m GFA for staff 1 space (Class 3) per 50 sq.m GFA for visitors	3 (Class 2) 6 (Class 3)
Total NDCP Requirement		10 (Class 2) 11 (Class 3)

The development requires provision of 21 bike spaces under NDCP 2012.

The development proposes 4 bike racks (each rack consist of 6 spaces) and therefore total of 24 bike spaces spread across site, which meets the NDCP 2012 requirement.

However, not all of the proposed premises have been provided with end user facilities. It is recommended that each of the other buildings (Buildings A, B, C & D) be provided with at least one end user facility with shower and storage. Conditions are recommended to ensure end user facilities are provided within the Draft Schedule of Conditions at **Attachment B**.

Motorbike Parking

The provision of 1 motorbike space per 20 car spaces, equating to a total of 9 motorbike spaces for 177 car spaces is required under NDCP 2012. The development proposes 14 motorbike spaces and is therefore considered to exceed the NDCP 2012 requirement.

Public Domain

Having regards to the above engineering aspects, the final design for the proposed road and associated works on Elizabeth Street will need to be refined for construction purposes generally based on the concept plans.

The proposed left in access from Industrial Drive will be subject to a Works Authorisation Deed (WAD) agreement with TfNSW.

The proposal is acceptable in terms of traffic, vehicular access, and parking subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

Northrop Consulting Engineers have been engaged by the applicants to undertake the stormwater assessment for the development. A stormwater management strategy for the overall Stage 2 development has been provided with the Development Application and has considered the flooding aspect on the development site.

The stormwater management strategy and proposed stormwater design has been carried out to the current NDCP 2012, Technical Specifications and industry standards.

Stormwater Management Strategy

Stormwater Reuse and Detention

The concept stormwater management plan and stormwater design prepared by Northrop Consulting Engineers have allowed for each new building to be installed with suitably sized rainwater tanks to be connected to the roof areas for reuse within each building. The overall Stage 2 development has been proposed with approx. 102KL of stormwater reuse.

Stormwater Quality and Quantity Assessment

Stormwater quality assessment has been undertaken by Northrop to determine the impact on the ecology of the downstream watercourse. The performance of the stormwater strategy was assessed against the MUSIC software targets set in the CN's Technical Manual and the MUSIC Link and create a Water Sensitive Design for the development.

In addition to the reuse, the overall site (Stage 1 and 2) has been provided with 4 flood storage basins, which performs as a flood storage area. The development achieves the targets required under the NDCP 2012 and is acceptable subject to conditions of consent.

Maintenance & Monitoring and Safety

The proposed stormwater structures will require regular monitoring and maintenance to ensure the system is functional. A detailed monitoring and maintenance plan have been provided with the stormwater management strategy.

Safety concerns around the basin areas have been addressed by the applicants. Additional barrier structures, fencing and signs are proposed to mitigate risks with pedestrian and vehicles.

Conclusion

The principles of water sensitive urban design and the requirements of the NDCP 2012 have been applied to the development. The submitted stormwater strategy reports and supporting documents have demonstrated that the development will not impact of the downstream ecology, is sustainable and can be maintained in the long term.

Stormwater Discharge Connection

The development has proposed to discharge the stormwater via a new stormwater pipe system which connects from the property and discharges to Throsby Creek via 75 Elizabeth St and Elizabeth St Road reserve.

Easement in 75 Elizabeth Street (Lot 102 DP 777631)

City of Newcastle (CN) Infrastructure and Property Services, being the owners of 75 Elizabeth St, Tighes Hill have agreed in principle to the creation of an easement along the western boundary of 75 Elizabeth Street for the purposes of an underground stormwater pipe discharging to Throsby Creek.

The proposed stormwater pipe has been confirmed by CN as being a private pipe as there are no public benefit from the proposal.

Further to this, a formal Roads Act application for the proposed stormwater pipe over Elizabeth St Road reserve has been lodged (RA2021/00102), which is being reviewed and processed by CN Infrastructure and Property Section. The process allows for a licence agreement to be reached to ensure that the stormwater pipe over the road reserve remains a private asset owned and maintained by the owners of 110 Elizabeth Street.

The proposed drainage system via 75 Elizabeth St was the best potential stormwater discharge solution for the proposed development.

The proposal is acceptable in terms of stormwater and water efficiency subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**

Waste Management - Section 7.08

The applicant has prepared a detailed waste management plan (WMP), which addresses waste collection on a weekly basis by private contractor. All the waste generated during construction will be taken to Summerhill Waste and Recycling facility.

The proposed uses would be 'Business-rated' in terms of waste collection. The waste management plan indicates that weekly waste collection will be undertaken by a private waste contractor using proposed loading docks of various buildings. Generally, the waste collection can be managed via the internal road network.

It is noted that the future tenants are not as yet known at this time, notwithstanding waste collection has been assessed as being acceptable based on the available storage spaces and likely frequencies of collection associated with private waste contractors.

Individual specific WMP's will further be prepared when actual tenants for each business is known. A condition is recommended within the conditions set out in the Draft Schedule of Conditions at **Attachment B** requiring these individual WMP's with associated litter minimisation plans.

Advertising and Signage - Section 7.09

The applicant has agreed that signage will be addressed via separate development application.

Development Contributions

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

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

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

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

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

Acoustic Impacts

The site is located adjacent to a high traffic road, a substantial distance from nearby residents and the proposed land uses are not overly noise generating. The subject site poses a very low risk of creating unreasonable noise impacts and as such further restrictions on hours of operation are not required.

The proposed typical day time and early evening commercial hours of operation for the proposed buildings A, B, C and D is acceptable. Further, the proposed 24-hour operation of the proposed take away fast food buildings A and B are acceptable from a noise perspective subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Overshadowing, Privacy & View Loss

The proposal will not have any unreasonable impacts in terms of overshadowing or privacy due to its setbacks, design, and relative position to surrounding properties. There are no views for the proposed development to impact in this instance.

Food & Health

The proposed food and health aspects of the development are acceptable subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**

5.7 The suitability of the site for the development

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

The constraints of the site have been considered in the proposed development and are acceptable in this context, which includes flooding, contamination, acid sulfate soils and traffic.

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

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

The application was publicly notified in accordance with CN's Community Participation Policy (CPP) on two occasions.

The first public notification period involved the design with main access via entry/exit to Industrial Drive plus access to Elizabeth Street. No submissions were received during this first notification period. TfNSW objected to the access to Industrial Drive and the applicants subsequently amended the proposal to address this issue.

The amended design had a sole access via Elizabeth Street and was placed on public exhibition from 6 November 2020 to 8 December 2020. This amended design received eight submissions.

The final amended plan returned the design of the proposal to a combination of Industrial Drive and Elizabeth Street accesses. This design does not result in the impacts within Elizabeth Street that were associated with second amended plan in terms of traffic impacts, vehicular access and loss of on-street parking which received eight submissions. The final design did not warrant further public notification as it did not result in these impacts within Elizabeth Street combined with the final amended plan being largely similar to the one initially notified design that received no public submissions.

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

Issue	Comment
<p>Traffic/Hannell Street Roundabout – Concern that the proposed changes within Elizabeth Street will have flow-on effects to traffic using the Hannell Street roundabout. As traffic is slowed down or stopped with Elizabeth Street, due to the changes proposed by this application, it will have flow-on traffic impacts to the Hannell Street roundabout. Elizabeth Street should not be the only access point for such a large site and it should be allowed to have a left in/left out access to Industrial Drive. The ‘Elizabeth Street access only’ proposed by the amended design will also potentially result in George and William Streets (residential streets) being increasingly used for access to the site when drivers realise too late there is no access via Industrial Drive.</p>	<p>The final design allows for left in from Industrial Drive with a deceleration lane. It is considered that the traffic impacts from this design will not be significant and will not unreasonably impact businesses within Elizabeth Street.</p>
<p>Heavy Vehicle Access – The proposed changes may restrict the access of semi-trailers and B-Double trucks accessing our site. Any changes to the position of existing on-street parking and bus stops will also impact on safe access and sight lines.</p>	<p>The final design does not require any of the medians or similar traffic restrictions that were proposed as part of the ‘second’ design and, as such, there will not be an unreasonable impact on vehicle access (including HRV’s) within Elizabeth Street.</p>
<p>Parking – The amended development results in the loss of on-street parking which will negatively impact neighbouring businesses.</p>	<p>The final design does not result in the loss of any on-street parking spaces as a result of required medians or similar traffic restrictions that were proposed as part of the ‘second’ design.</p>
<p>Traffic Assessment – The applicant’s traffic assessment does not address traffic counts of heavy vehicles movements within Elizabeth Street or vehicular access impacts (turning diagrams) for adjoining businesses and their driveways affected by the proposal.</p>	<p>The assessment of the final design confirms that the traffic impact within both Elizabeth Street and the ‘Hannell Street’ roundabout will be acceptable in terms of traffic impacts. It is further advised that TfNSW has supported the final design.</p>

<p>Traffic/Driveway Access – Proposal will impact the arrival and departure of large trucks and customers to neighbouring businesses as the design of the amended development directly restricts access three driveways (i.e. preventing movement altogether or limiting extent of vehicular access).</p>	<p>The final design does not require any of the medians or similar traffic restrictions that were proposed as part of the ‘second’ design and, as such, there will not be an impact on vehicle access (including HRV’s) within Elizabeth Street.</p>
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5.9 The public interest

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

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the EP&A Act and is supported on the basis of the recommended conditions set out in the Draft Schedule of Conditions at **Attachment B**

ATTACHMENTS

Item 11 Attachment A: Submitted Plans - 110 Elizabeth Street, Tighes Hill

Item 11 Attachment B: Draft Schedule of Conditions – 110 Elizabeth Street, Tighes Hill

Item 11 Attachment C: Processing Chronology - 110 Elizabeth Street, Tighes Hill

Item 11 Attachments A - C distributed under separate cover

**ITEM-12 DAC 20/07/21 - 7 FORT DRIVE, NEWCASTLE EAST -
DA2020/01382 - DWELLING HOUSE - ALTERATIONS AND
ADDITIONS INCLUDING DEMOLITION**

APPLICANT: L R BISHOP & R D BISHOP
OWNER: L R BISHOP & R D BISHOP
REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT

PART I

PURPOSE

An application has been received seeking consent to Dwelling house – alterations and additions including demolition at 7 Fort Drive, Newcastle East.

The submitted application was assigned to Principal Development Officer (Building), David Lamb for assessment.

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



Subject Land: 7 Fort Drive, Newcastle East

The application proposes a 20% variation to the Height of Buildings development standard, and a 68% variation to the FSR development standard.

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

The proposed development was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP) and two submissions were received in response.

The objector's concerns included:

- i) FSR
- ii) Privacy
- iii) Overshadowing
- iv) View sharing
- v) Construction concerns with respect to underpinning, stabilisation and maintenance
- vi) Existing encroachments over the property boundaries
- vii) Details of privacy screening and balustrades

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

Issues

- 1) Variation to the Height of Buildings development standard under the NLEP 2012.
- 2) Variation to the FSR development standard under the NLEP 2012.

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out; and

- B. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio (FSR), and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out; and
- C. That DA2020/01382 at 7 Fort Drive Newcastle East be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- D. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 7 Sec A DP 2370, being rectangular in shape and located to the south of Fort Drive and the north of Beach Street. The lot has a frontage of 6.705m, a maximum depth of 22.59m and a total area of 151.25m².

The land is currently occupied by a four-storey dwelling house. The site slopes toward the south boundary (Beach Street) of the allotment. Existing development on adjoining sites and the general locality predominantly comprise of two and three storey residential terrace construction of various ages, forms and materiality.

The proposed development is located within the Newcastle East Heritage Conservation Area. A number of state and locally listed heritage items are located within the general proximity of the site (01674 – Coal River Precinct, I480 – Fort Scratchley Group (Buildings and Underground Forts), I482 – Boatmans Terrace

Group (residences), 1485 – Coal Memorial and 1484 – Column from Original Courthouse).

The site is also located within the NSW Coastal Zone.

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to a dwelling house. A copy of the submitted plans is at **Attachment A**.

The majority of the proposed work involves alterations and additions to improve the internal configuration of the dwelling, and reinstatement and upgrades to the external facade of the street elevations (both Fort Drive and Beach Street) commensurate to development in a heritage conservation area.

The proposed development will maintain the ridge level of the existing dwelling (reduced level 29.03m), which is proposed to extend towards the Beach Street frontage boundary. The additional floor area proposed in the application is attributed to:

1. Amendment of the basement level to facilitate improved pedestrian access and vehicular accommodation to the dwelling.
2. The alterations and additions to the ground floor plan are primarily oriented towards the Beach Street elevation (south elevation), so as to provide a greater connection between the living spaces and the principal area of private open space.
3. An improvement to the occupant's amenity and liveability of the third-floor plan, including additions to the existing bedroom and inclusion of an ensuite.

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Consultation Plan. Two submissions were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

- i) FSR
- ii) Privacy
- iii) Overshadowing
- iv) View sharing

- v) Construction concerns with respect to underpinning, stabilisation and maintenance
- vi) Existing encroachments over the property boundaries
- vii) Details of privacy screening and balustrades

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

4.0 INTEGRATED DEVELOPMENT

The proposal is not '*integrated development*' pursuant to Section 4.46 of the EP&A Act 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 1979, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

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

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

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

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

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

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

This policy facilitates the effective delivery of infrastructure across the State. The development is subject to the following requirements of the ISEPP.

