



City of  
Newcastle



## CITY OF NEWCASTLE

# Development Applications Committee

Councillors,

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

**DATE:** Tuesday 15 November 2022

**TIME:** Following the Briefing Committee

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

J Bath  
Chief Executive Officer

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

8 November 2022

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**DEVELOPMENT APPLICATIONS COMMITTEE  
15 November 2022**

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

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 18 OCTOBER 2022**

**RECOMMENDATION**

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

**ATTACHMENTS**

**Attachment A:** 221018 Development Applications Committee

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

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Development Applications Committee Meeting 15 November 2022

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## CITY OF NEWCASTLE

**Minutes of the Development Applications Committee Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West on Tuesday 18 October 2022 at 7.53pm.**

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### **PRESENT**

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

### **IN ATTENDANCE**

J Bath (Chief Executive Officer), J Rigby (Executive Director City Infrastructure), D Clarke (Interim Executive Director Corporate Services), Lynn Duffy (Acting Executive Director Creative and Community Services), M Bisson (Interim Executive Director Planning and Environment), S Moore (Manager Finance, Property and Performance), E Kolatchew (Manager Legal and Governance), P Emmett (Development Assessment Section Manager), K Sullivan (Councillor Services/Meeting Support), R Garcia (Information Technology and AV Support) and W Haddock (Information Technology).

### **REQUEST TO ATTEND VIA AUDIO VISUAL LINK**

#### **PROCEDURAL MOTION**

Moved by Cr Mackenzie, seconded by Cr Adamczyk

The request submitted by Councillor Richardson to attend via audio visual link be received and leave granted.

**Carried**

### **APOLOGIES**

Nil.

### **DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS**

Nil.

### **CONFIRMATION OF PREVIOUS MINUTES**

#### **MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 SEPTEMBER 2022**

#### **MOTION**

Moved by Cr Barrie seconded by Cr McCabe

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

**Carried  
unanimously**

**DEVELOPMENT APPLICATIONS**

**ITEM-15                    DAC 18/10/22 - 42 AND 44 ELDER STREET, LAMBTON -  
DA2022/00083 - STAGED DEVELOPMENT COMPRISING  
STAGE 1 DEMOLITION OF DWELLING HOUSE AND  
BOUNDARY ADJUSTMENT AND STAGE 2 DUAL  
OCCUPANCY AND 1 INTO SUBDIVISION**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Winney-Baartz

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2022/00083 for a staged development comprising stage one demolition of dwelling house and ancillary structures and boundary adjustment, stage two erection of dual occupancy and one into two lot subdivision, at 42 & 44 Elder Street Lambton, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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

**Against the Motion:**                    Nil.

**Carried**

**ITEM-16                    DAC 18/10/22 - 93A RIDGE STREET MEREWETHER -  
DA2021/00884 - DWELLING HOUSE - INCLUDING  
DEMOLITION OF EXISTING STRUCTURES**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Clausen

- A. The objection under clause 4.6 Exceptions to development standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), relating to Clause 4.4 (Floor Space Ratio) is noted. In this regard, it is considered that the objection adequately addresses the matters required to be demonstrated by subclause 4.6 (3) of NLEP 2012, is well founded and consistent with specific aims of the relevant clause and the overarching aims of the Plan. The proposed development will be in the public interest because it is consistent with the objectives of Clause 4.4 Floor space ratio, and the objectives of the R2 Low Density Residential zone; and

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- B. That DA2021/00884 for the demolition of the existing structures and erection of a dwelling house at 93A Ridge Street Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of DAC's determination.

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

**Against the Motion:** Nil.

**Carried**

**ITEM-17                    DAC 18/10/22 - 61 TERALBA ROAD ADAMSTOWN -  
DA2021/01656 - DUAL OCCUPANCY - ERECTION OF  
DWELLING AND ONE INTO TWO LOT SUBDIVISION  
INCLUDING DEMOLITION OF DWELLING HOUSE**

### **MOTION**

Moved by Cr Mackenzie, seconded by Cr Barrie

- A. The objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental (NLEP) 2012, relating to Clause 4.1 Minimum Lot Size is noted. In this regard, it is considered the objection adequately addresses the matters required to be demonstrated by subclause 4.6(3) of the NLEP 2012, is well founded and consistent with the specific aims of the clause and the overarching aims of the plan. The proposed development will be in the public interest because it is consistent with the objectives of Clause 4.1 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out.
- B. That DA2021/01656 for dual occupancy comprised of demolition of existing dwelling, erection of two storey dwelling and one into two lot Torrens Title subdivision at 61 Teralba Road Adamstown, be approved and consent granted subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.
- C. That those persons who made submissions be advised on the determination.

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

**Against the Motion:** Nil.

**Carried**

**ITEM-18                    DAC 18/10/22 - 142 DARBY STREET, COOKS HILL -  
SUPPLEMENTARY REPORT - DA2021/00962 - HOTEL -  
EXTENSION OF TRADING HOURS**

**MOTION**

Moved by Cr Clausen, seconded by Cr Pull

- A. That DA2021/00965 for an extension to the trading hours of the Delany Hotel be approved and consent be granted for a 12-month trial subject to the following amendments to the Draft Schedule of Conditions of consent as provided at **Attachment B** within the report.
- i     Condition 3 (hours of operation)  
Proposed hours of operation amended from 10am - 2am (following day) Wednesday to Saturday to 10am - 1am (following day) Friday to Saturday only (i.e. No change to existing hours Sunday to Thursday).
  - ii    Condition 13 (shutting of doors and windows)  
Proposed condition to be amended to require security staff to monitor the doors and operable facades in the public bar to ensure they remain closed from 10pm.
  - iii   Condition 14 (shutting of doors and operable facades in beer garden)  
Proposed condition to be amended to require security staff to monitor the doors and operable facades (including roof) in the beer garden area to ensure they remain closed from 10pm.
  - iv    Condition 15 (shutting of windows to first floor function room)  
Proposed condition to be amended to require security staff to monitor the external windows to the first-floor function room to ensure they remain closed from 10pm.
- B. The Plan of Management condition to be updated to reflect the amendments to the draft conditions of consent.
- C. That those persons who made submissions be advised of City of Newcastle's (CN) determination.

**For the Motion:**

Lord Mayor, Cr Nelmes and Councillors Adamczyk, Barrie, Clausen, Duncan, McCabe, Pull, Wark, Winney-Bartz and Wood.

**Against the Motion:**

Councillors Church, Mackenzie and Richardson.

**Carried**

**The meeting concluded at 8.43pm.**

**DEVELOPMENT APPLICATIONS**

**ITEM-19                    DAC 15/11/22 - DA2021/01338 - 292 MAITLAND ROAD, MAYFIELD - SHOP TOP HOUSING - INCLUDING DEMOLITION OF EXISTING STRUCTURES**

**APPLICANT:            MEGAPLAY AMUSEMENTS PTY LTD  
OWNER:                MEGAPLAY INVESTMENTS PTY LTD & MEGAPLAY PROPERTIES PTY LIMITED  
NOTE BY:              PLANNING AND ENVIRONMENT  
CONTACT:              INTERIM EXECUTIVE DIRECTOR, PLANNING & ENVIRONMENT / ACTING MANAGER, PLANNING, TRANSPORT & REGULATION**

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**PART I**

**BACKGROUND**

A Development Application (DA2021/01338) has been received seeking consent for shop top housing, including demolition of existing structures. The development comprises, the demolition of an existing service station and structures, erection of a six-storey mixed use development, comprising basement and ground level car parking (70 spaces), ground floor retail and commercial (five tenancies) and five levels of shop top housing (58 residential apartments) at 292 Maitland Road, Mayfield.



**Subject Land: 292 Maitland Road Mayfield**

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

The application is referred to the Development Applications Committee (DAC) for determination as the construction value of the proposed development at \$26,689,956 exceeds the staff delegation limit of \$15 million.

The proposal was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP) between 20 October and 8 November 2021 and in response one late submission was received.

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



The applicant submitted amended plans during the assessment process in response to recommendations of City of Newcastle (CN) officers and advice from the Urban Design Review Panel (UDRP). These plans are the subject of this report.

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

### **Issues**

- 1) The proposed development does not comply with the height of buildings development standard of 20m under NLEP 2012. The proposed height of the building is 21.3m (to the lift overrun) which equates to a 6.5% variation to the height of buildings development standard.
- 2) The proposed development does not comply with the Floor Space Ratio (FSR) development standard of 2:1 under NLEP 2012. The proposed development has a FSR of 2.09:1, which equates to a 4.5% variation to the FSR development standard.

### **Conclusion**

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

### **RECOMMENDATION**

#### ***Vote by division***

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and
- B. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out,
- C. That DA2021/01338 for 'shop top housing – including demolition of existing structures' at 292 Maitland Road Mayfield, be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- D. That those persons who made a submission be advised of City of Newcastle's determination.

## Political Donation / Gift Declaration

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject site is located at 292 Maitland Road, Mayfield, and is identified as Lot 1 DP1068065. The site is rectangular in shape, with a total area of 2,862m<sup>2</sup>. The site has a frontage to Maitland Road of 43m and a frontage to Baker Street of 64m. Existing vehicle access to the site is from Baker Street and Maitland Road.

The site currently accommodates a service station with onsite parking, and various commercial premises, including food and drink premises. The majority of the site is covered by buildings and hardstand, with the exception of a number of small garden beds.

The site is located in the Mayfield Renewal Corridor. The land is zoned B4 Mixed Use, having a maximum FSR of 2:1 and a maximum height limit of 20m under the relevant provisions of the Newcastle Local Environmental Plan 2012 (NLEP 2012).

Existing uses surrounding the site include commercial and retail uses, with Mayfield Hotel located adjacent to the site on the south-east. The land directly at the rear of the site is parkland known as 'Webb Park' and is zoned RE1 Public Recreation. Land to the west and south-west adjacent to 'Webb Park' is zoned R3 Medium Density Residential and comprises residential uses.

### 2.0 THE PROPOSAL

The development application proposes shop top housing, including demolition of existing structures. Specifically, the proposal includes the following components:

- i) Demolition of all existing structures on site, including a service station and commercial tenancies.
- ii) Excavation and earthworks.

- iii) Carparking, including basement level parking (47 spaces) and ground floor car parking (23 spaces).
- iv) Five ground floor commercial tenancies, ranging from 96m<sup>2</sup> to 145m<sup>2</sup>.
- v) Ground floor indoor communal area, lobby, bicycle and car parking, garbage and service areas and vehicle and pedestrian access.
- vi) Levels 1 to 5 comprising 58 residential apartments and outdoor communal spaces.
- vii) Ancillary works including street tree planting, landscaping, services, and site infrastructure.
- viii) A pedestrian link laneway on the southeastern boundary of the site, providing direct pedestrian access from Maitland Road to Webb Park.

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

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

### **3.0 PUBLIC NOTIFICATION**

The application was publicly notified in accordance with CN's Community Participation Plan (CPP) between 20 October to 8 November 2021. One late submission was received in response.

The objection requested that drainage and water management measures be implemented and that appropriate safeguards be in place to prevent damage to adjoining properties resulting from excavation works on site. The objectors' concerns are addressed under the relevant matters for consideration in Section 5.8 of this report.

### **4.0 INTEGRATED DEVELOPMENT**

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

### **5.0 PLANNING ASSESSMENT**

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

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

[State Environmental Planning Policy \(Resilience and Hazards\) 2021 \(R&H SEPP\)](#)

Chapter 2 - Coastal Management

The site is partially located within a mapped Coastal Environment Area. Therefore, the R&H SEPP is applicable to the development. Clause 2.10 requires the consent authority to consider the surrounding coastal, natural, and built environment.

The bulk, scale and size of the proposed development has been considered in the assessment of the application. It has been satisfactorily demonstrated that the proposed development has been designed, sited, and will be managed to avoid, minimise, or mitigate any adverse impacts on the Coastal Environment Area.

The proposal is acceptable having regard to the requirements of Clause. 2.10.

