

**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**CCL 13/12/2022 – ADOPTION OF PLANNING PROPOSAL AND  
EXHIBITION OF DRAFT DEVELOPMENT CONTROL PLAN AND  
PLANNING AGREEMENT FOR LINGARD HOSPITAL PRECINCT**

<b>PAGE 3</b>	<b>ITEM-111</b>	<b>Attachment A:</b>	Submissions Table
<b>PAGE 18</b>	<b>ITEM-111</b>	<b>Attachment B:</b>	Draft Development Control Plan – Lingard Hospital Precinct
<b>PAGE 39</b>	<b>ITEM-111</b>	<b>Attachment C:</b>	Draft Planning Agreement - Lingard Hospital Precinct

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ITEM-111      Attachment A:      Submissions Table

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## ATTACHMENT A – SUBMISSIONS TABLE – 24 MEREWETHER STREET AND 8 LINGARD STREET, MEREWETHER

The proposal was placed on public exhibition from Monday 27 June 2022 and Monday 25 July 2022. All landowners in the vicinity of the Lingard Hospital Precinct were notified of the Planning Proposal. A total of 12 submissions were received during the exhibition period.

The table below captures the key matters raised within the submissions received by City of Newcastle (CN) during public exhibition of the Planning Proposal.

Theme	Summary of key matters	Council response
<b>Vehicle traffic</b>	<ul style="list-style-type: none"> <li>▪ Increase to facility and its capacity will inevitably escalate existing traffic, congestion, service and delivery vehicle movements, rat runs and general disruptions experienced by community.</li> <li>▪ No detailed traffic management plan or suggestions to improve current and address anticipated concerns.</li> <li>▪ Heavy vehicle access and main loading off Tye Road and Hopkins Street is inappropriate and needs relocating/resolving.</li> <li>▪ Reversing trucks not complying with current DA approval.</li> <li>▪ No consideration of construction traffic impacts and disruptions.</li> <li>▪ All future DAs should be referred to TfNSW due to anticipated increased traffic.</li> </ul>	<p>The draft precinct specific DCP includes development controls to satisfactorily manage traffic and parking as part of future development applications. The controls will require a Traffic Impact Assessment to be submitted with future development applications to demonstrate that development will not further impact the availability of on-street/local public parking and how traffic and congestion in the surrounding area will be managed.</p> <p>Referrals to TfNSW are required where proposals fit the definition of 'traffic generating development' under the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>.</p>
<b>Traffic safety</b>	<ul style="list-style-type: none"> <li>▪ Frequent accidents and regular near misses surrounding the site.</li> </ul>	<p>The draft precinct specific DCP includes development controls to satisfactorily manage traffic and parking as part of future development applications. The controls will require a Traffic Impact Assessment to be submitted with future development applications to demonstrate that development will not impact the availability of on-street/local public parking and how traffic and congestion in the surrounding area will be managed. The draft planning agreement</p>

		supports traffic and transport upgrades required to support intensification of the Precinct.
<b>Speeding vehicles</b>	<ul style="list-style-type: none"> <li>▪ Speeding vehicles observed and noticeable along Lingard Street.</li> </ul>	The draft precinct specific DCP includes development controls to satisfactorily manage traffic and parking as part of future development applications. The controls will require a Traffic Impact Assessment to be submitted with future development applications which will be required to take into consideration factors such as existing and estimated vehicle movements to and from the site. The draft Planning Agreement supports traffic and transport upgrades to improve safety around the area.
<b>Public and active transport</b>	<ul style="list-style-type: none"> <li>▪ Appreciate encouragement of public and active transport.</li> <li>▪ Is a good place to cycle with reasonable bus service.</li> <li>▪ Public and active transport unlikely to be used, particularly by patients.</li> <li>▪ Noted lack of availability of public transport times.</li> <li>▪ Pedestrian movements tend to cross Lingard Street more than Merewether Street.</li> </ul>	The draft precinct specific DCP includes controls that will require a Traffic Impact Assessment to be submitted with future development applications. A Traffic Impact Statement required to be provided as part of development applications, will assess the impact and availability of on-street/local public parking and how traffic and congestion in the surrounding area will be managed. The draft planning agreement supports traffic and transport upgrades and has a strong focus on pedestrian amenity
<b>Pedestrian safety</b>	<ul style="list-style-type: none"> <li>▪ Hazard crossing Lingard and Merewether Streets.</li> <li>▪ Suggested pedestrian safety solution (island) across Lingard Street along north side of Merewether Street.</li> <li>▪ Service vehicles entering and reversing along Tye Street create pedestrian hazard (movement pattern for public school and Junction shops).</li> </ul>	The draft precinct specific DCP includes development controls to satisfactorily manage pedestrian safety, particularly at Lingard Street and Merewether Street intersection and from future developments at the Hopkins Street precinct. The draft planning agreement also supports the inclusion of traffic calming measures, additional footpath connections and pedestrian crossings in an effort to improve pedestrian safety and accessibility around the site.
<b>Amenity</b>	<ul style="list-style-type: none"> <li>▪ Reversing noises of service vehicles impact on amenity of residents.</li> </ul>	The draft precinct specific DCP includes development controls that aim to protect the amenity of adjoining residential dwellings. All future development applications will be required to demonstrate that

		development will not impact the amenity of adjoining and adjacent residential dwellings.
<b>Availability of on-street car parking</b>	<ul style="list-style-type: none"> <li>▪ Staff, patients and visitors occupying on-street spaces in lieu of off-street provided by development.</li> <li>▪ Request more off-street parking be incorporated into the design.</li> <li>▪ Parking incentives to reduce impact unlikely to be successful.</li> <li>▪ Increase to facility and its capacity will inevitably decrease on-street parking availability.</li> <li>▪ Surrounding public uses are in need and deserving of on-street parking.</li> <li>▪ Any pedestrian link from Tye Road to Merewether Street will reduce on-street parking availability in Hopkins Street. Recommend resident only parking for Hopkins Street.</li> <li>▪ On-street parking is already overloaded, at capacity, a nightmare and current issue that has not been addressed.</li> <li>▪ No confidence parking will be addressed upon DA submission.</li> <li>▪ Construction vehicles will take up further on-street parking spaces.</li> </ul>	<p>The draft precinct specific DCP includes development controls to satisfactorily manage traffic and parking as part of future development applications. The controls will require a Traffic Impact Assessment to be submitted with future development applications to demonstrate that development will not impact the availability of on-street/local public parking and how traffic and congestion in the surrounding area will be managed. The draft planning agreement also supports traffic and transport upgrades.</p> <p>The carparking requirements of the proposed development will be considered as part of the development application process. This will include an assessment against the relevant carparking controls set out in Newcastle Development Control Plan (DCP) 2012.</p> <p>A Construction Management Plan (CMP) will be prepared in relation to the future DAs, to ensure that any impacts from the construction phase are managed to mitigate impacts to adjoining properties. The CMP will adopt recommendations from any technical studies, including the Acoustic and Vibration Assessments and Traffic Assessments, as well as conditions of consent imposed by CN.</p>
<b>Parking infrastructure and initiatives</b>	<ul style="list-style-type: none"> <li>▪ Free on street parking is more desirable and preferred to the paid parking station. As such, this infrastructure is not used and has had little impact.</li> <li>▪ Implementation of parking reimbursement scheme not considered effective.</li> </ul>	<p>The draft Lingard Hospital Precinct DCP includes development controls to satisfactorily manage traffic and parking as part of future development applications. The controls requiring initiatives are put in place ensuring off-street car parking will be made available. Other controls have been included requiring off-street car parking is self-managed.</p>

	<ul style="list-style-type: none"> <li>▪ Disgruntled by option for making parking station available to Townsend Oval users and profiting off parking due to an issue the hospital has caused.</li> </ul>	<p>The carparking requirements of the proposed development will be considered as part of the development application process. This will include an assessment against the relevant carparking controls set out in Newcastle Development Control Plan (DCP) 2012.</p>
<b>Indirect impact/s</b>	<ul style="list-style-type: none"> <li>▪ Safety and security.</li> <li>▪ Amenity.</li> <li>▪ Parking in proximity to home.</li> <li>▪ Parking offences being committed.</li> </ul>	<p>The draft Lingard Hospital Precinct DCP includes development controls to satisfactorily manage amenity impacts to adjoining residential uses and traffic and parking management.</p> <p>The safety and security requirements of will be considered as part of the development application process. This will include an assessment against the relevant safety and security controls set out in Newcastle Development Control Plan (DCP) 2012.</p>
<b>Rezoning</b>	<ul style="list-style-type: none"> <li>▪ Current zoning is accepted and suitable as it reflects the residential objectives and intent, provides level of certainty and limitations, and reflects the character and use of space in the suburb.</li> <li>▪ Responsibility of hospital to do their due diligence at site purchase. R3 zoning existed when site was established and should be retained.</li> </ul>	<p>The Lingard Hospital precinct is currently zoned R3 Medium Density Residential, and the Kingsland Precinct is currently zoned B5 Business Development.</p> <p>The proposed SP2 Infrastructure (Health Services Facilities) zone will enable the continued use and expansion of the Hospital on land that is appropriately zoned for medical use and has supporting planning and development controls. The SP2 zone also better reflects the existing use of the land and secures its future use for health-related employment and activities.</p> <p>The current zoning does not reflect the existing use on the site, nor does it recognise the importance and significance of the existing Hospital given its role in attracting complementary health service facilities and the growing importance of the health services industry in the strategic framework.</p>
<b>Other and indirect impact/s</b>	<ul style="list-style-type: none"> <li>▪ Building height currently limited by existing residential zoning but rezoning will effectively double the height of the current facility.</li> </ul>	<p>As mentioned, the draft precinct specific DCP includes development controls to satisfactorily manage amenity impacts to adjoining residential uses. Building setbacks have been allocated to the sites to assist in preserving the local character and amenity.</p>



	<ul style="list-style-type: none"> <li>▪ Impact residential character and community.</li> <li>▪ Will set future precedent for other development to emulate.</li> <li>▪ Acknowledge importance of and access to health care, however rezoning to support private hospital use offers little community benefit (not accessible to all and does not accept emergencies).</li> </ul>	<p>The expansion of the Lingard precinct enables the continuation of elective surgeries, that would otherwise be required to be undertaken in the public system, putting even further pressure on a system that is already over capacity. Private hospitals not only relieve the pressure on the public system by managing the privately insured patient population allowing the public resources to be present for critical and urgent illnesses and treatments, but also provide a valuable support response network for the public sector during periods of immense patient pressure, providing beds for public patients. Further, over the past two years, the private hospitals, including Lingard are providing surgery for public patients on a regular basis, to support the public sector and assist in managing demand, and this assistance will continue into the foreseeable future.</p> <p>Precedent is not a valid planning consideration. Each planning application must be considered on its own merit and facts and circumstances.</p>
<b>Privacy</b>	<ul style="list-style-type: none"> <li>▪ Impact on visual privacy and private open space.</li> </ul>	The draft precinct specific DCP includes development controls to satisfactorily manage privacy and amenity impacts to adjoining residential uses as part of future development applications.
<b>Solar access</b>	<ul style="list-style-type: none"> <li>▪ Compromise adequate solar access and daylight.</li> <li>▪ Overshadowing.</li> </ul>	The draft precinct specific DCP includes development controls to satisfactorily manage solar access and amenity impacts to adjoining residential uses as part of future development applications.
<b>Visual</b>	<ul style="list-style-type: none"> <li>▪ Little to no consideration to adjoining streetscapes.</li> <li>▪ Poor aesthetics.</li> <li>▪ Out of character and not in scale with surrounding development being single/two storey buildings.</li> </ul>	The draft precinct specific DCP includes development controls to satisfactorily manage visual, character and streetscape impacts as part of future development applications.
<b>Wind</b>	<ul style="list-style-type: none"> <li>▪ Impact on desirable sea breezes.</li> </ul>	The draft precinct specific DCP includes development controls to satisfactorily manage prevailing wind and amenity impacts to adjoining residential uses as part of future development applications.

<b>Amenity</b>	<ul style="list-style-type: none"> <li>▪ Current development has poor amenity that will be exacerbated.</li> <li>▪ Overdevelopment.</li> <li>▪ Protect community and suburban landscape.</li> </ul>	The draft precinct specific DCP includes development controls to satisfactorily manage amenity impacts to adjoining residential uses as part of future development applications.
<b>Other</b>	<ul style="list-style-type: none"> <li>▪ Will set precedent for development to apply this height across the entire site to meet future demands.</li> <li>▪ Piecemeal approach.</li> </ul>	<p>Precedent is not a valid planning consideration. Each planning application must be considered on its own merit and facts and circumstances.</p> <p>The draft precinct specific DCP includes robust development controls to ensure that the entire hospital precinct and its surroundings are considered when assessing a development application. Furthermore, the adoption of a Planning Agreement ensures that appropriate infrastructure is in place to support the hospital precincts expansion.</p>
<b>Amenity</b>	<ul style="list-style-type: none"> <li>▪ Removal of FSR will result in over development of a constrained site.</li> <li>▪ No limit to density and associated impacts.</li> <li>▪ Impact on character and amenity of the area.</li> </ul>	The rationale for the proposed removal of the FSR standards and increasing the HOB standards will allow the Hospital to provide facilities in accordance with health-related State legislative standards and obligations. NSW Health stipulates minimum floor space requirements for operating theatres, corridors and support suites that may not be capable of adhering to the Clause 4.4 Floor Space Ratio development standard in the NLEP 2012. Whilst the planning proposal results in the removal of FSR standards, all future development will need to demonstrate that the bulk and scale of the proposed structures does not negatively impact the amenity of adjoining and adjacent residential dwellings.
<b>Infrastructure</b>	<ul style="list-style-type: none"> <li>▪ Allowing greater FSR puts pressure on infrastructure and will increase stormwater and flooding impacts.</li> </ul>	It is noted that the site is generally flood compatible. All future development applications will need to demonstrate compliance with Clause 5.21 Flood Planning of NLEP 2012.
<b>Indirect impact</b>	<ul style="list-style-type: none"> <li>▪ Will set future precedent for other development to emulate.</li> </ul>	Precedent is not a valid planning consideration. Each planning application must be considered on its own merit and facts and circumstances.