The proposal was referred to Ausgrid in accordance with the ISEPP. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

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

The proposed development, for the purpose of a dwelling house, is consistent with the objectives of the R3 Medium Density Residential zone, which are:

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

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.3 - Height of Buildings

The objectives of Clause 4.3 of NLEP 2012 are:

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

Under the NLEP 2012 the site has a height of buildings development standard of 10m.

It is noted that the existing roof line already exceeds the prescribed building height standard by 2m or 20%. The proposed development seeks to extend the roof of the existing dwelling at the same height, equating to an exceedance of 2m or 20% above the prescribed maximum height for the subject land.

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

Clause 4.4 - Floor Space Ratio (FSR)

The objectives of Clause 4.4 of NLEP 2012 are:

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

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

The existing FSR of the development is 1.65:1 (248.76m²). This equates to an exceedance of 64.5% or 97.51m² of gross floor area.

The proposed development will result in a total FSR of 1.68:1 (254.58m²), equating to an exceedance of approximately 68% or 103.33m² above the prescribed maximum FSR for the subject land.

The proposed work equates to an additional 2.3% or 5.82m² of gross floor area compared to the existing development on site.

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

Clause 4.6 - Exceptions to Development Standards

The applicant has submitted a written request that seeks to vary the Height of Buildings and FSR development standards (Clauses 4.3 and 4.4) in accordance with Clause 4.6 of NLEP 2012.

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

The Objectives of this clause are:

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

In assessing the proposal to vary the Height of Buildings and FSR development standards against the provisions of clause 4.6, it is noted that:

1. Clauses 4.3 and 4.4 of NLEP 2012 are not expressly excluded from the operation of this clause; and
2. The applicant has prepared a written request, requesting that CN vary the development standards, which demonstrates that:
 - a) Compliance with the development standards are unreasonable in the circumstances of the case; and
 - b) There are sufficient environmental planning grounds to justify contravening the development standards.

Height of Buildings

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

For the proposal at 7 Fort Drive, Newcastle East, strict compliance with the height of building development standard of 10m is unreasonable. This is due to the reasons outlined below.

- i) *Existing height: the existing height of the building already exceeds that allowable. The proposed increase does not exceed the existing overall ridgeline but meets it.*

- ii) *Amenity: the proposed increase to the height of the building occurs only in an area of existing floor space which has a very low pitched roof above it. Increasing the height of the building in this location provides improved amenity for the occupants of the building, capitalising on floor space which already exists but is not fit for habitation.*
- iii) *Massing: the shape and massing of the existing building is retained. The rear pitched roof form is altered but retained and sculpting of the mass at corners reduces bulk and references the variegated character of the building and street. The mass of this alteration only occupies roughly half of the lot width, with the other half set further back, reducing the presence of the building's volume. This is in contrast with the new large, rectilinear dwellings at 2, 4 and 12 Beach Street.*
- iv) *Materiality: the lightweight cladding of corrugated metal sheeting marks the addition as an extension of the roof rather than that of the masonry building below. The proposed alterations and additions to this property aims to provide a light; clean; refreshed and high quality dwelling for the streetscape and neighbourhood.*
- v) *Solar access: the increased height of the development does not significantly effect the solar access of any neighbouring lots. Refer to the Shadow Projection Study supplied with the Development Application submission...*

...Given the established built context, existing built heights on the subject lot and the change of level across the site, the numerical control of 10m is impossible. We can assume that the 10m control has been nominated to ensure that the associated development control provisions—streetscape appearance, landscape and outdoor areas, privacy, solar access, view sharing, car parking—are achieved...The minor variation of the existing rear ridge height to meet the existing overall height does not significantly impact on neighbours and relates to its context and the public interest associated within the R3 medium density zoning...

...The proposed development, as evident in this report, will be in the public interest as it is consistent with the objectives of the Newcastle LEP. The desired Newcastle East character is to allow for the housing needs of the community within a medium density residential environment. The proposals volume and scale is sympathetic with Newcastle East and specifically the built character of Fort Drive and Beach Street. The proposed height is commensurate with the objectives of the zone which allows for a diversity of density if the scale and height of proposed buildings are compatible with the local character. The addition, in achieving contemporary living standards, further enables the existing contributory dwelling to be generally maintained as part of a sequence of terrace houses to Fort Drive without need for demolition and infill development.

The majority of works associated with proposal are limited to the Beach Street facade which is congruent with past additions and alterations to neighbouring dwellings and maintains the Fort Drive historic elevation. In addition, it has regard to the desired future character of residential streets as the proposed additions are to the rear of the property and proportionate to previous neighbouring alterations and additions and does not significantly detract from the amenity of any existing nearby development.

Consultation with immediate neighbours has been undertaken prior to the assessment period with modifications to the proposed works carried out to satisfy their concerns, the proposed height of the building was not raised as a issue as there will be no significant adverse impact on the amenity of any existing nearby development...

...As demonstrated, the overall massing, scale, volume and height of the proposed development is compatible and in harmony with the desired future character envisioned by the City of Newcastle for the Newcastle East Precinct and R3 medium density zoning.

The variation would allow for the continued domestic use of the land with a contemporary living standard. Further, after consultation meetings with immediate neighbours and amending the design to achieve the most appropriate development massing for the site, the proposal will not result in any unreasonable impact on amenity or any significant adverse environmental impacts as a result of the variations.

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

- a) It adequately addresses the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012.
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the height of buildings development standard, as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular 20-002 dated 5 May 2020.
- d) The proposed development will maintain the ridge height of the existing four-storey detached dwelling, with this variation representing an approximate 8.6m additional length of ridge. The proposed development will not exceed the ridge reduced level of the existing development (RL 29.03m) nor propose additional exceedance of the building height principal development standard.

- e) It has been suitably demonstrated by the applicant that the proposed development will contribute positively towards the desired built form, commensurate with CN's relevant planning and heritage provisions. Through submission of shadow diagrams, it has been suitably demonstrated by the applicant that the proposed development will have minimal impact on the amenity of neighbouring properties, including available access to sunlight. The proposed development has sought to address both streetscapes to the north (Fort Drive) and south (Beach Street), through reinstating and reinforcing the existing dwelling and its contribution to the Newcastle East Heritage Conservation Area, whilst also sympathetically and selectively differentiating new works from existing. It is also considered the proposed development, including the additional length of ridge to the third floor, will improve the occupant's amenity and liveability through provision of equitable floor-to-ceiling heights.
- f) It is considered that the exceedance proposed is an acceptable planning outcome and that strict compliance with the development standard is unreasonable in this case.

The proposal facilitates the ongoing use of an existing residential site in a single dwelling house capacity, providing for the housing needs of the community within a residential environment whilst suitably respecting the amenity, heritage and character of surrounding development and the quality of the environment, in accordance with the relevant R3 zone objectives. The proposal provides for an improvement to the functionality, liveability and amenity for building occupants, consistent with current expectations.

Further, it is considered the clause 4.6 variation request is well founded. The request for the building height to exceed 10m is supported.

Floor Space Ratio (FSR)

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

For the proposal at 7 Fort Drive, Newcastle East, strict compliance with the FSR development standard of 1:1 is unreasonable. This is due to the reasons outlined below.

- i) *Existing condition: the FSR on the site already exceeds that allowable under the development standard. That which is being proposed substantially improves the performance and amenity of the dwelling for occupants while negligibly increasing the FSR by 2.3%. This is achieved by growing the GFA in key areas but reducing it in others.*

- ii) *Small site area: the existing building's footprint, planning and zoning creates an unreasonable gross floor area for the intention of a contemporary family dwelling in this zone. The constraints of the site mean there are limited opportunities to increase the amenity of the historic building without adding floor area. Where this has been necessary, the proposal has sought to minimise the extent of these additions.*
- iii) *Solar access: the established terrace dwelling type and north-south orientation restricts solar access into areas of contemporary living (ie. kitchen) and typical of the area south-facing associated private outdoor areas. The small addition would achieve greater solar access and amenity for the occupants toward the rear of the building, and*
- iv) *Size: the alterations do not increase the footprint of development on the site, and simply alter existing hard-surfaced underperforming areas of external circulation. The varied historic mass of the building, compared to its rectilinear, contemporary neighbours, means the additional (predominantly existing) FSR does not result in unnecessary volume and scale from the street...*

Given the established built context and associated lot areas along with the site's medium density zoning, the numerical control of 1:1 is considered low. We can assume that the 1:1 control has been nominated to ensure that the associated development control provisions—streetscape appearance, landscape and outdoor areas, privacy, solar access, view sharing, car parking—are achieved...The minor variation of the existing FSR does not significantly impact on neighbours and relates to its context and the public interest associated within its zoning...

...Many examples of existing dwellings exceeding the prescribed FSR are evident in Newcastle East with no adverse impact to the context, environment nor neighbouring amenity to which the zone applies.

Recently approved development exceeding FSR controls have been documented through the City of Newcastle's Development Tracking App. Dwellings along Fort Drive with addresses to Beach Street that are contributing items, have developed their properties in a scale consistent or greater in terms of gross floor areas. Specifically, developments including 2, 4 and 12 Beach Street, 2 Parnell Place and 2A Ocean Terrace.

- | | | |
|----|------------------|---------------------------------|
| 1. | DA2018/00851 71% | 2 Parnell Place, Newcastle East |
| 2. | DA2016/01478 49% | 4 Beach Street, Newcastle East |
| 3. | DA2013/0012 40% | 11 Beach Street, Newcastle East |
| 4. | DA2020/00443 40% | 9 Beach Street, Newcastle East |

Multiple dwellings along Fort Drive and Beach Street exceed the nominated built form envelope – as nominated by NCC height and setback DCP controls.

While some do not specifically exceed the nominated gross floor areas, the existing volume establishes an alternative built character and density to which the proposed works seek to mediate...

...The proposed development, as evident in this report will be in the public interest as it is consistent with the objectives of the Newcastle DCP and the R3 zoning in Newcastle LEP objectives. The desired Newcastle East character is to allow for the housing needs of the community within a medium density residential environment. The proposal's volume and scale is sympathetic with Newcastle East and specifically the built character of Beach Street and Fort Drive. The proposed density is commensurate with the objectives of the zone which allows for a variety of housing types to meet contemporary living standard for occupants. The addition, in achieving contemporary living standards, further enables the existing contributory dwelling to be generally maintained as part of a sequence of terrace houses to Fort Drive without need for demolition and infill development.

The majority of works associated with proposal are limited to the Beach Street facade which is congruent with historical additions and alterations to neighbouring dwellings and maintains the Fort Drive terraced elevation. In addition, it has regard to the desired future character of residential streets as the proposed additions are to the rear of the property and proportional to neighbouring historical alterations and additions, and does not significantly detract from the amenity of any existing nearby development.

Consultation with immediate neighbours has been undertaken prior to the assessment period with modifications to the proposed works carried out to satisfy their concerns including the additional garage area and privacy walls. There will be no significant adverse impact on the amenity of any existing nearby development...

...As demonstrated, the overall massing, scale, volume and height of the proposed development is compatible and in harmony with the desired future character envisioned by the City of Newcastle for the Newcastle East Precinct and R3 medium density zoning.

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

- a) It adequately addresses the matters required to be demonstrated by Clause 4.6(3).
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the FSR development standard, as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular 20-002 dated 5 May 2020.

- d) The proposed development exceeds the maximum FSR of 1:1 by 68%. The proposed development includes an additional 5.82m² in gross floor area (GFA), which as a total represents an increase of 2.3% of additional GFA in the dwelling. The additional GFA incorporates egress to the basement (garage) floor plan, an infilled existing elevated walkway to the first-floor plan that is setback level with the existing southern wall, and a new asymmetrical roof form to provide a more usable third level bedroom through improved, compliant floor-to-ceiling heights.
- e) The proposed FSR exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing, view loss, bulk and scale. The FSR exceedance is consistent with similar developments in the locality.

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

In accordance with CN's relevant planning and heritage provisions, the existing dwelling will remain and be reinstated under this application and will contribute positively towards the desired built form. It is considered the proposed development will rectify existing amenity and liveability shortfalls in the development and provide for better connectivity between living spaces and the principal area of private open space through alteration of the existing building footprint, being situated predominantly within the existing building envelope of the development.

The proposal facilitates the ongoing use of an existing residential site in a single dwelling house capacity, providing for the housing needs of the community within a residential environment whilst suitably respecting the amenity, heritage and character of surrounding development and the quality of the environment, in accordance with the relevant R3 zone objectives. The proposal provides for an improvement to the functionality, liveability and amenity for building occupants, consistent with current expectations.

As a contributory building in the Newcastle East Heritage Conservation Area, it is considered that new works will sympathetically and selectively differentiate new works from existing, having regard to the established building density, bulk and scale in the context of the area.

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

Clause 5.10 - Heritage Conservation

The proposed development is located within the Newcastle East Heritage Conservation Area and is within the immediate vicinity of state and local heritage items (01674 – Coal River Precinct, 1480 – Fort Scratchley Group (Buildings and Underground Forts), 1482 – Boatmans Terrace Group (residences), 1485 – Coal Memorial and 1484 – Column from Original Courthouse). A Statement of Heritage Impact (SoHI) has been submitted for the proposed development, prepared by a suitably qualified Heritage Architect.