Chapter 4 – Remediation of land

The site currently contains a service station and therefore has the potential to be contaminated as service stations are known to be a contaminating land use. Therefore, the provisions of Chapter 4 of the R&H SEPP have been considered in the assessment of the development application. Clause 4.6 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

A Preliminary Site Investigation (PSI) was undertaken on behalf of the Applicant to assess whether contamination exists on the site and if further investigation is needed. The PSI concluded that a Detailed Site Investigation (DSI) would be required to determine the suitability of the site for redevelopment. A DSI was therefore submitted with the application, the DSI concluded that the site is suitable for the proposed residential land use, without the need for remediation.

An assessment of both the PSI and DSI was undertaken by CN staff and the findings and recommendations of the investigations were accepted. The requirements and provisions of R&H SEPP have been satisfactorily addressed by the documentation submitted and in the assessment of the application, and subject to the recommended conditions of consent contained in **Attachment B**.

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

Development likely to affect an electricity transmission or distribution network

Section 2.48 of the T&I SEPP requires the consent authority to give written notice to the electricity supply authority seeking concurrence and comments about potential safety risks.

The application was referred to Ausgrid in accordance with cl 45 of SEPP (Infrastructure) 2007 (now repealed and replaced with SEPP (Transport and Infrastructure) 2021). Ausgrid issued their advice, and no further assessment is required. The Ausgrid advice has been forwarded to the applicant for their information and relevant conditions have been imposed (**Attachment B**).

Development in or adjacent to road corridors and road reservations

The subject site has a frontage to a classified regional road and therefore the T&I SEPP applies to the development. Section 2.119 requires that the consent authority consider the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development. The proposed development is not considered to compromise the effective and ongoing operation and function of the road, with vehicular access, and loading for the development proposed from Baker Street. A Traffic Impact Assessment (TIA) has been submitted with the application in accordance with the requirements of this clause.

Section 2.122 requires certain applications to be referred to Roads and Maritime Services (RMS) as traffic generating development. The development is classified as '*traffic generating*' development for the purposes of the T&I SEPP. Accordingly, the application was referred to RMS and in response written advice was received from RMS raising no objection to the proposal.

As detailed in this assessment report, it is considered that the proposal is satisfactory in relation to traffic and is satisfactory having regard to the requirements of section 2.119 and 2.122 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

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

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

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

Chapter 2 -Vegetation in non-rural areas

Consent is required for the removal of a tree or other vegetation that is identified as declared vegetation on private land, or within 5m of a development site in accordance with Section 5.03 - Vegetation Management of the NDCP 2012. An Arborist Report and a tree retention assessment value were submitted with the application in accordance with NDCP 2012 and The Urban Forest Technical Manual.

The proposal seeks to remove two existing shrubs on site to make way for the proposed development. The trees are non-native species and are between 3 to 3.5m in height. The amenity of the area will not be significantly impacted in respect of the local character and appearance with the removal of these trees.

The requirements and provisions of the B&C SEPP are considered to have been satisfactorily addressed by the documentation submitted and in the assessment of the application.

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

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

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

The development application has been reviewed by CN's UDRP, who operate under a charter stating that they undertake the functions of a design review panel for the purposes of SEPP 65. The development application has been formally referred to the UDRP on two occasions, including once prior to lodgement of the application, at meetings held on 24 February 2021 and 24 November 2021.

In response to assessment matters raised by CN, including the advice from the UDRP meeting held 24 February 2021, an amended development application was submitted 12 August 2022.

The UDRP reviewed the development proposal for the third time via an electronic referral. The final advice of the confirmed the UDRP is supportive of the proposal and concluded:

*"The Panel's recommendations have been well addressed and is a well-designed development"*

CN is satisfied the current amended proposal has incorporated the recommendations of the UDRP through the assessment process and suitable conditions of consent has been included in the recommended conditions (refer to **Attachment B** – Draft Schedule of Conditions) to resolve the minor concerns raised by the UDRP. As such, the development application has now satisfied the UDRP advice and is considered an appropriate design response.

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

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

<b>Design Quality Principles</b>
<b>Principle 1. Context and Neighbourhood Character</b>
<i>"Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship, and the character they create when combined. It also includes social, economic, health and environmental conditions.</i>
<i>Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and</i>

*identity of the area including the adjacent sites, streetscape, and neighbourhood.*

*Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change."*

**UDRP Comment - 24 February 2021:**

*"This is a key site in the Mayfield commercial/retail area, on the corner of Maitland Road and Baker Street. It adjoins Maitland Hotel site to the east, with its area of car-parking fronting more than half of the common boundary between the two properties. The Newcastle Development Control Plan requires a through-site pedestrian connection between Maitland Road and the park adjacent to this boundary.*

*Although existing buildings in the locality are traditional 1 and 2-storeys, there is a nearby four (4) storey commercial building recently constructed, and another five (5) storey shop-top housing development recently approved on the opposite side of Maitland Road. It is very likely that these have established a precedent in relation to increased scale along this road in coming years.*

*To the south-west the site fronts Webb Park, which is a listed local heritage item and a valuable amenity for local residents, recently upgraded and a small children's play area installed. Along its south-west side is a row of large mature ficus trees which provide excellent visual and physical amenity. The park affords good outlook for residential development oriented in this direction. Away from Maitland Road the surrounding area is occupied by one and two storey 'suburban' detached dwellings, and this character is unlikely to change in the foreseeable future.*

*Presently the site is occupied by a service station and various small retail tenancies. Council advised that beneath the existing service station there are underground fuel tanks, which will need to be removed, and that there could well be contamination of the adjacent soil."*

**UDRP Comment – 24 November 2021:**

*"No further comment regarding context."*

**Officer Comment:**

Noted.

**Principle 2. Built Form and Scale**

*"Good design achieves a scale, bulk, and height appropriate to the existing or desired future character of the street and surrounding buildings.*

*Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation, and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook."*

**UDRP Comment - 24 February 2021:**

*"The design proposes a single building covering almost the entire site, rising to a height of six (6) storeys and in places to 21 metres. It has a strongly expressed two-storey*

*'podium', and above four levels of apartments separated into two blocks. This basic form is logical and results in good amenity for apartments. The following suggestions should be addressed as the design is developed: -*

- i) Strongly emphasize the two-storey base by way of articulation, materials etc, and design the four levels above to be less assertive, so that there is a resulting comfortable pedestrian scale to the development. Planting around the perimeter edges of the parapet at level 2 would assist in this outcome.*
- ii) Articulate the parapet of the two-storey base into a series of bays to break up its long horizontal emphasis.*
- iii) Whilst some emphasis on the street corner is supported, the preliminary form suggested appears somewhat over-assertive and unrelated to the other facade elements*
- iv) Morning overshadowing of Webb Park during winter months is of concern: whilst this is inevitable in view of the permissible height, the top level(s) on the south-west side should be set back and/or lowered to the extent possible in order to minimise this impact. The shadow diagrams tabled at the meeting were valuable in assessing this issue.*
- v) The location of the garbage room which would alienate a substantial length of the Maitland Road frontage is very undesirable.*

*In relation to statutory controls on height and bulk, as stated below there appears to be no justification for exceeding the FSR. However, the 1metre minor exceedance of the 20metre, LEP height control standard is not in itself an issue, and part of the development including lift overruns etc. could well be protrude above this height without unacceptable negative impacts. Some reduction in overall bulk of the south-western component could assist in reducing the unfortunate overshadowing impacts on Webb Park."*

**UDRP Comment – 24 November 2021:**

*"The DA design has been very responsive to the comments previously provided by the UDRP. It responds well to its three public frontages and provides an attractive interface with the adjacent park.*

*The Panel considered that the simple restraint that the proposal is demonstrating is very well handled – taking on the previous comments of the UDRP, and with a focus on high quality design.*

*The minor variation proposed (equating to 6.5%) to the maximum height is considered consistent with the objectives of the development standard and does not result in any significant adverse impacts.*

*While the Panel anticipates that the proposal will comfortably integrate with the context and likely future character, it suggested that a longer view to the project would be an informative inclusion in the urban design report, to understand placement in greater context."*



**Officer Comment:**

As per the Panel's recommendation, the design of the building has been amended to include two 'blocks' above the podium. This design enables increased sunlight access and amenity to apartments. The upper levels have also been appropriately setback, particularly fronting Webb Park, to prevent excessive overshadowing.

**Principle 3. Density**

*"Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.*

*Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment."*

**UDRP Comment - 24 February 2021:**

*"As proposed the FSR is 2.1:1, 7.5% over the LEP control of 2.0:1. There is no justification for exceeding the control, given concerns in relation to bulk and overshadowing."*

**UDRP Comment – 24 November 2021:**

*"A variation of the floor space ratio ('FSR') development standard of 7% is proposed. The Panel considers this variation to have no adverse impacts, and supports the density proposed."*

**Officer Comment:**

The design is expected to achieve a high level of amenity for residents and each apartment, resulting in a density that is considered appropriate to the site and its context. The proposed development will result in the provision of additional housing within an established inner city local suburb with access to public transport, essential community infrastructure and services.

**Principle 4. Sustainability**

*"Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation."*

**UDRP Comment - 24 February 2021:**

*"As the design is refined, environmental sustainability measures should be integrated into the development:*

- i) Given its large scale, rainwater collection and recycling should be included for irrigating the landscape within the site and adjacent areas*
- ii) Solar energy should be captured for the development and feeding into the*

*grid*

- iii) As well as the indicated courtyard landscaping, the rooftops should be extensively 'greened'.*

**UDRP Comment – 24 November 2021:**

*The proposal has included the following sustainability aspects:*

- i) Water collection tanks included*
- ii) Solar system 8kw proposed on roof*
- iii) Good planting allocation improvements*

**Officer Comment:**

Noted.

**Principle 5. Landscape**

*“Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain. Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by coordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character. Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours' amenity, and provide for practical establishment and long-term management.”*

**UDRP Comment - 24 February 2021:**

*"The above suggestions should be incorporated when the landscape design is developed at the next stage."*

**UDRP Comment – 24 November 2021:**

*"Planting on structure - soil depths appear appropriate to achieve the proposed planting, which is attractive and well considered. To ensure that the proposed plantings are capable of achieving their potential, soil volumes proposed should not be reduced at CC stage. To that end, it is important to check that the structural allowances have been designed to deal with the loads involved, including wet soils, and that provision/allowance has been made for penetrations for drainage and associated precipitation / hydraulic loads.*

*Automatic watering systems should be provided for landscape areas.*

*The Panel noted that it is important that the landscaping which is contributing to the overall appearance of the building (rather than the less visible, smaller soft landscape*

*areas serving the amenity of a single apartment for example) is able to be maintained by the owners' corporation. This planting should also be required in the strata plan to be retained in a consistent form to the approved landscape design."*

**Officer Comment:**

The above comments have been taken into consideration in the landscaped concept. Structural allowances for soil volumes will be checked prior to Construction Certificate. An automatic watering system will be provided for landscaped areas. The proposed landscaped areas will be maintained by the owner's corporation.

**Principle 6. Amenity**

*"Good design provides amenity through the physical, spatial and environmental quality of a development. Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility."*

**UDRP Comment - 24 February 2021:**

*"Amenity of apartments would potentially be of excellent standard, with solar access and cross-ventilation in excess of ADG recommendations, and good daylight to the internal corridors. Outlook from the majority should also be attractive, except for those facing Maitland Road. The following detailed issues should be addressed: -*

- i) Balustrades to balconies should not be clear glass, except perhaps for those oriented to the Park.*
- ii) Balconies facing Maitland Road should be designed to mitigate impact of traffic noise, -by way of greater proportion of solid in the balustrades, acoustic treatment of soffits etc.*
- iii) Privacy between balconies and adjacent corridor for internal corner units at Level 01."*

**UDRP Comment – 24 November 2021:**

*"Overshadowing to the park – a new childrens' playground located towards the centre of the park has been omitted from the plans and will be overshadowed in winter in morning (until about 12noon). The area needs to be shown on the plans. While the level of overshadowing is considered acceptable, shadow diagrams showing the area would be useful to demonstrate the impact in at the equinox and in summer.*

*The Panel commended the additional communal area that has been incorporated in the design since the previous review.*

*The revised arrangement of the functional elements has been well considered - driveway access, waste storage room, bicycle storage - a sense of human scale and a functional layout have been achieved."*

**Officer Comment:**

The children's playground has been included within the amended overshadowing

analysis and the impacts are considered acceptable.

