

Extraordinary Development Application Committee Meeting



DATE: Tuesday, 25 July 2023

TIME: 6:00pm

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

19 July 2023

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In participating in this Meeting, Councillors are reminded of their oath or affirmation of office made under section 233A of the Local Government Act 1993, and of their obligations under City of Newcastle's Code of Conduct for Councillors to disclose and appropriately manage conflicts of interest.

City of Newcastle
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Agenda

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

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

6. CONFIRMATION OF PREVIOUS MINUTES

6.1. MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE MEETING 27 JUNE 2023

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 230627 Extraordinary Development Applications Committee Meeting Minutes

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

Minutes

Extraordinary Development Application Committee Meeting



Council Chamber, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West, Tuesday, 27 June 2023 at 6:02pm.

1. ATTENDANCE

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

J Bath (Chief Executive Officer), D Clarke (Executive Director Corporate Services and CFO), J Rigby (Executive Director City Infrastructure), M Bisson (Executive Director Planning and Environment), L Duffy (Acting Executive Director Creative and Community Services), E Kolatchew (Executive Manager Legal and Governance), S Moore (Executive Manager Finance, Property and Performance and Deputy CFO), R Dudgeon (Executive Manager Project Management Office), N Kaiser (Interim Executive Manager Media Engagement Economy and Corporate Affairs), M Murray (Chief of Staff), M Meehan (Senior Media Adviser), P Emmett (City Wide Development Asset Manager), A Ryan (City Significant and Strategic Planning Manager), A Knowles (Councillor Services/Minutes/Meeting Support), Warren Haddock (AV/Information Technology Support) and Katie Bevan (Information Technology Trainee).

2. ACKNOWLEDGEMENT OF COUNTRY

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

3. PRAYER

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

The Deputy Lord Mayor expressed the City's condolences to the family and friends of those who were impacted by the recent tragedy in Greta and especially to those in the close knit community of the Hunter. The City of Newcastle expresses its condolences to Singleton Mayor Sue Moore and Cessnock Mayor Jay Suvaal on behalf of their communities.

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

MOTION

Moved by Cr Winney-Baartz, seconded by Cr Barrie

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

**Carried
unanimously**

5. DISCLOSURES OF INTEREST

Nil.

6. CONFIRMATION OF PREVIOUS MINUTES

6.1. MINUTES – EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE 9 MAY 2023

6.2. MINUTES – DEVELOPMENT APPLICATIONS COMMITTEE 16 MAY 2023

MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

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

**Carried
unanimously**

7. DEVELOPMENT APPLICATIONS

7.1. 7-9 WENTWORTH STREET WALLSEND – DA2021/01548 – CENTRE-BASED CHILD CARE FACILITY – INCLUDES DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF BUSINESS IDENTIFICATION SIGNAGE

MOTION

Moved by Cr Richardson, seconded by Cr Mackenzie

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density zone in which the development is proposed to be carried out; and
- B. That DA2021/01548 for the demolition of two dwellings and other structures, and the erection of a centre-based child care facility and associated signage at 7 & 9 Wentworth Street, Wallsend, 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, Church, Duncan, Mackenzie, Pull, Richardson, Wark, Winney-Baartz and Wood.

Against the Motion: Nil.

**Carried
unanimously**

7.2. SUPPLEMENTARY REPORT - 182 HUNTER STREET - MIXED-USE DEVELOPMENT (COMMERCIAL AND SHOP TOP HOUSING) - INVOLVING ALTERATIONS AND ADDITIONS TO LOCAL LISTED HERITAGE BUILDING - DA2021/01505

MOTION

Moved by Cr Mackenzie, seconded by Cr Barrie

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the MU1 Mixed Use Zone in which the development is proposed to be carried out; and
- B. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the MU1 Mixed Use Zone in which the development is proposed to be carried out; and
- C. That DA2021/01505 for alterations and additions at 182 Hunter Street Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment A of the Councillor memo dated 27 June 2023; and
- D. That those persons who made submissions be advised of CN's determination.

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

Against the Motion: Nil.

Carried

The meeting concluded at 6.12pm.

7. DEVELOPMENT APPLICATIONS

7.1. 21 PARNELL PLACE NEWCASTLE EAST - DA2022/00705 - MIXED USE - ALTERATIONS AND ADDITIONS TO EXISTING HOTEL OR MOTEL ACCOMMODATION (NEWCASTLE BEACH HOTEL), ANCILLARY FOOD AND DRINK PREMISES AND COMMERCIAL USE (ANCILLARY HOTEL SPA) AND DUAL OCCUPANCY (ATTACHED 2 X DWELLINGS)

APPLICANT: DE WITT CONSULTING
OWNER: PARNELL JV PTY LTD ATF PARNELL JV UNIT TRUST
REPORT BY: PLANNING & ENVIRONMENT
CONTACT: EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

PART I

PURPOSE

An application has been received seeking consent for alterations and additions to existing hotel or motel accommodation (Newcastle Beach Hotel), with ancillary food and drink premises and commercial use (ancillary hotel spa) and dual occupancy (attached 2 x dwellings) at 21 Parnell Place Newcastle East.

The submitted application was assigned to Senior Development Officer, Amanda Gale, for assessment.

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

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and 24 submissions of objection have been received in response.

The objectors' concerns included:

- i) Setbacks and height
- ii) Adverse impact on the heritage conversation area
- iii) Encroachment into public lane



Subject Land: 21 Parnell Place Newcastle East

- iv) Development classification
- v) Noise, privacy, views, overshadowing and social impacts
- vi) Lack of car parking
- vii) Number of patrons
- viii) Accessibility and fire safety
- ix) Landscaping and tree protection
- x) Loss of Rosa's rooftop restaurant
- xi) Structural integrity of the existing building

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

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

- i) The proposed variation to the Height of Buildings development standard, under the NLEP 2012.
- ii) The proposed variation to the Floor Space Ratio development standard, under the NLEP 2012.
- iii) Characterisation of land uses
- iv) Public safety.
- v) Acoustic impacts.
- vi) Impacts on the amenity of neighbouring residential properties.

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out; and
- B. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the

objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out; and

- C. That DA2022/00705 for mixed use - alterations and additions to existing hotel or motel accommodation (Newcastle Beach Hotel), with ancillary food and drink premises and commercial use (ancillary hotel spa) and dual occupancy (attached 2 x dwellings) at 21 Parnell Place Newcastle East be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- D. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The site comprises Lot 1 DP 815595, known as 21 Parnell Place Newcastle East. The site has a total area of 1,106m² and is located with a main western street frontage to Parnell Place of 42.68m, a northern frontage of 24.385m to Beach Street, a southern frontage of 27.665m to an un-named laneway and an eastern frontage of 19.63m to another public laneway.

The site is located within the Newcastle East End and within the Newcastle East Heritage Conservation Area (HCA), among a diverse range of low-scale, mainly terrace-type, residential buildings. The building on the site has an outlook to Parnell Park to the west and, from upper levels, there is an outlook to the Pacific Ocean. The site is within close proximity to Newcastle Beach to the south and Fort Scratchley to the north. The Newcastle Ocean Baths are also southwest of the site, with Shortland Esplanade running parallel further east.

There are a number of bars, restaurants, and accommodation establishments noted in the immediate area, including Noahs on the Beach to the south. Residential properties surround the site to the east and south. Residential properties also exist to the north, separated by Beach Road. To the west of the site is Parnell Place Park,

separated by the Parnell Place, road reserve. The Newcastle Light Rail terminus is just west of the site on Scott Street.

The site has city views to the north and west and views out toward the ocean to the east.

The lot is generally flat, with the existing building occupying the majority of the site, and has functioned as a motel, restaurant and function centre for more than 50 years, with various renovations being undertaken including major alterations and additions in 1981 and 1999.

According to the Statement of Environmental Effects (SEE) submitted in support of the application *'The site currently supports an operational five level building known as the Newcastle Beach Hotel' (formally the Novocastrian Hotel). The current building operates with 47 hotel rooms, three function rooms, a commercial kitchen, a restaurant and bar, a three-bedroom rooftop residence and ground floor car parking for 12 vehicles. Formal access from Beach Street exists (north of the site), providing access into the basement carparking area. The main pedestrian access to the building is off Parnell Place from the west.'*

The existing rooftop residence was originally, a caretaker/manager's residence. In more recent time, this residence has been used unlawfully, as Rosa's rooftop bar / restaurant by the resident owner for an extended period of time. This unlawful use has ceased operating from the site, following regulatory action.

There have been a number of applications over the years, including such applications as:

- i) BA1988/1640 approved for Motor Inn, alteration or renovations to Motor Inn,
- ii) DA2000/0325 - Alterations and additions to existing motel, several fire safety installations / upgrades and
- iii) DA2016/01401 Alterations to building for Adaptive reuse to residential flat building (23 units) and associated carparking (approved but now lapsed).

A Place of Public Entertainment 'certificate of approval' was granted dated 22 September 1992, for the Novocastrian Motor Inn. At that time, the certificate of approval nominated a total of 270 persons (i.e. Terrace Room: 150 persons and the Apollo Room: 120 persons, with persons standing/seated in rows or at tables).

The development also holds a current 'on-premises' liquor licence (Licence start date: 18/03/1975). No details other than hours of operation are provided on the existing licence, of which the current development has the benefit of.

The trading hours under the liquor licence are:

- i) Monday to Saturday 05:00 AM - 12:00 midnight
- ii) Sunday 10:00 AM - 10:00 PM

- iii) Good Friday 12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
- iv) Christmas Day 12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
- v) December 31st Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later

The Plan of Management (PoM), prepared by de Witt Consulting and dated April 2023 accompanying the application (refer to **Attachment D**), confirms this as Licence Number: LIQ600476465, which is an 'on premises' licence only. It is anticipated that an amended licence would be required upon approval of any development application, as the proposal involves expanding the dining, bar and function spaces on level 1 and the creation and use of the outdoor terraces, requiring a change to the liquor licence boundaries.

2.0 THE PROPOSAL

The application seeks consent for partial demolition and alterations and additions to Newcastle Beach Hotel - motel accommodation with ancillary restaurant, bar and function rooms, the addition of an additional food and drink premises (cafe) and commercial use (ancillary hotel spa) on the ground level and dual occupancy (attached 2 x dwellings) at roof top level.

The intent of the proposal, as stated in the application is to transform the existing building operations to offer a boutique destination for food and beverage, accommodation, or private residences. The proposal seeks to operate under the current hours of operation afforded in the existing liquor licence.

The proposal specifically includes the following:

Demolition

Demolition of parts of the ground, first and fourth floors (shown on demolition plans), with no demolition works proposed to the second and third floors, with the two levels of existing motel rooms remaining as existing.

Ground level

The ground floor level includes a car park with access off Beach Street and access ramp to the hotel lobby. The carpark includes four residential car parking spaces (within two double garages), 13 general car parking spaces, an accessible parking space, three motorbike parking spaces and five bike spaces / storage areas (internal / external). In addition, at ground level private access to the residential guest lifts is available; as well as commercial and general waste rooms, a toilet, a cool room, services, the hotel lobby, and alfresco seating area.

The proposal was amended in April 2023 to identify the proposed ground floor commercial uses as a cafe and hotel spa (with indicative floor plan layouts). These amendments were made to clarify the characterisation of land use and the ancillary nature of these uses to the main use as hotel or motel accommodation.

Where required separate approvals will be obtained for the fit-out of these spaces. However, the nominated ancillary uses for cafe and hotel spa are confirmed as part of this current application.

First floor level

The first-floor level contains a restaurant, bar and flexible function space, including indoor seating and outdoor seating. An outdoor dining terrace is provided opposite Parnell Place, and a second terrace located toward the rear and south side boundary of the site. There is landscaping proposed along and around the outdoor terrace areas. The flexible function space will have access to the rear outdoor terrace. The first floor also includes services, unisex accessible amenities, staff amenities and the back of house kitchen area.

Second and Third Floor levels

The second and third floors will have identical unchanged layouts and include a total of 42 refurbished hotel rooms (21 on each floor). The refurbishment of these two levels is not included as part of this application as the works are minor, non-structural alterations and will be undertaken as either exempt or complying development consistent with the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Fourth Floor level – Rooftop

Two dwellings are proposed on the fourth floor, replacing the existing dwelling currently located at this level, which was being unlawfully used as Rosa's rooftop bar / restaurant in more recent times. Private and secure resident only access to these dwellings is to be provided via a proposed lift on the ground floor and through an extension of an existing staircase. These access facilities will not be accessible by the general public.

General Trading Hours and Access

The Plan of Management (PoM), as amended dated 17 April 2023 that accompanies the application, states the following in relation to operational hours and access to the premises.

The existing principal use of the site for hotel or motel accommodation will continue to operate on a 24/7 basis, given the nature of the business for hotel or motel accommodation, with in-house services available. Generally, standard check-in time from 2.00pm and standard check-out time by 10.00am. However, front of desk and reception areas will be available 24 hours per day, with check-in times varying subject to management discretion, all of which will be outlined in any final PoM and updated accordingly.

The proposal when submitted included the following proposed hours of operation:

| | | |
|--|---|---|
| <u>Ground Floor level</u> Hotel Spa facilities Cafe | 10.00am to 6.00pm 7.00am to 3.00pm 7.00am to 4.30pm | Monday to Sunday Monday to Thursday Friday, Saturday, Sunday |
| <u>First Floor level</u> Restaurant Will operate within the times required by the existing licence. Note: Special Days Liquor can only be served with or ancillary to a meal in dining area on these special days. | All day dining - (breakfast / lunch / dinner) 5.00am to 12.00 midnight 10.00am to 10.00pm 12.00 noon to 10.00pm 12.00 noon to 10.00pm Normal opening time until normal closing time or 2.00am on New Year's Day, whichever is the later | Monday to Saturday Sunday Good Friday Christmas Day 31 December |
| <u>External Terraces</u> Trading will cease and external terraces will be closed no later than No music within terrace areas | 10.00pm | Monday to Sunday |
| <u>All Openable Structures</u> Restaurant / Bar and Function spaces will be closed prior to | 10.00pm | Monday to Sunday |

The venue and relevant activities propose to operate within the existing licensed trading hours, noting each individual operation may vary.

However, having considered the overall proposal, the acoustic assessment, PoM and residential context, on balance the reduced hours as set out below are recommended to be imposed.

- 1) Restricting general hours of operation of First floor (restaurant / bar / function) Monday to Saturday – 7.00am to 12.00 midnight and Sunday/Public holidays – 7.00am to 10.00pm

- 2) Restricting liquor trading hours to Monday to Saturday – 10.00am to 12.00 midnight and Sunday / Public holidays 10.00am to 10.00pm
- 3) The rear (southern) terrace area is to be closed at 8.00pm, given it is in closer proximity to adjoining residential properties. All other terraces to be closed as per acoustic report and PoM – by 10.00pm.

Appropriate conditions in this regard are recommended to be imposed on any consent issued. Refer to Draft Schedule of Conditions in **Attachment B** for conditions relating to hours of operation and PoM.

All access for guests (staying at the hotel or motel accommodation) will be via the main entry on Parnell Place or via the car park entrance on Beach Street, as stated within the PoM.

Capacity of Patrons

The PoM states that the commercial component of the site includes 47 existing hotel or motel rooms with the proposed refurbishment resulting in a reduction to 42 hotel or motel rooms, and of varied nature (ie. single and double, with potential for additional capacity for additional guests via temporary bedding).

Whilst the greater premises is intended to be operated, not dissimilar to the existing 'on-premises' liquor licence, the hotel or motel accommodation will function as a small boutique motel, where at times the accommodation will be at full capacity and times where uptake is less.

The proposal includes a maximum of 550 persons within the active licensed areas on Level 1 (restaurant, bar and function spaces). Guest and patron management will be the responsibility of the asset operators and shall not be exceeded. Patronage in different areas may vary but must not exceed the limits in one location at any one time. The patronage in these active licensed areas might consist of hotel or motel accommodation guests, visitors or a combination of both, but must not exceed in total 550 persons within the area identified in Figure 1 below.

The applicant has noted that these numbers in Table 1 do not total 550, as in some instances access may be restricted in certain areas at certain times and other locations being able to cater for the number of patrons, but overall patrons on Level 1 licensed area is restricted to the upper limit and further limited as identified on the relevant plan.

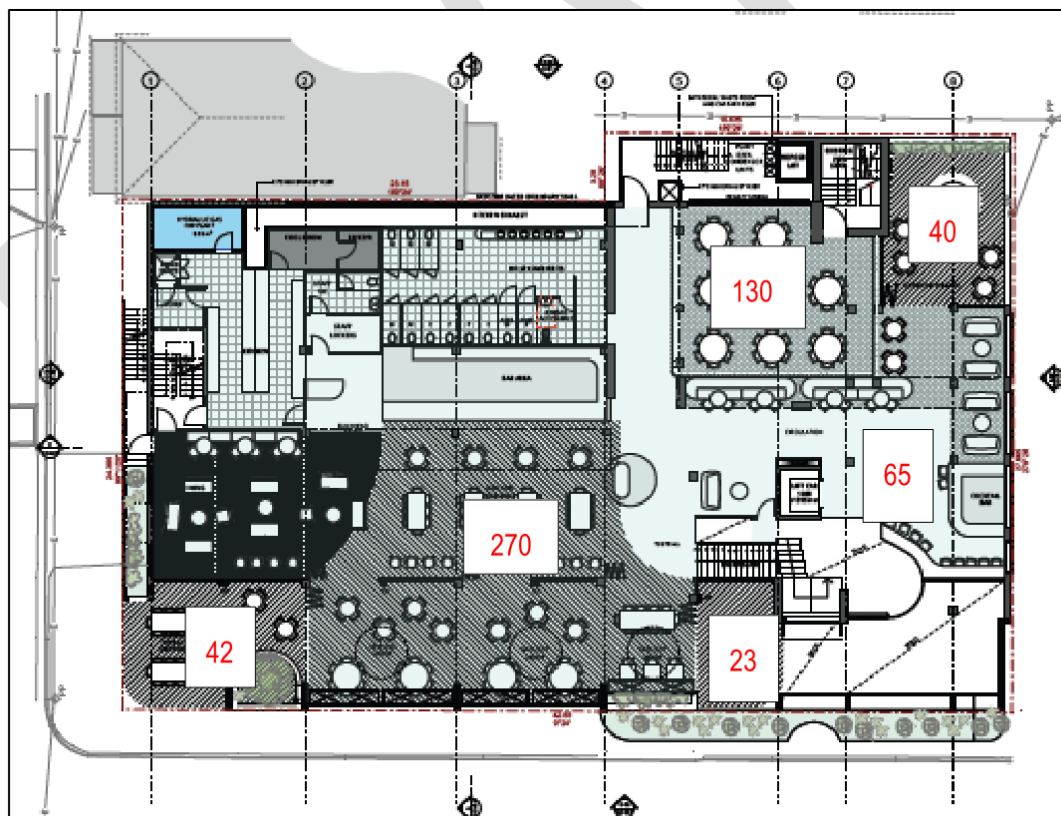


Figure 1: Excerpt Floor Plan Maximum Patron numbers in locations (note overall capacity 550).

Source: *Plan of Management, April 2023 prepared by de Witt Consulting.*

The applicant acknowledges that overall numbers of patrons on the site may be in excess of 550 persons when the accommodation rooms (42) are included, however it is likely that patrons of the licensed areas on the first-floor level, would include accommodation guests using these spaces, given the proposal maintains the restaurant, bar and function spaces as ancillary uses to the main use, that being for hotel or motel accommodation.

The applicant maintains that technical acoustic modelling has been undertaken based on this capacity and is compliant with the relevant noise criteria when implementing the relevant actions associated with outdoor spaces as well the introduction of fixed glazing in some locations which are operable and lockable to ensure capacity in various areas can be managed. It is important to note, that the maximum capacity is not expected to be consistently achieved during regular trade, it is to provide some flexibility as to the use of these spaces, hence it is considered a maximum only.

During the assessment of the application, amendments have been made in response to concerns raised by CN assessment officers, the Urban Design Review Panel (UDRP), NSW Police Force – Licensing Unit and submissions received.