The contributory building is retained and its positive contribution to the streetscape is maintained under this application. The proposed additions and alterations are generally sympathetic to the setting of the host building, with the majority of works being concealed from Fort Drive and associated public places. The appearance of the primary elevation is preserved, with the existing unsympathetic glass balustrade being replaced with a more recessive, simple metal balustrade.

The proposed roof addition continues the ridge line of the existing dwelling, with the proposed roof amendment being sympathetically identifiable as new work in contrast to the traditional materials and form of the host building. On balance, it is considered that the proposed roof amendment to the third floor does not impact the primary street frontage and is a simple and refined solution that provides additional habitable space without compounding the scale of the existing dwelling. The roof amendment is located at the rear of the building and does not impact on the traditional appearance of the primary elevation.

It has been assessed that traditional building elements associated with the architectural style of the existing dwelling are maintained. The proposed alterations to the double garage are generally consistent with the built form and presentation of the existing double garage and other previous garages fronting Beach Street. The development will not detract from the setting or significance of heritage items in the vicinity. Significant views to and from Fort Scratchley are conserved, as well as existing views outward to the harbour and ocean from within the Newcastle East precinct.

It is considered that the proposed development preserves the contributory heritage value of the subject building, will not detrimentally affect the heritage significance of the heritage conservation area and that the significance of the heritage items in the locality will be conserved.

Clause 6.1 – Acid Sulfate Soils

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

Clause 6.2 - Earthworks

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

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Single Dwellings and Ancillary Development - Section 3.02

The following comments are made concerning the proposed development and the relevant provisions of Section 3.02 (Note – Building envelope provisions within Section 3.02 do not apply in heritage conservation areas. See further heritage discussion in Part 5.3 of this report):

Landscaping (3.02.05)

The proposed development proposes nil landscaping to the allotment. Nil landscaping is currently available onsite – in this regard, there is no amendment to the existing, historic configuration.

It is noted that many small residential allotments within the Newcastle East Heritage East Conservation Area have limited or zero landscaping opportunities on site.

The proposed development will improve the amenity of the subject site and its contribution to the area and is considered to be satisfactory in this regard.

Privacy (3.02.07)

With respect to privacy, it is noted that there is no change to the use of this area. Additional privacy screening has been erected to the east (1600mm) and west (1300mm) elevations respectively, in consultation with adjoining property owners. With respect to the level 3 terrace, there is no change to the use of this area and therefore no additional impact with respect to privacy and overlooking.

It has been determined that the proposed development will incorporate adequate privacy measures to adjoining residences, commensurate with the proposed development's contribution to the Newcastle East Heritage Conservation Area. It is considered the proposed development will not unreasonably overlook the living room windows or the principal area of private open space of neighbouring dwellings. The proposed performance solution is considered satisfactory to the relevant Performance Criteria of this section.

Solar access 3.02.08)

With reference to existing and proposed shadow details, the proposed development will not significantly overshadow living area windows nor the principal area of private open space of the subject premises or in adjacent dwellings. It is considered that the proposed development has responded to the streetscape, with a design that has optimised, where possible and available, solar access to the site. The proposed performance solution is considered satisfactory to the relevant Performance Criteria of this section.

View sharing (3.02.09)

The planning principle for assessing view impacts (Tenacity Consulting v Warringah NSWLEC 140), has been considered in this assessment to consider view sharing with adjoining neighbours, to demonstrate how view sharing is achieved and to ensure development enhances views and vistas through the form and treatment of buildings.

The applicant has provided a detailed view analysis which outlines the potential impacts of the proposal on views from existing neighbouring properties. The main element which creates additional view impacts is the proposed solid privacy screen to be incorporated to the boundary of the 1st level southern external private open space area of 7 Fort Drive to improve occupant amenity and privacy.

The applicant has also advised that they deliberately did not extend the screening elements along the full length of the open space area in acknowledgement that western side neighbours currently enjoy a narrow borrowed side view towards the Pacific Ocean towards the south east over the property at 7 Fort Drive (Beach Street frontage). A portion of that view will still remain from the southern end of the neighbours open space area. An extract from the applicants submitted view sharing analysis (ref 2031.DA dwg A010) shows the existing and proposed perspectives:-



9 FORT DRIVE LEVEL 01 — EXISTING PERSPECTIVE
NTS



9 FORT DRIVE LEVEL 01 — PROPOSED PERSPECTIVE
NTS

The proposed works, including privacy screening to the western elevation of the existing terrace, will impact on available views from the existing terrace at No. 9 Fort Drive to the Pacific Ocean and associated foreshore areas. It has been assessed that the views are located across side boundaries of the allotment, which will impact both sitting and standing views. The case law cited in this report makes the following comment in relation to views across side boundaries: 'the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries...The expectation to retain side views and sitting views is often unrealistic' [27].

Having regard to the abovementioned planning principle, it has been determined that the proposed development will permit view sharing with adjoining premises. View sharing has been enhanced by the form and treatment of the proposed development, including its scale, setback, form and roofscape. It is noted the existing building envelope is being utilised in the proposed development, and on balance, it has been demonstrated that the proposed development will not detrimentally impact on views and view corridors across side boundaries of the allotment. The proposed performance solution is considered satisfactory to the relevant Performance Criteria of this section.

It should also be noted that there are also existing expansive views and vistas available from the northern elevation (Fort Drive frontage) of the adjoining properties towards / over Fort Scratchley to the north, Boatman's row terraces to the north west and the Pacific Ocean to the north east. These views are available over several levels and will remain unaltered as a result of the proposal.

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

Soil Management - Section 5.01

The application has suitably addressed the relevant objectives of soil management. A relevant condition is recommended to be included in any development consent to be issued, regarding development in close proximity to the allotment boundary / adjoining development.

Heritage Items - Section 5.05

The proposed development has been assessed having regard to the provisions of Section 5.05.06, with respect to heritage items within the immediate context of the subject allotment.

It is considered the proposed development will not impact the setting or significance of heritage items in the vicinity. The building envelope of the dwelling as viewed from Fort Drive, in proximity to Fort Scratchley, is to generally remain as existing. The building envelope fronting Beach Street will be altered at the roof level, however there are no listed heritage items within this view that would be negatively affected in any way. Adequate space is maintained from all heritage items in the vicinity of the subject allotment and no significant landscaping would be impacted by the proposal.

The site is adjacent to a known archaeological site. A condition of consent is recommended to be included in any development consent to be issued, advising the applicant of their obligations under the *Heritage Act 1977* (NSW) with regard to chance finds.

Significant views within the precinct, including along Fort Drive and Beach Street, from Fort Scratchley, and views outward to the harbour and ocean, will be retained as existing.

The proposed development is considered satisfactory having regard to this section.

Newcastle City Centre - Section 6.01

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

Heritage Conservation Areas - Section 6.02

The existing terrace is a contributory building in the Newcastle East Heritage Conservation Area. It is considered the proposed alterations and additions will not detrimentally affect the existing or desired amenity, streetscape and character of the Newcastle East Heritage Conservation Area.

The contributory building will be retained and recycled, and its contribution to the streetscape will be maintained under this application. The proposed development is predominantly concentrated towards the rear of the allotment, with the significant original fabric being retained and incorporated into the proposed development.

The profile and form of the contributory building will be retained, with the proposed roof form over the rear of the existing development not being readily visible from the primary elevation. Whilst the new roof form will be visible from the rear (secondary) elevation, the addition has been assessed as a contemporary interpretation of a characteristic pitched roof and is considered acceptable.

The proposed development removes previous unsympathetic alterations, including the existing framed glass balustrade at the rooftop, and the faux heritage timber balustrade above the garage on Beach Street. Generally original windows and doors will be retained where visible from the public domain.

The alterations to the rear of the dwelling generally use appropriate materials, finishes and colours. Proposed materials are contemporary and neutral which will suitably contrast with the richer, more varied historical palette of the existing dwelling.

The existing double garage on the site, accessed via Beach Street, is to be maintained. Alterations to the existing garage arrangement includes new panel garage doors and the extension of the existing terrace to the eastern (side) boundary. The proposed amendments to the existing garage have been assessed as being acceptable with consideration to the existing situation. Consideration has also been given to the alterations tidying up a cluttered street frontage and providing a more consistent appearance.

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

Traffic, Parking and Access - Section 7.03

The parking rate requirements have been met on the site which requires that two parking spaces be provided. The car parking provision to the site is satisfactory.

Stormwater - Section 7.06

Stormwater will discharge to CN's infrastructure. The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

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

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act 1979 requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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

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

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

5.7 The suitability of the site for the development

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

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

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

The application was notified in accordance with CN's CPP. Two submissions were received during the notification period.

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

Issue	Comment
Floor space ratio (FSR)	<p>The applicant has proposed a variation to CN's FSR principal development standard. In accordance with Clause 4.6 of the NLEP 2012, it has been demonstrated by the applicant that the additional 5.82m² in GFA (or a FSR increase of 2.3%) is justified in the circumstances of this application. Having regard to the relevant objectives of Clause 4.4 of the NLEP 2012, exceedance with the acceptable planning outcome has been justified in this instance and strict compliance with the development standard is unreasonable in this case.</p>
Privacy	<p>It has been assessed that privacy and overlooking has been addressed in the proposed development, to address the relevant performance criteria of Section 3.02.07 of the NDCP 2012. It is understood that consultation between the applicant and adjoining neighbours has resulted in the development as submitted, which will improve the existing, historic configuration. It has been determined that the proposed development will not adversely impact adjoining neighbours with respect to privacy or overlooking.</p>
Overshadowing	<p>The neighbours rear outdoor terrace area and windows face south towards the Beach Street frontage. The existing multi-storey terrace construction in this locality already overshadow these areas on June 21.</p> <p>As such, no additional consideration is required under NDCP 2012 in respect to overshadowing.</p> <p>The applicant has demonstrated the proposed development is satisfactory with respect to overshadowing in accordance with Section 3.02.08 of the NDCP 2012. In particular, the proposed development will not unreasonably reduce existing sunlight to adjoining residences during the winter solstice.</p>
View sharing	<p>As detailed under Part 5.3 of this report, the main view impact arise as a result of the proposed privacy screening elements to improve occupant amenity and privacy.</p> <p>The existing views that will be impacted are across side boundaries and over neighbours private open space areas.</p>

	<p>Having regard to the planning principle for assessing view impacts (Tenacity Consulting v Warringah NSWLEC 140), the proposed development is considered satisfactory. The proposed development will permit view sharing with neighbouring properties.</p>
<p>Construction concerns with respect to underpinning, stabilisation and maintenance</p>	<p>The applicant has advised that suitable construction measures will be undertaken during construction by the owner's contractor and engineer to maintain stability for adjoining properties. Relevant conditions will also be included in the development consent to ensure construction works are undertaken to preserve and maintain adjoining development.</p> <p>The applicant has also confirmed that the majority of the adjoining property owner's weatherboard external walls are already impacted by reduced setbacks.</p> <p>It should also be noted that maintenance of neighbouring buildings is the responsibility of individual property owners.</p>
<p>Existing encroachments over the property boundaries</p>	<p>Although considered a civil matter, the applicant has advised that the existing encroachment will be removed and areas impacted by removal of any elements will be undertaken by the owners of the subject property during the construction phase.</p>
<p>Details of privacy screening and balustrades</p>	<p>The applicant has confirmed the materiality and detailing of the privacy screening and balustrades, which has been designed to create a private enclosure to the terraced area whilst incorporating elements of transparency in the facade. The proposed development is considered satisfactory to CN's relevant planning and heritage provisions as submitted.</p>

5.9 The public interest

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

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

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

6.0 CONCLUSION

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

ATTACHMENTS

Item 12 - Attachment A: Submitted plans – 7 Fort Drive, Newcastle East

Item 12 - Attachment B: Draft Schedule of Conditions – 7 Fort Drive, Newcastle East

Item 12 - Attachment C: Processing Chronology – 7 Fort Drive, Newcastle East

Item 12 Attachments A – C distributed under separate cover

**ITEM-13 DAC 20/07/21 - 50 HONEYSUCKLE DRIVE NEWCASTLE &
726 HUNTER STREET NEWCASTLE WEST - DA2021/00225
- SUBDIVISION - 2 INTO 11 LOTS**

**APPLICANT: HUNTER AND CENTRAL COAST DEVELOPMENT
CORPORATION C/O ESS AUSTRALIA**
**OWNER: HUNTER AND CENTRAL COAST DEVELOPMENT
CORPORATION & HUNTER WATER CORPORATION**
REPORT BY: GOVERNANCE
**CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

PART I

PURPOSE

An application (DA2021/00225) has been received seeking consent for a two into 11 lot subdivision at 50 Honeysuckle Drive, Newcastle and 726 Hunter Street, Newcastle West.

The submitted application was assigned to Development Officer, Holly Hutchens, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variations to the minimum subdivision lot size development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being greater than a 10% variation.



Subject Land: 50 Honeysuckle Drive, Newcastle and 726 Hunter Street, Newcastle West

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

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

Issues

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

- i) The proposed variation to the minimum subdivision lot size development standard, under the NLEP 2012.