Shower arrangements have been updated as requested, including alterations to bathroom entries to provide an improved arrangement.

**Principle 7. Safety**

*“Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.”*

**UDRP Comment - 24 February 2021:**

*"The pedestrian link between Maitland Road and the Park should be a useful initiative, but there is concern as to its safety, particularly after dark. Although it will be partly overlooked from apartments in this new development, there would be areas which are not safe. Nighttime lighting will be essential, and it may be that entrances should be locked at both ends a night, until development on the adjoining site widens the pathway."*

**UDRP Comment – 24 November 2021:**

*"Pedestrian link gates are now shown on the plans to allow the pedestrian link to be secured at night. Further details should be provided for how this is to work (responsibility for locking the gate, times etc).*

*The Panel acknowledges the treatment and care that has gone into considering the security of the pedestrian link. The proposal has now activated the corner with the communal use – which is strongly supported. Some minor modifications were suggested at the south east corner of the development adjacent to the laneway and the park. At this point, the communal space may appear ambiguous as to whether it is a private space or a public one (such as a café). This needs to be more legible as private space and would benefit from some low planting or low fence to provide a level of territorial reinforcement/ visual cues. However, the Panel does not see any necessity for further enclosing the pedestrian link pathway or the deep soil planting area at its southern end.*

*Ground floor communal open space*

- i) The Panel does not recommend having access doors within the Ground floor eastern façade of the common area directly facing the pedestrian link. However, the glazing adjacent to the pedestrian pathway is supported and should be retained.*
- ii) If doors are proposed facing the park, locking up needs to be simple for residents.*

*Concrete plinth currently shown in 3D renders should be of brick."*

**Officer Comment:**

Further details have now been provided on the amended plans showing how the pedestrian link gates will be managed. Low level landscaped area has been provided

on the corner of the building at the southern end, fronting the communal room.

The amended plans have consolidated the number of access points. The proposed now provides for one doorway entry and three windows. One doorway is now proposed for the communal room facing Webb Park. The door is able to be locked efficiently and simply.

The amended 3D renders have now been updated to show the concrete plinth in brick.

### **Principle 8. Housing Diversity and Social Interaction**

*“Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.”*

#### **UDRP Comment - 24 February 2021:**

*"The apartment mix is considered to be acceptable, although no 1-bed units are proposed.*

*There is no indication of communal spaces and facilities, and it is essential that these be provided, particularly in a development of this scale, which could accommodate of the order of 150 people or more. At least one communal room with facilities such as kitchenette must be included. Two options were discussed: -*

- i) A communal room on the southern side opening directly to Webb Park*
- ii) A roof-top communal rooms in each block facing the north, both opening to a small outdoor deck. These would have the advantage of assisting in developing some sense of community amongst residents in each block.*

*Since the first would receive no sunlight, its utility would be limited. In relation to the roof-top options the Panel typically is of the view that some exceedance of the height control could be accepted provided that there are no adverse impacts in relation to view loss, overshadowing etc.*

*Ideally both the ground floor, and the roof-top rooms would be provided."*

#### **UDRP Comment – 24 November 2021:**

*"The proposal has a choice of excellent communal spaces, both internal and external. The proposed housing mix is now supported."*

#### **Officer Comment:**

Noted.

### **Principle 9. Aesthetics**

*“Good design achieves a built form that has good proportions and a balanced*

*composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape."*

**UDRP Comment - 24 February 2021:**

*"Subject to resolution of the issues raised above in relation to Built Form etc, the detailed design has the potential to result in an outcome of excellent quality.*

*The through-site pedestrian pathway will require thoughtful attention, since it is adjacent to the car-park wall and will have little 'activation'. It is essential to ensure that this wall is attractive, perhaps by way of a combination of artworks and 'greening' by climbing plants."*

**UDRP Comment – 24 November 2021:**

*"The evolution of the appearance has progressed well, and the resulting aesthetics considered to be commendable. In particular, following were considered well handled:*

- i) The texture in brickwork noted at eye level on the podium*
- ii) Decorative screens*
- iii) Awnings and outdoor covered retail*

*The overall presentation of the development in the streetscape is considered to be very attractive."*

**Officer Comment:**

Noted.

**UDRP Recommendation:**

**24 November 2021**

*"The Panel is supportive of the proposal, which is considered of a high design standard. The addressing to the satisfaction of Council of the relatively minor matters raised under the headings above, will ensure that the completed proposal will make a very positive contribution to the area.*

*The Panel commends the Applicant, Architects and consultants on achieving an attractive scheme that can provide highly liveable accommodation close to the Mayfield commercial area."*

**25 August 2022**

*The only remaining issue is the security of the bike store - this should be secured from unauthorised access from the car park.*

*The Panel's recommendations have been well addressed and it's a well-designed development."*

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

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

<b>3B Orientation</b>		
<b>Objective 3B-1</b> Building types and layouts respond to the streetscape and site while optimising solar access within the development.		
<b>Objective 3B-2</b> Overshadowing of neighbouring properties is minimised during mid-winter.		
<b>Comment:</b> The proposal has been designed to address the street frontages of Maitland Road and Baker Street.  Commercial tenancies at ground level will activate the street edges.  The design passively engages with the park while also creating a pedestrian link from Maitland Road to encourage activation of the park.  The orientation, massing and setbacks minimise any overshadowing impacts.  Balconies and windows on all elevations allow for casual surveillance to the public domain.		<b>Compliance:</b> Complies
<b>3D Communal and public open space</b>		
<b>Objective 3D-1</b> An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		
<b>Design Criteria:</b> 1. Communal open space has a minimum area equal to 25% of the site.	<b>Comment:</b> 14% of the site is provided as communal open space. This is below the minimum required, however is considered acceptable given the opportunities for engagement and recreational activity within the adjacent parkland.	<b>Compliance:</b> Satisfactory (Merit based assessment)
<b>Design Criteria:</b> 2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of	<b>Comment:</b> The principle usable part of the communal open space on the upper levels achieves a minimum of 2hrs sunlight between 9am and 3pm in	<b>Compliance:</b> Complies

<p>the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).</p>	<p>mid-winter to over 50% of the area.</p>	
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**3E Deep soil zones**

**Objective 3E-1**

Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.

**Design Criteria:**

1. Deep soil zones are to meet the following minimum requirements:

Site area	Minimum dimensions	Deep soil zone (% of site area)
greater than 1500m <sup>2</sup>	6m	7%

**Comment:**

The total site area equals 2,861sqm. 200sqm, or 7% of the site area has been allocated as Deep Soil zone.

**Compliance:**

Complies

**3F Visual privacy**

**Objective 3F-1**

Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.

**Design Criteria:**

1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

Building	Habitable	Non-
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**Comment:**

**Separation distance between buildings onsite**

Compliant separation exists for all habitable rooms between the two buildings. Compliant separation exists for all balconies up to and including the 4th storey. Balconies on the 5th storey have included adjustable privacy screens. This is considered acceptable.

The site is irregular in shape, with two street frontages: Baker Street (north-west boundary) and Maitland

**Compliance:**

Satisfactory (Merit based assessment)



height	rooms & balconies	habitable rooms	Road (north-east boundary). Given the site's corner location, the proposed development has been built to the Maitland Road and Baker Street boundaries.
up to 12m (4 storeys)	6m	3m	
up to 25m (5-8 storeys)	9m	4.5m	A variable setback (3.25m – 10.51m) is provided to the south-east boundary which will be utilised for a pedestrian link. The upper levels of the building are appropriately setback, particularly on the south-west (Webb Park) boundary and the south-east boundary adjoining the proposed pedestrian laneway.
over 25m (9+ storeys)	12m	6m	As such, the proposed development is consistent with the intent of this objective and acceptable in this regard.

**A4 Solar and daylight access**

**Objective 4A-1**

To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space

<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
<p>1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</p>	<p>A total of 71 % of all apartments receive a minimum of 2 hours direct sunlight between 9 am and 3 pm.</p> <p>The proposed development is considered acceptable regarding solar and daylight access.</p>	<p>Complies</p>
<p>2. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.</p>	<p>A total of 15.5% of apartments receive no direct sunlight in mid-winter. Those apartments that do not meet the requirement face directly south where there are significant views overlooking Webb Park. Living spaces are oriented to capture the views for these apartments.</p>	<p>Satisfactory (Merit based assessment)</p>

	<p>Living spaces are located to the north where possible. For most apartments, living spaces are designed to be dual aspect to increase solar penetration into the apartment during winter.</p> <p>An enclosed communal room has been provided on the rooftop of each building which receives adequate sunlight during the winter months.</p>	
<b>4B Natural ventilation</b>		
<b>Objective 4B-3</b>		
The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
<p>1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p>	<p>A total of 62% of all units are dual aspect and are naturally cross ventilated.</p> <p>For the single aspect apartments, the layout and design maximise natural ventilation; apartment depths have been minimised and frontages maximised to increase ventilation and airflow.</p> <p>All habitable rooms are naturally ventilated via adjustable windows with suitable effective operable areas.</p>	Complies
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
<p>2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	N/A	N/A
<b>4C Ceiling heights</b>		
<b>Objective 4C-1</b>		
Ceiling height achieves sufficient natural ventilation and daylight access.		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
<p>1. Measured from finished floor level to finished ceiling level,</p>	<p><u>Mixed use</u> A 4.2m floor to ceiling height is provided for ground floor.</p>	Complies

<p>minimum ceiling heights are:</p> <table border="1"> <tr> <td colspan="2"><b>Minimum ceiling height for apartment and mixed-use buildings</b></td> </tr> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use</td> </tr> </table>	<b>Minimum ceiling height for apartment and mixed-use buildings</b>		Habitable rooms	2.7m	Non-habitable	2.4m	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p>A minimum ceiling height from finished floor level to finished ceiling level of 2.7m to habitable rooms and 2.4m to non-habitable rooms is achieved for all apartments.</p>	<p>Complies</p>		
<b>Minimum ceiling height for apartment and mixed-use buildings</b>												
Habitable rooms	2.7m											
Non-habitable	2.4m											
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use											
<p><b>4D Apartment size and layout</b></p>												
<p><b>Objective 4D-1</b> The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.</p>												
<p><b>Design Criteria:</b></p> <p>1. Apartments are required to have the following minimum internal areas:</p> <table border="1"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m<sup>2</sup></td> </tr> <tr> <td>1 bedroom</td> <td>50m<sup>2</sup></td> </tr> <tr> <td>2 bedroom</td> <td>70m<sup>2</sup></td> </tr> <tr> <td>3 bedroom</td> <td>90m<sup>2</sup></td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p><b>Comment:</b></p> <p>All apartments achieve the minimum internal areas required.</p>	<p><b>Compliance:</b></p> <p>Complies</p>
Apartment type	Minimum internal area											
Studio	35m <sup>2</sup>											
1 bedroom	50m <sup>2</sup>											
2 bedroom	70m <sup>2</sup>											
3 bedroom	90m <sup>2</sup>											
<p><b>Design Criteria:</b></p> <p>2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than</p>	<p><b>Comment:</b></p> <p>All the apartments are provided with a window in an external wall to every habitable room.</p>	<p><b>Compliance:</b></p> <p>Complies</p>										