Summary of amendments to proposal as originally submitted

In summary, the following outline is provided as to the key areas of change:

- i) Ground floor commercial uses identified (cafe and hotel spa) with indicative floor plan layouts and operating hours.

- ii) Updated Plan of Management (PoM).
- iii) Amended architectural plans submitted which provide clarity of land uses, indicative floor plan layouts / patronage within each area and operational management within areas of the premises. Amendments to the design in response to CN and UDRP matters including – bulk and scale at the south-eastern corner of the building (presenting to Murray Ave) reduced via increasing the setback of Dwelling 2 and relocation of footprint further to the west.
- iv) Amended acoustic report and additional addendum relating to the proposed dual occupancy on site.
- v) Removal of outdoor dining along Parnell Place footpath and within unnamed laneway. In addition, the closing of openings associated with the outdoor dining within the laneway.
- vi) Removal of rooftop signage and Level 3 signage.
- vii) Additional landscaping provided to the perimeter of the rooftop level and elsewhere on the facade.
- viii) Updated waste management plan provided for servicing the site.

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

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with CN's Community Participation Plan (CPP). A total of 24 submissions objecting to the proposal were received.

The concerns raised by the objectors are summarised as follows:

- i) Existing building footprint/built form has non-compliant setbacks and height.
- ii) Adverse impact on the heritage conversation area.
- iii) Encroachment into public lane.
- iv) Development classification – commercial and shop top housing.
- v) Adverse noise impacts.
- vi) Social impact.
- vii) Inadequate plan of management.
- viii) Adverse privacy impacts.
- ix) Location of entry in proximity to residential properties.

- x) Lack of car parking.
- xi) Number of patrons.
- xii) Overshadowing impacts.
- xiii) Variation to height limit.
- xiv) Accessibility non-compliance relating to lights and sanitary facilities.
- xv) Fire safety provision for the site.
- xvi) Smoking likely within outdoor terraces.
- xvii) Tree protection measures required for Parnell Place Park.
- xviii) View corridor impacts.
- xix) No details of commercial uses provided.
- xx) Loss of rooftop bar – Rosa's.
- xxi) Structural integrity of the existing building given its age.

The current amended plans dated 17 April 2023 did not require re-notification given the nature and extent of changes to the built form, additional information which responds positively to clarification of land uses, greater detail around operational management provided and acoustic assessment further minimising impact. The amended plans and documentation have been made publicly viewable on CN's DA Tracker.

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

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

5.1 Planning context

Newcastle After Dark Strategy 2018-2022

The strategy was adopted on 27 November 2018 and sets the strategic intent for the development of a safe and vibrant night-time economy for Newcastle through outlining key priorities and actions. The strategy identifies six priority areas including strategic alcohol management, night-time economic development, night-time design, cultural participation and activation, and regulation, planning and licensing.

The strategy identifies CN's key areas of concern and threats to the night-time economy including noise, land use conflicts and alcohol related violence. The report also identifies different night-time precincts and major town centres. The proposal is located within one of the seven significant precincts – East End.

The applicant submits that the proposed development satisfies some of the top five things that people would like to see and do which includes – late night meals, dining at a restaurant, going to a small bar and meeting with friends.

The applicant outlines the following in relation to demonstrating consistency with the strategic priorities below:

Priority 1 – Strategic alcohol management

Responsible Service of Alcohol (RSA) to patrons will be a value of importance that is instilled in the staff as it is essential in ensuring the safety of patrons and employees. All staff will hold a current accredited RSA Certificate, and staff are not permitted to be under the influence of drugs or alcohol whilst working in the establishment.

Priority 2 – Night-time Economic Development

The proposed development is consistent with the intent of this priority as it provides a diverse range of nightlife options through the restaurant and bar area. The proposed future ground floor uses, such as for cafe and health spa will further diversify the options in offering a wider range of leisure, entertainment, and business type uses which will operate as ancillary, and in conjunction with the primary use of the site for hotel or motel accommodation.

Priority 3 – Night-time design

The development does not propose the design of night-time public spaces, but it does not hinder the potential for the design of these spaces through Newcastle.

Priority 4 – Cultural Participation and Activation

The development does not propose any cultural activation activities, but it does not hinder the potential for the design of these spaces throughout Newcastle.

Priority 5 – Regulation, Planning and Licensing

The proposed development has been planned from concept to DA stage. Specialist consultants have guided the planning of the development to ensure it is generally consistent with Council's policies and planning framework, with specialist reports supporting the DA. The premises holds a current on-premises licence, and any future licencing will be for on-premises and will be sought post-DA approval under the Liquor Act 2007.

The proposal is considered to be compatible with the intent of the strategy, as it is upgrading an existing developed site, and providing an improved built form / design outcome, and operational parameters within this Newcastle City Centre location. The amended Plan of Management submitted with the application outlines the operational measures to ensure safety, security and amenity of guests, staff, Newcastle East residents and the broader community.

Further details and discussion on the operational plan for the proposal are included in section 6.5 Public Safety of this report.

Newcastle 2030 Community Strategic Plan (CSP)

The CSP is a shared community vision for how the city will look in the next 10 years. The CSP through consultation with the community and analysis of key economic, environmental, and societal trends to ensure appropriate planning and service delivery. This Plan is prepared with regard to the social justice principles of equity, access, participation and rights, and addresses social, environmental, economic and governance matters.

The applicant outlines, that *Vibrant, Safe and Active Public Places are key visions for Novocastrian neighbourhoods. Specific aspirations include having:*

- i) Public places that provide for diverse activity and strengthen our social connections.
- ii) The inclusion of culture, heritage and place which are valued, shared and celebrated.
- iii) A thriving city that attracts people to live, work, invest and visit.
- iv) Safe and activated places that are used by people day and night.

The development is considered consistent with the CSP, by suitably addressing potential adverse impacts arising from the use, including noise, crime, heritage, waste and traffic assessments and architectural plans that provide a more positive urban design response to this existing developed site and ongoing hotel or motel accommodation establishment that currently exists on site.

Local Strategic Planning Statement (LSPS)

The LSPS was adopted by CN in May 2020. The Statement is our 20-year land use vision and identifies how we will sustainably manage the growth and change of our city. The LSPS gives effect to the Hunter Regional Plan 2036 and Greater Newcastle Metropolitan Plan 2036, implements priorities from our Community Strategic Plan, Newcastle 2040 and brings together land use planning actions in other adopted strategies.

The applicant outlines, that *key planning visions, outlined in the LSPS, allow for Newcastle to have a creative and innovative economy and a people orientated city:*

- i) Our local centres enable businesses to meet the changing retail and service needs of the community. They are also easily access from all homes by active and public transport.
- ii) Our community is inclusive and socially connected with safe, accessible and walkable streets, parks and gathering spaces in each neighbourhood and local centre.

- iii) Our built environment recognises and responds to our valued cultural heritage, coastline, and bushland, and complements the local character of each neighbourhood.
- iv) Our night-time economy has grown and attracts people of all ages and backgrounds with a diverse range of venues and activities that support live music, arts and other entertainment as an integrated part of our city environment.

The development is considered to be consistent with the LSPS directions, in assisting to meet the needs of the community through the revitalisation of the East End, offering what the applicant states as *'world class food and beverage offerings', stimulating the use of public transport, contributing positively to the existing streetscape of Parnell Place and making it a more walkable and safer street, valuing and designing to the attributes of the coastal location, enhancing social gathering opportunities and supporting the local night-time economy.*

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.

5.2 Provisions of any environmental planning instrument

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 - Coastal Management

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

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

The site is located within a well-established urban setting, with the site fully developed and clear of vegetation and used to provide accommodation for tourists for many years. The proposal is not considered likely to impact the integrity and resilience of biophysical, hydrological and ecological environments. The general building form and overall bulk and scale of the proposal will not significantly change; with those amendments to design considered to contribute positively to the overall building form and improve the design aesthetics of the building and interaction within the streetscape. The proposal is considered to be acceptable having regard to this policy and is considered to maintain an acceptable level of visual amenity and scenic qualities within this coastal area.

Chapter 4 – Remediation of land

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

The current use of the site is for a hotel or motel accommodation establishment with ancillary dining, bar and function spaces and proposed dual occupancy (attached 2 x dwellings) on the top floor. CN's records do not identify any past contaminating activities on the site. The development involves minimal earthworks.

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

State Environmental Planning Policy (Transport and Infrastructure) 2021

In accordance with Clause 2.48 (Determination of development applications – other development) of this SEPP, the proposed development is located within 5m of an exposed overhead electricity power line. A referral to Ausgrid was undertaken and their response received dated 20 April 2023 has indicated that the proposed development is satisfactory.

Refer to Draft Schedule of Conditions in **Attachment B**, which includes an Advisory Note referencing Ausgrid advice for the applicant's future action.

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

A BASIX Certificate was lodged with the application, for the dual occupancy proposed on the fourth floor - rooftop level (which will replace the existing residence on this level), demonstrating that the development can achieve the required water and energy reduction targets. A condition requiring that the development be carried out in accordance with the BASIX Certificate is in the Draft Schedule of Conditions in **Attachment B**.

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3 - Advertising and signage

This chapter aims to regulate signage and provide signage that is compatible with the desired amenity and visual character of an area. The chapter applies to all signage, except for signs deemed to be exempt development, that can be displayed with or without development consent, and is visible from any public place or public reserve.

The site is located within a heritage conservation area (HCA) under the Newcastle Local Environmental Plan (NLEP 2012). Clause 3.8 - Prohibited advertisements of the policy provides that in a 'heritage area' (excluding railway stations) despite the provisions of any other environmental planning instrument (such as the NLEP) the display of an advertisement is prohibited. An advertisement does not include business identification signs, building identification signs, signage that is exempt development under an environmental planning instrument or signage on vehicles.

Proposed signage relates to business identification signs, which is consistent with the provisions of the SEPP, and has been amended during the assessment by reducing the amount of signage. Amendments included the removal of the signage zone at roof top level and at Level 3. All signage is proposed to be maintained at the lower levels to minimise intrusion into significant views/vistas within the Heritage Conservation Area.

The signage component of the development, as amended, is acceptable and will not detract from the immediate streetscape or character of the surrounding area.

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 NLEP 2012 applies to land identified on the 'Land Application Map'. The subject site and development occur on land shown on the map.

Clause 2.3 Zone objectives and Land Use Table

The site is located within zone 'R3 Medium Density Residential' under the NLEP 2012.

The proposal is characterised as a *hotel or motel accommodation* with ancillary *food and drink premises* and *commercial use* (ancillary hotel spa) and *dual occupancy (attached 2 x dwellings)*.

The objectives of the R3 Medium Density Residential zone are as follows:

- 1 *Objectives of zone*
 - a) *To provide for the housing needs of the community within a medium density residential environment.*
 - b) *To provide a variety of housing types within a medium density residential environment.*
 - c) *To allow some diversity of activities and densities if –*
 - 1) *The scale and height of proposed buildings is compatible with the character of the locality, and*
 - 2) *There will be no significant adverse impact on the amenity of any existing nearby development.*
 - d) *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development –*
 - 1) *has regard to the desired future character of residential streets, and*

- 2) *does not significantly detract from the amenity of any existing nearby development.*

In the R3 zone the following the land uses are permitted with consent or prohibited:

3. *Permitted with consent*

*Attached dwellings, boarding houses, car parks, centre-based child care facilities, community facilities, educational establishments, emergency services facilities, exhibition homes, exhibition villages, flood mitigation works, group homes, health services facilities, home-based child care, home businesses, multi-dwelling housing, neighbourhood shops, oyster aquaculture, places of public worship, recreation areas, **residential accommodation**, respite day care centres, roads, seniors housing, tank-based aquaculture, **tourist and visitor accommodation***

4. *Prohibited*

Any other development not specified in item 2 or 3.

The site currently operates as the Newcastle Beach Hotel (formally, the Novocastrian Motor Inn), with the existing dominant use characterised as a *hotel or motel accommodation*, with ancillary dining, bar and function spaces. In addition, an existing dwelling is located on the roof top level of the building, presumed to be previously used as a caretaker's or manager's residence. However, in recent times has been operating unlawfully as Rosa's rooftop restaurant / bar by the dwelling's owner.

*'**Hotel or motel accommodation** means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that –*

- a) comprises rooms or self-contained suites, and*
- b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,*

but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.'

The restaurant, bar and function areas located on first floor level will continue to be ancillary to the main or dominate use for *hotel or motel accommodation*.

Hotel or motel accommodation is a type of 'tourist and visitor accommodation' which is a land use permitted with consent in the R3 zone.

Ground floor level – uses.

The amended proposal has resolved a concern with the proposal, as originally submitted, regarding the characterisation of the ground floor uses (ie. two retail / commercial premises).

The amended proposal includes a cafe (ie.30m²) and hotel spa (147m²). The small ground floor cafe is considered ancillary to the *hotel or motel accommodation*, with meals being offered to 'guests or general public'. This is not dissimilar to the first-floor

level *food and drink premise* areas being ancillary to the *hotel or motel accommodation* which are proposed to continue operating from the site.

The larger ground floor space will be used for a commercial use (hotel spa), ancillary to the main use and will function, with activities being predominately for guests at the hotel. The inclusion of a hotel spa within the confines of a hotel or motel accommodation is considered an appropriate land use and is a common offering at hotels. The applicant cites an example in 'Endota Spa' which operates from a number of hotels across the country (i.e. Four Seasons Sydney), with the intent to provide a full experience for guests of the hotel, whereby they might enjoy a coffee at the ground floor cafe, have a relaxing spa and massage experience, followed by an evening dining and relaxing at the first-floor level restaurant before retiring to their room. The applicant states that, the benefits of co-locating the ancillary hotel spa (and the food and drink options) within the hotel or motel accommodation creates a unique opportunity to attract both local and tourist patrons to the east end, supporting businesses, providing employment and transforming the building into a community asset.

The characterisation of the overall development is seen as being 'hotel or motel accommodation', with restaurant and cafe, bar, function areas and hotel spa ancillary services.

In considering the information put forward by the applicant, the proposed ground floor uses, have been adequately demonstrated that these are to be ancillary to the primary purpose of the development as 'hotel or motel accommodation'. In addition, the layout of the floor plans also reinforces an appropriate relationship and ancillary nature of these components to the main use operating on site, that being hotel or motel accommodation with associated and ancillary uses.

Residential accommodation

The proposal includes alterations and additions on the roof top (fourth floor level), replacing the existing dwelling, (previously been used as a caretaker / manager's residence at some time), with a dual occupancy (attached 2 x dwellings), originally, characterised in the SEE as shop top housing.

Shop top housing means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

The proposal does not meet the definition of *shop top* housing, as commercial premises are prohibited within the R3 Medium Density Residential zone under the NLEP 2012.

In response the applicant has submitted that '*...the dwellings are simply characterised as a 'dwelling' (or two dwelling(s)) which is a permissible form of residential development in the R3 zone. For completeness, the following is provided in this response.*

Residential accommodation (group term) is permissible with consent in the R3 Medium Density Residential zone.

Key words being: "**Residential accommodation means a building or place used predominately as a place of residence and includes any of the following**".

*A **dwelling** is defined as: dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile. So therefore, dwelling is a permissible form of development under the group term 'residential accommodation' and the development proposes 2 x dwellings.'*

The applicant's response is that the residential accommodation on the fourth level, each meet the definition of a dwelling, permissible within the R3 Medium Density Residential zone. The assessment considers the proper characterisation, is a 'dual occupancy (attached)' means *two dwellings on one lot of land that are attached to each other but does not include a secondary dwelling.*

A *dual occupancy* is permissible within the R3 Medium Density Residential zone subject to consent.

A condition is recommended that states that the dual occupancy dwellings are not permitted to be used as *serviced apartments*, given *serviced apartments* are expressly excluded from the *residential accommodation* group term and not specifically listed as a permissible defined use in the R3 zone. Refer to Draft Schedule of Conditions in **Attachment B**.

*A **serviced apartment** means a building (or part of a building) providing self-contained accommodation to tourist or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.*

The proposed dual occupancy dwellings are consistent with the zone objectives, which primarily relate to residential housing and diversity of housing types and options within the residential context of the site and proximity to services and facilities, provided within this Newcastle City Centre location.

In conclusion, *hotel or motel accommodation* with ancillary uses and *dual occupancy* are permissible forms of development within the R3 Medium Density Residential zone under the NLEP 2012. In addition, the ancillary uses to the dominant use as *hotel or motel accommodation* have been adequately demonstrated.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes partial demolition of the structures on the site. Refer to Draft Schedule of Conditions in **Attachment B** for conditions relating to demolition works, and the management / disposal of materials.

Clause 4.3 - Height of Buildings

The site has a maximum building height of 10m under the NLEP 2012. The proposed development will result in a maximum height of 15.14m, equating to an exceedance of 5.14m or 51.4% above the height of buildings development standard for the subject land. The proposed departure relates partially to the lift overrun, located centrally and to the western side of the development.

The actual roof height is 14.25m, a 4.2m height exceedance or a 42.5% variation.

A Clause 4.6 variation request to this standard has been submitted, which includes information on the existing, previously approved and proposed building height of the development (summarised below).

Refer to further discussion within this report under Clause 4.6 Exceptions to Development Standards.

Clause 4.4 - Floor Space Ratio (FSR)

The site has a FSR development standard of 1:1 under the NLEP 2012. The proposed development will result in a total FSR of 2.47:1, equating to an exceedance of 1,628.50m² or 147% above the prescribed maximum FSR for the subject land.

It is relevant to note that the site and existing building has had this floor space for an extended period of time, with the building originally being the 1960s Novocastrian Motor Inn which was approved and constructed long before the introduction of the NLEP 2012 and FSR development standard.

Refer to further discussion within this report under Clause 4.6 Exceptions to Development Standards below.

Clause 4.6 - Exceptions to Development Standards

The applicant has submitted a written request that seeks to vary the Height of Buildings (Clause 4.3) and the Floor Space Ratio (Clause 4.4) development standards in accordance with Clause 4.6 of the NLEP 2012. Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard.

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

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

Variation to Height of buildings development standard

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 10m. The proposed development reaches a maximum height of 15.14m, equating to an exceedance of 5.14m or 51.4% above the height of buildings development standard for the subject land. The proposed departure relates partially to the lift overrun, located centrally and to the western side of the development.

It is noted that the actual roof height is 14.25m, a 4.2m height exceedance or a 42.5% variation. As such the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

An assessment of the Clause 4.6 variation request 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 judgement: *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.