Conclusion

The proposed subdivision 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 acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.1 Minimum Subdivision Lot Size, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the B3 Commercial Core, B4 Mixed Use and RE1 Public Recreation zones in which the development is proposed to be carried out: and
- B. That DA2021/00225 for a two into eleven lot subdivision at 50 Honeysuckle Drive Newcastle be approved and consent granted, subject to conditions of consent as set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 5 DP 1265104 and Lot 100 DP 1096718, 50 Honeysuckle Drive Newcastle and 726 Hunter Street, Newcastle West. The site was formerly known as Lot 40 DP 1251908 and has recently been subdivided into two lots now known as Lot 4 and Lot 5 DP 1265104. Lot 5 DP 1265104 is included in this subdivision application. Lot 100 is owned by Hunter Water Corporation and forms part of the existing Cottage Creek Channel.

The site represents the remaining residual portion of the Honeysuckle redevelopment area, being an irregular shaped allotment with portions situated on both the northern and southern sides of Honeysuckle Drive. The land is bounded by Newcastle Harbour to the north, Hannell Street to the west and the light rail corridor to the south (refer Appendix A for the site location map).

The development site is 4.19 hectares (41900m²). The site is generally devoid of vegetation, with a gentle fall towards the Harbour and Cottage Creek. Cottage Creek transects the land, partly with covered culverts.

The site contains extensive areas of at-grade hardstand areas, some partially used as carparking. The site is dissected west to east by Honeysuckle Drive, with the western portion containing a number of buildings, including a locally listed heritage item known as the former Wickham School of Arts (WSA) building. The WSA is identified as a heritage item of local significance [Former School of Arts item no. 1690] under Schedule 5 of the NLEP 2012. Within the curtilage of the WSA are two buildings, identified as an existing two-storey residence and the former Mullen's Cordial factory, these two buildings are approved for demolition under DA2020/01555.

Existing land uses on adjoining sites comprise a vacant development site to the east (approved under DA2017/01371), the light rail corridor and Honeysuckle Drive to the south and a vacant site to the north (fronting Hannell Street).

2.0 THE PROPOSAL

The applicant seeks consent for a two into 11 lot Torrens Title subdivision of the site. The proposed subdivision aims to achieve the following:

1. Boundary adjustment to align with the approved Honeysuckle Drive Realignment Review of Environmental Factors (HDCCDC 2019).
2. Separation of the foreshore promenade from potential future development areas.
3. Boundary adjustment of Cottage Creek following the naturalisation and flood control works in accordance with the proposed ownership and management agreement between Hunter Water and the HCCDC.
4. Releases and adjustments to easements and covenants.
5. Creation of easements for utilities, access, and use.
6. Separate lots adjoining Cottage Creek to allow staged divestment to CN.

The proposed development constitutes a 'paper subdivision' only with no physical works being proposed as a part of the subdivision application.

The proposed 11 lots, description, land use zone, and proposed land area, are detailed in the table and diagram below.

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Proposed Lot	Description	Land use zone	Land Area
Lot 1	Throsby	B4 mixed Use	2.14 ha
Lot 2	Wickham Urban Village	B3 Commercial Core	9,933 m ²
Lot 3	Cottage Creek South East	RE1 Public Recreation	1,049 m ²
Lot 4	Cottage Creek North East	RE1 Public Recreation	745 m ²
Lot 5	Cottage Creek South West	RE1 Public Recreation	947 m ²
Lot 6	Cottage Creek North West	RE1 Public Recreation	1,272 m ²
Lot 7	Cottage Creek Channel	RE1 Public Recreation	1,773 m ²
Lot 8	NLR HVC Kiosk	RE1 Public Recreation	53 m ²
Lot 9	Throsby Promenade	RE1 Public Recreation	2,189 m ²
Lot 10	Lee 5 / 45HD Promenade	RE1 Public Recreation	1,095 m ²
Lot 11	Lee 4 / 35HD Promenade	RE1 Public Recreation	1,426 m ²

Physical works are being undertaken as part of the determined “Honeysuckle Drive Review of Environmental Factors (HCCDC; 2019)”. The physical works have been agreed to between the parties pursuant to a Deed of Agreement and is not the subject of this development application.



The subdivision will facilitate the sale of land and dedication of selected lots to CN and Hunter Water Corporation. It is noted that multiple lots are proposed for the public domain, this is to facilitate a more efficient dedication of each lot as each portion of upgrade work is completed.

Furthermore, HCCDC will compulsorily acquire from CN the redundant portion of Honeysuckle Drive that intersects proposed lot 2 (Wickham Urban Village), under Section 9 of the *Growth Centres (Development Corporations) Act 1974* in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*. The land comprising the closed road is to be consolidated with Lot 2, however this will occur under a separate development application.

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's CPP. No submissions were received in response.

4.0 INTEGRATED DEVELOPMENT

The proposal is integrated development pursuant to Section 4.46 of the EP&A Act 1979, as approval is required from Subsidence Advisory NSW under the *Mine Subsidence Compensation Act 1961*. Conditional approval for the proposed development has been granted by Subsidence Advisory NSW, via the stamping of plans prior to the lodgement of the application.

5.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of section 4.15(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 site is known to be contaminated, so a Preliminary Site Investigation was required, in accordance with the '*Guidelines for Consultants Reporting on Contaminated Sites*'.

The applicant has previously submitted a Preliminary Assessment (Under DA2017/0137) indicating that remediation over the wider Honeysuckle area can be managed on a site by site basis as development progresses. The sites within the Honeysuckle Precinct have variable levels of contamination resulting from historical activities conducted at each site including railway infrastructure, docking facilities, and dredged sands used to fill and reclaim land.

The land proposed to be subdivided has been subject to detailed contamination investigation and three Site Audit Statements and Remediation Action Plans. A review of CN's contaminated land register identifies 23 contaminated land records applied to the subject land.

The SEE's states: '*This subdivision proposal does not involve any physical work and does not constitute a use, therefore does not require any remediation. Future development applications for use of the lots would be required to address the required remediation.*'

Council must nevertheless consider the requirements of SEPP 55 in respect to the proposal. Clause 7(1) of SEPP 55 requires that a determining authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and whether remediation is required. SEPP 55 also requires consideration of whether the land use is suitable for the intended use.

The areas of land have been subject to detailed contamination investigation. A Remediation Action Plan (RAP) 'JBS&G (14 September 2018) Remedial Action Plan', and a site audit statement have been prepared 'Site Audit Statement No. FR 018 (7 December 2018) Produced by Ramboll Australia Pty Ltd'.

These documents indicate the land can be made suitable for the proposed land use following implementation of the RAP. Polycyclic aromatic hydrocarbons (PAH), heavy metal (primarily lead and zinc) and potential asbestos impacted soils were identified in existing historical fill which is consistent with recently developed adjacent areas within the Honeysuckle area.

This RAP proposes a cap and contain strategy which is consistent with approved remediation of other areas of Honeysuckle. Services are proposed to be placed in dedicated alignments, demarcated, and backfilled with clean material to avoid exposure to underlying impacted material during subsequent maintenance or excavation work.

The contamination status of each proposed development lot (Wickham and Thorsby precinct) will require detailed assessment when a specific future land use is proposed under separate development applications. The proposed subdivision does not negatively impact on future further detailed investigation or remediation if required to ensure the land is suitable for a future proposed land use. There is no restriction to the proposed subdivision progressing on this basis and it is considered that the site can be made suitable for its intended use with further investigation being undertaken under any future development application for land use.

The proposal satisfies the requirements and SEPP 55, in particular clause 7, which requires the consent authority to be satisfied that the development site will be suitable for the proposed development following remediation works.

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

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

The 'coastal zone' is defined in the Act as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability. Note: the Newcastle Local Government Area (LGA) has no areas identified in the coastal vulnerability map.

The proposed subdivision is not likely to cause increased risk of coastal hazards on the land or surrounding land, noting that easements for floodway and draining water apply.

The land is identified in the 'Coastal Use Area'. The proposed subdivision is satisfactory in relation to the Coastal Management SEPP provisions, including that it will not adversely impact upon existing open space and safe access to and along the foreshore. Easements will ensure that pedestrian access is maintained between Honeysuckle Drive and the RE1 Public Recreation zoned foreshore area.

The proposed development has suitably addressed the relevant matters for consideration and development controls for development within the Coastal Use Area as required under the Coastal Management SEPP.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

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

Clause 101 – Development with frontage to classified road

The subject site has a frontage to a classified regional road. Clause 101 provides that new development should not compromise the effective and ongoing operation and function of classified roads. Clause 101(2) specifies that 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 and safe, vehicular access is provided by a road other than the classified road, (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development, and (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.

The proposed subdivision does not generate any issues in relation to the above matters as the development is for 'paper subdivision' only.

Regional Environmental Plans

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

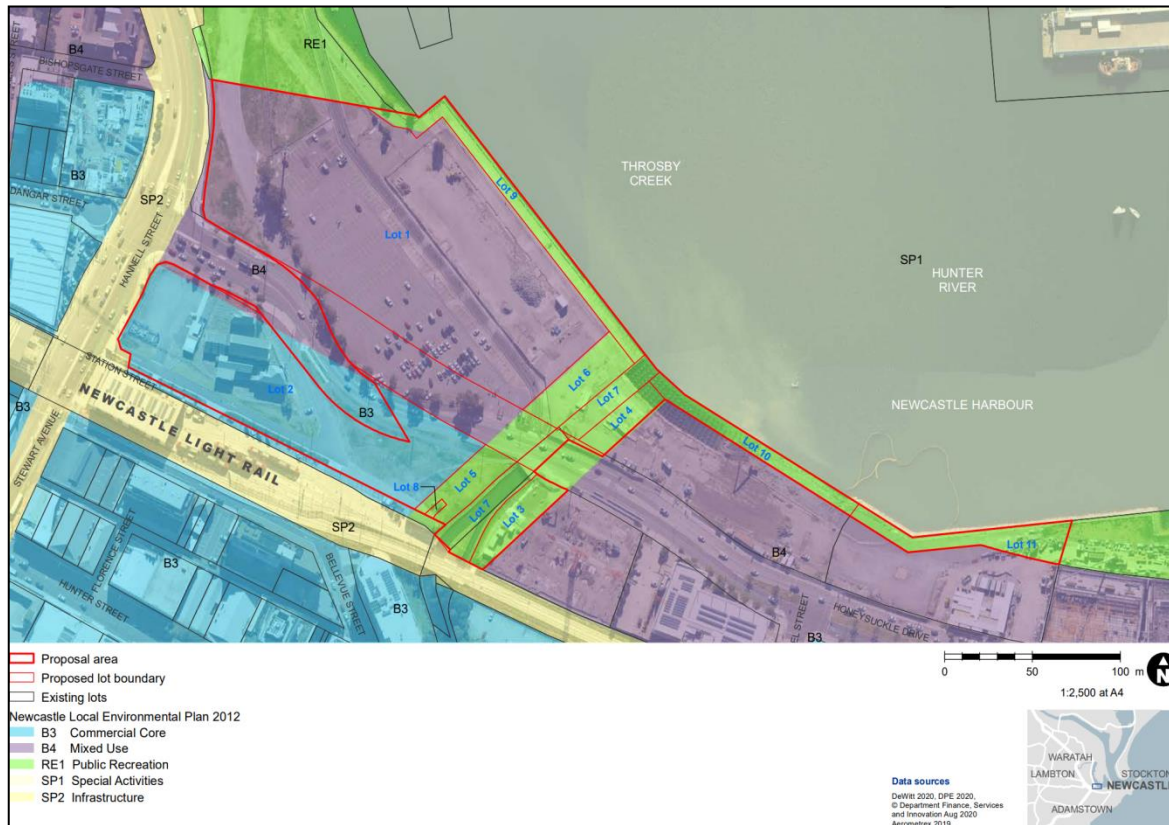
The following summarises an assessment of the proposal against the provisions of the NLEP 2012 that are primarily relevant to the proposed development.

Clause 1.3 – Land to which Plan applies

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

Clause 2.3 Land Use Table - Zoning

The site is zoned B3 Commercial Core, B4 Mixed Use and RE1 Public Recreation under the NLEP 2012. Subdivision is permissible, with CN's consent, on all land to which NLEP 2012 applies pursuant to clause 2.6 of the NLEP 2012.



The proposed development is consistent with the objectives of the zones as detailed below:

B3 Commercial Core

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

Comment:

The B3 Commercial Core zoned land will be contained wholly within the residual Lot 2. Future development would be able to satisfy the above objectives. The proposed subdivision will facilitate the dedication of the Honeysuckle Drive Road Corridor and creation of developable land.

B4 Mixed Use

- i) To provide a mixture of compatible land uses.*
- ii) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- iii) To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

Comment: Proposed Lot 2 is for future development and will be located wholly within the B4 Mixed Use zone. The lot could support future development consistent with the above objectives. The proposed subdivision will facilitate the dedication of the Honeysuckle Dive Road Corridor and creation of developable land, which is consistent with the zone objectives.

RE 1 Public Recreation

- i) To enable land to be used for public open space or recreational purposes.*
- ii) To provide a range of recreational settings and activities and compatible land uses.*
- iii) To protect and enhance the natural environment for recreational purposes.*

Comment: The proposed subdivision maintains the areas of RE1 Public Recreation.

Clause 2.6 - Subdivision—Consent Requirements

This clause provides that the land can be subdivided subject to development consent.