<b>Massing</b>	<ul style="list-style-type: none"> <li>▪ No confidence bulk and scale will be managed through building envelope controls.</li> <li>▪ Building mass out of scale and context with surrounding residential area.</li> </ul>	<p>The draft precinct specific DCP includes development controls to satisfactorily manage built form, massing, visual appearance, materials and context as part of future development applications.</p>
<b>Construction</b>	<ul style="list-style-type: none"> <li>▪ Noise pollution on residential amenity.</li> <li>▪ Concern construction will be granted 24 hour work permit.</li> </ul>	<p>A Construction Management Plan (CMP) will be prepared in relation to the future DAs, to ensure that any impacts from the construction phase are managed to mitigate impacts to adjoining properties. The CMP will adopt recommendations from any technical studies, including the Acoustic and Vibration Assessments and Traffic Assessments, as well as conditions of consent imposed by CN.</p> <p>Construction site operators, owner-builders and public authority developments must comply with noise-restriction regulations under the <i>Protection of the Environment Operations Act 1997</i>. Any development consent issued will include CN's standard conditions of development that restricts construction works to the following times:</p> <ul style="list-style-type: none"> <li>• Monday to Friday, 7:00 am to 6:00 pm; and</li> <li>• Saturday 8:00 am to 1:00 pm</li> </ul> <p>No noise from construction/demolition work is to be generated on Sundays or public holidays.</p>
<b>Operation</b>	<ul style="list-style-type: none"> <li>▪ Noise from air condition unit reducing amenity, sleep, wellbeing.</li> <li>▪ Disturbance caused because of land use differences.</li> <li>▪ Servicing and waste collection create impacts.</li> <li>▪ Site utilised at all times of day and night.</li> </ul>	<p>NDCP 2012 requires that all noise generating equipment such as air conditioning units, swimming pool filters, fixed vacuum systems and driveway entry shutters are designed to protect the acoustic privacy of residents and neighbours. All such noise generating equipment must be acoustically screened. The location and potential impact of such noise generating equipment will be determined at the Development Assessment stage.</p> <p>The <i>Protection of the Environment Operations Act 1997</i> (POEO Act) and the Protection of the Environment Operations (Noise Control) Regulation 2008 (Noise Control Regulation) provide the main legal framework and basis for managing unacceptable noise.</p>

		<p>The draft precinct specific DCP includes development controls allocates preferred locations for servicing and waste collection from the hospital precinct.</p> <p>Appropriate mitigation measures will also be introduced during operation. This will be determined through a Noise Impact Assessment which will be submitted as part of future development applications.</p> <p>It is noted that the through link from Tye Road to Merewether Street, for loading and servicing, is likely to present opportunities to further internalise operational facilities.</p>
<b>Heritage interpretation</b>	<ul style="list-style-type: none"> <li>▪ Underwhelming and tokenistic heritage interpretation response (colours and photos/plans in the hallway).</li> </ul>	<p>The draft precinct specific DCP includes development controls to satisfactorily manage heritage interpretation appropriate to the heritage significance as part of future development applications.</p>
<b>Site suitability</b>	<ul style="list-style-type: none"> <li>▪ Consideration of an alternate site should have occurred initially.</li> <li>▪ Site has been outgrown and is not suitable for intensification.</li> <li>▪ The continued expansion and increase in scale into a large multi-block, multi-storey private hospital precinct and its associated negative impacts is not appropriate in this location.</li> </ul>	<p>The Greater Newcastle Metropolitan Plan 2036 (GNMP) was released in 2018 to implement the vision set in the Hunter Regional Plan 2036; for the Hunter to be the leading regional economy in Australia with a vibrant new metropolitan city at its heart. The GNMP sets out four outcomes to be achieved, which comprise various strategies and actions.</p> <p>The Planning Proposal is consistent with <i>Outcome 1 - Create a workforce skilled and ready for the new economy</i>, and <i>Strategy 4 - Grow health precincts and connect the health network</i>.</p> <p>The GNMP recognises the role of the private health sector alongside Hunter New England Health in providing the necessary health infrastructure to serve the growing Hunter Region. The GNMP encourages all new major health facilities to be located within strategic centres or existing major health precincts. The Planning Proposal is in accordance with this strategy, as the Lingard Hospital Precinct has been identified within the GNMP as a “Major Health Precinct in Greater Newcastle”</p>

		<p>The draft Planning Agreement will ensure that required infrastructure upgrades accompany the expansion of the Lingard Hospital Precinct to ensure that the proposal protects the safety of pedestrians and improves pedestrian connectivity to and from the precinct.</p> <p>The numerical standard under Clause 4.3 Height of Buildings of NLEP 2012 is not an expectation for all structures on a site but in fact a maximum standard for structures. Whilst the planning proposal will allow for structures at the Lingard Hospital precinct to build to 18m, all future development applications will need to demonstrate compliance with the development controls within the draft precinct specific DCP and the overall objectives of Clause 4.3 which are:</p> <p><i>"(a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,</i></p> <p><i>(b) to allow reasonable daylight access to all developments and the public domain."</i></p>
<b>Landscaping</b>	<ul style="list-style-type: none"> <li>▪ Poor landscaping outcome anticipated.</li> <li>▪ Acknowledge intent to retain trees and improve green.</li> <li>▪ Trees retained are of no significant visual, environmental or ornamental benefit.</li> </ul>	<p>The Public Domain Improvement Plan identifies the improvement of the Kingsland Precinct frontage as part of the Master plan. This will involve additional street trees, improvements to the façade treatments, heritage interpretations and public seating.</p> <p>The draft precinct specific DCP includes development controls to satisfactorily manage landscaping and amenity impacts as part of future development applications.</p>
<b>Urban design</b>	<ul style="list-style-type: none"> <li>▪ No confidence that design and public realm will maximise quality and mitigate impacts.</li> </ul>	<p>The draft precinct specific DCP includes development controls that aim to ensure new development within the hospital precinct displays a balanced composition of elements including solid and void, fenestration, signage integration, as well as an appropriate scale and proportion to the streetscape. There is a section in the draft Lingard Hospital Precinct DCP which requires development applications to have regard to preserving residential amenity.</p>

<p><b>Public space</b></p>	<ul style="list-style-type: none"> <li>▪ Limited vision and regard for the creation of attractive, welcoming, inclusive and quality public space.</li> <li>▪ Adverse to utilising public land to accommodate proposed footbridge for private purposes.</li> </ul>	<p>The draft precinct specific DCP includes development controls to satisfactorily manage public domain and improving amenity as part of future development applications.</p> <p>Development Application DA2021/01236 proposing the development of a pedestrian footbridge has not yet been determined. The Planning Proposal nor draft Lingard Hospital Precinct DCP make reference to a pedestrian footbridge.</p>
<p><b>Change</b></p>	<ul style="list-style-type: none"> <li>▪ Deteriorating landscape and sense of place as humble, suburban, residential, family-oriented community and neighbourhood being industrialised, institutionalised and dominated by businesses.</li> <li>▪ Current and previous planning regime gave level of assurance with regard to impact certainty.</li> <li>▪ Over reach and over development of site for private not community nature.</li> <li>▪ Impact on residential lifestyle and amenity being constantly eroded.</li> </ul>	<p>The site and adjoining sites are located within close proximity to The Junction Business Precinct and Newcastle CBD. Section 6.13 of NDCP 2012 identifies the sites surrounding the hospital precinct as a 'substantial growth precinct', indicating increased densities are expected within this area due to its close proximity to centres and a range of services. This is further supported by the allocation of R3 Medium Density Residential zoning, a FSR of 0.9:1 and a maximum building height of 10m. Therefore, higher density development is to be expected.</p> <p>The R3 Medium Density Residential zone and the B4 Mixed use zone both permit 'Health Services Facilities'. The proposed SP2 Infrastructure (Health Services Facilities) zone will enable the continued use and expansion of the Hospital precinct on land that is appropriately zoned for medical use and has supporting development controls. The SP2 zone better reflects the existing use of the land and secures its future use for health-related employment and activities.</p> <p>The numerical standard under Clause 4.3 Height of Buildings of NLEP 2012 is not an expectation for all structures on a site but in fact a maximum standard for structures. Whilst the planning proposal will allow for structures at the Lingard Hospital precinct to build to 18m, all future development applications will need to demonstrate compliance with the development controls within the draft Lingard</p>

		<p>Hospital Precinct DCP and the overall objectives of Clause 4.3 which are:</p> <p><i>"(a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,</i></p> <p><i>(b) to allow reasonable daylight access to all developments and the public domain."</i></p> <p>The hospital precinct and surrounding land uses are located within proximity to a number of business uses operating within the B4 Mixed Use zone. The draft Planning Agreement aims to deliver transport upgrades and connections, with a focus on pedestrian and vehicle movements and public domain upgrades. The draft Planning Agreement is required to be considered with any future development application lodged.</p>
<p><b>Public interest</b></p>	<ul style="list-style-type: none"> <li>▪ Doesn't benefit the public as services are private.</li> <li>▪ Existing negative impact on neighbourhood to be worsened.</li> <li>▪ Economic benefits are not realised by a local or even national company.</li> <li>▪ Accepting of expansion but not at the expense of residents.</li> <li>▪ Residents were here well before the hospital.</li> <li>▪ Additional demand and impact on local infrastructure and facilities.</li> </ul>	<p>The Planning Proposal will provide a number of significant public benefits to the community, including:</p> <ul style="list-style-type: none"> <li>• Future development will result in an expansion to the variety of high quality health services on offer at the region's leading private hospital, especially to the ageing population. This future expansion will enhance this much needed service sector as Newcastle continues to undergo growth and transformation.</li> <li>• Employment will be generated in the expanding health sector, thereby providing ongoing economic and social benefits.</li> <li>• Future development will create a landmark that is identifiable and consistent with leading contemporary hospitals making it a centre of excellence thereby attracting further leading surgeons and specialist to the area.</li> </ul> <p>The draft Planning Agreement is to deliver transport upgrades and connections, with a focus on pedestrian and vehicle movements and public domain upgrades. The draft Planning Agreement is required to be considered with any future development application lodged.</p>

<b>Social</b>	<ul style="list-style-type: none"> <li>▪ Dealings with hospital management in trying to resolve issues.</li> </ul>	The draft precinct specific DCP and draft Planning Agreement aims to capture public works/domain upgrades for the Hospital Precinct and its surrounds.
<b>Sustainability</b>	<ul style="list-style-type: none"> <li>▪ The development should commit to rather than 'consider' water sensitive urban design.</li> </ul>	The inclusion of Water Sensitive Urban Design (WSUD) is enforced through minimum on-site storage and discharge quality targets set out in NDCP 2012.
<b>Flooding</b>	<ul style="list-style-type: none"> <li>▪ The development should commit to rather than 'consider' flooding impacts.</li> <li>▪ Concerns expansion will exacerbate flood incidence and severity in surrounding area, particularly to the south-east of the hospital.</li> </ul>	<p>The Planning Proposal was submitted with a Flood Assessment Report prepared by Northrop. As noted in the report, the proposal does not seek to alter the ground floor arrangement and as such is not expected to significantly impact other properties from a flooding perspective. Furthermore, the Hopkins Precinct is not part of the Planning Proposal.</p> <p>It was concluded from the assessment it is feasible to implement the requirements of the Ministerial Directions for Flooding and CN's LEP and DCP floodplain management requirements in the future design of the site. Any future Development Application will be required to demonstrate compliance with these requirements.</p>
<b>Newcastle 2040 Community Strategic Plan</b>	<ul style="list-style-type: none"> <li>▪ No alignment and evidence it will enrich neighbourhoods and places or enhance safe, active and linked movement across the city.</li> </ul>	In accordance with the Greater Newcastle Metropolitan Plan 2036, the proposal represents an opportunity to upgrade an existing health precinct to meet the growing demand for health services. The draft Planning Agreement aims to deliver transport upgrades and connections, with a focus on pedestrian and vehicle movements and public domain upgrades.
<b>Newcastle Local Housing Strategy</b>	<ul style="list-style-type: none"> <li>▪ Contradicts Newcastle Local Housing Strategy by decreasing residential zoned land and displacing dwellings.</li> </ul>	The Planning Proposal aims to rezone R3 Medium Density Residential zoned land at 23 Merewether Street to SP2 Infrastructure (Health Service Facilities), thereby reducing the amount of land zoned for residential use. However, the land at 23 Merewether Street is currently used for the purposes of a 'Health Services Facilities (Hospital)', and the rezoning of the land will not result in a net loss of housing. Moreover, the loss of residential zoned land due to the proposed rezoning is not anticipated to affect CN's capacity to meet projected housing demand.