Existing Building

The applicant states that, *the site benefits from an historical variance to the maximum building height, with the existing building having a maximum of 29.53m AHD (13.75m measured from ground to topmost part of the building parapet). Existing signage extends beyond this at 30.64m AHD (14.88m). Therefore, the existing variation equates to a 37.5% variation to the 10m height standard to the parapet and a 48.6% variation to the topmost signage.*

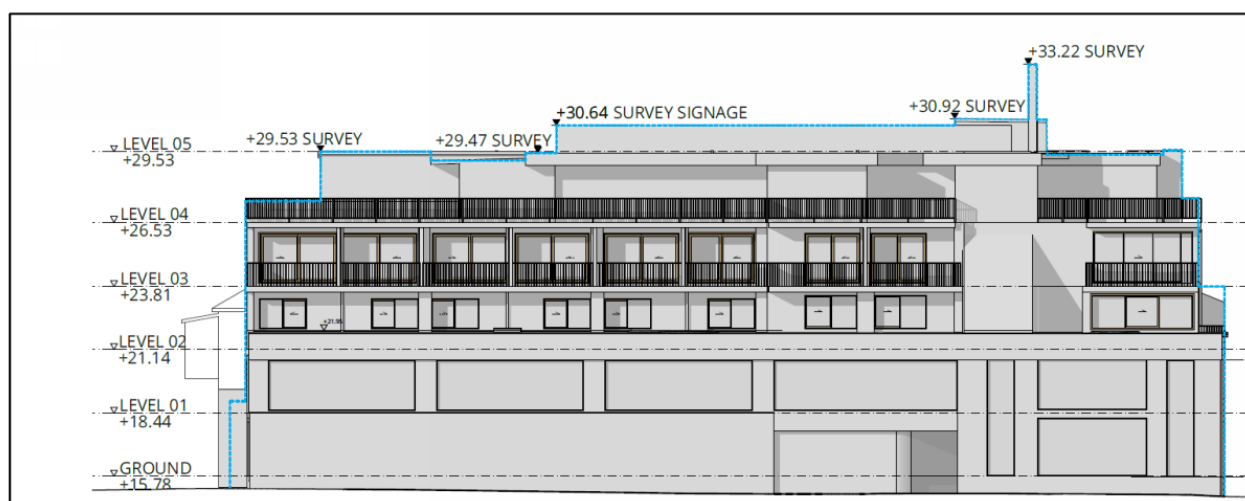


Figure 2: Existing building height (Source: SDA)

Source: (*Clause 4.6 Variation Request – Clause 4.3 Height of buildings, prepared by de Witt Consulting dated April 2023*)

Approved – DA2016/01401

The applicant makes reference to *the existing historical variation, as discussed above, was carried through and further extended with a more recent approval (DA2016/01401) for adaptive reuse of the site for residential flat building (RFB). This was approved with a height exceedance. The approved maximum height of 30.35m AHD (14.57m measured from the ground floor to the ridgeline), representing a 45.7% variation to the 10m height standard.*

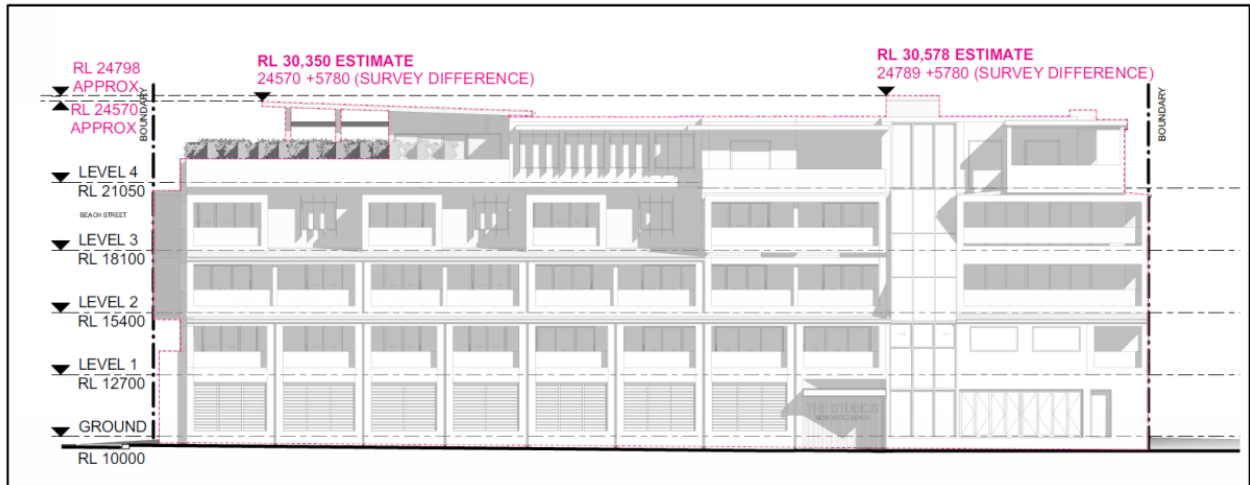


Figure 3: DA2016/01401 building height (Source: SDA)

Source: (Clause 4.6 Variation Request – Clause 4.3 Height of buildings, prepared by de Witt Consulting dated April 2023)

Proposed – DA2022/00705

The applicant now seeks consent for a maximum height of 30.92m AHD (15.14m measured from the ground level to the lift overrun), representing a 51.4% variation to the 10m height standard. The actual roof height (ground level to ridgeline) is 14.25m, a 4.2m height exceedance or a 42.5% variation.

The proposal is lower than the topmost part of the existing building (signage) and lower than the approved RFB under DA2016/01401.

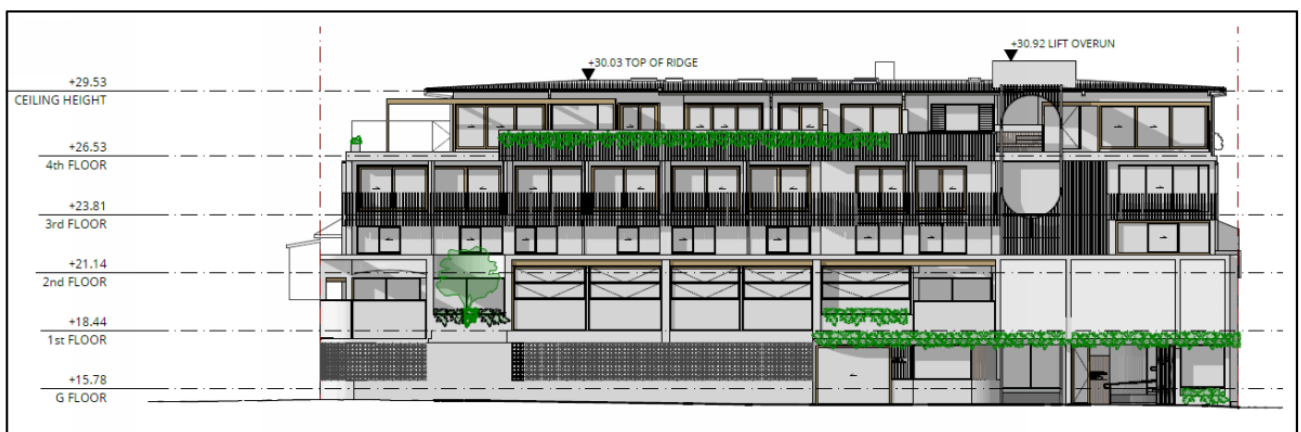


Figure 4: Proposed building height (Source: SDA)

Source: (Clause 4.6 Variation Request – Clause 4.3 Height of buildings, prepared by de Witt Consulting dated April 2023)

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

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

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

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

The applicant has prepared a written request, prepared by de Witt Consulting (dated April 2023) which constitutes a written request for the purposes of Clause 4.6(3).

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

The applicant's clause 4.6 Variation Request seeks to rely on these considerations to demonstrate that compliance with the development standard is unreasonable and unnecessary. The applicants Variation Request addresses Clause 4.6(3)(a), in summary as follows:

'The objectives supporting the height of buildings control identified in Clause 4.3, and' consistency with the objectives without any environmental planning impacts, would demonstrate that strict compliance with Clause 4.3 would be unreasonable in this instance.

The objectives of the development standard are as follows:

- (1) The objectives of this clause are as follows –*
 - a) To ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*
 - b) To allow reasonable daylight access to all developments and the public domain.*
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map'.*

The maximum height proposed is 15.14m, resulting in a numerical exceedance of 5.1m, representing as 51.4%. This is a minor element of exceedance and only attributes to the lift overrun, which is located centrally and to the western side of the development, furthest away from any adjoining properties. The intent of the proposed redevelopment of the Hotel is that the scale and height are maintained as far as practical and appropriate. For example, the existing building has a topmost parapet height of 29.53m AHD, which is also the height of the existing ceilings. Note, the existing building does not have a ridgeline height as such. Therefore, the proposed development has a maximum ceiling height of 29.53m AHD – the same as the existing building, but then increases slightly in height to accommodate for the new ridgeline and low-pitched hip roof. So, the new works maintain the existing maximum height on the corners, while slightly increasing towards the middle of the building envelope. Accommodating the new, low impact

roofscape is considered reasonable justification for the minor height increase in this instance. Further to this – the existing building has a large front signage that does have a maximum height of 14.86m (30.64m AHD), so on balance the proposal is technically lower than the highest point of the existing building.

The variance can be seen in Figures 5 to 8 below – blue outline indicates current building height and pink indicates the approved DA2016/01401 building height. Overall, the proposed height and building envelope is considered to be an appropriate outcome for the site due to the historic approved variance to maximum building height.



Figure 5: Front of the building – West Elevation at Parnell Place (Source: SDA)



Figure 6: Rear of the building - East Elevation (Source: SDA)



Figure 7: Side of the building - North Elevation at Beach Street (Source: SDA)



Figure 8: Side of the building – South Elevation (Source: SDA)

Source: (Clause 4.6 Variation Request – Clause 4.3 Height of buildings, prepared by de Witt Consulting dated April 2023)

- a) To ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,

With regards to the proposed scale making a positive contribution to the desired built form – the proposal is a positive improvement to the existing site and desired built form character of the area, despite the scale exceeding the development standard. The general height of the existing building is largely maintained through the proposed alterations and additions, but the visual impact of the development has been lessened. Achieved through a strong articulation of the elevations with windows and openings, softening the building by adding curves, light colours, transparent elements such as breeze blocks, and by reintroducing some traditional framed elements back into the design. Additionally, the proposal includes an

improved roofscape through the removal of redundant and bulky plant equipment, large signage and the inclusion of roof top terraces with good articulation and roof and eave details for interest. In this way, the scale makes a positive contribution to the locality and is consistent with the 'higher densities' Newcastle City Centre hierarchy (as identified in the Local Strategic Planning Statement (LSPS), 2040).

b) To allow reasonable daylight access to all developments and the public domain.

In terms of overshadowing impacts as a result of the height exceedance, this is expected to be minimal. This is due to the existing and proposed overshadowing impacts being virtually the same, as shown on the architectural plan set. In fact, there appears to be slightly more sunlight access to Parnell Place and the adjoining southern properties southwestern most corner and roof area as a result of the redevelopment. This is likely a result of the decrease in general building bulk associated with the proposal and the opening up of spaces allowing for additional sunlight to pass through the development site and onto adjoining spaces. The shadow diagrams provided within the architectural plan set, demonstrate that the public domain including Beach Street and Parnell Place are not overshadowed by the proposal from after 12pm. It can therefore be submitted that the development allows reasonable daylight access to all development and to the public domain as there are almost nil new shadowing impacts associated with the redevelopment.

The removal of height across the development site, to achieve numerical compliance with the standard would be an unreasonable imposition and would require substantial design change and a substantial change to the existing built form (likely the removal of at least one entire floor). This would unreasonably reduce the amenity achieved, the existing uses and the housing opportunities that the redevelopment proposes and is not a favourable outcome for the site or locality. The current building, previously approved development and the proposed development onsite prove that the objectives of the standard can be achieved not withstanding non-compliance with the standard.

The proposed upgrades on site with the height exceedance is justifiable on the basis of the best design outcome that provides a high amenity urban outcome.

CN Officer comment

The proposed development provides for a built form which is compatible with the existing and desired built form both on and off site in the area and deals appropriately with the ongoing use of the existing developed site. The proposal maintains reasonable daylight access to adjoining sites and the public domain.

The proposed variation to the development standard, when also taking it in context with the existing historical departure for this developed site, results in a proposal that is considered acceptable and will not result in any undue adverse environmental impacts, including impacts on adjacent properties in terms of bulk, scale, overshadowing or privacy, indicating the proposed development is suitable for the site.

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

Clause 4.6(3)(b). Are there sufficient environmental planning grounds to justify contravening the development standards?

Regarding sufficient environmental planning grounds, the applicant states: 'the assessment within the variation request and supporting plans / documentation demonstrates that the resultant environmental impacts of the proposal will be satisfactory. The proposal addresses the site constraints and relevant objectives of both the development standard and the zone. The proposal will not result in any unreasonable amenity or environmental impacts as detailed in the SEE and supporting appendices.

The proposal represents a well-considered development that responds to the constraints of the site and existing development while resulting in a positive visual outcome for the public domain and adjoining properties. The proposed height does not alter the existing outcomes of the site in terms of shadows and does not introduce new view sharing issues. The proposal seeks to make a positive contribution to the desired built form of the locality and has been architecturally designed in consideration of its surrounding context and in the interest of revitalising the existing land uses. It is therefore, considered that the development, as proposed, and despite the variation being sought to the building height, will deliver positive environmental outcomes.

There are sufficient environmental and planning grounds to justify contravening the development standard and are as follows:

Standards achieved notwithstanding – the proposed development meets the zone objectives by providing a range of accommodation options (both short term and long term) which is compatible with the existing development and is in a key location to assist with the on-going revitalisation of Newcastle East End. The ancillary activities support the commercial viability of the development and provides services for residents (both short term and long term). The proposed redevelopment and building design improve the relationship with the street and is compatible with the coastal and heritage character of the area. The proposed development also meets the Height of buildings objectives, as discussed above.

Existing state of the site – the variation is attributed to an existing building with an existing historic variation to height.

Compatibility with surrounding area – The proposed development is compatible with the existing development on site and is in a key location to assist with the ongoing revitalisation of Newcastle East End. The proposed land uses (retention of the hotel or motel accommodation was looked upon favourably by the Urban Design Review Panel (UDRP) at its meeting dated 27 July 2022.

Visual impact – the proposed building height will not result in unreasonable visual impacts resulting from density, bulk or scale, with the proposed alterations and additions expected to significantly improve the visual perception of the site and significantly decrease the current observed bulk. The building design has been softened and opened up, offering a more inviting and visually interesting built form.

Privacy – the proposed building height does not increase opportunities for overlooking – the additional height over the current building height is attributed to the new low-pitched hip roof.

Shadows – the proposed height does not introduce additional overshadowing impacts, with additional sunlight being afforded to Parnell Place and the adjoining southern property as a result of the redevelopment. Solar access to properties is therefore not unreasonably reduced as a result of the proposal.

Views – the proposed building height will not impact on view sharing to a greater extent than the existing built form already does. Maintaining this historic variation is considered to be reasonable.

In this case, it is submitted that the proposal displays sufficient environmental planning grounds to warrant variation to the development standard.

CN Officer comment

The written request outlines environmental planning grounds which justify the contravention. The site currently has a historical variance to the height of building standard and that the proposed height exceedance relates to such a small area of the building that it will not be perceived. In addition, the development is not likely to result in unreasonable impacts upon adjoining properties or the public domain. The reasons outlined above are considered to provide sufficient justification to contravene the development standard.

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

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

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

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

It is considered that the public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning regime and predominantly in accordance with the planning controls. The development is a permissible form of development and is consistent with the objectives of the R3

Medium Density Residential zone. Having regard to the circumstances of this case, there would be no benefit to the public or the Newcastle East community in maintaining the development standard. The proposed development will transform the existing building and ensure that the new works are a significant visual improvement to the site.

The variation sought is not considered to raise any matters of significance for State or regional environmental planning. The departure from Clause 4.3 of the NLEP 2012 still allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

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

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

CN officer conclusion

The applicant's written variation request pursuant to Clause 4.3 of the NLEP 2012 has satisfactorily demonstrated:

- (a) that compliance with the development standard is 'unreasonable and unnecessary' in the circumstances of the case and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Furthermore, it is considered that approval of the proposed development will be in the public interest because it is consistent with the objectives of the height of building standard and the objectives of the R3 Medium Density Residential zone.

Variation to Floor Space Ratio development standard

The proposed development also contravenes Clause 4.4 'Floor Space Ratio' of NLEP 2012. The floor space ratio map provides for a maximum floor space ratio of 1:1. The proposed development will result in a total FSR of 2.47:1, equating to an exceedance of 1,628.50m² or 147% above the prescribed maximum FSR for the subject land. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

An assessment of the Clause 4.6 variation request 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 judgement: *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.

Existing Building

The existing building has a gross floor area (GFA) of 2,715.46m², equating to an FSR of 2.46:1 (146% variation).

Approved – DA2016/01401

The applicant outlines that the more recent consent to redevelop the site, included a total GFA of 2,150m², equating to an FSR of 1.9:1.

Proposed – DA2022/00705

The proposal seeks a greater FSR than the approved 2016 development, as the previous proposal comprised a substantial redevelopment and change of use of the building, which provided greater opportunities to revise the floor plans and decrease the historic variation. In the applicant's opinion this created outcomes which are considered less favourable than the proposed development in relation to other aspects.

Given the basis for the current DA, in relation to a proposal to revitalise the existing building and current uses on site, has involved few opportunities for a lessened overall FSR. The current proposal does not make any changes to Level 2 and 3 (hotel or motel accommodation rooms, resulting in a building that is remaining more consistent with the historic FSR. The numerical difference between the existing and proposed buildings FSR equates to 19.04m².

It is concluded that the exceedance is attributed to the retention of the existing building and the variation allows for the continued use of the site for hotel or motel accommodation with a range of ancillary uses. The split / use of spaces is therefore generally in keeping with the existing building, with the existing first-floor dining area to be 'reimaged' with a comparative GFA.

There are no changes to the two levels of hotel or motel accommodation (Level 2 and 3). Further, the redevelopment of the roof top residence and open area will be replaced with a dual occupancy (attached 2 x dwellings) which has a greater GFA by virtue of the spaces being enclosed and for residences.

Table 2.1: Gross Floor Area breakdown (Source: SDA, Sheets DD801 and DD800)

| Existing Hotel GFA | | Proposed Hotel GFA | |
|---------------------------|-------------------------|--------------------------------|-------------------------|
| Zone Name | Measured Area | Zone Name | Measured Area |
| Existing GFA - Ground | 21.01 | GFA - Level 02 | 629.62 |
| Existing GFA - Level 01 | 126.77 | GFA - Level 03 | 625.31 |
| Existing GFA - Level 02 | 632.46 | | 1,254.93 m ² |
| Existing GFA - Level 03 | 627.94 | | |
| | 1,408.18 m ² | | |
| Existing Residential GFA | | Proposed Residential GFA | |
| Zone Name | Measured Area | Zone Name | Measured Area |
| Existing GFA - Level 04 | 37.12 | GFA - Ground | 2.00 |
| | | GFA - Ground | 38.84 |
| | | GFA - Level 04 | 417.81 |
| | | | 458.65 m ² |
| Existing Common GFA | | Proposed Common GFA | |
| Zone Name | Measured Area | Zone Name | Measured Area |
| Existing GFA - Ground | 115.18 | GFA - Ground | 34.73 |
| Existing GFA - Level 01 | 60.08 | | |
| | 175.26 m ² | | |
| GFA Existing - Commercial | | Proposed Commercial/Retail GFA | |
| Zone Name | Measured Area | Zone Name | Measured Area |
| Existing GFA - Ground | 29.75 | GFA - Ground | 36.82 |
| Existing GFA - Ground | 214.93 | GFA - Ground | 37.73 |
| Existing GFA - Level 01 | 12.87 | GFA - Ground | 147.18 |
| Existing GFA - Level 01 | 202.73 | GFA - Level 01 | 764.46 |
| Existing GFA - Level 01 | 261.49 | | 986.19 m ² |
| Existing GFA - Level 01 | 373.13 | | |
| | 1,094.90 m ² | | |
| | | EXISTING TOTAL GFA: | 2715.46m ² |
| | | PROPOSED TOTAL GFA: | 2734.50m ² |

Source: (Clause 4.6 Variation Request – Clause 4.4 Floor Space ratio, prepared by de Witt Consulting dated April 2023)

The applicant considers that by undertaking alterations to the existing building, the overall scale of the site will remain generally the same, but the perceived visual impact is lessened through a more attractive and active streetscape presentation and well-articulated, visually interesting elevations. The design response has also been supported by the Urban Design Review Panel, which is discussed in a following part of this report.

This is considered a positive contribution to the overall streetscape and the fringe of the Newcastle City Centre and East End in particular. In addition, the site is located within the Newcastle East HCA. The Statement of Heritage Impact (SoHI) accompanying the DA states that the building contributes positively on the existing streetscape of Parnell Place and the overall HCA, which is considered a positive outcome notwithstanding the FSR.

The exceedance is considered appropriate to provide for increased internal and external amenity and functionality for future residents, business owners, accommodation guests, without significant impacts on the amenity of adjoining properties. In addition, it is not considered that the variation will compromise the heritage character of the HCA.

