

# Development Application Committee Meeting



**DATE:** Tuesday 19 September 2023

**TIME:** 6:00pm

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

12 September 2023

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**City of Newcastle**  
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## Agenda

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

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

## **6. CONFIRMATION OF PREVIOUS MINUTES**

### **6.1. MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 15 AUGUST 2023**

#### **RECOMMENDATION**

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

#### **ATTACHMENTS**

**Attachment A:** 230815 Development Applications Committee

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

## Minutes



### Development Application Committee Meeting

Council Chamber, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West, Tuesday, 15 August 2023 at 6:00pm.

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#### 1. ATTENDANCE

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

J Bath (Chief Executive Officer), A Jones (Executive Director Creative & Community Services), D Manderson (Interim Executive Director City Infrastructure), M Bisson (Executive Director Planning and Environment), E Kolatchew (Executive Manager Legal and Governance), S Moore (Executive Manager Finance, Property and Performance), R Tranter (Traffic and Transport Manager), P Emmett (City Wide Development Assessment Manager), M Murray (Chief of Staff), L Barnao (Councillor Services/Minutes/Meeting Support) and W Haddock (Information Technology Support).

#### 2. ACKNOWLEDGEMENT OF COUNTRY

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

#### 3. PRAYER

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

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

##### MOTION

Moved by Cr Mackenzie, seconded by Cr Pull

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

**Carried  
unanimously**

##### MOTION

Moved by Cr Barrie, seconded by Cr Duncan

The request submitted by Councillor Winney-Baartz to attend by audio visual link be received and leave granted.

**Carried  
unanimously**

## **5. DISCLOSURES OF INTEREST**

### **Lord Mayor, Cr Nelmes**

Lord Mayor, Cr Nelmes declared a pecuniary interest in item 7.1 - 1B Islington Street Islington - DA2022/01482 stating that she has a family member that works casually for the proponent and managed the interest by leaving the Chamber.

## **6. CONFIRMATION OF PREVIOUS MINUTES**

### **6.1. MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE - 25 JULY 2023**

#### **MOTION**

Moved by Cr Mackenzie, seconded by Cr Barrie

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

**Carried  
unanimously**

## **7. DEVELOPMENT APPLICATIONS**

### **7.1. 1B ISLINGTON STREET ISLINGTON - DA2022/01482 - GROUP HOMES - INCLUDING DEMOLITION OF EXISTING STRUCTURES**

The Lord Mayor left the Chamber for discussion on this item and the Deputy Lord Mayor took the Chair.

#### **MOTION**

Moved by Cr Mackenzie, seconded by Cr Richardson

1. That the Development Applications Committee 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 R4 High Density Residential zone in which the development is proposed to be carried out; and
2. That DA2022/01482 for a residential flat building comprising six permanent group homes at 1B Islington Street, Islington be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and
3. That those persons who made submissions be advised of CN's determination.

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

**Against the Motion:** Councillors McCabe and Wood.

**Carried**

The Lord Mayor did not return to the Chamber prior to the meeting being closed.

**The meeting concluded at 6.21pm.**

## 7. DEVELOPMENT APPLICATIONS

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

**APPLICANT:** GWH NEWCASTLE WEST PTY LTD  
**OWNER:** GWH NEWCASTLE WEST PTY LTD  
**REPORT BY:** PLANNING & ENVIRONMENT  
**CONTACT:** EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

## PART I

### PURPOSE

An application has been received seeking consent for the demolition of existing buildings and erection of a mixed-use development, comprising retail / commercial on ground floor, podium level car parking shop top housing (comprising 72 residential apartments, six, one-bedroom apartments, 50, two-bedroom apartments, and 16, three-bedroom apartments) on land known as 8 Denison Street, 799 Hunter Street and 805 Hunter Street, Newcastle West.



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

**Subject Land: 805 Hunter Street Newcastle West** (including 799 Hunter Street & 8 Denison Street)

The application is referred to the Development Applications Committee (DAC) for determination for the following reasons:

- i) The construction value of the proposed development (\$27,259,805.00) exceeds the staff delegation limit of \$15 million.
- ii) The proposed variation to the building separation development standard of NLEP 2012 being more than a 10% variation. A maximum variation of 16.42% is proposed.

The proposal was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) between 4 August and 25 August 2022 and in response two submissions of objection were received in relation to potential impacts

during demolition and construction; building to the boundary; loss of amenity and outlook; and traffic.

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

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

## Issues

- 1) The proposed development has a building height of 69.69m (top of lift overrun) and does not comply with the prescribed building height of 66m which equates to a variation of 3.69m, or 5.59%. It is noted that a 10% bonus, to the 60m height of building under clause 4.3 of NLEP 2012 applies to the development under clause 7.5(6) 'Design Excellence' of NLEP 2012.
- 2) The proposed development has a building separation measuring between 20.06m and 22.55m to the approved development at 20 Denison Street (DA2018/01622). The building separation does not comply with the building separation of 24m (at 45m or higher above ground level) as prescribed under Clause 7.4 of NLEP 2012. The variation is between 1.45m (6.04%) and 3.94m (16.42%).

## Conclusion

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

## RECOMMENDATION

- A. That the Development Applications Committee as the consent authority note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 'Height of buildings', and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the MU1 Mixed Use zone in which the development is proposed to be carried out; and
- B. That the Development Applications Committee as the consent authority note the objection under Clause 4.6 Exceptions to development standards of the NLEP 2012, against the development standard at Clause 7.4 'Building separation', and considers the objection to be justified in the circumstances and to be consistent with the intent of Clause 7.4 and the objectives for development within the MU1 Mixed Use zone in which the development is proposed to be carried out; and
- C. That DA2022/00846 for the demolition of existing buildings and erection of a mixed-use development, comprising retail / commercial on ground floor, podium



level car parking and a residential flat building (shop top housing) located above at 8 Denison Street, 799 Hunter Street and 805 Hunter Street, Newcastle West be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and

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

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

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

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

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

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## **PART II**

### **1.0 THE SUBJECT SITE AND APPLICATION HISTORY**

The development site comprises the following lots:

- i) 8 Denison Street and 799 Hunter Street, Newcastle West (Lot 100 / DP 590406)
- ii) 805 Hunter Street, Newcastle West (Lot 1 / DP780632)

The development site has a combined site area of 1,522m<sup>2</sup> and is located within the West End area of Newcastle and within proximity to the Newcastle Transport Interchange.

The surrounding area contains land with significant height and floor space allowances to accommodate commercial and population growth, including several key sites in nearby streets. The street block itself, bounded by Hunter, Denison, Parry, and Tudor Street comprises a mix of medium density residential development and commercial offices, with a range of building heights and age.

There are current approvals in place for mixed use, multi-storey residential developments on the adjoining sites:

- i) 20 Denison Street, Newcastle West (DA2018/01622) – 20 storey residential flat building
- ii) 811-815 Hunter Street, Newcastle West (DA2017-01622) – 11 Storey mixed use development

The site is currently developed with buildings and concrete hardstand, and there are no landscaped areas or vegetation on the site.

The existing development fronting Hunter Street is a two-storey brick and iron roof building (805 Hunter Street) and a three-storey brick and iron roof building (799 Hunter Street). The existing development fronting Denison Street is a two-storey brick and iron roof building and an at grade bitumen sealed car park with a single driveway.

## 2.0 THE PROPOSAL

The development application proposes a 20-storey mixed use development comprising retail and commercial uses and shop top housing. The proposal includes the following components:

- i) Demolition of existing buildings and structures
- ii) Above ground carparking (93 car spaces) within podium level
- iii) Two ground floor retail and commercial premises, one each fronting Denison Street and Hunter Street
- iv) A co-work / shared space fronting Hunter Street which provides residents of the building a flexible workspace to utilise when working from home
- v) 72 residential apartments, comprising:
  - a) 6 x 1-bedroom apartments
  - b) 50 x 2-bedroom apartments; and
  - c) 16 x 3-bedroom apartments
- vi) Ancillary works including associated landscaping, services, and infrastructure.

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 proposal was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) between 4 August and 25 August 2022 and in response two submissions of objection were received.

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

- i) Traffic
- ii) Disruptions during the demolition and construction phase
- iii) Impacts to the rear yard of adjoining units (i.e., loss of outlook and amenity)
- iv) Overshadowing; and
- v) Podium wall built to the boundary.

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 integrated development pursuant to Section 4.46 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) as approval is required from the Subsidence Advisory NSW under s.22 *Coal Mine Subsidence Compensation Act 2017*, to erect improvements within a mine subsidence district.

Subsidence Advisory NSW granted General Terms of Approval on 24 August 2022 which included several conditions. The General Terms of Approval have been incorporated into the recommended conditions of consent (refer to **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 (Building Sustainability Index: BASIX) 2004**

*State Environmental Planning Policy – Building Sustainability Index BASIX– 2004* ('BASIX SEPP') applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by a BASIX Certificate committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP.

A condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) requiring that the development be carried out in accordance with the submitted BASIX Certificate. The proposal is acceptable having regard to the provisions of the BASIX SEPP.

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

### Chapter 2: Coastal Management

The site is located within a mapped Coastal Use Area. Therefore, the SEPP R&H is applicable to the development. Section 2.10(1) & (2) – '*Development on land within the coastal environment area*' of the SEPP includes broad provisions addressing the protection of coastal values within a 500 metre wide area.

Section 2.10(1) & (2) provides that development consent must not be granted to development on land that is within the coastal environment area unless the consent authority is satisfied that the proposed development will not cause an adverse impact on: the integrity and resilience of the biophysical, ecological and hydrological environment, including surface and groundwater; coastal environmental values and processes; water quality of any sensitive coastal lakes; marine vegetation, native vegetation and fauna and their habitats; existing public open space and access to and along the foreshore; and Aboriginal cultural heritage.

The development is located upon highly disturbed land and has been commercially used for many decades with the entire site covered hardstand and including existing buildings. It is considered that the current proposal will have no likely impacts on the coastal environment area under the SEPP and is acceptable particularly in relation to the biophysical environment and coastal processes and maintaining public access to the foreshore.

The proposal will have no material impact on environmental, coastal, native vegetation, surf zone or access issues listed above. Similarly, the long historic usage of the site for commercial uses, plus its highly disturbed nature, leaves negligible coastal attributes remaining as part of the subject site. The proposal has been assessed in terms of Aboriginal heritage and archaeological aspects and is acceptable. The proposal is acceptable having regard to the requirements of section 2.10.

### Chapter 4: Remediation of Land

The provisions of Chapter 4 of SEPP R&H have been considered in the assessment of the development application. Section 4.6 requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

A Preliminary Site Investigation ('PSI'), Detailed Site Investigation ('DSI') has been prepared for the site. No contamination was identified which exceeded appropriate land use criteria for the site and proposed development.'

The application satisfies the requirements and section 4.6 of SEPP R&H, which requires the consent authority to be satisfied that the development site is suitable for the proposed development. Accordingly, the site is considered suitable for the proposed development and contaminated land investigation is acceptable, subject to draft conditions included in **Attachment B**.

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

#### Section 2.48 - Development likely to affect an electricity transmission or distribution network

Section 2.48(2) of the Transport and Infrastructure SEPP requires consent authorities to refer an application for certain development impacted by an electricity tower, electricity easement, substation, or power line, as identified in s.2.48(1) to the relevant electricity supply authority (Ausgrid) and any concerns raised by the electricity supply authority are to be considered as part of the assessment.

The application comprises development to be carried out within proximity to underground power mains. As such, the application was required to be referred to Ausgrid in accordance with s.2.48(2) of the Transport and Infrastructure SEPP. Written advice from Ausgrid was received dated 06 August 2022 which provided recommendations to satisfy Ausgrid requirements. Suitable conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) to satisfy the recommendations and requirements raised within the Ausgrid referral response.

#### Section 2.120 – Impact of road noise or vibration on non-road development:

Section 2.120 of the SEPP T&I applies to development for the purpose of residential accommodation on land in, or adjacent to a road corridor with an average daily traffic volume of more than 20,000 vehicles and that the consent authority considers is likely to be adversely affected by road noise or vibration.

Furthermore, s.2.120(3) requires that the consent authority must not grant consent to development for the purposes of residential accommodation unless it is satisfied that appropriate measure will be taken to ensure that the following LAeq level are not exceeded:

- a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am,*
- b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

The provisions of s.2.120 apply to the proposal as development consent is being sought for 'residential accommodation' located on land adjacent to the Hunter Street which has an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of Transport for NSW).

Subject to the adoption of the measures recommended in the submitted Acoustic Assessment, the requirements of the relevant guidelines will be achieved and there will be no adverse noise or vibration impacts on future occupants because of external noise sources (principally road noise). Accordingly, the proposed development is acceptable subject to conditions recommended in **Attachment B**.

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

The application does not propose the removal of any declared vegetation in order to facilitate the development. The provisions of SEPP B&C do not apply.

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

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

Sub-section 28(1) of SEPP 65 requires the consent authority to refer an application to the relevant design review panel for advice concerning the design quality of the development prior to determining the application.

Prior to lodgment of the current development application (DA2022/00846), the development proposal was previously reviewed by the Urban Design Review Panel (UDRP) on seven occasions; at the meetings held 30 September 2020, 26 May 2021, 30 June 2021, 25 August 2021, 25 November 2021, and 24 February 2022 and 27 April 2022.

During the assessment process, the development application was formally referred to the UDRP a further two times, at meetings held on 31 August 2022 and 26 April 2023. In response to the advice from the UDRP meetings, an amended application was formally submitted on 15 June 2023.

The UDRP reviewed the development proposal for third and fourth time via electronic referrals. In response to the advice received via email, an amended application to resolve minor concerns was submitted 21 July 2023.

Relevant extracts from the meetings held on April 2023, and subsequent electronic referral, on 08 August 2023 are provided in the table below.

The current amended proposal has satisfactorily incorporated the recommendations of the UDRP through the assessment process and suitable conditions of consent have been included in the recommended conditions of consent.

Further, a SEPP 65 Design Verification Statement (prepared by Smith & Tzannes Architects) was submitted in support of the current amended proposal pursuant to

Clause 29(1) of the Environmental Planning and Assessment Regulation 2021 ('EP&A Reg 2021').

An assessment of the development under the ADG design principles, including relevant UDRP comments, is provided below.

***Consideration of the UDRP advise in relation to the design quality principles under SEPP 65***

<b>Design Quality Principles</b>
<p><b>Principle 1. Context and Neighbourhood Character</b></p> <p><b><u>UDRP Comment - 26 April 2023</u></b></p> <p><i>"The Panel commends the design development that has occurred for the resolution of the ground plane and internal arrangements addressing and connecting with the two street frontages. The intended continuation of Awabakal guidance and integration of design into the proposal is supported. The engagement with stories of the saltwater people, creeks and coordination with other cultural sites and wider story of place, as a journey across the ground plane of Newcastle's centre is presenting many opportunities for expression and integration of the project with its place as a continuum."</i></p> <p><b><u>Officer Comment:</u></b></p> <p>The scale of the proposed development is consistent with the desired future character and the prescriptive controls in the LEP and DCP. A height limit of 60m and FSR control of 6:1 exists over the subject block and is adjoined by a height limit of 90m and FSR of 8:1 to the north-east and 14m and 1.5:1 FSR to the south-west. These controls, as outlined in the current Local Environmental Plan, are part of a broader strategy to shift the CBD West, where lot sizes and existing built form are more suitable to high density urban development.</p> <p>Adjoining the proposed site to the West and North-West are existing approvals for high-density mixed-use development. To the East there are three lots under different ownerships, and several attempts have been made by the applicant to acquire these lots, however, to date these attempts have been unsuccessful.</p>
<p><b>Principle 2. Built Form and Scale</b></p> <p><b><u>UDRP Comment – 26 April 2023</u></b></p> <p><i>"The Panel reiterates previous comments regarding floor-to-floor height that remain at 3.1m given the additional obligations now on design teams under the Design and Building Practitioners Act. The Panel notes it is increasingly common to see 3.2m floor-to-floor heights now proposed at Pre-DA and DA stages of review."</i></p> <p><i>Building height and scale is a component of Design Excellence, the overall building form and consideration of accurate representations of development proposals at DA approval stages. The Panel encourages the proponents to further explore these considerations early and adjust, particularly where there may be further building height as a result."</i></p>

*There appear opportunities for design amendments that would avoid or significantly limit the need for privacy screens through a re-orientation of blade walls and further consideration of window locations.*

*Overall, the podium façade treatments are supported. However, the integration of the materials and compositional expression of the tower component requires further consideration."*

**Officer Comment:**

The built form comprises two components:

- The podium base that defines the street wall and creates a presentation to Denison Street and Hunter Street, and
- The residential tower form is fragmented into two parts- divided by the circulation space - the northern / Hunter Street facing section and southern Denison St.

The proposed development provides an active public domain interface with retail and commercial on both frontages. The residential uses on the Denison Street frontage overlook the street and provide passive surveillance.

The additional noise of traffic and trains on the Hunter Street frontage make it unsuitable for residential uses within podium level.

Floor to floor heights have now been increased to 3.2m throughout the tower to allow for flush thresholds between living spaces and balconies. This has resulted in a 1.5m increase in overall building height, however, is supported in this instance,

In response to the 26 April 2023 comments, the applicant submitted further design amendments. The UDRP are now satisfied with the design development undertaken in response to their comments during the assessment process, and as such the development is considered to achieve an appropriate built form for the site and for the building's purposes in terms of building alignments, proportions, building type, and articulation of building elements.

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

**Principle 3. Density**

**UDRP Comment – 26 April 2023**

*"The Panel acknowledges the proposed development with an FSR of 5.5:1 remains within the maximum permitted density of 6:1. The Panel considers the proposed numeric density acceptable."*

**Officer Comment:**



The design is expected to achieve a high level of amenity for residents and each apartment, resulting in a density that is considered appropriate to the site and its context.

The proposed development will result in the provision of additional housing within an established inner city local suburb with access to public transport, essential community infrastructure and services. The amended proposal has addressed the UDRP's concerns and is considered acceptable.

#### **Principle 4. Sustainability**

##### **UDRP Comment – 26 April 2023**

*"The Panel supports the provision of future rooftop PV. Further confirmation should include:*

- Accommodating infrastructure capable of 100% EV charging;*
- Inclusion at the outset of some short-stay fast-charging and overnight charging spaces;*
- Heat pumps for heating and cooling;*
- Cool roofs;*
- Façade design with integrated operable external shading; and*
- Maximising the wall-to-opening ratios for maximum amenity and performance."*

##### **Officer Comment:**

The proposal includes a BASIX certificate which requires sustainable development features to be installed into the development inclusive of water efficient fixtures and energy saving devices.

In addition, the proposed development includes the following design measures:

- External materials have been selected to minimise maintenance and provide lasting durability. Finishes include off form concrete (raw or painted), anodised aluminium and face brick;
- The concrete detailing has been considered to reduce adverse weathering impacts. The roof provides ease of access for maintenance of the façade;
- Capturing of stormwater for irrigation purposes;
- Floorplates with corner style apartments to obtain cross ventilation;
- Appropriate landscape selections with low water demand;
- Maximising the perimeter of the facade and minimizing the depth to enhance daylight;
- Horizontal sun shading to north facing facades;
- Windows minimised in east and west facing facades;
- PV system is located across the entire roof space of the tower to offset energy use in common facilities; and
- Common spaces are assisted with natural ventilation to reduce energy consumption.

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

### **Principle 5. Landscape**

#### **UDRP Comment – 26 April 2023**

*"The Panel supports the early coordination with the public domain along Hunter and Denison Streets and supports continuing dialogue with CN.*

*The Panel is supportive of the proposed combination of podium level and Level 19 rooftop communal spaces. Level 19 provides high quality outlook and solar amenity with limited areas of planting that will be exposed to high levels of wind and salt air.*

*The continuing design development of the public domain plan is being coordinated with Council and Awabakal inputs, which is supported. These include ground plane treatments and street planting, signage, public art and resolution of building entries as they interface with the public domain."*

#### **Officer Comment:**

Landscaped area on the eastern side of the podium has been increased to allow greater separation to potential future development on the adjoining corner site.

A comprehensive landscape design documentation has been prepared in support of the development application. The landscape design is appropriate in scale and context with the proposed residential development having considered useability, privacy and opportunities for social interaction.

Conditions have been included in the recommended Draft Schedule of Conditions (**refer to Attachment B**) to require the preparation of a Landscape Practical Completion Report and Landscape Establishment Report after practical completion. The amended proposal has addressed the UDRP's concerns and is considered acceptable.