<p>10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>		
<p><b>Objective 4D-2</b></p> <p>Environmental performance of the apartment is maximised.</p>		
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>
<p>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	<p>N/A (All apartments are provided a combined living/ dining/ kitchen area)</p>	<p>N/A</p>
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>
<p>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p>All apartments have a maximum habitable room depth of less than 8m from a window for open plan living, dining and kitchen area.</p>	<p>Complies</p>
<p><b>Objective 4D-3</b></p> <p>Apartment layouts are designed to accommodate a variety of household activities and needs.</p>		
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>
<p>1. Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space)</p>	<p>All master bedrooms have a minimum area of 10m<sup>2</sup> and all other bedrooms have a minimum area of 9m<sup>2</sup> (excluding wardrobe space).</p>	<p>Complies</p>
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>
<p>2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p>	<p>All bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p>	<p>Complies</p>
<p><b>Design Criteria:</b></p>	<p><b>Comment:</b></p>	<p><b>Compliance:</b></p>
<p>3. Living rooms or combined living/dining rooms have a minimum width of:</p> <ol style="list-style-type: none"> <li>1. 3.6m for studio and 1-bedroom apartments.</li> <li>2. 4m for 2- and 3-bedroom apartments.</li> </ol>	<p>All apartments have living rooms or combined living/ dining rooms which achieve the minimum dimensions required for the number of bedrooms provided.</p>	<p>Complies</p>

<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>															
4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	N/A	N/A															
<b>4E Private open space and balconies</b>																	
<b>Objective 4E-1</b> Apartments provide appropriately sized private open space and balconies to enhance residential amenity.																	
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>															
1. All apartments are required to have primary balconies as follows:	Many balconies to apartments exceed the minimum dimensions and area.	Satisfactory (Merit based assessment)															
<table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Min. area</th> <th>Min. depth</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4m<sup>2</sup></td> <td>-</td> </tr> <tr> <td>1 bedroom</td> <td>8m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>2 bedroom</td> <td>10m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>3+ bedroom</td> <td>12m<sup>2</sup></td> <td>2.4m</td> </tr> </tbody> </table>	Dwelling type	Min. area	Min. depth	Studio	4m <sup>2</sup>	-	1 bedroom	8m <sup>2</sup>	2m	2 bedroom	10m <sup>2</sup>	2m	3+ bedroom	12m <sup>2</sup>	2.4m	<p>Several apartments facing Maitland Road have reduced balcony areas due to noise from motor vehicle traffic.</p> <p>As discussed under 'Principle 6. Amenity' of the Design Quality Principle assessment above, amendments were made during the assessment process in response to recommendations from the UDRP each building is provided with a communal open area on the upper floors.</p> <p>As such, the development satisfies the design criteria for this objective.</p>	
Dwelling type	Min. area	Min. depth															
Studio	4m <sup>2</sup>	-															
1 bedroom	8m <sup>2</sup>	2m															
2 bedroom	10m <sup>2</sup>	2m															
3+ bedroom	12m <sup>2</sup>	2.4m															
<b>4F Common circulation and spaces</b>																	
<b>Objective 4F-1</b> Common circulation spaces achieve good amenity and properly service the number of apartments.																	
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>															
1. The maximum number of apartments off a circulation core on a single level is eight.	Two lift cores are provided with a maximum number of five apartments per level.	Complies															
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>															
2. For buildings of 10 storeys and over, the maximum number of apartments sharing a	N/A	N/A															

single lift is 40.										
<b>4G Storage</b>										
<b>Objective 4G-1</b> Adequate, well-designed storage is provided in each apartment.										
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>								
<p>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>1 bedroom</td> <td>6m<sup>3</sup></td> </tr> <tr> <td>2 bedroom</td> <td>8m<sup>3</sup></td> </tr> <tr> <td>3+ bedroom</td> <td>10m<sup>3</sup></td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	1 bedroom	6m <sup>3</sup>	2 bedroom	8m <sup>3</sup>	3+ bedroom	10m <sup>3</sup>	<p>All apartments are provided with the minimum required storage volume (being storage in addition to storage in kitchen, bathrooms, and bedrooms).</p>	<p>Complies</p>
Dwelling type	Storage size volume									
1 bedroom	6m <sup>3</sup>									
2 bedroom	8m <sup>3</sup>									
3+ bedroom	10m <sup>3</sup>									

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

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

Clause 2.1 - Land Use Zones

The subject property is located within the B4 Mixed Use zone under NLEP 2012. The proposed development being for shop top housing, is permissible in the zone with consent.

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

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

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

Clause 2.6 - Subdivision—Consent Requirements

The proposed development includes strata subdivision which is permissible with development consent.

Clause 2.7 - Demolition Requires Development Consent

The site currently contains a service station, several retail premises and associated car parking.

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

Clause 4.1 - Minimum Subdivision Lot Size

The proposed development includes strata subdivision which is permissible with development consent.

Clause 4.3 - Height of Buildings

The proposed development does not comply with the height of buildings development standard of 20m under NLEP 2012. The proposed height of the building is 21.3m (to the lift overrun) which equates to a 6.5% variation to the height of buildings development standard.

As the proposed development seeks to vary the building height standard in Clause 4.3(2), a written variation request has been made by the Applicant which seeks to justify the contravention of the development standard by addressing the matters required by Clause 4.6. Refer to discussion under Clause 4.6 Exceptions to Development Standards below.

Clause 4.4 - Floor Space Ratio

The proposed development does not comply with the FSR development standard of 2:1 under NLEP 2012. The proposed development has a FSR of 2.09:1, which equates to a 4.5% variation to the FSR development standard.

As the proposed development seeks to vary the FSR development standard in Clause 4.4(2), a written variation request has been made by the Applicant which seeks to justify the contravention of the development standard by addressing the matters required by Clause 4.6. Refer to discussion under Clause 4.6 Exceptions to Development Standards below.

Clause 4.6 - Exceptions to Development Standards

The proposed development seeks a variation to both the maximum building height and floor space development standards. The development application is accompanied by a written Clause 4.6 variation request.

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

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



An assessment of the Applicant's Clause 4.6 Variation Request to the maximum building height and floor space ratio development standards are provided below.

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

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

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

Newcastle Local Environmental Plan 2012.

What is the zoning of the land?

NLEP 2012 identifies that the site is within the B4 Mixed Use zone.

The objectives of the B4 Mixed Use zone are as follows:

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

Is the standard to be varied a development standard?

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

What are the objectives of the development standard?

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

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

*The objectives of Clause 4.4 – Floor Space Ratio are as follows:*

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

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

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

Height

LEP Clause	Development Standard	Proposal	Variation
Clause 4.3 – Building Height	20m	21.3m Lift overrun	6.5% (1.3m)

Floor Space Ratio

LEP Clause	Development Standard	Proposal	Variation
Clause 4.4 – Floor Space Ratio	2:1 (5,724m <sup>2</sup> )	2.09:1 (5,969m <sup>2</sup> )	4.5% (245m <sup>2</sup> )

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

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

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

- 1) *Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?*
- 2) *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?*

- 3) *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*
- 4) *Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?*
- 5) *Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning also unreasonable or unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.”*

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

Overall, it is submitted that the development is consistent with the objectives of Clause 4.3 and Clause 4.4 for the following reasons

- i) Architectural design measures have been effectively implemented to soften the facade of the proposed development using varying materials, modulated design elements, increased upper-level setbacks, separated built forms design and appropriate landscaping.
- ii) The development will contribute to the desired future character and vision of the Mayfield Renewal Corridor, including mixed use development with residential components. The development will introduce greater variety of residential accommodation in the area for a range of demographics, while also providing an activated street level.
- iii) The proposed development will improve the vitality, identity, and diversity of Mayfield Renewal Corridor by contributing to the ongoing revitalisation of the area.
- iv) The exceedance in height is predominately due to the lift overrun, located at the centre of the building. This exceedance in height is not expected to have any adverse amenity or overshadowing impacts to the public domain or adjoining properties and will be well incorporated into the design of the building
- v) The development will not unreasonably overshadow surrounding land uses; and does not cause unreasonable shadowing of the public domain, specifically to Webb Park located at the rear of the site, in comparison to a fully compliant proposal on the site.

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

The Applicant's written request has demonstrated that the proposed height and floor space variations do not result in significant adverse environmental impacts and that there are sufficient environmental planning grounds to justify a contravention to the height control.

The applicant submits the following environmental planning grounds to justify contravening the development standard:

- i) Whilst exceeding the height of building and floor space ratio standards for the site, the proposal contributes positively to the locality incorporating through-site links and building separation which enables view sharing, pedestrian connectivity and built form relief.
- ii) The exceedances will be visibly difficult to detect; and will be mitigated using architectural details.
- iii) The overall massing, scale, bulk, and height of the proposed development is consistent with the desired future character envisioned for the Webb Park Precinct of the Mayfield Renewal Corridor.
- iv) If made to strictly comply with Clause 4.3 and Clause 4.4, there would be no additional benefit to the streetscape or public domain in the local area.

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

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

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

The intent of the B4 Mixed-Use zone is to provide a wide range of compatible uses including business, office, residential, retail, and other development in accessible locations. This proposal provides of a range of uses, including commercial and residential components, and is in an accessible location for public transport and pedestrian access. These uses are compatible with the objectives of the zone and will complement surrounding land uses and strengthen the Mayfield Renewal Corridor, particularly in the vicinity of the Webb Park precinct.

The proposed development will provide several public benefits including contributing to the mix of land uses in the locality, creating employment opportunities during construction and operational stages as well as providing office, residential and retail space close to public transport. The proposed development represents a high-quality urban design, which seeks to continue to redevelop and enhance the Webb Park Precinct of the Mayfield Renewal Corridor.

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

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

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

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

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

Officer's conclusion

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

If made to strictly comply with Clause 4.3 and Clause 4.4, there would be no additional benefit to the streetscape or public domain. Strict compliance with Clause 4.3 and Clause 4.4 of the NLEP 2012 is therefore considered unreasonable and unnecessary.

Clause 5.10 - Heritage Conservation

The subject site is not a listed local or state heritage item. The site is not a listed archaeological site and is not identified as an indicative archaeological site within the Newcastle Archaeological Management Plan 1997. Further, the site is not an

Aboriginal Place. An AHIMS search found no Aboriginal objects in the vicinity of the site.

However, the site is adjacent to two listed local heritage items, 'Webb Park' (I258) and 'Residence' (I259 – No.88 Hanbury Street). It is considered that the development has generally been designed and located in such a way that it will not detract from the heritage significance of Webb Park or the adjacent former residence.

The significance of the adjoining Webb Park has been assessed in the SoHI submitted with the application. The SoHI has expanded upon the Statement of Significance provided in the NSW State Heritage Inventory. It is considered that the park demonstrates historical significance; significant historical associations; aesthetic significance and social significance. Significant characteristics of the park include its grand trees, cross path, central feature, and shrubberies.

The development is satisfactory having regard to the objectives of Clause .5.10 NLEP, being to conserve the heritage significance of heritage items (including associated fabric, setting and views), for the following reasons:

- i) The site is not a heritage item, and no significant fabric will be impacted by the proposal.
- ii) The development will impact the existing setting of the adjacent heritage item, Webb Park. However, the size of the park is significant and proportionately the proposed development will not overwhelm its scale.
- iii) It is considered that the proposed development will not have an unacceptable impact on views to the park, which are heavily dominated by the existing mature fig trees on the southern boundary. The proposed development will generally appear in the backdrop of views to the park and residence at 88 Hanbury St. Views within the park are directed along the length of the park due to the existing row of trees and existing development on the northern boundary (including the subject site) which is built up to the park edge and does not facilitate any kind of interaction with the park. Providing an active frontage to Webb Park and a pedestrian link to Maitland Road will make the park more accessible and be an improvement on the existing situation.
- iv) Views to the adjacent residence at 88 Hanbury Street will not be significantly impacted. The nature of the allotment has resulted in a deep rear setback between the heritage item and the proposed development. Primary views to the residence are achieved from Hanbury Street and are already significantly compromised by existing unsympathetic development in the front setback of the former residence.

Clause 6.1 – Acid Sulfate Soils (ASS)

The site is affected by Class 5 acid sulphate soils. A preliminary assessment of the proposed development has indicated that there is no known occurrence of Acid Sulfate Soils on the site. Accordingly, an Acid Sulfate Soils Management Plan is not required for the works in accordance with the provisions of Clause.6.1.