Clause 4.1 - Minimum Subdivision Lot Size

The objectives of this clause are as follows—

- (a) to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,*
- (b) to facilitate greater diversity in housing choice,*

- (c) *to ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form,*
- (d) *to ensure that the subdivision of land in Zone E4 Environmental Living—*
 - (i) *will not prejudice its possible future development for urban purposes or its environmental conservation, and*
 - (ii) *will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land’.*

The clause requires that the size of any lot resulting from a subdivision of land to which the clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land. Proposed Lot 1 (Throsby precinct) has an area of 2.14 ha and contains only B4 Mixed Use zoned land. There is no lot size specified under the Lot Size Map for this land. The proposed lot size is considered to be acceptable as it meets the zone objectives.

Proposed Lot 2 (Wickham Urban Village) has an area of 9,933 m² and will contain B3 Commercial Core. There is no lot size specified under the Lot Size Map for this land. The size and dimension of Lot 1 and Lot 2 will facilitate future development, including energy efficiency of the future built form. The proposed subdivision is acceptable in relation to the objectives of the subdivision lot size clause of the NLEP 2012.

The RE1 Public Recreation zoned land has a minimum lot size of 40Ha. The total area of land zoned RE1 Public Recreation is 1.02 ha (including both lots) and therefore already significantly below the 40ha minimum lot size. The largest variation to the minimum subdivision lot size of 40ha is Lot 8 at 53 m² being a 99.99% variation. Nine of the 11 lots propose a variation to the minimum subdivision lot size development standard.

The applicant has submitted a clause 4.6 variation request with respect 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 an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

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

As outlined above, clause 4.1 of the NLEP 2012 specifies the minimum lot size development standard applicable to the site. The development results in nine of the proposed lots under the specified minimum lot size. The proposed lot sizes and the variation to the development standard are as follows:

Lot	Location	Size	Variation to development standard
Lot 3	Cottage Creek South East	1,049 m ²	99.74 %
Lot 4	Cottage Creek North East	745 m ²	99.81 %
Lot 5	Cottage Creek South West	947 m ²	99.76 %
Lot 6	Cottage Creek North West	1,272 m ²	99.68 %
Lot 7	Cottage Creek Channel North	1,773 m ²	99.56 %
Lot 8	NLR Substation	53 m ²	99.99 %
Lot 9	Throsby Promenade	2,189 m ²	99.45 %
Lot 10	Lee 5 / 45HD	1,095 m ²	99.73 %
Lot 11	Lee 4 / 35HD	1,426 m ²	99.64 %
	Total RE1 Zoned Land	1.02ha	

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

In assessing the proposal against the provisions of clause 4.6, it is noted that:

1. Clause 4.1 (minimum subdivision lot size) is not expressly excluded from the operation of this clause (per clause 4.6(2) NLEP 2012); and
2. The applicant has prepared a written request, requesting that CN vary the development standard and demonstrating that:
 - a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - b) There are sufficient environmental planning grounds to justify contravening the development standard.

(per clause 4.6(3)(a)).

The applicant has submitted a written request contending that enforcing compliance with the minimum lot size requirements of clause 4.1 would be unreasonable and unnecessary in this case. A copy of the written request is appended at **Attachment D**.

The applicant's written submission states in part:

“Compliance with the 40ha minimum lot size is considered unnecessary and unreasonable in the circumstances since the existing lot is below the minimum lot size. It is unreasonable to apply the standard, when Council has already enabled the existing lot to be created in contravention of the standard.

Whilst the proposed nine (9) individual RE1 zoned Lots created will each be less than 40ha, 8 of the 9 lots will be acquired into the single ownership of CN and used and maintained as one contiguous piece of public recreation land. Therefore, compliance with the standard is unnecessary since provision of 40ha is not necessary to protect the functionality of the RE1 Zone.

The proposed smaller lot sizes will enable the staged rehabilitation of the public recreation zoned land. The existing zoning and strategic plans for the Honeysuckle West precinct support the proposed RE1 lot configuration, optimising public access to the rehabilitated Cottage Creek and foreshore public domain.

Adherence to the development standard in this instance would result in a negative social and economic outcome for the site, preventing public ownership of the existing RE1 zoned land and preventing the future sale and development of the residual lots”.

Comment:

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

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of NLEP 2012; and
- b) The proposed development will be in the public interest because it is consistent with the objectives of the minimum lot size development standard along with the relevant objectives of the land use zones, and
- c) The Secretary's (i.e. of the Department of Planning and Environment) concurrence to the exception to the minimum lot size development standard as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 (05 May 2020); and
- d) The proposed subdivision is acceptable as it does not further reduce the area of RE1 Public Recreation zoned land within the site.

The applicant has demonstrated that compliance with the development standard is unreasonable and unnecessary in this case as the RE1 Public Recreation zoned land is already below the minimum 40 Ha lot size, the land will not be fragmented as a result of the proposed subdivision, the lots will continue to meet user requirements for the foreshore public domain and facilitate the divestment of the RE1 Public Recreation zoned land to public ownership.

The proposed lot size and dimensions are appropriate to meet community and economic needs. The subdivision maintains all areas of public recreation within individual lots and provides for a public access easement across the proposed lots, thereby securing community needs for access to the foreshore recreation land. Increased development opportunities across the site will allow for increased usage of the land for a range of recreational activities and compatible land uses, this will enable the protection and enhancement of the natural environment for recreational purposes. The proposal demonstrates that the variation from the minimum lot size standard is positive when considering the objectives of the zone. Additionally, the proposed lot size does not affect the ability to comply with all relevant development standards and controls.

On this basis, the required states of satisfaction required by clause 4.6 NLEP 2012 have been reached and the applicant's variation request is supported.

Clause 5.10 - Heritage Conservation

The site contains a heritage item of local significance located within the south-west portion of the site (former School of Arts - NLEP 2012 Item 1690). Proposed Lot 2 is located at the eastern extremity of the subject land and will not adversely impact upon the heritage significance of this item.

No physical works are proposed, and no significant fabric is impacted. The proposed subdivision retains the elements of high significance identified in the draft Conservation Management Plan (CMP) for the School of Arts building, which includes its prominent location, its visual relationship with nearby heritage items, sandstone kerb and guttering and the angled aspect of the facade towards Hannell Street. The proposal is considered consistent with the objectives of clause 5.10.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 3 acid sulphate soils and the proposed development is considered to satisfy the requirements of this clause, as no soil disturbance is proposed. The development does not propose any physical works.

Part 7 Additional Local Provisions - Newcastle City Centre

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The controls specifically apply to built form and are not applicable to the proposed development.

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Subdivision - Section 3.01

The proposed subdivision is consistent with provisions of this section, satisfying the aims of the Section, including:

- a) *That all lots are physically capable of development.*
- b) *Lots have appropriate levels of amenity, services and access.*
- c) *To achieve efficient use of the land.*

The proposed lots can support future development, including facilitating appropriate amenity, service, and access. An efficient use of the land can be achieved. Extensive consultation has been undertaken with service providers to ensure the proposed lots have adequate access to services (electricity, water, communications, sewer, gas). This matter has been considered by CN's Asset Section which raised no objection to the subdivision.

Flood Management - Section 4.01

The land is identified as flood prone. The proposed development is acceptable with respect to flood prone land as no physical or built works are proposed. Future development will be subject to the provisions of the NLEP 2012 and NDCP 2012.

Hunter and Central Coast Development Corporation (HCCDC) have undertaken a flood study for the Honeysuckle precinct with BMT (Flood consultant) in March 2018. The flood report has been endorsed by CN as the main reference document to manage flooding and flood related risks for the Honeysuckle Precinct, including the subject site.

The proposal includes the subdivision of the Cottage Creek area, this being proposed Lots 3, 4, 5, 6, 7 and 8. The plan of subdivision also notes a 20m wide easement for floodway.

Honeysuckle Drive and Cottage Creek have been the subject of ongoing infrastructure works, including road realignment, construction of a bridge over Cottage Creek, and improvement works to facilitate future pedestrian and cycle access along the Hunter River (proposed Lots 9, 10 and 11). These infrastructure works have been undertaken in consultation with CN Assets and Infrastructure team, Hunter Water Corporation and HCCDC, with works subject to a Deed of Agreement.

Additionally, the design and construction of the subject works have been undertaken in accordance with the recommendations of the BMT flood study. It is noted that the flood study recommends that future development can occur on the subject site while appropriately managing flood risks for the development and wider community.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District. The proposed subdivision has been issued approval via stamped plans from Subsidence Advisory NSW.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55. The proposed development is considered acceptable having regard to land contamination constraints.

Aboriginal Heritage - Section 5.04

There are known Aboriginal heritage items located within the site. The proposed subdivision involves no physical works and is therefore considered acceptable.

Heritage Items - Section 5.05

This issue is discussed under Clause 5.10 Heritage of NLEP 2012.

Archaeological Management - Section 5.06

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

Part 6.00 Locality Specific Provisions

Newcastle City Centre - Section 6.01

The proposed subdivision is considered acceptable in relation to the provisions of this Section, including maintaining appropriate access to the foreshore using easements for public access.

Traffic, Parking and Access - Section 7.03

Honeysuckle Drive is not identified as a classified road. The redundant portion of the former Honeysuckle Drive Road alignment will be compulsorily acquired by HCCDC to form part of proposed Lot 2 (as part of a separate development application). The land relocation has been discussed between HCCDC and CN Assets and Infrastructure team, with a Deed Agreement being signed between the two parties.

The proposal will not result in any new road or additional traffic generation. The proposed subdivision seeks to reflect the realigned Honeysuckle Drive. Future development of the individual lots will require assessment of traffic impacts.

Access from Hannell Street road reserve and Station Street are to be maintained. A right of access over Station Street is proposed to ensure the benefited parties can maintain access. The proposed development is satisfactory having regard to Section 7.03.

Stormwater- Section 7.06

The proposed lots can support future development, including stormwater management.

The Cottage Creek area is clearly defined and is proposed be created as separate individual lots, this is to ensure future serviceability and maintenance of the creek and associated infrastructure.

Extensive consultation has been undertaken with service providers to ensure the proposed lots have adequate access to services.

CN Assets and Infrastructure team have been consulted and confirmation have been received in regard to the drainage infrastructure which have been made redundant due to realignment of Honeysuckle Drive.

Any service infrastructure within the development site will be subject to a detailed survey, easements are required to establish the location. Such easements will ensure future ownership and development can appropriately identify services and infrastructure. Accordingly, the proposed development is acceptable having regard to Section 7.06.

Development Contributions

The proposed subdivision is not subject to development contributions. Future development of the site may be subject to contributions.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the Environmental Planning and Assessment Regulation 2000. The proposal does not generate any significant issues in this respect.

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.

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

5.7 The suitability of the site for the development

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

The site is suitable for the proposed development as it is in the City Centre, which is well serviced by public transport and community facilities. Adequate services are available to the land.

At-grade access to the site will be available for pedestrians, from adjacent roads and public transport. Having regard for the City Centre location and the availability of public transport services, the proposal is satisfactory in respect of accessibility.

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

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

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

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

5.9 The public interest

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

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

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

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

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979*. The section 4.6 exception to the development standard of NLEP 2012, against the minimum lot size is noted and supported. The proposed dedication of land for road reserve is acceptable.

The proposed subdivision is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued, noting that in accordance with section 4.33(1) EP&A Act, the conditions of consent have been reviewed and accepted by the Crown.

ATTACHMENTS

Item 13 Attachment A: Submitted Plans – 50 Honeysuckle Drive, Newcastle & 726 Hunter Street, Newcastle West

Item 13 Attachment B: Draft Schedule of Conditions – 50 Honeysuckle Drive, Newcastle & 726 Hunter Street, Newcastle West

Item 13 Attachment C: Processing Chronology – 50 Honeysuckle Drive, Newcastle & 726 Hunter Street, Newcastle West

Item 13 Attachment D: Clause 4.6 Variation – 50 Honeysuckle Drive, Newcastle & 726 Hunter Street, Newcastle West

Item 13 Attachments A - D distributed under separate cover

ITEM-14 **DAC 20/07/21 - 198 LENAGHANS DRIVE BLACK HILL - DA2020/01497 - STAGES 1A AND 1B - 1 LOT INTO 62 LOT SUBDIVISION**

APPLICANT: **BLACK HILL INDUSTRIAL PTY LIMITED**
OWNER: **BLACK HILL INDUSTRIAL PTY LIMITED**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

PURPOSE

An application has been received by Council seeking consent for a staged subdivision of industrial land and associated works, including land clearing, at 198 Lenaghans Drive, known as the Black Hill Employment Lands.



Subject Land: 198 Lenaghans Drive Black Hill

Considered a “State Significant Development” at the time, a Concept Approval (MP10_0093) for an 8 staged subdivision on this site was issued by the NSW Planning Assessment Commission in November 2013.

The Development Application (DA) consists of an initial 3 lot subdivision of the undeveloped site and a 62-lot subdivision of one of those lots, in northwest quadrant of the site, referred to as stages 1A and 1B.

The physical works for stage 1A and 1B will include land clearing, earthworks, road construction, drainage, and service installation on the site, as well as the construction of a signalised intersection on John Renshaw Drive (JRD) for access and the duplication of JRD across the frontage of the site. The remainder of the site within the two remaining residual lots will be subdivided under future development applications consistent with Concept Approval MP10_0093.

The application is generally in accordance with the Concept Approval (MP10_0093), and the indicative lot layout and staging plan approved by Council at the Ordinary Council Meeting 29 June 2021(**refer to Attachment I**).

