



City of  
Newcastle

**CITY OF NEWCASTLE**



## **Development Applications Committee**

Councillors,

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

**DATE:** Tuesday 17 May 2022

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

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

J Bath  
Chief Executive Officer

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

10 May 2022

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**DEVELOPMENT APPLICATIONS COMMITTEE**  
**17 May 2022**

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

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 12 APRIL 2022**

**RECOMMENDATION**

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

**ATTACHMENTS**

**Attachment A:** 220412 Development Applications Committee Minutes

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

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Development Applications Committee Meeting 17 May 2022

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### Attachment A

## CITY OF NEWCASTLE

**Minutes of the Development Applications Committee Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West on Tuesday 12 April 2022 at 6.39pm.**

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### PRESENT

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

### IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance and Chief Financial Officer), F Leatham (Director People and Culture), J Rigby (Acting Director Infrastructure and Property), K Hyland (Interim Director Strategy and Engagement), E Kolatchew (Manager Legal), S Moore (Manager Finance), M Bisson (Manager Regulatory, Planning and Assessment), A Abbott (Manager Community Strategy and Innovation), K Sullivan (Councillor Services/Minutes), E Horder (Councillor Services/Meeting Support) and W Haddock (Information Technology Support).

### REQUEST TO ATTEND BY AUDIO VISUAL LINK / APOLOGIES

#### MOTION

Moved by Cr Barrie, seconded by Cr Duncan

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

The apologies submitted on behalf of the Lord Mayor, Cr Nelmes and Councillors Church and McCabe be received and leave of absence granted.

**Carried  
unanimously**

### DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Nil.

### CONFIRMATION OF PREVIOUS MINUTES

#### MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 15 FEBRUARY 2022

#### MOTION

Moved by Cr Duncan, seconded by Cr Adamczyk

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

**Carried  
unanimously**

**DEVELOPMENT APPLICATIONS**

**ITEM-4 DAC 12/04/22 - 45 MOIRA STREET ADAMSTOWN - DA2021/01583 - SUBDIVISION - ONE INTO TWO LOT SUBDIVISION AND TWO X TWO LOT STRATA SUBDIVISION**

**MOTION**

Moved by Cr Barrie, seconded by Cr Mackenzie

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.1 Minimum Lot Size, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out;
- B. That DA2021/01583 for one into two lot Torrens Title subdivision, and subsequent two x two lot Strata subdivision at 45 Moira Street Adamstown, be approved and consent granted subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

**For the Motion:**

Deputy Lord Mayor, Cr Clausen and Councillors Adamczyk, Barrie, Duncan, Mackenzie, Pull, Richardson, Wark, Winney-Baartz and Wood.

**Against the Motion:**

Nil.

**Carried  
unanimously**

**ITEM-5 DAC 12/04/22 - 335 LAMBTON ROAD NEW LAMBTON - DA2021/00959 - MULTI DWELLING HOUSING - INCLUDES ONE INTO FOUR LOT SUBDIVISION AND DEMOLITION OF EXISTING STRUCTURES**

**MOTION**

Moved by Cr Richardson, seconded by Cr Duncan

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor space ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Medium Density Residential zone in which the development is proposed to be carried out;

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- B That DA2021/00959 for multi dwelling housing - includes one into four lot subdivision and demolition of existing structures at 335 Lambton Road, New Lambton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

**For the Motion:**

Deputy Lord Mayor, Cr Clausen and Councillors Adamczyk, Barrie, Duncan, Mackenzie, Pull, Richardson, Wark, Winney-Baartz and Wood.

**Against the Motion:**

Nil.

**Carried  
unanimously**

**The meeting concluded at 6.45pm.**

**DEVELOPMENT APPLICATIONS**

**ITEM-6                    DAC 17/05/22 - 11 BRYANT STREET, TIGHES HILL -  
DA2021/01547 - DWELLING HOUSE - ALTERATIONS AND  
ADDITIONS**

**APPLICANT:            A. JONES C/O CKDS ARCHITECTURE  
OWNER:                J SCHNEIDER & S K CHARGE  
NOTE BY:              GOVERNANCE  
CONTACT:              DIRECTOR GOVERNANCE AND CHIEF FINANCIAL  
                                 OFFICER / MANAGER REGULATORY, PLANNING AND  
                                 ASSESSMENT**

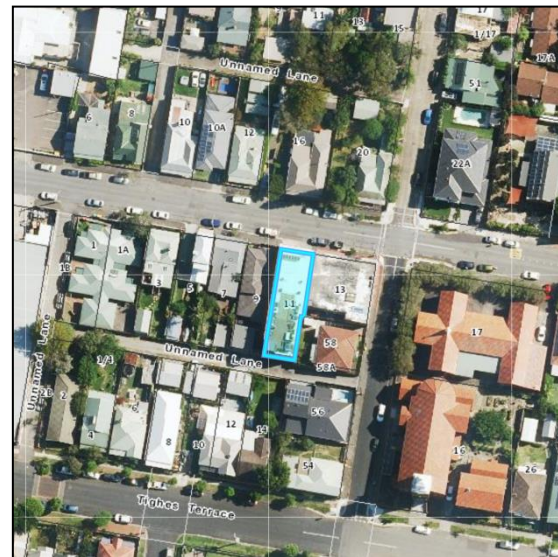
**PART I**

**PURPOSE**

An application has been received seeking consent for alterations and additions to the existing dwelling house at 11 Bryant Street, Tighes Hill.

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

1. 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 (133% variation proposed) noting that the existing building currently does not comply with the FSR development standard; and
2. One of the owners of the site is a City of Newcastle (CN) employee. Clause 4.2.1 of "CN's Assessment of CN Related development Applications Policy" (dated November 2021) requires the development application to be determined by DAC, due to the proposed variation to the Floor Space Ratio development standard of NLEP 2012 being more than 10%.



**Subject Land: 11 Bryant Street Tighes Hill**

The submitted application was assigned to Fiona Dowler Development Officer (Planning) for assessment. A non-pecuniary conflict of interest declaration has been completed and submitted by CN staff involved in the assessment of the application.

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

The objectors' concerns include the height of the building, visual impact, bulk and scale, built form, character, loss of privacy and potential safety issues.

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

### **Issues**

- 1) Floor Space Ratio (FSR) – The proposed development has an FSR of 1.75:1 and does not comply with the FSR development standard of 0.75:1 of NLEP 2012. This equates to a 133% variation to the FSR development standard.
- 2) It is noted that the existing building has a FSR of 1.65:1 (equating to a 120% variation), which currently does not comply with the FSR development standard.
- 3) Height of Buildings – The proposed development has a maximum building height of 11.43m and does not comply with the 11m Height of Buildings development standard of NLEP 2012. This equates to a 3.75% variation to the Height of Buildings development standard.

It is noted that the existing building has a height of 10.54m.

### **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; and
- B 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

- C That the dwelling house alterations and additions 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**

The subject property comprises Lot 2 of Deposited Plan 924577 and is a rectangular shaped lot located on the southern side of Bryant Street, with rear lane access to an unnamed lane. The site has a frontage of 9.785m to Bryant Street, 9.145m respectively, to the rear lane and a total area of 289.29m<sup>2</sup>. The site has a sloping topography of 2m from the front to the rear and is occupied by a three-storey building formerly used as a warehouse, which was converted to a dwelling under DA2009/0177. The dwelling consists of three bedrooms, study, combined kitchen, dining, living, a roof top deck and garaging of approximately 238m<sup>2</sup>.

The general form of development in the immediate area consists of dwellings from a range of architectural styles, including renovated warehouse style buildings.

### **2.0 THE PROPOSAL**

The applicant seeks consent for alterations and additions to the dwelling house. The proposed works include:

- i) Partial internal demolition and removal of existing rooftop structures
- ii) Internal alterations, including a passenger lift
- iii) Rooftop addition and terrace area
- iv) Rooftop swimming pool, landscaped areas and solar panels.

The application was amended in accordance with the recommendations of the assessing officer and in response to concerns raised by objectors. The plans were amended to provide increased setbacks to the rooftop addition in order to minimise potential impact to neighbours and reduce bulk and scale.

Amended plans were submitted to CN on 1 February 2022.

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 for a period of 14 days between 29 November and 13 December 2021, in accordance with CN's Community Participation Plan. Two submissions were received in response. The concerns raised by the objectors to the development are summarised as follows:

#### **1) Statutory and Policy Issues**

- i) Zoning objectives – the proposal does not meet the objectives of R3 Medium Density Residential zone
- ii) Non-compliance with the Floor Space Ratio and Height of Buildings development standards

#### **2) Design and Aesthetic Issues**

- i) Visual impact of the new rooftop addition
- ii) Character – not consistent with the character and built form of the area
- iii) Bulk and scale - excessive height of the building

#### **3) Amenity Issues**

- i) Loss of privacy and overlooking of adjoining properties
- ii) Increased overshadowing of adjoining properties

- iii) Safety issues associated with the rooftop area, such as objects falling or being dropped over the edge.

Amended plans were submitted to CN on 1 February 2022. The amended plans were not re-notified, as it was deemed that the amended proposal resulted in reduced impacts to neighbouring properties. The amended plans however were made publicly viewable on CN's website.

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

#### **4.0 INTEGRATED DEVELOPMENT**

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

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

The site is within a coastal use area and coastal environment area, and the proposed development is consistent with the SEPP.

###### Chapter 4 – Remediation of land

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

###### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The subject site is clear of any native trees or vegetation. The applicant does not propose the removal of any vegetation in order to facilitate the development. The provisions of the Vegetation SEPP do not apply.

**State Environmental Planning Policy (Transport and Infrastructure) 2021**

The proposal was required to be referred to Ausgrid in accordance with this SEPP. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information.

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

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

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

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

Clause 2.1 - Land Use Zones

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

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

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

Comment: The provision of additional floor space optimises the residential amenity for a single residential dwelling and is of a built form that is compatible with the medium density residential environment

- i) To provide a variety of housing types within a medium density residential environment.*

Comment: The provision of a modern, architecturally designed addition adds to the visual interest of the former industrial building, as well as contributing to the variety of building types within the surrounding area.

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

Comment: The proposed additions to an existing dwelling house within a medium density residential area does not impede on other land uses.

- i) To allow some diversity of activities and densities if—*

- a) *the scale and height of proposed buildings is compatible with the character of the locality, and*
- b) *there will be no significant adverse impact on the amenity of any existing nearby development.*

Comment: The proposed development is of a medium density residential scale that has regard to the character of the surrounding area and does not significantly detract from any existing nearby development.

- ii) *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development—*
  - a) *has regard to the desired future character of residential streets, and*
  - b) *does not significantly detract from the amenity of any existing nearby development.*

Comment: Not relevant to the proposed development.

#### Clause 2.7 - Demolition Requires Development Consent

The proposal includes partial demolition works 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 maximum building height for the site is 11m. The proposed development will result in a maximum height of 11.43m, equating to an exceedance of 0.413m or 3.75% 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

The proposed development does not comply with the FSR development standard of 0.75:1. The proposed development has an FSR of 1.75:1, equating to an exceedance of 289.69m<sup>2</sup>, or 133% above the prescribed maximum FSR for the subject land.

It is noted that the existing building has an FSR of 1.65:1. The proposed development to the existing building is 28.04m<sup>2</sup>, or a 5.8% increase to the existing building. The extent of the variation is largely made up by the existing excess garage / parking provision on the site, due to its past use as a commercial / industrial building. This excess parking provision results in garage / parking areas in excess of the minimum parking requirements prescribed in NLEP 2012, which by definition is now required to be calculated in Gross Floor Area.

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

Clause 4.6 - Exceptions to Development Standards

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

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

The proposed development contravenes Clause 4.3 'Height of Buildings' of NLEP 2012. The Height of Buildings Map provides for a maximum building height of 11m. The proposed development provides a maximum building height of 11.413m, which exceeds the maximum building height for the site by 0.413m or 3.75%.

The proposed development contravenes Clause 4.4 'Floor Space Ratio' of NLEP 2012. The Floor Space Ratio Map provides for a maximum FSR of 0.75:1. The proposed development provides a maximum FSR of 1.75:1, which exceeds the maximum FSR for the site by 289.69m<sup>2</sup> or 133%, noting that the extent of the proposed variation compared to the existing building is 28.04m<sup>2</sup> or 5.8% above existing.

The application is supported by a formal request to vary both development standards under Clause 4.6 of NLEP 2012.

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

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

The height of buildings development standard, and the floor space ratio development standard in NLEP 2012 are development standards in that they are consistent with the definition of development standards under Section 1.4 of the EP&A Act. The 'height of buildings' and 'floor space ratio' development standards are 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' document, prepared by CKDS (dated 1 February 2022) constitutes a written request for the purposes of Clause 4.6(3).

The documentation provided by the applicant addresses Clause 4.6 (3)(a), as follows:

### **Height**

*The height of the proposed residence is generally in keeping with the NLEP with some minor encroachments. The only height exceedance is a portion of the pitch and eaves of the roof over the indoor/outdoor space. Please refer to elevations as seen in A-2001, A2002, A-2003 and below Figure 1.1. The maximum exceedance of the 11m height limit is 0.413m on the south-western corner of the pavilion. 97% of the building is below the height limit with the roof exceedance on the rear lane frontage accounting for 3% of the building volume. The entirety of the alterations and additions fall well under a 10% variation of the height limit...*

*The proposed height is under the extent of the approved DA for 13 Bryant Street, which is the adjacent dwelling and neighbour to the east. The height exceedance occurs on the rear lane of the property and does not impact the main street elevation nor the visual character of the area. The lane is predominantly used for garage access for the proposed residence and neighbouring properties, it is not a main vehicle or pedestrian thoroughfare. The scale of the additions is consistent with current forms and makes a positive contribution towards the built environment.*

*The proposed works have a minor impact on the sunlight and daylight access of the adjoining properties and public domain. The overshadowing does not impact solar access of neighbouring solar panels and has little impact on the living spaces of the properties.*

*Strict compliance to the planning control would reduce the amenity of the indoor/outdoor space and create a less desirable residence overall. We consider it reasonable the proposed works are exempt from the standard as the proposal falls under the height extent of the approved DA for the neighbouring property, retaining the existing scale of building hierarchy.*

### **Officer Comment**

The proposed development provides for improved amenity of the existing residential dwelling, of a form which is predominantly below the maximum height standard, and does not detract from the existing streetscape, or the desired built form.

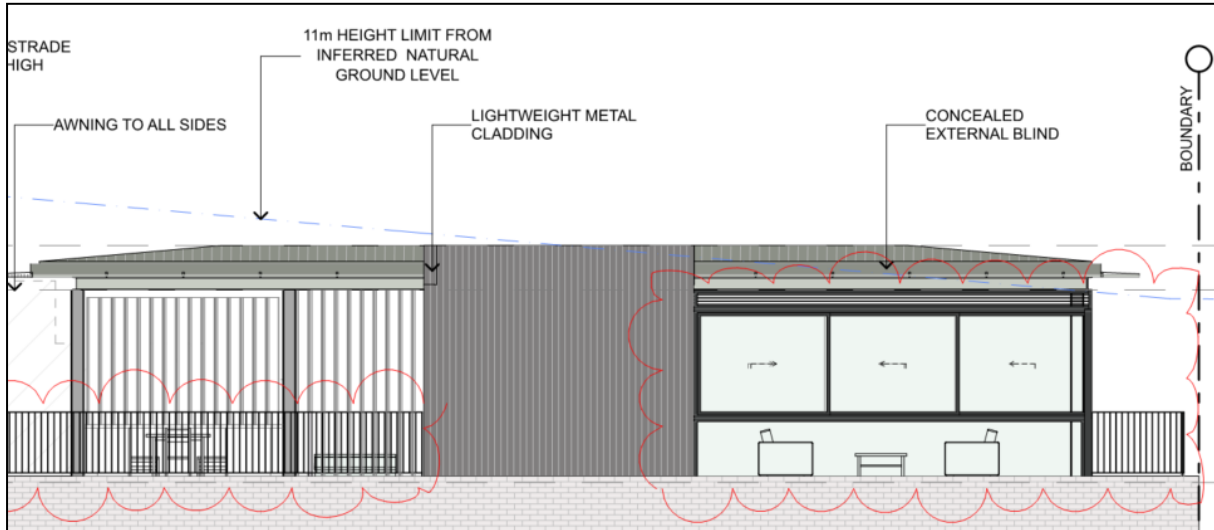


Figure 1 – West Elevation, height of buildings maximum in dashed blue

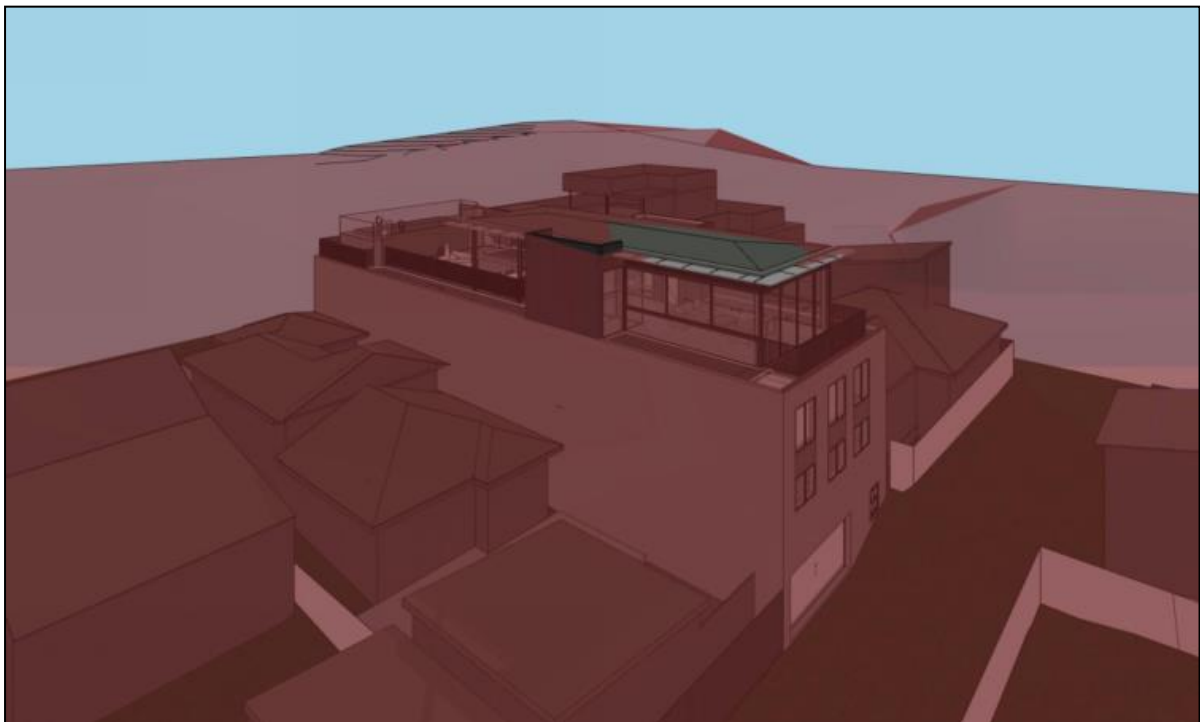


Figure 2 – Extent of height variation (in light grey)

The 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.