<b>Masterplan</b>	<ul style="list-style-type: none"> <li>▪ No masterplan or wholistic approach to land use conflict and impacts.</li> <li>▪ Development has evolved in an incremental and unplanned manner resulting in cumulative amenity impacts on the surrounding residential and mixed-use area.</li> <li>▪ Inadequate management and addressing of impacts demonstrate development further intensification is not appropriate in this location.</li> </ul>	<p>The draft precinct specific DCP includes robust development controls to ensure that the entire hospital precinct and its surroundings are considered when assessing a development application which will assist in preventing a piecemeal approach. Furthermore, the adoption of a Planning Agreement ensures that appropriate infrastructure is in place to support the hospital precincts expansion.</p>
<b>General</b>	<ul style="list-style-type: none"> <li>▪ Piecemeal approach to evolution of the use.</li> <li>▪ Do not defer addressing potential impacts (such as traffic, increase noise from deliveries, flooding, flora and fauna, overshadowing) to DA stage – address as part of the planning proposal.</li> <li>▪ Strategic parking approach is an oversight and needs to be further explored.</li> </ul>	<p>The draft precinct specific DCP includes robust development controls to ensure that the entire hospital precinct and its surroundings are considered when assessing a development application which will assist in preventing a piecemeal approach. Furthermore, the adoption of a Planning Agreement ensures that appropriate infrastructure is in place to support the hospital precincts expansion.</p> <p>The Planning Proposal is accompanied by a draft precinct specific DCP which includes development controls that aim to improve outcomes for car parking, traffic, connectivity to the Hospital Precinct and bulk and scale. The draft precinct specific DCP and accompanying Planning Agreement capture public works/ domain upgrades for the hospital precinct and its surroundings.</p> <p>The draft precinct specific DCP includes development controls to ensure that car parking on the site will be appropriately manages and accessible.</p>
<b>Do not Support / object</b>		

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**ITEM-111**      **Attachment B:**      **Draft** Development Control Plan – Lingard  
Hospital Precinct

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## Attachment B

### 6.16 Lingard Hospital Precinct

#### Amendment History

Version Number	Date Adopted by Council	Commencement Date	Amendment Type
1	XX/XX/XXXX	XX/XX/XXXX	New

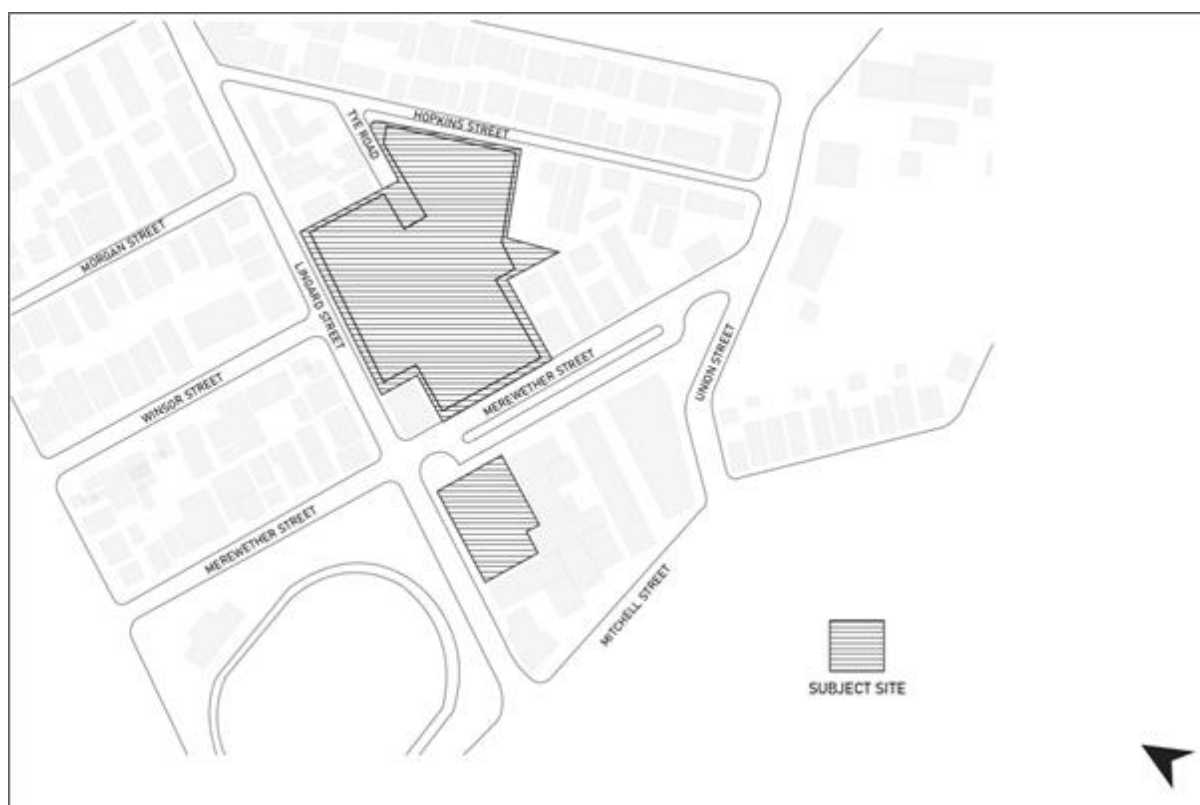
#### Savings provisions

Any development application lodged but not determined prior to this section coming into effect will be determined taking into consideration the provisions of this section.

#### Land to which this section applies

This section applies to all land within all land mapped as hatched on **Map 1** – Lingard Hospital Precinct (bounded by Lingard Street, Merewether Street, Hopkins Street and Tye Road).

#### Map 1 – Lingard Hospital Precinct



#### Development (type/s) to which this section applies

This section applies to all development applications relating to health services facilities.

## Applicable environmental planning instruments

The provisions of the following listed environmental planning instrument/s also apply to development applications to which this section applies:

- Newcastle Local Environmental Plan 2012
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021.

In the event of any inconsistency between this section and the above listed environmental planning instruments, the environmental planning instrument will prevail to the extent of the inconsistency.

Note 1: Additional environmental planning instruments may also apply to those listed above.

Note 2: The Environmental Planning and Assessment Act 1979 enables an environmental planning instrument to exclude or modify the application of this DCP in whole or part.

## Related sections

The following sections of this DCP will also apply to development to which this section applies:

- Any applicable land use specific provision under Part 3.00

Note: Any inconsistency between the locality specific provision and a land use specific provision, the locality specific provision will prevail to the extent of the inconsistency.

- 3.11 Community Services
- 4.04 Safety and Security
- 7.02 Landscaping, Open Space and Visual Amenity
- 7.03 Traffic, Parking and Access
- 7.05 Energy Efficiency
- 7.06 Stormwater
- 7.07 Water Efficiency
- 7.08 Waste Management

The following sections of this DCP may also apply to development to which this section applies:

- 4.01 Flood Management – all land which is identified as flood prone land under the Newcastle Flood Policy or within a PMF or area likely to flood
- 4.03 Mine Subsidence – within mine subsidence area
- 4.05 Social Impact – where required under ‘Social Impact Assessment Policy for Development Applications’, 1999
- 5.01 Soil Management – works resulting in any disturbance of soil and/or cut and fill
- 5.02 Land Contamination – land on register/where risk from previous use
- 5.03 Vegetation Management – trees within 5m of a development footprint or those trees likely to be affected by a development
- 5.04 Aboriginal Heritage – known/likely Aboriginal Heritage item/site and/or potential soil disturbance
- 5.05 Heritage Items – known heritage item or in proximity to a heritage item

- 5.06 Archaeological Management – known/likely archaeological site or potential soil disturbance
- 7.04 Movement Networks – where new roads, pedestrian or cycle paths are required
- 7.09 Advertising and Signage – signage and outdoor advertising
- 7.10 Street Awnings and Balconies – awnings or balconies to be located over public land

#### Associated technical manual/s

- Landscape Technical Manual
- Heritage Technical Manual
- Social Impact Assessment Policy for Development Applications - 1999
- Social Impact Assessment Policy for Development Applications - Guidance Notes 1999
- Stormwater and Water Efficiency for Development Technical Manual
- Waste Management Technical Manual

**Note:** Urban Design Review Panel

Proposals involving larger development which, by virtue of their location or scale, are likely to have a significant impact in the city may be referred to Council's Urban Design Review Panel for independent advice.

## Definitions

A word or expression used in this development control plan has the same meaning as it has in the Newcastle Local Environmental Plan 2012, unless otherwise defined in this development control plan.

Other words and expressions referred to in this section are defined in Part 9.00 - Glossary, of this plan.

## Aims of this section

1. Deliver quality and enduring design outcomes, responsive to place and context.
2. Manage surrounding amenity and the environmental impacts of development.
3. Ensure development is connected to the street and provides a safe environment for visitors and workers.
4. Improve the integration of green infrastructure and sustainability outcomes for development.
5. Deliver improved movement outcomes through better connectivity and transport solutions.
6. Heritage is promoted and celebrated, appropriate to the level of heritage significance.

## Preamble

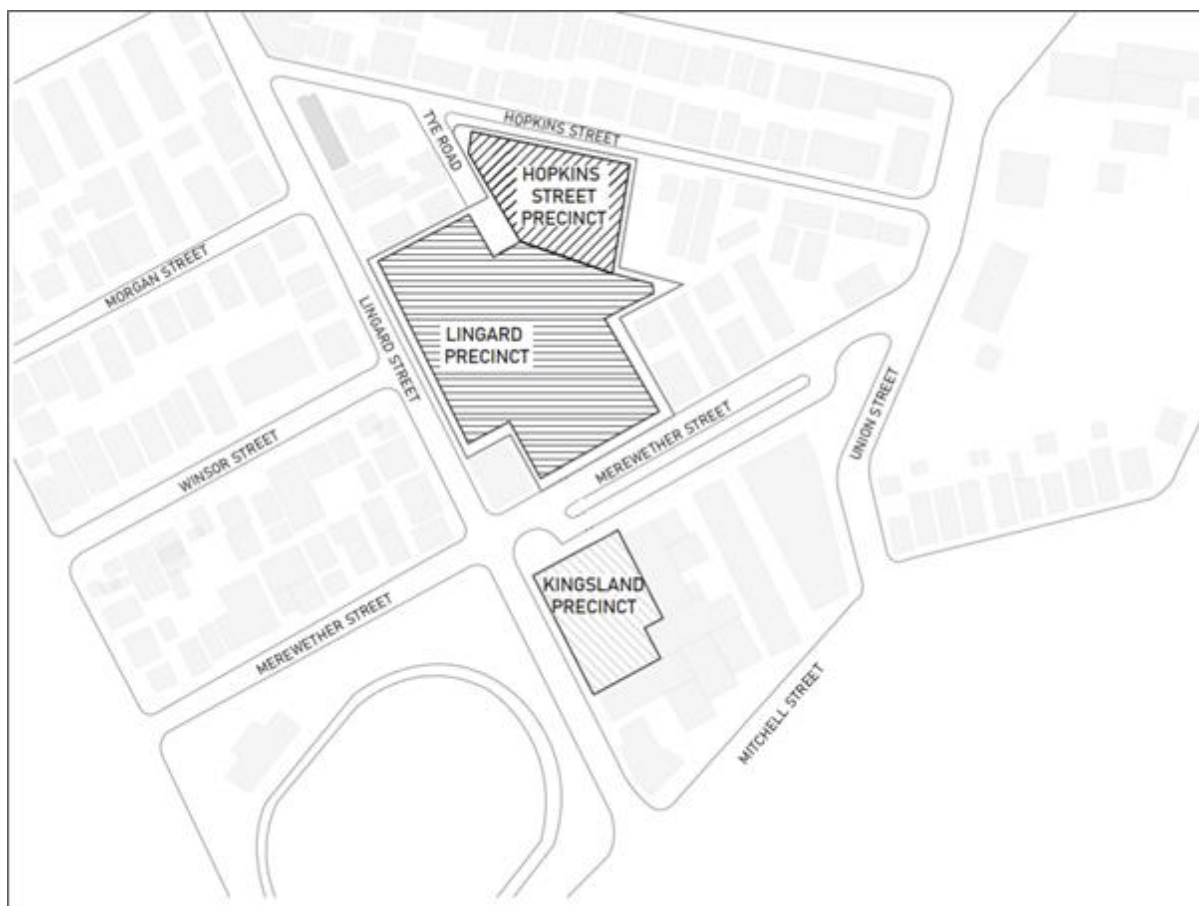
The historic Lingard Hospital is at 23 Merewether Street, Merewether, in the Local Government Area (LGA) of Newcastle. A recently completed expansion of the health precinct is located across the street at 8 Lingard Street, Merewether. There is potential to expand the health precinct to include an adjoining site at 27 Hopkins Street, Merewether.

The site is in the suburb of Merewether, approximately three kilometres south-west of Newcastle's high street (Hunter Street). Low density residential land uses dominate most of Merewether with medium density residential development to the north where it meets The Junction precinct, the commercial core, approximately 450 metres from the site.

The historic and principal Lingard Hospital is situated within a residential block, zoned R3 Medium Density Residential, comprising single and two-storey residential built form. The recent expansion of the health services facility is opposite the primary Lingard Hospital premises. Two-storey employment uses surround it in a small cluster of mixed business and warehouses, zoned B5 Business Development.

In March 1971, consent was granted to construct a single storey private hospital, with 106 beds. The Lingard Hospital precinct has grown, adapting to the needs of the community. Today there is a large staff across a range of speciality medical sectors. More recently, Lingard Hospital operates as two distinct precincts, with investigations for growth into a potential third precinct (Hopkins Precinct). These precincts reflect analysis of current land use and character, and consideration of envisaged future development, see Map 2.

## Map 2 - Precincts



### Lingard Precinct

The Lingard Precinct is the primary and historic Hospital Campus where most of the Lingard services are provided. This precinct fronts Merewether Street to the south-east, and Lingard Street to the south-west, and rear lane access on the north side via Tye Road. The block shape is irregular, sharing boundaries with residential lots. The hospital structure occupies almost the whole precinct. Due to the age of the existing hospital, the intent is a renewal of facilities in this precinct.