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

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

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

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

The applicant has prepared a written request, prepared by de Witt Consulting (dated April 2023) and constitutes a written request for the purposes of Clause 4.6(3).

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

The applicant's clause 4.6 Variation Request written response seeks to rely on these considerations to demonstrate that compliance with the development standard is unreasonable and unnecessary. The applicants Variation Request addresses Clause 4.6(3)(a), is summarised as follows:

'The objectives supporting the floor space ratio control identified in Clause 4.4, and consistency with the objectives without any environmental planning impacts, would demonstrate that strict compliance with Clause 4.4 would be unreasonable in this instance.'

The objectives of the development standard are as follows:

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

The maximum floor space ratio is 2.47:1, numerically an exceedance of 1,628.50m² (147% variation). Strict compliance with the development standard in this instance is considered unreasonable and unnecessary in the circumstances of the case, as the objectives of the standard have been achieved as outlined below.

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

The surrounding locality, the East End is located within the Newcastle City Centre, commercial centres hierarchy in accordance with the Local Strategic Planning Statement (LSPS). This strategic centre services the Hunter Region with higher order administrative, education, health services, cultural and recreational facilities with high density commercial and residential uses. The surrounding area supports a variety of high density residential, commercial and recreational land uses, including the existing site land uses (hotel and motel accommodation with ancillary elements). The proposal is entirely consistent with the existing density of the site, being only an additional 19m² of GFA from that which has existed for an extended period of time which also maintains the overall vertical and horizontal footprint. Therefore, as the proposal represents a redevelopment of existing historic land uses, the development provides for the continued appropriate density of residential and hotel uses which are compatible and consistent with the established centres hierarchy.

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

The desired built form as identified in the established centres hierarchy is a cumulation of several elements, but most significantly it is achieved through maintaining, protecting and enhancing heritage buildings, streetscapes, views and key features. As above, the existing circa 1960's building already has an FSR of 2.46:1, a historical variation to the current LEP development standard. The existing building represents a poor design outcome for the site when viewed from the streetscape and other surrounding public and private places. The building has harsh straight lines and significant corner massing to Parnell Place to the north and the south. The existing building provides little to no street activation and poor pedestrian connection with high, solid blank walls and an obscured front entrance, which is just as poor a safety outcome as it is a visual detriment. Furthermore, the existing building has redundant plant and service elements on the roof, as well as large signs that protrude past the building envelope. Overall, the existing building has a negative and high perceived bulk and scale which does not positively contribute to the desired built form of this area. This is also confirmed by the submitted SoHI which details the negative visual impact that the existing building has to the HCA, also stating that the building is intrusive.

In establishing the existing building does not make a positive contribution to the desired built form, it is worth noting that this negative perception is not owed to the FSR (and historic variation) but more notably the external built form elements and design, rather than the actual density and building footprint as a whole. Therefore, it is discussed how the proposal makes a positive contribution to the desired built form, notwithstanding the FSR.



Figure 2: Existing view from Beach Street / Parnell Place (north-western building corner) (de Witt Consulting)



Figure 3: Proposed view from Beach Street / Parnell Place (north-western building corner) (SDA)

Source: (Clause 4.6 Variation Request – Clause 4.4 Floor Space Ratio, prepared by de Witt Consulting dated April 2023)

The redeveloped northern, western and eastern facades significantly decrease the presence of bulk, and allow for increased transparency, removal of corner massing and introduction of a softer curved corner at Beach Street / Parnell Place, and introduction of open spaces at the street level. The new open terrace creates a setback from the street and reduces the height at the corner of Beach Street / Parnell Place which results in positive impacts and a decreased sense

of density. Similarly, the proposal seeks to replace the aforementioned domineering blank wall expanse to Parnell Place with breezeblocks which will create visual interest, transparency and decrease the appearance of bulk associated with the redundant masonry wall. Additionally, the proposal includes an improved roofscape through the removal of redundant and bulky plant equipment and the inclusion of roof top terraces with good articulation and roof and eave details for interest.

While the proposal sits above the allowable FSR for the site, it is considered that the redevelopment represents a significant visual improvement to the site. The additional 19m² of floor area (from the existing) does not result in an increased bulk or scale, with the new building having a significantly decreased perceived bulk and scale and a more positive impact on the streetscape, as well as adjoining properties.

It is worth acknowledging, that the removal of GFA across the development site, to achieve numerical compliance with the standard would be very difficult, due to the development focus being an upgrade of the existing building on site. Even if some reduction of floor area was achievable this will likely reduce the amenity and affect the principal existing uses of the building. This is not considered necessary to achieve the objectives of the standard and would have a detrimental effect on future residents, business owners, hotel patrons and restaurant patrons. The objectives of the standard are considered to be achieved, notwithstanding the non-compliance with the FSR, the proposal is considered to be justified.

CN Officer comment

The proposed development provides for a built form which is more compatible with the existing and desired built form in the area and deals appropriately with the ongoing use of the existing developed site. The proposal maintains reasonable daylight access to adjoining sites and the public domain.

The upgrade of the existing building and associated uses has been achieved with a positive urban design response, with greater visual improvement, which sits more appropriately within the context of the site and surrounding lands.

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

Clause 4.6(3)(b). Are there sufficient environmental planning grounds to justify contravening the development standards?

In regard to the sufficient environmental planning grounds, the request states as follows:

'... that the assessment within the variation request and supporting plans / documentation demonstrates that the resultant environmental impacts of the proposal will be satisfactory. The proposal addresses the site constraints and relevant objectives of both the development standard and the zone. The proposal

will not result in any unreasonable amenity or environmental impacts as detailed in the SEE and supporting appendices.

The proposal represents a well-considered development that addresses the locality, streetscape and existing development, and relevant objectives of both the development standard and the R3 Medium Density zone. The proposal will produce high levels of amenity to a dated and otherwise underutilised building and site. The proposal seeks to make a positive contribution to the desired built form of the locality and HCA. Its architecturally designed in consideration of its surrounding coast context and existing land uses. Despite the variation being sought, the proposal is considered to deliver positive environmental outcomes.

There are sufficient environmental and planning grounds to justify contravening the development standard and are as follows:

Standards achieved notwithstanding – the development meets the R3 Medium Density Residential zone objectives by providing a range of accommodation options (both short term and long term) which is compatible with the existing development on site. The ancillary activities support the commercial viability of the development and provides services for residents (both short terms and long term). The redevelopment and building design is compatible with the current streetscape and coastal character of the area and meets the FSR objectives as discussed above.

Other planning controls – the exceedance is not a direct result of any breach of other DCP planning controls for the site (such as view and vistas, landscaping, heritage and setbacks).

Existing state of the site – the variation is attributed to an existing building with an existing historic variation to floor space ratio. The proposal will provide a significant improvement and more effective use of space to an aged development site with poor amenity outcomes.

Compatibility with surrounding area – The proposed development is compatible with the existing development on site and is in a key location to assist with the ongoing revitalisation of Newcastle East End. The proposed land uses (retention of the Hotel component was looked upon favourably by the Urban Design Review Panel (UDRP) at its meeting dated 27 July 2022.

Visual impact – the proposed GFA will not result in unreasonable visual impacts resulting from density, bulk or scale with the existing overall vertical and horizontal footprint being generally maintained. Through the use of improved building articulation, appropriated scaled fenestration, introduced building transparency, introduced building curves and soft lines and removal of overall massing and solid elements, the proposal has a reduced perception of bulk and scale.

Privacy – the proposed GFA does not increase opportunities for overlooking.

Views – the proposed GFA will not impact on view sharing. The additional floor space has not increased the bulk and scale or height of the development to any great extent and generates the best outcome for the allocation of land uses on site, which is generally very consistent with the existing development. to a greater extent than the

existing built form already does. Maintaining this historic variation is considered to be reasonable.

In this case, it is submitted that the proposal displays sufficient environmental planning grounds to warrant variation to the development standard.'

CN Officer comment

The written request outlines environmental planning grounds which justify the contravention. In particular, that the proposed FSR exceedance relates primarily to a historical deficiency and represents a well-considered development that through design addresses the locality, streetscape and existing development consistent with relevant objectives of both the development standards and the R3 Medium Density Residential zone. The proposal looks to make a positive contribution to the desired built form of the locality and HCA. Its design has considered its surrounding coastal context and existing land uses and despite the variation to FSR is anticipated to present a positive environmental outcome and is supported on planning grounds.

In addition, the development will not result in unreasonable impacts upon adjoining properties or the public domain. The reasons outlined above are considered to provide sufficient justification to contravene the development standard.

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

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

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

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

The applicant states:

that there is no benefit to the public or the Newcastle East community in maintaining the development standard as it would result in a very significant and out of character redevelopment of this site. The proposed development will modernise the existing building and allow the continued use of the site.'

It is not considered that the variation sought raises any matter of significance for State or regional environmental planning. The departure from Clause 4.4 within LEP 2012 still allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

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

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

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

CN officer conclusion

The applicant's written variation request pursuant to Clause 4.4 of the NLEP has satisfactorily demonstrated:

- (a) that compliance with the development standard is 'unreasonable and unnecessary' in the circumstances of the case and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Furthermore, it is considered that approval of the proposed development will be in the public interest because it is consistent with the objectives of the FSR standard and the objectives of the R3 Medium Density Residential zone.

Clause 5.10 - Heritage Conservation

The site is located in the Newcastle East Heritage Conservation Area (HCA). A Statement of Heritage Impact (SoHI), Issue B prepared by Placemark and dated 22 June 2022 was submitted with the DA.

Heritage items in the vicinity of the site include the following:

- i) 'The Retreat (residence)' – LEP Item 486 – 31 Parnell Place Newcastle East
- ii) 'Coal Memorial' – LEP Item 485 – 2A Scott Street Newcastle East
- iii) 'Boatmans Terrace Group (residences)' – LEP Item 482 – 36-66 Nobbys Road Newcastle East
- iv) 'Coal River Precinct' – State Heritage Register #01674 – Nobbys Road Newcastle East

- v) 'Fort Scratchley Group (buildings and underground forts – Coal River Precinct)' – LEP Item 480 – 31 Nobbys Road Newcastle East

The main aspects of the proposal include the alterations to the facade of the existing hotel building, additions to the fourth floor to facilitate two dwellings (dual occupancy) and internal renovations.

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

The existing building was constructed in the 1960s. It is located on a prominent corner site. It is noted that the Key Period of Significance for the Newcastle East HCA is c1801-1940 and the subject building was constructed outside of this time period. The bulk and scale of the existing building is inconsistent with the surrounding context, which has a strong identifiable character of dense two to three-storey terraced dwellings on a grid pattern of streets, villa residences, parks and iconic heritage items such as Fort Scratchley. The existing building is currently considered to detract from this established character significantly.

Alterations and additions to non-contributory buildings are to:

- a) Remove inappropriate elements or features that are intrusive to the heritage significance of the heritage conservation area.
- b) Respect the prevailing character of the area and street in terms of bulk, form, scale, height and materials.

The existing building is out of scale and character with its context. The proposed alterations will improve the aesthetic qualities of the building, will refresh the building and enhance the streetscape architecturally. The proposal provides better articulation at the Parnell Place frontage by replacing the monolithic tiled ground floor wall with framed components, glazing, and open areas, thus allowing interaction between the building and the public domain, an essential element of original buildings throughout the HCA.

The proposed additions at rooftop level, as originally proposed increased the bulk and scale of the building when viewed from public areas such as Parnell Park, Murray Avenue and Beach Street. The additional bulk at the fourth floor increased the impact of the existing building and further removed the building from its fine grain context.

It was considered that the development could present a more neutral appearance by:

- a) Reducing the perceived bulk of the fourth floor, particularly at the Parnell and Beach Street corner, as perceived from Nobbys Road.
- b) Increasing the setbacks of the fourth-floor additions from the edges of the building.
- c) Softening the proposed bright white colour scheme across the exterior of the building, such as via contemporary interpretation of traditional materials

eg hit-and-miss recycled brickwork instead of breeze blocks; introduction of more planting; etc.

- d) The proposed 'signage zone' at the roof should be removed and all signage kept to the lower levels to minimise intrusion into significant views/vistas within the HCA.

The above matters have been resolved through the submission of amended plans which addressed the following:

- a) Removing the rooftop signage and Level 3 signage from the proposal.
- b) Bulk and scale at the south-eastern corner of the building (presenting to Murray Avenue) has been reduced by increasing the setback of dwelling 2 and relocating the footprint further to the west.
- c) Additional landscaping has been provided to the perimeter of the rooftop level and elsewhere on the facade.
- d) The use of breeze blocks to the corner of Parnell and Beach Street is understood and accepted in line with UDRP advice and links to the 1960s history of the building.

Removal of high-level signage is supported and presents a more sympathetic outcome to the street which is already elevated and characterised by residential properties. The amended signage is located at the ground level only which is acceptable. The additional landscaping at the rooftop and facade further contributes to the softening of the appearance of the building.

The proposed development will reduce the adverse visual impact of the building by removing deteriorated elements and providing a fresh and contemporary appearance. In addition, the activation of the Parnell Place elevation at the ground level is considered a positive outcome.

As amended, the development proposal is considered to be reasonable and responds more appropriately to the heritage significance of the local area.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils and given the presence of acid sulfate soils is unlikely and the nature of works associated with this DA, an acid sulfate soils management plan is not required. The proposal is considered satisfactory in this regard.

Clause 6.2 - Earthworks

Minimal earthworks are required for this development, and only relate to service needs, in particular a small area of ground disturbance associated with the fire pump room and an additional lift. The proposal is considered satisfactory in this regard.

Clause 6.5 - Public Safety—Licensed Premises

Clause 6.5 requires the consideration of public safety before granting consent to a use of land as a licensed premises. A licensed premises means a hotel within the meaning of the *Liquor Act 2007* or a registered club.

Whilst the proposal is not a hotel or registered club as defined, the existing development on site, proposes to continue the existing approved *hotel or motel accommodation* development with ancillary dining, bar and function facilities and by virtue of the nature of the development with ancillary food and drink premises is considered a licensed premises.

The application was originally referred to the Licensing Unit of the NSW Police Force (the Police) and comments were provided, dated 2 March 2023. In summary, the Police advised the layout and design of the proposal and the minimal information as to the use of these areas / premises, their proposed hours of operation and indication of patron numbers make it difficult to assess the proposal and the potential impacts with any certainty. In addition, adverse noise impacts and lack of parking within this area is of concern.

During assessment CN issued a request for additional information dated 28 March 2023, and outlined the matters raised by the Police.

In response to matters raised by the Police and requests for further information during the assessment, the proposal and accompanying documentation have been amended to respond to these concerns.

In summary, additional information has been provided in the following areas:

- a) Characterisation of land use (ie. ground floor spaces – cafe and hotel spa with indicative floor plan layouts).
- b) Amended architectural plans that provide more detail of proposed activities and indicative floor plan layouts within the hotel or motel accommodation.
- c) Updated Plan of Management providing the following details:
 - i) Operating hours consistent with the existing hotel accommodation and 'on-premises' licence for ancillary dining, bar and function areas and proposed hours for ground floor cafe and hotel spa.
 - ii) Capacity / patrons, in particular within the licensed area of the venue.
 - iii) Music / activity details – consistent with the amended acoustic report and additional measures identified relating to ceasing use of outdoor areas by 10.00pm and prohibition of music on terraces at all times.
 - iv) Confirmation that any new or amended liquor licence, will be consistent with the current licence for 'on-premises' only.

- v) Confirmation of management and entry and exit of the development by either the Parnell Place entry/exit point or alternatively via the car park off Beach Street.
- d) Removal of outdoor dining along Parnell Place and within un-named laneways. Operable windows in the south-east corner have also been removed and replaced with fixed glazing.

A further referral to the Police was undertaken, following receipt of the revised proposal and accompanying information, and further comment was provided dated 8 May 2023.

Their comments, primarily relate to concerns with noise, liquor licence and dealings with the previous unlawful use of the rooftop dwelling, known as Rosa's Rooftop restaurant / bar.

The proposal as it currently stands, with amendments made and submission of additional information, including a detailed PoM, is considered to have satisfactorily addressed key concerns of CN and the Police. Final advice received from Police dated 6 July 2023 advised that the proposal and recommended draft conditions are appropriate for this development.

Sufficient information relating to clarification of uses, how they are to operate, and indicative floor plan layouts have been provided, together with greater certainty of the operational management aspects of the proposal detailed in the amended PoM and supported by the amended Acoustic report. The amended Acoustic report provides greater clarity on both the assessment of the proposal relative to sensitive residential receivers, combined with mitigation (operational management) measures that have now been incorporated into the PoM. The PoM also confirms that there is no intention to seek any other licence other than an 'on-premises' liquor licence, not dissimilar to the current licence and that new boundaries will be provided with a future liquor license application. Though, for licensing purposes, these areas remain generally consistent and confined to the first-floor level., though now incorporates the entire first floor and terraces.

Whilst there is a potential for anti-social behaviour with any licensed premises, it is considered that given the dominant use of the development is remaining hotel or motel accommodation the premises would be viewed differently to a larger licensed premises such as a pub or registered club.

In addition, the premises is to operate at all times in accordance with the PoM which includes safety and security measures, including installation of CCTV and adherence to Responsible Service of Alcohol requirements. An amended Acoustic report was provided which demonstrates that the development with ancillary land uses including active licensed areas can achieve an appropriate level of acoustic privacy within the context of the site and residential receivers, and subject to the implementation of operational management measures expected with such a development.

On balance, the hours as detailed below are supported, and provided within the Draft Schedule of Conditions in **Attachment B**.

- i) Restricting general hours of operation of First floor (restaurant / bar / function) Monday to Saturday – 7.00am to 12.00 midnight and Sunday / Public holidays – 7.00am to 10.00pm
- ii) Restricting Liquor trading hours to Monday to Saturday – 10.00am to 12.00 midnight and Sunday / Public holidays 10.00am to 10.00pm.
- iii) The rear (southern) terrace area is to be closed at 8.00pm, given it is in closer proximity to adjoining residential properties. All other terraces to be closed no later than 10.00pm.

In addition, conditions have been included, in relation to patron entry/exit from premises (now also within PoM) and music management.

Based on the amended Acoustic report and updated PoM, conditions are recommended, in line with that of the proposal which see all windows and doors of the premises to close at 10.00pm and no patron use of terraces from 10.00pm, with the exception of the rear terrace area, recommended via condition to close at 8.00pm, given its closer proximity to adjoining properties across the laneways off (un-named off Parnell Place and Murray Avenue). Refer to Draft Schedule of Conditions in **Attachment B**.

Part 7 Additional Local Provisions—Newcastle City Centre

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

Clause 7.5 - Design Excellence

The proposal does not trigger the need for an architectural design competition, as the height of the building is not greater than 48m and the site is not identified as a key site.

CN's Urban Design Review Panel (UDRP) reviewed the application at its meeting on 22 July 2022 and an electronical referral was provided by the panel on 25 May 2023. A summary of the UDRP's advice in relation to the ten design principles considered is provided in the table below.