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



## Floor Space Ratio

*The Floor Space Ratio (FSR) of the existing dwelling is 1.65:1, exceeding the maximum as set in the NLEP 2012. The existing dwelling currently exceeds the permissible FSR by 120%. The proposed works seek to increase the existing FSR by 0.1:1 to 1.75:1. This represents a 5.8% increase to the existing GFA. The proposed dwelling would exceed the maximum FSR of the NLEP by 133%, however this is a marginal increase when factoring in existing floor area.*

*The density of the building is consistent with the area, as one of many repurposed light industrial buildings in Tighes Hill. The warehouse conversion to single dwelling has resulted in an FSR that exceeds the standard. The addition of a lightweight indoor/outdoor roof pavilion increases the amenity of the building, allowing for outdoor recreation in a residence otherwise devoid of outdoor space.*

*Strict compliance with the development standards in this case is unreasonable considering the building already far exceeds the maximum FSR, and the proposed marginal increase does not increase the dwelling capacity of the building. It should be noted that 6.7% of the proposed GFA is represented by an indoor/outdoor space. This entertaining space has only been enclosed due to inclement weather from the South. It is essential that this can be closed to protect the residents from Southerly weather conditions which represent roughly 31% of wind direction throughout the year.*

*The additions visible from the rear lane have a positive impact on the bulk and scale of the area. The unnamed rear lane is predominantly used for garage access for the proposed residence and neighbouring properties, it is not a main vehicle or pedestrian thoroughfare. The main volume of the pavilion has been set back 1670mm from the boundary, 670mm more than council recommendations. The change to the bulk and scale is in line with current building hierarchy and natural fall of the ground line. The alterations and additions fall under the height limit of the approved neighbouring development at 13 Bryant Street, maintaining the current pitch in skyline. Any addition to the bulk and scale of the building has sought to be mediated by the use of glazing and lightweight framing.*

## Officer Comment

The FSR of the existing residential dwelling is 1.65:1, which is in excess of the floor space ratio development standard by 0.90:1. The extent of the existing variation is largely made up of the existing garaging provision on the site, noting that parking in excess of the minimum requirements prescribed in NLEP 2012, is by definition required to be calculated in gross floor area.

The proposed development adds an additional 28.04m<sup>2</sup> of gross floor area to the existing building, equating to additional FSR of 5.8%, predominantly by virtue of the roof level addition, which is considered to be for the most part, imperceptible from street level. The development provides for improved amenity for the residents of the dwelling and the alterations and additions do not detract from the existing streetscape, or the desired built form.



Figure 3 – Gross floor area plans, existing (left) vs proposed (right)

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.

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

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

The documentation provided by the applicant addresses Clause 4.6 (3)(b), as follows:

## Height

*The proposed residence seeks variation to the development standard based on the minor encroachment of the height limit, its positive contribution towards the built form, consistency with current built hierarchy, and provision of reasonable daylight access, achieving to the objectives set out in Clause 4.3 of the NLEP 2012.*

### Officer Comment

The additional building height does not result in any inconsistency with the desired built form of the locality and is generally consistent having regard to the combination of controls under NLEP 2012 and NDCP 2012. The written request provides sufficient justification to contravene the development standard.

## Floor Space Ratio

*The proposed residence achieves the objectives set out in the development standard by maintaining the established density of the area. The increase in FSR adds to the amenity of the building and does not increase dwelling capacity. The proposal has aimed to have a negligible impact on the bulk and scale of the built environment. The only change visible from the main street frontage being the top of the pool and glass balustrade.*

### Officer Comment

The additional FSR exceedance does not result in any inconsistency with the desired built form of the locality and is generally consistent having regard to the combination of controls under NLEP 2012 and NDCP 2012. The written request provides sufficient justification to contravene the development standard.

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

As outlined above the applicant’s written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012. It follows that the test of Clause 4.6(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 height of buildings standard, and the floor space ratio standard were considered under the Clause 4.6(3)(a) discussed above.

*Objectives of Clause 4.3 'Height of buildings'*

The development is consistent with the objectives of Clause 4.3 'Height of buildings' as the proposed development for alterations and additions to the dwelling is of a density, bulk and scale consistent with the built form, as identified by the centres hierarchy.

*Objectives of Clause 4.4 Floor Space Ratio*

The development is consistent with the objectives of Clause 4. 'Floor space ratio as the proposed development for alterations and additions to the dwelling is of a density, bulk and scale consistent with the built form, as identified by the centres hierarchy.

*Objectives of the R3 Medium Density Zone*

The development is consistent with the objectives of the R3 Medium Density Zone as the proposed development maximises residential amenity in an appropriate single dwelling form complementary to the medium-density residential environment. The development type is a permissible development within the land zone.

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

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

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

Conclusion

The requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variations to the development standards.

The Clause 4.6 variation request has demonstrated that the standard is unreasonable in this instance and that the proposed scale of the development is in character with the existing building and surrounding locality.

It is considered the proposal facilitates the ongoing use of the residential site in a residential dwelling capacity, providing for housing needs of the community within a medium-density residential environment, whilst suitably respecting the amenity,

privacy and solar access of adjoining development. The request to exceed the prescribed maximum building height of 11m, and the floor space ratio maximum of 0.75:1, is supported.

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulfate soils and the proposed development is considered satisfactory in this regard. No earthworks are proposed that would require further assessment in this regard.

#### **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.

#### **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 applicants to demonstrate that a variation to a development standard “is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.” For the purposes of CN’s assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome.

The proposed development includes a Clause 4.6 variation request. As discussed above under Clause 4.6 of this report above, the proposal achieves the objectives of the R3 Medium Density Residential zone and the objectives of Clause 4.3 notwithstanding noncompliance.

There is also a second test proposed for development for when “the contravention is minor and relates to a small portion of the site, and therefore the environmental impacts of the contravention are minimal or negligible.” This test would require a less rigorous assessment when the impact of the contravention is demonstrated to be minor. It is unclear if this second test would be applicable to the subject application, as there is insufficient detail in the EIE to confirm what a ‘minor’ contravention is.

Considering the aims of the EIE and the above considerations, the proposed development and Clause 4.6 Variation Request is not considered to be inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and NLEP 2012.

#### **Proposed Local Character Provision: Explanation of Intended Effect (EIE)**

The proposed Local Character Provision EIE states that the objective of the subject clause will be to identify local character areas and 'to promote the desired future character of local character areas'. A consent authority would not be able to grant consent to development when this clause applies unless it has taken into account the local character statement.

In order to enable the use of this clause a local character statement must be developed for each area. The statement is required to be prepared in accordance with the Local Character and Place Guideline and detail how future growth will be consistent with the identified character.

The Tighes Hill Local Character Study has not yet been completed. The proposed local character provision of the Standard Instrument has also not been implemented by the State. Therefore, the existing adopted controls within NLEP 2012 and NDCP 2012 must be used to assess the proposal.

### **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 building retains its existing setback to the street.

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

The site is 9.785m wide at the building line and the existing building is built to both the side boundaries, and the rear boundary.

The alterations occurring at basement, ground and first floor levels are contained within the existing built form. The stairs to the roof top terrace addition are proposed to be built to the western side boundary from the level below. The lift overrun portion at rooftop level has a setback of approximately 800mm to the eastern boundary.

The proposal was required to be revised to increase the setbacks from the side and rear boundaries. The amended roof top addition provides increase side setbacks to the roof top deck of 1.6m (east and west); and a rear setback of 1.67m (south) which is considered to result in a development which is not overbearing for adjoining dwellings and their private open space.

Minimum setbacks of 1m for the trafficable areas to both side boundaries has been provided, however a balcony area is proposed along the rear boundary overlooking the laneway. Potential privacy impacts / overlooking from this balcony to those properties located opposite the laneway is considered acceptable given the sufficient separation distance.

Landscaping (3.02.05)

The existing built form occupies almost the entire site. A minimum of 10% landscaped area is required for a site of this size. The proposed development provides a roof top area capable of accommodating medium sized trees and shrubs which will be of a usable size and proportion. Conditions of consent require further detail prior to the issue of a Construction Certificate, to meet this requirement.

It is noted that the roof top additions provide ample opportunities for landscaping and planting that was previously not available on site.

Private open space (3.02.06)

The existing roof top deck is not directly connected to a living area of the dwelling house and provides no protection from the weather for the occupants.

The proposed development provides a roof level living area addition with direct access to a principal area of private open space which is usable and meets the needs of the occupants.

Privacy (3.02.07)

The existing roof deck covers approximately one third of the roof area and is located adjacent the open space of 9 Byrant Street and 58 Union Street Tighes Hill. This deck will be replaced with an enclosed indoor/outdoor living area, setback from the side and rear boundaries and the rear lane, with balustrading and landscaping.

The outdoor dining area, adjoining the living area is also setback and landscaped and provided with privacy louvres to all side boundaries.

The roof top deck is predominantly adjacent to the roof tops of the adjacent dwellings, with balustrading setback 1.6m to the west and 2.5m to the east.

The pool is located on the deck and has a small deck area to provide access to the pool. The impact of this structure on the adjoining properties is negligible due to its location to the street the location of the structures on the adjoining properties

The roof level addition has been provided with appropriate setbacks, landscaping and privacy louvres to maintain adequate privacy to neighbouring dwellings. The louvres will be required to be subject to the conditions of consent requiring them to be fixed to protect the privacy of the adjoining owners.

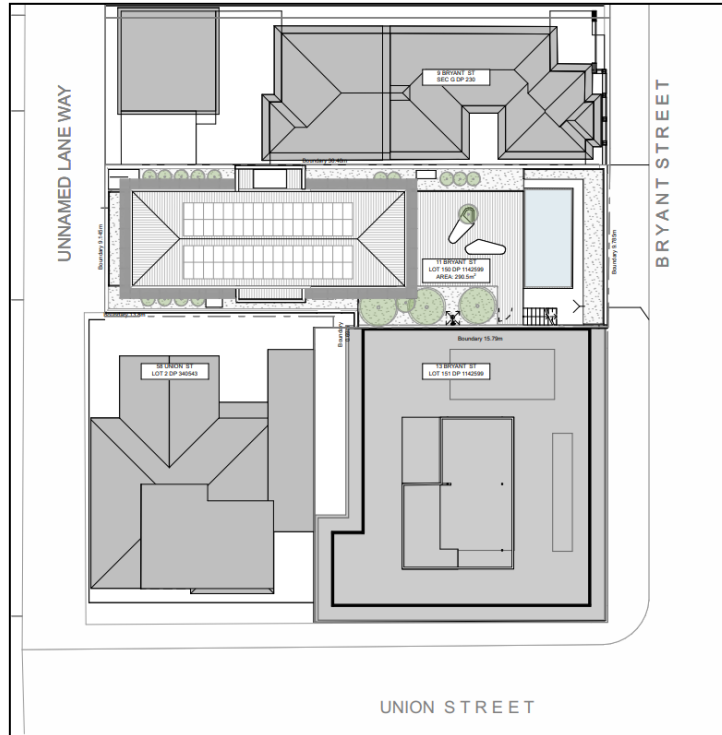


Figure 4: Proposed roof top area and location to adjoining sites.

Solar access (3.02.08)

Due to the north-south orientation of the site, the proposed development does not impact upon windows of north facing living areas of adjacent dwellings, as demonstrated in the submitted shadow diagrams.

While the extent of overshadowing is slightly increased due to the rooftop addition, it does not reduce solar access to the private open space of adjacent dwellings to less than two hours of sunlight per day (between 9:00am – 3:00pm on Winter Solstice). Sunlight to solar panels of adjacent dwellings is not impacted by the proposed development.

View sharing (3.02.09)

The existing building exceeds 5m in height, however the proposed roof level addition does not obscure any views or vistas from adjoining properties.

Car parking and vehicular access (3.02.10)

The dwelling has existing car parking in excess of the minimum requirements which is unchanged by the proposed development.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District and is subject to Guideline 8. In accordance with the document *Surface Development Guideline 8*,



prepared by Subsidence Advisory NSW, no additional restrictions apply to the proposed development.

Soil Management - Section 5.01

A condition will ensure adequate sediment and erosion management will remain place for the construction period.

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.

Landscape, Open Space and Visual Amenity - Section 7.02

The proposed development is considered a category 1 development and a landscape plan is not required. Sufficient area exists on the proposed rooftop addition to facilitate planting of small and medium sized trees and shrubs. Conditions of consent require the submission of a landscape plan demonstrating appropriate soil depths, volume, and planter bed proportions to support proposed planting selections, prior to issue of a construction certificate.

Traffic, Parking and Access - Section 7.03

No change is proposed to the existing vehicular parking and access on site. The provision is in excess of the minimum requirements and is satisfactory.

Stormwater- Section 7.06

The proposed development does not increase the sites impervious area and no additional discharge controls are required. The proposed stormwater management plan is satisfactory subject to the conditions of consent.

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 proposal is exempt from incurring a levy, as detailed in CN's Development Contributions Plans, as the application is for alterations and additions to an existing dwelling with a cost of works less than \$200,000

**5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

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

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations. The proposed development will not have any undue adverse impact on the natural or built environment.

The development is located within a site suitably zoned for residential development, and is compatible with the existing character, bulk, scale and massing of development in the immediate area.

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

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

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

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

The site is located in an established residential area with good connectivity to a range of services and facilities.

The site is within a Mine Subsidence District and in accordance with the document *Surface Development Guideline 8*, prepared by Subsidence Advisory NSW, no additional restrictions apply to the proposed development. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development. The proposed development is suitable to the site.

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

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

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

Issue	Comment
The proposed development does not meet the objectives of R3 Medium Density Residential zone.	As discussed in the above report, the proposed development is consistent with the objectives of the R3 Medium Density Residential zone.  The additional floor space optimises the residential amenity for a single residential dwelling and is of a built form that is compatible with the medium density residential environment.
Non-compliance with the Floor Space Ratio and Height of Buildings development standards.	An exception to the Floor Space ratio and Height of Buildings standards has been assessed in accordance with statutory requirements and is considered acceptable in this instance.
Visual impact of the new rooftop addition.	The proposed rooftop addition and terrace area is setback from the building's side boundaries and is not highly noticeable from the surrounding streets.
The proposed development is not consistent with the character and built form of the area.	The proposed development is of a medium density residential scale that is not out of character with the surrounding area and does not significantly detract from any existing nearby development.
Bulk and scale.	The development is of a scale and built form that is appropriate for its location.
Loss of privacy and overlooking of adjoining properties.	Trafficable areas of the proposed rooftop area have been reduced with increased setbacks from side boundaries, eliminating direct lines of sight into adjoining properties and maintaining privacy for neighbours.
Increased overshadowing of adjoining properties.	As discussed in the above report, the proposed development does not impact upon windows of north facing living areas of adjacent dwellings, nor does it reduce solar access to the private open space of adjacent dwellings to less than two hours of sunlight per day (between 9:00am – 3:00pm on Winter

	Solstice). Sunlight to solar panels of adjacent dwellings is not impacted by the proposed development.
Safety issues associated with the rooftop area, such as objects falling or being dropped over the edge.	Setbacks of the roof top terrace area from the buildings boundaries have increased mitigating any potential safety issues associated with this level.

The application was amended in accordance with the recommendations of the assessing officer and in response to concerns raised by objectors. The plans were amended to provide increased setbacks for the rooftop addition in order to minimise potential impact to neighbours.

Amended plans were submitted to CN on 1 February 2022. The amended plans were not re-notified, as it was deemed that the amended proposal resulted in reduced impacts to neighbouring properties. The amended plans however were made publicly viewable on CN's website.

**5.9 The public interest**

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

The development is of a scale and built form that is appropriate for its location. The proposal provides improved residential amenity, while maintaining privacy and solar access for adjoining neighbours.

The proposed development will not have an adverse impact on the natural or built environments. The proposed development is in the public interest and allows for the orderly and economic development of the land

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

**Item 6 - Attachment A:** Submitted Plans - 11 Bryant Street Tighes Hill

**Item 6 - Attachment B:** Draft Schedule of Conditions - 11 Bryant Street Tighes Hill

**Item 6 - Attachment C:** Processing Chronology - 11 Bryant Street Tighes Hill

**Item 6 - Attachments A - C distributed under separate cover**

**ITEM-7**                    **DAC 17/05/22 - 20 DENISON STREET, NEWCASTLE WEST - MA2021/00470 - SEC 4.55(2) MODIFICATION TO DA2018/01498 - SHOP TOP HOUSING - CHANGES TO FLOOR PLANS AND ELEVATIONS**

**APPLICANT:**            **GYDE CONSULTING**  
**OWNER:**                **DENISON STREET APARTMENTS PTY LTD**  
**NOTE BY:**               **GOVERNANCE**  
**CONTACT:**              **DIRECTOR GOVERNANCE AND CHIEF FINANCIAL OFFICER / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

**PART I**

**PURPOSE**

An application to modify development consent DA2018/01498, which gave consent to the 'Demolition of existing structures and erection of a twenty (20) storey mixed use development' on the 26 August 2019.

The modification under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) seeks changes to the building height, façade and internal floor plans, an increase in the height of the basement vehicle access, changes to the car parking layout and four additional residential units.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the building height development standard under Clause 4.3 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) exceeding a 10% variation.

The modified proposal results in a 14.16% (8.5m) variation to the maximum building height for the site. The approved development included an 8.7% (5.2m) variation to the building height development standard of the NLEP 2012.