### Kingsland Precinct

The Kingsland Precinct was established in 2016, with consulting suites completed in 2020. It is currently used for day surgery, with limited health consulting rooms. This precinct fronts Merewether Street to the north-west and Lingard Street to the south-west. It is roughly rectangular, sharing boundaries with three neighbouring commercial allotments. A two-storey building occupies most of this precinct with substantial underground carparking. Recent unrelated development activity directly north-east of this precinct limits opportunities to expand the Kingsland Precinct to the south-east.

### Hopkins Precinct

The Hopkins Precinct is not occupied by health related uses, it is occupied by a residential complex. This precinct directly adjoins the Lingard Precinct to the south and fronts Hopkins Street and Tye Road. Opportunities for the Hopkins Precinct will be based on changing health demands in the region.



### 6.16.01 Site Analysis

#### **Objectives**

1. Development planning and design decisions are informed by a comprehensive understanding of the Lingard Hospital Precinct and its context.
2. Development planning and design are responsive to existing site conditions and surrounds.

#### **Controls**

##### General controls applying to all development to which this section applies

1. A site analysis is submitted to the level of detail required to assess the potential impacts associated with the nature, type and scale of the development and its surroundings. The site analysis will identify the unique and specific qualities and attributes of the subject site, as well as the opportunities and constraints of the site and the wider area. This is to be undertaken at the local, neighbourhood and streetscape and site scale to ensure the development responds to the context at the varying scales.
2. The design and supporting information demonstrate how the development responds to the constraints and opportunities identified in the site analysis.

### 6.16.02 Site Layout

#### **Objectives**

1. The proposed development is positioned and oriented on the site to minimise the impact on surrounding properties and uses.

#### **Controls**

##### General controls applying to all development to which this section applies

1. The development layout is generally in accordance with Map 3, unless an equivalent or improved planning outcome is identified as a result of the site analysis design process.

### Map 3 – Indicative site layout



#### 6.16.03 Building Envelope

##### Objectives

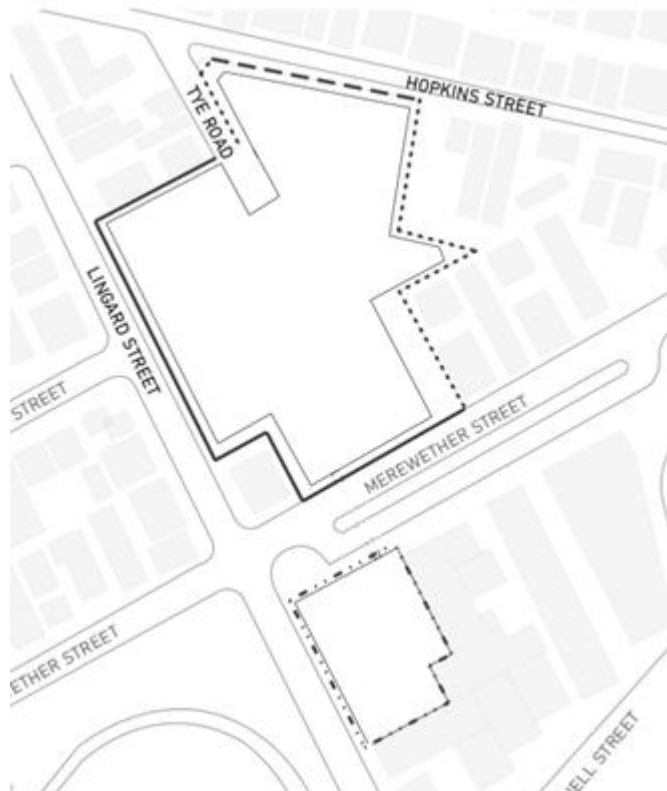
1. The building height is consistent with the desired scale and character of the street and locality, creates an articulated and visually interesting skyline, and provides an acceptable impact on the amenity of adjoining properties.
2. Setbacks are established by the context and established urban form, ensuring built form engages with the public domain, and minimises the impact on the amenity of adjoining properties.
3. Buildings and sites are designed to preserve the amenity of adjacent public open spaces.

##### Controls

##### General controls applying to all development to which this section applies

1. The maximum building height is in accordance with the relevant statutory requirements and site-specific criteria as identified by this DCP.
2. Setbacks to boundaries shared with residential uses, where the residential uses are within 3m of the boundary are:
  - a. 1.5m setback up to 3m in height;
  - b. 3m setback from 3m - 6m in height; and
  - c. 4.5m setback above 6m in height.
3. For circumstances where the criteria detailed directly above does not apply, building setbacks are consistent with those shown on Map 4, Map 5 and Cross Sections A-E, unless an equivalent or improved planning outcome is identified as a result of the site analysis design process.
4. Development does not unreasonably reduce the total area of public open space (such as Mitchell Park) that receives direct sunlight between 9am to 3pm on June 21.

**Map 4 – Indicative setbacks**




---

WALL HEIGHT	SETBACK FROM BOUNDARY
UP TO 10m	EXISTING
OVER 10m	3m

---

WALL HEIGHT	SETBACK FROM BOUNDARY
UP TO 5m	1.5m
5m TO 10m	3m
OVER 10m	6m

---

WALL HEIGHT	SETBACK FROM BOUNDARY
UP TO 10m	3m
OVER 10m	6m

---

**EXISTING SETBACKS**

**Map 5 – Cross Section Locations**

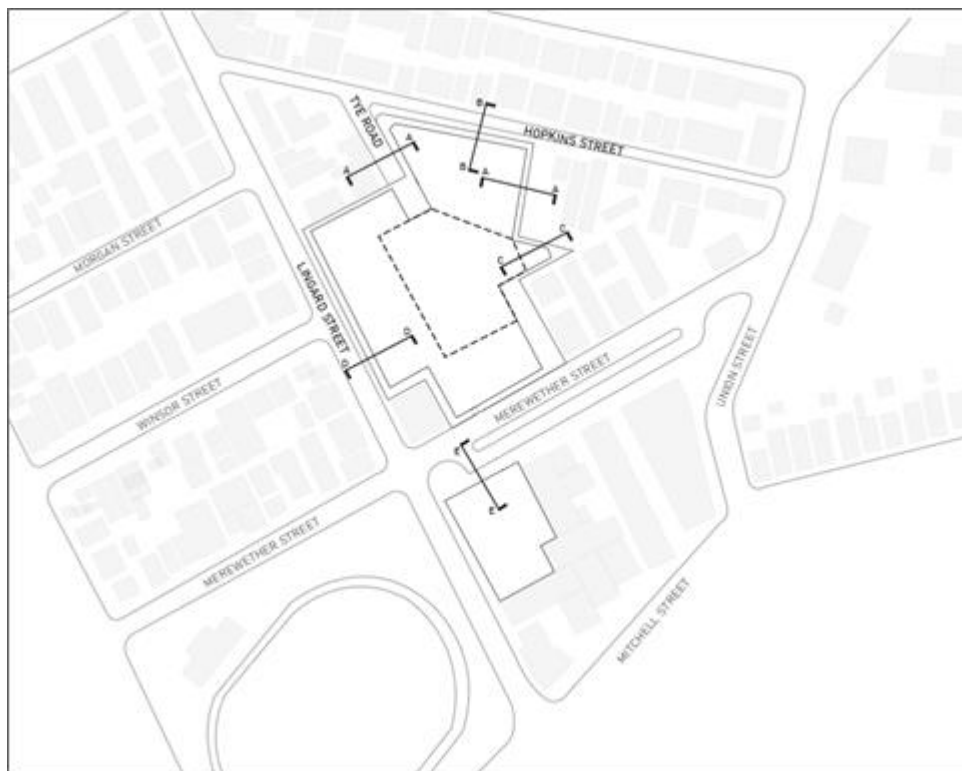
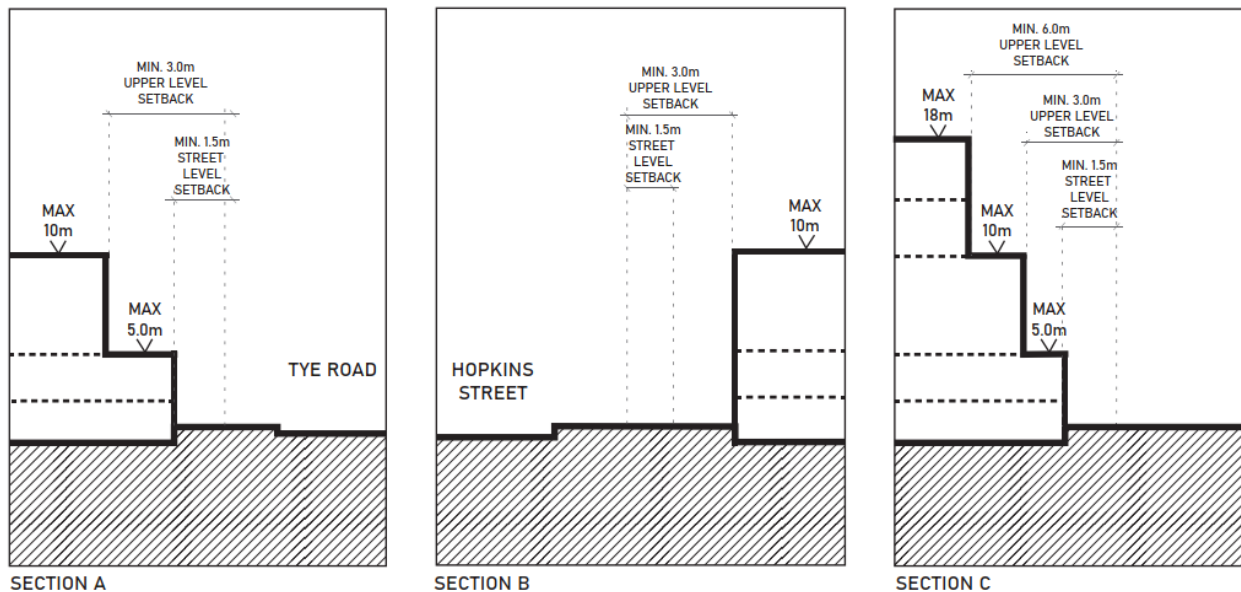
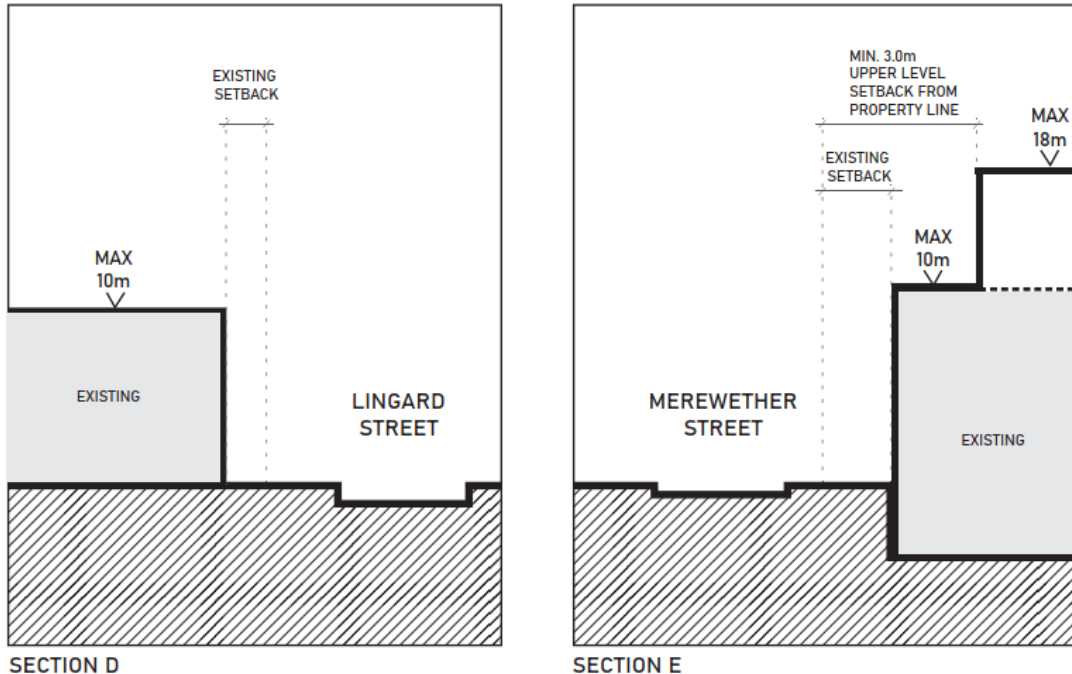


Figure 1 – Cross Sections A-C



Note: The built form and massing of health service facility buildings should transition in scale from the hospital context, down to the residential scale.

Figure 2 – Cross Sections D-E



### 6.16.04 Built Form and Massing

#### **Objectives**

1. Buildings and sites contribute to a finer grain urban environment through built form articulation and through site links.
2. The built form and massing of buildings are designed to respond to their context, considered as an ensemble of elements and allow for articulation.

#### **Controls**

##### General controls applying to all development to which this section applies

1. Large buildings are broken up or articulated to reduce overall perceived bulk and scale, as well as to provide architectural interest.
2. Through site links are considered where making a positive contribution to the public domain.
3. Impacts on surrounding properties are minimised.

### 6.16.05 Visual Appearance and Materials

#### **Objectives**

1. Architectural form uses a balanced composition of elements and makes a positive contribution to the urban environment.
2. Plant and equipment are screened using elements integrated into the architectural design.
3. Material selection contributes to the design of an aesthetically pleasing, durable and resilient building.