However, a condition of consent is recommended that requires further assessment of ASS potential to be undertaken during excavation. If ASS is found to be present, soils will be treated in accordance with the NSW Acid Sulfate Soils Advisory Committee's Manual. The proposal is considered acceptable having regard to this clause.

Clause 6.2 - Earthworks

The development includes a basement car park which will require earthworks to be undertaken. The proposed earthworks will result in approximately 3.2m of excavation across the site.

The application is supported by several technical reports, which satisfactorily demonstrate that the proposal will not result in detrimental environmental impacts because of proposed earthworks, construction and demolition. Consideration has been given to the matters prescribed under Clause .6.2 and the proposed earthworks are considered acceptable.

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

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

**5.3 Any development control plan**

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

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

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

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

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

Residential Development - Section 3.03

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

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

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

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

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

The main planning requirements of relevance in the Newcastle Development Control Plan 2012 (NDCP 2012) are discussed in detail below.

Principal controls (3.03.01)

A. *Frontage widths*

The minimum site frontage for multi dwelling housing and residential flat buildings within the B4 Mixed Use zone is 15m. The subject site has two street frontages more than 15m, which complies with the NDCP 2012 requirements.

B. *Front setbacks and C. Side and rear setbacks*

The setback controls specify compliance with the relevant locality specific controls under Section 6 of the NDCP 2012 as an acceptable solution. The proposal satisfies the relevant locality specific building setbacks as discussed under 'Section 6.05 – Mayfield Renewal Corridor' of the NDCP 2012 assessment below.

Further, the relevant components of the Apartment Design Guide under SEPP 65 prevail over the setback controls of the NDCP 2012. The development application satisfies the provisions of the Apartment Design Guide as detailed under the 'State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development' assessment in **Section 5.1** of this report above.



*D. Landscaped Area*

Development in the B4 Mixed Use zone is required to provide a minimum landscaped area of 20% and a minimum deep soil zone of 10% of the site area. The total landscaped area provided is 21% with 7% of the site area as deep soil zone. Although the proposed deep soil landscaping varies from the requirement, it is considered satisfactory for the use of the site.

The proposed landscaping will make a positive contribution to the amenity of the development and is incorporated into areas of private open space and communal open space. The landscaping provides positive amenity to residents, including privacy and appropriate screening, increasing acoustic privacy as well as enhancing the appearance of the development. The proposed planting incorporates both native and exotic plant species that are easily maintained and will provide visual interest to the development.

The proposed landscaped areas are appropriate for the development and will contribute positively to the amenity and design of the building.

*Siting the development (3.03.02)*

*A Local character and context*

A detailed site analysis was submitted with the development application. The proposed development reflects the desired future character of the area and will not unreasonably impact on the amenity or privacy of adjoining land uses.

Further, the proposal satisfies the relevant provisions for the Mayfield renewal Corridor, as discussed under '*Section 6.05 – Mayfield Renewal Corridor*' of the NDCP 2012 assessment below. The proposed development is acceptable having regard to local character and context.

*B. Public domain Interface*

The site is located on a corner and a public park is located at the rear of the site. The proposed development has been sited and designed to address both street frontages and a public pedestrian link will provide clearly defined access to Webb Park. The development provides an appropriate interface with the public domain and allows for clear delineation between the private and public space.

Further, the interface proposed by the development is consistent with the relevant locally specific provisions, as discussed under '*Section 6.05 – Mayfield Renewal Corridor*' of the NDCP 2012 assessment below.

*C. Pedestrian and vehicle access*

All internal vehicle paths are compliant with the relevant Australian Standards. Conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) to ensure the provision of suitable lighting to carpark areas and pedestrian pathways.

*D. Orientation and siting*

Building types and layouts have been designed to respond to the streetscape and site constraints while optimising solar access within the development and maximising street surveillance and connectivity.

Further, the relevant components of the Apartment Design Guide under SEPP 65 prevail over solar access controls of the NDCP 2012. The development application satisfies the provisions of the Apartment Design Guide as detailed under the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment in **Section 5.1** of this report above.

It is further noted that overshadowing impacts as a result of the height exceedances do not cause unacceptable impacts for the site or adjoining properties due to the minor and localised location of the exceedance.

*E. Building Separation*

Adequate separation is provided between buildings to allow for quality landscaping, daylight access, and to reduce visual bulk and scale. The side and rear setbacks for the development meet the performance criteria of the NDCP 2012 by providing sufficient separation to minimise any potential amenity impacts, including privacy, daylight access, acoustic amenity and natural ventilation.

Further, the relevant components of the Apartment Design Guide under SEPP 65 prevail over the building separation controls of the NDCP 2012. The development application satisfies the provisions of the Apartment Design Guide as detailed under the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment.

*Amenity (3.03.03)*

Many of the controls in 3.03.03 specify compliance with the relevant components of the Apartment Design Guide under SEPP 65 as an acceptable solution. The development application satisfies the provisions of the Apartment Design Guide, as detailed under the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment in this report. Accordingly, only the relevant additional controls contained within 3.03.03 have been discussed below.

*A Solar and daylight access*

The proposal is required to address solar access as identified in SEPP 65 – ADG, and NDCP 2012. Sufficient solar access is available to habitable rooms and private open space areas within the development to generally satisfy the relevant NDCP objectives and is considered adequate with respect to the orientation of the site.

*B Natural ventilation*

The ADG recommends that at least 60% of apartments in the first nine storeys of buildings be naturally cross ventilated. A total of 36 out of 58 total apartments, or 61%, will achieve natural cross ventilation. The development application satisfies the provisions of the Apartment Design Guide, as detailed under the *'State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development'* assessment in **Section 5.1** of this report above.

*C Ceiling height*

The proposal complies with relevant provisions of SEPP 65 – ADG relating to minimum apartment ceiling heights.

*D Dwelling size and layout*

The proposal complies with relevant provisions of SEPP 65 – ADG relating to minimum apartment size and layout, the provisions of the ADA prevail of the provisions of the NDCP 2012.

*E Private open space*

The proposal complies with relevant provisions of SEPP 65 – ADG relating to private open space.

*F Storage*

Adequate storage has been provided within each apartment as well as within the basement adjacent to each car space in accordance with SEPP 65 – ADG.

*G Car and bicycle parking*

The car and bicycle parking controls specify compliance with Section 7.03 Traffic, Parking and Access of the NDCP 2012 as acceptable solution. The development application satisfies the relevant car and bicycle parking controls, as discussed under *'Traffic, Parking and Access – Section 7.03'* of the NDCP 2012 assessment below.

*H Visual privacy*

The proposal has considered visual privacy of neighbours through appropriate site planning and building location within the site. The building design has achieved design excellence principles and compliance with the SEPP 65 Apartment Design Guide. The proposal complies with relevant provisions of SEPP 65 – ADG relating to visual privacy and building separation.

*I Acoustic privacy*

An Acoustic Assessment has been submitted with the application and is considered to have appropriately addressed potential acoustic privacy impacts.

*J Noise and pollution*

The proposed development is located on a classified road and within proximity to other existing noise generating sources, such as the Mayfield Hotel which provides night-time entertainment and amplified music, a mechanical repair and tyre fitting premises is also located adjacent the site. The applicant submitted a Noise Impact Assessment (NIA) which provided an assessment of these external noise impacts to the proposed development. The NIA also considered the noise impacts arising because of the proposed development, including car parking.

The NIA has been assessed and it demonstrates that compliance with internal noise level requirements will be achieved. The proposed development is appropriately located and designed to ameliorate potential outside noise, including traffic noise. The development is acceptable subject to draft conditions included in **Attachment B**.

*Configuration (3.03.04)*

*A Universal design*

The spatial planning and general arrangements of the development suitably maximises accessibility to offer inclusion for all building users, and as such is considered to promote flexible housing for community members.

*B Communal area and open space Communal area and open space*

A total of 410m<sup>2</sup> of communal open space is provided for the development, including communal open space on Levels 4 and 5 of each building in addition to separate communal open spaces located on the ground floor level. The communal open space areas are designed as passive spaces with limited uses, to encourage use of the adjacent public open space (Webb Park) and existing surrounding facilities within the site area.

The communal open space is considered to achieve adequate solar access of a suitable size to enhance the amenity of future residents. Common circulation spaces achieve good amenity and promote safety and social interaction between residents.

*C Architectural design and roof form*

The overall architectural design and roof form has achieved the design excellence principles and compliance with the relevant provisions of SEPP 65 Apartment Design Guide.

*D Visual appearance and articulation*

The overall building form and facade design has achieved the design excellence principles and compliance with the relevant provisions of SEPP 65 Apartment Design Guide.

Environment (3.03.05)

*A Energy efficiency*

The density of the proposed development limits the ability to provide dedicated outdoor clothes drying areas. However, each apartment has access to private balconies/terrace to utilise if required. Given the nature of the proposal this is considered acceptable.

*B Water management and conservation*

The water management and conservation controls specify compliance with the relevant stormwater treatment and disposal requirements of Section 7.06 Stormwater under NDCP 2012 as an acceptable solution. The proposed development satisfies the relevant stormwater treatment and disposal controls as discussed under 'Section 7.06 Stormwater' of the NDCP 2012 assessment below.

*C Waste management*

Waste storage and collection facilities are integrated into the development and have minimal impact on the amenity of adjoining residents, building entry and the streetscape.

Furthermore, the proposal can be serviced by CN's Waste Collection Services without disruption to traffic, on street parking and without requiring waste bins to be placed on the street, as discussed under 'Waste Management – Section 7.08' of the NDCP 2012 assessment below.

Commercial Uses - Section 3.10

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

Flood Management - Section 4.01

The site is identified as being in a low risk to life hazard (L2) and low risk to property (P2) zone in the Probable Maximum Flood (PMF) events. Therefore, a flood refuge is not required for the development.

The proposed ground floor level foyer and lift areas and commercial units comply with the required flood planning level requirements. The basement area will be appropriately protected to prevent flood waters entering the basement.

The impacts from flooding and risks are considered generally low for the site and the development. The proposal has been assessed with respect to flood management and subject to the recommended Draft Conditions of Consent is satisfactory, subject to draft conditions included in **Attachment B**.

Safety and Security - Section 4.04

A Crime Risk Assessment has been provided which demonstrates that the proposal incorporates appropriate crime prevention features to reduce the likelihood of criminal activity and provide a safe environment for future residents. Landscaping, walls and fencing have been designed to ensure clear sightlines between public and private areas. Accordingly, the proposal is acceptable in relation to safety and security.

Social Impact - Section 4.05

The proposed development will result in the provision of additional housing within an established inner-city suburb with access to public transport, employment opportunities, community infrastructure, education and services.

The proposal includes a mix of residential apartment types through housing diversity which means greater housing choice for a range of households, which can also create more affordable housing options. The development will increase the population in an ideal location and lead to the activation of an existing underutilised site. The associated public domain improvements also contribute positively to the existing locality.

The development does not involve a potential loss of opportunity or resources for future generations. It is unlikely that a development of the nature proposed would result in increased anti-social behaviour.

Redevelopment of this under-utilised site is a positive outcome socially. The proposal will provide additional housing choice and employment opportunities in the locality (during construction). As such, the proposed development is acceptable in terms of the above Section of the NDCP 2012.

Soil Management - Section 5.01

The proposed development involves earthworks, in particular excavation. The proposed earthworks have been informed by supporting technical reports and assessments, including a Construction Management Plan and Geotechnical investigations.

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

Accordingly, the proposal is acceptable subject to conditions included in the recommended Draft Schedule of Conditions (**Attachment B**) to address soil management and ensure adequate sediment and erosion control measures are in place for the construction period.

Land Contamination - Section 5.02

Land contamination has been investigated and is considered suitable as detailed under R&H SEPP 2021 within the report above, which found the site to be acceptable for the proposed development and consistent with the provisions of the SEPP and CN's requirements subject to the inclusion of CN's standard conditions of consent addressing classified waste removal/ disposal.

As such, the proposed development is satisfactory regarding contamination and relevant conditions have been included in the recommended Draft Schedule of Conditions to address classified waste removal and disposal (**Attachment B**).