The increase to the approved building height is a result of an increase to the height of the ground floor to accommodate waste collection services and the relocation of a communal area to the rooftop of the building.



**Subject Land: 20 Denison Street  
Newcastle West**

The modified development has been amended during the assessment process, in response to issues raised by City of Newcastle (CN)'s Urban Design Review Panel (UDRP). The modified development, as amended, is supported by the UDRP.

The application was assigned to Senior Development Officer, Gareth Simpson, for assessment.

The application was publicly notified in accordance with CN's Community Participation Plan (CPP) for 43 days between 9 December 2021 and 14 January 2022 and no submissions have been received.

### Issues

- 1) The development (as modified) does not comply with the building height development standard of 60m under NLEP 2012. The proposed height of the building is 68.5m, which includes a lift overrun and rooftop communal area. This equates to a 14.16% variation to the development standard. It is noted that the approved development included an 8.7% variation to the building height development standard of NLEP 2012.

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

### Conclusion

The development has been assessed having regard to the relevant heads of consideration under section 4.55 of the EP&A Act and is considered to be acceptable subject to compliance with appropriate conditions.

### RECOMMENDATION

- A That the Development Assessment Committee (DAC) note the variation to the building height development standard of NLEP 2012 and consider the variation to be justified; and
- B That MA2021/00470 for the modification of DA2018/01498, including changes to the approved floor plans and elevations 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 45 in DP 632876 and is a flat, predominately square-shaped parcel of land, with an area of 1,636m<sup>2</sup>. The site has frontage to Denison Street of 40.23m and is surrounded by a mix of mainly residential and commercial properties. Directly to the north of the site is an event space called 'The Unorthodox Church of Groove'. The built environment in the locality is low rise in character, comprising one-storey to three-storey commercial buildings, despite the area having a maximum height limit of 60m under NLEP 2012.

The subject site currently accommodates a circa 1970s single-storey steel and brick building positioned along the northern (rear) boundary. The existing building has a floor area of 480m<sup>2</sup> and comprises of office premises, a showroom and warehouse. A large hardstand area, accommodating approximately 34 at-grade car parking spaces, occupies the front portion of the site. Part of the car parking area is covered by a single-storey, flat roofed canopy, associated with the site's historic use as a service station.

The site is entirely covered by buildings and concrete and is fenced at the site's front street boundary. Vehicular access to the site is available via two separate driveway crossings from Denison Street.

#### Previous Development History

Development consent was granted by Newcastle City Council on 26 August 2019 for '*Demolition of existing structures and erection of a twenty (20) storey mixed use development*' at 20 Denison Street Newcastle West

The approved development comprised of the following:

- i) Demolition of the existing building and ancillary development within the site;
- ii) Site preparation work including earthworks and installation of ancillary services and infrastructure;
- iii) Construction of a 20-storey building accommodating:
  - a) 235m<sup>2</sup> of retail floor space fronting Denison Street at ground level;



- b) 77 car parking spaces over 4 levels (Basement, Ground, Level 1, Level 2);
- c) A resident's common room at level 3;
- d) 74 x one-, two- and three-bedroom residential apartments, including 5 'dual key' studio apartments, over levels 1-19. The apartment mix is as follows:
  - 1) 9 X 1 bedroom
  - 2) 53 X 2 bedroom
  - 3) 7 X 3 bedroom
  - 4) 4 X 'dual key' 1 bedroom
  - 5) 1 X 'dual key' 2 bedroom
- iv) Associated vehicular access and service areas; and
- v) Podium landscaping and the provision of private and communal open space.

The approved development included an 8.7% (5.2m) variation to the building height development standard of the NLEP 2012.

## **2.0 THE PROPOSAL**

The application to modify development consent DA2018/01498, proposes the following changes.

### **Basement**

- i) Maintain one (1) basement level
- ii) Redesign basement layout and reduce its area by 530m<sup>2</sup>.
- iii) Decrease car parking from 31 to 20 spaces.

### **Ground floor**

- i) A one metre increase in the height to level one, to establish a five-metre floor to floor height, between ground and first floor levels, to enable onsite operation of waste collection vehicles.
- ii) Reconfiguration of the waste storage facilities.
- iii) Increase car parking from eight to twenty-three spaces.

- iv) Minor decrease (12m<sup>2</sup>) in commercial gross floor area.
- v) Addition of a concrete awning above the substation.

**Mezzanine Floor**

Addition of a new mezzanine floor containing twenty-four car parking spaces.

**Level 1**

Split 'dual key' apartments to create two x one-bedroom, and two x two-bedroom apartments.

**Level 2**

- i) Split 'dual key' apartments to create two x one-bedroom, and two x two-bedroom apartments.
- ii) Deletion of car parking on level 2 and inclusion of an extra two (2) apartments.

**Level 3**

- i) Deletion of the community room and communal open space. (Relocation to levels 19 & 20).
- ii) Addition of a 2-bedroom apartment.
- iii) Deletion of north-eastern corner (podium roof lowered to level two).

**Level 4 - 18**

Change design of stairs to a 'scissor stair' configuration.

**Level 19**

Replace unit on northern side with community rooms and balconies.

**Level 20**

- i) Addition of rooftop open space with an area of 104m<sup>2</sup>. The area is split into two separate rooms and includes perimeter plantings.
- ii) Provision of an accessible roof top serviced by lifts.

**Colours and Materials**

Updated materials palette, including:

- i) Oxidised copper for the podium balustrades.
- ii) Grey aluminium louvres on Denison Street to conceal fire equipment and substation.

A copy of the submitted plans is at **Attachment A**, proposed conditions of consent is at **Attachment B**.

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 for a period of 43 days between 9 December 2021 and 14 January 2022 in accordance with CN's Community Consultation Plan. No submissions were received in response. The extended notification period occurred because of notification being during the Christmas holiday period.

### 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 relevant provisions of Section 4.55 of the EP&A Act, as detailed below.

Pursuant to Section 4.55(2) of the EP&A Act, the consent authority, when considering a request to modify a Determination under the clause, must:

- a) *be satisfied that the development as modified is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and;*
- b) *consult the minister, the public authority, approval body or Minister, as a result of:*
  - i) *a condition imposed as a requirement of a concurrence to the consent, of:*
  - ii) *in accordance with the general terms of an approval proposed to be granted, and*
- c) *notified the application in accordance with the regulations and Council's Development Control Plan, and*
  - i) *consider any submissions made; and*

- ii) *take into consideration the matters referred to in Section 4.15 as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

These matters are further considered below.

**i) Section 4.55 (2)(a) – Substantially the same development**

The NSW Land and Environment Court has established several precedents as to what may be considered as being '*substantially the same development*', and what should be factored into the consideration of this threshold test.

Principles drawn from the judgment include that:

- i) The term 'substantially' means 'essentially or materially having the same essence'.
- ii) When a consent authority makes a determination as to whether a development is substantially the same, it is a question of fact and degree and is not a question of law.
- iii) The term to 'modify' means to 'alter without radical transformation'.
- iv) In comparing the approved development and the development proposed to be modified, it is necessary to undertake a qualitative and quantitative assessment of the developments in their proper context.
- v) To undertake a numeric or quantitative assessment of the modification only in the absence of a qualitative assessment would be flawed.

These considerations apply to the modification of a development consent through design changes as well as amendments to conditions that impact the nature of the proposal.

The consideration of the 'substantially the same development test' should not only include the physical characteristics of the approved and modified schemes, but also the nature and magnitude of impacts of the developments. In these respects, the modified scheme should be 'essentially or materially' the same as that originally approved.

An assessment of the qualitative and quantitative elements of the development approved and as proposed to be modified are provided below:

*Qualitative Comparison*

The proposed development, as modified, is substantially the same development, in a qualitative sense, as that originally approved as:

- a) There will be no change to the land use.
- b) The architectural quality will not be diminished.
- c) There are no changes which would have a detrimental impact on the character of the Heritage Conservation Area of which the site is a part (being the Newcastle City Centre Heritage Conservation Area).
- d) There are no changes to the building footprint, and whilst the proposal includes an increase in building height, the additional height will not adversely impact on the adjoining properties or public domain.
- e) There is minimal change in impact or potential impacts to the natural environment as a result of the proposal.
- f) The changes will not preclude the development from complying with the conditions of consent, noting that several conditions are proposed to be modified within this application.

*Quantitative Comparison*

The following table provides a summary of the key features of the approved development and the modified development to assist with the quantitative assessment of the proposed modification.

	<b>Approved development</b>	<b>Modified development</b>
Site Area	1636 sqm	1636 sqm
Gross Floor Area	6,844 sqm	7,487 sqm
Retail/Commercial Gross Floor Area (GFA)	235 sqm	223 sqm
Residential GFA	6,609 sqm	7,264 sqm
Maximum Height	65.2m	68.5m
Total Dwellings	74	78
Total Parking	77	97
Communal Open Space	168 sqm	169 sqm
Floor Space Ratio (FSR)	4.5:1	5.03:1

Number of levels (excluding basement)	5 plus rooftop terrace	6 plus rooftop terrace
Maximum Relative Level (RL)	71.150 Australian Height Datum (AHD)	74.450 AHD

The proposed development, as modified, is substantially the same development, in a quantitative sense, as originally approved as it:

- i) Does not significantly alter the number, or mix of apartments
- ii) Does not change the number of commercial tenancies.
- iii) Does not significantly alter the GFA.
- iv) Does not significantly alter the approved height.

The development being modified is substantially the same development as the development for which consent was originally granted.

**ii) Section 4.55 (2)(b) – Consultation**

No public authority or approval bodies were required to be consulted.

The development involves alterations to a building within a mine subsidence district and approval is required under Section 22 of the *Coal Mine Subsidence Compensation Act 2017*, at lodgement of the original development application (DA2018/01498) the applicant did not elect for the development to be *'integrated development'* for the purposes of Section 4.46 of the EP&A Act and as such General Terms of Approval from Subsidence Advisory NSW do not form part of the original development consent.

**ii) Section 4.55(2)(c)(i) & (ii) – Notification**

The application was publicly notified for a period of 43 days between 9 December 2021 and 14 January 2022, in accordance with CN's Community Participation Plan.

**iii) Section 4.55(2)(d) – Submissions**

No submissions were received during the public notification period.

**iv) Section 4.55(3) – relevant matters in Section 4.15(1) and reasons given for the grant of the consent that is sought to be modified**

When determining an application for modification of a consent, the consent authority must take into consideration the matters referred to in Section 4.15(1) that are of relevance to the development the subject of the application, which includes the following:

- a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
- b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- c) *the suitability of the site for the development,*
- d) *any submissions made in accordance with this Act or the regulations,*
- e) *the public interest.*

An assessment of the modification against the matters for consideration under Section 4.15 of the EP&A Act is provided below.

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

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

##### **Chapter 4 – Remediation of land.**

State Environmental Planning Policy No.55 – Remediation of Land ('SEPP 55') was repealed by State Environmental Planning Policy (Resilience and Hazards) 2021 ('RH SEPP') on 1 March 2022. The provisions of SEPP 55 have been transferred to Chapter 4 of the RH SEPP. This policy contains planning controls for the remediation of contaminated land.

The RH SEPP requires that the consent authority consider whether the land is contaminated and, if the land is contaminated, whether the land  
The site is identified on CN's contaminated land mapping as having operated as a service station in the past, being a potentially contaminating activity.

As part of the original approved development for the site (DA2018/01498), a Detailed Site Investigation (DSI) addressing the contamination was submitted with the DA. The DSI confirmed that four underground fuel storage tanks are present on the site. The investigation identified the potential for hydrocarbon impacts in the soil and groundwater.

Following completion of the DSI, a Remediation Action Plan (RAP) was prepared by the proponent in accordance with the NSW Office of Environment and Heritage 2011 Guidelines for Consultants reporting on Contaminated Sites. This RAP incorporated recommendations made in the DSI to ensure that the site is remediated to a condition suitable for the proposed mixed land use.

Appropriate conditions to address these issues were included in the original DA consent...There are no changes proposed to the basement footprint, therefore it is not necessary to amend or remove these conditions.

The proposal is considered acceptable in respect of contamination.

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

The subject site is clear of any vegetation. The applicant does not propose the removal of any vegetation in order to facilitate the development. The provisions of the Vegetation SEPP do not apply.

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

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

The proposal was required to be referred to Ausgrid in accordance with the ISEPP. Ausgrid have advised they have no major concerns in respect of the application.

Provisions of the ISEPP relating to traffic generating development require certain applications to be referred to Roads and Maritime Services (RMS). The development is not considered to be '*traffic generating*' and was not required to be referred to RMS.

**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 constructed in accordance with the amended BASIX Certificate.

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

*State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65)* applies to the development for the purpose of mixed-use development comprising a residential accommodation component (amongst other development types) and aims to improve the quality of residential apartment development.

Clause 28(2) of SEPP 65 requires the consent authority to take into consideration the advice of a Design Review Panel (constituted under Part 3 of the Policy), and the design quality of the development when evaluated in accordance with the Design Quality Principles set out in the Apartment Design Guide (ADG).

CN's Urban Design Review Panel (UDRP), have reviewed the modification application as detailed below.

CN's UDRP reviewed the modified development on 24 February 2022. The UDRP confirmed support in principle, however identified a number of minor design changes required to be undertaken to the proposal.



Following the meeting, the applicant amended the proposal in accordance with the UDRP's comments. The panel reviewed these changes and confirmed acceptance of the amended proposal on 31 March 2022. A summary of the UDRP's advice and CN's planning assessment is provided in the table below.

<b>Design Quality Principles and Assessment</b>
<p><b>Principle 1: Context and Neighbourhood Character</b></p> <p><u>UDRP comments:</u></p> <p><i>"Overall, the Panel is supportive of the proposed modifications and the relationship of the tower and ground floor address to Denison Street.</i></p> <p><i>Generally, improvements have been made that tighten the tower presentation and improve resident amenity.</i></p> <p><i>The entry areas to the ground floor tenancies are a little more generous, although it is noted that equitable access via platform lifts (previously approved) are not generally an acceptable option for dignified and equitable access in new development. The entry to the residential tower is improved with a wider and generous foyer addressing the street that is more inviting and subordinates the fire egress.</i></p> <p><i>The Panel was interested in the architectural exploration of the podium façade and its materiality but was less convinced by the option proposed compared to the original approved design as it presents in the street.</i></p> <p><i>The curved geometry of the façade frame that integrates the awning, balconies and planters and the intent to play with the straight geometry of the internal planning is acknowledged.</i></p> <p><i>However, the Panel would like to see this further developed to avoid what appear awkward junctions and relationships between the Level 1 and 2 balconies and Level 3 podium planter geometries with the curved frame.</i></p> <p><i>Solid balustrades for the podium levels are supported in principle. They ensure the façade composition can maintain its intended integrity and high quality in the streetscape over the long-term. Solid upstands improve residents' privacy amenity thus avoiding the inevitable ad hoc screening that otherwise occurs with excessively glazed balustrading and which negatively impacts the street interface character at the important pedestrian scale."</i></p> <p><u>Officer Comment</u></p> <p>Following receipt of these comments, the applicant amended the level 1 and level 2 balconies and level 3 podium planters. The amended design is supported by the Panel and is considered to integrate into the existing streetscape.</p>

**Principle 2: Built Form and Scale**

UDRP comments:

*"The changes proposed are largely rational and well resolved.*

Height – *an increase to the approved building height is proposed:*

- i) The variation in height is providing for generous communal spaces on two rooftop levels, which offer residents real options of type of spaces (indoor/outdoor) and sizes of spaces that are comfortable for large or small groups, or individual use.*
- ii) The height is supportable on the basis there is a demonstrated communal benefit, a shared benefit.*
- iii) The Panel commended the quality of communal spaces proposed on the rooftop levels noting the relocation of lower podium communal open spaces enables all future residents and their visitors, particularly those on the lower levels, to share equitably in the best amenity offered in the development.*

Denison Street podium

- i) The geometry of balconies in plan does not follow the alignment of the curved edge podium 'frame'*
- ii) the staggering of the balconies and planters sits awkwardly with the fluid curve appearing more in competition rather than fully resolved, balanced tension. The Panel supports the curve (which is also understood to be protecting existing established street trees) and the rounded columns but had reservations about the straight alignment of the balustrade edge and planter boxes above.*
- iii) The Panel suggests further design development is required for the:
  - a) resolution of the balustrades, edge and the column elements.**

*Denison Street façade 'return' at the south-east corner which is not as successful as the approved development in terminating the corner."*

Officer Comment

The UDRP supported the increased building height. Following receipt of these comments, the applicant amended the proposal in respect of the design of the Denison Street podium. The amended design was reviewed by the UDRP and they confirmed support for the amended proposal on 31 March 2022.

**Principle 3: Density**

UDRP comments:

*"The proposed modest increase in yield and GFA can be supported. The modified podium apartment types achieve high levels of amenity, and the relocation of the podium communal spaces creates more generous offering of communal spaces and improves communal amenity.*

*The modifications to the car park likewise improve the layout achieving greater efficiency and improved management of truck access. However, the panel notes minor amendments are required to address pedestrian safety with obscured sightlines at the ramp (see item 7 – Safety).*

*Overall, the proposed building form appears to have well accommodated the sought density."*

Officer Comment

The panel's support for the increased density is noted. The comments in respect to site safety are discussed in Principle 7 below.

**Principle 4: Sustainability**

UDRP comments:

*"No information was provided, but the Panel notes opportunities for the following should be considered particularly as the application proposes modifications to the car parking:*

- i) PV rooftop*
- ii) EV charging*
- iii) Car Share*

Officer Comment

The proposal achieves the requirements of BASIX and is considered acceptable in respect of sustainability. Whilst the support for PV rooftop, EV charging and car share is noted there are no requirements for these items to be provided.

The Panel have confirmed their support of the proposal.