#### **Controls**

##### General controls applying to all development to which this section applies

1. The design of the development exhibits good proportions and a balanced composition of elements that reflects the building's use, its structure, and internal planning.
2. The development's aesthetics and composition are considered as it relates to the surrounding buildings and context.
3. Building facades display a balanced composition of elements including solid and void, fenestration, signage integration, and appropriate scale and proportion to the streetscape.
4. All plant and equipment are screened from view from the public domain, and any residential or mixed use areas.
5. Ground level plant is located behind the front building line and/or rooftop plant is set back from perimeter and screened reducing visual impact and to meet acoustic regulations.
6. Screening of plant and equipment is to be:
  - a. considered as a part of the architectural design and integrated into the overall design of the building; and
  - b. a secondary preference, with primary emphasis on locating elements out of view from the public domain.
7. Materials are robust and durable to create a long lasting and low maintenance environment. This includes materials that are unpainted and prefinished.
8. Materials are selected with an understanding of the effects of weathering to ensure a high quality finish that endures for the life of the building.

9. Materials are selected for their low embodied energy and potential for future re-use or recycling.
10. Materials are not highly reflective to avoid glare and the absorption of heat.
11. Street walls should be articulated through colour, texture and materiality to provide scale, street definition and pedestrian interest.

### **6.16.06 Residential Amenity**

#### ***Objectives***

1. Built form is arranged and sited to minimise impacts on neighbouring residential uses.
2. Development does not unreasonably reduce existing solar access for neighbouring residential areas.
3. Acoustic privacy is managed so that noise transfer to neighbouring residential uses is minimised through the siting of buildings and building layout.
4. Visual privacy of neighbouring residential areas is maintained through the orientation and siting of the building, and where required, screening.

#### ***Controls***

##### General controls applying to all development to which this section applies

1. Where the site adjoins lower density residential uses, the built form steps down in scale to the boundary shared with residential uses.
2. Direct solar access is retained to habitable rooms and private open spaces of neighbouring residential uses for a minimum of 3hrs between 9am - 3pm on 21st June. Direct Solar access is defined as a minimum of 1sqm at 1m above the FFL receiving the full 3hrs of daylight.
3. Noise generating uses are located away from residential areas, and screened with appropriate acoustic treatment ensuring noise is within statutory and/or approved levels.
4. Buildings are oriented on the site to minimise opportunities for overlooking of residential living areas, and private outdoor space. Unscreened openings are located on walls not facing residential uses.
5. Where overlooking is unavoidable, openings that enable a view to private spaces are to be treated to maintain the privacy of residential areas. Options may include angling openings to orient the view elsewhere, using obscure glazing to lower portions of windows, fixed external louvres/privacy screens, fixed depth planters.
6. Privacy screens are consistent with, and integrated into, the design of the building.
7. Built form is arranged to prevent the total loss of prevailing winds for passive cooling for adjoining residential properties.

## 6.16.07 Public Domain Interface

### *Objectives*

1. The development provides activation and passive surveillance to public streets and public open space.
2. Building entries provide employees, customers, and visitors with a welcoming, accessible, entry point.
3. Awnings are considered as part of the overall development and designed accordingly.
4. Secondary frontages make a positive contribution to the public domain.
5. Building services and essential equipment are integrated with the building design.
6. Welcoming urban activation space is incorporated into the development for the enjoyment of residents, the local community and users of the development that provides relief from the urban environment and allows people to gather or participate in activities.

### *Controls*

#### General controls applying to all development to which this section applies

1. Active uses are located along street frontages to enliven facades. Long expanses of blank, solid and unbroken walls are avoided along street frontages.
2. Clear glazed openings are provided along the street frontage to active uses behind, to provide engagement with the street, and passive surveillance of the public domain.
3. Maximum 50% of any new facade facing a street may be glazed.
4. Minimum dimensions of ground floor clear glazing to any new street frontage as a percentage of the facade length:
  - a. Primary road frontage – 50%
  - b. Secondary road frontage – 25%
5. Glazed facades facing a street must be low reflective glass.
6. All publicly accessible external areas of the site are visible from within the building to encourage activation of building facades and to provide passive surveillance of open spaces.
7. Building Entries:
  - a. are accessible, clearly defined, inviting, and visible from the public domain.
  - b. Provide weather protection.
  - c. Are located on the primary frontage. Where this is not possible, they are visible from the public domain, and clearly sign posted.
8. Awnings are in accordance with relevant awning provisions contained separately in this DCP.
9. Frontages to secondary roads provide an active edge to the boundary treatment, are integrated with the design and make a positive contribution to the public domain.
10. Secondary frontages are articulated and modelled to provide interest along the street edge.
11. Setbacks to secondary frontages are landscaped.
12. Essential services and equipment are to be accessible from the public domain and located:
  - a. away from main building entries and lobbies; and
  - b. in service enclosures, cupboards, and doors that address the public domain and are integrated with the design of the building.
13. Urban activation spaces are provided for each precinct, positioned in central locations, typically within front or secondary setbacks near a main entrance and partly incorporated into the road reserve.
14. Urban activation spaces comprise uses or facilities such as:
  - a. shade and tree plantings
  - b. community gardens

- c. rain gardens
- d. furnishings such as seats, bins and drinking fountains
- e. play equipment
- f. lawns and paved areas
- g. small stage areas with plugin facilities for open air music, performance or screenings
- h. lighting
- i. Wi-Fi
- j. public facilities
- k. publicly accessible art

### 6.16.08 Landscaping and Green Infrastructure

#### **Objectives**

1. Landscaped areas provide shade, acoustic and visual buffers to main roads and adjoining residents, permeable surfaces for stormwater, and attractive additions to sites and structures.
2. Trees provide shade to hardstand areas, building facades, and parking areas; reducing the heat island effect, and mechanical cooling requirements for buildings.
3. Site planning minimises the impact on existing vegetation.
4. Public domain is embellished with vegetation to realise the benefits of the urban forest and contribute to neighbourhood character.

#### **Controls**

##### General controls applying to all development to which this section applies

1. Landscaped area has a minimum dimension of 1.5m.
2. Larger, consolidated areas of landscaping with a minimum dimension of 2m are provided to enable greater varieties of planting, larger plants, and denser screening. Long narrow strips of landscaped area are avoided.
3. Landscaped areas are to provide the greatest benefit to the subject site, the public domain, and neighbouring properties. Landscaping is provided along boundaries adjoining residential uses including screening trees. Landscaped areas are to act as buffers to residential uses.
4. Permeable paving is used in place of hardstand areas where possible to reduce stormwater runoff and overland flow.
5. Local indigenous plants are favoured in landscape design to reinforce local character and assist in the regeneration of local microclimates. Plant species selection is to accommodate local environmental conditions, particularly the exposure to strong coastal winds, salt spray and shading.
6. A landscape maintenance plan is submitted and includes a schedule of maintenance.
7. Protected trees are identified, retained, and protected during construction.
8. Locate landscaped areas and tree plantings where they provide the greatest amount of shade to communal areas, building facades and roofs, parking, and other hardstand areas.
9. Street tree planting is provided along Merewether Street in consultation and accordance with the relevant Council requirements.
10. The existing palm tree on the corner of Hopkins Street and Tye Road is retained and protected during and after construction.
11. A four metre (4m) wide landscaped setback on Hopkins Street is established with vegetation that has a medium to long-term life expectancy retained.



12. Roof gardens on buildings that provide areas for recreation and environmental benefits (such as recreation, communal space, stormwater storage/treatment, insulation or the like) are incorporated, where reasonable and feasible.

### **6.16.09 Transport and Movement**

#### ***Objectives***

1. The movement network has a clear structure, is functional and provides for the safe, efficient and equitable movement of pedestrians, cyclists and vehicles.
2. Transport and movement elements are a considered part of the overall urban design and minimise impact on the public domain, surrounding properties and the locality.

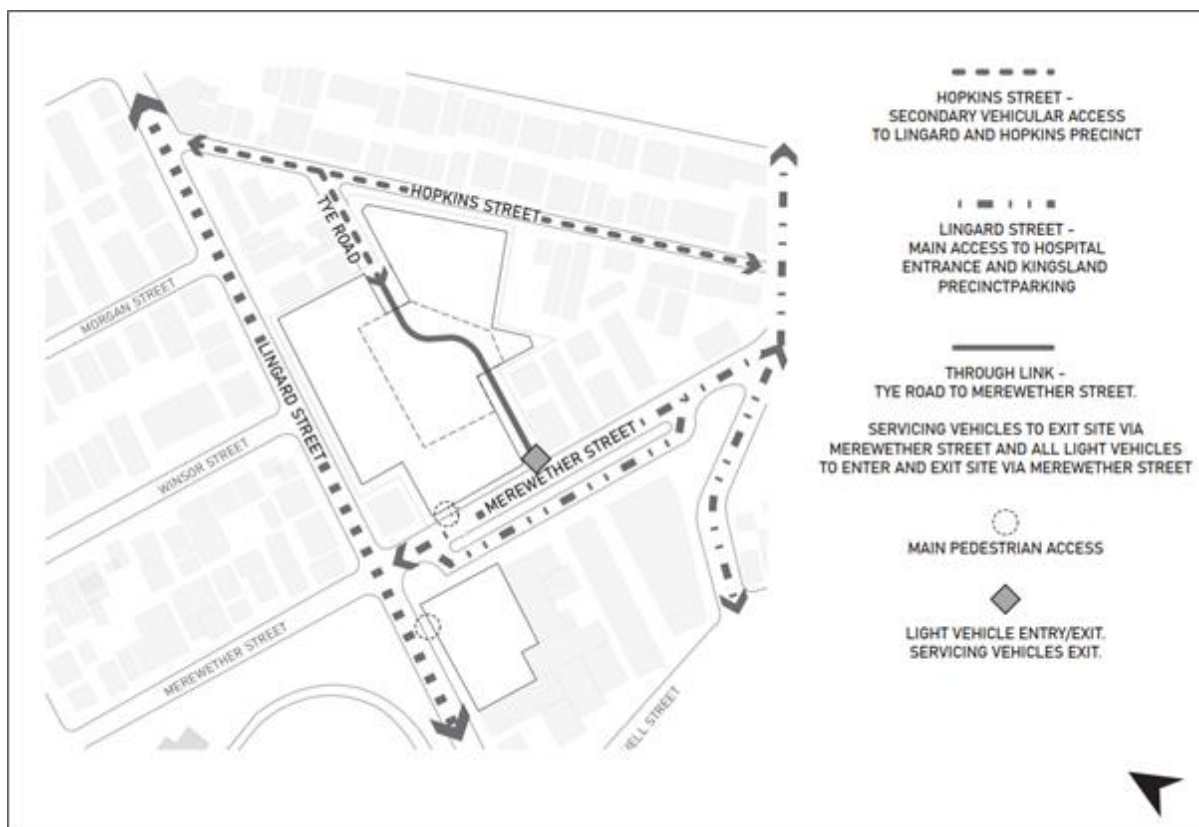
#### ***Controls***

##### General controls applying to all development to which this section applies

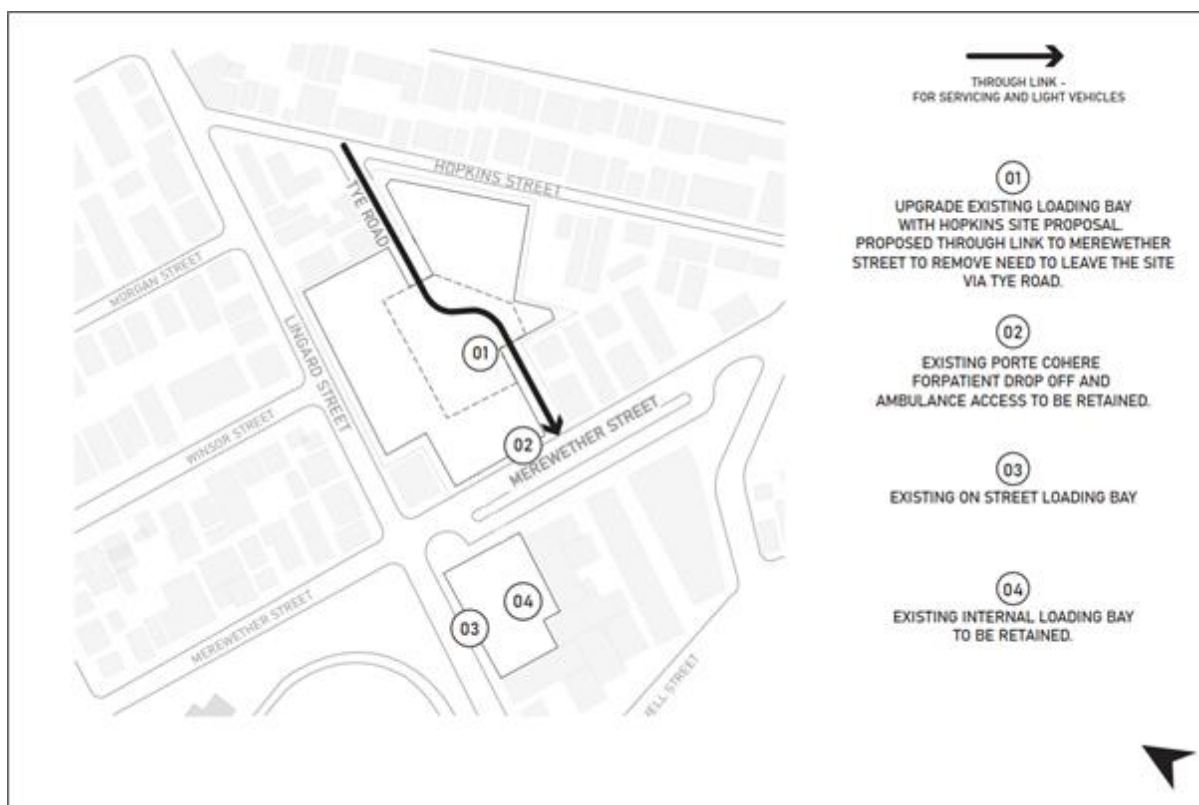
1. Development proposals which, in the opinion of Council, may cause significant impacts on the surrounding movement network, are supported by a Traffic Impact Study, prepared by a suitably qualified and experienced transport professional.
2. Issues addressed in the Traffic Impact Study (TIS) include, but are not limited to:
  - a. a review of the existing and proposed traffic network, traffic operating conditions and flows
  - b. existing car parking supply and likely demand, as well as servicing requirements
  - c. existing trip generation and estimate of trip generation of the development
  - d. public transport services within the vicinity of the proposed development
  - e. impacts of generated traffic on the surrounding road network and the locality
  - f. safety of access between the site and the adjacent road network
  - g. pedestrian infrastructure, generation and movements
  - h. recommended improvement works
  - i. linkages with existing and proposed bicycle and pedestrian routes.
3. The TIS will also include details of public transport services and stops, and measures proposed to increase mode share to public transport and improve access to services.
4. The TIS is to regard the entire Lingard Health Precinct (that is Kingsland, Lingard & Hopkins Precincts) together with the proposed development. The TIS must provide traffic modelling for the local road intersections and signalised intersections and such modelling must provide cumulative post development traffic data generated by the entire Lingard Hospital Precinct. The TIS should consider the impacts of each precincts and recommend improvements and management of the local and signalised intersections.
1. Development is in accordance with the relevant transport and movement criteria contained separately in this DCP, unless an equivalent or improved planning outcome is identified as a result of the site analysis design process, TIS and/or advice from Council.
2. Access and servicing of the site in accordance with Map 6 and Map 7, particularly the through links from Tye Road to Merewether Street, improve outcomes identified in the TIS.
3. Major development of the site is to demonstrate that safe entry treatment at the intersection of Hopkins Street and Tye Road can be achieved and implemented.
4. All vehicles are to enter and leave site in forward motion.
5. Vehicular access is to minimise impact on the streetscape and surrounding local context.
6. Sufficient area is provided for the safe manoeuvring of large trucks and service vehicles as required for operation of the development.