During assessment, plans were amended as a result of the recommendations from the UDRP and CN's assessment of the application. The amended proposal has adequately addressed the recommendations of the panel and satisfy the design excellence criteria, subject to recommended conditions. Refer to Draft Schedule of Conditions **Attachment B**.

| Design Quality Principles | Assessment |
|--|--|
| <p>Principle 1: Context and Neighbourhood Character</p> <p><u>UDRP comments:</u></p> <p><u>27 July 2022</u> The panel noted this is a challenging and interesting project, whereby a good urban design process and architectural treatment will result in a refreshed positive outcome for the city. The panel was generally supportive of the proposed approach to the refurbishment and presentation by the applicants' architects and planners.</p> | <p><u>Applicant's response:</u> <i>Noted</i></p> |
| <p>Principle 2: Built Form and Scale</p> <p><u>UDRP comments:</u></p> <p><u>27 July 2022</u> The panel noted the key element proposed to unify the front facade of the old hotel is the new two storey Loggia. The Loggia is supported as a clever device and works well with different height spaces and penetrations to attract light and shade across the facade. The panel look forward to seeing it evolve as the designers take on the comments and feedback. The panel felt the North elevation is very subtle, perhaps too subtle. The panel notes the approach to balance new fenestration with respect to</p> | |

the local street system and neighbours. It is the northern sunny end of the building with dramatic iconic views. The panel feels this end could be less forgotten and more attention to detail be considered to tie it into the overall building concept. Attention appears to have been focused on Parnell Street (this is evident in the 3D views which all concentrate on the Parnell frontage). The panel suggested the design needs to 'turn the corner'; facade treatments, articulation, and depth to the windows is needed in the north facade, without impacting amenity of neighbouring residences. The Panel also discussed the long linear "ocean liner" form of the original building which dictates the eventual design solutions for the facade. There is an opportunity to break or accentuate this linearity with a moment or vertical element intervention (previously defined by a mast sign) such as a small rooftop crescendo or crowning moment on the upper penthouse levels. If this building was being proposed in the 1940s it would have an expressive funnel or mast element at the 1/3 point along the building facade, toward the south end to articulate the entry and celebrate the buildings entry moment, as seen from the distance when approaching the building. The Panel also supports further design articulation of the southern end of the western facade. The second bay along from the right has a dead patch where proportion and fenestration don't appear to be fully resolved. The panel recommended screening of the large west facing glass panels including an element that carries on higher up through to the penthouse to perhaps provide a crescendo moment. The lane to the south, as it turns into the street, is an opportunity for further design integration and the laneway has potential for good placemaking – providing impacts upon neighbouring residences are considered and addressed.

Applicant's response:

The northern elevation has been altered with increased setbacks and greater articulation. The northern roof extension follows the western roof form to better activate the facade and continue the language of the western elevation.

Additionally, a planter box separating the terrace and fire door improves activation and visual interest at this elevation on the first floor.

Similarly, additional landscaping has been added to the north-west corner on the fourth-floor level. These additional landscaping and green elements also address heritage comments.

The signage zone has been removed and vertical batten screening introduced to the existing stair windows to form an arched 'moment' before forming a pergola on the penthouse level.

The key changes to the western facade are addressed above. The scale of the building has been broken down through blade walls and bays with different architectural elements, such as reliefs, indented gardens, and solid and glazed balustrades.

At Council's request, the outdoor dining at the laneway has been removed and the operable windows in this location replaced with solid glazing. We note that the removal of the solid barrier wall at the ground level on Parnell Place does create an inviting and vastly improved activation of the streetscape in this location.

CN officer's comment:

From a planning / heritage perspective, some aspects during the assessment that required further consideration included - extent of signage zones proposed, the use of breeze blocks, colour scheme, opportunity for

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| | <p>additional landscaping at the perimeter of the rooftop level and some reduction of bulk and scale of the corner element of the built form on Murray Avenue. In addition, the final architectural plan set was required to demonstrate it had addressed and resolved all aspects of the UDRP's advice dated 27 July 2022 (demonstrated on both plan and through a detailed response to the UDRP's advice).</p> <p>The applicant's response is considered to have sufficiently addressed the issue raised.</p> |
| <p>Principle 3: Density</p> <p><u>UDRP comments:</u></p> <p><u>27 July 2022</u> The panel generally supports the reduction in hotel apartment density and the removal of the rooftop bar, in lieu of two apartments set back from the main facade line.</p> | <p><u>Applicant's response:</u> <i>Noted</i></p> <p><u>CN Officer comment:</u> The UDRP comments are noted and retaining the use of the fourth-floor level / rooftop for residential accommodation is a positive in terms of restricting access / use to a lower density residential environment, which is considered more appropriate within the context of the site and residential setting.</p> <p>In addition, the use of the fourth-floor level for two dwellings results in lower density, less land use conflict at this higher level and appropriate visual and acoustic privacy between properties.</p> |
| <p>Principle 4: Sustainability</p> <p><u>UDRP comments:</u></p> <p><u>27 July 2022</u> The panel supported further investigation and definition of western shading in particular, screening of the window proposed to the existing stairs at the second and third Floors. Opportunities for rooftop PV generation should be pursued, and this need not involve raised stands (integrated panels recommended). Provision should be made for EV charging in the car park.</p> | <p><u>Applicant's response:</u> <i>Vertical batten screening has been provided on the western facade and additional glazing is also provided here.</i></p> <p><i>Advice regarding solar PV is noted. The roof profile and design ensure that roof top solar PV can be easily installed at a later date.</i></p> <p><i>Advice regarding EV charging in car park is noted. Whilst no EV charging is currently proposed, there are services available to allow future integration in this regard.</i></p> |

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| | <p><u>CN Officer comment:</u> Final UDRP via electronic referral has reinforced the need for compliance with Section J of the Building Code of Australia and provision of PV generation and EV charging in the car park.</p> <p>The applicant has advised that the BASIX assessment report submitted does suggest that thermal comfort has been addressed and confirmed with calculations. The report suggests that requirements can be achieved (without the need for dark window tinting).</p> <p>Notwithstanding, the applicant has advised that Section J compliance is achievable with further detail demonstrating compliance at Construction Certificate stage.</p> <p>Conditions are recommended within the Draft Schedule of Conditions in Attachment B, in relation to Section J compliance that provision of PV solar installation and EV charging facilities within the car park is to be provided.</p> |
| <p>Principle 5: Landscape</p> <p><u>UDRP comments:</u></p> <p><u>27 July 2022</u> The project has attempted to create a place full of light, that is naturally ventilated with a coastal relaxed atmosphere. Simple landscape elements are encouraged with planting selections to support the refurbishment having regard to the harsh coastal bluff location. Plantings under structure should be provided with automated watering and should be located as to receive adequate light for the species selection. There appears to be an opportunity to provide street trees in front of the building, and it is suggested that the Applicant consult Council in this regard.</p> | <p><u>Applicant's response:</u> <i>Landscape outcomes are limited considering the existing building footprint. Regardless the landscape methodology has been guided by the most appropriate use of space and suitability of species. In this regard, a simple landscape design has been adopted, with opportunities for plantings maximised where appropriate to do so, noting the challenging climate. Notwithstanding, additional planting has been added to the south-east corner at Murray Avenue, the northern elevation on the first floor and on the western elevation at the fourth floor.</i></p> <p><i>All plantings are easily accessible, ensuring that future maintenance including manual watering will be suitable.</i></p> <p><i>The footpath is existing and is not of a suitable width that would support pedestrian movements and street trees. As such it is not considered appropriate to provide street trees in this location. Parnell Place Park remains as existing with an abundance of trees. And as</i></p> |

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| | <p><i>above, additional landscaping is provided on site on the ground, first and fourth floor levels.</i></p> <p><u>CN officer comment:</u> The proposal is considered acceptable in relation to an improved landscaping outcome for the site. Additional landscaping opportunities on the fourth-floor level / rooftop residences was required and this was confirmed in response to CN's request for information.</p> <p>A condition is recommended in the Draft Schedule of Conditions in Attachment B, requiring an amended landscaping plan to reflect this additional landscaping on roof top.</p> <p>As stated by the applicant, there is no opportunity to provide street tree planting, given the narrow width of existing footpath / road reserve in this location. It is noted that the proximity of existing landscaping within Parnell Place Park public space, provides some existing natural relief in the streetscape.</p> |
| <p>Principle 6: Amenity</p> <p><u>UDRP comments:</u></p> <p><u>27 July 2022</u></p> <p>The panel commended the improved activation of the street along Parnell Place. The panel questioned the intended hours of operation and requested further information be provided to support the application. The applicant suggested families and locals are the targeted audience. They mentioned venues such as the Boathouse, Cabarita Beach offerings and Bannisters at Salamander where breakfast, lunch and dinner opening times are available, are likely precedent. The ground floor curved entry ramp area is considered a valuable device in the design to define a welcoming entry. The panel requested further consideration be given to acoustic attenuation in this area. This is a hardscape, open area and as such the sounds will bounce around and have the potential to be a nuisance for the residents. Winds from the south also have the potential to make the open entry</p> | |

ramp unpleasant if unable to close this space down. The panel noted the applicant's comments that balustrades at 1800 high are being considered to control acoustics and wind. Further consideration of this balustrade system should be given to ensure it doesn't contribute to the hard reflective surfaces. The proposal includes shared public amenities. The panel requested further detail be supplied to support the design approach and use of these spaces under different event conditions. The panel acknowledges the spaces were described as well-lit with appropriate screening and greenery. A casual surveillance opportunity should be explored to the shared area. There are no baby change /parents' rooms shown on the plans. The panel requested further resolution of this.

Applicant's response:

The Panel's acknowledgement of the improved activation of the street along Parnell Place is noted.

A Plan of Management (PoM) has been prepared that outlines further details with regards to the operation of the site including hours.

Glazing on the southern and western sides will be closed during night to provide acoustic separation and address weather conditions.

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| | <p><i>Further, the outdoor dining at the ground floor level has been removed and the operable windows in the south-west corner have been removed and replaced with fixed glazing which will greatly assist with the acoustics from this ramp.</i></p> <p><i>The ground floor and first floor accessible toilets are fitted with foldable changing trays to accommodate baby changing.</i></p> <p><u>CN officer comment:</u></p> <p>The amended design is considered to have captured the key elements of the UDRP's advice and an amended acoustic assessment has been submitted which makes an adequate assessment of and provides mitigation measures, also built into the updated Plan of Management to appropriately manage the potential for acoustic impacts on the residential amenity in this location.</p> |
| <p>Principle 7: Safety</p> <p><u>UDRP comments:</u></p> <p><u>27 July 2022</u></p> <p>The panel questioned the safety by design considerations of Unisex amenities in a licence premises. Shared facilities like this tend to work best where there is casual surveillance and views to the common area/ hand washing area are balanced with the access to the toilets still needing to be private. The Panel requested the applicant further consider this design element and provide more detail around operational and design solutions to satisfy public safety in various function operating modes. The panel requested further consideration be given to the laneway design to avoid concealment and entrapment spaces where fire stairs discharge on southeast corner at ground level. The panel supports initiatives to improve the laneways through improvements to visual amenity and safety of these laneways. The panel noted the rear stairs are intended to be alarmed with a separated path for residents from the hotel guests. The Applicant advised</p> | <p><u>Applicant's response:</u></p> <p><i>The proposed amenities design seeks to balance privacy with casual surveillance of the unisex facilities. The entrance to the bathroom is casually surveyed from multiple areas within the dining area on level 1 and this is considered suitable to balance amenity impacts to diners who are located within proximity to the amenities.</i></p> <p><i>The use of the laneway is now limited as a response to Council's request, being closed down in this regard.</i></p> <p><i>Discussions in relation to negotiating with the southern neighbour to activate the laneway, are expected to continue separately from this DA.</i></p> <p><i>A Plan of Management has been prepared which addresses CPTED principles. The</i></p> |

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| <p>they are in the process of negotiating with the neighbour to the south (23 Parnell Place) to activate the laneway; exploring potential for artwork on the neighbour's wall, canteen lighting, sculpture and artwork down the laneway. This initiative was supported by the panel. The panel was advised by council that the DA will be referred to the Police for comment. A Plan of Management is encouraged by the panel to address CPTED design safety elements for the project.</p> | <p><i>originally submitted SEE also does discuss CPTED principles.</i></p> <p><u>CN Officer comment:</u> The application has appropriately responded to UDRP advice, as outlined in the applicant response above.</p> <p>As mentioned elsewhere in the report, outdoor dining associated with the original proposal was removed due to insufficient width of footpath / road reserve in Parnell Place. In addition, the un-named laneways are emergency access for properties in Murray Avenue and therefore, activation and use of these for outdoor dining was not considered appropriate.</p> |
| <p>Principle 8: Housing Diversity and Social Interaction</p> <p><u>UDRP comments:</u></p> <p><u>27 July 2022</u> The panel is generally in support of retaining the premises as motel accommodation with limited private residential apartments, subject to operation systems and plans of management being presented to support refurbishment of the existing building.</p> | <p><u>Applicant's response:</u></p> <p><i>Noted</i></p> <p><u>CN Officer comment:</u></p> <p>The amended plans and updated information, in particular the acoustic assessment, Plan of Management and clarity of uses on site and their relationship to the predominant use of the development for hotel or motel accommodation with ancillary uses and residential accommodation is considered to have addressed the concerns of the UDRP, CN officers and objections from NSW Police.</p> |
| <p>Principle 9: Aesthetics</p> <p><u>UDRP comments:</u></p> <p><u>27 July 2022</u> The panel appreciated the attention to detail demonstrated in the submission and applauded the strength in the low horizontal loggia element along the Parnell Place frontage. The panel supports the strength in colour unity across the facade. The soft coastal styling is very strong and appropriate so is supported by the panel. The combination of white and bronze is delightful in the renderings. The Panel recommend</p> | <p><u>Applicant's response:</u> <i>The Panel's reference to attention to detail and strength in colour unity across the facade is noted.</i></p> <p><i>The key changes to the western facade are addressed above.</i></p> |

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| <p>maintaining this, as opposed to introducing black mullions to windows. The panel asked the applicant to further consider the west facade at the southern end near the glazed stair over the loggia main entry. The building may benefit from a crescendo moment, a roof form or defined crown would be a logical expression in this location. The Panel supported the application of Breeze Blocks to screen the carpark. This is an appropriate place to use breeze blocks and the panel was satisfied as long as the applicant is able to form the radius suggested in the curved facade with the intended product.</p> | <p>CN officer comment: From a planning and heritage perspective, by removing the high-level signage presents a more sympathetic outcome to the street which is already elevated and characterised by residential properties. The amended signage is located at the ground level only which is acceptable. The additional landscaping at the rooftop and facade softens the appearance of the building.</p> <p>While the proposed development will not alter the non-contributory nature of the site, it is unlikely that any substantial changes would ameliorate the already intrusive character of the site. The proposed development will reduce the adverse visual impact of the building by removing deteriorated elements and providing a fresh and contemporary appearance. Activation of the Parnell Place elevation at the ground level is also a positive.</p> <p>As amended, the development proposal is considered to be reasonable and responds more appropriately to the heritage significance of the local area and overall is considered a reasonable design outcome for this existing established site.</p> |
| <p>Recommendation:</p> <p><u>UDRP comments:</u></p> <p><u>27 July 2022</u> Amendments to the design as outlined are required in order for the panel to support the proposal. If the officer considers that issues appear to have been satisfactorily addressed, electronic distribution to the Panel for final comment should be sufficient.</p> <p><u>25 May 2023</u></p> <p>Final advice from the panel, was that the panel's raised issues have been adequately addressed.</p> <p>Further to discussion at the presentation, it is not immediately evident whether PV generation is proposed at roof level. Likewise, EV charging facilities</p> | |

maximised in the car park – Minimum Level 2 or faster.

There appears to be a lot of glass that is exposed on the west, north and east – with not a lot of shading. This may need addressing at Construction Certificate stage to satisfy Section J. Very dark window tint (over 30% light transmission reduction) is considered inappropriate in the context, and windows and glazed doors should be externally shaded in preference to dark tinting to achieve Section J compliance.

Suggest these could be conditioned on the consent.

Applicant's response:

Noted

CN Officer comment:

The amended proposal is considered to have addressed the issues raised. An electronic referral on 25 May 2023 to the panel was undertaken which contained the following CN officer comments:

'From a planning / heritage perspective, some aspects during the assessment that required further consideration included - extent of signage zones proposed, the use of breeze blocks, colour scheme, opportunity for additional landscaping at the perimeter of the rooftop level and some reduction of bulk and scale of the corner element of the built form on Murray Avenue. In addition, the final architectural plan set was required to demonstrate it had addressed and resolved all aspects of the UDRP's advice dated 27 July 2022 (demonstrated on both plan and through a detailed response to the UDRP's advice).

Other aspects during assessment that required further information and resolution (also mentioned within the UDRP advice) included residential amenity and acoustic privacy and operational aspects of the proposal.

From a planning and heritage perspective, the amended plan achieves an improved outcome for this site. Some latest amendments made in response to the above include:

- *The rooftop signage and Level 3 signage has been deleted.*
- *Bulk and scale at the south-eastern corner of the building (presenting to Murray Avenue) has been reduced via increasing the setback of Penthouse 2*

and relocating the footprint further to the west.

- *Additional landscaping has been provided to the perimeter of the rooftop level and elsewhere on the facade.*
- *The use of breeze blocks to the corner of Parnell and Beach Street is understood and accepted in line with UDRP advice and links to the 1960s history of the building.*

CN's planning / heritage assessment includes the below.

By removing the high-level signage presents a more sympathetic outcome to the street which is already elevated and characterised by residential properties. The amended signage is located at the ground level only which is acceptable. The additional landscaping at the rooftop and facade softens the appearance of the building and minimises the bright white effect of the proposed colour scheme.

While the proposed development will not alter the non-contributory nature of the site. The proposed development will likely reduce the adverse visual impact of the building by removing deteriorated elements and providing a fresh and contemporary appearance. Activation of the Parnell Place elevation at the ground level is also a positive. As amended, the development proposal is considered to be reasonable and responds more appropriately to the heritage significance of the local area and overall is considered a reasonable design outcome for this existing established site.

Other matters which were raised in relation to acoustic privacy and operational management is considered to have been addressed sufficiently with this proposal, through updated Plan of Management, Acoustic assessments and amendments to the design. In addition, indicative uses have been provided and discussed for the ground floor premises. A condition will be recommended to be imposed on any development consent, that requires first use DAs for these two premises at ground.

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| | <p><i>In relation to outdoor dining and purpose of existing unnamed laneway, which also featured in comments from UDRP, CN advised the applicant to remove the outdoor dining along Parnell Place and activation within the unnamed laneway.</i></p> <p><i>CN advised that the outdoor dining is not supported along the Parnell Place frontage and unnamed laneway given the insufficient width of public footway to allow for outdoor dining and pedestrian movements. In addition, it was noted that the unnamed laneway is an emergency egress route for surrounding properties within Murray Avenue, and outdoor dining would obstruct this purpose in which case, therefore the proposed doors within this side elevation at ground level were also required to be removed.</i></p> <p><i>From a planning perspective, the proposal has dealt appropriately with the UDRP advice and the alterations and additions to the existing Newcastle Beach Hotel site are acceptable and present a positive upgrade to the site and surrounding area.</i></p> |
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Clause 7.10A - Floor Space Ratio for Certain Other Development

The development has a site area of less than 1,500m². The provisions of this clause apply to the proposal. This clause specifies that the maximum FSR of a building is whichever is the lesser of the FSR identified on the FSR map (1:1) or 3:1.

The floor space ratio of the proposal was discussed in the above sections of this report addressing Clause 4.4 and Clause 4.6 of NLEP 2012.

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, as it applied to the proposal at the time of lodgement, are discussed in more detail in the table below.

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control Plan 2012 – Section 4.02 Bush Fire Protection,

Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

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

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

Residential Development – Section 3.03

The objectives of this section of the NDCP 2012 are 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, mindful that in relation to this proposal, the dual occupancy (attached 2 x dwellings) are at fourth floor level / rooftop so many of the controls, are not directly relevant. However, the underlying intent or performance criteria has been achieved.

Principal controls (3.03.01)

Frontage widths

Whilst not directly relevant, the minimum width of frontage required for dual occupancy / attached dwellings in the R3 zone of 12m is achieved for this site / development.

Front setbacks

The proposal as it relates to the dual occupancy (attached 2 x dwellings) at fourth floor level is appropriate and is not considered to adversely impact on the street frontage appearance in this instance. The dual occupancy (attached) is designed to complement the overall building form and provide a more complimentary built form, scale and massing for this existing developed site.

Side and rear setbacks

As shown on plan at fourth floor level, a setback of 6.2m is provided from the northern / Beach Street frontage, minimum 6.870m to the Parnell Place frontage, 1.805m to unnamed laneway off Parnell Place and 3m setback to main building form along eastern / rear setback to laneway.

Appropriate setbacks have been provided through the urban design outcome to ensure the overall built form, scale and massing is appropriate for the site and its context, as discussed in more detail elsewhere in this report.