### **Principle 6. Amenity**

#### **UDRP Comment – 26 April 2023**

*"Each apartment within the proposed development achieves or exceeds the minimum size requirements outlined in the Apartment Design Guide. Internally the apartments are provided with good amenity and excellent access to daylight and ventilation.*

*The following amendments to the development outlined in the submitted documentation are noted and supported:*

- *Visual privacy is provided between the proposed development and the adjoining existing development through adequate separation, and different scales of building;*
- *The proposed development achieves privacy from adjacent sites through a combination of setbacks, orientation and size of windows;*
- *All habitable rooms are naturally ventilated with windows to the façade;*

- *Single aspect units are minimised and provided with shallow depth to maximise ventilation;*
- *90% of the apartments are cross ventilation – this is a result of the central core and the pivot design of the floor plate; and*
- *Apartments are designed around a central core with most apartments being corner apartments with cross ventilation.*

**Officer Comment:**

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

**Principle 7. Safety****UDRP Comment – 26 April 2023**

*"The site has frontages to Hunter and Denison Street. The facades at both street frontages provide for a clear definition of public and private space with the facades aligning with the street boundary. Activation of the street frontage is provided with retail and commercial shopfronts opening to both streets.*

*The residential lobby creates a private circulation space between to two street frontages. A direct line of sight is provided from the street frontage to the lift doors.*

*The residential entrances are clearly identifiable from the street with a two-storey lobby on Denison Street and the wide communal space / co-working area on Hunter Street*

*The Panel is satisfied that resident and visitor safety is adequately resolved. "*

**Officer Comment:**

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

**Principle 8. Housing Diversity and Social Interaction****UDRP Comment – 26 April 2023**

*"The proposed development has provided 100% Silver Level unit types which is consistent with Housing Priority 3 in Newcastle's Housing Strategy and NDCP 2012. The ground level co-working space has been reconfigured and has addressed the Panel's earlier comments."*

**Officer Comment:**

All floor levels have a maximum of five apartments per core. This is consistent with the design guidance that requires a maximum of 12 per core on a single level.

A diversity of apartment types and styles is provided, with a mix of 1-, 2- and 3-bedroom apartments. Housing choice is therefore provided for which responds to general market needs.

The proposed development contains 100% of apartments incorporating silver level universal design features. The apartments have good access to views and sunlight and can be easily adapted for a person in a wheelchair. Several areas for communal spaces are proposed which provide diverse opportunities for social interaction. In addition to this, provision has been made for 8 x 1-bedroom apartments which meet Liveable Housing Australia 'Gold Level' standards, representing 8% of apartments within the development at this standard.

The communal space provides a small gathering space and an internal room. The site is located in close proximity to larger active open space areas. Further communal space is provided at ground level with a co-work facility being provided for use of the residents.

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

### **Principle 9. Aesthetics**

#### **UDRP Comment – 26 April 2023**

*"The Panel acknowledges the exploratory work the proponent's architect has undertaken with the NSW Government Architect in understanding long-term materiality performance of the exposed precast concrete. The Panel remains interested in future guidance from GANSW.*

*Further design development of the facades is recommended in order to achieve an architectural character and expression expected of a development of this scale and visual prominence as is required to satisfy the design quality expected of Design Excellence."*

#### **Officer Comment:**

Additional façade details have now been provided that demonstrate the high standard of architectural design, materials and detail appropriate to the building type and location. In particular, further details have been provided to address the Panel's issues concerns regarding the proposed membrane finished precast paint finish.

East and west facing balconies and facades are angled, which informs the character of the building, but also has functional aspects that direct the views away from the neighbouring properties.

Perforated angled panels provide screening to the car parking in the podium and visual interest. The same screening is used at various levels to provide privacy screening for windows and balconies.

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

**Recommendation****UDRP Comment – 08 August 2023**

*"The Panel considers the direction that the design had progressed was positive, and that the proposed development is heading in a direction that appears capable of achieving Design Excellence in the future.*

*I confirm that the remaining issues identified by the UDRP, have been satisfactorily addressed - and the UDRP is now able to confirm its support for the proposal as exhibiting design excellence."*

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

In addition to the nine design principles, the ADG provides benchmarks for designing and assessing a residential apartment development. The following section contains an assessment of the development against key aspects of the ADG.

**3D Communal and public open space****Objective 3D-1**

An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping

<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
1. Communal open space has a minimum area equal to 25% of the site.	The development provides 525sqm, or 36.2% of communal open space.  The communal open space is designed to be accessible to all residents, with good passive surveillance.	Complies
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	The principle useable part, of the communal open space, is orientated north and achieves a minimum of 2hrs sunlight between 9am and 3pm in mid-winter to over 50% of the area.	Complies

<b>Objective 3D-2</b>						
Communal open space is design to allow for a range of activities, respond to site conditions and be attractive and inviting						
<b>Comment:</b>	<b>Compliance:</b>					
Facilities are provided within communal open spaces and common spaces for a range of age groups. The communal areas and the garden have been designed to provide large outdoor spaces, overlooked by the development, that can be enjoyed throughout the year by the residents and their visiting family and friends.	Complies					
<b>Objective 3D-3</b>						
Communal open space is design to maximise safety						
<b>Comment:</b>	<b>Compliance:</b>					
Communal open space and public domain is readily visible from habitable rooms and private open space areas within the development while maintaining visual privacy.	Complies					
<b>Objective 3D-4</b>						
Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood						
<b>Comment:</b>	<b>Compliance:</b>					
Public open space is not provided.	N/A					
<b>3E Deep soil zones</b>						
<b>Objective 3E-1</b>						
Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.						
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>				
1. Deep soil zones are to meet the following minimum requirements:	The ADG acknowledges that deep soil zones may not be possible on some sites, due to their location, and the fact that there are non-residential uses at ground floor level. Both of these conditions are relevant to this site. The proposal has limited opportunity for deep soil zones which is considered acceptable in terms of the ADG in this instance.  Landscaping has been provided on the podium level communal open space area.	Complies				
<table border="1"> <thead> <tr> <th>Site area</th> <th>Deep soil (% of site area)</th> </tr> </thead> <tbody> <tr> <td>Greater than 1500sqm</td> <td>7%</td> </tr> </tbody> </table>			Site area	Deep soil (% of site area)	Greater than 1500sqm	7%
Site area			Deep soil (% of site area)			
Greater than 1500sqm	7%					

<b>3F Visual privacy</b>														
<b>Objective 3F-1</b>														
Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.														
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>												
<p>1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Building height</th> <th style="text-align: center;">Habitable rooms &amp; balconies</th> <th style="text-align: center;">Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">up to 12m (4 storeys)</td> <td style="text-align: center;">6m</td> <td style="text-align: center;">3m</td> </tr> <tr> <td style="text-align: center;">up to 25m (5-8 storeys)</td> <td style="text-align: center;">9m</td> <td style="text-align: center;">4.5m</td> </tr> <tr> <td style="text-align: center;">over 25m (9+ storeys)</td> <td style="text-align: center;">12m</td> <td style="text-align: center;">6m</td> </tr> </tbody> </table>	Building height	Habitable rooms & balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	<p>The development is built to all boundaries from ground level - fourth storey. The tower above the podium provides the following side setbacks:</p> <p><u>Denison Street frontage</u></p> <ul style="list-style-type: none"> <li>• 12m to western side boundary of 20 Denison Street</li> <li>• 6m to eastern side boundary of 797 Hunter Street</li> </ul> <p><u>Hunter Street frontage</u></p> <ul style="list-style-type: none"> <li>• 6m to western side boundary of 815 Hunter Street</li> <li>• 7m to eastern side boundary 797 Hunter Street</li> </ul> <p>Windows which do not meet the required setbacks have been amended in response to advice from the UDRP to limit potential overlooking and are acceptable.</p> <p>The building orientation and apartment layout is such that there are limited opportunities for views into the neighbouring properties, having regard to the position of windows and the location of landscaping.</p> <p>Furthermore, it is noted that the development proposal was referred to CN's UDRP several during the assessment process. The UDRP did not raise concern with the design of the apartments regarding setbacks, building separation and visual privacy.</p> <p>The non-compliance can be accepted on merit. As such, the</p>	<p>Satisfactory (merit based)</p>
Building height	Habitable rooms & balconies	Non-habitable rooms												
up to 12m (4 storeys)	6m	3m												
up to 25m (5-8 storeys)	9m	4.5m												
over 25m (9+ storeys)	12m	6m												

	proposal complies with the design guidance for this objective.	
<b>Objective 3F-2</b>		
Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.		
<b>Comment:</b>		<b>Compliance:</b>
Generally, communal open space, common areas and access paths are separated from private open space and windows to apartments. A combination of substantial landscape planting, vertical fencing, and changes in level between private open space and common access paths, have been utilised at Ground Level to separate the private open space and windows of apartments from adjacent communal open space and common areas.		Complies
<b>4A Solar and daylight access</b>		
<b>Objective 4A-1</b>		
To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.	Over 70% of the apartments receive a minimum of two hours direct sunlight between 9am and 3pm at mid-winter.	Complies
<b>Design Criteria:</b>	<b>Comment</b>	<b>Compliance:</b>
2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter.	N/A	N/A



<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	Only two apartments, or 1.4% % of the 72 total apartments will not receive direct sunlight between 9am and 3pm.	Complies
<b>Objective 4A-2</b>		
Daylight access is maximised where sunlight is limited.		
<b>Comment</b>	<b>Compliance:</b>	
Skylights and high-level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms. Full height glazing for the maximum practical extent of apartment frontages has been provided to maximise daylight access. All apartments within the development will have access to all areas of communal open space, maximising daylight access for future residents by providing multiple options to access northern sun no matter the time of day.	Complies	
<b>Objective 4A-3</b>		
Design incorporates shading and glare control, particularly for warmer months.		
<b>Comment</b>	<b>Compliance:</b>	
The design incorporates shading devices such as eaves, external screening, and recessed balconies, to shade summer sun but allow winter sun to penetrate living areas.	Complies	
<b>4B Natural ventilation</b>		
<b>Objective 4B-1</b>		
All habitable rooms are naturally ventilated		
<b>Comment</b>	<b>Compliance:</b>	
All habitable rooms are naturally ventilated via adjustable windows, located in external walls, with suitable effective operable areas.	Complies	
<b>Objective 4B-2</b>		
The layout and design of single aspect apartments maximises natural ventilation.		
<b>Comment</b>	<b>Compliance:</b>	
For the single aspect apartments, apartment depths have been minimised and frontages maximised to increase ventilation and airflow.	Complies	

Natural ventilation is further enhanced by providing generous window and door openings (full height glazing for maximum practical extent of apartment frontages has been provided).										
<b>Objective 4B-3</b>										
The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.										
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>								
1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	Over 90% of the apartments are naturally cross ventilated due to apartments being designed around a central core.  Single aspect units are minimised and provided with shallow depth to maximise ventilation.	Complies								
<b>4C Ceiling heights</b>										
<b>Objective 4C-1</b>										
Ceiling height achieves sufficient natural ventilation and daylight access.										
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>								
1. measured from finished floor level to finished ceiling level, minimum ceiling heights are:	A 3.2m floor to floor height for residential uses allows for a 2.7m ceiling height and sufficient space for services, additional space is provided where services and structural space is needed.	Complies								
<table border="1"> <thead> <tr> <th colspan="2"><b>Minimum ceiling height for apartment and mixed-use buildings</b></th> </tr> </thead> <tbody> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use</td> </tr> </tbody> </table>		<b>Minimum ceiling height for apartment and mixed-use buildings</b>		Habitable rooms	2.7m	Non-habitable	2.4m	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	
<b>Minimum ceiling height for apartment and mixed-use buildings</b>										
Habitable rooms	2.7m									
Non-habitable	2.4m									
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use									

<b>Objective 4C-2</b>												
Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.												
<b>Comment:</b>		<b>Compliance:</b>										
Ceiling heights that increase the sense of space within the apartment and provide well-proportioned rooms can be achieved within the proposed floor-to-floor heights.		Complies										
<b>4D Apartment size and layout</b>												
<b>Objective 4D-1</b>												
The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.												
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>										
1. Apartments are required to have the following minimum internal areas:	All apartments are more than the minimum internal area, with most apartments being on average 15-20% larger than the minimum area.	Complies										
<table border="1"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m<sup>2</sup></td> </tr> <tr> <td>1 bed</td> <td>50m<sup>2</sup></td> </tr> <tr> <td>2 bed</td> <td>70m<sup>2</sup></td> </tr> <tr> <td>3 bed</td> <td>90m<sup>2</sup></td> </tr> </tbody> </table>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bed	50m <sup>2</sup>	2 bed	70m <sup>2</sup>	3 bed	90m <sup>2</sup>	The design drawings have suitably demonstrated the apartments are well designed by showing the useability and functionality of the space with realistically scaled furniture layouts and circulation spaces, despite the minor non-compliance.	
Apartment type	Minimum internal area											
Studio	35m <sup>2</sup>											
1 bed	50m <sup>2</sup>											
2 bed	70m <sup>2</sup>											
3 bed	90m <sup>2</sup>											
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>										
2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	All habitable rooms are provided a suitably sized window in an external wall.	Complies										
<b>Objective 4D-2</b>												
Environmental performance of the apartment is maximised.												
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>										
1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	For a ceiling height of 2.7m, the maximum depth for habitable rooms other than combined living/ dining/ kitchen rooms is 6.75m.	Complies										

	Other than combined living/ dining and kitchen rooms, all habitable room depths have been limited to a less than 6.75m.	
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	All apartments have a maximum habitable room depth of less than 8m from a window for open plan living, dining and kitchen area, measured from glass line to furthest kitchen bench.	Complies
<b>Objective 4D-3</b>		
Apartment layouts are designed to accommodate a variety of household activities and needs.		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
1. Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).	All master bedrooms have a minimum area of 10m <sup>2</sup> and all other bedrooms have a minimum area of 9m <sup>2</sup> (excluding wardrobe space).	Complies
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All apartments have bedrooms which achieve the 3m minimum dimension (measured excluding wardrobe space).	Complies
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
3. Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> <li>• 3.6m for studio and 1-bedroom apartments.</li> <li>• 4m for 2 and 3-bedroom apartments.</li> </ul>	All apartments have an open layout plan which achieve the minimum dimensions required for the number of bedrooms provided.	Complies
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
4. The width of cross-over or cross-through apartments are at	All cross-through apartments are greater than 4m in width.	Complies

least 4m internally to avoid deep narrow apartment layouts.																	
<b>4E Private open space and balconies</b>																	
<b>Objective 4E-1</b> Apartments provide appropriately sized private open space and balconies to enhance residential amenity.																	
<p><b>Design Criteria:</b></p> <p>1. All apartments are required to have primary balconies as follows:</p> <table border="1" data-bbox="209 759 611 1081"> <thead> <tr> <th>Type</th> <th>Min-area</th> <th>Min-depth</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4m<sup>2</sup></td> <td>-</td> </tr> <tr> <td>1 bed</td> <td>8m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>2 bed</td> <td>10m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>3+ bed</td> <td>12m<sup>2</sup></td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Type	Min-area	Min-depth	Studio	4m <sup>2</sup>	-	1 bed	8m <sup>2</sup>	2m	2 bed	10m <sup>2</sup>	2m	3+ bed	12m <sup>2</sup>	2.4m	<p><b>Comment:</b></p> <p>All apartments have primary balconies that achieve the minimum depth and minimum area required.</p>	<p><b>Compliance:</b></p> <p>Satisfactory</p>
Type	Min-area	Min-depth															
Studio	4m <sup>2</sup>	-															
1 bed	8m <sup>2</sup>	2m															
2 bed	10m <sup>2</sup>	2m															
3+ bed	12m <sup>2</sup>	2.4m															
<p><b>Design Criteria:</b></p> <p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15sqm and a minimum depth of 3m.</p>	<p><b>Comment:</b></p> <p>Four apartments on the podium level have private open spaces with areas of 30sqm; 59sqm; 63sqm and 78sqm.</p>	<p><b>Compliance:</b></p> <p>Complies</p>															
<b>Objective 4E-2</b> Primary private open space and balconies are appropriately located to enhance liveability for residents.																	
<b>Comments:</b>	<b>Compliance:</b>																

<p>All private open space and balconies have been orientated with the longer side facing outwards to optimise daylight access into adjacent rooms.</p> <p>Private open spaces and balconies predominantly face north, east, or west.</p> <p>Private open space and balconies have been designed as an extension of the main living area by being located adjacent to the living area, dining room or kitchen.</p>	Complies	
<p><b>Objective 4E-3</b> Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</p>		
<p><b>Comments:</b></p> <p>Solid, partially solid, or transparent fences and balustrades have been selected to respond to the location. They have been designed to allow views and passive surveillance of the street while maintaining visual privacy and allowing for a range of uses on the balcony.</p> <p>Full width full height glass balustrades have generally been avoided. Projecting balconies have been integrated into the building design and the design of soffits.</p> <p>Vertical batten screens, perforated metal solar screens, hoods and pergolas are integrated into the design to control sunlight and wind. Clothes drying, storage and air conditioning units are not located on balconies.</p>	<p><b>Compliance:</b> Complies</p>	
<p><b>Objective 4E-4</b> Private open space and balcony design maximises safety.</p>		
<p><b>Comments:</b></p> <p>The design and detailing of private open space and balconies has avoided opportunities for climbing and falls. Horizontal screening has not been proposed.</p>	<p><b>Compliance:</b> Complies</p>	
<p><b>4F Common circulation and spaces</b></p>		
<p><b>Objective 4F-1</b> Common circulation spaces achieve good amenity and properly service the number of apartments.</p>		
<p><b>Design Criteria:</b></p> <p>1. The maximum number of apartments off a circulation core on a single level is eight.</p>	<p><b>Comment:</b></p> <p>The maximum number of apartments servicing a single core (per level) is five.</p>	<p><b>Compliance:</b> Complies</p>

<p><b>Design Criteria:</b></p> <p>2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p><b>Comment:</b></p> <p>Two lifts are proposed, with 36 apartments per lift. Natural light and ventilation are provided from each foyer space.</p>	<p><b>Compliance:</b></p> <p>Complies</p>										
<p><b>Objective 4F-2</b> Common circulation spaces promote safety and provide for social interaction between residents.</p>												
<p><b>Comments:</b></p> <p>Internal corridors have been designed to provide clear and well-defined circulation paths. Direct and legible access has been provided between the vertical circulation points (lifts) and apartment entries by minimising corridor or gallery length to give short, straight, clear sight lines.</p>		<p><b>Compliance:</b></p> <p>Complies</p>										
<p><b>4G Storage</b></p>												
<p><b>Objective 4G-1</b> Adequate, well-designed storage is provided in each apartment.</p>												
<p><b>Design Criteria:</b></p> <p>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1" data-bbox="204 1332 574 1686"> <thead> <tr> <th>Dwelling type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4m<sup>3</sup></td> </tr> <tr> <td>1 bedroom</td> <td>6m<sup>3</sup></td> </tr> <tr> <td>2 bedroom</td> <td>8m<sup>3</sup></td> </tr> <tr> <td>3+ bedroom</td> <td>10m<sup>3</sup></td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	Studio	4m <sup>3</sup>	1 bedroom	6m <sup>3</sup>	2 bedroom	8m <sup>3</sup>	3+ bedroom	10m <sup>3</sup>	<p><b>Comment:</b></p> <p>48 out of 72 apartments (66%) are provided with storage located within the apartment, equal to at least 50% of the storage volume required in accordance with the number of bedrooms. External storages located throughout the podium levels and accessed from common area is proposed to achieve the total storage volume required.</p>	<p><b>Compliance:</b></p> <p>Complies</p>
Dwelling type	Storage size volume											
Studio	4m <sup>3</sup>											
1 bedroom	6m <sup>3</sup>											
2 bedroom	8m <sup>3</sup>											
3+ bedroom	10m <sup>3</sup>											
<p><b>Objective 4G-2</b></p>												

Additional storage is conveniently located, accessible and nominated for individual apartments.	
<b>Comments:</b>	<b>Compliance:</b>
In addition to the storage volume located within apartments, storage volume for individual apartments accessed from common areas (individual storage cages located in car parking areas) is proposed to achieve the total storage volume required. The individual storage cages, capable of storing larger and less frequently access items, are located in the car parking areas are secure and capable of being clearly allocated to specific apartments.	Complies

### **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 MU1 Mixed Use zone under NLEP 2012.

The proposal is permitted with consent within the MU1 Mixed Use zone under Clause 2.3 as a combination of *commercial premises* and *shop top housing*.

The proposal is consistent with the zone objectives, which are:

- a) *To provide a mixture of compatible land uses.*
- b) *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.*
- c) *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

The proposal is for a mixed-use development incorporating compatible residential and commercial land uses.

The development is in a highly accessible location at the edge of the West End precinct within Newcastle CBD. It is close to the Newcastle transport interchange that provides access to bus and rail services. The site is accessible by walking and cycling to a broad range of commercial and recreational land uses within the CBD and surrounding area including Marketown shopping centre, National Park recreational facilities, and the waterfront precinct at Honeysuckle.

Commercial space is provided at ground level to help activate the streetscape. It will not detract from the primary commercial centres in surrounding areas but will provide



increased population to increase the client base for facilities and services in those areas.

The proposed development will integrate residential and retail / business development within a city centre location. The site is ideally located with respect to public transport and will support the viability of the city centre through increased housing and employment opportunities within the area.