DA2018/00714 was submitted on the site previously and eventually refused. It proposed the subdivision of the site into 200 lots to be constructed in eight stages.

The DA was the subject of a Class 1 Appeal. against the 'deemed refusal' of the application.

The appeal was dismissed by the Land and Environment Court and resulted in the DA being refused. The main reason for refusal related to uncertainty of the impact of the traffic likely to be generated by the development on the State and National Road network.

Since that appeal was dismissed, the Applicant has undertaken further consultation with Transport for NSW (TfNSW) and City of Newcastle (CN) and the current application reflects the outcome of that consultation.

The current submitted application was assigned to Development Officer, Edward Kenney, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination as the construction value of the proposed development (\$28.8M) exceeds the staff delegation limit of \$10M.

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

The proposed subdivision has been publicly notified in accordance with CN's Community Participation Plan (CPP) and 13 submissions have been received in response.

The objectors' concerns include:

- i) Location of the signalised intersection and the impact on future access to the proposed neighbouring development.
- ii) Potential traffic impacts to JRD and surrounding road network.
- iii) The scale of the development and consideration on the rural context of the local area.
- iv) Potential for access to Black Hill Road in later stages of the subdivision.
- v) Environmental impact and approach to land clearing; and
- vi) Integration with and impacts on the neighbouring industrial subdivision within the Cessnock Local Government Area (LGA).

Details of the submissions received are summarised at **Section 3.0** of this report and the concerns raised are addressed as part of the Planning Assessment at **Section 6.9**.

Issues

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

- i) Whether the proposed subdivision is generally consistent with the Concept Approval (MP 10_0093) (**refer to Attachment H**)
- ii) Whether the proposed subdivision is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).
- iii) Whether the proposed subdivision has, in consultation with TfNSW, suitably addressed the impact on the surrounding road network.

Conclusion

The proposed subdivision has been assessed having regard to the relevant heads of consideration under section 4.15(1) of the EP&A Act and the environmental assessment requirements specified in Part D of the Concept Approval and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

A. That DA2020/01497 for a 3-lot subdivision of the site and a subsequent one lot into 62 lots (in two sub-stages) industrial subdivision be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and

B. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 30 in DP 870411, No.198 Lenaghans Drive Black Hill. Figure Two identifies the location of the site and surrounding infrastructure.

The 183-hectare site is located between:

- i) The M1 Pacific Motorway to the east,
- ii) The Local Government boundary adjoining Cessnock City Council to the west,
- iii) JRD to the north and
- iv) Two large allotments of E4 (Environmental Living) zoned land to the south.

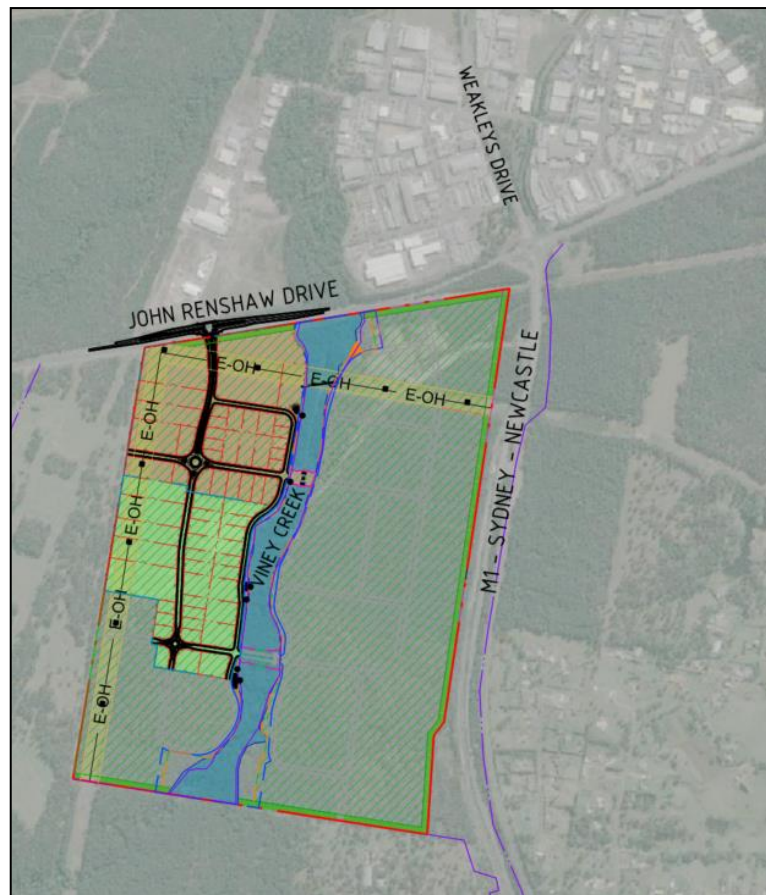


Figure Two: Property location and association to existing infrastructure and location of Stage 1A and 1B (EOH is Existing Over Head electrical easement)

The northern boundary of the site is separated from JRD by, Lot 4 in Deposited Plan 847676, owned by Hunter Water Corporation (HWC), in which the Chichester Pipeline is located. The HWC have consented to that land being crossed by a proposed access road to the development. Refer **Attachment A** for site location map.

The neighbouring land to the north, and to the west of the site is zoned IN2 (Light Industrial) and to the east of the site is the M1 Pacific Motorway. Adjoining the site on the southern boundary are two large E4 (Environmental Living) zoned allotments. These properties contain rural bushland with older style structures. The south-eastern allotment is an equestrian complex with stables and the south-western allotment is a small school with the buildings located approximately 800m from southern extent of the property.

Levels over the site vary from 11 metres Australian Height Datum (AHD) in the northern portion to 42 metres AHD in the southern portion. The site is bisected by Viney Creek, which runs south to north across the site. Dense vegetation is located either side of the creek. Isolated clearings and easements for overhead electricity traverse the western and northern parts of the site.

2.0 THE PROPOSAL

The application has been submitted to meet the requirements of a Concept Approval (MP10_0093) issued by the NSW Planning Assessment Commission in November 2013 (**refer Attachment H**).

The Concept Approval was for the development of 183 hectares of employment lands, dedication of 545 hectares of conservation lands to the NSW State Government, conceptual road, pedestrian and cycleway network, conceptual lot layout and associated infrastructure. The Concept Approval is known as "Black Hill Employment Lands".

The Concept Approval includes a number of conditions that are required to be satisfied prior to the first subdivision application. Specifically, condition 1.10, stipulates that the proponent must prepare a Staging Plan for CN approval. In accordance with condition 1.10(a) the Staging Plan must provide for an updated indicative lot layout, identifying how the development of the site would be staged. Additionally, the Staging Plan is required to include details on the provision of infrastructure, payment of contributions and management arrangements for elements of the development in accordance with conditions 1.10(b) and (c).

On the 29 June 2021 Council endorsed the Black Hill Industrial Subdivision Staging Plan, dated April 2021, for Black Hill Employment Lands, satisfying condition 1.10 of the Concept Plan Approval (**refer Attachment I**).

This Development Application is for the following works:

1. A 3-lot subdivision of approximately 183 hectares; (Plan number HD15 Rev 9-1 dated 06/11/2020)
2. Stage One (referred to as Stage 1A and Stage 1B in this report) industrial subdivision comprising 62 lots, totalling 41.7 hectares; (Plan number NL166552 C1.01 Rev C dated 16/04/2021).
3. Stage One related subdivision works; and

4. Land clearing of the whole of the development footprint allowed under a Concept Approval, to be undertaken in stages.

The subdivision plan in the Concept Approval, was amended to conform with the indicative lot layout, endorsed by Council at the Ordinary Council Meeting held on 29 June 2021. The amendments were made to satisfy requirements of TfNSW regarding the location of the signalised intersection along John Renshaw Drive. A copy of the amended plans is at **Attachment A**.

A supplement to the Statement of Environmental Effects, addressing the impacts of the required external works to the site was also submitted for consideration. The steps in the processing of the Concept Approval and this 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 Public Participation Policy/ Community Consultation Plan. A total of 13 submissions were received. The concerns raised are summarised as follows:

- i) Location of the signalised intersection and the impact on future access to the neighbouring development.
- ii) Traffic impacts to JRD and surrounding road network.
- iii) Scale of the development.
- iv) Potential for access to Black Hill Road in later stages of the subdivision.
- v) Environmental impact and approach to land clearing.
- vi) Consideration on the rural context of the local area.
- vii) Integration with and impacts on the neighbouring industrial subdivision within the Cessnock LGA.

These matters are addressed under the relevant matters for consideration in the following section of this report.

4.0 THE CONCEPT APPROVAL

On 19 November 2013, the NSW Planning Assessment Commission, as delegates of the Minister for Planning, Infrastructure and Environment, issued a Concept Approval (MP10_0093) for the site– 8 Staged Industrial Subdivision (refer **Attachment H**). The development was considered a "State Significant Development" under previous legislation and the approval was subject to conditions and modifications, pursuant to Part 3A (repealed) of the EP&A Act. It allowed for development of the site and addressed the basis for biodiversity impacts offsets; Urban Design Guidelines; indicative lot layout; and further environmental assessment requirements for subdivision.

5.0 INTEGRATED DEVELOPMENT

In accordance with section 75P(2)(b) of the EP&A Act, development applications lodged subsequent to MP-10_0093 are not Integrated Development for the purposes of section 4.46 of that Act.

Despite this consultation to satisfy conditions of the Concept Approval has occurred with the relevant authorities during the assessment of this application details of which are discussed throughout this report.

6.0 PLANNING ASSESSMENT

The current transitional arrangements for Part 3A Concept Approvals are under *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*. Schedule 2 Clause 3B (2) 'Provisions applying with respect to approval of concept plans', states:

"a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan" and "the provisions of any environmental planning instrument, or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan."

The subdivision is considered to be generally consistent with the terms of the Concept Approval. Conditions of the Concept Approval (MP10_0093). that impact the planning assessment of this subdivision are discussed below under the relevant heads of assessment in the Planning Assessment section.

The application has also been assessed against the relevant matters of consideration of section 4.15(1) of the EP&A Act, as detailed hereunder.

6.1 Provisions of any environmental planning instrument

State Environmental Planning Policy No 55 - Remediation of Land (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 consider whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

Compliance with the requirements of SEPP 55 is addressed by the environmental assessment requirements of the Concept Approval (Part D Condition 1.23) headed "Contamination".

To comply with the requirements of the Concept Approval and SEPP 55 a Remediation Action Plan (RAP), prepared by a consultant (Cardno) in 2018 and a letter from Cardno dated 9 December 2020 confirming the recommendations and conclusions of the RAP are still appropriate have been provided. Council's Environmental Services Unit have reviewed the documentation and it is considered that the land can be made suitable for industrial use.

The RAP states that the contamination found on site can be managed via off-site disposal to a licenced disposal facility. Conditions requiring the contamination to be managed via offsite disposal and for a validation report to be completed prior to issue of the subdivision certificate for each stage has been included within the schedule of proposed conditions as at **Attachment B**.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

This SEPP facilitates the effective delivery of infrastructure across the State. Compliance with the requirements of ISEPP is also reflected in the environmental assessment requirements of the Concept Approval (MP10_0093), Part D Conditions 1.10 headed "Infrastructure Provision"; 1.15 "Traffic and Transport"; 1.28 and 1.29 headed "Infrastructure and Utilities".

The following ISEPP provisions have been considered in relation to the proposal.

Easements for electricity purposes:

Clause 45(1)(b)(i) relates to determination of development applications within or immediately adjacent to an easement for electricity purposes. The land contains high voltage transmission easements, as indicated in Figure Two, which have been retained in the subdivision layout. The proposal was referred to Transgrid and they have given conditional concurrence for the proposed subdivision works. The Transgrid conditions are included within schedule of proposed conditions (refer to **Attachment G**).

Traffic generating development:

The subject site has a frontage to JRD which is a classified State Road and a Controlled Access Road (CAR). Clause 104 relating to traffic generating development would normally apply to an application of this nature. However, the effect of section 75P(2)(b) of the EP&A Act (remaining in force via Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017) is that those provisions of Part 4 do not apply to this application.

Regardless, the Concept Approval does require consultation with TfNSW with regards to the traffic and transport impact assessment and off-site road works required to accommodate each stage of the subdivision.

Following consultation with TfNSW, including consideration of scenarios with and without the M1 Motorway to Raymond Terrace extension, the applicant has agreed to the following external roadworks on JRD and at the intersection of the M1 Motorway/John Renshaw Drive/Weakleys Drive:

1. A new signalised intersection on JRD toward the western end of the site frontage. The roadworks will transition back to the exiting lane configuration on the western side of the new intersection.

2. Duplication of JRD between the new signalised intersection (described in 1 above) and the M1/Weakleys Drive intersection. The duplication is approximately 950m in length.
3. One additional right-turn lane on JRD turning on to the M1(southbound), and one additional right-turn lane on Weakleys Drive turning on to JRD toward the west.

The plans incorporate 2 roads crossing Lot 4, DP 847676, to the north of the site. One of the roads will be constructed in Stage 1 of the development, as part of this DA and other in Stage 3, the subject of a further DA. The consent of the landowner, the HWC has been obtained for this work.

Strategic design plans for the above works have been prepared and TfNSW have confirmed that they have no objection to the proposed works. Conditions of consent have been provided by TfNSW for the required off site roadworks (refer to **Attachment E**).