Landscaped area

An appropriate level and type of landscaping is proposed, to provide good residential amenity, as expected for this type of development.

Siting the development (3.03.02)

Local character and context

The proposal is acceptable in relation to built form, articulation, and scale relevant to the desired local character of the area, the existing development on the site and the context where it is located. It also does not unreasonably impact on the amenity or privacy of adjoining properties and their private open space.

Pedestrian and vehicle access

The proposed dual occupancy (attached) is within a mixed-use development, however, have been provided with separate pedestrian and vehicle parking on-site, and vehicle access to on-site garages is from the existing access point off Beach Street and into the building.

Orientation and siting

The proposal has been suitably laid out having due regard for the orientation and aspect. Its siting is appropriate for the nature of the surrounding built environment and responds to the existing development on site and neighbouring properties. Solar access is available either directly or passively to the private open spaces and living areas. All private open space areas receive the minimum two hours of direct sunlight under the requirements.

Amenity (3.03.03)

Solar and daylight access

Sufficient solar access is available to habitable rooms and private open space areas within the development in line with relevant requirements.

Natural ventilation

All habitable rooms are naturally ventilated and meet the ventilation requirements of this section.

Ceiling heights

The proposal achieves the ceiling height requirement of this section with all ceiling heights achieving 2.7m.

Dwelling size and layout

The proposal exceeds the minimum requirement for internal areas of 115m² for 3-bedroom dwellings, plus an additional 5m² for each additional bathroom, and an additional 12m² for any additional bedrooms. The internal layout and spatial

arrangement of the development provides appropriate levels of amenity for future occupants.

Private open space

Each dwelling has been provided with adequate areas of private open space, located adjacent to living areas and sufficient covered areas. The private open space areas are considered appropriate having regard to the nature of the development and their intended purpose, have reasonable levels of solar access and connectivity, which are conducive to passive and to extent active private recreational pursuits (ie. pool) in this roof top location on site.

Storage

The proposal achieves the minimum requirement of 10m³ and is acceptable.

Car and bicycle parking

The development on site has accommodated a double garage per dwelling, with sufficient area for bicycle parking on site. Parking is secured by virtue of being within the existing carparking area at ground level but is separate and secure for residential use.

Visual Privacy

The proposal to replace the existing residence at fourth floor level, with two dwellings does result in an increased residential density on the site, however given the residential nature of these additions, the dwellings have been designed with adequate privacy both within and off site. Appropriate setbacks from the existing external walls of the built form and screening, together with distance provides an adequate level of visual and acoustic privacy within the development and as it relates to surrounding properties.

Acoustic privacy

The dual occupancy will be constructed to Australian Standards to ensure acoustic privacy. An Acoustic report addendum as it relates to the dual occupancy component of this development, has been submitted, prepared by JHA Consulting Engineers Pty Ltd, dated 24 May 2023. A condition is recommended in relation to the requirements of this Acoustic report addendum and to require further acoustic assessment be undertaken for all plant and equipment associated with the proposed dwellings (ie. air conditioning and pool plant) to ensure appropriate systems and placement on rooftop, provides both acoustic privacy within and for surrounding properties.

Configuration (3.03.04)

Architectural design and roof form

The proposal is considered to have achieved the requirements of this section, by providing a roof design and treatment which integrates into the building design and positively responds to the overall urban design outcome for this existing developed site. The visual bulk is reduced through design refinement, articulation, varied material

finishes and setback treatments at the fourth floor / rooftop level. These aspects are also discussed within the urban design discussion within this report.

Visual appearance and articulation

The residential component does not unreasonably impact on the amenity and privacy of adjoining properties, by virtue of their location at fourth floor level, but also through the design outcome.

Pools and ancillary development

The proposal includes a pool for each dwelling, suitably located so as to minimise the potential for impacts within the site or on the amenity of adjoining properties. In addition, an acoustic report addendum has been provided with the application, that has given proper consideration of both acoustic impacts within the development, from the hotel or motel accommodation and ancillary uses below and also in terms of plant required for the proposed residential component at fourth floor level / rooftop.

Universal Design

The Silver Level Livable Housing Design Standards relates to the designed and constructed elements of a dwelling to achieve accessibility, and requires wider doorways and halls, accessible bathrooms and at least one level entry accessway.

The proposed dwellings are provided with accessible access and safe path of travel, via a new lift proposed to facilitate access to the two dwellings from the ground floor level. As outlined within the Access Report, the dwelling entrance foyers also facilitate wheelchair turning areas.

The applicant has confirmed *that both dwellings comply or are capable of complying with the Silver Liveable Level Design Standards.*

The ensuite in dwelling 02 is designed to be the nominated Silver Level bathroom and all corridors are capable of meeting the 1m clearance.

The main bathroom in dwelling 01 is capable of being redesigned to meet the Silver Level Design Standards in detailed design.

The proposal is considered suitable in regard to this section, with Silver Level Livable Design Standards and appropriate conditions are included.

Environment (3.03.05)

Energy efficiency

The proposal is acceptable in relation to passive design elements and suitable clothes drying arrangements.

Water management and conservation

The proposal is acceptable in regard to this section. Water management and stormwater treatment and disposal is considered further in this report within Section 7.06 of NDCP 2012.

Waste management

The proposal is considered acceptable in relation to waste management, with further detail in this report within Section 7.03 Traffic, access and parking, relating to servicing arrangements and Section 7.08 Waste management of NDCP 2012.

The proposed development is considered acceptable in relation to the abovementioned DCP section and provides for an appropriate building form and layout for these residential dwellings. Overall, the proposed dual occupancy at fourth floor level achieve good residential amenity and the underlying objectives of relevant controls in this section.

Safety and Security - Section 4.04

The proposed development has suitably integrated the principles of Crime Prevention Through Environmental Design (CPTED) in the development, with positive improvement in surveillance on the site. The submitted CPTED comments provided by de Witt Consulting provides a satisfactory response to the four key CPTED key strategies required in the design. The four strategies being: Surveillance, Access Control, Territorial Reinforcement and Space/Activity Management.

The Police in their advice, commented that the CPTED comments provided by de Witt Consulting is adequate in addressing the four key strategies. CN's assessment considers that based on the revised proposal and additional information submitted, the proposal has now demonstrated that the ongoing use of the existing hotel or motel accommodation with an upgrade of ancillary uses, will be managed appropriately and in accordance with the revised PoM and Acoustic Report to ensure no significant impact on the safety of the public or adjoining residential properties within this location. The improvement in urban design also assists in achieving a safer and more secure environment both on and off site.

It is acknowledged that the proposal includes an increase in maximum capacity of patrons, when compared to the limited historical records relating to capacity / patrons is undertaken. In this regard, a Place of Public Entertainment (POPE) was issued by CN in 1992, which referenced the Terrace Room and Apollo Room capacity and a total of 270 patrons across both rooms. However, the basis for issuing a POPE at that time, related more to Building Code of Australia (BCA) requirements including such aspects as fire safety, rather than capacity operationally and from a planning perspective.

The proposed 550 persons within the main areas on Level 1, are put forward as generally consistent with 'on-premises' licensed areas and is based on 1 person per m² which is questionable in terms of whether or not this capacity will ever be realised, as discussed elsewhere in this report. Taking into account the additional information received in regard to indicative floor plan layouts within level 1, with tables / chairs, circulation spaces, staff service to customers and so on, the maximum capacity of 550 person, is unlikely in reality to be achieved operationally.

The amended plans, PoM and acoustic assessment and mitigation measures, provide clarity around the intended patronage, particularly of the ancillary uses and licensed areas, future intentions of obtaining a new or amended licence, consistent with the existing 'on-premises' liquor licence and operational management parameters to ensure the development is operated in a safe manner and without unreasonable impact on site or on surrounding properties.

4.04.02 General principles

Having regard to the general principles contained within this section of the NDCP 2012 (exterior design and layout, surveillance, lighting and signage / wayfinding), the proposed refurbishment of the building facilitates ongoing active use of the ground level through the refurbishment with provision for both active and passive surveillance. CCTV is to be provided (as recommended by the Police) at the premises and passive surveillance is increased to the public domain including bordering footpaths and streets. The proposal is satisfactory in response to general principles.

In addition, the Crime Risk Assessment comments, prepared by de Witt Consulting, provides an assessment against the four CPTED principles: natural surveillance, access controls, territorial reinforcement and space management. These principles are reflected throughout the acceptable solutions of Section 4.04.02.

An assessment against these acceptable solutions is provided below:

Surveillance

Good surveillance reduces the attractiveness of potential targets by increasing the risk of detection. This can be achieved through a combination of technical and natural surveillance including sightlines, lighting, CCTV monitoring, and site management.

The site is located along Parnell Place and Beach Street, with the surrounding street network and public domain providing opportunities for natural surveillance. The building's frontage and entry via Parnell Place and directly facing the public domain, provides a good position with natural surveillance. The design changes to the existing building form, includes an increase in glazing and open spaces along this frontage which promotes natural surveillance of the street and adjoining parkland space. Proposed terrace seating area at the front of the building provides a direct line of vision of the public domain contributing to the natural surveillance, which does not currently exist for the site and immediate location.

Lighting is proposed to be designed and positioned appropriately throughout the site to enhance surveillance by limiting the opportunity for crime. The applicant uses an example, of continuous lighting around the ground floor entrance along the pathway and on the side street entry to the carpark area. In addition, where natural surveillance is limited, it is proposed to use technical surveillance (ie. CCTV surveillance). Refer to Draft Schedule of Conditions in **Attachment B** for conditions relating to CCTV and lighting.

Access Control

Access control reduces crime risk by attracting, channelling or restricting movement. This can occur through natural, technical or organised control such as landscaping,

physical barriers, signage, security control etc. The tactical use of design features including building configuration, security hardware, pathways, landscaping, fencing, gardens and on-site guardians (eg. Site manager) can control access and help to reduce opportunities for anti-social or criminal behaviour.

Access control measures are proposed to restrict public access to certain parts of the site, such as for the hotel or motel accommodation and the proposed dwellings, in the form of key type access to doors and to the residential garage, lift and stairs. The applicant stated that access control such as key or similar will also be used to access the second and third floors in the hotel or motel accommodation, restricting access to unauthorised persons at all times.

More broadly, access into the building is via the single and identifiable entrance off Parnell Place, which the applicant stated will channel visitors to the site into the lobby area and then into the hotel or motel accommodation with its ancillary cafe, hotel spa and restaurant, bar and function spaces as required.

Territorial Reinforcement

Territorial reinforcement establishes a hierarchy of spaces that clearly identifies and aligns the design, definition, and designation of areas. This can be achieved by a range of measures including appropriate design for use; territorial markers to reinforce the designation of areas; and appropriate environmental maintenance to promote ownership and use of spaces.

Site boundaries are clearly defined through the existing built form and setbacks. Boundary treatments such as fencing are not required due to the position of buildings within the site (ie. built to boundaries).

Areas for specific uses – pedestrian movement areas, restaurant spaces, terraces, tourist accommodation and residential accommodation spaces are clearly defined by the layout and surface treatments. The applicant proposes signage to also clearly identify public and private areas, uses and access restrictions. This coincides with access control provisions such as key access to authorised areas.

It is considered that the redevelopment and upgrade of the existing building and operations on site, provides a significantly improved visual presentation to the streetscape and increased active and passive surveillance which will deter anti-social and criminal behaviour. In addition, the design changes combined with the operational management measures, will promote a sense of ownership for the space and territorial reinforcement.

The applicants state that a maintenance plan for the site would also ensure timely repair of damaged property, lighting, and removal of graffiti. Good environmental maintenance promotes a sense of ownership and will assist to deter crime by increasing the perceived risk of detection.

Activity and space management

Activity and space management involves the supervision, control and care of space. Activity and space management, while identified at the design stage through allocation of uses, are heavily dependent on management and enforcement. Space and activity

management strategies are an important means of developing and maintaining natural community control.

The applicant has acknowledged that given the proposal involves a licensed premise, close attention needs to be paid to activity and space management. Signage, lighting and management shall be used to reinforce and encourage the appropriate use of spaces, particularly at nighttime. Signage and good management will promote activity to assist natural surveillance and crime mitigation. Signs would be required in areas which are restricted, prohibited or under surveillance.

It is considered that the original proposal was lacking in terms of clarity of proposed internal uses, indicative floor plan layouts and the overall acoustic and operational management plan supporting the development.

The amended plans have now provided clarity of uses and their relationship to the predominant use of the development as hotel or motel accommodation. The operational management of the overall development and its 'on-premises' licensed areas through the PoM and acoustic assessment and recommendations to ensure a reasonable level of safety and security and residential amenity more broadly is achieved.

It is noted that the urban design changes proposed to the existing building, to improve the overall building form and scale and street activation, the general positioning of the existing entry/exit points from Parnell Place and Beach Street remain. The proposed terraces fronting Parnell Place and toward the rear corner of the site off the un-named laneways are considered to enhance natural surveillance and will provide an active street frontage particularly for Parnell Place and the corner of Beach Street. This is supported from a crime risk perspective as the increased passive surveillance to the street from the upper terraces that is now going to be open to the public, a significant increase in external CCTV coverage and deployment of security and staff to monitor external activity are all considered positive in regard to an upgrade of this site to prevent crime and anti-social behaviour.

Overall, the building design and functionality of the street frontage curtilage allows surveillance of all surrounding footpath areas through increased use of the upper floors, presence of CCTV and physical security along both Parnell Place and Beach Street.

The proposal achieves clear sight lines between private and public spaces, effective lighting of public places and suitable activation of Parnell Place and Beach Street.

4.04.03 Principles for specific uses

The existing use is maintained as a hotel or motel accommodation with ancillary restaurant, cafe, hotel spa, bar and function space and residential accommodation. Activation of street frontages is an important element for the existing and proposed upgraded development and this proposal will increase the activation of both street frontages.

Pedestrian and vehicle access for the site are maintained and are acceptable. Natural surveillance and mechanical CCTV is improved for the site, with details included in the PoM. The PoM addresses safety, patron dispersal and behaviour, alcohol

management, hours of operation, patron numbers and transport arrangements. The proposal is satisfactory in this regard.

In summary, the application has been supported by an updated PoM for the development. The PoM identifies and addresses safety and security impacts of the development. The plan will periodically be updated to account for changing conditions of the venue in collaboration with operators and residents. A condition is included to ensure approval is also provided by NSW Police and City of Newcastle.

The venue is to be used and operated in accordance with the PoM for the lifetime of the development. A condition has been included in the Draft Schedule of Conditions in **Attachment B**.

Social Impact - Section 4.05

The aims of this section are:

- i) *To provide clear guidelines as to the level of assessment required for a development application.*
- ii) *To consider both positive and negative social impacts in achieving socially sustainable development through an evidenced based approach.*
- iii) *To ensure consultation is undertaken with the community, stakeholders and relevant groups to identify public values and concerns.*
- iv) *To consider how potential social impacts of change can be best managed and mitigated.*

Throughout the documentation submitted, it is noted that the use allows for social opportunities including improved levels of service for guests and choices for dining. In addition, a response to public interest and strategic context, noting that the upgrade of the existing development and its operations promotes opportunities for employment, social interaction, additional night-time trade and a more active and safer site and surrounding neighbourhood.

The submitted PoM addresses the responsible service of alcohol by stating that the licensee will ensure that all staff involved in the sale and supply of liquor has completed an approved NSW Responsible Service of Alcohol (RSA) Course and holds a valid NSW Competency Card and / or interim certificate.

The PoM also demonstrates that staff are trained in identifying and preventing intoxication and verifying proof of age. The PoM also details the deployment of Designated RSA Advisor in accordance with the *Liquor Regulation NSW 2018*.

The PoM demonstrates external management will be the responsibility of a nominated supervisor to ensure security personnel comply with the duties outlined in the PoM. Further, it is acknowledged that the applicant will also be required to make application for an amended liquor licence to the Liquor and Gaming NSW.

The potential impacts of the development are considered acceptable and can be adequately addressed through conditions of consent. Conditions regarding hours of

operation, CCTV management, maximum patron capacity, the PoM supported by the Acoustic assessment and mitigation measures are included in the Draft Schedule of Conditions in **Attachment B**.

Soil Management - Section 5.01

The site is fully developed, and minimal earthworks will be required for this development.

Land Contamination - Section 5.02

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

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. The development is considered acceptable in regard to this section.

An advisory note is recommended in the Draft Schedule of Conditions in **Attachment B** in relation to the event that any objects are in fact uncovered by the works, the need to stop work and obtain appropriate approvals in accordance with the *National Parks and Wildlife Act 1974*.

Heritage Items - Section 5.05

A Heritage Impact Statement (HIS) – Issue B, prepared by Placemark and dated 22 June 2022 has been submitted with the application.

The site is not an identified heritage item under NLEP 2012; however, it is located within the vicinity to a number of heritage items as discussed in a preceding section of this report considering Clause 5.10 -Heritage conservation of the NLEP 2012.

The development is considered acceptable in regard to this section.

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*'. The development is considered acceptable in regard to this section.

An advisory note is recommended in the Draft Schedule of Conditions in **Attachment B** in relation to uncovering any archaeological objects, the need to stop work and obtain appropriate approvals from Heritage NSW.

Part 6.00 Locality Specific Provisions

Newcastle City Centre - Section 6.01

The site is located within the Newcastle East HCA and the existing building is a 'Non-Contributory' building within this area. Whilst this section of the NDCP 2012 relates more to new development, the proposal remains consistent with this section.

Street wall heights

The site is not identified with any specific street wall height under this section. The proposal relates to alterations and additions to an existing building / developed site. Street wall heights are largely consistent with the existing building, though the upgrade in design of the existing building is considered to reduce the presence of bulk, allows for increased surveillance and streetscape activation, alters or reduces corner massing including the softening in design of the corner of Beach Street, all of which are design features that are considered a positive urban design outcome for this existing developed site.

The existing and proposed massing is shown below, in an extract from the applicant's documentation submitted with the DA, noting that further refinement to the design / plans has occurred during the assessment process.



Figure 12: Extract from **Appendix 1** showing existing vs proposed.

Source: *Statement of Environmental Effects dated June 2022*

Building setbacks

The existing building currently does not have any real street activation and provides a poor connection from the pedestrian level into the building. The existing building presents with a continuous masonry wall to Parnell Place, with a single pedestrian access which is not inviting and is disconnected from the public realm into the building. The proposal maintains an existing nil street boundary setback while substantially improving street activation in this area through an improved urban design response.

A proposed awning at street level is considered appropriate and consistent with the NDCP provisions and it seeks to complement the building and offer interest and articulation as well as being a practical addition to this development.

Side and rear boundary setbacks are generally maintained, with building envelopes provided showing existing and proposed envelopes. The most notable departure, from the existing is to the rear boundary at the fourth-floor level, with the proposed floor extending further east than that of the existing building. This additional floor area is attributed to the stairs and servicing equipment which is proposed to be extended up

the fourth floor for the two residential dwellings, replacing the single dwelling which currently exists at this level (more recently known as Rosa's rooftop restaurant / bar, unlawfully operating from the site).

The applicant has undertaken further design refinement to reduce the overall bulk and scale and visual amenity of works associated with fourth-floor additions and the assessment now considers the proposal acceptable in respect to the Newcastle East HCA, as discussed elsewhere in this report.

Setbacks are considered appropriate in the context of the site and surrounding properties, with the design achieving appropriate privacy by ensuring no additional overlooking opportunities are provided. Solar access is largely consistent with existing shadowing from the site and minimal changes are made to view impacts from the site.

Building exteriors

The building exteriors are considered an appropriate response to the existing site context and location within the Newcastle East HCA and Newcastle City centre coastal location. The Statement of Heritage Impact (SoHI) submitted with the DA, discusses the visual improvement and positive visual impact associated with the redevelopment and upgrade of the existing site and redesign, particularly when viewed from the public domain and externally. From urban design and heritage conservation perspectives the amended proposal is considered to have responded appropriately in relation to building exteriors.

Design of parking structures

An existing above ground car park will continue to be used, with minor alterations and additions proposed, to facilitate the improvement in functionality. Refer to Section 7.03 Traffic, Access and Parking of NDCP 2012 for assessment of such aspects of the proposal.