Vegetation Management - Section 5.03

Two small trees located in the garden beds along the south-eastern boundary of the site are proposed to be removed. The trees are non-native and approximately 3m in height. An arborist's report has been provided which details species, location, size, health, and value of trees on site. The report is prepared generally in accordance with CN tree assessment requirements, and it is considered that the proposed tree removal is acceptable.

The amenity of the area will not be significantly impacted in respect of the local character and appearance with the removal of these trees.

Aboriginal Heritage - Section 5.04

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

Heritage Items - Section 5.05

The site is adjacent to two listed local heritage items, 'Webb Park' (I258) and 'Residence' (I259 – No. 88 Hanbury Street). It is considered that the development has generally been designed and located in such a way that it will not detract from the heritage significance of Webb Park or the adjacent former residence.

The significance of the adjoining Webb Park has been assessed in the Statement of Heritage Impact (SoHI) submitted with the application. The SoHI has expanded upon the Statement of Significance provided in the NSW State Heritage Inventory. It is considered that the park demonstrates historical significance; significant historical associations; aesthetic significance and social significance. Significant characteristics of the park include its grand trees, cross path, central feature and shrubberies.

The proposed development will not detract from the assessed significance of Webb Park. The proposed development will alter the existing setting of the park; however the proposed level of change is considered acceptable. The scale of the development is appropriate with consideration to the desired future character of the Mayfield Renewal Corridor and is balanced with the substantial scale of Webb Park itself.

Historical development along the north side of the park has traditionally turned its back on the park. The development will open up new views to the park particularly from Maitland Road. The ground floor of the development provides an active frontage to Webb Park, which is considered positive and will enhance the setting of the park.

No landscaping features will be impacted by the proposal with the development contained within the boundaries of the site.

Although existing views will be altered, it is not considered to be unacceptable. Webb Park is primarily appreciated while within the park itself, and immediate views within the park are dominated by the existing fig trees on the southern boundary. The development will for the most part appear in the distance in significant views to the park from the south, east and west. There are no views from the north due to the existing built-up nature of Maitland Road.

No. 88 Hanbury Street is typically interpreted from Hanbury Street. The development will appear in the background of these views but will not dominate or overwhelm the scale of the heritage item, which is compromised by existing unsympathetic development within the front setback of the former residence.

#### Archaeological Management - Section 5.06

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

#### Part 6.00 Locality Specific Provisions - Mayfield Renewal Corridor - Section 6.05

The site is located with Precinct 4 – Webb Park of the Mayfield Renewal Corridor. It is envisaged that this precinct will continue to provide a range of mixed uses, with a focus on additional residential densities, in particular where these address Webb Park.

The overall setbacks are generally consistent with the setback controls, specifically on ground level, and will suitably reduce impacts to surrounding properties and land uses. The upper-level balconies are setback and reduced further on the Maitland Road frontage more so than balconies on other boundaries. This is to assist in enhancing the scale and alignment of the facade along Maitland Road, as well as providing more distance from traffic noise below.

The proposed bulk and scale of the development is considered appropriate for the site's location on the corner of Maitland Road and Baker Street. Taking into consideration the future vision of the Mayfield renewal corridor and recent developments in the area, the proposed development is consistent with the intended future of the area.

A new two-way vehicular crossing from Baker Street frontage is proposed and this will be the only vehicular access for the development. Although the Mayfield Renewal Corridor concept plan outlines a new laneway through the site, the proposed nature of the development including the car parking and basement access will not make a potential public laneway possible. The remaining parcel of land



between Hanbury Street and Maitland Road could be accessed from the existing driveway on Hanbury Street and use the Maitland Road frontage driveway access.

The proposed development offers improvements to the public domain and will improve the existing streetscape, along with encouraging activity and movement at pedestrian level. These improvements will be complemented by additional landscaping and street trees.

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

Landscaping at street level is designed to create interest and interaction with the public, while positively contributing to the public amenity of the streetscape. Landscaping proposed on the south-eastern boundary of the site backing onto Webb Park will contribute to the visual interest and attraction of the pedestrian link, which will be visible to Webb Park and residents of the apartments above. These improvements will be complemented by an additional eight street trees along Maitland Road and Baker Street frontages.

Upper-level landscaping will consist of several low-medium level planting beds across the boundaries of the floors, particularly in areas of private and communal open space. The proposal is acceptable in terms of its landscaping outcomes. It is noted that these requirements overlap with criteria elsewhere within the NDCP 2012 and the provisions of the ADG.

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

##### *Access*

The car parking area will be accessed via a shared entry/exit driveway on Baker Street. The carpark layout has been designed to enable suitable manoeuvrability for vehicles to safely enter and exit the site in a forward direction.

The internal layout of the carparking area is fully compliant with relevant requirements of the AS2890, including internal manoeuvring, car parking aisle width, ramp grades and vehicle clearances.

Existing vehicular crossings on Maitland Road and Baker Street will be made redundant and shall be replaced with new kerb/gutter. On-street parking will be reinstated in accordance with the proposed concept plans which were approved by CN's Traffic Committee.

##### *Parking rates*

In accordance with the NDCP 2012 requirements for the Mayfield Renewal Corridor, the development requires a total of 69.9 car parking spaces. A total of 70 off-street car parking spaces has been provided which complies with CN's requirements.

There are 12 commercial parking spaces which will be multi-used as visitor parking outside of business hours. It is recommended that the multi-use of the commercial car parking be managed for the site and conditions are recommended.

*Bicycle Parking*

In accordance with the NDCP 2012 requirements for the Mayfield Renewal Corridor, a total of 67 bicycle parking spaces are required. The development proposes 61 bicycle spaces on the ground floor. The remaining required spaces are able to be managed through car parking and storage areas and compliance can be achieved. Furthermore, additional casual bicycle parking can be provided with the public domain footpath area as part of the footpath upgrade works.

*Electric Car, Bicycle and Scooter Charing Stations*

It is encouraged to support increased usage and demand for electric vehicles, in this respect it is noted that the recently adopted provisions of the NDCP 2012 provides that electric circuitry needs to accommodate 'Level 2' or higher standard electric vehicle charging points to ensure that 100% of spaces are available in the future. This is consistent with previous requirements to provide car charging stations, discussed further below, therefore recommended Draft Conditions of Consent include this requirement (**Attachment B**).

Further, it is considered best practice that new buildings be installed with car charging stations for electric vehicles, bicycles, and scooters. Generally, 10% of spaces is considered adequate given the foreseen changes towards electric based transport system. It is recommended that the proposed development be installed with electric car charging system and conditions are recommended.

*Servicing*

A loading zone for heavy vehicles is proposed to be located on Baker Street, on the north-western boundary of the site. The loading zone will have a length of 20m and will be able to accommodate a 12.5m heavy rigid vehicle (HRVS) or multiple smaller vehicles. The proposed loading zone was approved by the CN's Traffic Committee in June 2021. Based on the above, the proposed on-street loading zone is considered suitable for the development.

All light vehicle loading requirements will be conducted internal to the site within the proposed visitor parking bays. The loading zone will be shared between the site and surrounding commercial premises. Servicing arrangements will be limited to refuse collection twice per week, and delivery for commercial premises. The car parking security gate is set back approx. 6.2m and allows for a car waiting space until the roller door opens and for management of the security devices.

The proposal is acceptable, subject to draft conditions included in **Attachment B**.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposal seeks to improve stormwater management from the site by providing underground reuse tank retention tanks and introducing stormwater re-use. The resulting impact on the stormwater system in the area therefore is positive and the concept stormwater management plan is supported.

The proposed development is considered satisfactory in this regard and can comply with Council's policies relating to storm water management, subject to draft conditions appended at **Attachment B**.

#### Waste Management - Section 7.08

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

Waste collection is proposed to be serviced by a private contractor; however, it has also been demonstrated that the development could be serviced by CN's Waste Services if required in the future. Waste is proposed to be collected from the loading zone located on the Baker Street frontage. As detailed above, the loading zone has been approved by CN's Traffic Committee and is considered suitable for the required servicing of the development.

CN's waste collection vehicles are able stand on Baker Street and have bins wheeled to/from the truck from the on-site refuse storage area on the ground floor, serviced and returned immediately to the refuse storage area. No garbage bins will be presented to the kerb for collection.

Accordingly, the submitted Waste Management Plan satisfies CN's requirements and has satisfactorily demonstrated that the development site is able to be serviced should the future occupants request CN waste services.

#### Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans, being \$647,872.29.

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

#### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

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

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

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

**Character, Streetscape, External Appearance, Urban Design, Height, Bulk and Scale**

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

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

The proposed setbacks of the upper additions and the site's location ensure that impact on solar access and public spaces is minimised.

**Amenity (Privacy, Overshadowing and Views)**

Privacy

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

Overshadowing

Any additional overshadowing caused by the proposal is primarily to the surrounding streets and commercial buildings and is considered acceptable in this regard.

Views

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

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

The site is located within an identified growth and renewal corridor. The proposed development is consistent with the desired character and built form of the Mayfield Renewal Corridor, bringing new residential opportunities that are well placed, highly accessible and functional.

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

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

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

The application was publicly notified in accordance with CN's Community Participation Plan (CPP) between 20 October to 8 November 2021. One late submission was received requesting that the following matters be addressed and incorporated into the development:

- i) *Drainage / water management measures*

#### Officer Response

The proposal has been assessed against the relevant stormwater and water management requirements and is acceptable. The proposed stormwater management plan is in accordance with the relevant aims and objectives of the DCP and complies with CN's policies relating to stormwater management. Appropriate conditions have been recommended in the Draft Schedule of Conditions (refer to **Attachment B**) to ensure that the development meets the specified standards.

- i) *Appropriate safeguards be in place to prevent damage to adjoining properties as a result of excavation.*

#### Officer Response:

A condition of consent is recommended requiring that a suitably qualified engineer must prepare a dilapidation report detailing the structural condition of adjoining buildings, structures or works, and public land, to the satisfaction of the certifier, prior to issue of a construction certificate,

If the engineer is denied access to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the certifier's satisfaction that all reasonable steps were taken to obtain access to the adjoining properties.

The issues and concerns raised in the submissions have all been addressed and do not warrant any further amendments to the proposal. The proposed development does not raise any other significant public interest issues beyond matters already addressed in this report.

## 5.9 The public interest

The assessment has demonstrated that the development does not cause any significant overshadowing, privacy impacts or unreasonable view loss for surrounding properties.

The proposal is consistent with CN's urban consolidation objectives, making efficient use of the established public infrastructure and services. The proposed development provides for the orderly economic development of the site for purposes for which it is zoned and will not have any significant adverse social or economic impacts.

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

The proposed development does not raise any other significant public interest issues beyond matters already addressed in this report. The development is in the public interest and will allow for the orderly and economic development of the site.

## 6.0 CONCLUSION

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

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

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

The proposal is acceptable having been assessed against the relevant heads of consideration under Section 4.15(1) of the *EP&A Act*, subject to the recommended conditions contained at **Attachment B**, and should be approved.

**ATTACHMENTS**

**Item 19 Attachment A:** Submitted Plans - 292 Maitland Road, Mayfield

**Item 19 Attachment B:** Draft Schedule of Conditions - 292 Maitland Road, Mayfield

**Item 19 Attachment C:** Processing Chronology - 292 Maitland Road, Mayfield

**Item 19 Attachments A - C distributed under separate cover**

**ITEM-20                    DAC 15/11/22 – 53 RODGERS STREET CARRINGTON –  
DA2022/00587 - DWELLING HOUSE - ALTERATIONS AND  
ADDITIONS INCLUDING DEMOLITION**

**APPLICANT:                MURRAY JAMES  
OWNER:                    N DANKO & L THREADGOLD  
NOTE BY:                 PLANNING & ENVIRONMENT  
CONTACT:                 INTERIM EXECUTIVE DIRECTOR, PLANNING &  
                                 ENVIRONMENT / ACTING MANAGER, PLANNING,  
                                 TRANSPORT & REGULATION**

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**PART I**

**PURPOSE**

A development application (DA2022/00587) has been received seeking consent for alterations and additions to a dwelling house at 53 Rodgers Street Carrington.