#### Clause 2.6 - Subdivision—Consent Requirements

The proposal includes strata subdivision, which is acceptable and appropriate for this form of development.

#### Clause 2.7 - Demolition Requires Development Consent

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

#### Clause 4.3 - Height of Buildings

The site has a height of buildings development standard of 60m. However, it is noted that under Part 7 Additional local provisions – Newcastle City Centre cl 7.5(6) provides for an additional 10% height for development that exhibits design excellence, as extracted below:-

*“7.5(6) The consent authority may grant consent to the erection or alteration of a building to which this clause applies that has a floor space ratio of not more than 10% greater than that allowed by clause 7.10 or a height of not more than 10% greater than that allowed by clause 4.3, but only if the design of the building or alteration has been reviewed by a design review panel”.*

The proposed development will result in a maximum height of 69.69m, equating to an exceedance of 3.69m or 5.59% above the height of buildings development standard for the subject land.

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

#### Clause 4.4 - Floor Space Ratio

Under NLEP 2012, the site has a FSR development standard of 6:1. The submitted FSR is 5.5:1, or 8,319m<sup>2</sup> of gross floor area (based on a site area of 1,522m<sup>2</sup>) and complies with this requirement.

#### Clause 4.6 - Exceptions to Development Standards

The proposed development involves two clause 4.6 variation requests: -

- i) Clause 4.3 –Height of buildings & Clause 7.5(6) of NLEP 2012
- ii) Clause 7.4 – Building Separation of NLEP 2012

An assessment of the Applicant's Clause 4.6 Variation Request to the height of building and building separation development standards is provided below.

The provisions of Clause 4.6 relevant to the assessment of the Applicant's variation request are as follows:

- 1) *The objectives of this clause are as follows:*
  - a) *To provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- 2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- 3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- 4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - b) *the concurrence of the Secretary has been obtained.*

- 5) *In deciding whether to grant concurrence, the Secretary must consider:*
- a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - b) *the public benefit of maintaining the development standard, and*
  - c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Clause 4.6 Variation Request to Clause 4.3 - Height of buildings

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

The development application does not seek to vary any of the development standards excluded from the operation of Clause 4.6 of the NLEP 2012. Accordingly, pursuant to Clause 4.6 it is open to the Applicant to make a written request seeking to justify the contravention of the building height development standard by demonstrating that compliance with the standard is unreasonable or unnecessary.

What is the name of the environmental planning instrument that applies to the land?

Newcastle Local Environmental Plan 2012.

What is the zoning of the land?

NLEP 2012 identifies that the site is within the MU1 Mixed Use zone.

The objectives of the MU1 Mixed Use zone are as follows:

- 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.*

Is the standard to be varied a development standard?

The Height of buildings development standard contained in NLEP 2012 is consistent with the definition of development standards under section 1.4 of the *Environmental Planning & Assessment Act, 1979* ('EPA Act') and not a prohibition.

What are the objectives of the development standard?

The objectives of Clause 4.3 – Height of buildings are as follows:

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

What is the proposed numeric value of the variations proposed to the development standard?

The numeric value of the proposed development and percentage variation is detailed in the following table.

LEP Clause	Development Standard	Proposal	Variation
Clause 4.3 – Building Height & Clause 7.5(6) – Design Excellence	66m	69.69m (top of lift overrun)	3.69m, or 5.59%.

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

In the Land and Environment Court Judgement of *Wehbe vs Pittwater Council [2007] NSW LEC 827*, (‘the *Wehbe* judgement’) Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with them may be considered unreasonable or unnecessary.

In this judgment, Preston CJ established five circumstances in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary. These are as follows:

- 1) *Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?*
- 2) *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?*
- 3) *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*
- 4) *Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?*

- 5) *Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning also unreasonable or unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.'*

The submitted Clause 4.6 - Exception to a development standard request to vary the height of building development standard seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable and unnecessary, stating that that the objectives of the development standards are achieved notwithstanding non-compliance.

The Applicant submits that the development is consistent with the objectives of Clause 4.3 for the following reasons:

- i) *The Newcastle West Precinct is identified through the strategic direction and goals in the Hunter Regional Plan, Greater Newcastle Metropolitan Plan, Newcastle Urban Renewal Strategy, Newcastle Urban Transformation and Transport Program and Newcastle Community Plan to drive the revitalisation in Newcastle City Centre and the long term-growth of the West End. In particular, the West End was identified for higher density and greater height outcomes, as the historical land use, subdivision and ownership patterns provided larger sites more capable of redevelopment without significant consolidation.*
- ii) *Reasonable daylight access is provided to surrounding developments, both existing and approved. Further, the proposed height variation will not result in any significant or detrimental impact to neighbouring sites. The development will not unreasonably overshadow adjoining properties or the public domain in both Hunter and Denison Streets.*
- iii) *The development that will contribute to the vitality, identity, and diversity of Newcastle City Centre by enacting revitalisation of this site in a manner that is entirely consistent with this strategic objective.*

Comment:

The applicant's Clause 4.6 variation request has demonstrated that the proposal meets the objectives of the height of buildings development standard. It is considered that requiring compliance with the development standard is unnecessary in this instance and that the proposed variations, as submitted, are in the public interest in terms of the height of buildings development standard objectives.

Similarly, it is considered that the proposed variations are in the public interest as the applicants Clause 4.6 variation requests have demonstrated that the zone objectives have otherwise been met.

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

The Applicant submits that the proposed variation to the building height development standard will not adversely and unreasonably affect the amenity of the surrounding sites and the public domain, regarding the following:

*The project will deliver an urban renewal project with a built form that reflects the ongoing emergence of a higher-density urban environment within Newcastle, particularly the West End.*

*The building projection above the height limit relates to the lift overrun only rather than any additional internal habitable floor space.*

*It will not result in any adverse or overbearing visual impact, will barely be perceptible (if at all) from a pedestrian perspective, and will have minimal impact on surrounding development or the public domain.*

*The height exceedance above the main roof line encompasses only approximately 5.59% of the site area.*

*The surrounding planning context contains sites with higher design controls as well as recent development that have exceeded controls and will be at similar or higher points in the landscape than is proposed with this development. When considered against the other approved buildings in the vicinity, the variation will not be noticeable, nor will the overall building design look out of place because of the variation.*

*An extensive design excellence process has ensued to arrive at the form and massing for the site, which is optimised to create a superior outcome for the public domain and for its appropriateness in context. The LEP envelope was tested and manipulated to arrive at the proposed massing. The UDRP requested a floor-to-floor height of 3.2m through the design excellence process which increased the overall height of the building.*

Comment

The applicant's Clause 4.6 request is made on several grounds which include the architectural design competition waiver process, the limited extent of the impacts (e.g., overshadowing and privacy) resulting from the proposal, the good design outcomes achieved in this instance (e.g., public domain areas, street wall heights, setbacks), lack of impacts on adjoining developments and meeting the strategic planning outcomes of the Newcastle City Centre.

In this respect, it has been assessed and determined that the Applicant's written request has demonstrated that the proposed building height variation does not result in significant adverse environmental impacts and that there are sufficient environmental planning grounds to justify a contravention to the development standard.

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

It is concluded that the Applicant’s Clause.4.6 variation request has satisfied the relevant tests under this clause.

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

The consent authority must be satisfied when assessing a Clause 4.6 variation, that the proposed development, and its associated Clause 4.6 variation are in the public interest by being consistent with the objectives of the development standard.

The applicant’s Clause 4.6 variation request, as assessed above, has demonstrated that the proposal meets the objectives of the height of buildings development standard. It is considered that requiring compliance with the development standard is unnecessary in this instance and that the proposed variations, as submitted, are in the public interest in terms of the height of buildings development standard objectives. Similarly, it is considered that the proposed variations are in the public interest as the applicant’s Clause 4.6 variation requests have demonstrated that the zone objectives have otherwise been met.

The Clause 4.6 variation request is accepted based on the first limb Wehbe as discussed above in terms of cl4.6(3)(a). As such, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of Sub-clause .4.6(4)(a)(ii) of the NLEP 2012 is satisfied.

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

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

The proposed exception to the Height of buildings development standard of NLEP 2012 is an acceptable planning outcome and, in this instance, requiring strict compliance would be unreasonable and unnecessary. The proposed variation to the development standard does not cause any undue adverse environmental impacts, including impacts on neighbouring properties, in terms of overshadowing and visual privacy.

Given the above, it is concluded that the Applicant has sufficiently demonstrated that requiring strict numerical compliance with the development standard would be unreasonable and unnecessary as the proposal already achieves the underlying objectives notwithstanding the numerical non-compliance.

#### Conclusion - Variation to Clause 4.3 Building Height

As demonstrated within the Applicant's written request by the assessment above, compliance with the development standard is considered unreasonable and unnecessary in the circumstances. There are sufficient environmental planning grounds to justify the contravention; and the proposed development will be in the public interest because it is consistent with the objectives of the zone and the Height of buildings development standard.

If made to strictly comply with Clause 4.3, there would be no additional benefit to the streetscape or public domain. Strict compliance with Clause 4.3 of the NLEP 2012 is therefore considered unreasonable and unnecessary.

The proposed height of the development is of a built form and scale that is compatible with the surrounding built environment and recent developments within the area. It is considered that it will have minimal adverse amenity impacts in terms of visual dominance and overshadowing. As such, it is considered that the height of the development is acceptable.

#### Clause 4.6 Variation to Clause 7.4 - Building separation

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

The development application does not seek to vary any of the development standards excluded from the operation of Clause 4.6 of the NLEP 2012. Accordingly, pursuant to Clause 4.6 it is open to the Applicant to make a written request seeking to justify the contravention of the building height development standard by demonstrating that compliance with the standard is unreasonable or unnecessary.

##### What is the name of the environmental planning instrument that applies to the land?

Newcastle Local Environmental Plan 2012.

##### What is the zoning of the land?

NLEP 2012 identifies that the site is within the MU1 Mixed Use zone.

##### The objectives of the MU1 Mixed Use zone are as follows:

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



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

Is the standard to be varied a development standard?

The building separation development standard contained in NLEP 2012 is consistent with the definition of development standards under section 1.4 of EPA Act and not a prohibition.

What are the objectives of the development standard?

The applicant has noted that clause 7.4 does not directly have associated objectives, so they have addressed the relevant objectives under clause 7.1 of Part 7 (Additional local provisions—Newcastle City Centre) under which clause 7.4 sits, in addition to the objectives design guideline 3F 'Visual privacy' of the ADG. This approach is appropriate, and has previously been accepted in similar circumstances, as a way to resolve this issue.

What is the numeric value of the development standard in the environmental planning instrument?

Clause 7.4 requires buildings within the Newcastle City Centre to be separated by a distance of not less than 24 metres once the building is above 45 metres in height.

What is the proposed numeric value of the development standard in your development application?

The numerical value of the proposed setback and proposed variations are outlined below. It should be noted that the distances have been measured above the 45m height plane, although there is currently no building located on 20 Denison Street, only an approved DA for a 20-storey mixed use building.

The development involves multiple variations of the required 24 metre building separation standard, the following table outlines the numerical values and percentage variations.

<b>Requirement</b>	<b>Proposed Setback</b>	<b>Variation</b>
24m to approved development at 20 Dennison Street (construction has not commenced)	Proposed setback varies between 20.06m to 22.55m	1.45m (6.04%) to 3.94m (16.42%)

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

As outlined above, in the Land and Environment Court Judgement of *Wehbe vs Pittwater Council [2007] NSW LEC 827*, (‘the *Wehbe* judgement’) Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with them may be considered unreasonable or unnecessary.

The submitted Clause 4.6 -Exception to a development standard request to vary the building separation development standard seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable and unnecessary, stating that that the objectives of the development standards are achieved notwithstanding non-compliance.

The design has responded to the UDRP advice and is considered compliant with the objectives and design guidance provided in the relevant planning controls regarding setbacks and boundary separation. The applicant’s variation request is summarised in the following points:

- i) The building separation is justifiable due to the management of privacy and visual impacts on the adjoining property, and the proposed building's compliance with the objectives of the ADG. It should be noted that the building at 20 Dennison Street has not commenced construction, and the site has been vacant and for sale for a number of years. UDRP supports the configuration of the tower and the proposed building separation.*
- ii) The projection of the building separation exceedance will not result in an overbearing visual impact and the bulk, scale, mass and siting are generally supported and considered appropriate and will have minimal impacts on surrounding development and the public domain.*
- iii) The proposed separation distance is consistent with the objectives of the Apartment Design Guidelines (ADG) in terms of visual privacy and building separation. The ADG "...is a State-wide policy that provides guidance on building separation and what is an equitable setback share in different scenarios."*

Comment:

The Applicant’s written request is considered to satisfy the requirements of Sub-clause 4.6(3)(a) and the first *Wehbe* consideration in demonstrating that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, as the objectives of the development standard are achieved notwithstanding non-compliance.

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

The Applicant submits that the proposed variation to the building separation development standard will not adversely and unreasonably affect the amenity of the surrounding sites and the public domain, with regard to the following:

- i) *Compliance with the ADG (2F Building Separation) in that there are no privacy impacts between the proposed tower and the approved development at 20 Denison Street. The development "...results in a good outcome as the design response has relied on the objectives established by the ADG" to:*
  - a) *"ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings".*
  - b) *"assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook".*
  - c) *"provide suitable areas for communal open spaces, deep soil zones and landscaping."*
- ii) *the proposed separation between the buildings does not result in any unreasonable impacts on adjoining properties or within the development with respect to overshadowing, loss of privacy or loss of views.*
- iii) *Relatively short building lengths present to the side boundary where compliance with building separation is not achieved;*
- iv) *The number of units directly facing the boundary have been minimised;*
- v) *Apartment layouts orientate views away from side boundaries and toward the frontages, and*
- vi) *High light windows and screening is provided to further mitigate direct line of sight across common boundaries.*

**Comment:**

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

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

It is concluded that the Applicant's Clause 4.6 variation request has satisfied the relevant tests under this clause.

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

The consent authority must be satisfied when assessing a Clause 4.6 variation, that the proposed development, and its associated Clause 4.6 variation are in the public interest by being consistent with the objectives of the development standard (building separation).

The applicant's clause 4.6 variation request, as assessed above, has demonstrated that the proposal meets the objectives of clause 7.1 Newcastle City Centre under which the Clause 7.4 building separation standard operates.

Requiring compliance with the building separation development standard is unnecessary in this instance and that the proposed variations, as submitted, are considered to be in the public interest in terms of the objectives of the Newcastle City Centre under which development standard operates. Similarly, it is considered that the proposed variations are in the public interest as the applicant's clause 4.6 variation requests have demonstrated that the zone objectives have otherwise been met.

The clause 4.6 variation request is accepted on the basis of the first limb Wehbe as discussed above in terms of Clause 4.6(3)(a).

#### Clause 5.10 - Heritage Conservation

The site is located in the Newcastle City Centre Heritage Conservation Area (HCA).

- i) Heritage items in the vicinity include the following:
- ii) 'Dairy Farmers Building' – LEP Item 505 – 924 Hunter Street Newcastle West
- iii) 'Cambridge Hotel' – LEP Item 502 – 789 Hunter Street Newcastle West
- iv) 'St Joseph's Convent and Sacred Heart Church and School' – LEP Item 503 – 841 Hunter Street Newcastle West
- v) 'Former Castlemaine Brewery' – NSW SHR Item 00312 – 787 Hunter Street Newcastle West

The site contains a three-storey brick building at 799 Hunter Street, a two-storey brick building at 805 Hunter Street, and a two-storey brick building and hardstand parking area at 8 Denison Street.

The heritage significance of the conservation area is defined in the Newcastle Development Control Plan 2012. The Statement of Significance of the Newcastle City Centre HCA is as follows:

*'The Newcastle City Centre Heritage Conservation Area is significant on many levels. The mix of commercial, retail and civic buildings is a powerful reminder of the city's past, its economic and social history. Historic buildings provide the backdrop to a city of dramatic topography on the edge of the sea and the mouth of a harbour.'*

*'The site of 799 Hunter Street did not contain any built fabric in the late nineteenth century with a structure and a shed indicated at 805 Hunter Street. This building was originally a shopfront and residential dwelling, later altered in 1921 accommodating operations of the newly formed Newcastle District Ambulance Fleet...The first temporary quarters were opened in Hunter Street West and daily the work of the ambulance grew [until] it was decided to launch a building scheme. A piece of land in Hamilton was procured, all municipal parties were invited by the Mayor to join in the project and very soon the campaign was in operation.'*

*'The opening ceremony [of the Hamilton premises] was held in December of 1923, with the building hailed as one of the most 'successful appeals to the philanthropic interests of the Newcastle public.' By this time the Hunter Street premises had been vacated with the subsequent use unknown. Due to the prominent location within Newcastle West's commercial precinct it is assumed the building would have returned to a shopfront. Historic photographs highlight extensive cosmetic alterations particularly to the Hunter Street façade including removal of the front verandah, decorative cast iron balustrade and post brackets... The ornate Victorian structure remained intact until the late twentieth century when it was replaced with a double storey brick commercial building in 1992.'*

Documentary evidence is provided in the submitted Heritage Impact Statement (HIS) which indicates the original building on the site is a different structure from the existing building at 805 Hunter Street. A photograph dated 1986 indicates the Victorian building was still extant at that time. Comparison with the existing building on the site and CN's archived aerial surveys confirms that the existing building was built at some point after 1986 and does not have an association with the significant period of development of the HCA.

The HIS provides the following comments regarding the contribution of the existing building:

*'The existing building fabric is no longer representative of the key period of significance of the HCA...Based on this assessment, 805 Hunter Street is deemed to have a neutral status within the HCA. This grading is recommended based on the current building whose construction period falls outside of any key period of significance, although the form, scale and height is commensurate with the streetscape.'*

The demolition of the non-contributory and neutral buildings on the subject site is acceptable in this instance.

The proposed replacement building is a twenty-storey mixed use development. Section 6.02.07 (Infill Development) provides the relevant objectives and controls for new buildings in HCAs. It is noted that 'infill development should not copy or replicate its neighbouring traditional buildings. Rather, it is appropriate to interpret the features of the neighbouring buildings and design them in a way that reflects and respects them.'

The setting of the site is undergoing a rapid change evidenced through recent approvals for several multi-storey developments in the immediate context. This is reflective of the changing context of the Newcastle West End and the transition from a lower scale industrial/commercial area to a new CBD. Heritage items and contributory buildings in this part of the Newcastle City Centre HCA are more sporadic and the surrounding streetscapes lack the integrity and cohesive character that is plainly evident in the majority of the precinct, as described in the Statement of Significance for the HCA.

Despite isolated buildings of heritage significance in the vicinity, including Sacred Heart Cathedral and Dairy Farmers Corner, the general streetscape has no consistent heritage character and is characterised by a wide range of building styles, uses and scales. There are several high-rise buildings approved or under construction in the vicinity, including the Dairy Farmers residential apartments, The Store development, and 20 Denison Street, all within 100m of the site.

It is considered that the proposal is responding appropriately to the context of the Newcastle West. The development will activate and enhance the immediate area and have a flow on benefit to nearby streetscapes with greater integrity in the HCA.

The HIS notes that the original building at 805 Hunter Street (now demolished) served as the first base of operations for the Newcastle District Ambulance Fleet, before a larger and permanent location was built nearby in Hamilton. The development provides an opportunity to interpret the history of uses on the site via a Heritage Interpretation Plan. A condition of consent is recommended in this regard (refer **Attachment B**).

#### Clause 5.21 - Flood planning

The site is not within a floodway or flood storage area and has been designed to comply with the relevant flood planning levels. It has a low property hazard category (P1) which does not infer restrictions on the parking of vehicles etc.

The L2 Life Hazard category for the site indicates a low risk to residents from potential flooding. Given the nature of the development, being multi-storey with no ground level residential, the development is considered compatible with the identified flood risk without the need for specific flood mitigation measures.

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils. The site has been subject to an acid sulfate soil assessment report which included testing. The results indicated that

potential or actual acid sulphate soils do not exist at the site and that an acid sulfate soils management plan is not required and the proposed development is considered satisfactory in this regard.

#### Clause 6.2 - Earthworks

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

An assessment has found that due to the nature, extent and location of the earthworks, and the proposed mechanisms to be put in place during the work, the level of earthworks proposed to facilitate the development is acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

#### Part 7 Additional Local Provisions—Newcastle City Centre

The site is located within the Newcastle City Centre. There are 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 proposal is consistent with the objectives of Part 7 of the NLEP 2012.

#### Clause 7.1 – Objectives of Part, and Clause 7.2 Land to which this Part applies:

Part 7 of the NLEP 2012 contains additional locality specific provisions for development on land located within the Newcastle City Centre.

The subject site is included within the Newcastle City Centre as shown on the '*Newcastle City Centre Map*'. In accordance with Clause 7.2, the provisions of Part 7 of the NLEP 2012 therefore apply to the Subject Application.

The proposed development is consistent with the objectives of Part 7, which include promoting the economic revitalisation of the Newcastle City Centre, facilitating design excellence, and protecting the natural and cultural heritage of Newcastle.