7. The size and layout of loading areas are appropriate for the use and ongoing operation of the development.
8. Clear delineation of the loading areas is provided to ensure safe ongoing operation.
9. Dedicated service vehicle circulation may be considered to ensure safe movement of pedestrian, vehicles and service vehicles. Major development of the site is to demonstrate safe pedestrian movement at the intersection of Merewether Street and Lingard Street to the Lingard and Kingsland Precincts can be achieved and implemented.
10. Provide accessible pedestrian paths from street front boundary to building entries, separate from any vehicular circulation or parking.
11. Provide marked crossings where pedestrian access crosses any road or driveway.
12. Provide an accessible pedestrian circulation path from all car parking areas to building entries.
13. Provide dedicated circulation path, separate to any road or drive, adjacent building from carpark to building entry.
14. Safe pedestrian access routes are provided to improve connectivity across the overall site and to the locality.
15. Public access is restricted to areas unsafe or unsuitable for public access in the form of fencing or barriers.
16. Public access is restricted to areas not visible from the public domain outside of business hours.
17. Safe and legible access to staff and visitor bicycle parking is provided that is not in conflict with vehicular access and circulation.
18. Provision is made for future pedestrian connections between Lingard and Kingsland precincts.

Map 6 – Access



Map 7 – Servicing



## 6.16.10 Parking

### *Objectives*

1. Adequate off-street parking is provided to maintain a high amenity of the adjoining street network and reduce the impact and demand for on-street parking and services.
2. The visual and environmental impacts of vehicular parking does not dominate the streetscape and should be mitigated through siting and landscaping.
3. Vehicular parking is utilised and managed in a functional, sustainable and equitable manner.

### *Controls*

#### General controls applying to all development to which this section applies

1. Development is in accordance with the relevant parking criteria contained separately within this DCP.
2. On-site parking is provided underground. Where underground parking is not possible, at grade parking will only be considered where:
  - a. it is predominantly set back or sleeved behind other uses; or
  - b. it is screened, integrated into the built form and covered by upper levels of the building; or
  - c. it is not within front building setbacks.
3. Basement parking, loading areas and servicing areas are located and designed to minimise impact on the public domain and adjoining residential uses.
4. On-site parking is to be self-operational and self-managed. Commercial models of parking provision and management are avoided.
5. Development must demonstrate that a clear initiative and direction can be achieved and implemented for parking to be made available to staff and visitors of the site, with minimum to no cost.
6. Development must demonstrate that a clear initiative and direction can be achieved and implemented for the allocation of parking spaces to the various users to assist with parking management and sustainable usage.

### 6.16.11 Energy Efficient Design

#### **Objectives**

1. Development incorporates passive environmental design to reduce energy use and ongoing costs.

#### **Controls**

General controls applying to all development to which this section applies

1. Avoid dark or mirrored glass as means of reducing heat loading.
2. North, east, and west facing glazing is shaded by external screens, louvres, or overhangs.
3. Maximise thermal mass where possible in north facing rooms.
4. Light coloured roofing materials with a high Total Solar Reflectance are to be used to reduce heat loading.
5. Solar systems (energy/water) are encouraged to be installed on roofs to generate electricity and/or reduce energy consumption. Batteries can be used to store energy for evenings use.

### 6.16.12 Building and Workplace Amenity

#### **Objectives**

1. Development provides workplaces or office spaces within a building with good daylight and solar access.
2. Development uses natural cross ventilation to reduce air conditioning usage, and provide healthy work environments.
3. Ceiling heights allow for habitable areas with a high degree of amenity.
4. Workplaces provide accessible open space for staff and employees.

#### **Controls**

General controls applying to all development to which this section applies

1. Open office areas, workspaces, and office areas within a building are no more than 12m from building facades providing natural daylight.
2. Enclosed spaces and rooms are limited along the building perimeter to maximise natural daylight access.
3. Site constraints may require reduced building depths to meet good daylight and solar access amenity.
4. Where appropriate, buildings are designed with narrow floor plates and operable windows on opposing facades to allow for natural cross ventilation.
5. Opening windows are located away from site constraints that would lead to them not being opened or used.eg busy roads, noisy equipment, sources of odours.
6. The following minimum ceiling heights are provided:
  - a) 3.6m for ground floor retail, workspaces, areas accessible to the public, lobbies;
  - b) 2.7m for upper levels – workspaces, offices, areas accessible to the public; and
7. 2.4m for bathrooms, kitchens, storage areas, circulation. Provide 0.5sqm per employee accommodated on the site (as defined by the BCA) as communal open space.
8. Communal open space is to have a minimum dimension of 3m x 3m and receive 2 hours of direct sunlight between the hours of 9am – 6pm.

9. Communal open space is shaded and furnished to accommodate seating and eating.
10. Communal open space is consolidated into a well design, easily identified and usable area, and where practical co-located with landscaped areas.
11. Communal open space is located and designed to benefit from daylight and natural ventilation.
12. Where practical, communal open space should be located in proximity to communal kitchen facilities.
13. Communal open spaces are not located where it would have a negative impact on the local context and may be located on rooftops and balconies.

### **6.16.13 Heritage**

#### ***Objectives***

1. Development provides meaningful, considered and high quality Aboriginal and non-Aboriginal heritage interpretation at the site to improve community understanding and sense of place.

#### ***Controls***

##### General controls applying to all development to which this section applies

14. Heritage interpretation, appropriate to the level of heritage significance, is considered holistically across the site and coordinated across the precincts.
15. A Heritage Interpretation Strategy is submitted for all major development. Heritage interpretation may include the use of historic artefacts, the in-situ retention of relics, signage, artwork, public access, guided walks, electronic media, architectural design and built form etc.
16. Any Aboriginal heritage interpretation is to be delivered in consultation with relevant local Aboriginal stakeholders, considering the sensitivity of Aboriginal cultural heritage, knowledge and values.

**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**CCL 13/12/2022 – ADOPTION OF PLANNING PROPOSAL AND  
EXHIBITION OF **DRAFT** DEVELOPMENT CONTROL PLAN AND  
PLANNING AGREEMENT FOR LINGARD HOSPITAL PRECINCT**

**ITEM-111**      **Attachment C:**      **Draft** Planning Agreement - Lingard Hospital  
Precinct

**DISTRIBUTED UNDER SEPARATE COVER**





## Voluntary Planning Agreement

*Reference: HEA954-00001*

### **Draft**

**28 November 2022**

Newcastle City Council

*ABN 25 242 068 129*

Health Care Lingard Pty Ltd

*ACN 117 484 438*

Northwest Healthcare Australian Property Limited

*ACN 083 065 034*

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# Contents

<b>Parties</b>	<b>4</b>
<b>Background</b>	<b>4</b>
<b>Operative part</b>	<b>4</b>
1 <i>Definitions</i>	4
2 <i>Interpretation</i>	6
3 <i>Planning Agreement under the Act</i>	8
4 <i>Application of this agreement</i>	8
5 <i>Operation of this agreement</i>	8
6 <i>Contributions to be made under this agreement</i>	8
6.1 Contributions	8
6.2 Works	8
6.3 Access to Council owned land	10
7 <i>Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development</i>	10
8 <i>Registration of this agreement</i>	10
8.1 Landowner Interest	10
8.2 Registration of this agreement	10
8.3 Removal from Register	11
9 <i>Review of this agreement</i>	11
10 <i>Dispute Resolution</i>	11
10.1 Reference to Dispute	11
10.2 Notice of Dispute	11
10.3 Representatives of Parties to Meet	11
10.4 Further Notice if Not Settled	12
10.5 Mediation	12
10.6 Expert determination	13
10.7 Litigation	13
10.8 No suspension of contractual obligations	13
11 <i>Enforcement</i>	13
11.1 Default	13
11.2 Restriction on the issue of Certificates	14
11.3 General Enforcement	14
12 <i>Assignment and Dealings</i>	14
12.1 Assignment	14

12.2	Transfer of Land	14
13	<i>Approvals and consents</i>	15
14	<i>No fetter</i>	15
14.1	Discretion	15
14.2	No fetter	15
15	<i>Notices</i>	15
15.1	Notices	15
16	<i>General</i>	16
16.1	Relationship between parties	16
16.2	Time for doing acts	16
16.3	Further assurances	17
16.4	Variation	17
16.5	Counterparts	17
16.6	Legal expenses and stamp duty	17
16.7	Entire agreement	17
16.8	Representations and warranties	17
16.9	Severability	17
16.10	Invalidity	17
16.11	Waiver	18
16.12	GST	18
16.13	Governing law and jurisdiction	18
	<b>Schedule 1 Contributions Schedule</b>	<b>19</b>
	<b>Schedule 2 Construction terms</b>	<b>23</b>
	<b>Schedule 3 Summary of requirements (section 7.4)</b>	<b>27</b>
	<b>Annexure A Plan showing Land</b>	<b>29</b>
	<b>Annexure B Pedestrian Crossing (Updated)</b>	<b>30</b>
	<b>Annexure C Tye Road Streetscape Works</b>	<b>31</b>
	<b>Annexure D Merewether Street Streetscape Works</b>	<b>32</b>
	<b>Annexure E Union Street Footpath</b>	<b>33</b>
	<b>Annexure E 1 Lingard Street Footpath</b>	<b>34</b>
	<b>Annexure F Draft Explanatory note</b>	<b>35</b>
	<b>Explanatory Note</b>	<b>35</b>

# Agreement

## Date

## Parties

### First party

<b>Name</b>	Newcastle City Council ( <b>Council</b> )
<b>ABN</b>	25 242 068 129
<b>Contact</b>	[TBA]
<b>Telephone</b>	[TBA]

### Second party

<b>Name</b>	Health Care Lingard Pty Ltd ( <b>Developer</b> )
<b>ACN</b>	117 484 438
<b>Contact</b>	[TBA]
<b>Telephone</b>	[TBA]

### Second party

<b>Name</b>	Northwest Healthcare Australian Property Limited ( <b>Landowner</b> )
<b>ACN</b>	083 065 034
<b>Contact</b>	[TBA]
<b>Telephone</b>	[TBA]

## Background

- A. The Landowner is the registered proprietor of the Land.
- B. The Developer made an application to the Council for the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- C. The Instrument Change application was accompanied by an offer by the Developer to enter into this agreement to make contributions for public purposes in connection with the Instrument Change and the Development.

## Operative part

### 1 Definitions

In this agreement, unless the context indicates a contrary intention:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW);

**Address** means a party's address set out in the Notices clause of this agreement;

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person, agency or entity and includes a certifier accredited under the *Building Professionals Act 2005* (NSW);

**Bond** means an insurance bond from an AAA credit rated party or a cash bond;

**Business Day** means a day on which banks are open for general banking business in Sydney, NSW, excluding Saturdays and Sundays;

**Certificate** means a Construction Certificate or an Occupation Certificate;

**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

**Compliance Certificate** means a compliance certificate as defined under section 6.4 of the Act;

**Construction Certificate** means a construction certificate as defined under section 6.4 of the Act;

**Construction Terms** means the terms set out in Schedule 2;

**Contribution Item** means an item listed in the Contributions Schedule;

**Contributions Schedule** means table in Schedule 1 setting out the contributions to be made under this agreement;

**CPI** means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

**Damages** means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

**Development** means:

- (a) proposed development of the Lingard Precinct to add an additional storey to the building on that land; and
- (b) proposed development of the Kingsland Precinct to add an additional storey to the building on that land.