State Environmental Planning Policy No. 44 - Koala Habitat Protection (SEPP 44)

It is considered that the matter of koala habitat was adequately considered and addressed as part of the Concept Approval (MP10_0093). The application is generally consistent with the Concept Approval and as such no further assessment is required. It is noted that the land zoned E2 Environmental Conservation within the site is largely unaffected by the proposed subdivision.

The Greater Newcastle Metropolitan Plan 2036

The Greater Newcastle Metropolitan Plan 2036 (GNMP 2036) supports the development of a Beresfield-Black Hill freight and logistics hub, with complementary manufacturing and light industrial activity. This current DA is on land that forms part of the "Emerging Black Hill Precinct" as described in the GNMP 2036.

The GNMP states that "*Cessnock City and Newcastle City Council will work with Transport for NSW to prepare a master plan for the emerging Black Hill Precinct that considers freight and logistics uses, the adjoining mine site and includes an internal road network and access points to John Renshaw Drive*".

Council officers have, on numerous occasions, consulted with the Hunter and Central Coast Development Corporation, Cessnock City Council and TfNSW to try and develop an integrated masterplan for the 'Emerging Black Hill Precinct', however no masterplan has been adopted. In the absence of a masterplan, Council has consulted with TfNSW and the owner of the site to develop an agreed access plan, staging plan and updated indicative lot layout, which is reflected in this application.

The application is considered to be in accordance with the objectives of the GNMP 2036.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

On 9 August 2013 re-zoning of the site occurred upon the gazettal of the *State Environmental Planning Policy Amendment (Cessnock and Newcastle) 2013* and these zones are now reflected in the 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 IN2 (Light Industrial) with a smaller area of E2 (Environmental Conservation) covering the Viney Creek riparian corridor. Under the provisions of the NLEP 2012 the proposed development is permissible with consent.

The objectives of the IN2 Light Industrial zone are:

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

And the objectives of the E2 Environmental Conservation zone are:

- i) To protect, manage and restore areas of high ecological, scientific, cultural, or aesthetic values.
- ii) To prevent development that could destroy, damage, or otherwise have an adverse effect on those values.
- iii) To provide for the management of the majority of the Hunter River floodplain by restricting the type and intensity of development to that compatible with the anticipated risk to life and property.
- iv) To provide for the conservation, enhancement, and protection of the Hexham Wetlands.

The application is consistent with the NLEP 2012 zonings in that:

1. The 62 industrial lots are located on IN2 Light Industrial zoned land. and,
2. The Viney Creek riparian corridor is in the E2 Environmental Conservation zone. The subdivision layout generally maintains the E2 land in consolidated holding and in a natural state as much as practicable. This allows the environmental value of the land to be maintained and for the appropriate management of the E2 zoned land in perpetuity.

Clause 2.6 - Subdivision—Consent Requirements

The land can be subdivided with consent.

Clause 4.1 - Minimum Subdivision Lot Size

The NLEP 2012 does not stipulate a minimum lot size for this site.

The development of this site is subject to the conditions of Concept Approval MP10_0093. To comply with condition 1.10 of the Concept Approval an indicative lot layout and staging plan was submitted to Council and approved, at the Ordinary Council Meeting 29 June 2021. The allotment layout is consistent with this plan.

Condition 1.8 of the Concept Approval required Black Hill Employment Lands Urban Design Guidelines (BHELUDG) to be developed. Those guidelines were revised and on 28 June 2018 the Director, Regional Assessments of the Department of Planning and Environment, as delegate of the Secretary, approved the Black Hill Employment Lands Urban Design Guidelines (Version. 4 dated 21/ June 2018).

The allotment layout is consistent with the BHELUDG, and the minimum 1000m² lot area required by the BHELUDG.

Clause 5.10 - Heritage Conservation

There are two (2) registered Aboriginal Sites located in the eastern part of the site.

In accordance with condition 1.20 of the Concept Approval an Aboriginal Cultural Heritage Management Plan has been submitted with the application and will be implemented with the development of the land. The heritage values of the development site are considered adequately addressed by this plan.

Clause 6.1 – Acid Sulfate Soils

The site is mapped as being affected by Class 5 acid sulphate soils. Under the submitted Remediation Action Plan the likelihood of Acid Sulphate Soils being encountered on the site is assessed as highly unlikely. The proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

The development proposes a balance of cut and fill across the site. It is anticipated that no material will be exported from or imported to the site. Detailed cut and fill plans have been prepared and the engineering design report concluded that the earthworks can be conducted without significant environmental impact. It is considered that the proposed earthworks will not have any adverse impact on neighbouring properties and are unlikely to intercept groundwater.

Industrial allotments generally require large level areas. The degree of earthworks proposed to facilitate this and future developments on the lots is considered to be acceptable considering the existing topography and minimising proposed earthworks.

Part 8 – Urban Release Area

The site forms part of an Urban Release Area under the NLEP 2012 which triggers the following provisions under Clause 8.1(2) of the NLEP 2012:

“Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area, unless the Director-General (Secretary) has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.”

The applicant has provided a copy of the Secretary’s Certificate for Satisfactory Arrangements for designated State public infrastructure over the land for this development application, as such above requirement has been met.

6.2 Black Hill Employment Lands Urban Design Guidelines Section 3.01 - Subdivision

In accordance with condition 1.8 of the Concept Approval the Urban Design Guidelines for the Black Hill Employment Lands were revised and on 28 June 2018 the Director, Regional Assessments of the Department of Planning, Industry and Environment (DPIE), as delegate of the Secretary, approved the BHELUDG.

The BHELUDG have been prepared in a form which can be adopted as site specific controls within the Newcastle Development Control Plan 2012 (NDCP 2012) at some stage in the future.

In the event of any inconsistency between the NDCP 2012 or any environmental planning instrument and the Concept Approval, and if not addressed in the Concept Approval, the BHELUDG will have precedence over the NDCP 2012.

The relevant clauses of the BHELUDG, that are considered alongside with section 3.01 Subdivision of the NDCP 2012 are discussed below:

Layout

The subdivision layout is consistent with the indicative lot layout and staging plan approved by Council at the at the Ordinary Council Meeting 29 June 2021. The lot sizes are more than 1000m², the minimum lot size required under the BHELUDG.

Road Network

The road network for stage one is in accordance with the approved, indicative lot layout and Concept Approval and the location of the signalised intersection access from JRD that has been endorsed by TfNSW.

The subdivision layout accommodates access for B-double trucks and the lot sizes will allow onsite manoeuvring of large vehicles on each of the allotments.

The proposed internal road will provide connectivity between the subdivision and the industrial zoned land to the west of the site located in the Cessnock LGA. This will enable the adjoining site to potentially utilise the signalised intersection on JRD in the future when and if this land is developed.

Public Transport and Cycleway Network

NDCP 2012 compliant road geometries have been provided to facilitate access for design vehicles (B-Double trucks) as well as pedestrians and cyclists. The collector road within the subdivision will accommodate a bus route, if and when demand requires TfNSW to implement a service.

Earthworks and Clearing

The Concept Plan Approval (MP10_0093) assessed the potential for broad scale land clearing and required appropriate biodiversity conservation offset lands to be dedicated to the State government. This land dedication has been completed.

The Director, Regional Assessments of the DPIE has certified under clause 34A (3) of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* that;

- a. the proposed development is part of a concept plan approval for which the biodiversity impacts of the proposed development have been satisfactorily assessed before 25 August 2017, and
- b. that conservation measures to offset the residual impact of the proposed development on biodiversity values after the measures required to be taken to avoid or minimise those impacts have been secured into the future.

This DA relies on the approval given by the Director for the land clearing. The clearing includes:

1. Stage 1A and 1B and the remainder of the future development site.
2. The proposed road embankment zones along the edge of the riparian corridors, noting that these areas do not extend into the riparian corridor.

3. The proposed new stormwater quality basins and associated infrastructure.
4. Parts of the riparian corridor, including the two proposed creek culvert crossings; and stormwater outlet infrastructure from the stormwater network.
5. Utility infrastructure that will traverse the riparian corridor (e.g., sewer main, etc).

In accordance with the Concept Approval, 20m wide vegetation retention buffers are proposed to be retained along the north, east and southern boundaries.

Vegetation clearing will occur in accordance with the submitted Vegetation Management Plan.

Any consent issued will be conditioned to require that a Construction Environmental Management Plan to be prepared and sediment and erosion controls to be implemented, as outlined in the Engineering Design Report, and managed in accordance with the Vegetation Management Plan (VMP).

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

The earthworks associated with the external roadworks required by TfNSW will be within the existing road corridor and will be subject to the requirements of a future Works Authorisation Deed with TfNSW.

Riparian Corridor

The Viney Creek Riparian Corridor is generally protected from the development. Mitigation measures will be implemented with necessary sediment and erosion controls and water quality management devices to protect the natural, Viney Creek riparian corridor and downstream watercourses.

Cultural Heritage

There are two (2) registered Aboriginal Sites recorded on the land. These sites are in the eastern part of the site.

In accordance with condition 1.20 of the Concept Approval an Aboriginal Cultural Heritage Management Plan has been submitted with the application and will be implemented with the development of the land. The heritage values of the development site are considered adequately addressed by this plan.

Geotechnical / Contamination

To comply with the Concept Approval and SEPP 55 the applicant has provided a Remediation Action Plan (RAP), prepared by a consultant (Cardno) in 2018 and a letter from Cardno, dated 9 December 2020, which has confirmed the recommendations and conclusions of the RAP are still appropriate. Council's Environmental Services Unit have reviewed the submitted documentation and it is considered that the land can be made suitable for industrial use.

The RAP states that the contamination found on site can be managed via off-site disposal to a licenced disposal facility. Conditions requiring the contamination to be managed via offsite disposal and for a validation report to be completed prior to issue of the subdivision certificate for each stage has been included within the schedule of proposed conditions.

Noise Mitigation

In accordance with the indicative lot layout and staging plan, 20m buffers have been provided to the boundaries of the M1, JRD and the Rural/Residential land to the south. Noise will be appropriately mitigated within each lot where necessary, when the industrial use of each lot is known. Construction noise associated with the subdivision will be addressed via a Construction Management Plan to be prepared prior to the issue of a Subdivision Works Certificate.

Infrastructure and Utilities

Each lot within the subdivision will be serviced with water, electricity, communications, and sewerage with all internal site service reticulation provided underground.

Water Management

An engineering report has been provided detailing the stormwater management strategy for the site.

Stormwater runoff from the proposed road reserves will be managed on a subdivision scale by gross pollutant traps (GPTs) adjacent to drainage outlets, as well as bio-filtration basins strategically located along the perimeter of the riparian corridor. Stormwater runoff, including any pollutants, from the future industrial developments on the allotments will be managed on each lot and assessed as part of future Development Applications and do not form part of this application for subdivision.

Ownership and maintenance obligations will lie with Council for the subdivision scale treatment infrastructure e.g. retention basins.

The applicant has also considered the likely impact the development will have on the wetting and drying cycle of the downstream wetland at Woodberry and determined that the development is unlikely to have an unreasonable adverse impact.

The stormwater management strategy is considered to be acceptable.

Construction Management

Prior to works commencing a Construction Environmental Management Plan (CEMP) will be prepared to manage all environmental aspects associated with the construction works.

6.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Subdivision - Section 3.01

The land is not affected by lot size map under the NLEP 2012. However, the lot sizes are all greater than 1000m², being the minimum lot size required under the BHELUDG.

The lot dimensions are considered acceptable and capable of supporting future industrial development.

Flood Management - Section 4.01

A comprehensive flood assessment was undertaken in association with the previous proposed development in DA2018/00714. The flood assessment has been updated to reflect the current development DA2020/01497 and is included within the Engineering Design Report.

The assessment concludes that the development will effectively mitigate any significant impacts in Viney Creek downstream of the subject site. In addition, the flood impacted land is also predominantly limited to the riparian corridor within the site. The proposed road levels and industrial allotments are set above the 1% Annual Exceedance Probability (one in a hundred-year flood event).

The subdivision is considered acceptable and future developments within the site will also be subject to the provisions of the NDCP 2012.

Bush Fire Protection - Section 4.02

A Bushfire Assessment Report dealing with the Stage 1 subdivision was submitted with the application. The Bushfire Assessment Report recommends a range of bushfire safety measures (Asset Protection Zones, utilities design and access controls) and concludes that the development will be provided with a satisfactory level of bushfire protection.

The application was referred to the NSW Rural Fire Service who have issued conditional approval for the development.

Mine Subsidence - Section 4.03

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

Safety and Security - Section 4.04

The subdivision layout relies on a grid pattern and does not include any cul-de-sacs. The layout has adequately considered the principles of Crime Prevention Through Environment Design (CPTED) guidelines and is acceptable.

Social Impact - Section 4.05

The social and economic benefits of the light industrial development of the site were assessed as part of the Concept Approval. The subdivision works will provide direct business and employment benefits and once complete, the serviced industrial land will facilitate business growth and on-going employment and economic activity.

Soil Management - Section 5.01

Land disturbance is expected as part of this development and appropriate measures will be addressed under a Construction Environmental Management Plan to be submitted and approved by Council prior to the release of the Subdivision Works Certificate.

Land Contamination - Section 5.02

Land contamination has been previously considered in this assessment report and is in accordance with SEPP 55.