#### Clause 7.4 - Building Separation

This clause requires that a building must be erected so that the distance "*to any other building is not less than 24 metres at 45 metres or higher above ground*". The 24-metre requirement applies both to external sites and internally where multiple structures are proposed.

The proposed development does not meet the required separation to the approved development at 20 Denison Street, Newcastle West. The development involves multiple variations of the required 24 metre building separation standard. Please refer to the following table for the numerical values and percentage variations.

Requirement	Proposed Setback	Variation
24m to approved development at 20 Dennison Street (construction has not commenced)	Proposed setback varies between 20.06m to 22.55m	1.55m (6.05%) to 3.96m (16.42%)

The proposed development results in a maximum variation to the building separation development standard of 16.5%.

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

### Clause 7.5 - Design Excellence

Clause 7.5 applies to the erection of a new building or to significant alterations to a building and states that a consent authority must not grant consent to development within the Newcastle City Centre unless the development exhibits design excellence.

The Subject Application seeks development consent for alterations and additions which in the opinion of the consent authority are significant, and therefore the provisions of Clause 7.5 apply. Clause 7.5(3) provides several matters that the consent authority must consider in deciding whether to grant consent on land to which the design excellence provisions apply.

The proposed development is considered to deliver 'design excellence' and is of a high standard of architectural quality, having regard to the design excellence considerations provided in Clause 7.5(3) of the NLEP 2012. This finding was further confirmed by the UDRP who provided full support for the Subject Application as detailed in the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment in **Section 5.1** of this report above.

Clause 7.5(4) provides that development consent must not be granted for certain types of development unless an architectural design competition has been held in relation to the proposed development, this includes 'development in respect of a building that is or will be higher than 48m in height'.

The development has a building height greater than 48m. Accordingly, the provisions of Clause 7.5(4) apply to the Subject Application. However, Clause 7.5(5) specifies that Clause 7.5(4) does not apply if the Director-General certifies in writing that the development is one for which an architectural design competition is not required. Pursuant to Clause 7.5(5) of the NLEP 2012, the Government Architect NSW (delegate of the Director-General) has certified in writing that a design competition is not required for the proposed development, subject to the implementation of alternative design excellence process in accordance with the conditions of the waiver (letter dated 26 September 2022).

The alternative design excellence process provides a method of design integrity be established to ensure the development retains design excellence through to the



competition of construction, this includes continuing review by CN UDRP at key milestones. Accordingly, a design competition is not required to be held prior to the granting of development consent.

Suitable conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) requiring the development to be undertaken in accordance with the architectural design competition waiver issued by the Government Architect NSW and the Design Excellence Strategy which was the basis on which the waiver was granted.

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

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

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

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

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

## **5.3 Any development control plan**

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

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

It is noted that Council at its meeting of 27 September 2022 adopted the following amendments to the NDCP 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 the adopted NDCP 2012 chapters include savings provisions to the following effect: *'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.'*

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

The main planning requirements of relevance in the NDCP 2012, as it applied to the proposal at the time of lodgement, are discussed below.

### Residential Development - Section 3.03

This section applies to *residential flat buildings* and the submitted proposal meets this definition. Notwithstanding this, the operation of the Apartment Design Guide (SEPP 65) and Section 6.01 below would prevail over controls within Section 3.03 and also considered more applicable to the scale of the development and its City Centre location.

The proposal is acceptable having regard to the requirements of this section of the NDCP 2012. The proposal has been assessed by the UDRP and is acceptable having regard to the provisions of SEPP 65 and the Apartment Design Guide which prevail in terms of the design criteria.

The proposed design is acceptable having regard to its character, streetscape appearance, height, bulk, and scale. The development is of a type and scale that is allowed under the planning controls and the design of the development generally meets the required numerical controls in terms of density, height, setbacks, open space and landscaping. The proposed building, whilst being of a contemporary design is considered aesthetically appropriate within the emerging built context of the area, which is identified as an area of growth and revitalisation.

The impact on general outlook is considered acceptable having regard to the allowable height and scale for development under Council's adopted controls.

Overshadowing of neighbouring properties is considered acceptable, having regard to the site's context and the overall impact of the development throughout the year. In terms of the site itself, the building has been designed to allow both internal and external solar access appropriate to the nature of the development.

The floor space ratio, height and character of the development is considered acceptable, as previously discussed elsewhere in this report.

### Commercial Uses - Section 3.10

The commercial spaces are yet to be nominated for fit-out and use. Ground floor commercial is proposed on both frontages. These spaces have extensive glazing to provide visual connection with the street. Infrastructure and services are integrated within the building design and capable of being managed separately to the residential requirements.

While exact uses are not yet known, with the revitalisation of the west end of Newcastle, these areas will see increased pedestrian activity and are ideally located

to leverage off the proximity to public transport, services, retail, and increasing residential facilities.

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

#### Flood Management - Section 4.01

The subject site is affected by Local Catchment Flooding during both the 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) events. The flooding characteristics are as follows:

<b>Local Catchment Flooding:</b>	
Is any part of the site a floodway?	No
Is any part of the site a flood storage area?	No
1% AEP Level / Velocity / Property Hazard	5.1m AHD / 0.7ms <sup>-1</sup> / P1
PMF Level / Velocity / Life Hazard	5.2m AHD / 0.9ms <sup>-1</sup> / L2 (H1)

Accordingly the development is subject to the following requirements:

- a) Floor levels of any occupiable rooms in a new development on this site and along the Hunter Street frontage shall not be lower than the flood planning level (4.30m AHD).
- b) Floor levels of any occupiable rooms in a new development on this site and along the Denison Street frontage shall not be lower than the flood planning level (5.20m AHD).
- c) Car parking areas connecting to Denison Street are set no lower than the 1% Annual Exceedance Probability (1% AEP) flood level (5.10m AHD).

Subject to the recommended conditions of consent the proposal is acceptable in relation to flooding.

#### Mine Subsidence - Section 4.03

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

#### Safety and Security - Section 4.04

The development has been designed with an acceptable level of casual surveillance and there are limited opportunities for hidden areas within the public spaces. The

layout includes multiple retail premises which will encourage activity during business hours and potentially into the evening.

Additionally, CCTV will also be utilised within the public domain areas, driveways, lobbies and lift areas. Access to the residential components of the proposal will be via security swipe passes ensuring appropriate access control.

The proposal is adequate in relation to the provisions of Section 4.04 and Crime Prevention Through Environmental Design (CPTED).

#### Social Impact - Section 4.05

The development is generally consistent with the intended strategic planning outcomes for the Mixed-Use zone and the Newcastle City Centre. It is expected that the proposal during construction, and in operation, would provide positive economic inputs to the broader Newcastle area and beyond. The proposed development will result in the provision of additional housing within an established suburb with access to public transport, employment opportunities, community infrastructure, education, and services.

The development will increase the population in an inner-city location and lead to the activation of an existing underutilised site. The associated public domain improvements also contribute positively to the existing locality.

Redevelopment of this under-utilised site is a positive outcome socially. The proposal will provide additional housing and employment opportunities in the locality. As such, the proposed development is acceptable in terms of the above section of NDCP 2012. The proposal is acceptable having regard to social and economic impacts.

#### Soil Management - Section 5.01

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

Accordingly, the proposal is acceptable subject to conditions to address soil management and ensure adequate sediment and erosion control measures are in place for the construction period.

The quality of any fill material to be imported to the site can be controlled by appropriate conditions of consent recommended at **Attachment B**. The proposed development is acceptable in terms of the above Section of the NDCP 2012.

#### Land Contamination - Section 5.02

Land contamination has been considered elsewhere in this assessment report, in accordance with the relevant requirements of SEPP H&R.

### Vegetation Management - Section 5.03

The existing subject site does not contain any vegetation.

An arborist report has been prepared to assess the impact of the development on the two street trees on the Dennison Street frontage. The arborist report identifies that the intention is to retain the street trees. The arborist report identifies the possibility of unavoidable impacts due under boring of roots and trimming of branches for cranes movements, which could have a detrimental impact on the health of the tree.

Conditions relating to the protection of the street trees have been imposed (refer Attachment B), including that works in the tree protection zone must be supervised by a suitably qualified arborist. Further conditions have also been imposed relating to the required trimming to accompany any application for hoarding and the future s138 Roads Act approval. The conditions ensure the retention of the existing street trees.

### Aboriginal Heritage - Section 5.04

An AHIMS search has been provided with the development application which indicates no Aboriginal sites within a 50 metre radius. However, an updated basic search identified that the site is adjacent to an Aboriginal site. It is likely that this is a new site registered as a result of recent development undertaken subsequent to the applicant's search.

A Due Diligence report has been provided due to the known Aboriginal site adjacent to the development to demonstrate that the due diligence process has been followed and provide appropriate management recommendations

### 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*'.

### Heritage Conservation Areas - Section 5.07

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

### Newcastle City Centre - Section 6.01

*General controls*

(6.01.03) A1. *Street*

*wall heights*

The proposal has been designed with setbacks and proportions consistent with the adjoining development existing and as approved sites i.e., 4-storeys at 815 Hunter St and 3-storeys at 20 Denison Street. The setbacks are appropriate given the sites context and relationship with surrounding development.

Further, the setback has provided opportunities for improvement to the public domain with use of soft landscaping. The proposal meets the setback requirements under Section 6.01 –Newcastle City Centre of NDCP 2012 and has been considered capable of achieving design excellence by the UDRP.

#### *A2. Building setbacks*

A zero setback is described for the front, side, and rear boundary up to the prescribed podium street wall height (which is 16m for the subject site) and a 6m setback above.

The floor plans and setbacks establish an appropriate relationship with adjoining sites, having regard for the approved developments. The setbacks allow for solar access and ventilation, reasonable view sharing while maintaining suitable privacy and outlook from habitable spaces.

The relevant components of the Apartment Design Guide (ADG) under SEPP 65 prevail over building setback controls of the NDCP 2012. The development application satisfies the relevant provisions of the ADG, as detailed under the SEPP 65 assessment in **Section 5.1** of this report. As such, the development application is considered acceptable regarding side boundary setbacks.

The proposal has been the subject of an architectural design competition waiver and review by CN's UDRP and, overall, the proposal is satisfactory in terms of urban design outcomes.

#### *A3. Building separation*

The building separation controls for mixed use development specify compliance with the relevant components of the ADG under SEPP 65 as an acceptable solution. The development application satisfies the relevant provisions of the ADG, as detailed in the SEPP 65 assessment in **Section 5.1** of this report.

#### *A4. Building depth and bulk*

Controls prescribe that floor plates above street wall height, a maximum Gross Floor Area (GFA) of 900m<sup>2</sup> and a maximum building depth of 18m is described for residential tower development. Building floor plates are below 900m<sup>2</sup>, however site configuration has dictated a design with a central core and building depth that exceeds 18m. The design achieves an appropriate built form and scale and mitigates potential impacts through an appropriate design response for the dual frontage site.

Further, the development application satisfies the relevant provisions of the ADG to allow for ventilation, daylight access, view sharing and privacy in neighbouring

development and the public domain, as detailed under the SEPP 65 assessment in **Section 5.1** of this report.

#### *A5. Building exteriors*

The facades have been designed with a mix of materials, including pre-cast concrete with rendered finish, and flat panel lightweight cladding.

The material selection presents a high-quality design and finish that will subtly complement the surrounding buildings and the character of the wider area. A well-articulated building form which differentiates between the base, middle and top is achieved.

The proposal has been the subject of an architectural design competition waiver and review by CN's UDRP and, overall, the proposal is satisfactory in terms of urban design outcomes.

#### *A6. Heritage buildings*

This part relates to the assessment or alteration work of listed heritage items and does not apply to the subject development application.

#### *A7. Awnings*

The proposed development includes awnings over both the Denison Street and Hunter Street frontages to protect pedestrians from sun and rain.

#### *B1. Access network*

The proposal includes active uses at the ground level on Denison Street and Hunter Street frontages promoting access and public use of the public footpath fronting the site.

The proposed development has provided 100% Silver Level unit types which is consistent with Housing Priority 3 in Newcastle's Housing Strategy and are adaptable for a person in a wheelchair. In addition to this, provision has been made for 8 x 1-bedroom apartments which meet Liveable Housing Australia 'Gold Level' standards.

#### *B2. Views and vistas*

New development must protect the nominated views within the city centre and achieve equitable view sharing from adjacent development. There are no identified view corridors from Denison Street or Hunter Street to be protected and no views across the street block between Parry and Hall Streets.

Given the location of the subject site in a high-density residential zone and the constraints associated with the narrow subdivision pattern, it is inevitable the development application will result in some impact on the views of existing residential development adjacent the subject site.

View sharing has been considered having regard to the planning principles contained within *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 at 25-29. A reasonable level of outlook and views will be maintained consistent with this city centre urban environment. On balance, the view impact of the proposed development is considered acceptable and the view sharing reasonable.

### *B3. Active street frontages*

The proposal provides a positive street presentation, with active frontages and uses at ground level to both Denison Street and Hunter Street that will promote street activation and contribute to the desired streetscape.

### *B4. Addressing the street*

The proposal contributes to the safety, amenity, and quality of the public domain through the provision of pedestrian access to ground level business tenancy and residential lobby on Hunter, whilst a separate vehicular and pedestrian access is provided on Denison Street. Glazing is provided across a significant part of the street frontages, encouraging passive surveillance and activity.

### *B5. Public artwork*

Under the DCP public artwork is required to be provided where development is over 45m in height. The development is required to allocate 1% of the capital cost of development towards public artwork for development. The artwork is subject to consideration by CN's Public Art Reference Group (PARG), and appropriate conditions of consent are recommended at **Attachment B**.

### *B6. Sun access to public spaces*

New development is required to be designed to ensure that reasonable sunlight access is provided to new and existing public spaces.

The overshadowing impacts of the proposed development have been assessed and the development does not result in unreasonable overshadowing impacts to either existing or proposed public spaces. Further detailed assessment is included in the ADG assessment.

### *B7. Infrastructure*

Stormwater, water, and sewerage infrastructure is integrated into each site and does not create negative off-site impacts.

The proposed development will connect to the existing water and sewer network services the subject site. The infrastructure controls specify compliance with the relevant controls under Section 7.06 Stormwater of the NDCP 2012 as acceptable solution. The proposal satisfies the relevant infrastructure controls, as discussed under '*Stormwater - Section 7.06*' of the NDCP 2012 assessment below.



### *B8. Site amalgamation*

The subject site is not located on former rail corridor land, accordingly, this section does not apply.

### Heritage Conservation Areas - Section 6.02

These matters were addressed under Clause 5.10 of the NLEP 2012 above. The proposed development is acceptable in terms of the above Section of the NDCP 2012.

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

#### *General controls (7.02.02)*

The submitted Landscape Plans demonstrates sufficient areas of soft landscaping with a detailed planting schedule also provided. Landscaping is concentrated on the podium level including the outdoor communal space. Elements of wall planting are proposed to soften the façade and integrate with the architectural design, materials, and colours. On-structure planting within the building facades addressing Denison Street and Hunter Streets help to soften the built form, maximise the amenity of the public domain.

The development is acceptable having regard to the proposed landscaping, considering the form of development and its location within the City Centre. Deep soil planting is not required due to the urban nature of the site.

Overall, it is considered that the landscape design for the proposed development is acceptable and this section of the DCP has been satisfactorily addressed.

### Traffic, Parking and Access - Section 7.03

#### *Traffic studies & plans (7.03.01)*

##### *A. Traffic impact study*

A Traffic Impact Assessment has been prepared to address traffic impacts of the proposed development on the local and state road network.

The Traffic Impact Assessment confirms that:

- i) the proposed development will not adversely impact on the local and state road network;
- ii) the proposed access arrangements provide safe and suitable site access to all components of the development and would comply with relevant CN and AS2890.1 requirements;
- iii) the internal circulation arrangement is appropriate and can comply AS2890.1 requirements; and

- iv) the on-site parking provisions proposed will be adequate and can comply with rates set out in this section of the NDCP 2012.

The development is well connected to high-capacity classified roadways immediately to the north (Hunter Street - Regional) and south (Parry Street – State) providing good access to the Newcastle CBD and the Greater Newcastle Area. The development is well connected to existing pedestrian and cycling infrastructure. The development is well connected to public transport, being 200m of Newcastle Interchange which provides access to heavy rail (Hunter & Central Coast), light rail, and upwards of 10 bus routes.

A traffic survey undertaken to determine peak traffic on Denison Street to be only 160 two-way movements per hour. The assessment found the development is likely to increase loading on the Denison/Parry and Denison/Hunter intersections by only 16 peak hour vehicle movements with the assumption the proposed commercial tenancies would generate only passing trade. The assessment concluded this increase in loading was minor and would not alter the existing level of service of the intersections.

The findings of the Traffic Impact Assessment are supported, and the development application is considered acceptable.

#### Construction traffic management plan

The provision of traffic management measure for the construction phase of the project to minimise adverse impacts on traffic movement, pedestrians, and/or parking can be addressed by the provision of suitable conditions of consent.

A condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) requiring a Construction Traffic Management Plan be submitted to CN for approval prior to commencement of site works.

#### *Parking provision (7.03.02)*

##### *A. Parking rates*

Parking requirements set out in the NDCP are superseded by the provisions of SEPP65. Section 30 of SEPP65 defers to Part 3J of the Apartment Design Guide to establish minimum on-site car parking requirements. This guide, in turn, establishes minimum on-site car parking requirements as being either RTA's "Guide to Traffic Generating Development, or the car parking requirement prescribed by the relevant council, whichever is less." Therefore, the RTA's Guide to Traffic Generating Development (GTGD) provides the relevant rates for the development.

The GTGD, which provides lesser rates for both high density residential flat buildings in metropolitan sub-regional centres, and unrestrained commercial areas, determines the minimum parking requirements for development under SEPP65.

Use	GTGD Parking Rate	Relevant Quantity	Parking Requirement
High density residential flat buildings (metropolitan sub-regional)	0.6 spaces per 1 bedroom unit	6 one-bed units	3.6 car spaces
	0.9 spaces per 2 bedroom unit	50 two-bed units	45 car spaces
	1.4 spaces per 3 bedroom unit	16 three-bed units	22.4 car spaces
	1 visitor space per 5 units	72 total units	14.4 visitor car spaces
Commercial (unrestrained)	1 space per 40sqm GFA	195m <sup>2</sup>	4.9 (5) car spaces
Total Requirement:			71 car spaces (residential)
			14 car spaces (visitor)
			5 car spaces (commercial)
Provided:			81 car spaces (residential)
			9 car spaces (visitor)
			4 car spaces (commercial)

The development provides a total of 94 off-street car parking spaces which exceeds the minimum total parking accommodation requirement of 90.4 spaces. It is noted, however, that insufficient car spaces are allocated to visitor and commercial parking to meet minimum SEPP65 requirements, whilst an excess of 10 spaces have been allocated to residential parking.

The deficiency of visitor and commercial car parking is not supported on merit considering the development will remove all on-street car parking spaces in the Denison Street frontage. A condition of consent has been imposed requiring the allocation of off-street car parking to include minimum of 14 visitor and 5 commercial car spaces (refer **Attachment B**) and a maximum 75 residential spaces.

#### *Design of parking structures*

The proposed parking is consistent with the provisions of this section of the DCP with the design positioning the proposed parking sleeved behind screens and located at the podium levels of the design. The site having two street frontages, is restricted in its opportunities to reasonably limit the positioning of the required car parking within

the design. Overall, the visual appearance outcomes achieved by the proposed parking, and its integration into the design of the overall proposal is acceptable.

#### Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section subject to conditions of consent.

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

Extensive stormwater infrastructure works in the public domain are required to achieve appropriate drainage of the proposed development. A stormwater management concept has been prepared and having regard to the site attributes and constraints, the solution ensures an appropriate outcome for current and future development drainage.

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

#### Waste Management - Section 7.08

The applicant has prepared a detailed waste management plan, which addresses waste minimisation and litter management strategies. Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

A Waste Management Plan (inclusive of Site Waste Minimisation Management Plan) is included as part of the application.

The proposed development provides communal waste storage areas located within the carpark to be used for both commercial and residential waste. Adequate space has been provided to accommodate the required number of bins, with sufficient space for safe manoeuvrability.

Waste collection is proposed from Denison Street via a loading zone, with a CN vehicle able to stand kerbside while operators collect and return bins from the bin storage area without affecting traffic. Collection contractors will exit the vehicle and transport the bins to the vehicle to be emptied via a 'wheel-in/wheel-out'. Once emptied, the bins will be transported back to the bin holding room immediately, where the building caretaker will return them to the bin storage room to resume operational use. Conditions of consent have been imposed at **Attachment B**.

Based on the submitted information, the development application is considered acceptable having regard to the requirements of s.7.08.

### Street Awnings and Balconies - Section 7.10

Street awnings on both frontages will improve pedestrian amenity and provide weather protection to the commercial space and residential entry.