**Principle 5: Landscape**

UDRP comments:

*"The podium landscaping will be contributing to the overall appearance of the*

*building that over time will add to the whole-of-block urban character.*

*The podiums of each development will be viewed to and from the public domain, within the subject site, and from future neighbouring development.*

*All landscape planting on the podium level, therefore, must be in common ownership and maintained by the Owners Corporation in any future strata plan, to ensure the landscape outcome that is delivered over the long term is consistent with the approved landscape design and achieves the expected urban outcome.*

*Access to all landscape areas must be direct, functional and safely accommodated from common lobbies/areas to ensure regular maintenance by the Owners Corporation over the life of the development.*

*Private use of the podium that extends close to the boundary will not be supported. Careful consideration of the podium interface at all boundaries is required – further design development is needed to resolve how the interface is to be managed in terms of security, privacy, access, maintenance, and coordination with neighbouring sites particularly where there may be opportunities for well-coordinated boundary treatments and landscape between sites.*

*Second Floor – greater podium landscape areas*

- i) Clarification of the strata subdivision is to confirm all areas nominated 'Mass Planting' on dwg A104 (A) are in common ownership.*
- ii) Safe and functional access to these areas needs to be provided directly from the lift lobby:*
  - a) Whilst a perimeter maintenance path is provided to the outer edge of the podium level, direct access from the common area (the residential apartment lobby) is not shown on the modification application documentation.*
  - b) The secondary private open space of Unit 2.07 is to be reduced to provide generous access to the landscape and to the perimeter access walkway area. The access needs to accommodate foreseeable work that may involve tools, equipment for soil replacement, any planter repairs.*
  - c) The Panel was advised that subsequent to lodging the subject modification application documentation, the design team has reconfigured the north facing terrace of apartment 2.07 (and adjacent areas) to accommodate a restricted access path from the residential lobby to the perimeter maintenance path.*
  - d) The Panel notes this amendment is to be formally submitted to ensure the modification remains consistent with the original approved design and long-term delivery of high quality podium landscapes noted above.*

*Third Floor – planters*

- i) Modifications to the Denison Street perimeter planting treatment result in a change to the approved design outcome.*
- ii) The continuous, curved expression of the podium planters in the approved development is proposed to be a series of individual, rectangular planter boxes in a staggered arrangement.*
- iii) Further design development is required to improve the resolution of what still appear as conflicting geometries and an awkward edge relationship, which the Panel considered has lost much of the integrity of the original approved fluid/ curved building edge.*

*Note: See Panel’s comments in response to subsequently issued (7 March) options for the Denison St podium façade treatment under the Aesthetics heading below.*

*Across the development, provision of appropriate soil volumes for landscaping on structure for planting of varying scale is essential. Adequate allowances are to be accommodated in the structural and hydraulic design necessary for the loads, precipitation volumes, automated irrigation, long-term ability for maintenance and retaining water-proofing integrity and the like. Irrigation design should take into account at DA stage, appropriate means of ensuring that plumbing for landscape watering is integrated with the overall landscape design and does not detract from its appearance.*

*Public domain landscape is to be coordinated with Newcastle City for canopy retention/replenishment and public domain upgrade works to ensure a consistent and coordinated streetscape along Denison Street and beyond in Newcastle West."*

Officer Comments

Following receipt of these comments, the applicant amended the proposal, that included changes to the proposed podium level planters to ensure maintenance access is available to all parts of the landscaped area. The proposal is acceptable in terms of landscaping.

**Principle 6: Amenity**

UDRP comments:

*"Modifications have generally improved internal layouts and associated resident amenity.*

*The Panel supports the podium levels’ solid balustrades. They will improve resident amenity and provide greater certainty for the long-term streetscape character at the lower levels.*

*The Panel commended the relocation and resulting choice of communal spaces proposed on the rooftop levels. They provide all residents with equitable access to enjoy areas offering the best amenity.*

*The following requires further consideration:*

- i) Natural cross ventilation L4-7 Type 4.03 to 7.03 are single aspect types. See dwg A602. While adequate SEPP 65 ADG natural cross ventilation amenity is likely still achieved, these units should be deleted from the calculations for accuracy. (While only a draft, the revised ADG now provides helpful additional information that clarifies what is and is not considered to be naturally cross ventilated unit types.)*
- ii) Car park proposes a more efficient and more comfortable/practical layout for vehicle movements. However, the pedestrian access both behind the truck turning at ground level and the mezzanine lobby entry at the top of the car ramp require amendments to address sightlines and safety and a more pleasant lobby entry character. Generally, the pedestrian access from the north-western sides requires quite a convoluted pedestrian route through the car park to reach the eastern lobby entry.*

*Access to mezzanine storage areas is unclear."*

Officer Comments

The applicant has responded to these comments and amended the proposal to ensure greater safety for pedestrians. The proposal is supported in terms of amenity

**Principle 7: Safety**

UDRP comments:

*"Amendments have generally improved the outcome for overall amenity that by association tends to improve safety. Two areas require further consideration:*

Basement and Ground Floor

*The panel was advised that vehicle access ramp is intended to have balustrade height walls only (rather than solid, full height walls) which will allow sufficient sightlines for pedestrian and vehicle movements.*

*This is to be amended and submitted.*

Mezzanine Floor

*The access door needs to be recessed further into the lobby so that pedestrians are not stepping out into the path of vehicles.*

*This is to be amended and submitted."*

Officer Comments

The applicant has addressed these comments and amended the proposal in response. The amended proposal was reviewed by the UDRP and confirmation of their support for the amended proposal was issued on 31 March 2022.

**Principle 8: Housing Diversity and Social Interaction**

UDRP comments:

*"The Panel notes that in principle, opportunities for providing Liveable Housing Design Platinum Level apartments as a typology should be considered. As an as-built outcome, they create more diversity for housing more generally, and increase a paucity of supply for sectors currently needing it.*

*Provision of Platinum Level apartment types achieves greater carbon savings by avoiding the need for future adaption of already constructed housing stock, which occurs under AS4299, and with it avoid the wasted of perfectly good materials that results from future adaption instead of provision of more flexible housing types at initial construction.*

*The location of the site in immediate proximity to what Newcastle West currently has to offer, and will offer with continued renewal and public domain initiatives, presents opportunities for increasing housing types that support all members of the community in being able to engage fully in a living city.*

*As a considered focus, it will also facilitate solutions that will support Newcastle's policies that encourage richer social interactions with the provision of more family friendly high-density housing types or working from home options located in a dense, well served and desirable urban area."*

Officer Comments

The proposal meets the Liveable Housing Design Guidelines Silver Level universal design features which is requirement of the Development Control Plan. Given there is no requirement for Platinum Level apartments, the proposal is considered to be acceptable.

**Principle 9: Aesthetics**

UDRP comments:

*"The panel supports the overall architectural language, expression of building elements and clear articulation of materials.*

*The only areas requiring further consideration as regard aesthetics are the Denison Street podium façade and associated landscape integration.*

*See comments under item 1 Neighbourhood Context and item 2 Built Form and Scale.*

*The applicant advised that they had tested curving balcony edges, and was not comfortable with the options. However, the Panel does not have the benefit of seeing this work as it has not been included in the documentation provided. The Panel remained of the view that further design development is warranted.*

*Note: The architect made available several options for the façade and planter treatment of the Denison St podium façade subsequent to the meeting. On considering the options, the Panel expressed the view that Parapet Option 4, combined with Balustrade Option 2 are the preferred, which includes curved balustrades and a set-back linear planter, finished in a dark tone."*

#### Officer Comments

The applicant amended the balcony design for the podium apartments and the planter treatment. The amended proposal has been assessed by the UDRP and they have confirmed their support.

#### **Amendments Required to Achieve Design Quality**

##### UDRP comments:

*"Amendments to the design as outlined above are required in order for the Panel to support the proposal.*

##### Officer Comments

The applicant addressed all issues raised by the UDRP in amended plans. These plans were reviewed by the UDRP and they confirmed their support for the amended proposal on 31 March 2022.

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

Further to the nine Design Quality Principles, the ADG provides greater detail on how residential development proposals can meet these principles through good design and planning practice. The following section contains an assessment of the development against key aspects of the ADG.

##### *3C Public Domain Interface*

The objective is to transition between private and public domain is achieved without compromising safety and security.

The proposal does not provide for terraces, balconies or courtyard apartments with direct access to the street. This is considered acceptable and consistent with CN's planning controls which seek activity at street level.



There are two levels of apartments at level 1 and level 2 which include balconies that overlook the public domain in front of the proposed building. Units located on the second-floor podium directly overlook the podium communal amenity area. Both design features provide opportunity for casual surveillance.

The podium building facing Denison Street contains a significant amount of glazing at all levels. Opportunities for concealment are minimised across the Denison Street façade and the provision of vehicular and pedestrian entrances for the building.

The mailboxes in the lobby and car parking vents are concealed from street view.

The modified application proposes only minor changes to the originally approved proposal which was considered to be acceptable in respect of the Public Domain Interface.

### *3D Communal and Public Open Space*

The modified proposal provides 27% of the site as communal open space within the podium and roof top areas, in excess of the minimum 25% required in this control. The podium level has areas for deep soil planting and subsequent landscaping.

Due to the orientation of the building, the podium level communal area receives over 50% direct sunlight for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter). The level 20 roof top communal areas have uninterrupted sunlight access.

These areas combine to provide quality communal and public open space for residents.

### *3E Deep Soil Zones*

The podium level amenity area results in 31% of the site having the ability for deep soil planting at a depth of approximately 1m which is in excess of the guidelines.

### *3F Visual Privacy*

The podium is built to the boundary on the east, north and west orientations, with the residential component predominantly facing the street, with the exception of two windows facing the west boundary on level 02. These windows are set back by 3.1m from the boundary. One of these windows is to a stairwell and the other is a secondary window to a living room. Given the relatively low usage pattern related to these windows and that there is minimal direct impact on site to the west, which has already been redeveloped, the proposed setback distance is considered acceptable.

The setback from the tower to the eastern and northern boundary is 9m on levels 2-7 and 12m from level 8 upwards. These distances comply with the design criteria, noting that the sites to the north and east could be amalgamated in the future and redeveloped to a similar height.

The setback from the western boundary is 9m on all upper levels. While it is acknowledged that the sites further to the west (corner of Tudor and Parry Streets) could be amalgamated for redevelopment, the residential development that is

located immediately west and north-west of the subject site is unlikely to be redeveloped in the foreseeable future. A 9m setback to the western boundary is considered to be satisfactory.

*3G Pedestrian Access and Entries*

Multiple entrances are provided to the building at ground level with two commercial entrances and one entrance to the upper floor residential units. The proposed residential entrance is clearly defined and located in the centre of the building whilst all communal building access areas are clearly visible from the public domain.

*3H Vehicle Access*

The car parking entry is located behind the building line with the car park entry integrated into the building design. The pedestrian and vehicle access to the building is also adequately separated ensuring the proposed vehicle access is acceptable.

*3J Bicycle and Car Parking*

Based on the proposed number and mix of apartments, a total of 92 car parking spaces are required. The proposal provides 97 car parking spaces. The proposal also incorporates sufficient bicycle car parking spaces. The proposed basement car parking area has been optimised ensuring an efficient and logical car parking layout.

*4A Solar and Daylight Access*

The proposal achieves the requirement in respect of solar access with 73% of units achieving at least 2 hours of sunlight access and 7% of units receiving no solar access.

*4B Natural Ventilation*

The proposal complies with this control with 92% of units achieving natural ventilation.

*4C Ceiling Height*

The ceiling heights for all apartments complies with the 2.7m minimum required by the ADG. The ground floor provides a floor to floor height of 4m, allowing a ceiling height of 3.3m. The first floor provides a floor to floor height of 3.1m, however due to the shallow floor plate which provides appropriate levels of daylight, the lower ceiling height is considered acceptable.

*4D Apartment Size and Layout*

The minimum apartment sizes are as follows:

- i) 1 bedroom: 51m<sup>2</sup>
- ii) 2 bedroom: 75m<sup>2</sup>
- iii) 3 bedroom: 93m<sup>2</sup>

These sizes comply with the ADG requirements.

All habitable rooms 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 whilst the units achieve the minimum dimensions and room depths.

*4E Private Open Space and Balconies*

All balconies comply with the minimum area with balcony areas proposed as follows:

- i) 1 bedroom: 10m<sup>2</sup>
- ii) 2 bedroom: 12m<sup>2</sup>
- iii) 3 bedroom: 13m<sup>2</sup>

All balconies comply with the minimum depth of balcony with the exception of apartments 1.02 and 2.06. These units have balconies with depths that vary between 1m and 2m, while individually achieving the minimum required area. The angling of the balconies provides articulation to the façade, which is shaped around the existing street tree. Due to the benefit to the streetscape, that the retention of the street tree brings and that the proportions of the two balconies still achieve reasonable usability, the proposed arrangement is considered acceptable in this instance.

*4F Common Circulation and Spaces*

The proposal complies with this control in respect to the maximum number of apartments off a circulation core.

*4G Storage*

The proposal provides for a compliant level of storage for each unit.

The modified proposal is considered to be acceptable having regard to SEPP65, taking into consideration the design criteria in the Apartment Design Guide and comments received from the UDCG in respect of the design principles.

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

This SEPP applies to all residential dwelling types and is applicable to this application. The aim of BASIX is to deliver equitable and effective water and greenhouse gas reductions across the State. BASIX Certificates were provided and approved by Council as part of the original application, which demonstrated compliance with the identified BASIX targets for water, energy and thermal comfort.

An amended BASIX Certificate to reflect the proposed modifications was provided with the application. The Certificate confirms that the development will meet the NSW Governments requirements for sustainability of built form in accordance with the commitments that are set out in the 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 B4 Mixed Use Zone under the provisions of NLEP 2012. Within the B4 mixed use zone, commercial premises and shop top housing are permissible with consent. The proposal incorporates shop top housing and retail units, which are a type of commercial premises. Accordingly, all of the proposed uses are permissible with consent.

The objectives of the B4 Mixed Use zone are:

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

The modified proposal comprises a mixed-use scheme incorporating retail and residential dwellings in close proximity to public transport. The proposed uses complement and enhance the viability of the commercial centre by increasing the population of the area. The proposed development is consistent with the objectives of the land use zone.

Clause 2.7 - Demolition Requires Development Consent

The modified proposal includes the demolition of the structures on the site. The original approved development included conditions to ensure demolition works and disposal of material is managed appropriately and in accordance with relevant standards. These conditions are not proposed to be amended or removed as part of this application.

Clause 4.3 - Height of Buildings

The modified development exceeds the building height development standard of 60m for the subject site under NLEP 2012. The proposed height of the building is 68.5m includes a lift overrun and rooftop communal area. This equates to a 14.16% variation to the building height development standard.

The 3.3m increase to the approved building height is a result of an increase to the height of the ground floor to accommodate waste collection services and the relocation of a communal area to the rooftop of the building.

There is no requirement to submit a Clause 4.6 request to vary the building height development standard for an application to modify development consent.

The relevant judgements (originating with *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163) say that section 4.55 of the EP&A

Act1979 is a 'free-standing provision', meaning that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application". This means that it is section 4.55 itself which authorises the development to be approved notwithstanding any breach of development standards.

Section 4.55 however is a broad power to approve, subject to its own stand-alone tests. The applicant needs to meet the "substantially the same test" criteria, and having passed that statutory bar, the application must then be assessed on its merits having regard to the relevant consideration under section 4.15 of the EP&A Act 1979, including relevant SEPP, Local Environmental Plan (LEP) and Development Control Plan (DCP) objectives.

As such, a merit-based assessment of the modified development with respect to the objectives of the Clause 4.3 building height development standard of NLEP 2012 has been undertaken and is detailed below.

The objectives of the building height development standard are:

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

The scale of the development, as modified, will continue to contribute towards the desired character in presenting a mixed-use development that provides both high density residential living and opportunities for commercial and retail development, in close proximity to public transport and arrange of services.

The development, as modified, continues to be consistent with the intended future urban form of the area. It is also consistent with the objectives of the B4 Mixed Use zone and support the viability of the centre including Marketown shopping district through increasing the local population.

As demonstrated within the submitted shadow diagrams, the additional height will not result in unreasonable shadowing to adjoining development or to the public domain, allowing for continued amenity and solar access to these areas. The building will continue to make a positive contribution and will not result in excessive height or scale.

For these reasons, the proposal as modified remains consistent with the objectives of Clause 4.3 and is acceptable.

#### Clause 4.4 - Floor Space Ratio

Under NLEP 2012 the site has a maximum 6:1 floor space ratio (FSR). The FSR of the proposed development is 4.5:1 and complies with this requirement.

Clause 5.10 - Heritage Conservation

The site is within the Newcastle City Centre Heritage Conservation Area (HCA). Accordingly, a Heritage Impact Statement (HIS) was submitted with the modification application. The HIS provides a detailed assessment of the potential impact of the modified proposal on the character of the HCA.

The modified proposal will result in the removal of a commercial building that is of low design quality and will provide a high design quality development considerate of the heritage area. This will enhance the character of the locality, which comprises of a range of generally low design quality buildings and structures.

It has been demonstrated that the proposed development will not unduly impact on the character and heritage significance of the HCA.

Clause 6.1 – Acid Sulfate Soils

The site is potentially affected by Class 4 acid sulfate soils and the development is considered satisfactory in this regard. Relevant conditions were included with the approval for the original development application and this modification does not propose to amend or remove these conditions.

Clause 6.2 - Earthworks

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

Part 7 Additional Local Provisions—Newcastle City Centre

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

Clause 7.4 - Building Separation

The subject site is not located in proximity to any building above 45m in height. Accordingly, this clause does not apply to the proposed development.

Clause 7.5 - Design Excellence

In accordance with subclause 7.5(5), the Government Architect NSW has certified in writing that a design competition is not required in this case. This waiver was granted on the basis that it has been demonstrated that design excellence will be achieved and that the architect has a reputation for delivering buildings of the highest quality.

The recommendation of the Government Architect NSW was for a process of design integrity to be established, specifically through ongoing review by the UDCG (now called the UDRP). The recommendation also noted that this process should continue until construction of the proposal including a review of any modifications by the panel.

The original and modified proposals have been reviewed by the UDRP and have been supported, as required by the Government Architect.

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

Several draft State Environmental Planning Policies or updates have been exhibited or are under consideration by the Department of Planning and Environment, however, three are considered relevant to the subject application.

### **Draft State Environmental Planning Policy (SEPP) Remediation of Land**

The Draft Remediation of Land SEPP will replace the existing SEPP 55 Remediation of Land. The proposed development is consistent with the Explanation of Intended Effect (EIE) for the new SEPP and complies with the existing SEPP 55 Remediation of Land requirements.