Landscaping

A landscaping plan has been submitted with the proposal and is considered acceptable. Refer to Section 7.02 Landscaping, Open space of NDCP 2012 for assessment of landscaping associated with the proposal.

Views and vistas

The proposed redevelopment is generally consistent with the existing building in terms of height and overall footprint, notwithstanding there is some additional footprint at fourth-floor level in converting the existing dwelling into two dwellings at this level.

In addition, the site is not located within any view corridors shown in Figure 6.01-24 of the NDCP. Views and vistas are therefore expected to remain, similar to existing and without significant impact.

Addressing the street

As discussed throughout this report, the urban design response in regard to the amended proposal has seen improvement in relation to how the development

addresses the street, in both Parnell Place and Beach Street. Internal to the site, the land uses proposed as ancillary to the use as hotel or motel accommodation (i.e. café and hotel spa) is also considered an improvement in terms of activation, visual connection, and overall community or public benefit through both active and passive surveillance and improved management of uses within the development.

Heritage Conservation Areas - Section 6.02

The site is located in the Newcastle East Heritage Conservation Area (HCA) and consideration of heritage conservation was discussed in a preceding section of this report addressing Clause 5.10 Heritage Conservation under NLEP 2012.

The development is considered acceptable in regard to this section.

Landscape Open Space and Visual Amenity - Section 7.02

The proposal is considered a category 2 development and a landscape plan has been submitted with the DA.

Given the site is fully developed, there is limited potential for landscaping, however a landscape proposal has been submitted to improve the existing development on site and create an improved amenity both on and off site within this residential context. The landscape schedule provided with the landscape plan, shows a mixture of native and non-native plant types, all of which are considered appropriate in scale to the existing streetscape.

The landscaping proposed seeks to soften and compliment the built form at the site and provide more visual interest and relief, also contributing more positively to the amenity of the site when viewed internally and from the public domain. Some additional landscaping was put forward in response to both the UDRP and CN's assessment and a condition is included requiring an amended landscaping plan be submitted prior to issue of the Construction Certificate. Refer to Draft Schedule of Conditions in **Attachment B**.

Traffic, Parking and Access - Section 7.03

Vehicular access, Driveway design and Crossing location

All development is to be designed in accordance with *Section 7.03 Traffic, Parking and Access of NDCP2012* and Australian Standard AS/NZS2890.1:2004 Off Street Car Parking.

A review of the carpark layout confirms the following:

- i) Aisle widths comply with AS2890.1
- ii) Driveway width 5m which is consistent with the existing approval and is acceptable.
- iii) Car park dimensions as indicated on the original architectural plans complied with AS2890.1 except for parking spaces 9, 10 and 11 which were too narrow and should be combined into two car parking spaces.

- iv) Amended plans combined these spaces and the development now complies with AS2890.1.
- v) The door to the fire pump room as indicated on the original plans created a potential conflict with an exiting vehicle. Plans have been amended and the door has been set back and no longer conflicts with the driveway entry.
- vi) The original plans did not demonstrate that safe sight distances would be provided for pedestrian safety at the driveway entry in accordance with Figure 3.3 of AS2890.1 as it appears that the proposed stairwell and wall obstructs sight lines.

Plans have been amended and the driveway entry has been adjusted and now includes a 1.0 x 1.2m splay. This does not comply with AS2890.1, however, is appropriate to recommend a condition to require a convex mirror and flashing light beacon at the entry to ensure pedestrian safety is managed at the driveway exit.

Refer to Draft Schedule of Conditions in **Attachment B**.

Parking demand

Parking is to be provided in accordance with Section 7.03 Traffic, Parking and Access of NDCP 2012.

Car Parking

As the development involves an adaptive reuse of an existing building where alterations and additions are proposed with no changes to level 2 and 3, a calculation of the existing parking demand is imperative to establish the existing parking deficiency.

| Existing Use | NDCP Parking Rate | Relevant Quantity | Parking Requirement |
|--|---------------------------------|---------------------|---------------------|
| Non-residential development in city centre | 1 space per 60m ² | 2,678m ² | 44.6 |
| Penthouse Apartment (large apartment for parking rate) | 1.4 spaces plus 1 visitor space | 1 apartment | 2.4 |
| Total Requirement: | | | 47 |
| Provided: | | | 12 |
| Historical Deficiency | | | 35 spaces |

An historical parking deficiency of 35 spaces can be applied to the proposed development as the use is consistent with the existing use. The table below outlines the changes proposed to each floor with regard to parking demand:

| Floor Level | Proposed Change |
|-----------------|----------------------------------|
| Ground | Reduction in GFA |
| 1 st | Similar GFA |
| 2 nd | No Changes |
| 3 rd | No Changes |
| 4 th | Change from one apartment to two |

Noting the above changes, parking demand for the proposed development is calculated as follows:

| Proposed Use | NDCP Parking Rate | Relevant Quantity | Parking Requirement |
|---|--|---------------------|---------------------|
| Non-residential development in city centre | 1 space per 60m ² | 2,262m ² | 37.7 |
| Two dwellings (large apartments for parking rate) | 1.4 spaces per apartment plus 1 visitor space for the first 3 apartment. | 2 apartments | 3.8 |
| Total Requirement: | | | 41.5 |
| Provided: | | | 18 |
| Deficiency | | | 23.5 spaces |

Based on the reduction in GFA and increase in parking supply, the parking deficiency is reduced from the historical situation and therefore the development is acceptable with regard to parking demand. A total of 18 car parking spaces have been provided on site, one of which is nominated as an accessible carparking space and one as a loading bay space.

Bicycle Parking

| Proposed Use | NDCP Bike Parking Rate | Relevant Quantity | Bike Parking Requirement |
|----------------------------|---|---------------------------------|--|
| Retail | 1 per 20 staff | Likely to be less than 20 staff | 1 |
| Bar/Dining | Using Restaurant/Café rate, 1 per 100m ² | Approx 600m ² | 6 |
| Hotel | 1 per 20 units | 42 units | 2 |
| Two dwellings (apartments) | 1 per dwelling | 2 dwellings | 2 |
| Total Requirement: | | | 11 spaces |
| Provided: | | | 5 on ground floor + 2 accommodated in residential apartments |

Four additional public bicycle parking spaces are shown on the architectural plans, located on the street frontage to Beach Street which cannot be included in the calculation as these are public spaces outside of the site boundary and can be used by the general public. The original proposal therefore had a deficiency of four spaces which was not supported.

Amended plans were submitted providing four additional bicycle parking spaces, shown within the ground floor parking area and therefore bicycle parking demand is met. However, the plans still showed four spaces in the public domain, and these were not supported as they obstruct the public footpath. A condition is recommended requiring the deletion of these spaces. Refer to Draft Schedule of Conditions in **Attachment B**.

Motorcycle Parking

In accordance with the NDCP 2012, motorcycle parking shall be provided at a rate of 1 space per 20 car spaces. Disregarding the accepted carparking deficiency, the development generates a demand of 41.5 car spaces, requiring a total of two motorcycle parking spaces. Three motorcycle spaces are shown on the plans, meeting this requirement.

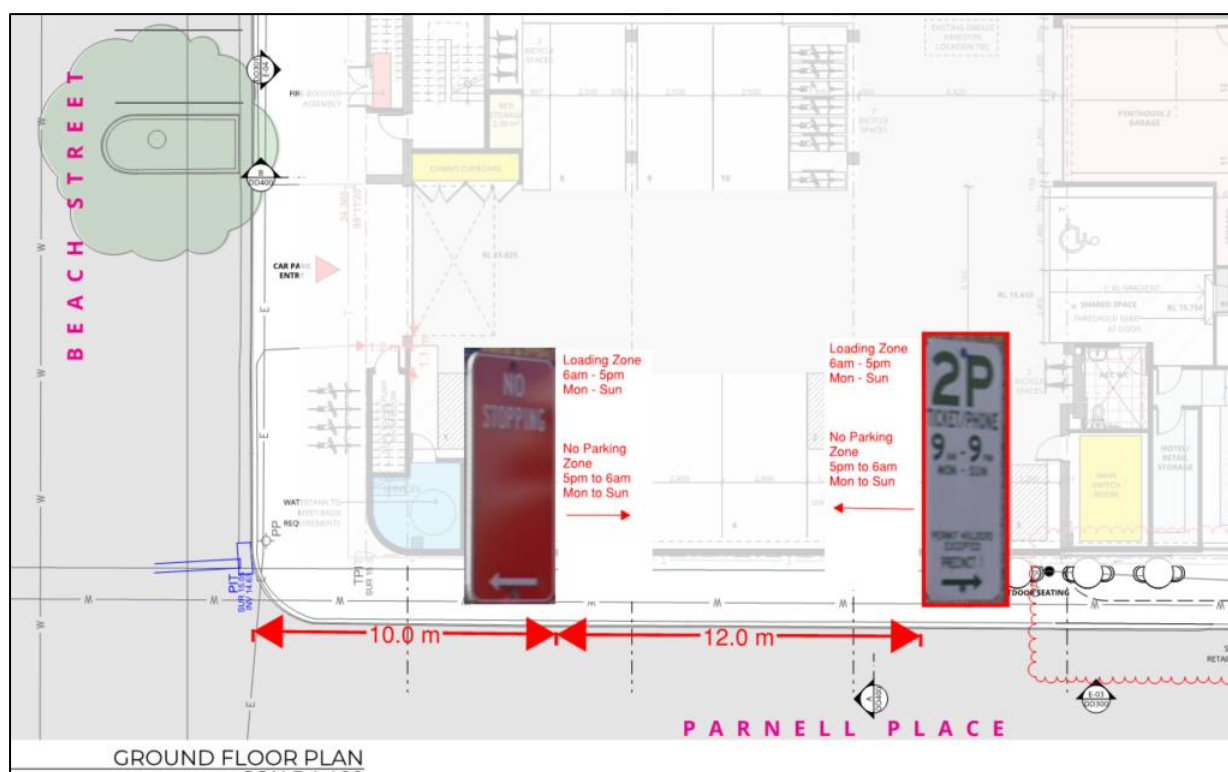
Site servicing

The traffic impact assessment states that the existing vehicular entry to the carpark is limited with only 2.0m height clearance and therefore designing the site for servicing of larger vehicles onsite is not possible. One of the proposed car parking spaces is to be dedicated as a loading bay that can be used by small service vehicles.

It is expected that the proposed development will increase the use of servicing vehicles at the site (i.e deliveries of food, alcohol, equipment, other goods etc) as well as taxi and ride-share vehicles. As the development involves an adaptive reuse of the existing building, there is limited opportunity to facilitate these services onsite. To manage the expected additional demand, a loading zone and No Stopping zone could be instated

along the site frontage subject to approval by the Newcastle City Traffic Committee (NCTC). It is suggested that the most appropriate location for this would be to replace two parking spaces along the frontage to create a 12m zone on the east side of Parnell Place just before the Beach Street intersection.

The Loading Zone can be used by service vehicles during the day and the No Parking zone would allow ride share and taxi drivers to use the zone in evenings when demand for those services is highest. This is shown in the image below:



This will result in the loss of two on-street parking spaces at the front of the site, however this loss is considered suitable on merit given the additional parking provided within the site and overall, the installation of a loading/no parking area is considered to aid in the ongoing road function along the site frontage. This proposed signage change and proposed loading zone was assessed by the Newcastle City Traffic Committee (NCTC) on its meeting of 20 March 2023 and in-principal approval was granted with the following requirements:

Installation of Loading Zone (6AM – 12PM Mon-Fri) and 5 Minute Parking (all other times) restriction on Parnell Place Newcastle East, adjacent to No.21.

Refer to Draft Schedule of Conditions in **Attachment B**.

Waste servicing of the two dwellings is satisfied by a waste bin area at the base of the residential stairs. A door with access to the existing pedestrian laneway at the rear can be used to move bins to the street frontage for collection which is acceptable.

Further information was requested regarding waste storage and servicing of the ground floor areas and hotel portion of the site. Calculations were provided to demonstrate that the bin storage area is sufficient to accommodate the expected waste generation. Additionally, the frequency of waste collection and vehicle size was confirmed.

In response, the applicant states that waste collection from the commercial portion of the development (hotel, retail and function spaces) will occur via Beach Street where a truck can seek refuge on the side of the road temporarily while the operator collects bins from inside the bin storage room in the carpark. This is consistent with the previous operation of the site and is acceptable. The proposed waste collection strategy from the two residential dwellings includes pulling bins from a storage area at the rear of the site along a pedestrian access way and placing them at the end of Murray Ave for collection by CN's waste team. This is acceptable with regard to the development engineering aspects of the assessment. Refer to further discussion on waste under Section 7.08 Waste management of this report.

Traffic generation

A Traffic Impact Assessment, prepared by SECA Solutions and dated 21 June 2022 was submitted with the application.

Traffic generated by the proposed development has been considered in the Traffic Impact Assessment and the conclusion that traffic generated by the development is expected to be within the capacity of the existing network is considered acceptable.

A condition for a construction traffic management plan is recommended within the Draft Schedule of Conditions in **Attachment B**.

Public domain

Upgrades to the public footpath along the site frontage will be required to facilitate the development and the full extent of upgrades including pavement types etc are listed below.

- i) Removal of redundant driveway crossing on Parnell Place.
- ii) Removal of brick paving along site frontage and replacement with asphalt pavement in accordance with City Centre Public Domain Technical Manual. Asphalt pavement is to extend the full length of the site frontage on Parnell Place and Beach Street and include a 4m extension across the front of the pedestrian pathway on the south side of the development site on Parnell Place. Surface levels to match existing.
- iii) Retention of the existing sandstone kerb at the corner of Parnell and Beach Street.

During the assessment of a section 138 application submitted by the applicant, CN shall determine whether it is necessary to request that the developer to remove the bricks and deliver to CN's depot to stockpile.

- iv) Replace driveway crossing to CN standard drawing A1300.
- v) Proposed removal of two parking spaces along the site frontage and replacement with a loading zone and no parking zone, subject to final approval from NCTC.

The proposed loading zone was assessed by NCTC on the 20 March 2023 and in-principal approval was granted with the following requirements:

- i) Installation of Loading Zone (6AM-12PM Mon-Fri) and 5 Minute Parking (all other times) restriction on Parnell Place Newcastle East, adjacent to No. 21.

Relevant conditions are recommended to reflect these requirements in the Draft Schedule of Conditions in **Attachment B**.

Energy Efficiency – Section 7.05

The proposal is acceptable having regard to this section subject to the recommended conditions in the Draft Schedule of Conditions in **Attachment B**.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

All development is to be designed in accordance with Section 7.06 Stormwater of NDCP 2012. The DCP states '*Alteration and additions within the existing building footprint, such as building a second floor, do not require additional discharge controls*'. Based on this, the development is considered acceptable without any additional discharge controls. All new rainwater runoff is to be connected to the existing system and discharged to the existing point of discharge/s.

Waste Management - Section 7.08

A Site Waste Minimisation and Management Plan (SWMMP) has been provided with the application and amended in response to CN's assessment. Key aspects of the SWMMP include – demolition / excavation waste, construction waste and operational waste management for the site.

Waste generation rates for the development has been calculated in accordance with the EPA's 'Better practice Guide for Resource Recovery in Residential Developments', a basis for calculation with some consideration of the nature of the proposed development and in response to CN assessment advice.

In relation to the specifics of operational waste, servicing the two dwellings will be managed similarly to any residential property, managed by individual owners and transported to a collection by CN or a waste contractor. Commercial waste will be stored in the building in appropriate receptacles and transported through the motel and ancillary (restaurant, bar and function areas) on an as need basis and or during scheduled cleaning. Waste will be transported from the relevant locations to the commercial waste storage area via internal servicing corridors and areas. Collection and disposal is to occur via a collect and return service either by CN or likely a private contractor, not dissimilar to current arrangements. Commercial waste bins shall not be via kerbside collection. Waste bins shall be collected via the commercial waste storage area and returned immediately. Collection vehicles will park kerbside at the roadside in Beach Street during bin collection and return service. Residential waste collection will be via kerb side collection, with bins presented to the kerbside by the resident and/or an asset manager or body corporate representative. Given the location of the separate residential bin room it is proposed that bins are collected from Murray

Avenue, to keep separation between the more frequent commercial collection, as residential collection already occurs within Murray Avenue.

CN's Waste Services team consider the development is acceptable and consistent with this section.

Advertising and Signage - Section 7.09

The original signage strategy included a number of signage zones, including roof top level signage, consisting of both flush wall and window signs, integrated within the overall design of the building. The intent of signage was for business or building identification purposes only, which is consistent with the provision of signage within a heritage conservation area.

The site is located within the Newcastle East Heritage Conservation Area (HCA), which supports 'non-illuminated' business and building identification signage, and the integration of such signage into the overall building design and assessed on merit within the heritage context of the site.

The concept of proposing a signage strategy, incorporated into the overall building design was supported by the UDRP and CN's assessment.

Amendments included the removal of the signage zone at roof top level and at Level 3. All signage was proposed to be maintained at the lower levels to minimise intrusion into significant views/vistas within the HCA.

The amended signage proposal is considered acceptable and will not detract from the immediate streetscape or character of the surrounding area and is acceptable in relation to this section.

Street Awnings and Balconies - Section 7.10

The proposal includes an awning along the main entry of the building, designed to improve the visual presentation of the building within the streetscape and provide weather protection.

The proposed awning is generally consistent with the design requirements, based on width of footway along Parnell Place, extending approximately 1400mm, with the benefits of shade provision and visual interest without detracting from the overall design of the building. The awning is considered an integral part, by complementing the design, providing curved elements to match the various building corners and entrances that exist.

The proposal is considered acceptable in regard to this section.

Development Adjoining Laneways - Section 7.11

The areas of outdoor dining originally provided on the architectural plans, along the frontage of Parnell Place and around the corner of Parnell Place and un-named laneway have been removed on the amended development.

These changes were as a result of CN's advice that the outdoor dining could not be supported along the Parnell Place frontage and unnamed laneway, given insufficient width of public footway to allow for outdoor dining and pedestrian movements. In addition, by removing these aspects from the proposal, this resulted in the closing of any openings associated with the outdoor dining within the laneway and changes to operable glazing, replaced with fixed glazing.

Local Infrastructure Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a 3% development contribution to CN, as detailed in CN's Section 7.12 Development Contributions Plan.

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

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

Demolition

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

Fire safety and other considerations

Building assessment

As required by Section 64 of the *Environmental Planning and Assessment Regulation 2021* (the Regs), the assessment of a development application (DA) for the proposed development must take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the Building Code of Australia (BCA).

In this respect it is considered that the proposed building work represents more than half of the total volume of the building (Ref: Section 64 (1)(a) of the Regs). In this respect, it is noted that the proposal involves building work across the majority of the ground floor, first floor and fourth floor levels of the building.

It is also noted that, while the submitted plans do not indicate any work on the second floor and third floor levels (ie. existing hotel or motel accommodation suites), the submitted Statement of Environmental Effects states "*the proposed development will include upgrades to the hotel accommodation*" and the submitted Access Report states that the accommodation will have "*cosmetic upgrades only*", that the report

author considers to not be “*new work*”. While arguably not essential for establishing that proposed building work represents more than half of the total volume of the building, it is considered that the proposed “cosmetic” upgrade to the second floor and third floor accommodation levels is also likely to constitute building work.

Having regard for the extent of building work proposed, it is considered appropriate to require a full upgrade of the existing building, in accordance with the Performance Requirements of the BCA. A relevant condition has been included in the Draft Schedule of Conditions in **Attachment B**.

Equitable Access

An Access Report has been submitted with the DA, prepared by Lindsay Perry Access and dated 20 June 2022. Under the Disability (Access to Premises — Buildings) Standards 2010, access compliance is the responsibility of building certifiers, building developers and building managers.