The proposed development includes the demolition of an existing single storey extension at the rear of the two-storey dwelling house, the construction of a new single-storey addition, minor alterations within the existing two storey dwelling, retaining walls, recladding of northern external walls and associated site works.

The submitted application was assigned to Development Officer, Walter Weinzerl, for assessment.



**Subject Land:** 53 Rodgers Street Carrington

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the Floor Space Ratio (FSR) development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% total variation (20.72% variation).

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

The application was not required to be publicly notified and no submissions were received.

**Issues**

- i) Variation to the FSR Development Standard under the NLEP 2012.



## Conclusion

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

## RECOMMENDATION

### *Vote by division*

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2022/00587 for alterations and additions including demolition to the existing dwelling at 53 Rodgers Street Carrington be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

## Political Donation / Gift Declaration

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

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

The applicant has answered 'No' to the following question on the application form: *Are you aware of any person who has financial interest in the application who has made a political donation or gift in the last two year?*

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## PART II

### 1.0 THE SUBJECT SITE

The subject site is known as 53 Rodgers Street Carrington and has a legal description of Lot 2 DP186. The site is a small rectangular allotment located on the western side of Rodgers Street Carrington. The site has a frontage of 6.55m to Rodgers Street and a depth of 23.77m and a total area of 151.7m<sup>2</sup>. Rodgers Street is quite narrow at only 6m in width.

The subject site is relatively flat and contains no significant vegetation that will be affected by the development. The subject site shares the rear boundary with land that forms part of a private laneway.

The subject site is occupied by an older style two-storey weatherboard clad, metal roofed dwelling house with an open verandah and elevated metal roofed balcony fronting Rodgers Street. A single storey weatherboard clad, metal roofed addition is currently in place at the rear of the premises.

The general form of development in the immediate area consists of a mixture of older style and renovated low density single and two storey dwellings with various forms and styles. The majority of the allotments in the locality are quite small in footprint, with many of buildings having a minimal side and front setback to the Rodgers Street frontage.

Several locally listed heritage items exist near the subject site which include the central island within the Gipps Street road "Palms in Gipps Street", "St Francis Xavier Catholic Church", "Mary McKillop Home" (60 Gipps Street) and Carrington Public School (88 Young Street).

Grahame Park is located east of the site at the intersection of Gipps and Robertson Streets, providing a relatively large open space and children's play equipment for use by local residents.

## **2.0 THE PROPOSAL**

The applicant seeks consent for alterations and additions to the existing dwelling. The existing single storey rear addition to the two-storey building will be demolished and replaced with a new single storey addition containing a kitchen/dining room, laundry, bathroom, deck and hallway. The proposal is also for minor alterations within the existing two storey dwelling including changes to the entrance door arrangements, retaining walls, recladding of northern external walls adjacent to the boundary with a fire rated wall system and associated site works.

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

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

## **3.0 PUBLIC NOTIFICATION**

The application was not required to be publicly notified and no submissions have been received.

## **4.0 INTEGRATED DEVELOPMENT**

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

## **5.0 PLANNING ASSESSMENT**

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

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

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

State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R&H) provides that prior to granting consent to the carrying out of any development on land the consent authority is required to consider whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject site is listed on City of Newcastle's (CN) contaminated lands register due to the presence of a black glassy slag and ballast that was used as filling material over 100 years ago in the Carrington locality. Accordingly, a condition relating to the removal and disposal of slag material from the site is recommended if any slag is unearthed during excavations.

In this application, the land use of the site will continue to be used for residential purposes, and the application is for small scale alterations and additions.

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

It is considered that no additional works are required, and the development proposal is acceptable having regard to this policy.

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

In accordance with the SEPP the assessment has been completed in accordance with the Section 5.03 (Tree Management) of the Newcastle Development Control Plan 2012

An arborist report has been provided and the arborist confirms that the trees and other significant vegetation in the vicinity of the proposed development, located on adjoining properties, will not be lost due to the works on the subject site. A condition requiring compliance with the recommendations of the arborist will be included in the consent. By complying with the condition of the consent, the proposed development is considered to meet the objectives of the NDCP 2012 and the SEPP.

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

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

carried out in accordance with the BASIX Certificate. By complying with the requirements of the Certificate the development is considered to meet the objectives of the SEPP.

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

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

#### Clause 2.1 - Land Use Zones

The subject property is within a R2 Low Density Residential zone under the provisions of NLEP 2012, within which zone the proposed development is permissible with CN's consent.

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

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

#### Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the single storey addition to the rear of the two-storey dwelling as well as internal alterations and the removal of wall cladding. Conditions are recommended to require that demolition works, and the disposal of material, is managed appropriately and in accordance with relevant standards.

#### Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum allowable height for buildings of 8.5m. The existing two-storey dwelling has a maximum height of approximately 8.1 m and the existing maximum height will not be changed by the proposed development. The proposed new works have a maximum height of approximately 5 m.

#### Clause 4.4 - Floor Space Ratio

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

Under the NLEP 2012 the site has a Floor Space Ratio (FSR) development standard of 0.6:1.

The existing building currently has a FSR of 0.63:1, which exceeds the FSR development standard by 5.23% (4.74m<sup>2</sup> of gross floor area).

The proposed development will result in a total FSR of 0.72:1, equating to an exceedance of 18.86m<sup>2</sup> of gross floor area or 20.72% above the prescribed maximum FSR for the subject land. The proposed development results in a further increase of approximately 14.1m<sup>2</sup> of gross floor area when compared to the existing building on the subject site.

Clause 4.6 - Exceptions to Development Standards

The proposal seeks consent to vary the FSR development standard (Clause 4.4) in accordance with Clause 4.6 of the NLEP 2012.

The applicable maximum FSR development standard is 0.6:1.

The existing dwelling has an FSR of 0.63:1 and exceeds the prescribed maximum FSR by 5.23% (4.74m<sup>2</sup>).

The proposed development has an FSR of 0.72:1, exceeding the prescribed maximum FSR by 20.72% (18.86m<sup>2</sup>). Compared to the existing development, this equates to an additional 14.1m<sup>2</sup> in gross floor area (15.27%).

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

The Objectives of this Clause 4.6 are:

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

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

1. Clause 4.4 of the NLEP 2012 is not expressly excluded from the operation of this Clause; and
2. For the purposes of NLEP Clause 4.6(3), the applicant has prepared a written request, seeking to justify the contravention of the development standard and demonstrating that:
  - a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - b) There are sufficient environmental planning grounds to justify contravening the development standard.

The relevant Clauses of the NLEP 2012 in relation to the variation to the FSR development standard and the applicant's justification are discussed below:

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

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

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

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

The two submitted written requests from the applicant constitute written requests for the purposes of clause 4.6(3).

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

The applicant's Clause 4.6 request seeks to rely on the first Wehbe consideration to demonstrate that compliance with the development standard is unreasonable or unnecessary, stating that the objectives of the development standard are achieved notwithstanding non-compliance.

The objectives of the FSR development standard are:

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

A summary of the justifications provided within the applicant's written requests is provided below:

- i) The proposed development does not result in an increase in density as the number of bedrooms on the site remains the same. The additional floor space has been used to provide additional amenity to the dwelling mostly in the form of a larger kitchen and a dedicated laundry. As the proposal is for only a variation to the FSR control which is only manifested in additional area at the rear of the property and will not be visible from the public domain, the hierarchy of the centre is not impacted.*
- ii) The requested minor variance to the Floor Space Ratio Standard does not significantly manifest in the overall built form of the proposal nor would strict compliance with it result in a built form that is markedly different to what is currently proposed.*
- iii) The built form and bulk and scale of the proposed development is not dissimilar to what is currently on the site. The proposal is generally within the applicable building envelopes required by the Newcastle Development*

*Control Plan 2012, which form part of the planning controls that are used to assess bulk and scale. There is a small section of building which exceeds the allowable height of a built to boundary wall, which is addressed in the Statement of Environmental Effects. In addition the building is articulated, both in terms of form and materials which further enhances the appearance of the building.*

- iv) The underlying objective of the Floor Space Ratio Standard is as a part of a number of planning controls that work in unison to control scale and density of built form on sites. The other primary controls which also impact scale & density are height limits, building envelopes and landscaped area. As the floor space ratio forms a part of the planning controls in regard to the objectives of the Standard and compliance with the remaining primary controls listed above is achieved this provides sufficient grounds for giving consideration to varying the standard.*
- v) Strict compliance is unreasonable as it would not make any perceptible difference in respect to the stated objectives of the instrument. Strict adherence to the FSR in this particular case is unnecessary, in that strict compliance would not make any difference to the perceived bulk and scale of the building from both the public domain and the perspective of neighbouring properties.*

CN Officer Comment

The proposed development provides for additions and alterations to an existing residential dwelling. The additions are similar to and in keeping with the existing single storey rear addition to the dwelling. The additions are to be sited behind the existing two storey portion of the dwelling house and will not be readily discernible when viewed from Rodgers Street and will maintain the existing and intended streetscape character.

It is agreed that the additional exceedance to the existing non-compliant FSR is considered minor and will not result in significant or adverse impacts to adjoining properties in terms of bulk, scale, overshadowing and privacy which indicates the proposed development is suitable for the site.

Furthermore, the non-compliance does not result in any additional unreasonable impacts to adjoining properties compared to the existing building and the proposal complies with the height of buildings development standard and is compliant with the relevant objectives and controls of the NLEP 2012.

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

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

In terms of addressing the NLEP 2012 Clause 4.6(3)(b), the applicant provides the following justification:

- i) *This is a variation to the controls which falls well within the context of the intent of the mechanism for controls to be varied.*
- ii) *There are a number of recently approved applications in the immediate area which have been approved on a similar basis.*

*78 Bourke Street Carrington - 20%*  
*35 Gipps Street Carrington - 26%*  
*54 Gipps Street Carrington - 8%*  
*61 Gipps Street Carrington -27.7%*  
*65 Gipps Street Carrington - 23%*

CN Officer Comment

The written requests provide sufficient justification to contravene the development standard.

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

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

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

The applicant’s response to the satisfaction of the objectives of the floor space ratio development standard was considered under the Clause 4.6(3)(a) discussion above.

However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, ‘the proposed development will be in the public interest because it is consistent’, with the relevant objectives.

***Objectives of Clause 4.4 'Floor space ratio'***

The development is consistent with the objectives of Clause 4.4 ‘Floor space ratio’ as the proposed alterations and additions to the dwelling is of a low density bulk and scale which is consistent with the built form as identified by the centres hierarchy and makes a positive contribution towards the desired built form.

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

The development is consistent with the objectives of the R2 Low Density Zone (as detailed under Clause 2.1) as the proposed development maximises residential



amenity, while maintaining a scale and height that is compatible with the character of the locality and there will be no significant adverse impacts on the amenity of any existing nearby development. Further, the development type is a permissible development within the land zone.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the R2 zone. The proposal is considered to be satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

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

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

### **Conclusion**

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

- a) That the Clause 4.6 variation request is well founded and that the requirements of Clause 4.6 of the NLEP 2012 have been satisfactorily addressed and there is power to grant development consent to the proposed development notwithstanding the variation from the floor space ratio development standard.
- b) The Clause 4.6 variation request has demonstrated that the standard is unreasonable and unnecessary in this instance and that the proposed scale of the development is in character with the existing building and surrounding locality.
- c) It is considered the proposal increases the useability of the existing dwelling, providing for the present-day housing needs of the community within a low-density residential environment whilst maintaining the amenity, privacy and solar access of adjoining development.
- d) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out.
- e) The proposed FSR exceedance is considered to have minimal impact on neighbouring properties in terms of privacy, overshadowing, view loss, bulk and scale. The FSR exceedance is consistent with similar development in the area.

- f) The Secretary's concurrence to the exception to the FSR development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per NSW Planning and Environment Circular PS 20-002 of 5 May 2020.
- g) It is considered that the Clause 4.6 request is well founded. The request to vary the prescribed maximum floor space ratio of 0.6:1 is supported.