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

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines those amendments to Clause 4.6, if adopted it will include new criteria for consideration. The proposed change would require applicants to demonstrate that a variation to a development standard *“is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.”*

For the purposes of CN's assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome.

The proposed development includes a Clause 4.6 variation request and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.

### 5.3 Any development control plan

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

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

##### 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.

Given the minor nature and extent of the proposed modification to the approved development, the modified development remains consistent with the relevant provisions of the NDCP 2012 controls as assessed for the original approved application.

The following assessment relates to the modifications to the original approved development application only. If commentary on the controls is not provided it because there has been no change from the original development application.

##### *Principal controls (3.03.01)*

###### *D. Landscaped Area*

The NDCP 2012 requires that developments in the B4 zone incorporate a minimum of 20% landscaped areas, including a 10% deep soil zone. The proposed landscaped areas will cover 36% (521 sqm) of the site. In addition, 31% (521 sqm) of the landscaped podium area comprises of 1 metre deep planting zones which will allow for the proposed tree planting. The proposed landscaping is considered to be acceptable.

##### *Siting the development (3.03.02)*

###### *B. Public domain Interface*

The modification application includes amendments to the height of the approved basement car park entrance and a decrease of approximately 12m<sup>2</sup> in the commercial floor area. These changes are minor and do not noticeably impact on the public domain interface.

###### *C. Pedestrian and vehicle access*

The proposed modifications do not change the approved basement car park ramp and therefore, the modification proposal is considered to comply with these controls.



*Amenity (3.03.03)*

*A. Solar and daylight access*

The modification proposal results in 73% of living rooms achieving at least 2 hours direct sunlight between 9am and 3pm at the winter solstice (i.e. 21 June) in exceeding the requirements of this control.

*B. Natural ventilation*

The modified proposal results in 92% of apartments achieving natural cross ventilation in compliance with the ADG and this control.

*D. Dwelling size and layout*

As part of the modifications, dwelling sizes have been amended to the following: 1 bedroom: 10 m<sup>2</sup>, 2 bedroom: 12 m<sup>2</sup> and 3 bedroom: 13 m<sup>2</sup>. These sizes comply with the ADG minimum dwelling size standards and are considered acceptable.

*Configuration (3.03.04)*

*B. Communal area and open space*

The modified proposal proposes approximately 27% of the site is to be communal open space located on the roof of the podium level and levels 19 and 20. The extent of communal open space complies with the ADG.

All communal areas receive in excess of the minimum level of solar access whilst the podium communal area is viewable from the habitable rooms of dwellings proposed on the same level. The communal areas are consistent with this control.

*C. Architectural design and roof form*

The roof design is integrated into the overall building design and incorporates areas for plant. The proposed roof design is considered to comply with this control.

*D. Visual appearance and articulation*

The modifications to the approved development are minor and maintain the overall same appearance of the approved building. The façade is considered to maintain a balance of elements including an appropriate mix of solid and void, whilst building services have been integrated within the overall façade and at roof level.

The vehicular and pedestrian building entries are clearly defined and the residential entry is afforded an awning.

The design of the proposal is supported by the UDRP and is considered acceptable.

*Environment (3.03.05)*

*C Waste management*

Details of waste management are discussed in Section 7.08 below.

Flood Management - Section 4.01

The proposed basement entry points are above the Flood Planning Level (FPL) of 5.95 metres AHD and the substation room has a floor level of 5.45 m AHD. This is considered acceptable in respect of potential flood impacts.

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 safety and security measures proposed in the original approved scheme are not proposed to be amended.

Soil Management - Section 5.01

Appropriate sediment control measures were included in the original scheme in accordance with this control. These measures are not proposed to be amended or removed by this modification.

Due to the large scale of the development, earthworks are required to position car parking and other services below ground. The proposed earthworks will be informed by the geotechnical investigation prepared and approved for the site. Minimal filling is proposed, and no excavation is proposed external to the building footprint. Excavation to a maximum depth of 3.7m is proposed within the building footprint.

An Environmental Management Plan will be considered at the Construction Certificate phase. The proposed development complies with this control.

Land Contamination - Section 5.02

A Detailed Site Investigation (DSI) and Remedial Action Plan (RAP) was prepared for the original proposal. Conditions of consent requiring the management of contamination in accordance with the RAP were provided in the approval. These conditions are not proposed to be amended or changed and the proposed modification do not impact on the approved basement footprint. As such, the modified development is acceptable with respect to contamination.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Aboriginal Heritage - Section 5.04

The site does not contain any recorded Aboriginal archaeological sites. However, the project area has a high degree of potential to contain Aboriginal archaeological material within relatively undisturbed sub-surface profiles associated with the fore-dune system. The original approved development for the site included the imposition of a condition of consent requiring the preparation of an archaeological study to be reviewed by the Local Aboriginal Land Council. This modification application doesn't seek to amend or remove this condition and doesn't propose to change the approved basement footprint.

Heritage Items - Section 5.05

The broader locality contains a number of items of 'local' and 'State' heritage significance items, however, no heritage items are located adjacent to or in the vicinity of the site. The proposed development will not unduly impact on the surrounding heritage items.

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

The subject site is within the Newcastle City Centre Heritage Conservation Area. A Heritage Impact Statement (HIS) has been provided with the development application. The HIS demonstrates that the modified development has been designed to minimise the impact to the heritage conservation area through the choice of materials, scheme design and proposed building form. While the proposed building is significantly taller than surrounding properties, this reflects the anticipated future character of the area. The proposed development is a good design that will contribute to the emerging character in Newcastle West.

The modified development complies with this control and is acceptable.

**Part 6.00 Locality Specific Provisions**

**Newcastle City Centre - Section 6.01**

**i) Landscaping (6.01.03 A9)**

The modified proposal includes significant areas of landscaping and communal open space proposed.

**ii) Active Street Frontages (6.01.03 B3)**

It is considered that the modified development includes an active street frontage. Details are included below in the section title "Addressing the street". The NDCP 2012 maps do not identify the site as requiring an active frontage to the streets, nor is it within an identified 'activity node'.

**iii) Addressing the street (6.01.03 B4)**

The modified proposal contributes to the safety, amenity and quality of the public domain through the provision of ground level retail space. Separate pedestrian accesses are proposed to the retail tenancies and the residential lobby from the street. With the exception of the fire booster at the south-western corner of the building, glazing is proposed for the full length of the retail façades to enhance activation.

**iv) Sun access to public spaces (6.01.03 B6)**

The modified proposal will not create significant overshadowing impacts on public spaces.

**v) Infrastructure (6.01.03 B7)**

The stormwater system for the modified proposal has been designed to comply with Section 7.06 of the NDCP 2012. The proposal will connect to the existing water and sewer network servicing the site.

**vi) Landscape Open Space & Visual Amenity - Section 7.02**

General controls (7.02.02)

The proposal involves a high level of landscaping for a multi-storey development within a Central Business District. Approximately 36% of the site area is proposed for landscape planting with 31% proposed for 1 metre deep mass planting. Retention of the 'London Plane' street tree and the proposed landscaping at podium level will help to soften the built form, maximise the amenity of the public domain, and provide visual integration with the street.

**vii) Traffic, Parking & Access - Section 7.03**

Traffic studies & plans (7.03.01)

A Traffic and Parking Assessment was provided with the approved development application and a condition was included in the consent requiring a construction traffic management plan.

The proposal results in a compliant level of resident car parking and a shortfall of 9 visitor car parking spaces. The level of under-provision for visitor parking is consistent with the visitor parking rates for the approved scheme and is supported.

Variations to parking rates (7.03.02 B)

The development seeks approval for only 7 visitor parking spaces while 16 are required in accordance with the NDCP 2012. Reviewing the approved development, 12 visitor spaces were required and 4 were provided, a short fall

of 8 spaces. It is considered that the proportion of visitor parking allocation with this modification application is consistent with the original development and can be supported.

Bike parking (7.03.02 C)

The proposed development exceeds the bicycle parking requirement.

Motorbike parking (7.03.02 D)

The proposal exceeds the motorbike parking requirement.

Parking for people with a disability (7.03.02 E)

Two spaces are provided in the basement car park area in accordance with AS2890 and AS1428.

Public transport (7.03.03 A)

The site is well serviced by public transport, being in close proximity to a number of bus routes and the Newcastle Transport Interchange.

Green Travel Plan (7.03.03 B)

A Green Travel Plan has been provided as part of the development application.

End of trip facilities (7.03.03 C)

Bicycle storage will be provided at ground level for residential visitors and commercial staff/patrons to encourage trips by cycling.

Design & layout of parking & access (7.03.04)

The proposed car park layout and vehicular access arrangements generally comply with the requirements of the NDCP 2012 as well as *AS2890.1 Parking facilities – Off -street car parking*. In particular, the internal car park will enable vehicles to enter and exit the site in a forward direction. In addition, the proposed vehicular access point is suitably located, providing adequate sight lines.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

Stormwater plans submitted with this modification application show a retention tank and sand filter on the mezzanine level of the building, overflowing to the street gutter via a 200x100mm pipe. The tank is not proposed to be used for any reuse, while the approved development proposal stated that reuse was to be implemented in the "lower-level dwellings". It is recommended that rainwater be reused within the building via the following as a minimum:

- i) Ground level retail spaces (if any toilets are proposed)
- ii) First and second floor toilets and washing machine taps/laundry basins
- iii) Second floor outdoor irrigation/outside taps

This has been shown on the architectural plans that will form part of the consent and is considered to be suitably addressed.

#### 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.

The original development was approved on the basis of site private waste collection with vehicles entering and exiting the site in a forward direction. The modified proposal does not seek to amend the approved waste management proposal. CN has an obligation to provide waste management for all residential accommodation. The current proposal has been assessed and can be adequately serviced by CN's waste vehicles is required.

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

#### Street Awnings and Balconies - Section 7.10

The proposed street awning and balconies facing Denison Street are considered to be consistent with the streetscape and complement the proposed design. The street facing balconies have been endorsed by the UDRP.

#### Development Contributions

Section 7.12 of the EP&A Act, 1979 enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's *Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019*.

A condition of consent has been imposed on the original development consent requiring development contributions be paid, calculated on the estimated cost of works provided for the approved development. Changes to this condition of development consent are recommended in the Draft Schedule of Conditions (refer to **Attachment B**) to reflect the increased cost of works for the modified development.

#### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

Demolition

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

A condition of consent was imposed on the original development consent to require demolition works to be planned and carried out in accordance with AS2601 – Demolition of Structures. This condition remains unchanged under the t modification application.

NSW Address policy and guidelines

In accordance with NSW Government policy, Local Governments are responsible for providing clear and logical addressing to ensure quick and accurate location by delivery, utility and emergency services, and the public.

The approved development will result in the production, aggregation, publication or usage of a new address. A condition of consent was imposed on the original development consent allocating street address/es in accordance with *City of Newcastle's House Numbering Policy* and the *Surveying and Spatial Regulation*.

The modified development includes an increase to the approved number of apartments and as such the street addressing conditions imposed on the original development consent requires revision.

Schedule of Conditions (refer to **Attachment B**) has been updated to reflect the amended addresses for the proposed units.

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

The proposed development will not have any undue adverse impact on the natural or built environment. The development is compatible with the existing character, bulk, scale and massing of development in the broader locality. 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 development, as modified, will have positive social and economic benefits. It will facilitate employment and housing within walking distance to public transport and local services, as well as providing employment during the construction period. The development continues to provide additional housing opportunities within the City Centre. The development does not generate any significant overshadowing or privacy impacts and will provide a suitable level of amenity for future occupants, including adequate acoustic attenuation from potential noise generated by the commercial component of the development, and from neighbouring land uses.

The development will not adversely impact on any public or private views. Views from surrounding roads and residential developments are generally screened because of landform, existing developments or recently approved developments.

The constraints of the site, which include flooding, heritage and vehicle access, have been considered in the assessment of the development.

The modified development will have minimal impact on the natural environment. The site does not contain any vegetation and the proposal will not impact on any natural ecosystems. Appropriate measures will be required to be in place during proposed building works to minimise any sediments leaving the site or entering waterways.

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

The application was notified in accordance with CN's Community Participation Plan. No submissions were received during the notification period.

### **5.9 The public interest**

Overall, the modified development will have an acceptable impact on the surrounding natural and built environment and will result in positive social and economic impacts.

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

The development, as modified, is in the public interest and will allow for the orderly and economic development of the site, leading to additional commercial premises and residential accommodation in an area that is well serviced by public transport and community facilities and will assist with the revitalisation of the city.

The modified development will provide housing in a well-serviced area to meet the demands of a growing population, while incorporating increased housing choice within the City Centre. The proposal includes sufficient measures to address potential crime and safety issues.

### **6.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under Section 4.55(2) and Section 4.15(1) of the EP&A Act 1979 and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.



**ATTACHMENTS**

**Item 7 - Attachment A:** Submitted Plans – 20 Denison Street, Newcastle West

**Item 7 - Attachment B:** Draft Schedule of Conditions – 20 Denison Street, Newcastle West

**Item 7 - Attachment C:** Processing Chronology – 20 Denison Street, Newcastle West

**Item 7 - Attachments A - C distributed under separate cover**

**ITEM-8**                    **DAC 17/05/22 - 32-38 GEORGETOWN ROAD, GEORGETOWN AND 2 TURNER STREET, GEORGETOWN - MA2021/00497 - SEC 4.55(2) MODIFICATION TO DA2015/0546 - FOUR STOREY MIXED USE DEVELOPMENT - CHANGE OF USE FROM RESIDENTIAL FLAT BUILDING TO SENIORS LIVING 'IN-FILL SELF-CA**

**APPLICANT:**            **OTH DEVELOPMENTS PTY LTD C/O WPP PTY LTD**  
**OWNER:**                **JS INVESTMENT GROUP PTY LIMITED**  
**NOTE BY:**              **GOVERNANCE**  
**CONTACT:**             **DIRECTOR GOVERNANCE AND CHIEF FINANCIAL OFFICER / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

**PART I**

**PURPOSE**

A Section 4.55 (2) Modification Application has been received seeking consent to modify DA2015/0546, an approved Mixed-Use Development at 32-38 Georgetown Road, and 2 Turner Street, Georgetown.

A Development Application (DA) was approved on 2 November 2015 for a four-storey building comprising (four commercial tenancies and parking on ground floor) twenty-two residential units, associated site works, consolidation of sites and twenty-six lot strata subdivision.

The approved scheme included variances of 33% to the height of building and 64% to the Floor Space Ratio (FSR).

The land use over the site is spilt between Zone B2 (Local Centre) and Zone R3 (Medium Density).

The proposed modification seeks to:

- i) change the approved use of the development from a residential flat building to a seniors living 'in-fill self-care housing'.



**Subject Land: 32-38 Georgetown Road & 2 Turner Street, Georgetown**

- ii) amend two of the ground floor commercial tenancies to a foyer, communal space, and office premises which will operate as ancillary to the seniors living proposal.

The remaining two approved commercial tenancies are proposed to remain as separate commercial/retail use (shop and café).

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

In the consideration of the subject Section 4.55 (2) application to modify the consent, the assessment by the consent authority is limited to only those matters that are relevant to the proposed changes to the approved development. Other aspects of the approved development, which do not form a part of the proposed modification were considered as part of the original assessment.

The submission of a section 4.55 (2) application limits what the applicant can seek via a modification application and prevents the consent authority from making fundamental changes to a development consent.

An application to modify consent can only be regarded a modification if it involves "alterations without radical transformation" and the consent authority must also be satisfied that the modified development will be "substantially the same" as authorised by the original development consent.

Demolition work associated with the development consent was carried out in 2018, ensuring that the consent had physically commenced prior to the consent lapsing date which is detailed as the 2 November 2020. As the demolition works relate to the approved development consent, and were undertaken prior to 2 November 2020, the consent has not lapsed and is still active.

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

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

The proposed development has been reviewed and supported by the City of Newcastle (CN)'s Urban Design Review Panel (UDRP) noting that:

*'The proposed development, as modified provides a positive contribution to its locality in terms of its design quality, the internal and external amenity it provides, and is a suitable mix of commercial and residential uses.'*

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

The proposed development was publicly notified in accordance with CN's Community Participation Plan (CPP), two submissions have been received in response.

The objector's concerns include:

- i) Privacy
- ii) Acoustic
- iii) Pollution
- iv) Traffic
- v) Parking
- vi) Character

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

### **Issues**

- 1) The development (as modified) does not comply with the height of buildings development standard. The prescribed height of the building's development standard is 11m (B2 Zone) and 10m (R3 Zone).

The original development was approved with a building height of 13.3m, exceeding the prescribed height in both the B2 and R3 zoned land, by 2.3m (20.9% variation) and 3.3m (33% variation) respectively.

The proposed modification seeks a maximum height of 14m, including the lift overrun. This equates to a 27.3% variation (B2 Zone) and 40% variation (R3 Zone) to the height of buildings development standard.

- 2) The proposed development (as modified) does not comply with the FSR development standard of 1.5:1 (B2 Zone) and 0.9:1 (R3 Zone) under the Newcastle Local Environmental Plan 2012 (NLEP 2012).

The proposed FSR is 1:56, which equates to a 4% (B2 Zone) and 73.3% (R3 Zone) variation to the floor space ratio development standard. The proposed modification results in an increase of Gross Floor Area (GFA) from 2,588.62m<sup>2</sup> to 2729.2m<sup>2</sup>. This represents a variation of 5.4% from the originally approved FSR and an increase of 140.58m<sup>2</sup>.

### **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 Development Assessment Committee note the variation to the height of building development standard under the NLEP 2012 and consider the variation to be justified.
- B That Development Assessment Committee note the variation to the floor space ratio development standard under NLEP 2012 and consider the variation to be justified.
- C That MA2021/00497 to modify the approved mixed-use development at 32-38 Georgetown Road, and 2 Turner Street Georgetown be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.
- D That those persons who made submissions be advised of CN's determination.

### Political Donation / Gift Declaration

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject site is legally described as Lot 4 DP 1089422, Lot 10 DP 1037029, Lot 11 DP1037029, and Lot 1 DP 196696 known as 32,34 and 38 Georgetown Road, and 2 Turner Street, Georgetown. The site has an area of 1749.2m<sup>2</sup> and with frontages to Georgetown Road and Turner Street.

The site is irregular in shape, with a slight fall from the north-west to south-east. The site is accessed via both Georgetown Road and Turner Street. The site is currently vacant and contains no trees or significant vegetation.