### Development Contributions

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

The development contribution applicable to the development is \$908,771.52 (subject to indexation). A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions at **Attachment B**.

### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

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

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

The amended plans are acceptable having regard to the proposed height, external appearance, character, bulk, and scale of the proposed development. The proposal has been assessed by CN's Urban Design Review Panel on several occasions and is acceptable having regard to the provisions of SEPP 65 and the Apartment Design Guide.

The height of buildings and building separation development standards are exceeded by the proposed development. However, these variations have been considered in the context of adjoining and potential future development. The development also has minimal impacts on surrounding development and is acceptable.

The proposal achieves adequate visual and acoustic privacy for the proposed residential development and for the surrounding properties and has suitably considered the potential future development of the area.

There are no significant views that will be impacted in this location and the proposal does not have a significant adverse impact on the adjoining properties in terms of view loss. The development will alter the general outlook due to the proposed changes in size and scale, but this is reasonable having regard to the height and scale of adjacent developments and other approved developments in the area.

## 5.7 The suitability of the site for the development

The proposed development is consistent with the desired character and built form of the Newcastle City Centre, bringing new residential opportunities that are well placed, highly accessible and functional.

The site is within proximity to commercial centres to ensure residents will have good levels of amenity and proximity to services and facilities. The site is located within an established suburb and is accessible to key services and amenities. The land is suitably zoned for the development which is permissible.

The variation sought to the building height and building separation development standards are acceptable having regard to the built form and potential impacts. The application has been reviewed and supported by CN's UDRP during the assessment and is supported.

The site is not affected by significant environmental constraints that would preclude development of the site. The site is therefore suitable for the development, as outlined within the detailed assessment contained within this report, and subject to the recommended conditions of consent.

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

The application was notified in accordance with CN's Community Participation Plan between 08 August and 25 August 2022, and in response two submissions were received. It is noted that the amended plans were not renotified as the changes resulted in an improved outcome to the development originally proposed.

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	<p>Construction work will be contained within the site with minimal impact upon the external road network. There will be a need for construction machinery to access the site and traffic associated with workers.</p> <p>The site will require a crane and the movement of heavy vehicle in and out of the site will need to be safely managed with a Construction Traffic Management Plan to be prepared prior to release of any Construction Certificate. This will require pedestrian access across the site frontages to be managed in a safe and appropriate manner.</p>
Overshadowing to commercial property located opposite the development site	The site referred to is a commercial tenancy, and whilst there are no provisions within NDCP 2012, or the Apartment Design Guide to ensure commercial buildings receive adequate solar access. As demonstrated in the submitted shadow diagrams,

	<p>the property in question maintains at least 3 hours of sunlight between 9:00am and 12:00pm.</p>
<p>Impacts associated with the podium walls being built to boundaries</p>	<p>The proposed development is consistent with the setback provisions identified in both DCP2012 and the ADG, with podium levels being built to the boundary.</p> <p>The boundaries of the site have been surveyed, and the proposed development is contained within boundaries for the site.</p> <p>The proposed development is consistent with the strategic intent for the west-end of Newcastle CBD and will lead the revitalisation of this section of Hunter and Dennison Street, which is seen as an overall benefit.</p>
<p>Impact during demolition and construction activities</p>	<p>It is acknowledged that there will be short term impacts associated with the demolition and construction of the proposed development. Conditions of consent have been included (refer <b>Attachment B</b>) in relation to hours of works, demolition, construction, and traffic management measures. Further, prior to issue of a Construction Certificate, the developer is required to submit a Construction Management Plan and a Traffic Management Plan to CN for approval.</p> <p>Demolition and construction will be carried out in accordance with the relevant standards and conditions of consent. All efforts will be made to minimise impacts on adjoining residences, with construction noise to be limited to approved hours and dust minimisation processes used during demolition.</p>
<p>Loss of outlook</p>	<p>The proposed development is consistent with the setback and siting provisions identified within NDCP 2012 and the ADG. The views from the rear of the property in question are not considered to be significant and does not have an adverse impact on the adjoining properties in terms of view loss.</p> <p>The development will alter the general outlook due to the proposed changes in size and scale, but this is reasonable having regard to the height and scale of adjacent developments and other approved developments in the area.</p>

The issues and concerns raised in the submissions do not warrant the refusal of the application in its present form or require any further amendments. The proposed development does not raise any other significant public interest issues beyond matters already addressed in this report.

The proposed development is considered an acceptable form of development for the site as discussed within this report subject to the conditions included in the recommended Draft Schedule of Conditions (refer to **Attachment B**).

## 5.9 The public interest

The proposal is in the public interest and facilitates the orderly and economic development of the site for purposes for which it is zoned and will not have any significant adverse social or economic impacts.

Further, the development is consistent with the aims and design parameters contained in the NLEP 2012 and NDCP 2012 and other relevant environmental planning instruments. The proposal is consistent with CN's urban consolidation objectives, making efficient use of the established public infrastructure and services.

The development does not cause any significant overshadowing, privacy impacts or unreasonable view loss for surrounding properties. The proposed development does not raise any other significant public interest issues beyond matters already addressed in this report.

## 6.0 CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls and the key issues identified in this report, it is considered that the application can be supported. The proposed development is suitable for the site and adequately responds to environmental, social, and economic impacts from the development and therefore, is within the public interest.

Given the high-quality design outcome for the site and its positive contribution to the locality, consistency with Local Strategies (including the NDCP 2012) and applicable State Environmental Planning Policies, the proposal is appropriate in the context of the site and the locality.

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



## **ATTACHMENTS**

- Attachment A:** Submitted Plans - 805 Hunter Street Newcastle West
- Attachment B:** Draft Schedule of Conditions - 805 Hunter Street Newcastle West
- Attachment C:** Processing Chronology - 805 Hunter Street Newcastle West
- Attachment D:** General Terms of Approval - Subsidence Advisory New South Wales - 24 August 2022 - 805 Hunter Street Newcastle West

**Attachments A - D distributed under separate cover**

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

**APPLICANT:** ENIGMA COMMUNICATION PTY LIMITED  
**OWNER:** ENIGMA COMMUNICATION PTY LIMITED  
**REPORT BY:** PLANNING & ENVIRONMENT  
**CONTACT:** EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT /  
ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT  
& REGULATION

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### PART I

#### PURPOSE

An application has been received seeking consent for alterations and additions to an existing office building at 21 Bolton Street Newcastle (level 5).

The submitted application was assigned to Development Officer, Oliver King, for assessment.

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



Subject Land: 5/21 Bolton Street Newcastle

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Public Participation Plan (CPP) between the dates of 23 March – 6 April 2023. In response, no submissions were received.

#### Issues

- 1) The proposed development does not comply with the FSR development standard of 3:1 under the NLEP 2012. The proposed development has an FSR of 4.41:1 which exceeds the control by 47%. It is noted that the existing building currently has an FSR of 4.36:1 which exceeds the FSR control by approximately 45.33%. The proposed development will result in an increase of exceedance by approximately 1.67%.

## Conclusion

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

## RECOMMENDATION

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

## Political Donation / Gift Declaration

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject property comprises Lot 5 SP 69696 and is known as 21 Bolton Street, Newcastle. The site has a total area of approximately 500m<sup>2</sup> with a 17.34m western frontage to Bolton Street and a rear eastern boundary of 10.21m to an unnamed laneway. A view of the site as seen from Bolton Street is included in **Figure 1** below.

The site contains a part five/part seven storey office building (with single basement level). The occupied portion of the building is five storeys in height, with Level 6 and 7 used primarily as a plant and service room areas. The proposed development will be on Level 5 which is currently vacant and previously used as an office. The total gross floor area of the building on the subject site is 2180m<sup>2</sup>.

The existing internal layout of the former office premises on Level 5 comprises:

- i) Two internal lifts
- ii) Hallway, services closet and fire stairs
- iii) Four office spaces
- iv) One bathroom
- v) One kitchen area
- vi) Two outdoor areas.

The site is located at the eastern extent of the Newcastle City Centre and within both the Newcastle City Centre and City Centre Heritage Conservation Area as identified under the Newcastle Local Environmental Plan 2012.

The site is well serviced by nearby public transport. The nearest light rail station is approximately 300m walking distance to the north-west of the site along Scott Street. Numerous bus routes connecting the greater Newcastle region provide frequent services along King Street, Bolton Street and Watt Street in the vicinity of the site. The closest bus stop is on Bolton Street, approximately 70m walking distance from the site.

Surrounding land uses in proximity to the site predominately comprise a range of retail premises (including shops, cafes, restaurants, bars and pubs), offices and residential apartments. The closest residential developments are located on the western side of Bolton Street opposite the site at Nos. 22 and 28 Bolton Street.

The following historical building applications have been submitted for the site:

- i) BA1981/0300 for alterations and additions to an office level.
- ii) BA1981/2423 for alterations and additions and caretakers flat.
- iii) BA1981/2720 for alterations and additions to an office level.
- iv) BA1990/2765 for the construction of a doorway.
- v) BA1990/6087 for alterations and additions to an office level.
- vi) BA1990/6087/02 for pergola structure on rooftop.

- vii) BA1991/1938 for alterations and additions for an office fitout.
- viii) BA1993/0149 for alterations and additions to an office level.
- ix) BA1994/0707 for alterations and additions for an office fitout.
- x) BA1994/2252 for the cutting of an opening between buildings.
- xi) DA2002/1000 for Strata subdivision.



**Figure 1** – View of the site from Bolton Street, facing north-east.

## **2.0 THE PROPOSAL**

The application seeks consent for partial demolition and alterations and additions to the existing office building. The proposed works primarily involve the refurbishment and minor expansion of the Level 5 office space and the introduction of a roof terrace.

Specifically, the proposal includes the following components:

### Demolition Works

- 1) Removal of internal walls, doors, and windows within the existing office space.
- 2) Removal of internal flooring.
- 3) Removal of bathroom and kitchen features.

### Construction Works

- 1) New open plan conference, workspace and kitchen area.
- 2) New male and female WC with adjoining shower.
- 3) New editing suite.
- 4) New outdoor area (eastern portion).
- 5) New open plan outdoor kitchen, dining and lounge area with an adjacent rooftop terrace area (western portion).
- 6) New outdoor seating area.
- 7) Two new synthetic turf outdoor areas with associated planter boxes.
- 8) Associated new roofing.

The northern portion of the site including the lift area, hallway, fire stairs and services rooms are to remain existing, as demonstrated on the proposed plans.

As a result of the proposed works, the development will increase the gross floor area of the building from 2,180m<sup>2</sup> to 2,205m<sup>2</sup> which is a total increase of 25m<sup>2</sup>. The increase in GFA will result in a total FSR of 4.41:1. The proposal therefore results in an exceedance of the allowable control of 47%.

As the site area is less than 1500m<sup>2</sup>, a maximum FSR of 3:1 is permitted on the site. It is noted that the existing FSR is 4.36:1. The existing FSR exceeds the maximum allowable by 45.33%.

The proposed development has an increase above the current FSR of 1.67%.

The operation of the development seeks to maintain the permissible ongoing use as an 'office premises'.

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

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

### **3.0 PUBLIC NOTIFICATION**

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

## 4.0 INTEGRATED DEVELOPMENT

The proposal is integrated development pursuant to Section 4.46 of the EP&A Act as approval is required from the Subsidence Advisory NSW under Section 22 of the Coal Mine Subsidence Compensation Act 2017, due to site being located within a mine subsidence district. The Subsidence Advisory NSW granted their '*General Terms of Approval*', on 11 April 2023, as included in **Attachment D**.

## 5.0 PLANNING ASSESSMENT

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

### 5.1 Provisions of any environmental planning instrument

#### State Environmental Planning Policy (Resilience and Hazards) 2021

##### Chapter 2 -Coastal Management

The aim of this chapter of the policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objectives of the *Coastal Management Act 2016*. The site is located in the 'coastal use area' and 'coastal environment area' under the mapping of coastal management areas.

Clause 2.12 requires that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to '*cause increased risk of coastal hazards on that land or other land.*'

The site is located within a well-established urban setting, with the site fully developed and clear of vegetation. The proposal is not considered likely to impact the integrity and resilience of biophysical, hydrological and ecological environments, given the proposed works mainly relate to interior works of the established building footprint.

The general building form and overall bulk and scale of the proposal will not significantly change; with those amendments to design considered to contribute positively to the overall building form and improve the design aesthetics of the building and interaction within the streetscape.

The proposal is considered to be acceptable having regard to this policy and is considered to maintain an acceptable level of visual amenity and scenic qualities within this coastal area.

##### Chapter 4 – Remediation of land

Clause 4.6 of the policy 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 do not identify any past contaminating activities on the site. The site has historically been used for commercial/office purposes and is not understood to have been used for activities that may result in contamination.

The proposal is considered to be acceptable having regard to this policy.

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

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

#### Clause 2.1 - Land Use Zones

The subject property is included within the MU1 'Mixed Use' zone under the provisions of NLEP 2012. The proposed development is considered an 'office premises' which, falls under the group term of commercial premises and is permissible in the zone.

The proposal is considered to be consistent with the zone objectives, which are as follows:

- a) *'To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- b) *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- c) *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- d) *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- e) *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.'*

The proposed development will encourage a diversity of uses to generate employment opportunities and support nearby or adjacent commercial centres without adversely impacting on the viability of those centres. The site is considered ideally located with respect to public transport and will support the viability of the city centre through increased employment opportunities within the area.

#### Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of internal walls, doors and windows as previously stated. Conditions are recommended to require that demolition works and



the disposal of material is managed appropriately and in accordance with relevant standards.

#### Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 30m. The existing building has a maximum height of 27m. The proposed works will not alter the building footprint in terms of height beyond the existing maximum height.

#### Clause 4.4 - Floor Space Ratio

The proposed development does not comply with the floor space ratio (FSR) development standard of 3:1 under NLEP 2012. On the FSR map the subject site is subject to a maximum FSR of 4:1 under the NLEP 2012, however clause 7.10A applies to the site. Clause 7.10A states the following:

##### *'7.10A Floor space ratio for certain other development*

*The maximum floor space ratio for a building that is located on land with a site area of less than 1,500 square metres is whichever is the lesser of—*

*(a) the floor space ratio identified on the Floor Space Ratio Map, or*

*(b) 3:1.*

As the site has an area less than 1500m<sup>2</sup>, Clause 7.10A applies and the maximum allowable FSR is 3:1. The proposed development will result in a total gross floor area of 2205m<sup>2</sup> on the site.

The development will result in an FSR of 4.41:1, with a total increase of 25m<sup>2</sup> in gross floor area when compared to the existing building. The development results in an exceedance of the allowable FSR control by 47%.

It is noted that the existing development currently exceeds the allowable FSR by 45.33% and the proposed works will result in an increase of the current exceedance by approximately 1.67%, which is 25m<sup>2</sup>.

The applicant has submitted a Clause 4.6 Variation Request to this standard. Refer to the below discussion under Clause 4.6 Exceptions to Development Standards.

#### Clause 4.6 - Exceptions to Development Standards

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

- 1) Clauses 4.3 (Height of Buildings) and 4.4 (Floor Space Ratio) are not excluded from the operation of this clause; and

- 2) The applicant has prepared a written request, requesting that CN vary the development standard and demonstrating that:
  - a) *Compliance with the development standards is unreasonable or unnecessary in the circumstances of the case, and*
  - b) *There are sufficient environmental planning grounds to justify contravening the development standard.*

The objectives of Clause 4.6 'Exceptions to development standards', are:

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

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

Consideration of the proposal against each subclause of Clause 4.6 is as follows:

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

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

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

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

The submitted 'Application to Vary a Development Standard', prepared by Williams Planning and Property Services Pty Ltd constitutes a written request for the purposes of Clause 4.6(3). A summary of the justification provided within the applicant's written request is provided below:

*"Achievement of Objectives of Clause 4.4 of NLEP 2012*

**a) to provide an appropriate density of development consistent with the established centres hierarchy,**

*The proposed marginal increase in density will facilitate the ongoing use, modernisation and improved functionality of existing office premises, providing improved amenities and facilities for staff reflective of a contemporary office environment. The expanded office area is generally intended to accommodate existing operations / staff numbers rather than any substantial expansion of current operations. As such, while the proposal involves a minor increase in overall site GFA, it is not intended to notably intensify the existing use of the site. Accordingly, it will not result in any discernible additional demands on parking, essential services and infrastructure, nor any discernible increase in traffic or waste generation.*

*As outlined below, the new GFA will not result in any discernible changes to the existing built form.*

*The minor proposed external addition fits within the existing building envelope and will not result in any new overshadowing or view impacts for surrounding development or the public domain, nor any unreasonable impacts on surrounding heritage values.*

*Overall, the additional FSR would have no adverse environmental, amenity or social impacts on the surrounding natural and built environment. Notwithstanding the minor exceedance in FSR proposed for this well-located site, the density of development is considered appropriate and beneficial to the locality and will help continue to support the viability of the nearby commercial core.*

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

*As outlined above, the site currently accommodates a part 5 / part 7-storey building that is considered to be consistent with the desired built form of the area.*

*The proposed office addition is positioned within the existing building envelope, setback from the western street boundary by almost 14m and approximately 5.385m below the height of the existing building's uppermost level. The proposed addition is negligible in the context of the existing built form and due to the height of the existing building and the setbacks proposed, would not be visible from the public domain. The proposed changes will not result in discernible change in overall building bulk and scale, nor any new amenity or heritage impacts.*

*Importantly, the proposed external addition will not result in any height exceedance and complies with the building's approved setbacks.*

*Overall, the increased density and proposed built form is considered appropriate in the circumstances, including the established centres hierarchy, maintaining the existing building's positive contribution to the character of the locality."*

### Summary

*The objectives of the development standard are achieved notwithstanding non-compliance with the standard;*

- 1) The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- 2) The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
- 3) The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; and*
- 4) The zoning of the land is unreasonable or inappropriate.*

*It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a)2*

*In this case, it is demonstrated below that Test 1 under Wehbe has been satisfied as the objectives of the floor space ratio development standard are achieved notwithstanding the proposed variation.*

*Therefore, in accordance with relevant caselaw, compliance with the floor space ratio standard is demonstrated to be unnecessary in this instance and the requirements of clause 4.6(3)(a) have been met on this way alone.*

*The remaining recognised reasons are not considered relevant or applicable and have not been relied upon.*

### CN Officer Comment

The proposed development seeks alterations and additions to an existing vacant office premises by adaptively reusing and revitalising the internal spaces and external rooftop areas. The development will largely be non-discernible from the public streetscape, given the distance of the premises from the street below and general setback of the internal works. The development does not seek to increase the total building height beyond the existing maximum. The active refurbishment of the site will allow for a positive contribution to the immediate locality.

The hours of operation, limited scale of works and associated acoustic impact information will result in a development that does not cause additional unreasonable impacts when compared to a compliant design. The proposed variation to the development standard does not cause any undue adverse environmental impacts, including impacts on neighbouring properties in terms of bulk, scale, overshadowing or visual and acoustic privacy.

Given the above satisfaction of the objectives of this clause, the applicant's written request is considered to satisfy the requirements of clause 4.6 (3) (a) in demonstrating

that compliance with the development standard is unnecessary in the circumstances of the case.

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

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

*"In Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole. In Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.*

*As discussed in Section 3, the elements of the development which contravene the FSR development standard are the proposed office addition. The environmental planning grounds to justify the departure of the development standard are as follows:*

- i) The proposed marginal increase in gross floor area will facilitate the ongoing use, modernisation and improved functionality of an existing office premises at the site. The expanded office area is generally intended to accommodate existing operations / staff numbers rather than any substantial expansion of current operations. As such, while the proposal involves a minor increase in overall site GFA, it is not intended to notably intensify the existing use of the site. Accordingly, it will not result in any discernible additional demands on parking, essential services and infrastructure, nor any discernible increase in traffic or waste generation.*
- ii) The proposed variation is exceedingly minor and the minor proposed external addition fits within the existing building envelope and will not result in a discernible change in overall building bulk and scale. The proposed addition is negligible in the context of the existing built form and due to the height of the existing building and the setbacks proposed, would not be visible from the public domain.*
- iii) The additional GFA will not result in any height exceedance and complies with approved setbacks.*
- iv) The new addition will not result in any new view impacts for surrounding development or the public domain, nor any unreasonable impacts on surrounding heritage values.*
- v) The new addition will not result in any new overshadowing impacts for surrounding development or the public domain. The shadow diagrams prepared*

*for the proposal by EJE Architecture show the overshadowing impacts of the proposed structure on the site during the 'worst-case' overshadowing scenario (21st June – the winter solstice). As indicated in the submitted architectural plans, additional shadows cast by the proposed addition would be negligible and confined to the rooftop of the adjoining 5-storey commercial building. No overshadowing of the public domain or any nearby residential development would occur.*

#### CN Officer comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular that the additional FSR will not result in any inconsistency with the desired built form of the locality, and that the development will not result in significant impact to adjoining properties and the immediate locality.

As such, the applicant's written request is considered to be sufficient justification to contravene the development standard.