It is noted that the submitted Access Report states that there is no requirement for accessibility upgrades to the second and third floor levels (ie. existing hotel or motel accommodation suites) of the building, as no building works are proposed on those levels, other than “*cosmetic upgrades*”. The statement is made in the context of an assessment against the provisions of the Disability (Access to Premises — Buildings) Standards 2010. While the submitted Access Report does not identify non-compliances on the second and third floor levels, the previously recommended requirement for a full BCA upgrade of the existing building would require access upgrading if there are non-compliances with the BCA.

The Access Report has considered the proposed development, and has advised, in summary of some key aspects of accessibility, which the development is in compliance with, including:

Approach from allotment boundary and Approach from accessible carparking

An accessible path of travel is provided to the building entrance from the lot boundary along Parnell Place and an accessible ramp facilitates wheelchair access into the development. An accessible path of travel is provided from the accessible parking space at ground level to the lobby.

Accessible car parking

One accessible carparking space is provided within the development and considered to meet the Building Code of Australia (BCA) requirements.

Accessible ramp

An accessible ramp forms part of the accessible path of travel to the building from Parnell Place. The overall configuration of the ramp offers compliance with current accessibility requirements including gradient, width of 1500mm (for curved ramp), provision of landings, circulation areas at landings and the provision of handrails to both sides.

Stairs

Stairs are provided as a part of the pedestrian access from Parnell Place to the building entrance. The report states that *overall configuration is in keeping with current legislation including the provision of handrails to both sides. Ensure provision of tactile indicators top and bottom and contrasting non-slip nosings to treads.*

Accessible entrance

An automatic sliding door is provided for entrance to the building. The use of this type of door is encouraged, maximising access for persons with a disability to the tenancy. A level threshold is achievable.

A single hinged door provides the entry from the carpark. Circulation areas at the doorway offer compliance with current accessibility requirements and a threshold ramp is provided to ensure wheelchair access is achieved.

BCA - Interior

Extent of Access generally - BCA

A new lift is proposed to facilitate access to the two dwellings from the ground floor level.

The proposal maintains that no work is proposed to the hotel accommodation at the second and third floor levels. It is noted that the existing lift facilitates access to these levels. For the restaurant and bar areas and cafe and hotel spa, access is provided to and within all areas.

Circulation areas

The report states that *compliant circulation space has been provided through the building ground and first floor levels. Doorways within the accessible path of travel achieve the required circulation areas. The dwellings entry foyer also facilitates wheelchair turning areas.*

Sanitary facilities

Sanitary facilities are provided at the ground and first floor levels. A unisex accessible sanitary compartment is provided at each level with accompanying male and female ambulant toilets at Level 1 as per BCA requirements.

Two unisex accessible sanitary facilities are provided within the building. One is located at the ground floor level within the carpark areas, the other as a part of the bank of toilets at the first-floor level.

Lifts

Two lifts are provided for access between levels. The existing lift will facilitate access between levels of the hotel – and is capable of compliance. A new lift is provided for access to the dwellings.

Capacity

With respect to Section 73 (maximum capacity signage) of the Regulation, the applicant did not originally provide sufficient information in relation to the operation of this section of the Regulation.

The amended documentation provided by the applicant addresses the issue of capacity that was raised during assessment by CN.

The documentation references a capacity of 550 patrons in the “whole venue”, with further references to the “licensed areas of the first floor”.

A recommended condition, relating to the maximum number of patrons permitted in the first floor internal and external spaces of the premises is to be restricted to a total of 550 persons. A sign must be displayed in a prominent position in the building, stating the maximum number of persons that are permitted in the building. Refer to Draft Schedule of Conditions in **Attachment B**.

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

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

Acoustic impacts and Residential amenity

Having regard to potential acoustic impacts arising from the proposed development, a detailed assessment of the proposal has been undertaken including consideration of the Acoustic Report prepared by JHA Consulting Engineers dated 21 April 2023 and notes the report theoretically demonstrates that, with appropriate controls in place, the proposed development satisfies the assessment criteria and is therefore unlikely to significantly impact neighbouring receivers.

The acoustic assessment follows the conventional process of determining appropriate criteria for the potentially affected receivers, characterising source noise levels, modelling the propagation of these source levels, determining compliance, and specifying controls as necessary.

The applicant has assessed the operation of the licenced area of the premises against the noise criteria from the Independent Liquor and Gaming Authority (ILGA). This allows the L10 noise levels to exceed the external background noise by 5dB across all octave bands (31.5Hz to 8Khz) external to a residence prior to midnight, whilst imposing inaudibility after midnight.

Noise level modelling for the northern, western, and southern terraces are based on a 1.8m glazing balustrade around the perimeter of the terraces. Operable windows for the front facade along with bi-fold doors allowing the northern, western and southern terraces are to be closed off with all patrons being moved internally.

Internal noise has been aggregated and propagated externally to determine what contribution internal noise levels would have on the use of the outdoor spaces. Table 14 contained within the Acoustic Report shows the internal noise levels do not significantly contribute to the overall noise emissions from the terraces, demonstrating that patron noise on each terrace being the dominant noise source.

The assessment goes on to demonstrate that the noise emissions from each terrace along with the front facade (with the mitigation measures installed) are expected to comply with the requirements of the NSW Liquor and Gaming criteria before 10pm to the corresponding nearest residential receivers.

Given the proximity of residential receivers to the proposal, the consultant has recommended that patrons cease use of all outdoor terraces at 10.00pm to avoid any exceedances of the sleep disturbance criteria. These areas will be closed off to patrons along with the operable windows installed on the front facade being closed. A condition is recommended in the Draft Schedule of Conditions in **Attachment B** to address this recommendation.

The consultant has also provided an acoustic letter prepared as an addendum to the Acoustic Report (ref: 220214 AC-DA[F], issued on 21st April 2023) which has considered patron noise from the front facade along with mechanical plant from the rooftop upon receivers within the residences located on the fourth level / rooftop.

Based on the results of the assessment, the noise emissions from the central area (which includes the northern and southern terrace along with the front facade) to the roof residences are expected to comply with the project noise goals provided the roofing and thermal insulation requirements are addressed. A condition is recommended in the Draft Schedule of Conditions in **Attachment B** to address this recommendation.

Compliance with the L_{Amax} sleep disturbance assessment is expected as the noise emissions from the bar / restaurant are unlikely to exceed the sleep disturbance criteria as defined in the NSW NPI between 10.00pm and midnight so far as all external doors and windows are closed and there are no patrons on the terrace.

A condition is also recommended whereby the applicant engage a suitably qualified acoustic consultant to carry out a post commissioning assessment confirming the acoustic recommendations have been addressed and are effective in mitigating the noise sources so that compliance with the project noise goals have been achieved (refer to Draft Schedule of Conditions in **Attachment B**).

While the consultant demonstrated that the comparable plant did not exceed the noise goals for the subject site, a condition is recommended (refer to Draft Schedule of Conditions in **Attachment B**), that the acoustic consultant carry out a detailed assessment once the plant (mechanical plant and pool pumps) have been selected so that any potential acoustic treatments can be incorporated into the design of the building to ensure compliance with the internal noise levels (of 35dB in sleeping areas and 40dB in living areas) will comply with AS/NZS2107-2000, the Office of Environment and Heritage (OEH), Department of Planning & Environment (DPE), and CN guidelines.

Reference to the recommendations of the acoustic assessment have been incorporated into the PoM. This helps to ensure the venue operators are made aware of the acoustic recommendations of the acoustic report on an ongoing basis. It also provides additional regulatory options as compliance with a PoM can be included within the conditions of consent and is often required as part of any future liquor licence.

Whilst a number of complaints have been received over time regarding the site, these have been related more directly to adverse acoustic impacts associated with Rosa's rooftop restaurant/bar, which has now ceased operating from the site and was in fact an unlawful land use, operating without consent from Council. The closure of this unlawful operation in itself reduces the adverse acoustic impacts on nearby residential receivers.

It is considered that these matters have been adequately addressed, with clarity provided both on plan and within the PoM and Acoustic assessment and report recommendations. Whilst the applicant intends on seeking to amend or apply for a new liquor licence, it has been confirmed that the licence will be for an 'on-premises' liquor licence only, not dissimilar to the existing licence in operation. Clarity around uses within the development (ie. cafe and hotel spa at ground level), management of patronage within first floor level 'on-premise' licensed areas, indicative floor plan layouts, confirmation of patron numbers and more detailed PoM has demonstrated that the development is appropriate and not likely to unreasonably impact the social or acoustic amenity of adjoining residential properties.

5.7 The suitability of the site for the development

The site currently is fully developed and the proposal whilst proposing considerable building upgrade, does propose to continue to operate the existing Newcastle Beach Hotel, with its predominant use being for hotel or motel accommodation with ancillary uses and dual occupancy on the fourth floor / rooftop, consistent with the predominant land uses operating from the site over many years.

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

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

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

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

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

The application was notified in accordance with CN's Community Participation Policy. A total of 24 submissions of objections 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 all issues raised and a response to those issues, principally provided by the applicant in response to CN's requests for information.

| Issue | Comment |
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| Building footprint and Height, Bulk and Scale | <p>Setbacks were raised in terms of non-compliance with side setbacks.</p> <p><u>Comment</u> The setbacks are considered generally in keeping with the historic built form that covers the majority of this site. The upgrade and adaptive re-use is limited, as full building demolition does not form part of the application.</p> <p>In relation to height, the site has an historical departure to the existing 10m height limit. The variances to the existing height (which exceeds the 10m height limit) are confirmed more to the central components of the building and building eaves to the north of the site.</p> <p>Refer to further discussion within this report under Clause 4.3 Height of buildings and Clause 4.6 Exceptions to development standards of the NLEP 2012.</p> <p>In relation to building bulk, the overall building bulk and scale has been improved through an updated design, open terraces and increased articulation and an appropriate colour and material scheme palate which has effectively reduced the visual appearance of bulk and has support of the Urban Design Review Panel (UDRP).</p> |
| Encroachment into public lane | <p>Submissions raise concern in relation to the use of the public lane for seating and activation space.</p> <p>The proposal has been amended and now does not include the provisions of outdoor dining within Parnell Place or the un-named laneway. All opening onto the un-named laneway have been closed off, given the purpose for the laneway relates to an emergency access.</p> <p>Refer to discussion under Section 7.11 of NDCP 2012.</p> |
| Heritage | <p>The National Trust of Australia's submission raised concern regarding the perceived heritage impacts, though other submissions raised concern with colour palette.</p> <p>A Statement of Heritage Impact was submitted with the application, and aspects of heritage within the context of the site and setting were considered by both the UDRP relating to urban design matters and, specifically from a heritage consideration under NLEP 2012 and NDCP 2012.</p> |

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| | Refer to further discussion within this report under Clause 5.10 Heritage conservation of the NLEP 2012. |
| Development classification | <p>Submissions raised issue with the classification of the development as 'hotel and motel accommodation' with 'shop top housing' and ancillary uses. Some referred to the Department's Planning Circular 13-001 regarding the classification of ancillary uses in terms of the bar and commercial components of the development.</p> <p>The applicant draws attention to 'the Circular notes the following:</p> <ul style="list-style-type: none"> • <i>The fact there are different components or parts of varying nature comprising the development is not necessarily of importance.</i> • <i>Physical proximity of the component to the rest of the development is likely to be evidence of an ancillary relationship.</i> <p>Operating within the same building ensures physical proximity between the varying uses and suggests a strong and direct relationship in this regard.</p> <p>During assessment, additional information was submitted which provided clarification around characterisation of land uses associated with the existing and ongoing predominant use as hotel and motel accommodation. Clarity was also provided for the ground floor uses, now being a cafe and hotel spa, demonstrated appropriately as ancillary to the main or dominant use for hotel and motel accommodation. In addition, further information was provided which expanded on operational parameters and hours of operation which also assists in demonstrating how the development will be integrated and run under the dominant use being for hotel and motel accommodation.</p> <p>In addition, further clarity has been provided in relation to the two fourth floor / rooftop residences and these are dwellings, permitted under the broader group term of 'residential accommodation' permissible within the R3 Medium Density Residential zone and consistent with the zone objectives.</p> <p>Refer to further discussion within this report under Clause 2.3 Zone objectives and Land Use Table of the NLEP 2012.</p> |
| Acoustic impacts | The amended acoustic assessment has adequately demonstrated acoustic impacts have been considered appropriate, with the addition of operational management measures to further assist with maintaining a reasonable acoustic environment both on site and for surrounding residential receivers. |

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| | Refer to further discussion within this report under Acoustic impact and Residential amenity under Section 5.6 of this report. |
| Plan of Management (PoM) | An amended PoM was submitted which provided more clarity and certainty around, clarity of uses of spaces within the hotel and motel accommodation, hours of operation and operational management measures relating to acoustic management, service of alcohol, capacity and so on. |
| Waste | <p>Waste management for the proposal has been resolved through provisions of additional information and is now considered acceptable.</p> <p>Refer to servicing requirements under Section 7.03 Traffic, Parking and Access and Section 7.08 Waste management of NDCP 2012.</p> |
| Privacy | <p>The development, through its design changes has appropriately considered privacy between properties. The development has provided mitigation measures such as privacy screens to the western elevation to mitigate potential overlooking of private open space areas from new residential areas on the fourth floor (ie. dwellings). In addition, private open spaces to both dwellings are generally orientated to overlook public spaces and not across side boundaries to other properties, with no direct views towards any adjoining private open space available.</p> <p>The existing hotel rooms remain unchanged and so privacy will be maintained / existing between properties.</p> <p>Objections received relating to the overlooking of the public park, were acknowledged, however there are also positives in terms of CPTED principles, with higher levels of safety and security through natural and passive surveillance achieved.</p> |
| Location of entry | <p>The main entrance is on the southern side of the building along Parnell Place, with its proximity to adjoining premises noted. The applicant advised that the location of entry way has been guided primarily by the existing historic built form. The adaptive re-use is limited in the way that it seeks to retain as much of the existing building as possible. The northern part of the site is occupied by the existing car park and ground floor servicing areas. This area is existing and is largely to be retained including access off Beach Street, the logical approach was to provide minor alterations to improve internal circulation and maintenance, in redeveloping the existing entrance which is located on the southern extent of the Parnell Place frontage.</p> <p>The northern section and corner will still be activated through alternative building treatments (ie. breezeblocks allowing light,</p> |

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| | <p>ventilation and articulation), the use of first floor terraces and alfresco dining. The location of the main entrance has been redesigned to ensure it is welcoming, active and open to the benefit of uses and those nearby.</p> <p>Amended plans have seen some operable components at this southern end as well as outdoor dining along both the Parnell Place frontage and within the un-named laneway removed from the proposed plans. Operable glazing in this location within the entrance area has also been changed to fixed glazing.</p> |
| Parking | Traffic, parking and access has been addressed and is acceptable for the proposal, as discussed under Section 7.03 of NDCP 2012. |
| Patron Numbers | <p>The documentation now references a capacity of 550 patrons in the “whole venue”, with further references to the “licenced areas of the first floor”.</p> <p>A recommended condition, relating to the maximum number of patrons permitted in the first floor internal and external spaces of the premises is to be restricted to a total of 550 persons.</p> <p>An amended PoM provides clarity of capacity, use, ancillary operations and managements measures to be undertaken, particularly around the licensed areas.</p> |
| Shadow diagrams | <p>The proposal has provided shadow diagrams, demonstrating shadows cast at 9am, 12pm and 3pm on the 21 June as required.</p> <p>Whilst the development will vary slightly in scale and bulk to the existing building, this is distributed through the design upgrade and is not considered to have unreasonable overshadowing impacts on surrounding neighbours.</p> |
| Details on plans relating to windows, details on eastern and southern facades | Concerns relating to insufficient information and detail on architectural plans has been addressed through amended plans, further design refinement in response to CN assessment, UDRP advice and submissions received. |
| Accessibility | <p>An Access Report has been provided, and the proposal is considered either compliant or where required, capable of compliance with the relevant provisions of accessibility subject to design at Construction Certificate stage.</p> <p>Refer to discussion within this report relating to Building Code of Australia matters and equitable access.</p> |
| Fire safety | Refer to discussion within this report relating to Building Code of Australia matters and requirements for building upgrade works relative to fire safety matters. |

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| Smoking | <p>The applicant has responded by stating that, as per typical operations, any smoking zone will be isolated and properly orientated / located so that smoke does not impact non-smokers. Smoking will not be permitted at all three of the proposed terraces.</p> <p>It is noted that NSW Health under the <i>Smoke-free Environment Act 2000</i> regulate public health by reducing exposure to tobacco and other smoke, as well as aerosol or vapour (whether or not containing nicotine) generated by e-cigarettes, in certain public places.</p> |
| Landscaping | <p>Viability of landscaping given location / climate was raised as a concern by submissions.</p> <p>Refer to discussion within this report relating to landscaping in under Section 7.02 of NDCP 2012.</p> |
| Tree protection | <p>Trees located within Parnell Place Park are separated to the side by the road reserve and are on CN managed lands.</p> |
| Commercial uses | <p>Original commercial spaces shown at ground floor level, have been revised and now propose a cafe and hotel spa, to operate as ancillary uses to the hotel or motel accommodation and are considered acceptable.</p> |
| Redacted plans | <p>A submission expressed concern regarding redacted plans on DA Tracker. Redaction of information deemed personal is required under the Privacy Information Act.</p> |
| Loss of rooftop bar | <p>A submission expressed concern or disappointment over the loss of the rooftop bar, known as Rosa's. Others were divided with many stating existing acoustic issues with the bar, yet also expressing concern over the rooftop residences on privacy and height grounds.</p> <p>As stated by the applicant, the removal of the rooftop bar and replacement with two dwellings overall is likely to result in less acoustic impacts given the nature of the dwellings. In addition, it is not considered that the two dwellings at this level, contribute to an unreasonable level of additional height, bulk or scale, with the roofscape being a more simplified, recessed and improved articulated built form as a result. The overall height of building is reasonably consistent with the existing building overall and the UDRP also supported this element, siting dwellings were more appropriate in the residential context of the site and creating an improved building design outcome for the site.</p> |
| Structural integrity | <p>The structural integrity of the building was questioned given its history and therefore, it would be better demolishing the entire building.</p> |

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| | The applicant has responded by stating that ' <i>the intent of the adaptive re-use is the refurbishment of the existing building as far as practical, costs effective and structurally appropriate to do so. Structural adequacy will be dealt with through the detailed design and construction certificate phase.</i> ' |
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5.9 The public interest

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development. Conditions are recommended in relation to the provision of PV solar panels on the roof and EV charging facilities within the carparking areas on site and are contained within the Draft Schedule of Conditions in **Attachment B**.

The development is in the public interest and will allow for the ongoing orderly and economic development of the site, by upgrading the existing building and providing a more functional visitor and tourist accommodation (hotel or motel accommodation) with its ancillary services and facilities consistent with the PoM. The existing uses on site predominately remain that being for hotel or motel accommodation, with an upgrade of ancillary uses relating to dining, bar and function spaces. The addition of a cafe and hotel spa is also included as ancillary uses and located within the hotel or motel accommodation at ground floor level. The existing residential accommodation (ie. single dwelling at rooftop) is being replaced by a dual occupancy (attached), being two dwellings, all of which are permissible with consent in the R3 Medium Density Residential zone, as discussed in more detail in this report under Clause 2.3 of NLEP 2012.

The site and its location within the Newcastle East HCA, reinforces the need for a more positive urban design outcome, than what currently exists, and the proposal achieves this and promotes a more user-friendly, visually pleasing and safer operation, both through improved design, passive and active surveillance, greater acoustic and operational management and mitigation measures, than what currently exists for this existing development, with current 'on-premises' liquor licence. As a result, the site and its on-going operations and relationship within this residential context will be improved with this development outcome.

6.0 CONCLUSION

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

ATTACHMENTS

Attachment A: Plans and elevations of proposed development / as amended – 21 Parnell Place Newcastle East

Attachment B: Draft Schedule of Conditions – 21 Parnell Place Newcastle East

Attachment C: Processing Chronology – 21 Parnell Place Newcastle East

Attachment D: Plan of Management – 21 Parnell Place Newcastle East

Attachments A – D distributed under separate cover