The site is zoned part B2 Local Centre and part R3 Medium Density Residential under the NLEP 2012 (see Figure 2- Zoning Map).

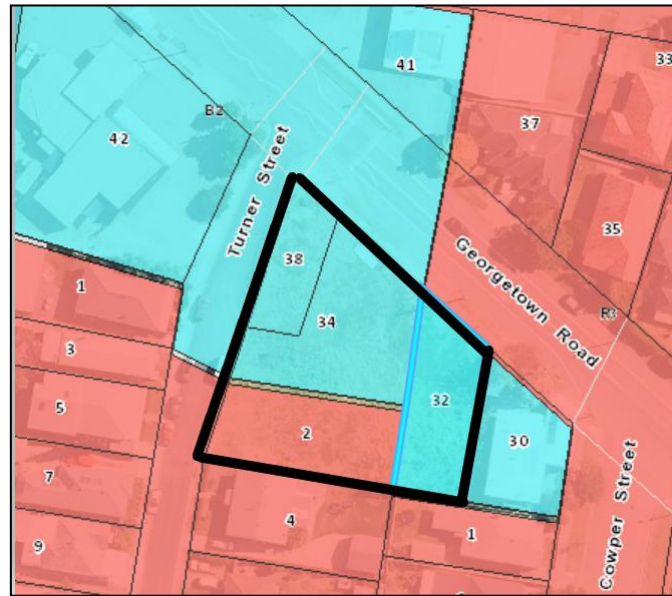


Figure 2: Zoning Map – Zone B2 (Blue) & Zone R3 (Red)

Development on surrounding sites is a mix of commercial and residential. The adjoining land to the west contains a butcher and fruit store, to the north is a takeaway food premises, to the south and east are residential dwellings.

### Site History

DA2015/0546 and S4.55 (1A) modification - DA2015/0546.01

The original consent (DA2015/0546), approved the following works:

- i) The demolition of buildings on site, with the retention of the 1920 corner building façade
- ii) The construction of a four-storey mixed use development including a 'loft area'
- iii) Four ground floor commercial units and lobby addressing Georgetown Road and the corner of Turner Street
- iv) Two x 1-bedroom units, 18 x 2-bedroom units, and 2 x 3-bedroom units.
- v) 35 off street parking spaces, residential storage cages, bin storage areas

- vi) Two vehicle driveways both accessed via Turner Street.
- vii) Associated site works
- viii) Lot consolidation and a 26 lot strata subdivision

On the 19 May 2016 application DA2015/0546.01, a Section 4.55 (1A) Modification was approved. The approved amendments involved:

*'Changes to approved development including internal configuration, enclosing the resident's car park and reconstruction of façade'.*

The modification to the approved development included changes to carpark areas and internal layouts, as well as a reconstruction of the original 1920s corner building, which was previously proposed to be retained. However, during demolition works the original façade was damaged and found to be structurally unsound. The modification allowed the reconstruction of the façade as a part of the proposal.

## **2.0 THE PROPOSAL**

The purpose of this application is to modify the current development consent to enable the use of the site for seniors living known as 'in-fill self-care housing'. The proposal will comprise of 22 units which will be owned and operated by the 'Oak Tree Group' as a retirement village under the provisions of the Retirement Villages Act 1999.

The proposed modifications subject of the section 4.55 (2) application includes the following components:

- i) Change the approved land use from a mixed-use development incorporating shop top housing to seniors housing.
- ii) The number of units remain the same, however the mix of apartments has been amended. The 22 units comprise of a mixture of 4 x 1 bedroom, 15 x 2 bedroom, and 3 x 3 bedroom.
- iii) Amend the ground floor to comprise of a 49sqm shop, 69sqm café, foyer, office and 118sqm communal space.
- iv) The inclusion of rooftop common area/gymnasium, and associated amenities.
- v) The inclusion of storage areas, plant rooms, bin storage and collection rooms, and egress paths.
- vi) The provision of 32 parking spaces including 1 accessible and 3 adaptable spaces.

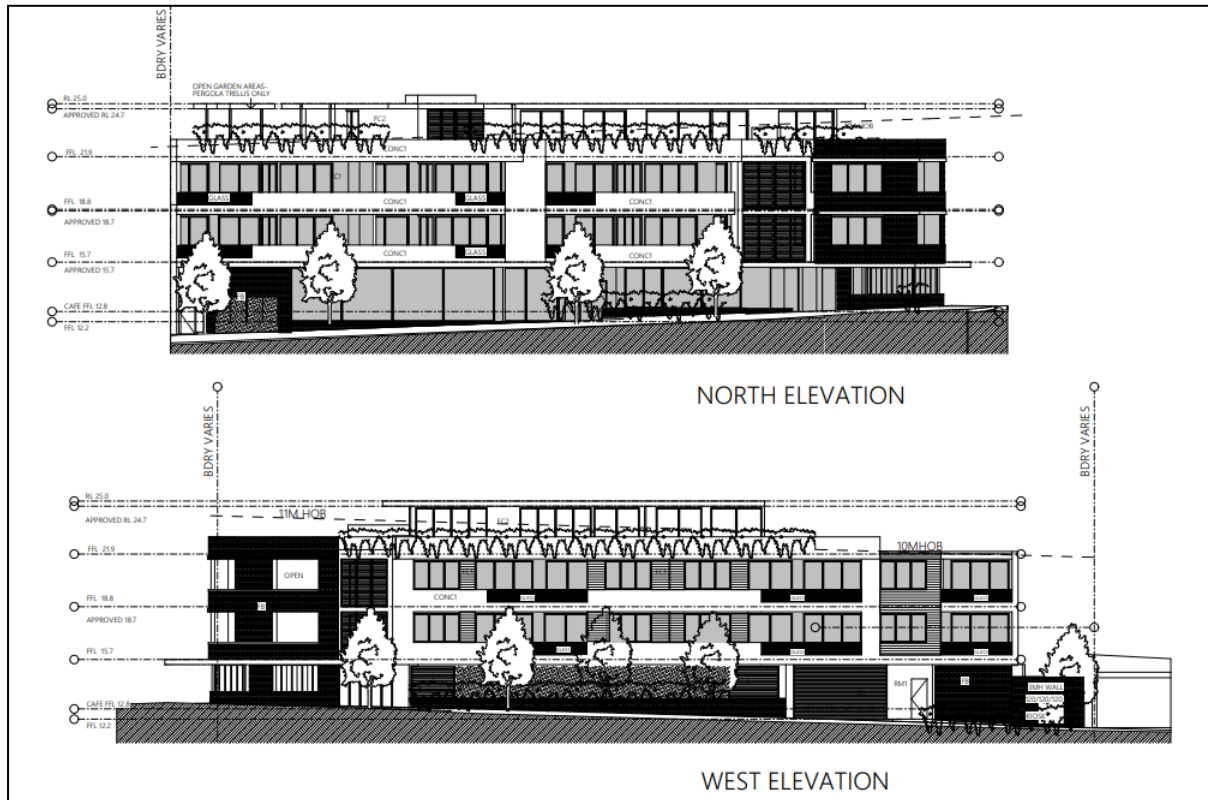


Figure 3: Proposed Amended Elevations

### 3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Participation Plan. Two submissions were received in response.

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

- i) Access - The proposed access is via Turner Street, is narrow and unsafe.
- ii) Visitor Parking - The proposal does not provide visitor parking.
- iii) Car Parking - The proposal does not provide enough car parking spaces.
- iv) Traffic - The traffic generated along Turner Street is a safety concern.
- v) Pollution - Inadequate ventilation for the underground parking.
- vi) Privacy - The courtyards and roof terrace will create privacy issues.
- vii) Acoustic - Potential noise levels from balconies and the roof top.
- viii) Character - The proposal is not in keeping with the area.

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



#### 4.0 INTEGRATED DEVELOPMENT

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

#### 5.0 PLANNING ASSESSMENT

##### 5.1 Environmental Planning and Assessment Act 1979 (EP&A Act)

The application has been assessed having regard to the relevant matters for consideration under the relevant provisions of Section 4.55 of the EP&A Act, as detailed below.

Pursuant to Section 4.55(2) of the EP&A Act, the consent authority, when considering a request to modify a Determination under the clause, must:

a) *be satisfied that the development as modified is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and;*

i) *consult the minister, the public authority, approval body or Minister, as a result of:*

ii) *a condition imposed as a requirement of a concurrence to the consent, of:*

*in accordance with the general terms of an approval proposed to be granted, and*

a) *notified the application in accordance with the regulations and Council's Development Control Plan, and*

b) *consider any submissions made; and*

c) *take into consideration the matters referred to in Section 4.15 as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

These matters are further considered below.

##### i) **Section 4.55 (2)(a) – Substantially the same development**

The NSW Land and Environment Court has established several precedents as to what may be considered as being '*substantially the same development*', and what should be factored into the consideration of this threshold test.

Principles drawn from the judgment include:

- i) The term ‘substantially’ means ‘essentially or materially having the same essence’.
- ii) When a consent authority makes a determination as to whether a development is substantially the same, it is a question of fact and degree and is not a question of law.
- iii) The term to ‘modify’ means to ‘alter without radical transformation’.
- iv) In comparing the approved development and the development proposed to be modified, it is necessary to undertake a qualitative and quantitative assessment of the developments in their proper context.
- v) To undertake a numeric or quantitative assessment of the modification only in the absence of a qualitative assessment would be flawed.

These considerations apply to the modification of a development consent through design changes as well as amendments to conditions that impact the nature of the proposal.

The consideration of the 'substantially the same development test' should not only include the physical characteristics of the approved and modified schemes, but also the nature and magnitude of impacts of the developments. In this respect, the modified scheme should be ‘essentially or materially’ the same as that originally approved.

The following table provides a summary of the key features of the approved development and the modified development to assist with the quantitative assessment of the proposed modification.

	<b>Approved development</b>	<b>Modified development</b>
Site Area	1749.2m <sup>2</sup>	1749.2m <sup>2</sup>
Gross Floor Area	2588.62m <sup>2</sup>	2729.2m <sup>2</sup>
Retail/Commercial	4 x Commercial Units – Café & Shops	2 x Separate Commercial Units (Café & Shop) and ground floor foyer, common lounge area, office.
Residential	22 units comprising: 2 x 1 bed 18 x 2 bed	22 units comprising: 4 x 1 bedroom 15 x 2 bedroom

	2 x 3 bed	3 x 3 bedroom
	Total: 44 bedrooms	Total: 43 bedrooms
Maximum Height	13.3m	14m
Total Parking	35	32
Floor Space Ratio (FSR)	1.48:1	1.56:1
Number of levels (excluding basement)	4	4

It is considered that the current proposal is substantially the same as the originally approved development for the following reasons:

- i) The approved development allows for residential accommodation in the form of a residential flat building. The modification application does not propose significant changes to the approved building, rather design modifications to ensure the building meets the functional accommodation needs of seniors in an 'independent living' environment and the requirements of the operator.
- ii) Senior's housing is a land use which remains consistent with the zone objectives. The proposal will still provide a mixed commercial and residential arrangement, in a similar built form, and relationship to the surrounding land
- iii) The number of units will remain the same.
- iv) Amenity impacts, such as solar, acoustic, and privacy are similar to the approved scheme.
- v) The development will be of similar appearance to the approved development when viewed from the public domain.

The modified external building treatments including glazing, shading, awning, and brickwork do not adversely impact on the overall design of the proposal as shown below.



Figure 4: Amended Proposal



Figure 5: Approved Development



Figure 6: Amended Proposal



Figure 7: Approved Development

- vi) There will be no change in impact or potential impacts to the natural environment as a result of the proposal.
- vii) No change to the building footprint.
- viii) With the exception of the breach to the numerical height and floor space ratio standards, the development will remain compliant with all other numerical standards under the NLEP 2012 and NDCP 2012. It should be noted that the approved scheme also relied on breaches to the numerical height and floor space ratio standards.
- ix) The minor extended height and FSR will not adversely impact on adjoining properties. The additional shadows cast as a result of the additional height is minimal.

- x) The proposed change of use and associated design amendments are considered to be of a minor nature and of minimal impact.
- xi) The approved development remains substantially the same as that previously approved in terms of form and function.

**ii) Section 4.55 (2)(b) – Consultation**

No public authority or approval bodies were required to be consulted.

The proposal as originally approved was not considered '*integrated development*' pursuant to Section 4.46 of the Environmental Planning & Assessment Act, therefore this subsection does not apply.

**iii) Section 4.55(2)(c)(i) & (ii) – Notification**

The application was publicly notified for a period of 14 days between 10 January 2022 and 25 January 2022, in accordance with CN's Community Participation Plan.

**iv) Section 4.55(2)(d) – Submissions**

Two submissions received during the notification period.

**v) Section 4.55(3) – relevant matters in Section 4.15(1) and reasons given for the grant of the consent that is sought to be modified**

When determining an application for modification of a consent, the consent authority must take into consideration the matters referred to in Section 4.15(1) that are of relevance to the development the subject of the application, which includes the following:

- a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
- b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- c) *the suitability of the site for the development,*
- d) *any submissions made in accordance with this Act or the regulations,*
- e) *the public interest.*

The density, bulk, height, and scale of the proposed modification remains relatively unchanged. The site continues to provide a mixed used development which will support both residential development and commercial activity within proximity to public transport and the Georgetown & Waratah Town Centre. Accordingly, the proposed modification is considered satisfactory in this regard.

An assessment of the modification against the matters for consideration under Section 4.15 of the EP&A Act is provided below.

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

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

#### **Chapter 4 – Remediation of land.**

This policy contains planning controls for the remediation of contaminated land.

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

The subject land is currently vacant, previous uses included residential and CN's records do not identify any past contaminating activities on the site. The proposal is considered to be acceptable having regard to this policy.

The proposed modification does not impact on the original assessment.

No further investigations have been undertaken or considered relevant in the assessment of the proposed modifications.

### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

#### **Chapter 2 – Vegetation in non-rural areas**

The aims of the policy are to protect biodiversity values of trees and other vegetation in non-rural areas and preserve the amenity of non-rural areas through the preservation of trees and other vegetation.

The subject site is clear of any native trees or vegetation. The applicant does not propose the removal of any vegetation in order to facilitate the development. Therefore, the provisions of the SEPP do not apply.

### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

#### **Chapter 2 – Infrastructure**

Development impacted by an electricity tower, electricity easement, substation, power line

Clause 2.48 of the policy requires the consent authority to give written notice to the electricity supply authority and invite comments about potential safety risks when applications for the following development are received:

- i) *the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower*
- ii) *development carried out:*
  - a) *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
  - b) *immediately adjacent to an electricity substation, or*
  - c) *within 5m of an exposed overhead electricity power line,*
- iii) *installation of a swimming pool any part of which is:*
  - a) *within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or*
  - b) *within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,*
- iv) *development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.'*

The proposal was referred to Ausgrid in accordance with the Clause 2.48 of the SEPP (Transport and Infrastructure). The referral to Ausgrid raised no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

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

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

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

**State Environmental Planning Policy Housing 2021 (Housing SEPP)**

The Housing SEPP aims to provide incentives to supply affordable and diverse housing in appropriate areas and for every stage of life. Part 5 of the SEPP ensures that seniors housing is designed to meet the needs of seniors and people with disability. Seniors housing includes a diverse spectrum of housing options this includes independent living units, residential care facilities, and hostels.

Part 5 Housing for seniors and people with a disability

The SEPP applies to this development and is defined and consistent with the definition of *'in-fill self-care housing'* which is a type of independent living unit.

The development is considered to meet the requirements of the SEPP, for the reasons summarised below:

- i) The site exceeds the SEPP's minimum lot size requirement of 1000m<sup>2</sup> with a site area of 1749.2m<sup>2</sup>. The proposal provides a street frontage of 44.775m to Georgetown Road and 52.26m to Turner Street, satisfying the SEPP's minimum site frontage requirement of 20m.
- ii) The development is permissible in the zone and positively responds to the desired future character of the area, as outlined throughout the SEE.
- iii) The design of the building including the neighbourhood amenity, streetscape, visual and acoustic privacy, solar access, stormwater design, crime prevention, accessibility and waste management meet the requirements of the SEPP and are discussed in more detail in this report.
- iv) The proposed operational parameters for this development for senior residents meet the requirements of the SEPP.
- v) The residents will have adequate access to facilities and services. The Disability Access Report prepared for the proposal by Lindsay Perry Access, confirms that the proposal complies with the requirements.
- vi) The proposal is generally consistent with the objective and design guidance in the Seniors Living Policy: Urban Design Guideline for Infill Development, March 2004.
- vii) The building form has been designed to improve neighbourhood character and maximise amenity and passive surveillance, and a generous landscaping scheme is proposed.
- viii) 25 car spaces are provided for the 22 seniors units, meeting the requirements of SEPP, with 0.5 spaces provided per bedroom.
- ix) The development standards outlined in Clause 108 of the SEPP that are varied i.e. height, FSR and percentage of deep soil planting are supportable for the reasons discussed further in this report.
- xi) Relevant to this development, Clause 87 (2) (b) of the SEPP permits an additional 15% of the maximum permissible floor space ratio for the independent living unit component of the development.
- xii) Applying the 1.5:1 and 0.9:1 FSR limit under the NLEP 2012, this results in an FSR 'bonus' of 1.725:1 and 1.035:1, in the B4 and R3 zone. The



proposal, as modified, has an overall FSR of 1.56:1, above the NLEP 2012 FSR limits applying to the site.

- xiii) The proposal does not seek to rely on the FSR bonus available to justify the proposed FSR exceedance, however the bonus can be seen to provide further indication that the proposed density is acceptable.

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

The Urban Design Consultative Group (UDCG) reviewed the proposal during the assessment of the original application and a commentary of the main points is summarised below:

*'Georgetown is generally a mix of older style. Low scale housing bounding a commercial strip along Georgetown Road. The area is currently transitioning towards a higher density area with increased residential demand and an expanded commercial strip.'*

*The Group felt there were many positive elements incorporated in the built form. The retention of the exiting brick building on the corner and the juxtaposition of the more contemporary forms was supported. The commercial suite on the corner in the old building was thought by the panel to be ideal as a café. There seemed to more opportunity to open this tenancy up with more windows on the western side which would work well if a café.'*

*The setbacks for the residential units were generally considered acceptable'.*

CN's Urban Design Review Panel (UDRP), replaced the UDCG, reviewed the modified application on the 23 February 2022 and are in support of the amended development. A summary of the UDRP's advice in relation to the ten design principles is provided in the table below.