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

As outlined above the applicant's written request had adequately addressed the matters required to be demonstrated by Clause 4.6 (3) of NLEP 2012.

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

The applicant's response to the satisfaction of the objectives of the FSR standard was considered under the Clause 4.6 (3) (a) discussion above. The objectives of Clause 4.4 'Floor space ratio' are as follows:

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

The development is consistent with the objectives of Clause 4.4 'Floor Space Ratio' as the proposed development is of an appropriate density which is consistent with the established centres hierarchy. The resulting office premises is consistent with the existing built form as identified by the centres hierarchy.

Objectives of MU1 'Mixed Use' zone:

- i) *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- ii) *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- iii) *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- iv) *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- v) *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

The development is consistent with the objectives of the MU1 Mixed Use Zone above as the proposal encourages an office land use that will generate employment opportunities.

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

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

The Secretary's (i.e. of the Department of Planning, Industry and Environment) concurrence to the exception to the FSR development standard as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 of 5 May 2020.

### **Conclusion**

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

- 1) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of NLEP 2012.
- 2) The proposed development will be in the public interest because it is consistent with the objectives of the particular standards and the objectives for development within the MU1 Mixed Use zone in which the development is proposed to be carried out.

- 3) The Secretary's (ie. of the Department of Planning, Industry and Environment) concurrence to the exception to the floor space ratio development standard as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS18-003 of 21 February 2018.
- 4) The applicant has demonstrated that the standard is unnecessary in this instance, given the minimal additional exceedance of 1.67%. Further, the proposal is consistent with the character of surrounding developments in the area and is in accordance with the relevant zone objectives.
- 5) The applicant has demonstrated sufficient environmental planning grounds in this instance. The proposed variations would not result in any significant impacts and therefore the proposal has planning merit.
- 6) The proposed exceptions to the floor space ratio development standards of NLEP 2012 is an acceptable planning outcome and in this instance strict compliance would be unnecessary and that the proposed development has sufficient environmental planning grounds to justify the departure from the development standard. The proposed variations to the development standards in this instance do not cause any undue adverse environmental impacts, including impacts on neighbouring properties in terms of overshadowing, visual privacy or imposing bulk and scale.
- 7) The proposal is consistent with the intended future urban form within the area, having regard to the combination of controls under NLEP 2012 and NDCP 2012 (notably Section 6.01 Newcastle City Centre).
- 8) The request for the additional floor space exceeding the 3:1 FSR development standard is therefore supported.

#### Clause 5.10 - Heritage Conservation

The site is located in the Newcastle City Centre Heritage Conservation Area (HCA). The subject site is not listed as a heritage item, however Local Heritage items in the vicinity of the site include the following:

- 1) 'The Bowery' (Item No. 366) at 37 Bolton Street, Newcastle
- 2) 'Howard Smith Chambers' (Item No. 461) at 14 Watt Street, Newcastle
- 3) 'Former Eldon Chambers' (Item No. 364) at 26 Bolton Street, Newcastle
- 4) 'Newcastle Herald Building' (Item No. 365) at 60 King Street, Newcastle
- 5) 'National Australia Bank' (Item No. 396) at 73-75 Hunter Street, Newcastle
- 6) 'Former CBA Bank' (Item No. 394) at 67 Hunter Street, Newcastle.



The subject site is identified as being a *non-contributory* building in the context of the Newcastle City Centre HCA. Development of non-contributory buildings is an opportunity to improve the contextual design and visual impact of the site.

The main aspects of the proposal relate to internal alterations and demolition works, with rooftop terracing that will largely be non-discernible from the public streetscape. It is considered that the proposed development will reduce the adverse visual impact of the building by removing deteriorated elements and providing a modern and contemporary appearance.

Council's Heritage Officer reviewed the application, and the proposal is considered acceptable, noting there are no changes to the overall building footprint or additional height proposed.

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulfate soils. The proposed development does not include any excavation or works that would likely impact upon the acid sulfate conditions of the site.

#### 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 proposal is considered to be consistent with the objectives of Part 7 of the NLEP 2012.

#### Clause 7.10A - Floor Space Ratio for Certain Other Development

The proposed development has a site area of less than 1,500m<sup>2</sup>. Accordingly, the provisions of this clause apply to the proposal. This clause specifies that the maximum FSR of a building is whichever is the lesser of the FSR identified on the FSR map or 3:1. The variation to FSR has been discussed above.

### **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

The proposed development provides additional, refurbished office space within an existing office building in the city centre.

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

### 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.

An appropriate condition to address this requirement has been included in the Draft Schedule of Conditions (refer to **Attachment B**).

### Safety and Security - Section 4.04

The development will allow for passive surveillance from the rooftop area and activate a vacant premises. In this regard the proposed development will contribute to the safety and security of the site.

### Social Impact - Section 4.05

The refurbishment of the building and the provision of new retail tenancies will have a positive impact. The proposed development will contribute to the diversity of the City Centre and is unlikely to result in negative social impacts on the community.

### Soil Management - Section 5.01

The site is fully developed, and no earthworks will be required for this development.

### Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with State Environmental Planning Policy (Resilience and Hazards) 2021.

### Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

### Aboriginal Heritage - Section 5.04

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

### Heritage Items - Section 5.05

The site is not listed as a Heritage Item. The site is located within proximity of the following Local Heritage Items:

- 1) 'The Bowery' (Item No. 366) at 37 Bolton Street, Newcastle
- 2) 'Howard Smith Chambers' (Item No. 461) at 14 Watt Street, Newcastle
- 3) 'Former Eldon Chambers' (Item No. 364) at 26 Bolton Street, Newcastle
- 4) 'Newcastle Herald Building' (Item No. 365) at 60 King Street, Newcastle
- 5) 'National Australia Bank' (Item No. 396) at 73-75 Hunter Street, Newcastle
- 6) 'Former CBA Bank' (Item No. 394) at 67 Hunter Street, Newcastle.

The development is not considered to impact the nearby heritage items and is considered satisfactory in this regard.

### Archaeological Management - Section 5.06

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site. The development is considered acceptable in regard to this section.

### Heritage Conservation Areas - Section 5.07

The site is not an identified heritage item under NLEP 2012; however, it is located within the Newcastle City Centre Heritage Conservation Area, as discussed in a preceding section of this report considering Clause 5.10 -Heritage conservation of the NLEP 2012.

The development is considered acceptable in regard to this section.

### Part 6.00 Locality Specific Provisions - Newcastle City Centre - Section 6.01

The existing building setbacks will remain unchanged, and the existing street wall height is not proposed to be altered. The proposed additions on Level 5 will be largely non-discoverable from the Bolton Street streetscape.

No views to or from any historical landmarks are adversely impacted on. The building is not a public or civic building and does not exceed a height of 45m, therefore a public art requirement is not applicable.

The proposal respects the built qualities of the building while increasing the useability of the site by refurbishment of the vacant portion of the building.

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

The development proposes alterations and additions to an existing developed site, with no deep soil area available for landscaping. However, the submitted architectural plans demonstrates the softening of the rooftop area via synthetic turfing and planter boxes.

The landscaping will soften and compliment the built form of the site and provide more visual interest and relief, also contributing more positively to the amenity of the site. Given the nature of the existing development, the proposed limited landscaping is considered to be satisfactory.

### Traffic, Parking and Access - Section 7.03

The proposed office premises requires the following parking provisions for the development:

- 1) One car parking space per 50m<sup>2</sup> in GFA.
- 2) One bike parking space per 200m<sup>2</sup> in GFA.
- 3) One motorbike parking space per 20 car spaces.

Given the increase of an additional 25m<sup>2</sup> in GFA, additional car, bike and motorbike parking facilities are not required.

### Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

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

The proposed development has been assessed by CN's Senior Development Officer (Engineering) and is considered to be acceptable subject to conditions, as recommended.

The proposal can comply with CN's policies relating to stormwater management. Appropriate conditions have been recommended in the Draft Schedule of Conditions (refer to **Attachment B**) to require that the development meets the specified standards.

### 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 fourteen days in accordance with the City of Newcastle's Public Participation Plan. No submissions were received.

## Development Contributions

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

The development is subject to a contribution levy and a required monetary contribution is required to be paid to Council prior to the issue of the construction certificate.

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

### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2021*.

#### *Demolition*

Demolition is required by the regulations to be completed in accordance with the provisions of Australian Standard 2601 – 1991: *The Demolition of Structures*. A condition is included in the Draft Schedule of Conditions in **Attachment B**.

### **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 and Residential amenity

The proposal is for an addition to the office space and the use of a rooftop terrace (with outdoor kitchen and seating area) at 5/21 Bolton Street Newcastle. The *Noise Policy for Industry 2017* requires that industrial noise should not cause disturbances inside the habitable rooms of a residential property.

Amplified entertainment is not a feature of this proposal, rather background (incidental) music is proposed to provide a more pleasant ambience for users, while still allowing conversation without the need to raise their voices above the level of music. No new mechanical plant is proposed as part of this application.

The closest multi residential properties are located approximately 25m from the premises (opposite Bolton Street) and 24 Bolton Street has balconies facing the development site.

A Noise Impact Assessment prepared by Reverb Acoustic consultants to support the application (February 2023). The assumptions in the model were that there was a maximum of 40 people in the outdoor area at any one time between 8 am and 10 pm (see Section 7 of the submitted report).

The assessment demonstrated that to attain acceptable amenity for future occupants, the following noise reduction controls will be required to meet the relevant noise criteria. Section 8 of the report recommended that:

- 1) Operation hours should be restricted from 8am until 10pm.
- 2) Background "incidental" music is permitted if the sound power level is limited to 70 dB(A), L<sub>max</sub> at 3 m from each speaker with the volume limit marked on the controls (See Section 8 of the report which suggests a procedure to calibrate the sound system).
- 3) Absorbent underside of the roofed area (i.e., insulated and perforated ceiling).

Further operational information was provided by Reverb Acoustics at CN's request dated 27 July 2023. Reverb Acoustics further recommended that background music limits be restricted to 65dB(A), L<sub>max</sub> at 3m from speakers (rather than 70 dBA as stated above), to ensure music will be inaudible to all - except for people using the rooftop. Once this output limit is achieved, corresponding references should be assigned to the sound system controls and should only be accessed by responsible staff familiar with the system settings.

CN's Environmental Health team have reviewed the submitted documentation and have raised no objection to the application, subject to the recommendations outlined in the approved documentation and conditions of consent (as contained in the *Draft Schedule of Conditions* in **Attachment B**).

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

The site is suitable for the proposed development as it is located in the City Centre, which is well serviced by public transport and community facilities. It is considered that adequate services and waste facilities can be provided to the development. Having regard for the City Centre location and the availability of public transport services, it is considered that the proposed development is satisfactory in respect of its accessibility. The development will have positive social and economic benefits. It will facilitate employment within walking distance to public transport and local services, as well as providing employment during the construction period. In addition as per the acoustical

impact of the development, no significant impacts on nearby residential properties is foreseen as a result of the proposal.

It is expected that the proposal will not adversely impact on any public or private views. Views from surrounding roads and residential developments are generally screened as a result of landform, existing developments or recently approved developments.

The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW, dated 11 April 2023.

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

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

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

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

## **5.9 The public interest**

The proposed development does not raise any significant general public interest issues beyond matters already addressed in this report. Overall, the proposed development will have an acceptable impact on the surrounding natural and built environment and would have positive social and economic impacts.

The proposed development is considered to be 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 established public infrastructure and services.

The development is in the public interest and will allow for the construction of additional commercial premises in an area that is well serviced by public transport and community facilities and will assist with the revitalisation of the city.

The proposal will allow for passive surveillance from the rooftop and is not considered to result in potential crime and safety issues.

## **6.0 CONCLUSION**

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

## **ATTACHMENTS**

- Attachment A:** Submitted Plans – 5/21 Bolton Street, Newcastle
- Attachment B:** Draft Schedule of Conditions - 5/21 Bolton Street, Newcastle
- Attachment C:** Processing Chronology - 5/21 Bolton Street, Newcastle
- Attachment D:** General Terms of Approval – Subsidence Advisory NSW - 5/21 Bolton Street, Newcastle
- Attachment E:** Clause 4.6 request to vary development standard - 5/21 Bolton Street Newcastle

**Attachments A - D distributed under separate cover**



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

**APPLICANT:** TOM VINCENT DESIGNS  
**OWNER:** B A CASHEL  
**REPORT BY:** PLANNING & ENVIRONMENT  
**CONTACT:** EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT /  
ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT  
& REGULATION

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## PART I

### PURPOSE

An application has been received seeking consent for a dwelling house - change of use (former butcher shop) and alterations and additions, including demolition at 25 Mounter Street Mayfield East.

The submitted application was assigned to Development Officer, Caitlin Dunlop, for assessment.

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



**Subject Land: 25 Mounter Street Mayfield East**

The application was publicly notified, and no submissions were received in relation to the proposal.

### Issues

- 1) Floor Space Ratio – The proposed development has a maximum floor space ratio of 0.673:1 and does not comply with the floor space ratio development standard of 0.6:1 for the subject land as prescribed under

Clause 4.4 of the Newcastle Local Environmental Plan 2012 (NLEP 2012).  
The variation equates to an exceedance of 14.21m<sup>2</sup> or 12.08%.

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

## Political Donation / Gift Declaration

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject property consists of a single allotment located at 25 Mounter Street Mayfield East and is legally described as Lot 1 DP304958. The site is a corner allotment, with frontage of 6.706m to Mounter Street and a 30.175m frontage to Walsh Street frontage. The site is rectangular in shape and has an area of 196m<sup>2</sup>. The topography of the site is generally flat with no visible slope.

The subject property is occupied by a single storey masonry rendered building positioned on the boundary of Mounter and Walsh Street. A detached weatherboard structure is located behind the primary building. The rear yard comprises of hardstand and limited introduced shrubs primarily in pot plants. The general built form of the development is inconsistent with the surrounding residential development. CN's records indicate that the building had historically operated as a butcher shop. It is understood that this use ceased prior to 2008.

The general form of development in the immediate area predominantly consists of a mixture of older type dwellings, renovated single dwellings, and contemporary dwellings up to two stories in height.

### 2.0 THE PROPOSAL

The applicant seeks consent for change of use, alterations and additions to the existing building and demolition. The proposed change of use will result in the old butcher's shop being adaptively reused as a dwelling house with internal alterations proposed to form two bedrooms, bathroom, laundry, kitchen and dining room.

The new rear additions will create a living room, pergola, open landscaped courtyard and carport. The first-floor addition is for a study nook, main bedroom, walk in robe, ensuite and alfresco.

Amended plans were received in May 2023 that addressed a conflict with the sliding carport door and pedestrian gate and removed a roof overhang outside the property boundary.

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 original application was publicly notified from 7 to 21 March 2023 in accordance with CN's Public Participation Policy. The amended plans were not re-notified due to the minor changes which resulted in a better outcome for adjoining properties and a minor change to the streetscape.

No submissions were received as part of the notification process.

### **4.0 INTEGRATED DEVELOPMENT**

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

### **5.0 PLANNING ASSESSMENT**

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

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

##### **State Environmental Planning Policy (Resilience and Hazards) 2021)**

In accordance with clause 4.6 (2 and 4) of *State Environmental Planning Policy (Resilience and Hazards) 2021*, CN is required to consider whether the land is contaminated, and if contaminated whether it is suitable for the proposed land use (or can be made suitable, after remediation). Further information was requested from the applicant regarding the land's suitability for the proposed residential use or whether remedial actions are required.

A Preliminary Site Assessment was prepared by Getex Pty Ltd dated 08 May 2023 (Ref:12166. 01a.PSCA). Four soil samples were taken as part of the preliminary site assessment and analysed for metals (taken at 01.m depth). The PSI found that two samples returned a lead result exceeding the HIL A site assessment criteria (as defined in the National Environmental Protection Measure ASC 1999, *amended in 2013*). Ecological screening levels were also exceeded for copper, lead, nickel and zinc.

To manage this potential risk, further assessment and/or management was considered necessary, and a Remediation Action Plan (RAP) was prepared by Getex Pty Ltd dated 13 June 2023 which addressed the contamination identified in the Preliminary Site Investigation.

As lead levels were identified above the adopted Health Investigation Levels (HIL A) in the landscaped area, excavation and offsite removal of the topsoil (to 0.02 m depth) was recommended. The estimated volume of soil to be removed is approximately 5m<sup>3</sup>.

The remediation goal is to make the site suitable for the proposed residential use once the slab is demolished and proposed landscaped area established (approx. 25m<sup>2</sup>) by removing the metal impacted soils. This will be followed by validation assessment to confirm that the remaining soils are suitable for a residential use (against the appropriate criteria in the *National Environmental Protection - Assessment of Site Contamination - Measure ASC NEPM 2013*).

The RAP includes the following stages:

- 1) Site establishment.
- 2) Excavation and removal of waste impacted soil.
- 3) Waste classification for offsite disposal.
- 4) Reporting and validation.

If the works are undertaken strictly in accordance with the RAP, the site can be managed, remediated and validated appropriately so that it does not pose a risk to human health or the environment. Suitable conditions have been included to implement the RAP and manage soil management within the site. On this basis, the proposal is consistent with the requirements of the SEPP as the site will be remediated to a suitable level for the proposed use.

#### **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 R2 Low Density Residential Zone under the provisions of NLEP 2012, within which zone the erection of a *dwelling house* is permissible with CN's consent.

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

- i) To provide for the housing needs of the community within a low-density residential environment.*

The development consists of a dwelling house which will meet the needs of the community through providing additional housing within a suitable zoned lot.

- i) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The development provides an additional housing option that will meet the changing need of the occupants.

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

The proposed change of use and alterations and additions is consistent with the mixture of existing residential developments in Mayfield East. The proposed modern building form responds to the prevailing low density residential character of the area. The bulk and scale of the development is consistent with adjoining development.

### Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the detached outbuilding structure, internal walls of the existing main structure and removal of hardstand throughout the site. Conditions are recommended to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

### Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 8.5m and the proposed height is 6.6m and complies with this requirement.

#### Clause 4.4 - Floor Space Ratio

The maximum floor space ratio for the site is 0.6:1. The subject site has a site area of 196m<sup>2</sup> and the proposed development will result in a gross floor area of 134.5m<sup>2</sup>. The proposed development has a FSR of 0.673:1, which exceeds the prescribed maximum FSR by 12.08% (14.21m<sup>2</sup>).

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

#### Clause 4.6 - Exceptions to Development Standards

The proposal seeks consent to vary Clause 4.4 Floor Space Ratio (FSR) of the NLEP 2012. The Floor Space Ratio Map of the NLEP 2012 provides for a maximum FSR of 0.6:1 on the subject site. The proposed development will result in a maximum FSR of 0.673:1, which exceeds the maximum FSR for the site by 12.08% or 14.21m<sup>2</sup>. The application is supported by a formal request to vary the development standard under Clause 4.6 of the NLEP 2012.

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

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

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

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

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

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

An assessment of the Clause 4.6 variation request has been undertaken below, in undertaking the assessment consideration has been given to both the provisions of Clause 4.6 and the relevant Land and Environment Court judgements including: *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (and appeal at NSWLEC 90) (*Four2Five*), *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), and *Wehbe v Pittwater Council [2007] NSWLEC 827* (*Wehbe*). The objection was well founded having regard to *Wehbe* as the objection provides a suitable justification for the non-compliance by demonstrating that they still achieve the objectives of the relevant standard notwithstanding non-compliance with the numerical component of the NLEP 2012 standard. namely that that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

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

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

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

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

The submitted 'Application to Vary a Development Standard', prepared by Tom Vincent Designs constitutes a written request for the purposes of Clause 4.6(3). A summary of the justification provided within the applicant's written request is provided below:

*'Compliance with the maximum FSR development standard contained in Clause 4.4 of LEP is unreasonable and unnecessary in the circumstances of the development. It is considered that the variation allows for an appropriate planning outcome for a constrained site that is aligned with the needs of the local community and compatible with the desired character of the locality.'*



*This Clause 4.6 request demonstrates that the proposed development is compatible with objectives of the LEP notwithstanding the non-compliance, and that the proposed development will make a positive contribution to the local streetscape.'*

#### CN Officer Comment

The proposed development provides for alterations and additions to an existing building by adaptively reusing an old butcher shop. The proposed additions have given consideration to the host building whilst reducing impacts to adjoining properties and respecting and complementing the streetscape. Further, the dwelling house development is consistent with the low-density objectives of the land.

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

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

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

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

*'Clause 4.6(3)(b) of the LEP 2012 requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating there are sufficient environmental planning grounds to justify contravening the development standard. There are sufficient environmental planning grounds to justify a flexible approach to the application of the FSR development standard as it applies to the site. In Four2Five, the Court found that the environmental planning grounds advanced by the applicant in a clause 4.6 variation request must be particular to the circumstances of the proposed development on that site.'*

*The applicable circumstances that relate to the site include:*

- i) As noted above, the development is located on a constrained site previously used as a butcher's shop. The development retains the former*

*shop front, contributing to the character of the area whilst providing a sympathetic addition to meet the needs of a contemporary family.*

- ii) The proposed scale of the development fits comfortably within the streetscape and is no higher than existing surrounding development.*
- iii) The development will not result in any unreasonable impacts to surrounding properties, including in relation to solar access, privacy, views'.*

#### CN Officer Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular that the additional FSR does not result in any inconsistency with the desired built form of the locality, provides sufficient justification to contravene the development standard.