Vegetation Management - Section 5.03

This issue is discussed above in Section 6.2 of this report relating to the BHELUDG and with the imposition of appropriate conditions is considered acceptable.

Aboriginal Heritage - Section 5.04

This issue is discussed above in relation to Clause 5.10 Heritage of NLEP 2012.

Heritage Items - Section 5.05

This issue is discussed above in relation to Clause 5.10 Heritage of NLEP 2012.

Archaeological Management - Section 5.06

Aboriginal cultural heritage is discussed above in Section 5.10 of this report relating to the BHELUDG.

No other archaeological features are known to be present on the site.

Landscape Open Space and Visual Amenity - Section 7.02

A concept landscaping plan has been submitted with the application and is acceptable. In accordance with the indicative lot layout and staging plan, 20m vegetated buffers are provided to the boundaries of the M1, JRD and Rural/Residential land to the South.

Conditions requiring a comprehensive landscape plan to be submitted with the Subdivision Works Certificate will be included of any consent issued.

Traffic, Parking and Access - Section 7.03

A traffic impact assessment has been submitted for the stage one subdivision works and this has been assessed by TfNSW, against strategic traffic modelling undertaken by TfNSW for this locality.

That assessment has found that road upgrades are required for each stage of development, with appropriate timing and developer apportionments, identified. The applicant has agreed to the following external roadworks on JRD and at the M1/Weakleys Dr intersection:

1. A new signalised intersection on JRD toward the western end of the site frontage. The roadworks will transition back to the existing lane configuration on the western side of the new intersection.
2. Duplication of JRD between the new signalised intersection (described in 1 above) and the M1 / Weakleys Dr intersection. The duplication is approximately 950m in length.
3. One additional right-turn lane on JRD turning on to the M1(southbound), and one additional right-turn lane on Weakleys Drive turning on to JRD toward the west.

Strategic design plans for the above works have been provided and TfNSW have issued a letter confirming that they have no objection to the proposed works. TfNSW have provided conditions to be included for the required off site roadworks.

The internal local road network is considered appropriate to support Stage 1, and subsequent stages of the Concept Approval, while enabling connectivity with the industrial zoned land within the Cessnock LGA.

In accordance with the advice provided by TfNSW the traffic impact is considered acceptable.

Movement Networks – Section 7.04

The proposed roads meet the minimum requirements of the NDCP 2012 in terms of road reserve width and alignment and is considered acceptable. Detailed road designs will be provided with the Subdivision Works Certificate application.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed stormwater management plan is discussed above in Section 5.2 of this report relating to the BHELUDG and is in accordance with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

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

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 21 days in accordance with the NDCP 2012. A total of 13 submissions objecting to the proposal were received.

Comments are provided in Section 6.9 below.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The development attracts a development contribution to CN, as detailed in CN's Section 7.12 Development Contributions Plans.

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

6.4 Planning agreements

Two planning agreements have been entered into with the State Government in relation to dedication of biodiversity conservation offsets land and State Infrastructure Contributions.

Neither of these planning agreements involve CN.

6.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act 1979 and EP&A Regulations 2000.

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policies, including the NLEP 2012, the BHELUDG and the NDCP 2012 considerations. In addition, the biodiversity impacts of the clearing the site have been offset by the dedication of Conservation Lands and confirmed by an

Order issued pursuant to clause 34A (3) of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*.

It is considered that the proposed subdivision will have limited impact on any existing or future external premises due to:

- a) The distance of residential (including rural/residential) development from the site; with the closest residential property located 80 metres from the site.
- b) The site being bordered on its northern and eastern sides by major roads; and

The 20 metre buffer zones proposed on the southern, eastern, and northern boundaries of the site.

Once complete the subdivision will provide direct business and employment benefits and the serviced industrial land will facilitate business growth and on-going employment and economic activity.

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

6.7 The likely impacts of the off-site road works, including environmental impacts on both the natural and built environment.

As part of this development application the developer has agreed to undertake significant off-site roadworks to mitigate the traffic impacts of this development.

The works include an upgrade to the intersection of John Renshaw Drive/M1 Motorway/Weakleys Drive, approximately 950m of JRD duplication and the proposed signalised intersection giving access to the development. All the works will occur within the existing road reserve with most of the footprint to occur within previously cleared land. Some clearing of native vegetation will be required. Information on these works has been provided in a supplementary Statement of Environmental Effects, along with an engineering report and Flora and Fauna Assessment by Ecological Australia.

Being located within road reserve, the proposed external roadwork will be undertaken within zone SP2 Infrastructure (Classified Road) under the NLEP 2012 and Cessnock LEP 2011 (CLEP). The External Roadwork is permissible under the zone and consistent with the zone's objectives. These works will also be subject to an application made pursuant to Section 138 of the Roads Act, 1993.

6.8 The suitability of the site for the development

The site is considered suitable for the land clearing and subdivision works for the following reasons:

1. The development is consistent with the objectives and permissible under the applicable land use zonings under the NLEP 2012.

2. The development is generally consistent with the Concept Approval (MP10_0093).
3. The proposed development is in accordance with the indicative lot layout and staging plan and the signalised intersection access from JRD has been approved by TfNSW; and

The development is consistent with the GNMP2036 applying to the land, which includes Beresfield-Black Hill freight and logistics hub, with complementary manufacturing and light industrial activity.

The constraints of the site have been considered in the development, which includes flooding, contamination, acid sulphate soils and heritage. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

6.9 Any submissions made in accordance with this Act or the regulations.

The application was notified in accordance with CN’s Public Participation Policy and Community Consultation Plan. 13 submissions were received during the notification period.

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

Issue	Comment
Traffic impacts to JRD and surrounding road network	In consultation with TfNSW the developer has agreed to off-site roadworks on JRD and the M1 Pacific Motorway/ John Renshaw Drive/ Weakleys Drive signalised intersection. These intersection works and network improvements will mitigate the impact of proposed stage 1 development (this DA) as detailed in the SMEC report (14 April 2021) commissioned by TfNSW.
Potential access onto Black Hill Rd under later stages of the development	There is no access to Black Hill Road proposed under this DA.
Environmental impact of land clearing and future industrial development of the site	<p>The Concept Approval assessed the potential for broad scale land clearing and required appropriate biodiversity conservation offset lands to be dedicated to the State government. This land dedication has been completed.</p> <p>The Director, Regional Assessments of the DPIE has further certified the biodiversity conservation measures under clause 34A (3) of the Biodiversity Conservation (Savings and Transitional) Regulation 2017. In accordance with the Concept Approval clearing will follow the requirements of a Vegetation Management</p>

	<p>Plan.</p> <p>The future development of the site will need to be in accordance with zoning of the land and will be subject to future development applications.</p>
<p>Proposed industrial subdivision does not fit the rural context of the local area with regard to the lot sizing.</p>	<p>The proposed development is consistent with the GNMP 2036 and the Concept Approval (MP10_0093) for the site.</p> <p>The indicative lot layout and staging plan complies with details endorsed by Council at the Ordinary Council Meeting 29 June 2021.</p> <p>The lot sizing proposed is consistent with this plan and the BHELUDG.</p>
<p>No assessment of cumulative impacts (traffic) when combined with neighbouring industrial subdivision within Cessnock LGA. The application does not consider the precinct as a whole nor has a master plan for the catalyst area been agreed to.</p>	<p>CN has on numerous occasions, consulted with the Hunter and Central Coast Development Corporation, Cessnock City Council and TfNSW to develop an integrated masterplan for the 'Emerging Black Hill Precinct', however no masterplan has been adopted.</p> <p>In the absence of a masterplan, CN has developed with TfNSW and the owner of 198 Lenaghans Drive an agreed access plan which is in accordance with the indicative lot layout and staging plan endorsed by Council at the Ordinary Council Meeting 29 June 2021.</p> <p>The application includes a road connection to the neighbouring industrial land in the Cessnock LGA and a second connecting road will be provided in later stages of the sites development.</p>
<p>Opposition to branding of the subdivision as "Black Hill Industrial Park"</p>	<p>The applicant has been made aware of this objection however is not a matter of consideration pursuant to Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
<p>Impacts on property values.</p>	<p>This concern is not a matter of consideration pursuant to Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
<p>Concerns over length and nature of notification process.</p>	<p>The proposal was notified in accordance with CN's Public Participation Policy and Community Consultation Plan.</p>

CITY OF NEWCASTLE

Submissions were also received from the developer of an adjoining site and Cessnock City Council with a summary of the issues raised and a response to those issues below.

Issue	Comment
<p>The location of the signalised intersection on JRD and the detrimental impact on future access options to the neighbouring industrial subdivision within the Cessnock LGA.</p>	<p>The neighbouring developer and Cessnock City Council have submitted an objection to the location of the access not being on the common (western) boundary and the perceived detrimental impact that this may cause to the developer of the Cessnock land on the basis this could significantly impact the timing, subdivision layout, development costs associated with the Cessnock land.</p> <p>As discussed previously in this report CN has, consulted with the Hunter and Central Coast Development Corporation, Cessnock City Council and TfNSW to develop an integrated masterplan for the 'Emerging Black Hill Precinct', however no masterplan has been adopted.</p> <p>In the absence of a masterplan, CN has developed with TfNSW, and the owner of the subject site has agreed to the access plan which will provide a signalled access on to JRD. This access is in accordance with the indicative lot layout and staging plan presented to Council at the Ordinary Council Meeting 29 June 2021.</p> <p>On relevance to this matter, the proposed subdivision on the adjacent land in Cessnock LGA was refused by the Hunter and Central Coast Regional Planning Panel and is now the subject of a Class 1 Appeal lodged with the Land and Environment Court. As part of those proceedings, the applicant for that DA has since sought leave from the LEC to modify the DA to not be reliant on a signalised intersection at the common site boundary. That appeal is yet to be concluded.</p>
<p>The legal process to provide access to the neighbouring site from the internal road is questionable and is a mechanism to prevent the Broaden land gaining full access to the proposed intersection with the imposition of an easement on the last 2m of road prior to the property boundary on the internal road</p>	<p>To give this comment context, Broaden are the developers of the adjoining land.</p> <p>A condition has been included for the easement to be removed and for the road to continue up to the property boundary. This will allow full access to the neighbouring property upon dedication of the road.</p>

connection to the west.	
The application relies on the SMEC traffic report from 09 October 2020 which uses assumptions inconsistent with TfNSW	In consultation with TfNSW the developer has agreed to the required off-site roadworks on JRD and the M1 Pacific Motorway/ JRD/ Weakleys Drive signalised intersection. these works will mitigate the impact of stage 1A and 1B development (this DA) as recommended in the SMEC report (14 April 2021) that was commissioned by TfNSW.
The capital investment value of the works is questionable with the works expected to be in excess of \$30 million.	A cost estimate of the expected works prepared by a registered quantity surveyor has been provided at the time of lodgement, valuing the CIV at \$28.8 million. Only applications with a CIV greater than \$30 million are required to be reported to a Regional Panel. The Capital investment value (CIV) is calculated at the time of lodgement of the DA for the purpose of determining whether an application should go to a Regional Planning Panel - refer to Planning Circular PS 10-008.
The Development Application does not consider the controls within Cessnock Development Control Plan 2010 (Cessnock DCP). In particular part E.18 (Black Hill employment Area) which applies to the land adjacent to the Stevens Group Site	Cessnock Development Control Plan 2010 does not apply to development applications lodged within the CN local government area.
The application is substantially the same as an earlier application which had been determined and refused by both the Council and the Land and Environment Court	The Class 1 Appeal lodged regarding the previous application was dismissed primarily on traffic and access grounds as these had not been satisfactorily resolved. The previous application was for subdivision of the whole of the site into 200 lots, to be constructed in eight stages. After the dismissed Appeal the applicant has amended the application and undertaken further consultation with TfNSW and CN and the current application reflects the outcome of that consultation.

6.10.10 The public interest

The proposed development is considered to be in the public interest, in relation to:

- i) The principles of ecologically sustainable development with the biodiversity impacts of the clearing having been offset by the provision of Conservation Lands and confirmed by an Order issued pursuant to clause 34A (3) of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*.

- ii) The proposed dedication of land for road reserve enabling the orderly and economic development of the site and provide suitable access to neighbouring industrial zoned land in the Cessnock LGA.

7.0 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 generally consistent with the Concept Approval (MP10_0093).

The proposed subdivision is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

- Item 14 - Attachment A:** Submitted Plans - 198 Lenaghans Drive Black Hill
 - Item 14 - Attachment B:** Draft Schedule of Conditions - 198 Lenaghans Drive Black Hill
 - Item 14 - Attachment C:** Processing Chronology - 198 Lenaghans Drive Black Hill
 - Item 14 - Attachment D:** Subsidence Advisory NSW – Terms of Approval
 - Item 14 - Attachment E:** Traffic NSW – Terms of Approval
 - Item 14 - Attachment F:** NSW Rural Fire Service – Terms of Approval
 - Item 14 - Attachment G:** Transgrid – Terms of Approval
 - Item 14 - Attachment H:** Concept Approval (MP10-0093)
 - Item 14 - Attachment I:** Indicative Lot Layout and Staging Plan
 - Item 14 - Attachment J:** 2018 Order Pursuant CI 34A(3) Biodiversity Conservation Regulation 2017
- Item 14 Attachments A - J distributed under separate cover**