**Development Application** has the same meaning as in the Act;

**Development Consent** has the same meaning as in the Act;

**GST** has the same meaning as in the GST Law;

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of the GST;

**Instrument Change** means an amendment to the *Newcastle Local Environmental Plan 2012* in accordance with Planning Proposal PP2022-395 to:

- (a) rezone the land from R3 Medium Density Residential and B5 Business Development to SP2 Infrastructure (Health Services Facility);

- (b) amend the maximum building height applying to the Land from 10m to 18m; and
- (c) amend the floor space ratio control for the Land from 0.9:1 to no FSR control;

**Kingsland Precinct** means Lot 100 DP 1251777, known as 8 Lingard Street, Merewether.

**Land** means the Lingard Precinct and the Kingsland Precinct;

**Law** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

**Lingard Precinct** means Lot 100 DP 1168197, known as 23 Merewether Street, Merewether on which the Lingard Private Hospital is currently located;

**Merewether and Lingard Street Intersection Works** means the construction of a roundabout at the intersection of Merewether and Lingard Streets including pedestrian facilities at each leg, priority pedestrian crossing in Merewether Street, associated realignment of verges, kerb and gutter, drainage and street lighting upgrades, to be carried out by Council;

**Modification Application** means any application to modify the Development Consent under section 4.55 of the Act;

**Monetary Contribution** means Contribution Item No. 1 in the Contributions Schedule;

**Occupation Certificate** means an occupation certificate as defined under section 6.4 of the Act;

**Register** means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

**Regulation** means the *Environmental Planning and Assessment Regulation 2021*;

**Regulation (Certification)** means the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*

**Related Body Corporate** has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth);

**Works** means any development contribution involving the carrying out of works on the Land or other land required under this agreement.

## 2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;

- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in New South Wales, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;

- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

### 3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 3 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.

### 4 Application of this agreement

This agreement applies to:

- (a) the Instrument Change,
- (b) the Development, and
- (c) the Land.

### 5 Operation of this agreement

- (a) This agreement commences on and from the date it is executed by all parties.
- (b) Until the planning agreement operates, this document constitutes:
  - (i) the Developer and Landowner's offer in connection with the Instrument Change sought by the Developer and Landowner for the purposes of making Development Applications in respect of the Land; and
  - (ii) the Developer and Landowner's offer to enter into this agreement if the Instrument Change is made.

### 6 Contributions to be made under this agreement

#### 6.1 Contributions

- (a) The Developer must deliver the Contribution Items to Council at the time and in the manner set out in the Contributions Schedule.
- (b) The parties acknowledge and agree that the Contributions serve the public purposes set out in the Contributions Schedule.

#### 6.2 Monetary Contribution

- (a) The Monetary Contribution must be paid to Council by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (b) The Monetary Contribution is to be indexed in accordance with increases in the CPI from the date of this agreement to the date of payment. The Monetary Contribution payable will be adjusted to in the following manner:

$$\$CPY = \$CDC \times CPIPY / CPIDC$$



Where:

\$CPY is the amount of the contribution at the date of payment

\$CDC is the amount of the Monetary Contribution as set out in this agreement (prior to indexation)

CPIPY is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of payment as published by the ABS.

CPIDC is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date of entering into this agreement.

- (c) The Monetary Contribution will be taken to have been made when the Council, acting reasonably, notifies the Developer that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (d) The parties agree and acknowledge that the Monetary Contribution will be used towards the carrying out of the Merewether and Lingard Street Intersection Works.
- (e) Council acknowledges and agrees that:
  - (i) the Developer has notified Council that it intends to submit a Development Application or Development Applications for the Development or part of the Development within 20 Business Days after the Instrument Change is published on the NSW Legislation Website;
  - (ii) Council will commence the design for the Merewether and Lingard Street Intersection Works when the first Development Application for the Development is being assessed by Council; and
  - (iii) Council will construct the Merewether and Lingard Street Intersection Works as soon as practicable after the completion of the design and will use its best endeavours to complete the Merewether and Lingard Street Intersection Works in a timely manner.
- (f) Notwithstanding any other provision of this agreement, the Developer will not be required to pay the Monetary Contribution if, prior to that payment becoming due, a condition is imposed on any Development Consent requiring the Developer (or any other entity with the benefit of the Development Consent) to carry out the Merewether and Lingard Street Intersection Works.
- (g) Notwithstanding any other provision of this agreement, if, prior to the Monetary Contribution becoming due, a condition is imposed on any Development Consent requiring the Developer (or any other entity with the benefit of the Development Consent) to carry out a part of the Merewether and Lingard Street Intersection Works, the Monetary Contribution will be reduced by an amount equivalent to the value of the works required under the Development Consent, as determined by a qualified quantity surveyor appointed by the Developer with the Council's approval (acting reasonably).

### 6.3 Works

- (a) The Developer will carry out the Works in accordance with this agreement, including the Construction Terms and any Development Consent granted for the Works.

- (b) The Works or any part of the Works required under this agreement will be taken to have been completed and delivered to Council for the purposes of this agreement when a Compliance Certificate has been issued for those Works.

#### 6.4 *Access to Council owned land*

The Council agrees to permit the Developer, upon receiving at least 10 Business Days' prior notice, to enter, pass through or occupy any Council owned or controlled land in order to enable the Developer to properly perform its obligations under this agreement. Nothing in this clause creates or gives the Developer any estate or interest in any part of the Council owned or controlled land.

### 7 Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

### 8 Registration of this agreement

#### 8.1 *Landowner Interest*

The Landowner represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land.

#### 8.2 *Registration of this agreement*

- (a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Developer at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
  - (i) The consent of each person who:
    - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
    - (B) is seized or possessed of an estate or interest in the Land, and
  - (ii) the execution of any documents,
 to enable the registration of this agreement in accordance with clause 8.2.
- (c) The Landowner consents to the registration of the agreement in accordance with this clause 8.2.

- (d) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
  - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 20 Business Days after that date; and
  - (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

### 8.3 *Removal from Register*

The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.

## 9 Review of this agreement

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

## 10 Dispute Resolution

### 10.1 *Reference to Dispute*

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

### 10.2 *Notice of Dispute*

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

### 10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 10 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
  - (i) resolve the dispute during the course of that meeting,
  - (ii) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to

effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or

- (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

#### 10.4 *Further Notice if Not Settled*

If the dispute is not resolved within 20 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under clause 10.5 or by expert determination under clause 10.6.

#### 10.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 10 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 10 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
  - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 10 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation;
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
  - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
  - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

## 10.6 *Expert determination*

If the dispute is not resolved under clause 10.3 or clause 10.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
  - (i) Agreed upon and appointed jointly by the parties; and
  - (ii) In the event that no agreement is reached or no appointment is made within 15 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
  - (i) Within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
  - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

## 10.7 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

## 10.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

# 11 Enforcement

## 11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.

- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

### 11.2 *Restriction on the issue of Certificates*

- (a) Subject to clause 11.2(b), if the Contributions Schedule specifies that a Contribution Item must be delivered prior to the issue of a Certificate, in accordance with provisions of the Act and Regulation (Certification), the relevant Certificate must not be issued unless that Contribution Item has been delivered.
- (b) Clause 11.2(a) will not apply if:
  - (i) the Developer is unable to complete the Contribution Item due to circumstances beyond its control;
  - (ii) Council has accepted a Bond; and
  - (iii) Council has agreed to defer delivery of the Contribution Item for a reasonable period to allow the relevant circumstances to be resolved and the Certificate to be issued.

### 11.3 *General Enforcement*

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
  - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
  - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

## 12 *Assignment and Dealings*

### 12.1 *Assignment*

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party is deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

### 12.2 *Transfer of Land*

- (a) The Landowner may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:

- (i) the Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Landowner under this agreement;
- (ii) any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
- (iii) the Landowner and the Transferee pay the Council's reasonable costs in relation to the assignment.

## 13 Approvals and consents

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## 14 No fetter

### 14.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Instrument Change, the Development Application or any other application for Development Consent (all referred to in this agreement as a ("**Discretion**").

### 14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

## 15 Notices

### 15.1 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address, or at the address last notified by the intended recipient to the sender after the date of this agreement:

- (i) to Newcastle City Council: [TBA]  
Email: [TBA]  
Attention: [TBA]
  - (ii) to Healthe Care Lingard Pty Ltd: [TBA]  
Email: [TBA]  
Attention: [TBA]
  - (iii) to Northwest Australian Property Limited: [TBA]  
Email: [TBA]  
Attention: [TBA]
- (c) is taken to be given or made:
- (i) in the case of hand delivery, when delivered; and
  - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of email, when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above or when the Notice is first opened or read by the recipient whichever occurs first; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

## 16 General

### 16.1 *Relationship between parties*

- (a) Nothing in this agreement:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
  - (i) bind another party; or
  - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

### 16.2 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.



- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

### 16.3 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

### 16.4 *Variation*

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

### 16.5 *Counterparts*

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

### 16.6 *Legal expenses and stamp duty*

The Developer must pay the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation and execution of this agreement.

### 16.7 *Entire agreement*

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

### 16.8 *Representations and warranties*

The parties represent and warrant that they have the power and authority to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any law.

### 16.9 *Severability*

If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

### 16.10 *Invalidity*

- (a) A word or provision must be read down if:
  - (i) this agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.10(b) applies.

### 16.11 Waiver

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a party fails to do, or delays in doing, something the Party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

### 16.12 GST

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the consideration payable or to be provided for that supply under this agreement but for the application of this clause is increased by, and the recipient of the supply must also pay to the supplier, an amount equal to the GST payable by the supplier on that supply.

### 16.13 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

## Schedule 1 Contributions Schedule

Item No.	Contribution Item	Public Purpose	Nature and Extent	Timing	Manner of Delivery	Indicative Value*
1.	Monetary Contribution – Merewether and Lingard Street Intersection	Merewether and Lingard Street Intersection Works	Monetary Contribution in the amount of \$1,000,000.	The Monetary Contribution must be paid to Council prior to the issue of any Occupation Certificate for the Development on the Kingsland Precinct, subject to clause 6.2(f).	Payment in accordance with clause 6.2.	\$1,000,000.00
2.	Works – Tye Road Streetscape	Public Domain Upgrades Pedestrian Amenity and Access	Reconstruction of the street and streetscape elements along both sides of Tye Road, including construction of pedestrian footways, kerb and gutter and road pavement, generally in the location shown in Annexure C.	The Tye Road Streetscape Works must be completed prior to the issue of any Occupation Certificate for the Development on the Lingard Precinct, or otherwise in accordance with clause 11.2(b).	Works are to be designed, carried out and delivered in accordance with the Construction Terms.	\$850,000.00

Item No.	Contribution Item	Public Purpose	Nature and Extent	Timing	Manner of Delivery	Indicative Value*
3,	Works – Merewether Street Streetscape	Public Domain Upgrades Pedestrian Amenity and Access	Reconstruction of the street and streetscape elements along both sides of Merewether Street between Union Street and Lingard Street, including management of on-street parking, road and safety works and pedestrian management facilities, excluding road surfaces, kerbing and guttering, and civil drainage, generally in the location shown in Annexure D.	The Merewether Street Streetscape Works must be completed prior to the issue of any Occupation Certificate for the Development on the Lingard Precinct, or otherwise in accordance with clause 11.2(b).	Works are to be designed, carried out and delivered in accordance with the Construction Terms.	\$1,380,000.00
4.	Works – Lingard Street Streetscape	Public Domain Upgrades Pedestrian Amenity and Access	Construction of footway connections and streetscape elements along western side of Lingard Street between Merewether Street and Mitchell Street, including pedestrian ramps on both sides of Mitchell St intersection and associated footway kerbing and guttering, generally in the location shown in Annexure E 1.	The Lingard Street Streetscape Works must be completed prior to the issue of any Occupation Certificate for the Development on the Lingard Precinct, or otherwise in accordance with clause 11.2(b).	Works are to be designed, carried out and delivered in accordance with the Construction Terms.	\$100,000.00

Item No.	Contribution Item	Public Purpose	Nature and Extent	Timing	Manner of Delivery	Indicative Value*
5.	Works – Union Street Footpath	Public Domain Upgrades Pedestrian Amenity and Access	Construction of a new concrete footpath between existing crossovers approximately 260m in length linking the southern side of Merewether Street to Union Street, continuing along the western side of Union Street to Mitchell Street, as shown generally in Annexure E.	The Union Street Footpath must be completed prior to the issue of any Occupation Certificate for the Development on the Lingard Precinct, or otherwise in accordance with clause 11.2(b).	Works are to be designed, carried out and delivered in accordance with the Construction Terms.	\$250,000.00
6.	Works – Public Park	Open space and recreation, improvement of public parks	<p>Prior to the lodgement of a Development Application for Development on the Kingsland Precinct, the Developer will provide a proposal to Council for works to enhance Townson Oval. The works subject to the proposal may include installation of park furniture, signage and lighting, up to a maximum value of \$50,000 (<b>Public Park Works</b>).</p> <p>The Developer will design and construct the Public Park Works in accordance with the approved proposal.</p>	The Public Park Works must be completed prior to the issue of any Occupation Certificate for the Development on the Lingard Precinct, or otherwise in accordance with clause 11.2(b).	Works are to be designed, carried out and delivered in accordance with the Construction Terms.	\$50,000.00

Item No.	Contribution Item	Public Purpose	Nature and Extent	Timing	Manner of Delivery	Indicative Value*
7.	Works – Public Roads	Improvement and upgrade to public roads and intersections	<p>Prior to lodgement of the each Development Application for the Development, the Developer will prepare a detailed traffic study identifying works to be undertaken to improve the local road network as a consequence of the development subject to the Development Application. The traffic study will address, but will not be limited to, the following potential works to address capacity and queuing distance issues:</p> <ul style="list-style-type: none"> <li>• Potential upgrades at Glebe Road / Lingard Street intersection</li> <li>• Works to the Lingard Street / Railway Street roundabout</li> <li>• Works to the Glebe Road / Union Street intersection</li> <li>• Potential upgrades to Merewether Street / Lingard Street intersection</li> </ul> <p>The Developer will carry out and complete the works required by the traffic study (<b>Road Works</b>).</p>	The Road Works are to be completed at the time or times specified in the relevant traffic study, or as otherwise agreed between the parties.	Works are to be designed, carried out and delivered in accordance with the Construction Terms and the relevant traffic study.	To be determined under traffic studies prepared for the Development.