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

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

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

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

#### *Objectives of Clause 4.4 ‘Floor space ratio’*

The objectives of this clause are:

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

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

The development is consistent with the objectives of Clause 4.4 'Floor space ratio' as the proposed development is of an appropriate density which is consistent with the established centres hierarchy. The proposed dwelling house is of a low-density bulk and scale and is consistent with the built form as identified by the centre's hierarchy.

#### *Objectives of the R2 Low Density Zone*

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

The development is consistent with the objectives of the R2 Low Density Zone above as the proposed development maximises residential amenity in an appropriate dwelling house form complementary to the low-density residential environment.

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

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

The Secretary's (i.e. of the Department of Planning, Industry and Environment) concurrence to the exception to the FSR development standard as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 of 5 May 2020.

#### Conclusion

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 the 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 R2 Low Density Residential Zone in which 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 the NLEP 2012, is assumed, as per NSW Planning and Environment Circular PS 20-002 of May 2020.
- d) The proposed FSR exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing, view loss, bulk and scale. The FSR exceedance is consistent with similar development in the area.

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

The proposal facilitates additional housing within a residential zone, providing for the housing needs of the community within a low-density residential environment whilst suitably respecting the amenity, and character of surrounding development and the quality of the environment, in accordance with relevant R2 Zone objectives. The proposal provides for an improvement to functionality, liveability, and amenity for building occupants, consistent with current living expectations.

Further, it is considered the Clause 4.6 variation request is well founded. The request for the FSR to exceed 0.6:1 is supported.

#### Clause 6.1 – Acid Sulfate Soils

The site is mapped as Class 4 Acid Sulfate Soils, which have a high probability of occurrence two metres below natural ground level. It is considered the potential for this development to disturb acid sulfate soils is low as only minor earthworks are proposed (300mm depth). Therefore, a site-specific acid Sulfate soils management plan in accordance with the NSW Acid Sulfate Soil Manual and Assessment Guidelines 1998 is not considered necessary.

#### Clause 6.2 - Earthworks

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

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

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

## **5.3 Any development control plan**

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

The main planning requirements of relevance in the NDCP 2012 are discussed below.  
Single Dwellings and Ancillary Development - Section 3.02

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

#### Street frontage appearance (3.02.03)

The Mounter Street frontage will remain unchanged with the built form not being altered on the ground floor. The proposed second floor additions will be visible from Mounter Street; however, it has been suitably setback.

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

The existing built form will be retained along both side boundaries. The proposed additions will maintain this building setback and will step in 0.2m to enable roof and gutters to be located within the property. As per the DCP controls for sites less than eight metre wide at the building line, the proposal could be built to both side boundaries, therefore the proposed side setback of 0.2m for the new addition is considered to be acceptable. The rear setback of the dwelling is compliant with the required six meters. Therefore, the proposed rear and side setbacks are satisfactory.

#### Landscaping (3.02.05)

A new grassed courtyard is proposed off the rear of the dwelling with a total of 21.55m<sup>2</sup>, which complies with the required 10% of landscaping area.

#### Private open space (3.02.06)

The proposed development has addressed private open space by providing a deck off the living room with pergola shade cover on the ground floor. The deck will provide an adequate area of private open space that will be usable and meet the needs of the occupants. The proposed development is considered satisfactory in this regard.

### Privacy (3.02.07)

The design of the development has oriented windows of habitable rooms away from neighbouring private open spaces and instead are oriented towards the public domain or within the site. No windows are proposed along the western elevation. The rear doors opening onto the principal private open will not enable casual overlooking into the adjoining property as the carport and fences prevent overlooking opportunities. As described above the development provides adequate privacy to the principal area of private open space and the windows of habitable rooms. The proposal does not unreasonably impact living room windows or the principal area of private open space of neighbouring dwellings. In this regard the privacy of the proposed development and the adjoining neighbours is considered to be satisfactory and to meet the NDCP 2012 requirements.

### Solar access (3.02.08)

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 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)

Having regard to the planning principle (Tenacity vs Warringah NSW LEC 2004), it has been determined that there are no significant views requiring view sharing with adjoining premises. The proposed performance solution is considered satisfactory to the relevant Performance Criteria of this section.

### Car parking and vehicular access (3.02.10)

The proposed development has addressed car parking and vehicular access by providing a single car space in a hybrid carport. The site has limited depth which results in the carport having a zero setback with no ability for 'stacked parking' within the site. The site has a historical parking deficiency for the previous commercial use therefore the single car space is acceptable. Vehicles can enter and exit the site in a safe manner and vehicular access and car parking structures do not dominate the streetscape as part of the proposal. The proposed performance solution is considered satisfactory to the relevant Performance Criteria of this section.

### Ancillary development (3.02.12)

The proposed new carport is accessed via the Walsh Street frontage. Access to the site via Mounter Street is constrained by the existing built form and narrow lot width.

As the subject site is 6.706m wide, the proposed zero setback to three boundaries to facilitate the carport will not adversely impact on the amenity of the locality and is considered satisfactory.

New fencing is proposed along both the North and South boundaries of the subject site. The external appearance of the fencing will be softened by the timber battening fence and screening.

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

### Mine Subsidence - Section 4.03

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

### Soil Management - Section 5.01

Soil management will be achieved in accordance with the relevant objectives of this section. A condition will ensure adequate land contamination, sediment and erosion management will remain in place for the construction period.

### Land Contamination - Section 5.02

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

### Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

#### Aboriginal Heritage - Section 5.04

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

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

The parking rate requires that two parking spaces be provided and only one parking space has been provided. A merit-based assessment has been undertaken for the subject site. The narrow depth of the site and the footprint of the existing building along the Mounter Street frontage restricts the location of car spaces on the site. The site has a historical parking deficiency and utilised on-street parking. Sufficient kerbside space is available along the Walsh Street frontage of the site to accommodate the required additional parking space. Given the above circumstances of the case, the provision of one on-site parking space is supported.

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

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

#### Waste Management - Section 7.08

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

#### Development Contributions

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

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

### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

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



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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations.

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

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

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

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

The constraints of the site have been considered in the proposed development, which includes contamination.

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.

## **6.0 CONCLUSION**

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

## **ATTACHMENTS**

- Attachment A:** Submitted Plans – 25 Mounter Street Mayfield East
- Attachment B:** Draft Schedule of Conditions - 25 Mounter Street Mayfield East
- Attachment C:** Processing Chronology - 25 Mounter Street Mayfield East
- Attachment D:** Clause 4.6 request to vary development standard - 25 Mounter Street Mayfield East

**Attachments A - D distributed under separate cover**

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

**APPLICANT:** V Y HEDGES  
**OWNER:** T J MCCALLUM  
**REPORT BY:** PLANNING & ENVIRONMENT  
**CONTACT:** EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT /  
ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT  
& REGULATION

### PART I

#### PURPOSE

An application (DA2022/00789) has been received seeking consent for a dual occupancy including one into two lot subdivision, swimming pool and demolition of garage at 15 Helen Street Merewether.

The submitted application was assigned to Senior Development Officer, Ethan Whiteman, for assessment.

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

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

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

The submitter is concerned about the impact of the development on access through Busby Close during construction.

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



**Subject Land: 15 Helen Street Merewether**

## Issues

- 1) The proposed variation to the Height of Buildings 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) and is considered to be acceptable subject to compliance with appropriate conditions.

## RECOMMENDATION

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

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

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## **PART II**

### **1.0 THE SUBJECT SITE**

The subject property comprises Lot 1 in Deposited Plan 995139 (15 Helen Street, Merewether) and is a rectangular shaped allotment located on the southern side of Helen Street on the corner of Busby Close, with Busby Close also bordering the site to the south. The site has a frontage of 11.85m to Helen Street, 55m and 8.83m to the long and short axis of Busby Close, respectively and a total area 682.1m<sup>2</sup>. The site has a steeply sloping topography, rising approximately six metres uphill from the Helen Street boundary to the rear (southern) boundary with Busby Close, with mature vegetation present at the Helen Street frontage.

Existing improvements on the subject allotment include a two-storey dwelling house with frontage to Helen Street, a detached double garage and ancillary concrete slabs and landscaping. The site currently has vehicular access from both Helen Street and Busby Close.

Existing development on adjoining sites includes a multi-unit residential complex to the west and to the east across Busby Close a dwelling house with frontage to Busby Close. The general form of development in the immediate area consists of dwelling houses of considerable scale, dual occupancies and residential flat buildings.

The site benefits from an existing development consent for the establishment of a 'Secondary Dwelling', the form of which is reflected in the architectural plan set as an indication of the massing envelope of development already approved toward the rear of the site.

### **2.0 THE PROPOSAL**

The applicant seeks consent to establish a detached dual occupancy on the subject site and undertake a one into two lot Torrens title subdivision, particulars of the proposal include:

- i) Retention of the existing dwelling house.
- ii) Demolition of existing garage at the rear of the site.
- iii) Erection of three storey dwelling house at rear of site, creating a detached dual occupancy.
- iv) Installation of swimming pool with associated safety barriers.
- v) Associated site works, front fencing and landscaping.
- vi) One into two lot Torrens title subdivision with resultant lot sizes of 365m<sup>2</sup> and 317m<sup>2</sup>.

The application was amended during the assessment to remove a rooftop deck proposed on a fourth floor. Concerns were raised by CN officers due to the height exceedance and impacts on the streetscape and privacy.

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

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

### **3.0 PUBLIC NOTIFICATION**

The application was publicly notified in accordance with CN's Community Participation Plan.

One submission was received as a result of the notification process.

### **4.0 INTEGRATED DEVELOPMENT**

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

### **5.0 PLANNING ASSESSMENT**

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

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

##### **State Environmental Planning Policy (Resilience and Hazards) 2021**

###### Chapter 2 Coastal Management

The subject site is located in both the Coastal Use and Coastal Environmental Area as defined under this SEPP.

The proposed development is considered to be acceptable having regard to the matters for consideration under the SEPP.

###### Chapter 4 Remediation

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

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

A BASIX Certificate was lodged with the application, demonstrating that the development can achieve the required water and energy reduction targets. A condition

of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate.

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

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

#### Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential Zone under the provisions of NLEP 2012, within which zone a dual occupancy and subdivision is permitted with consent.

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

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

#### Clause 2.6 - Subdivision—Consent Requirements

In accordance with this clause, the applicant has sought consent for subdivision.

#### Clause 2.7 - Demolition Requires Development Consent

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

#### Clause 4.1 - Minimum Subdivision Lot Size

The lots resulting from the proposed subdivision do not comply with the minimum subdivision lot size standard applicable to the site of 400m<sup>2</sup>. However, an exemption applies under Clause 4.1A as discussed below.

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

The proposal includes the erection of a dwelling house to create a detached dual occupancy and will result in the existing and proposed dwelling house being placed on separate lots.

The proposal meets the requirements of this clause as there will be a development built on the site prior to the subdivision of the land.

The proposed lots will be over 200m<sup>2</sup> and a condition is recommended that will ensure the proposed dwelling is built prior to the release of a subdivision certificate.

#### Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum building height of 8.5m.

The proposed development will result in a maximum height of 9.715m, equating to an exceedance of 1.215m or 14% above the Height of Buildings development standard for the subject land.

The building height has been measured from an existing ground level of 22.325m AHD to the proposed ridge level of 32.04m AHD.

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

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

Under the NLEP 2012 the site has a maximum FSR development standard of 0.75:1. The submitted FSR is approximately 0.58:1 calculated on a gross floor area of 397m<sup>2</sup> and a site area of 682.1m<sup>2</sup> and complies with this standard.

#### Clause 4.6 - Exceptions to Development Standards

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

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

The proposed development results in a variation of 1.215m, exceeding the principal development standard for the allotment by 14%. **Figure 1** displays the intended breach to building height, demonstrating that the predominant breach to the standard is limited to upward projecting roof form to the northern elevation.

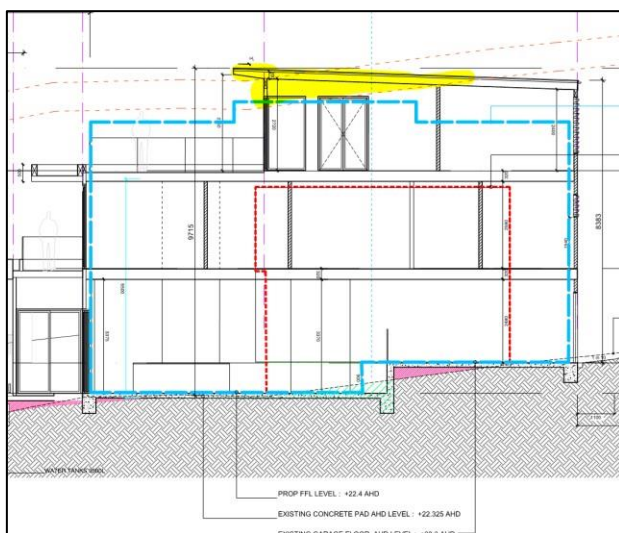
The submitted request to vary the development standard outlines how the proposed development achieves the objectives of the height of building development standard despite the numerical non-compliance with the standard.

Accordingly, an assessment of the request must have regard to the rationale 1 of the rationale established in the decision of *Webbe v Pittwater Council* (2007) NSW LEC 827 in establishing whether the application of a standard might be considered to be unnecessary in particular circumstances. Rationale 1 states:



- 1) *The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The rationale is that development standards are not ends in themselves but means of achieving ends.*

An assessment of the submitted Clause 4.6 variation request is included beneath.



**Figure 1:** *Extent of building height breach highlighted in yellow*

### **Clause 4.6 (1) consistency with objectives of Clause 4.6.**

The objectives of this clause are (prescribed by Cl4.6(1)):

- 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.*

With regard to Objective b, the applicant asserts that the non-compliant building height provides a better planning outcome for the site (and does not compromise the amenity of the adjoining premises and the immediate locality) in the following manner:

*' The non-compliant height is deemed to provide a better planning outcome by:*

- i) *Providing shading to the north facing deck and windows of the dwelling*
- ii) *Allowing for occupants to obtain views towards Bar Beach and the headland beyond, improving amenity.*
- iii) *Incorporating ceiling heights greater than the minimum requirements of the National Construction Code, improving internal amenity.*

*The non-compliance has demonstrated, via the plans of the proposal, that it will not in any way overshadow adjoining allotment's nor will it result in overlooking of living areas of any adjoining dwelling. This is detailed within the accompanying Statement of Environmental Effects.*

*The non-compliance will also be imperceptible from the primary viewing opportunities available over the site and the proposal is completely obscured from view when looking directly toward the site in Helen Street and further west within Helen Street, by existing dwelling houses.*

*The building will be visible when viewed from nearby the Busby Close intersection with Helen Street, as demonstrated in the figures below:*

*Whilst the building is visible it is clear from the render that its scale is entirely proportionate to existing development, namely 13 Helen Street, whilst not imposing upon the existing dwelling within the site.*

*No significant viewing opportunities are over the site are observed from Busby Close. The adjoining dwelling to the east has no significant windows facing the site, reflecting the most significant views from the context being afforded to the north, south and east and this away from the proposed. Other structures immediately adjoining the site in Busby Close are ancillary garages and storage areas.*

*Views from the nearby residential flat complex will not be impacted by the height non-compliance given the relative siting of the building to the east of the proposal, the distance between the two buildings and the general layout of outdoor spaces on the closest building facing away from the site.*

*Potential view loss and perception of bulk is further mitigated by the encroachment forming only a portion of the structure. The observer is likely to be drawn to aspects of the build that are below the height exceedance, being the interplay of green space in the planter boxes at the edge of the balconies with the built elements, along with the material changes on the perimeter of the building.*

*Accordingly, the application can provide improved outcomes for the future occupants of the dwelling without impact on the amenity of adjoining allotments or the established streetscape and character of the sites context. The application of flexibility to the height development standard will facilitate these planning outcomes.*

#### Officer comment

The applicant has demonstrated that the circumstances of this particular case are reasonable considering the above objectives of CI4.6 as a better design outcome for the development is achieved through providing commendable amenity without creating unreasonable impacts upon surrounding properties or the locality including the prominent Helen Street streetscape. Facilitating this planning outcome is considered to require a degree of flexibility in applying the Height of Buildings development standard that would be appropriate in the circumstances and inconsistent with Objective (a).

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

The Height of Buildings (Clauses 4.3) development standard in the NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act.

The Height of Buildings (Clause 4.3) development standard is not expressly excluded from the operation of Clause 4.6.

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

The applicant has prepared a written request for the purposes of Clause 4.6(3). The request relies upon the proposed development being compatible with its surrounding built form context and not creating significant adverse impacts upon adjoining properties, despite the non-compliance with the numerical standard.

An excerpt of the applicant's request is included below:

- i) *'Compliance with the development standard is unreasonable and Unnecessary where:*
- ii) *The proposed non-compliance has demonstrated that it will be largely imperceptible within the primary streetscape, Helen Street, and the scale of the Dwelling is entirely consistent with existing development within the immediate context.*
- iii) *The proposed non-compliance, in of itself, will not impact on the amenity provided to adjoining development. Bulk and scale, visual privacy and sunlight provided to adjoining allotments will not be influenced by the non-compliance with the height development standard.'*

CN Officer comment

It is considered that the applicant has demonstrated that the proposed development meets the objectives of Clause 4.3 of the NLEP despite the non-compliance with the numerical standard as the scale of the development would make a positive contribution to the desired built form of the immediate locality, suitably responding to its context and would allow for reasonable daylight access to surrounding development and the public domain.

Accordingly, it has been demonstrated that compliance with the development standard is unnecessary in the circumstances of this case.

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

In order to satisfy the provisions of Cl4.6(3)(b), the applicant seeks to rely upon paragraph 23 of the NSW Land & Environment Court judgement in *Initial Action Pty Ltd v Woollahra Council (2018)* in stating that an adequate response to the objects prescribed by Clause 1.3 of the *Environmental Planning and Assessment Act 1979* is a suitable demonstration of environmental planning grounds to justify a non-compliance with a development standard prescribed by the LEP. The applicant's response to these objects contained within the written request to vary the standard is extracted below in italics:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

*'The proposed non-compliance can be accommodated within the site without influence on the social and economic welfare of the community in the context, given the non-compliances will not impact on amenity provided to any adjoining allotments as demonstrated within this report and the plans of the proposal.'*

- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

*'The development, and non-compliance, is to be subject to detailed assessment to determine the proposals response to economic, environmental and social considerations.'*

*These matters are in no way impacted by the proposed non-compliance.'*

- (c) to promote the orderly and economic use and development of land,

*'The additional height is considered to be an orderly and economic use of the land, where it has been demonstrated this additional height will have no impact on the amenity of the site's context, including consideration of the established character of the area.'*

- (d) To promote the delivery and maintenance of affordable housing

*'It is beyond the scope of this development, notwithstanding the non-compliance, to promote the delivery of affordable housing given the scale of the proposal.'*

- (e) To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats

*'The proposal will have no impact on any threatened species or ecological communities.'*

- (f) To promote the sustainable management of built and cultural heritage (including Aboriginal Cultural Heritage)

*'The proposal will have no impact on any item of built or cultural heritage.'*

- (g) To promote good design and amenity of the built environment

*'The proposal promotes good design by responding to the existing site conditions in a manner that will not detract from the amenity provided to any adjoining allotment.'*

*Further, it results in no significant impact to the dominant streetscape of Helen Street as detailed above.*

*The non-compliance will afford the occupants greater amenity through the retention of increase ceiling heights and an outdoor space that is afforded views towards a significant coastline and headland.*

*The application therefore promotes best practice design outcomes and careful consideration of the site conditions.'*

- (h) To promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

*'The proper construction and maintenance of the building will be confirmed via the Construction Certificate process, responding to any conditions imposed by Council.'*

- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

*'Not considered to be relevant to the application.'*

- (j) to provide increased opportunity for community participation in environmental planning and assessment.

*'The application will be subject of community participation via notification by Council. Any items raised during consultation can be addressed by the applicant as required.'*

#### Officer comment

It is agreed that consistency with the objects of the act is suitable demonstration of environmental planning grounds to justify contravention of the standard.

On this basis, the applicant has demonstrated there are sufficient environmental planning grounds to justify contravening the standard in this instance and therefore has met the requirements of cl4.6(4).

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

As outlined above, the applicant’s written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012. Clause 4.6(a)(i) is satisfied in this regard by sub clause 4.6(3) in demonstrating that enforcing strict adherence to the standard is unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify the contravention of the standard.