Design Quality Principles	UDRP Comments	Officers Comments
<p><b>Principle 1: Context and Neighbourhood Character</b></p> <p><u>UDRP comments:</u></p>	<p>The proposed development is located in Georgetown. To the north-east is the rail line that terminates at the Newcastle Interchange, to the north is Waratah Oval and to the west is Waratah Shopping Centre. The main road through the suburb is Georgetown Road and the proposed development is located at the intersection of Georgetown Road and Turner Street.</p> <p>The suburb is predominately low density single and two storey</p>	<p>Noted.</p>

	<p>residential dwellings. The proposed development is within a small cluster of retail premises including takeaway food outlets, newsagency, bottle shop, medical services, small commercial spaces, a service station and the like. This retail cluster is the junction of four roads, slightly offset from the other, which connect with Georgetown Road. To manage the junction, a small grassed island is located within the road.</p> <p>The proposed development has a site area of 2749.35m<sup>2</sup> and has frontages to Georgetown Road and Turner Street. Turner Street is a local road with a reduced pavement width and on street parking is limited to the western side.</p> <p>The site is vacant after previously been cleared under the development approval which granted consent for a four storey shop top building comprising four (4) ground floor commercial units, 35 parking spaces within a ground floor parking area and 22 units above. Two vehicle cross overs were proposed on Turner Street.</p> <p>This consent required the retention of the original façade which was located on the corner of Georgetown Road and Turner Street. The consent was modified after the façade was damaged during demolition work. The modification was for the reconstruction of the corner building.</p>	
<p><b>Principle 2: Built Form and Scale</b></p> <p><u>UDRP comments:</u></p>	<p>The development proposes to change the approved land use from a mixed-use development incorporating shop top housing to a mixed-use development incorporating seniors housing. The number of units remains the same, which are 22 units, however the mix has been amended</p>	<p>The applicant has responded to the suggested changes and has amended the proposal as follows:</p> <p>Removed the</p>

	<p>to 4 x 1 bedroom, 15 x 2 bedroom and 3 x 3 bedroom units.</p> <p>The arrangement of units and the layout of internal corridors has changed including, the replacement of two level units with single level units. A common room, gym and amenities were added to the proposed Level 3 which includes the roof top terrace area. The ground floor was reconfigured to provide a secure foyer for residents, a communal space and manager office. This reconfiguration results in the removal of two previously approved ground floor commercial tenancies. The ground floor parking area has been redesigned to omit one of the previously approved driveway crossings. The crossing furthest from the intersection was selected.</p> <p>An internal waste area is proposed for day to day bin storage, while an external space adjacent the driveway can be accessed by a Council garbage truck on pick up days.</p> <p>The loss of the corner building element during past demolition required its reconstruction under the modification. However, the applicant proposes a contemporary approach to the corner taking form and aesthetic cues from the previous building. The Panel were supportive of the approach as it results in an integrated building opposed to what had been previously approved.</p> <p>The Panel noted there were some changes to the new design which could be revisited to improve privacy for the southern neighbours, as follows:</p> <p>Units 106 and 206 have balconies 3 metres from the boundary. It is</p>	<p>southern balcony of units 106 and 206, with minor internal amendments to the subject units to suit;</p> <p>Provided a narrow eastern window to Unit 206, with angled window hood for additional privacy;</p> <p>Provided a small rear courtyard to unit 106 with a 2.1m courtyard wall which creates privacy for the new bedroom window; and</p> <p>Reduce the width of the level 3 southern communal deck by one metre by increasing perimeter planting.</p>
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	<p>recommended that the balcony be removed from the second bedroom. It is also recommended that the bedroom window be reoriented to the eastern wall as a tall narrow window so as not to impact privacy on Units 105 and 205. It is envisaged that the planter bed on Unit 105 will assist in privacy measures.</p> <p>a) The Panel supports the replacement of the metal roof sheeting on Level 1 (in the approved development) with planting on structure. This will improve the outlook for the southern facing apartments at Level 1 and for the levels above, looking down.</p> <p>b) The width of the southern facing terraces on Level 3 are recommended to be narrowed so they act as a circulation space opposed to a dining and sitting space.</p>	
<p><b>Principle Density</b> 3: <u>UDRP comments:</u></p>	<p>The proposed development is of a similar scale and density as the previously approved development. The proposed development has improved upon the approved design in form and functionality. The minor increase in the area on the upper level, and consequent increase in height exceedance is supported.</p>	<p>In this instance the total proposed Gross Floor Area is 2729.2m<sup>2</sup> and the site is 1749.2m<sup>2</sup> in area. The approved GFA and FSR was 2,588.62m<sup>2</sup> being an FSR of 1.48:1, the proposed modification results in an increase of GFA from 2,588.62m<sup>2</sup> to 2729.2m<sup>2</sup>. This represents a variation of 5.4% from the originally approved FSR and a departure of 140.58m<sup>2</sup>.</p> <p>The amendments translate to an FSR</p>

		of 1.56:1 being a 4% (B2 Zone) and 73.3% (R3 Zone) variation to the FSR (compliant FSR being 2623.8m2 and 1574m2).
<p><b>Principle 4: Sustainability</b></p> <p><u>UDRP comments:</u></p>	<p>The Panel was initially concerned about the lack of natural light provided to the common corridor area on Level 3; however, the applicant advised that the communal room is open to the corridor therefore, natural light and ventilation can be shared between the spaces.</p> <p>Furthermore, natural light is being borrowed from the Gym via large internal glazing panels within the shared wall lobby wall.</p> <p>It is noted that PV solar generation is proposed on the roof top of the development. Other sustainability measures are recommended to be included as the design is developed:</p> <p>a) Ventilated skylights are recommended for all bathrooms/ensuites.</p> <p>b) Provision should be made for charging electric vehicles and electric mobility devices (scooters, bicycles etc) in the development.</p>	<p>The applicant has noted that the provision for electrical vehicle chargers, bathroom skylights and landscape irrigation will be further considered at the detailed design phase as required.</p> <p>The requirement for a designated charging point for electric vehicles and mobility devices has been condition as a part of the consent.</p>
<p><b>Principle 5: Landscape</b></p> <p><u>UDRP comments:</u></p>	<p>The removal of the second driveway crossing is supported by the Panel as it provides more space for ground plane landscaping. Planting that is sheltered by structure, even if in deep soil, should be automatically irrigated.</p> <p>The relocation of the common room and common outdoor space to the roof top is a positive change to the proposed development. It provides a space of high amenity for residents which was lacking in the previous</p>	<p>The approved landscaping plan incorporates extensive gardens along the edges of the proposed building. The range in scale of vegetation, soften and articulate the space.</p> <p>The communal podium terrace</p>

	<p>design.</p> <p>As the design is developed the following landscape items are recommended:</p> <p>a) Integrate automatic irrigation into the planter boxes.</p> <p>b) Narrow the Level 3 south facing terraces to convert them into a circulation space opposed to a useable space. The reallocated terrace area should be incorporated into the planter beds to assist with privacy for neighbouring properties.</p>	<p>provides a usable space that affords flexibility for the residents including, seating, and BBQ area.</p> <p>The proposal will continue to provide residents with a useable green space that affords amenity and practicality.</p> <p>With regard to additional planting located on Level 3, the applicant has reduced the width of the level 3 southern communal deck by one metre.</p>
<p><b>Principle 6: Amenity</b></p> <p><u>UDRP comments:</u></p>	<p>The proposed development will improve the amenity of the building through the inclusion of a new roof top communal space, the ground floor common lounge and activity area, the generous foyer and the improved unit and corridor arrangement. As the design is developed the following is recommended:</p> <p>a) Improve privacy for adjoining neighbours on the southern boundary by increasing the depth of the planters and reducing the width of the terraces on Level 3.</p>	<p>In response to the concerns raised, the planter beds have been reduced one metre on Level 3.</p>
<p><b>Principle 7: Safety</b></p> <p><u>UDRP comments:</u></p>	<p>The applicant advised that parking for the commercial units is for staff only and their access is via the door located between the shop and the fire egress, not the residential living lobby. This is supported and public access to the carpark should not be permitted to ensure the security of residential vehicles and the carpark lobby access point.</p>	<p>Noted.</p>

<p><b>Principle 8: Housing Diversity and Social Interaction</b></p> <p><u>UDRP comments:</u></p>	<p>The proposed development provides a range of spaces for residents to interact and meet.</p>	<p>Noted.</p>
<p><b>Principle 9: Aesthetics</b></p> <p><u>UDRP comments:</u></p>	<p>The changes to the development's composition and façade are supported. The changes substantially improve upon the previous façade which was fragmented due to the retention of the existing corner building façade. The opportunity to revisit and reconsider how this building responds to the corner was a good opportunity and results in a more unified approach while expressing the history of the site through material selection and form. The indicated detailing of face brickwork, which includes expressed horizontal bands, etc. as well as the brick selection were considered appropriate, and should be conditioned under any forthcoming Development Approval.</p> <p>In summary, the Panel supports:</p> <ul style="list-style-type: none"> <li>a) the brick selection</li> <li>b) the setback of the fourth storey element from the corner</li> <li>c) the clean, simple brick detailing and expressed horizontal brickwork detail.</li> </ul>	<p>Noted.</p>
<p><b>Amendments Required to Achieve Design Quality</b></p> <p><u>UDRP comments:</u></p>	<p>The Panel is supportive of the proposal. A small number of relatively minor matters, as outlined under the headings above, are expected to be satisfactorily addressed, and it is anticipated that these will be resolved to the satisfaction of the Assessing Officers without necessarily referring further to the Panel.</p>	<p>In summary, the UDRP identified that some further detailed refinement of the proposal was needed. Subject to these minor changes the UDRP recommended that</p>

	<p>With the expected resolution of the identified minor matters, the development can be considered to exhibit a high level of design quality, and the completed proposal can be expected make a very positive contribution to the area.</p>	<p>the modification application could be supported.</p> <p>In response to the comments from the UDRP the applicants amended the submitted plans.</p> <p>In summary, the proposed development, as modified provides a positive contribution to its locality in terms of its design quality, the internal and external amenity it provides, and is a suitable mix of commercial and residential uses.</p>
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The proposed development does not involve a substantial redesign of the approved residential flat building and remains compliant with SEPP 65 and the Apartment Design Guide. Senior's housing represents a positive social outcome for the site and the addition of a communal rooftop terrace is supported by CN's UDRP as it encourages social interaction between the residents.

In summary, the modified development, provides a positive contribution to its locality in terms of its design quality, the internal and external amenity it provides, and is a suitable mix of commercial, and residential uses.

**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 land use zoning over the site is split between the B2 Local Centre Zone and R3 Medium Density Residential Zone under the provisions of NLEP 2012, within which zones the proposed development is permissible with CN's consent.

The proposed development is consistent with the objectives of the B2 Local Centre and R2 Medium Density Residential Zone, which are:



**'B2 Local Centre**

- i) To provide a range of retail, business, entertainment, and community uses that serve the needs of people who live in, work in, and visit the local area.*
- ii) To encourage employment opportunities in accessible locations.*
- iii) To maximise public transport patronage and encourage walking and cycling.*
- iv) To provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.*
- v) To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of the Newcastle City Centre.*

**R3 Medium Density Residential**

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

Modifying the development consent to permit a seniors housing development will add to the diversity of housing stock and provide an opportunity for local residents to

age and reside in a local facility. Additionally, it will provide for new employment opportunities with the inclusion of a café and commercial space.

Clause 2.7 - Demolition Requires Development Consent

The original proposal included the demolition of the structures on the site. Demolition has been undertaken and the site is now vacant.

Clause 4.3 - Height of Buildings

All lots with a frontage to Georgetown Road are zoned part B2 Local Centre, which is subject to a maximum building height of 11m. The remaining rear lot with a frontage to Turner Street is zoned Part R3 Medium Density Residential which has a 10m building height limit.

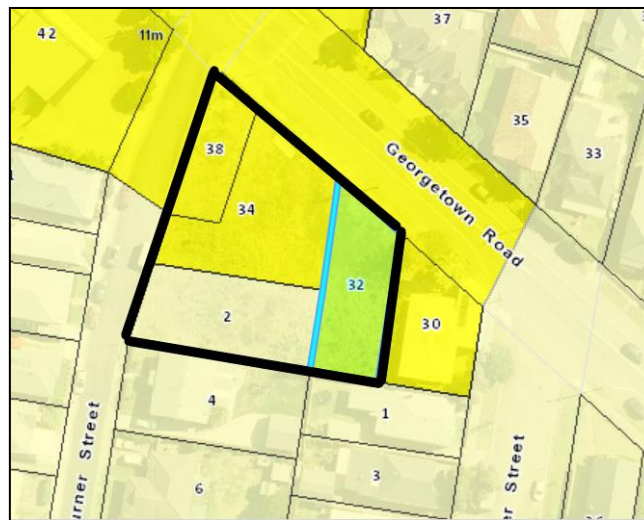


Figure 8: Height of building map

The additional height is sought to accommodate a further 100mm per floor to allow for the installation of sprinklers. A slight increase in the footprint on the rooftop for the lift overrun is proposed, this will be located away from the street corner to minimise visual impacts. The proposed heights of the building and the variance sought in each zone and a comparison to that approved in the DA is summarised in the table below.

	B2 Zone	R3 Zone
Maximum Building Height under NLEP 2012	11m	10m
<b>Approved Application</b>		
Height Approved in DA	13.3m, exceeded the height limit by 2.3m	13.3m, exceeded the height limit by 3.3m
Variation approved	20.9%	33%

Modification Application		
Height Proposed in Modification	13.5 (excluding the lift overrun) or 14m including the lift overrun. Exceeding the height limit by 3m.	13.5 (excluding the lift overrun) or 14m including the lift overrun. Exceeding the height limit by 4m.
Variation proposed	27.3%	40%

There is no requirement to submit a request to vary a development standard for modifications to a development consent, however the objectives of development standard and height controls remain relevant in the assessment of the proposed modification.

Having regard to the objectives of clause 4.3 and the relevant zone objectives in NLEP 2012, the scale of the development will continue to contribute towards the desired character. The mixed-use development provides both high density residential living and further opportunities for commercial and retail development in close proximity to public transport and the commercial centre of Georgetown and Waratah.

As demonstrated in the shadow diagrams, the additional height will not result in unreasonable additional shadowing to adjoining developments or to the public domain, allowing for continued amenity and solar access to these areas. The building will make a positive contribution and will not result in excessive height or scale.

For these reasons, the proposal as modified remains consistent with the objectives of Clause 4.3.

Clause 4.4 - Floor Space Ratio (FSR)

The site is zone part B2 Local Centre, which is subject to a maximum FSR of 1.5:1. The remaining rear portion of the site is zoned Part R3 Medium Density Residential and has a FSR of 0.9:1. The subject site has an area of 1749.2m<sup>2</sup>.

The increase to the GFA is the result of accommodating amended unit layouts, corridors, lobbies, and communal space that will better suit the circulation space and functional needs of older persons. No increase in unit numbers or bedroom numbers are proposed.

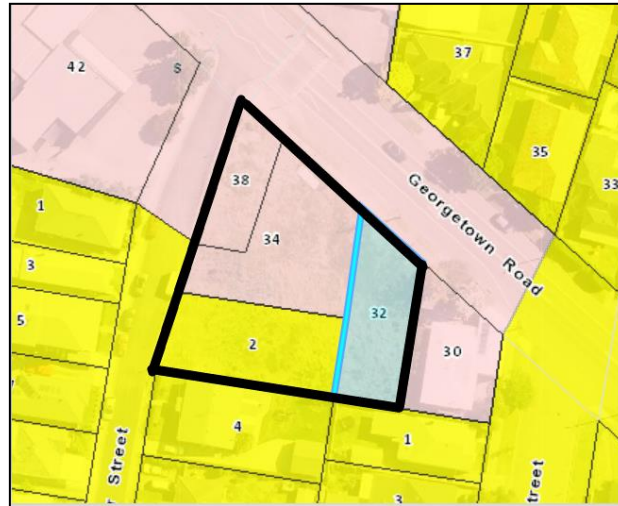


Figure 9: Floor space ratio map

The proposed FSR of the building and the variance sought in each zone and a comparison to that approved in the DA is summarised in the table below.

	B2 Zone	R3 Zone
Maximum FSR under NLEP 2012	1.5:1	0.9:1
Complaint GFA	2623.8m2	1574m2
<b>Approved Application</b>		
FSR Approved in DA	1.48:1	
Total GFA Approved DA	2588.62m2	
Variation to FSR approved in DA	0%	64%
<b>Modification Application</b>		
FSR proposed in modification	1.56:1	
Total GFA of modification	2729.2m2	
Modification variation to FSR proposed for entire site	4%	73.3%
Increase in total GFA	140.58m2	
% GFA increase proposed from the approved DA.	5.4% increase in GFA	

As stated previously, there is no requirement to submit a request to vary a development standard for section 4.55 modifications to development consents.

However, the objectives of development standard and controls remain relevant in the assessment of the modification.

Notwithstanding, the numerical departures to the objectives of the clause, the building design will continue to make a positive contribution to the streetscape and will not result in excessive density, bulk, and scale. The modified design retains appropriate setbacks providing appropriate separation to existing and potential future development.

The massing, rooftop level, and external decorative elements remain aesthetically distinctive, and the style incorporates a range of building materials that provide adequate articulation. The contemporary approach to the corner taking form and aesthetic cues from the previous building is a significant element in the design and remains relatively unchanged.

In a broader context, the design amendments, and additional GFA do not result in a substantial increase in the development footprint or building envelope. The retention of the approved building form, built fabric, accommodate the additional GFA cohesively.

For the above reasons, the proposal remains consistent with the objectives of Clause 4.4 and the additional GFA is supported.

#### Clause 4.6 - Exceptions to Development Standards

There is no requirement to submit a request to vary a development standard for a modification application. Clause 4.6 does not apply to the subject application.

#### 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.

#### Clause 6.2 - Earthworks

Clause 6.2 aims to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. Specifically, cl.6.2(2) specifies that consent is required for earthworks unless the works are exempt development, or ancillary to other development for which development consent has been granted.