\* Values in this table are indicative only. Actual cost of the works will depend on the final design for the works.

## Schedule 2 Construction terms

### 1 Interpretation

For the purposes of this Schedule 2, the defined terms in clause 1 of this agreement and the Interpretation principles in clause 2 of this agreement will apply and, unless context indicates a contrary intention:

**Builder** means any entity contracted under the Construction Contract to carry out the Works.

**Construction Contract** means the contract to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development).

**Defects Liability Period** means in respect of each item of building works which together comprise the Works the period of 12 months from the date on which the Certificate of Compliance is issued for the Works.

**Detailed Design** means the final specifications and finishes for the Works prepared in accordance with clause 5.1 of this Schedule 2 and will include the design of the Works, the location for the Works, installation specifications and costs of construction and/or installation.

### 2 Requirements of Authorities and Approvals

2.1 These Construction Terms must be read and construed subject to:

- (a) any requirements or conditions of any Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

2.2 If the Developer requires any Approvals in order to carry out the obligations under this agreement, then the Developer will acquire all Approvals necessary to carry out the Works at its own cost.

2.3 The Developer must ensure that the Works carried out under this agreement are carried out:

- (a) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and
- (b) in a good and workmanlike manner and so that they are diligently progressed until completion;

AND it is acknowledged that to the extent that there is any inconsistency between this agreement and any Approval the terms of the Approval shall take precedence.

### 3 Costs of Works

All costs of the Works must be borne by the Developer.

### 4 Project Management and Contractor Engagement

4.1 The Developer will be responsible for managing the Works.

- 4.2 The Developer will ensure that any contractor it engages to carry out the Works agrees to carry out the Developer's obligations in these Construction Terms as part of any Construction Contract.

## **5 Design Development and Approvals**

### **5.1 Detailed Design**

- (a) Prior to Works commencing the Developer must provide a copy of the draft Detailed Design to the Council for approval.
- (b) Within 15 Business Days of receiving the Detailed Design, Council will respond to the Developer with any suggested amendments to the Detailed Design.
- (c) Council and the Developer must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (d) If the Detailed Design is not completed and agreed within 15 Business Days of Council providing its suggested amendments in accordance with clause 5.1(b) of this Schedule 2, to avoid possible delays to the issue of a Compliance Certificate, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to the Detailed Design, provided that any decision made by Council under this clause:
  - (i) is consistent with the obligation to carry out the Works under this agreement, including any limitation on the maximum value of those Works; and
  - (ii) is consistent with the Development Consent; and
  - (iii) does not materially and adversely affect the Development; and
  - (iv) is not unreasonable.

- 5.2 Any acceptance by the Council of the Detailed Design under this clause 5 of Schedule 2 is not to be taken as approval of or to any Construction Certificate for the Works.

### **5.3 Good faith**

The parties must act promptly and in good faith to consult in relation to the Detailed Design.

## **6 Carrying out of Works**

### **6.1 Communication**

The Developer must keep Council reasonably informed of progress of the Works and provide to Council such information about the Works as Council reasonably requests.

### **6.2 Standard of Works**

- (a) Unless otherwise provided, the Developer shall, and must cause the Builder to, use suitable new materials and proper and tradesman-like workmanship when carrying out the Works.
- (b) The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:
  - (i) Any relevant Australian Standard;



- (ii) Any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this agreement.
- (c) The Developer will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 6.2(b)(ii) of this Schedule 2 from Council if the Council fails to deliver them to the Developer.
- (d) The Developer may but is not obliged to reinstate any Works where damage or destruction is as a result of:
  - (i) Any act or omission of the Council or its employees, consultants or agents relating to any part of the Works under this agreement; or
  - (ii) The use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of the Council of any part of the Works.

### 6.3 Defects Liability Period

- (a) During the Defects Liability Period, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Works and specifies:
  - (i) action required to be undertaken by the Developer to rectify that defect (**Rectification Works**); and
  - (ii) the date on which the defect must be rectified (**Rectification Date**).
- (b) The Developer must comply with the Rectification Notice by:
  - (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;
  - (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
  - (iii) carrying out the Rectification Works.
- (c) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.
- (d) When the Developer considers that the Rectification Works are complete, either the Developer must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (e) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from the Developer under clause 6.3(d) and, acting reasonably:
  - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
  - (ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.
- (f) The Developer must meet all costs of and incidental to rectification of defects under this clause 6.3.

- (g) If the Developer fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Developer, and may:
  - (i) require the Developer to call upon any defect liability security provided by the Builder under the Construction Contract; and
  - (ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in carrying out Rectification Works.
- (h) The Developer must request that Council inspect the Works 28 days prior to the end of the Defects Liability Period. The Council must inspect the Works at any time after receiving the request from the Developer and before the end of the Defects Liability Period.
  - (i) If, prior to the end of the Defects Liability Period:
    - (i) the Developer fails to request the inspection, or
    - (ii) the Council does not carry out the inspection,
 the Council may extend the Defects Liability Period so that the inspection may be carried out.

## **7 Risk**

The Developer undertakes the Works entirely at its own risk.

## **8 Indemnities**

The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Developer of the Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

## **9 Intellectual Property Rights**

The Council acknowledges that the Developer or its contractors hold all rights to copyright and any intellectual property which may exist in the Works. To the extent the Developer has or receives intellectual property rights for the Works, the Developer shall permit the use of intellectual property rights by Council.

## **10 Plans**

The parties acknowledge and agree that further detail and refinement of plans and documents in connection with this agreement may be necessary having regard to the following matters:

- (a) matters affecting Works not capable of identification on or before the date of this agreement; or
- (b) by agreement between the parties.

### Schedule 3 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p><b>Planning instrument and/or Development Application – Section 7.4(1)</b></p> <p>The Developer has:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p><b>Description of the land to which the Planning Agreement applies – Section 7.4(3)(a)</b></p>	<p>See the definition of Land, the Lingard Precinct and the Kingsland Precinct in clause 1.</p>
<p><b>Description of the change to the planning instrument or development to which the Planning Agreement applies – Section 7.4(3)(b)</b></p>	<p>See the definitions of Development and Instrument Change in clause 1.</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</b></p>	<p>See clause 6 and the Contributions Schedule (Schedule 1).</p>
<p><b>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</b></p>	<p>Not excluded – see clause 7.</p>
<p><b>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</b></p>	<p>Not excluded – see clause 7.</p>
<p><b>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</b></p>	<p>Not excluded – see clause 7.</p>
<p><b>Mechanism for dispute resolution – Section 7.4(3)(f)</b></p>	<p>See clause 10.</p>
<p><b>Enforcement of the Planning Agreement – Section 7.4(3)(g)</b></p>	<p>See clause 11.</p>
<p><b>Registration of the Planning Agreement – Section 7.4(3)(g)</b></p>	<p>See clause 8.</p>
<p><b>No obligation to grant consent or exercise functions – Section 7.4(9)</b></p>	<p>See clause 14 (no fetter).</p>

Executed as an agreement

[Insert Execution clauses]

### Annexure A Plan showing Land



# Annexure B Pedestrian Crossing



# Annexure C Tye Road Streetscape Works



# Annexure D Merewether Street Streetscape Works





# Annexure E Union Street Footpath



# Annexure E 1 Lingard Street Footpath



## Annexure F                      Draft Explanatory note

### **Explanatory Note**

#### **Exhibition of draft Voluntary Planning Agreement**

**Lot 100 DP 1168137, known as 23 Merewether Street, Merewether  
(Kingsland Precinct)**

**Lot 100 DP 1251777, known as 8 Lingard Street, Merewether  
(Lingard Precinct)**

*Environmental Planning & Assessment Regulation 2021 (clause 205)*

### **Explanatory Note**

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (**the Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

This Explanatory Note has been prepared jointly between the parties as required by clause 205 of the *Environmental Planning and Assessment Regulation 2021 (the Regulations)*. The Explanatory Note must address the requirements of section 205(1)(a)-(b) of the Regulation. This Explanatory Note has been prepared to address these requirements.

Additionally, in preparing the Explanatory Note, the planning authority must consider any relevant practice note prepared by the Planning Secretary under clause 203(6). The relevant practice note is *Planning agreements: Practice note – February 2021* published by the former NSW Department of Planning, Industry and Environment (now the Department of Planning and Environment).

This practice note has been considered by the parties in the course of preparing this Explanatory Note.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

### **Parties**

Health Care Lingard Pty Ltd (**the Developer**) made an offer to Newcastle City Council (**the Council**) to enter into a voluntary Planning Agreement, in connection with a Planning Proposal relating to the subject land.

Northwest Healthcare Australian Property Limited (**Landowner**) is the registered proprietor of the subject land and will also be a party to the Planning Agreement.

### **Description of subject land**

The land to which the Planning Agreement applies is described as Lot 100 DP 1168137, known as 23 Merewether Street, Merewether and Lot 100 DP 1251777, known as 8 Lingard Street, Merewether (**the Land**).

### **Description of the Planning Proposal to which the Planning Agreement applies**

The Planning Agreement is offered in connection with Planning Proposal PP2022-395, which seeks amendments to *Newcastle Local Environmental Plan 2012* to:

- (a) rezone the land from R3 Medium Density Residential and B5 Business Development to SP2 Infrastructure (Health Services Facility);
- (b) amend the maximum building height applying to the Land from 10m to 18m; and
- (c) amend the floor space ratio control for the Land from 0.9:1 to no FSR control

### **Description of the Development Application to which the Planning Agreement applies**

The Planning Agreement will apply to future proposals to add an additional storey to each of the buildings on the Land (**Development**).

### **Summary of Objectives, Nature and Effect of the Planning Agreement**

The Planning Agreement requires the following works in kind:

- (a) Payment of a monetary contribution in the amount of \$1million (increased in accordance with CPI to the date of payment) towards the upgrade of the Merewether Street and Lingard Street intersection.
- (b) Reconstruction of the street and streetscape elements along both sides of Tye Road, including construction of pedestrian footways, kerb and gutter and road pavement.
- (c) Reconstruction of the street and streetscape elements along both sides of Merewether Street between Union Street and Lingard Street, including management of on-street parking, road and safety works and pedestrian management facilities.
- (d) Construction of a new footpath between existing crossovers approximately 260m in length linking the southern side of Merewether Street to Union Street and continuing along the western side of Union Street to Mitchell Street.
- (e) Construction of footway connections and streetscape elements along western side of Lingard Street between Merewether Street and Mitchell Street.
- (e) Works to embellish and improve Townson Oval.
- (f) Intersection upgrade works in accordance with detailed traffic studies to be prepared for the Development, which must address the need for upgrades to the following intersections:
  - Glebe Road / Lingard Street intersection
  - Lingard Street / Railway Street roundabout
  - Glebe Road / Union Street intersection
  - Merewether Street / Lingard Street intersection

### **Assessment of the Merits of the Planning Agreement**

#### **How the Planning Agreement Promotes the Objects of the Act and the public interest**

The draft Planning Agreement promotes the following objectives of the *Environmental Planning and Assessment Act 1979*:

- To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.

- To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.
- To promote the orderly and economic use and development of land.

The draft Planning Agreement promotes the public interest by ensuring that the potential impacts of additional development on the Land are adequately addressed at an early stage of the development and that public facilities and services are provided to meet the needs of the community. The proposed improvements to road works, pedestrian walkways and public domain and open space areas will benefit staff, patients and visitors of the private hospital, as well as local residents and road users. The draft Planning Agreement further encourages ecologically sustainable development, by requiring works to be undertaken as part of the development that will encourage use of sustainable transport modes to access the Land.

### **The Planning Purposes served by the Planning Agreement**

The works will be carried out for the purposes of:

- improving and upgrading pedestrian paths, public domain areas and access to the Land;
- improving and upgrading roads and intersections in the vicinity of the Land; and
- enhancing nearby public open space and recreation areas.

The proposed amendment to the local environmental plan will facilitate future development of this important site in the Newcastle and Hunter Region and will contribute to the implementation of the goals of applicable regional and metropolitan strategic plans. The continued improvement of the Lingard Private Hospital supports the health care and social welfare needs of the community and will have an important role in the growth of the region.

### **Whether the Planning Agreement Conforms with the Council's Capital Works Program**

The contributions proposed under the Planning Agreement do not conform with the Council's capital works program. This is because the opportunity to obtain the contributions has arisen outside of the Council's capital works program. The Planning Agreement will not have an adverse effect on this capital works program. Overall, the Planning Agreement is likely to result in more capital works (to the benefit of the community) than would be the case without the Planning Agreement.

### **Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

The Planning Agreement requires that certain obligations are to be met prior to the issue of a construction certificate or an occupation certificate for the Development, unless the Council accepts a bond and agrees to defer the timing for compliance.