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

**It is noted that this provision does not require consideration of whether the objectives have been adequately addressed, rather that ‘the proposed development will be in the public interest because it is consistent’ with the relevant objectives.**

The applicant states within the submitted written request to vary the development standard that the proposed development would be in the public interest because it is consistent with the objectives of NLEP Clause 4.3 Height of Buildings and the objectives of the R2 Low Density Residential Land use zone. An extract from the applicant's written request to vary the standard is included below:

*The proposal responds to the objectives of Clause 4.3 as follows:*

- (a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarch.*

*The dwelling seeks a non-compliance of the 8.5m height applicable in the R2 Zone.*

*The design response to the site conditions and established built form character of the site's context (including the height of the immediately adjoining buildings) confirms that the building does not significantly contradict the anticipated height for development in this zone, and specifically the sites immediate context.*

- (b) To allow for reasonable daylight access to all developments and the public domain*

*As demonstrated within the plans of the proposal, the development will facilitate suitable and reasonable daylight access to all adjoining allotments.*

*The proposal is isolated from the key public domain of Helen Street. The application results in no overshadowing of this domain.*

*The proposal responds to the objectives of the R2 zone as follows:*

- i) To provide for the housing needs of the community within a low-density residential environment*

*The proposal seeks a Dual Occupancy that reflects the identified demand for housing within Merewether. The application is compliant with all other development standards including floor space ratio. The minor non-compliance will not result in a density of development inconsistent with the LEP, rather this is a response to the conditions of the site.*

- i) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

*Not considered relevant to the applicant as day-to-day services are more appropriately provided in other areas of the suburb.*

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

*The proposal seeks a built form that will provide diversity and interest within the streetscape. The proposal will therefore provide only positive outcomes- to the character of the area.'*

#### Officer comment

The proposed development is considered to be within the public interest as it would be compatible with the objectives of clause 4.3 and the R2 zone, despite non-compliance with the numeric standard.

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

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

#### **Conclusion**

In conclusion, the applicant has submitted a written request to vary the maximum height of building development standard applicable to the subject site.

The request relies partially upon the rationale established in the decision of Initial Action Pty Ltd v Woollahra Council (2018) in order to justify that there are sufficient environmental planning grounds to justify the breach of the standard.

The request states that, despite the breach, the proposed development would be within the public interest as it is consistent with the objectives of Clause 4.3 (height of buildings) of NLEP 2012 and the R2 Low Density Residential Zone in which the subject site is located.

It is considered that the request has adequately demonstrated that the proposed development achieves the objectives of Clause 4.3 of the NLEP despite the numerical non-compliance and that there are sufficient environmental planning grounds to justify contravening the standard.

The request is further considered to meet all of the provisions of Clause 4.6 and is well founded.

The proposed non-compliant building height does not cause the proposed development to be out of character with the built form of the immediate locality and the proposed development is considered to exhibit site responsive design through predominantly utilising existing site levels.

The proposed development is permitted with consent in the subject zone, is compliant with the remainder of the principal development standards prescribed under NLEP 2012 and is generally consistent to NDCP 2012.

The breach to the maximum height limit is predominantly limited to a section of building that provides a shading element to lower levels (roof form) and does not result in a development of inappropriate scale when viewed within the surrounding built form context.

The portion of the breach which includes the roof form is a function of the upper-level ceiling height raising toward northern elevation of building, assisting in further capturing solar access and increasing amenity. Also, in retaining the existing garage slab level and projecting ground floor living space out to the north whilst retaining the ceiling height (resulting in a more than 3m ceiling height to habitable space at ground floor), enhanced internal amenity is achieved. All these elements reflect good design which is site responsive.

Further, the non-compliant height does not create adverse amenity impacts on adjoining properties and does not detract from the provision of reasonable daylight access to adjoining residential properties and the public domain.

In light of the above, and in consideration of the applicant's written request to vary the maximum height of building development standard, the proposed 14% exceedance of the 8.5m maximum building height applicable to the subject site is considered to be acceptable.



It is therefore concluded to be unnecessary to enforce strict adherence to the standard in this case and the proposed exceedance to the standard is supported.

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils and the proposed development is considered satisfactory in this regard, given the extent of earthworks.

#### Clause 6.2 - Earthworks

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

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

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

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

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

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

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

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

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

#### Subdivision - Section 3.01

The proposed subdivision lot sizes have been discussed previously in Section 5.1 of this report.

The proposal will contain a dwelling house on each resultant lot that will form a detached dual occupancy development. Consent is sought for dual occupancy with an assessment against Section 3.03 of the NDCP 2012 contained within this report which concludes that the proposed dwelling will comply with that section.

Accordingly, the lots resulting from the development are able to achieve adequate solar access, essential services such as water, sewer and electricity in addition to vehicular access to a public road, dwellings that present to a public street frontage and independent stormwater discharge points to the street gutter in order to generally satisfy the objectives of Section 3.01.03 (i.e. lot layout, sizes and dimensions).

It is considered the proposal is satisfactory having regard to the requirements of Section 3.01 as it achieves the relevant aims of this Section, namely:

- i) To minimise adverse impacts on the natural and built environments.*
- ii) To ensure that all lots are physically capable of development.*
- iii) To ensure all lots have appropriate levels of amenity, services and access.*
- iv) To achieve efficient use of land.*

### Residential Development - Section 3.03

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

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

#### *Principal controls (3.03.01)*

##### *A. Frontage widths*

The subject site has a frontage to Helen Street of 11.825 metres and to Busby Close (also a public street) of 55.245 metres.

The frontages of the site are generally compliant with the acceptable solutions of this section which requires a minimum of 12m for the creation of a dual occupancy development within the R2 Low Density Residential (R2) zone and is therefore acceptable.

##### *B. Front setbacks*

The proposed development does not alter the existing front boundary setback.

##### *C. Side and rear setbacks*

The proposed development is considered to include side and rear boundary setbacks which are consistent with the surrounding built form context with due consideration given to the allotment sharing two boundaries with a public road.

The proposed built form is sited to allow for functionality for the proposed dwelling house and to avoid creating adverse impact upon adjoining properties and is considered acceptable.

The proposed development is consistent with the applicable performance criteria and is acceptable having regard to this Section of the NDCP 2012.

#### *D. Landscaped Area*

In the R2 zone the acceptable solution requires a minimum landscaped area (as a percentage of site area) of 30% with a minimum deep soil zone of 15%. The proposed development retains 30% of the site area for the purposes of landscaping. Further, a minimum 15% of the site is suitable for deep soil planting and a 3m wide landscaping strip is located along the intended common boundary on either side.

The applicant has submitted plans demonstrating the required amount of landscaping can be achieved and whilst this indicates an intent to provide an adequate amount of landscaping, details of proposed plantings have not yet been provided. However, this matter can be satisfactorily addressed by way of conditions of consent.

#### *Siting the development (3.03.02)*

##### *A. Local character and context*

The proposed built form, articulation and scale relate to the local character and context of the broader locality through the presentation of a modern contemporary design consistent to existing examples of built form including recent redevelopment within proximity of the site.

The development does not unreasonably impact on the amenity and privacy of adjoining dwellings through placement on site with due consideration to boundary setbacks in relation to existing improvements on adjoining sites, locating main living areas on the ground floor and design treatment to areas of the proposed dwelling capable of impacting upon visual privacy through overlooking.

The proposed development is acceptable having regard to this section of the NDCP 2012.

##### *B. Public domain Interface*

The proposed development provides an appropriate interface with the public domain and allows for clear delineation between public and private space. Direct visibility is provided to the front door and garage to the proposed and existing dwelling houses along paths and driveways from the public domain. The development is in keeping with the form and scale of built form within the locality. Variation is proposed within the design through a variety of window and porch sizes. Balcony elements are suitably oriented with front entries and windows to habitable rooms providing surveillance to the public domain (noting that surveillance to Busby Close is currently poor).

The design and orientation of the living and outdoor areas of the dwellings ensures the development is not likely to unreasonably impact upon the amenity or privacy of adjoining dwellings, subject to the inclusion of further privacy mitigation elements required through conditions of consent. The internal amenity is also considered to be satisfactory. There will be some degree of overlooking on the subject site itself due to the slope of the land. However, this will be mitigated through the use of planters on the edge of the second-floor deck and proposed landscaping along the dividing boundary of the dual occupancy.

The applicant proposes the installation of fencing forward of the building line to Busby Close with a height that is considered acceptable to provide privacy to the proposed swimming pool. Landscaping will also be provided within the street setback in addition to existing site landscaping at the Helen Street frontage which provides a visual buffer to the street.

Further, a detailed landscape plan including fencing detail that complies with the NDCP 2012 will be required as part of the recommended conditions of consent.

#### *C. Pedestrian and vehicle access*

The proposed development provides appropriate areas for vehicular circulation/maneuverability, including the provision of an appropriate garage setback to Busby Close to ensure safe maneuvering. The proposed development is acceptable having regard to this section of the NDCP 2012.

#### *D. Orientation and siting*

The proposed development has been suitably laid out having regard for orientation and aspect. The siting of the development is appropriate for the nature of the surrounding built environment. The private open space and living areas of the proposed dwelling receive ideal northerly aspect, whilst the private open space of the existing dwelling house continues to receive a minimum two hours of solar access between 9am and 3pm at the winter solstice.

The development responds to the existing landform of the site and minimises earthworks (max one metre fill), indicating a site responsive design. Further, each dwelling house of the dual occupancy has a covered entry door and window of a habitable room facing a street. The proposed development is acceptable having regard to this section of the NDCP 2012.

#### *E. Building Separation*

The proposed development includes building separation compliant with the acceptable solutions of this section of the NDCP 2012.

#### *Amenity (3.03.03)*

### *A. Solar and daylight access*

Sufficient solar access is available to habitable rooms and private open space areas within the proposed dwelling house, with the existing dwelling house retaining existing solar access to these areas and is not impacted by the proposed dwelling in this respect. The proposal therefore satisfies the objectives of this section of NDCP 2012 and is considered adequate with respect to the orientation of the site.

An analysis of the overshadowing found that each dwelling is provided with two hours direct sunlight between 9am and 3pm at the winter solstice to the designated private open space areas, particular throughout the morning.

Further, each ground floor private open space and living space is connected to a larger yard space for each dwelling. The proposed development is acceptable having regard to this section of the NDCP 2012.

### *C. Ceiling heights*

A recommended ceiling height of 2.7 metres for habitable rooms is included within this section of the NDCP 2012.

The proposed dwelling includes 3.18m ceiling heights to the ground floor, 2.75m to the first floor and 2.4m to the second floor.

The ground and first floor ceiling heights comply with the recommendation, with the 3.18m height at the ground floor height intended to allow for a retained ceiling height throughout that level noting a 2.28m height for the garage (non-habitable) noting the 900mm difference in levels between the existing garage slab and concrete pad, indicating site responsive design.

It is noted that the 2.7m height is a recommendation and the National Construction Code requires a minimum 2.4m ceiling height for habitable rooms and the ceiling height at the second floor raises to 2.66m at the northern extent of the building. On this basis, the second floor minimum ceiling height is considered to be acceptable and consistent with the applicable performance criteria.

### *D. Dwelling size and layout*

The internal layout and spatial arrangement of the development is in accordance with the NDCP 2012 requirements and provides appropriate levels of amenity for future occupants. This is achieved through minimum floor areas compliant with the acceptable solutions of a minimum 127m<sup>2</sup> for four-bedroom dwellings (157m<sup>2</sup> GFA for the existing dwelling and 240m<sup>2</sup> for the proposed dwelling) and in addition to appropriate combined living areas and bedroom sizes.

### *E. Private open space*

The private open space areas provided to each dwelling within the dual occupancy are considered appropriate having regard to the nature of the development and their

intended purpose. They provide reasonable levels of solar access and connectivity and are conducive to passive and active recreational pursuits.

The NDCP 2012 requires each dwelling to have a minimum of 16m<sup>2</sup> of private open space, with a minimum dimension of three metres, adjacent to either a living or dining room or kitchen and 50% of this area is covered to provide shade and protection from rain.

Each dwelling has been provided with private open space which meets the minimum requirements and is connected to larger yard space and is considered acceptable.

#### *F. Storage*

The development is acceptable in this regard.

#### *G. Car and bicycle parking*

The development has been designed to include a minimum of one car space per dwelling and sufficient area is available on-site for secure bicycle storage and parking. The design of the car parking areas meets the requirements of the NDCP 2012.

#### *H. Visual privacy*

The development does not adversely impact on the privacy of adjoining or adjacent neighbours through a design that predominantly orients outlook to the street and yard of each dwelling and incorporates adequate separation and mitigation through design and recommended conditions of consent to reduce any privacy impacts to sensitive space.

The development has also been designed to ensure adequate visual privacy between the proposed and existing dwellings.

The proposal is acceptable having regard to visual privacy.

#### *I. Acoustic privacy*

The development has been designed to ensure the potential transfer of noise between dwellings is minimised. The location of openings and recreational areas have been suitably positioned on site.

Further, any consent issued will be conditioned having regard to the placement of any air conditioning units with consideration to neighbouring properties.

The proposed development is acceptable having regard to this section of the NDCP 2012.

#### *J. Noise and pollution*

There is no infrastructure within close proximity of the site that generates noise levels likely to detrimentally impact upon the use of the proposed development.

The proposed development is acceptable having regard to this section of the NDCP 2012.

#### *Configuration (3.03.04)*

##### *A. Universal design*

The proposed development is not inconsistent with the objectives of achieving universal design features and there is scope to achieve flexibility in the design in future.

The proposed development is acceptable having regard to this section of the NDCP 2012.

##### *C. Architectural design and roof form*

The development includes articulation within the built form. The design of the proposed dwelling incorporates a mixture of building elements and materials which adds visual interest and amenity and allows for clear differentiation between the two detached dwellings which comprise the dual occupancy.

Further, the varied roof form between the two dwellings provides further visual interest when viewed from the surrounding public domain.

The proposed development is acceptable having regard to this section of the NDCP 2012.

##### *D. Visual appearance and articulation*

Articulation is achieved through the provision of a porch area to the frontage of the new dwelling. The proposed facade is consistent with examples of modern contemporary design evident in redevelopment within the surrounding locality and the placement of the proposed building and the design ensures that the development does not unreasonably impact upon the amenity and privacy of adjoining development.

The proposed development is acceptable having regard to this section of the NDCP 2012.

##### *E. Pools and ancillary development*

The proposed development includes a swimming pool setback 500mm from the northern wall of the proposed dwelling and a minimum 660mm from the eastern side boundary. The pool coping is a metre higher than the finished ground level of the 'garden' area in proximity to the proposed common boundary. The pool plant enclosure is located away from the nearest dwellings and will be conditioned for appropriate sound proofing.

Privacy screening to a height of 1.8m from finished ground level will be implemented to the eastern boundary to ensure potential privacy impacts are mitigated.

The proposed pool and associated elements are considered to meet the relevant performance criteria of this section, namely:

*‘Swimming Pools are located to minimise the impacts on adjoining properties.’*

Accordingly, the proposed development is acceptable having regard to this section of the NDCP 2012.

#### *Environment (3.03.05)*

##### *A. Energy efficiency*

A valid BASIX Certificate has been submitted for the development. Conditions requiring compliance with BASIX requirements ensure that the development will incorporate passive environmental design.

The submitted plans display suitable space for clothes drying purposes, for each dwelling in the dual occupancy.

The proposed development is acceptable having regard to this section of the NDCP 2012.

#### *Water management and conservation*

Subject to the inclusion of conditions on any consent issued the proposed development achieves compliance with water management and conservation requirements.

##### *B. Waste management*

Suitable waste storage and collection can be achieved for each dwelling. Bin storage for each dwelling appears suitably screened from street view however this will be ensured through imposition of a condition on any consent issued requiring bin storage areas to be suitably screened from the public domain.

The proposed method of waste storage and collection is discussed further in Section 7.08 of this report.

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



Further, it is considered that the overall floor space ratio, height and character of the development are acceptable in the context of the site and the area generally, as previously discussed in this report.

#### Mine Subsidence - Section 4.03

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

#### Safety and Security - Section 4.04

The overall design and functionality of the proposed building, in addition to the existing building, with frontage to both Helen Street and Busby Close, enables casual surveillance of all surrounding public domain areas.

The proposal achieves good surveillance by providing clear sight lines between public and private space, suitable provision of landscaping and activation of both street frontages.

A crime risk assessment is not required for the type of development proposed; however, the proposal is not inconsistent to the principles of 'Crime Prevention through Environmental Design', namely: surveillance, access control, territorial reinforcement and space management and is not considered likely to result in an increase of opportunistic crime to occur at the site or immediate surrounds.

#### Soil Management - Section 5.01

The proposed development includes earthworks that slightly exceed the building footprint, allowing for functionality and a level transition between indoor and outdoor space. The proposed building utilises existing levels established by the garage and outdoor slab.

Maximum fill does not exceed one metre outside the building footprint.

The amount and location of earthworks intended is acceptable and reflect site responsive design.

Accordingly, the proposed development is acceptable having regard to this section of the NDCP 2012.

#### Vegetation Management - Section 5.03

To facilitate the proposed works there will be an impact on existing trees that are of a minor scale and not declared vegetation.

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

Compensatory planting is proposed which abuts the common boundary of the proposed subdivision and appropriate conditions have been recommended in this respect.

#### Aboriginal Heritage - Section 5.04

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

#### Archaeological Management - Section 5.06

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

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

The proposal is a 'Category 2' development. The submitted plans demonstrate that the proposal provides sufficient area for 'soft' landscape, that the existing landscaping at the Helen Street frontage will be retained and that landscape planting is proposed near the common boundary of the two proposed allotments creating a mid-block landscaped interface when viewed from Busby Close and surrounding development to the east.

Detailed planting descriptions have not yet been indicated, however a requirement for these details to be provided with the construction certificate has been included in the recommended conditions of consent.

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

The proposed development includes a double garage to the proposed dwelling and retains the single garage for the existing dwelling house accessed from the Helen Street frontage.

The proposal meets the required on-site car parking provision for the development type and is not considered to result in a significant increase in traffic flow.

The proposed development is acceptable having regard to this section of the NDCP 2012.

#### Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

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

The applicant has submitted plan detail which directs roof water to rainwater tanks, with reuse required as per BASIX and overflow to be directed to the street gutter in Helen Street, an outlet at the Helen Street frontage already carries stormwater from the existing garage.

An easement is to be created over proposed Lot 1 for the benefit of Lot 2 in order to allow for stormwater pipes to run through that site, discharging at the Helen Street frontage.

Technical stormwater details will be further developed at the construction certificate stage, as required by recommended conditions of consent.

It is considered that the proposed stormwater management arrangement 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.

The submitted plans display bin storage within each lot and the bins will be presented for collection at Helen Street for the dwelling on proposed lot 1 and to Busby Close for the dwelling on proposed lot 2, both of which are public streets to which the site has legal frontage.

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

#### Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Section 7.11 Development Contributions Plan.

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

#### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

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

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

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

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

### Potential View impacts

The subject site is afforded access to significant views including a potential view of the interface between land and water nearby the Bar Beach headland to the north-east.

As the proposed development does not comply with the maximum building height development standard prescribed to the subject site by the NLEP 2012, consideration must be given to the potential impacts on existing and potential views to surrounding properties which may result from that breach.

The subject site's location on the down slope of the ridge running generally east-west on the southern border of the Busby Close corridor is acknowledged.

This location on the down slope means that any site to the southern side of Busby Close is afforded the potential to capture a significant view to the north-east despite the height of the subject development across their rear boundary. This is further aided by the nature of the breach in height being predominantly of transparent materials.

The existing residential flat buildings located at 2 and 2A Busby Close are located slightly to the east of the subject site, with existing view corridors to the north-east not impacted by the proposal.

Accordingly, the proposal is considered to be acceptable having regard to potential view impacts.

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

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

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

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

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

The site is suitable for the proposed development as it is located within a suburban location which is well serviced by public transport and community facilities, indicating that the location can support an additional dwelling house.

It is considered that adequate services and waste facilities are available to the development.

Suitable access to the site will be/remain available for pedestrians, from adjacent roads and public transport.

The constraints of the site have been considered in the proposed development, which includes mines subsidence and location within the coastal zone.

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

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

The application was notified in accordance with CN's Community Participation Plan. One submission was received during the notification period.

The submitter raised concerns about the impact of the development on the operation of Busby Close during the construction phase of the development.

#### Officer's comment

Busby Close is a public street and it would be unlawful in the absence of appropriate approvals under the *Roads Act 1993* to obstruct the public road during construction. Conditions are recommended requiring associated infrastructure (waste containers) to not be located on the road reserve.

### **5.9 The public interest**

The proposed development is considered to be 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 EP&A Act and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

## **ATTACHMENTS**

**Attachment A:** Submitted Plans - 15 Helen Street Merewether

**Attachment B:** Draft Schedule of Conditions 15 Helen Street Merewether

**Attachment C:** Processing Chronology - 15 Helen Street Merewether

**Attachment D:** Clause 4.6 request to vary development standard - 15 Helen Street Merewether

**Attachments A - D distributed under separate cover**