Bulk earthworks, in particular, excavation works are required to facilitate the proposed development. No changes are proposed to the approved civil concept.

### **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.

#### 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*
- B. Front setbacks*
- C. Side and rear setbacks*
- D. Landscaped Area*

#### ***Siting the development (3.03.02)***

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

#### ***Amenity (3.03.03)***

- A. Solar and daylight access*
- B. Natural ventilation*
- C. Ceiling heights*
- D. Dwelling size and layout*

*E. Private open space*

*F. Storage*

*G. Car and bicycle parking*

*H. Visual privacy*

*I. Acoustic privacy*

*J. Noise and pollution*

**Configuration (3.03.04)**

*A. Universal design*

*B. Communal area and open space*

*C. Architectural design and roof form*

*D. Visual appearance and articulation*

*E. Pools and ancillary development*

**Environment (3.03.05)**

*A. Energy efficiency*

*B. Water management and conservation*

*C Waste management*

The approved development was assessed and considered acceptable in respect to these controls. The current proposal does not have any notable effect on these approved aspects.

The proposed development is considered acceptable in relation to the abovementioned NDCP 2012 section and achieves relevant acceptable solutions and performance criteria for building form, building separation, and residential amenity. The development establishes a scale and built form appropriate for its location within B2 Local Centre and R3 Medium Density Zone.

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 modification does not include any significant amendments to the residential section of the approved development.

Commercial Uses - Section 3.10

Section 3.10 encourages commercial development that has a positive contribution to surrounding development, attracts pedestrian traffic, and activates street frontages.

Pedestrian access to the foyer of the seniors living component of development is provided along the Georgetown Road frontage. A suitable amount of glazing addresses these frontages at ground level to achieve a visual connection between the development and the street. The provision of ground level business space and café will enhance the activation of Georgetown Road by promoting increased activity within the locality.

The site facilities are visually attractive and blend in with the streetscape. The shared waste storage area is concealed within an enclosed room at ground level within the carpark, adjacent the Turner Street frontage to facilitate collection by CN's Waste Services.

The subject site is in an ideal location for the proposed commercial use (business & cafe) due to proximity to public transport, services, retail, and recreational areas. The proposal is considered an appropriate scale and form in the context of the sites Georgetown Town Centre location and responds appropriately to surrounding development.

The application is considered consistent with the aims and objectives of this section of the NDCP 2012.

Flood Management - Section 4.01

The site is not located within a flood affected area.

Mine Subsidence - Section 4.03

The site is not located within a proclaimed Mine Subsidence District.

Safety and Security - Section 4.04

This section applies to the proposal given the nature and scale of development, with components of common space (driveway, car parking, entry foyers, lift and stair wells and communal opens space areas and roof top area).

A Crime Risk comment prepared by WWP Planning and Property, issue 3, dated 11 January 2022. It demonstrates that the proposal incorporates appropriate crime prevention features to reduce the likelihood of criminal activity and provide a safe environment for future residents.

The development is acceptable in relation to aspects of safety and security. It provides opportunities for natural surveillance by active frontages with balconies, maintains clear sightlines between private and public spaces; provides lighting to



external areas, limits places to hide and access to the building and car parks is controlled and safe for residents 24 hours per day.

Accordingly, the proposal is acceptable in relation to safety and security.

Social Impact - Section 4.05

The proposed development does not require the submission of a Social Impact Assessment pursuant to CN's *Social Impact Assessment Policy of Development Applications*. The proposed development is in keeping with the existing urban context and is not likely to result in any increase risks to public safety.

Notwithstanding, it is identified that the proposed development will result in the provision of additional housing within an ideal central locality with access to public transport, essential community infrastructure, and services.

The seniors living and commercial uses, will contribute to the overall revitalisation of Georgetown. The proposal includes a mix of apartment types (one bedroom to three bedroom). More diversity means greater housing choice for older persons, in an area well connected to services. The associated public domain improvements also contribute positively to the existing locality.

It is considered unlikely that the proposed changes to the approved development would result in increased anti-social behaviour.

Redevelopment of this under-utilised site within the Georgetown Centre is a positive outcome socially. The proposal will have a positive impact within the community as it will provide additional seniors housing opportunities and employment opportunities in the locality. As such, the proposal is acceptable having regard to Section 4.05.

Soil Management - Section 5.01

No changes are proposed to the approved civil concept and the likely impacts of earthworks will be minimal and acceptable. A condition has been placed on the consent to ensure such measures are in place for the entire construction period.

Land Contamination - Section 5.02

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

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 listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an '*Archaeological Site*'.

Landscape Open Space and Visual Amenity - Section 7.02

*Categories of development (7.02.01)*

For the purpose of this section development proposals are grouped into three categories which determine the level of landscape documentation required with a development application. The proposed development is identified as a 'category 3' development. Landscape Plans (Drawings 1.00, 1.01, 1.02, 1.03, 1.04, 1.05, 1.06, and 1.07) have been prepared by Fred St in accordance with the requirements of this section.

*General controls (7.02.02)*

The submitted Landscape Plans demonstrates sufficient areas of soft landscaping with a detailed planting schedule. The landscaping design is in scale and context with the proposed mixed-use development within a town centre location.

A high level of integrated landscaping throughout the development enhances the appearance and amenity from both within, and external to, the development. The landscaped rooftop terrace, serve as a communal area and provides visual and landscape amenity to occupants.

In response to comments received from the Urban Design Review Panel (UDRP), the revised plans have reduced the southern boundary deck by 1 metre increasing the width of the southern rooftop terrace planter box.

Landscaped planter boxes are also provided along the southern boundary of Level 1, this provides residents and adjoining property owners with privacy and general amenity. The on-structure planting within the building facades addressing Georgetown Road and Turner Street helps to soften the built form, maximise the amenity of the public domain, and provide visual integration with the street

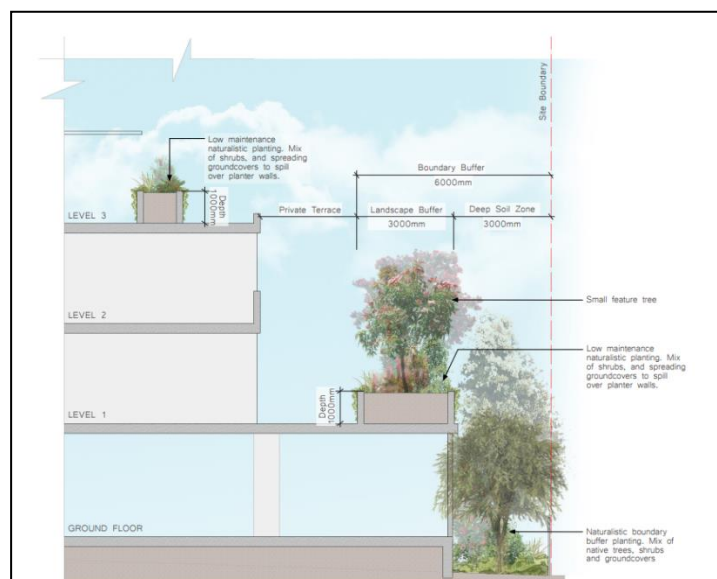


Figure 10: Proposed landscaping on the southern boundary.

Traffic, Parking and Access - Section 7.03

Vehicular Access, Driveway Design and Crossing Location

The approved development provided two driveways located along the Turner Street frontage. The revised proposal looks to consolidate the dual access and provide for one driveway from the Turner Street frontage. This driveway is positioned in a similar location to the approved DA access being the southern end of Turner Street frontage.

The carpark entry is setback from the Turner Street frontage by 6m and this will allow for a vehicle to queue within the site whilst accessing the car park. There are adequate sightlines available for drivers to see the on-street vehicles and pedestrian movements.

Existing driveways on Turner Street and Georgetown Road will be made redundant and on-street parking will be reinstated.

The applicant submitted 'on- street' turning templates that demonstrate that vehicles can safely enter and exit the driveway along Turner Street. Vehicles exiting the carpark onto Turner Street will be required, by way of supporting regulatory signage, to make only right-hand turns.

Additionally, a 'Stop' and 'Give Way to Pedestrian' sign will also be installed at the exit point from the carpark.

Parking Demand

The parking requirements for this development are assessed under SEPP (Housing) 2021 for the residential component and NDCP 2012 for the commercial component.

Off-Street Car Parking

Clause 108 parts (j) and (k) of the Housing SEPP, which outlines car parking requirements for a seniors developments states:

- '(j) for a development application made by, or made by a person jointly with, a social housing provider—at least 1 parking space for every 5 dwellings,*
- (k) if paragraph (j) does not apply—at least 0.5 parking spaces for each bedroom'.*

The development is not on behalf of a social housing provider. Off-street car parking for this development rate is therefore at 0.5 parking spaces for each bedroom. The development proposes 43 bedrooms within 22 units, based on the number of bedrooms the car parking requirement is 21.5 (22) residential spaces.

The café as approved required 2 car parking spaces which is to be maintained with the amended proposal. The submitted Traffic Report has explained that the café use will generally be from the surrounding residents, and this is considered a reasonable assumption.

The 49sqm of commercial space will generate a demand of 1.2 (1) spaces, based on NDCP 2012 parking rate of 1 space per 40m<sup>2</sup>.

The overall car parking demand required for the development is 25 spaces and this complies with the Housing SEPP and NDCP 2012 requirements.

In response to CN's request for additional off-street car parking, parking increased from a total of 28 to 32 car parking spaces.

The revised plans indicate a total of 32 car parking spaces, resulting in 28 parking spaces allocated to residential car parking and the remaining 4 to commercial car parking.

#### Visitor Parking Provisions

The Housing SEPP does not require seniors housing known as independent living units to provide visitor parking. However, it is considered the development will generate the need for visitor parking.

The approved residential development required the provision of 4 visitor parking spaces.

It was recommended to the applicant that the senior's development have a minimum of 2 visitor parking spaces allocated, for servicing/maintenance vehicles and for visitors to the complex.

At the request of CN amended plans were submitted indicating 4 commercial parking spaces. These spaces will operate as 'multi-use' parking, by providing visitor parking outside business hours and servicing the commercial needs of the building at other times, which is a common approach with mixed use development parking.

The concerns raised within the submissions were to the original plans that showed no visitor parking, this has now been addressed.

Motorbike and bicycle parking was a consideration in the original development. However, the SEPP (Housing) does not require the provision of motorbike and bicycle parking in seniors' developments.

Notwithstanding, CN strongly encourages the provision of bicycle parking in any commercial and residential development, as it provides for an alternative mode of transport.

It is recommended that at least 50% of the units (12 spaces) be provided with secured bicycle parking. The available storage space is the most appropriate area where bicycles can be placed.

Conditions have been recommended to ensure that the proposal provides at least 12 secured (class 2) bicycle spaces.

### Traffic Impacts

Turner Street is a relatively narrow street, with two-way traffic flow and existing on street parking on both sides of the carriageway, which has the effect of providing reduced vehicle speeds in the vicinity of the proposed development.

The Turner Street frontage of the development site is also subject to 'No Parking' restriction on Thursdays between 6am and noon to assist with garbage collection services. Initial support has been received from CN's Traffic and Transport Section to implement minor changes to the 'No Parking' restrictions either side of the proposed driveway to assist with providing clear sight lines for vehicles exiting the site. Appropriate conditions of consent have been included in this regard.

Overall, the additional traffic resulting from the proposed development is not expected to have any significant impact on traffic safety or function.

### Public Domain

Plans of works within the Georgetown Rd and Turner Street frontage, including new footpaths, street trees, and awning will be subject to separate approval under Section 138 of Roads Act.

### 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 stormwater management for the site is similar to the previously approved plans as submitted under DA2015/0546. The submitted stormwater report has considered the current NDCP 2012 requirements, and no concerns are raised with the approved design.

The proposed underground tank will ensure 15,000L of reuse volume and 35,000L of retention volume. A sand filter system will be included within the tank to provide for the stormwater quality management in line with NDCP 2012.

The proposed discharge is to an existing underground kerb inlet pit located on Turner St south of the property boundary. Minor modification to the concept design is required at construction certificate stage to ensure that the connection can be achieved.

The submitted report and concept plan generally achieves with NDCP 2012 requirements.

Waste Management - Section 7.08

A Waste Management Plan has been provided with the application. The proposal provides for bulk storage bins. The waste will be collected via Turner Street, utilising a wheel out / wheel back style service. The on-site manager is to wheel the bins out to the kerb for collection and wheel the bins back to a dedicated storage on the site when empty.

Waste collection vehicles can stop along the Turner Street frontage for pick-up at the driveway location without impacting traffic.

Turner Street is restricted as a 'No Parking Zone' on Thursdays 6am – 12pm along the southern side. This is to facilitate the management of CN waste collection services which operates on Thursdays.

Therefore, it is suggested that the waste collection services be arranged for Thursdays to ensure that the on-street traffic management is adequately managed.

To service the commercial and café component, loading services can be done using smaller vehicles.

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

Street Awnings and Balconies - Section 7.10

The development includes awnings on Georgetown Road and Turner Street. The proposed awnings accord with the design criteria set out in this control and are considered acceptable.

Development Contributions

The *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's previous section 94 Development Contributions Plan 2009. The proposed development attracts a contribution fee of \$104,925.67 which is payable prior to the issue of a 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 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 development is well designed, providing a positive addition to the site's corner location, whilst maintaining an appropriate interface with surrounding commercial and residential developments. The proposed density and built form, as well as the provision of seniors housing, is considered beneficial to the locality and the transitioning nature of Georgetown.

The development will not have any adverse impacts on the natural or built environment and is considered to be compatible with the desired future character, bulk and scale and massing of development in the immediate area.

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

The site is located in a B2 Local Centre and R3 Medium Density Residential Zone, in an established suburb and close to suitable infrastructure and facilities.

The development as modified does not result in adverse social or economic impacts. The proposal includes sufficient measures to address potential crime and safety issues.

The application constitutes an appropriate form of development that is consistent with the existing and future character of the area.

The site is not affected by significant environmental constraints that would preclude development of the site.

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

The application was notified in accordance with Community Participation Plan. Two submissions were received during the notification period.

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

Issue	Comment
<u>Access</u> - The proposed access is via Turner Street is unsafe, particularly given the	The amendments to the approved development include the consolidation of access along Turner Street to provide a single driveway arrangement. The removal of the additional driveway will improve vehicle safety within

<p>narrow width of the street.</p>	<p>the street.</p> <p>Additionally, the applicant has provided turning templates which demonstrate that vehicles can enter and exit safely within Turner Street.</p>
<p><u>Visitor Parking</u> - The proposal does not provide visitor parking.</p>	<p>The proposal is compliant with the car parking provisions as specified under the Housing SEPP and NDCP 2012.</p> <p>In response to the concerns raised, the applicants have provided 2 visitor parking spaces. Conditions are recommended requiring the carparking dedicated to the commercial components to be made available for visitors after hours.</p>
<p><u>Car Parking</u> - The proposal does not provide enough car parking spaces.</p>	<p>The proposal is compliant with the car parking provisions as detailed within the Housing SEPP and NDCP 2012.</p>
<p><u>Traffic</u> - Traffic generated along Turner Street will result in safety issues and congestion.</p>	<p>The submitted traffic report has found that the proposal as amended will not result in any adverse traffic impacts. CN's Senior Development Engineer has reviewed the submitted report and has determined that there is sufficient capacity in the local road network to support the changes in the approved development.</p>
<p><u>Pollution</u> - Ventilation for the underground parking will exit near our property.</p>	<p>The submitted Acoustic Assessment found that use of the car park and the car park ventilation system would not result in any adverse acoustic impacts.</p> <p>Appropriate ventilation systems will be considered at the detailed design phase to minimise potential pollution impacts to adjoining properties.</p>
<p><u>Privacy</u> - The courtyards and roof terrace will create privacy issues.</p>	<p>The useable floor area of the rooftop terrace, designed for use as communal open space has been setback from the side boundaries. The design also proposes raised planters provided between the communal open space and the southern side boundary. The raised planters provide a landscape buffer between the rooftop communal terrace and the adjacent developments.</p> <p>Additionally, the plans have been updated to reflect the changes recommended by the UDRP Panel, which include additional planting, and removal of the southern balcony of units 106 and 206, with minor internal amendments to the subject units to suit.</p>



	<p>Th plans now detail a narrow eastern window to Unit 206, with angled window hood for additional privacy. Additionally, the plans have been amended to provide a small rear courtyard to unit 106 with a 2.1m courtyard wall which creates privacy for the new bedroom window.</p> <p>The proposed development has been designed to limit overlooking of neighbouring properties and within the development site itself. All the windows and balconies comply with prescribed building separation requirements.</p>
<p><u>Acoustic</u> – Noise levels from balconies and the roof top.</p>	<p>The use of the rooftop communal terrace is expected to generate domestic levels of noise only. This is considered acceptable given the location of the subject site within local centre and medium density residential zone.</p>
<p><u>Character</u> - The proposal is not in keeping with the area.</p>	<p>The development as modified remains consistent with the bulk, scale, and nature of the previously approved plans. The development continues to allow for the creation of housing and commercial spaces.</p> <p>The additional floorspace and height will accommodate housing and employment space required to achieve the strategic outcomes listed in the Hunter Regional Plan.</p> <p>The development as modified does not result in unreasonable impacts to adjoining properties or the surrounding locality.</p>

**5.9 The public interest**

Approval of the development will result in a positive outcome which will improve the diversity of housing in the locality and assist in meeting the housing needs for an aging population.

This will be achieved through providing an appropriately located and well-designed facility which will accommodate seniors who remain to be independent, mobile and active.

There is sufficient infrastructure (transport, reticulated services) to accommodate the predicted demands of the occupants.

The development as modified does not result in any unreasonable impacts to adjoining properties or the public domain, and subject to the imposition and compliance with the recommended modified conditions of consent, the granting of development consent to the application is in the public interest.

**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**

**Item 8 - Attachment A:** Submitted Plans - 32-38 Georgetown Road & 2 Turner Street Georgetown

**Item 8 - Attachment B:** Draft Schedule of Conditions - 32-38 Georgetown Road & 2 Turner Street Georgetown

**Item 8 - Attachment C:** Processing Chronology - 32-38 Georgetown Road & 2 Turner Street Georgetown

**Item 8- Attachments A - C distributed under separate cover**