#### Clause 5.10 - Heritage Conservation

Under the NLEP 2012, the subject property is not listed as a heritage item nor is it located within a Heritage Conservation Area. It is noted that, pursuant to subclause 5.10(2), the proposed development is not listed as development for which consent is required under Clause 5.10.

Several locally listed heritage items exist within 100m of the subject site, namely the central island within the Gipps Street road "Palms in Gipps Street", "St Francis Xavier Catholic Church", "Mary McKillop Home" (60 Gipps Street) and Carrington Public School (88 Young Street), as indicated in Schedule 5 of the NLEP 2012.

It is not considered necessary to require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage items.

It is considered that the proposed development is designed and located in such a way that the heritage significance of the heritage items will be conserved. The existing space around the heritage items, that enables their interpretation, is retained. Significant views and lines of sight to the heritage items are unaffected by the development.

#### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 2 Acid Sulfate Soils (ASS). Due to the limited nature of the proposed excavation and site works, the likelihood of potential impacts arising from ASS is expected to be limited.

A condition of consent is recommended in respect of the management of ASS. The proposed development, carried out in accordance with the conditions of the consent, is satisfactory with respect to ASS.

#### Clause 6.2 - Earthworks

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

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

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

### 5.3 Any development control plan

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

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

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

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

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

#### Single Dwellings and Ancillary Development - Section 3.02

The following comments are made concerning the proposed development and the relevant provisions of Section 3.02:

##### *Street frontage appearance (3.02.03)*

The existing street frontage appearance will not be significantly changed by the proposed development. The proposed development is considered to meet the Performance Criteria of the NDCP 2012 with respect to Street frontage appearance.

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

The subject site has a width of 6.55m and there is a minor section of the new addition that projects outside the northern side boundary envelope, which does not result in any amenity impacts. Retaining walls are proposed along parts of the northern and southern side boundaries. The development is considered to meet the Performance Criteria of the NDCP 2012 with respect to side and rear setbacks.

##### *Landscaping (3.02.05)*

Adequate landscaping areas are available on the site, and it is considered that the development meets the Performance Criteria of the NDCP with respect to landscaping.

##### *Private open space (3.02.06)*

Private open space is available on the new rear deck and in the backyard area and it is considered that the development meets the Performance Criteria of the NDCP with respect to private open space.

*Privacy (3.02.07)*

The design of the new additions and the inclusion of a new screen along the northern deck, in combination with the existing fences and screens, do not result in significant privacy impacts on the adjoining properties. It is considered that the development meets the Performance Criteria of the NDCP 2012 with respect to privacy.

*Solar access 3.02.08)*

Taking into account the orientation of the site and the scope of the single storey addition it is considered that the development meets the Performance Criteria of the NDCP 2012 with respect to solar access.

*View sharing (3.02.09)*

The proposed development will not result in significant impacts to views, and it is considered that the development meets the Performance Criteria of the NDCP 2012 with respect to view sharing.

*Car parking and vehicular access (3.02.10)*

The subject site has an historic deficiency with respect to off-street parking as the site does not contain on-site parking spaces. Considering the scope and scale of the development and the size of the site it is not considered warranted to provide an on-site parking space as part of this development.

The proposed development is considered acceptable in relation to the abovementioned NDCP 2012 section and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity.

The development establishes a scale and built form that is appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

Flood Management - Section 4.01

CN's Senior Development Officer (Engineering) has advised that the additions satisfy the flood planning level and provided conditions for the proposed development.

Accordingly, the proposal, carried out in accordance with the conditions of the consent, is acceptable in relation to flooding.

Mine Subsidence - Section 4.03

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

Soil Management - Section 5.01

Siteworks including retaining walls form part of the proposed development. It is considered that the development, carried out in accordance with the conditions of the consent, is acceptable having regard to this Section.

Land Contamination - Section 5.02

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

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees. It is noted that the works will be carried out in the vicinity of trees and other significant vegetation on adjoining properties.

In support of the proposed works, the applicant has submitted an Arboricultural Impact Assessment report that details nearby trees and significant vegetation. The report is prepared generally in accordance with Section 5.03 of CN's NDCP 2012.

By carrying out the works in accordance with the report, the existing vegetation in the vicinity of the proposed works will not be lost due to the development on the subject site.

Archaeological Management - Section 5.06

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

Traffic, Parking and Access - Section 7.03

The development is required to provide on-site car parking in accordance with the rates set out in Table 1 of section 7.03.02 of the NDCP 2012, where dwelling houses are required to have a minimum of one car parking space per 125m<sup>2</sup> of gross floor area or dwelling, and 2 spaces per dwelling where the gross floor area is over 125m<sup>2</sup>.

Section 7.03.02(B)(3) stipulates that where alterations and / or additions of an existing building is proposed, a departure from the rates set out in Table 1 may be considered if a historic parking deficiency applies. In this instance, a historic parking deficiency applies as there are no existing car parking spaces provided on the site.

Noting the scope of the works and the location of the existing dwelling it is considered that the provision of on-site spaces is not warranted as part of the proposed application.

Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

Roof waters from the new development will be directed to the street gutter by way of a sealed pipe system.

The proposed stormwater management arrangements are considered to meet relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

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

Development Adjoining Laneways - Section 7.11

Whilst the subject site shares a boundary with a private laneway no access to or from that laneway is proposed as part of the development and the proposed development does not result in changes to the existing laneway arrangements.

Public Participation

The proposal was not notified, and no submissions were received.

Development Contributions

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

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

#### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

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

In respect of Section 64 of the EP&A Regulation, CN as the consent authority for a development application is obliged to consider if it is appropriate to require existing buildings to be brought into partial conformity with the Building Code of Australia in the interests of fire safety. The applicant has indicated on the submitted plans that the owner proposes to voluntarily upgrade the fire separation of the northern walls of the existing dwelling with a lightweight fire rated cladding system.

It is also proposed that an automatic smoke alarm system be installed to the dwelling in accordance with the Building Code of Australia (BCA).

A condition of development consent is recommended to be included requiring this work to be completed in accordance with the spread of fire and automatic warning for occupants' performance requirements of the BCA as part of this development proposal.

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

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

The proposed development will not have any undue adverse impact on the natural or built environment.

The development is compatible with the existing character, bulk, scale and massing of development in the immediate area.

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

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

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

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

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

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

The application was not publicly notified.

**5.9 The public interest**

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

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

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

**6.0 CONCLUSION**

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

**ATTACHMENTS**

**Item 20 Attachment A:** Submitted Plans – 53 Rodgers Street Carrington

**Item 20 Attachment B:** Draft Schedule of Conditions – 53 Rodgers Street Carrington

**Item 20 Attachment C:** Processing Chronology – 53 Rodgers Street Carrington

**Item 20 Attachments A - C distributed under separate cover**



**ITEM-21                    DAC 15/11/22 – 9 WILLIAM STREET, MAYFIELD –  
DA2022/00532 – DUAL OCCUPANCY – INCLUDING  
DEMOLITION OF EXISTING STRUCTURES**

**APPLICANT:                M ASHURI**  
**OWNER:                    M ASHURI**  
**NOTE BY:                 PLANNING & ENVIRONMENT**  
**CONTACT:                INTERIM EXECUTIVE DIRECTOR, PLANNING &  
ENVIRONMENT / ACTING MANAGER, PLANNING,  
TRANSPORT & REGULATION**

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**PART I**

**PURPOSE**

A development application has been received seeking consent to construct a dual occupancy, including demolition of existing structures and one into two lot Torrens Title subdivision at 9 William Street Mayfield.

The submitted application was assigned to Development Officer, Fiona Dowler, for assessment.

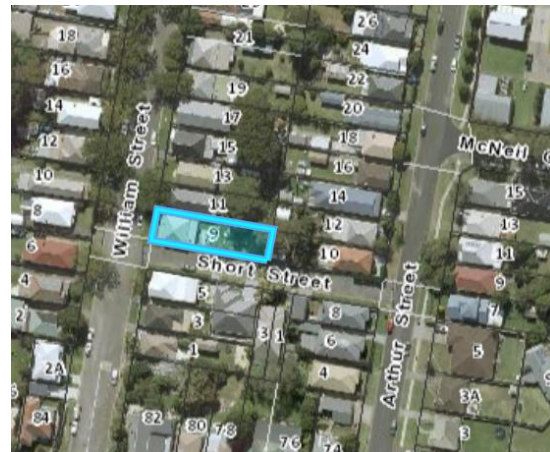
The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the Floor Space Ratio (FSR) development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.

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

The proposed development was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP) and no submissions have been received in response.

**Issues**

- 1) The proposed variation to the Floor Space Ratio Development Standard, under the NLEP 2012.



**Subject Land: 9 William Street Mayfield**

## Conclusion

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

## RECOMMENDATION

### *Vote by division*

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- C. That DA2022/00532 for construction of a dual occupancy, including demolition of existing structures at 9 William Street Mayfield be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

## Political Donation / Gift Declaration

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

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

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

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## PART II

### 1.0 THE SUBJECT SITE

The subject property comprises Lot 63 DP 192768, is rectangular in shape with a 10.058m frontage to William Street, a secondary 40.234m frontage to Short Street, and a total area of 404.6m<sup>2</sup>. The site has a sloping topography from the south to the north of approximately one metre and is occupied by a partially demolished dwelling with a large Frangipani tree to the rear yard.

The adjoining site to the north is currently vacant and existing development on other adjoining sites consists of low density residential accommodation. The general form of development in the immediate area consists of single storey dwellings.

### 2.0 THE PROPOSAL

The applicant seeks consent to construct a dual occupancy, including demolition of existing structures, and one into two lot Torrens Title subdivision.

The proposal was amended by the applicant on 31 August 2022, and again on 12 October 2022 in response to issues raised by CN regarding calculation of FSR, landscaped area, private open space and solar access. The final amended plans form the basis for this assessment.

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

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

### 3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with CN's Community Consultation Plan for a period of 14 days between 27 May and 10 June 2022. No submissions were received in response.

### 4.0 INTEGRATED DEVELOPMENT

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

### 5.0 PLANNING ASSESSMENT

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

#### 5.1 Provisions of any environmental planning instrument

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

Chapter 4 Remediation of Land Clause 4.6 of this SEPP provides that prior to granting consent to the carrying out of any development on land the consent

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

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

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

To facilitate the proposed development removal of vegetation is proposed. An assessment of the impacts of the vegetation removal has been undertaken in accordance with the provisions of the NDCP 2012 and subject to conditions of consent, the proposed vegetation removal is acceptable. The proposed development is therefore satisfactory having regard to the relevant provisions of the SEPP.

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

This policy facilitates the effective delivery of infrastructure across the State. The development is subject to the following requirements of the ISEPP. The proposal was required to be referred to Ausgrid in accordance with Clause 2.48 of this SEPP, as it includes works to be carried out within 5m of an exposed overhead electricity power line. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

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

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

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

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

#### Clause 2.1 - Land Use Zones

The subject property is located within the R2 Low Density Residential zone under the provisions of NLEP 2012, where the proposed development is permissible with CN's consent.

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

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

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

Clause 2.6 - Subdivision—Consent Requirements

The applicant has sought consent for the subdivision of the land, in accordance with this clause.

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.1 - Minimum Subdivision Lot Size

Under NLEP 2012 a minimum subdivision lot size of 400m<sup>2</sup> is afforded to the subject site. The proposed lots exceed the minimum lot size prescribed, however an exception to the minimum lot size applies under Clause 4.1A as discussed below.

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

The proposal meets the requirements of this clause as there will be a development built on the site prior to the subdivision of the land. The proposed lots will be greater than 200m<sup>2</sup> (Lot 1 – 200.2m<sup>2</sup>, Lot 2 – 204.4m<sup>2</sup>), and a condition will be placed on any consent issued to ensure that the dwellings are built prior to the release of a subdivision certificate.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 8.5m. The submitted height is approximately 8.036m and complies with this requirement.

Clause 4.4 - Floor Space Ratio

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

The proposed development will result in a total FSR of 0.676:1, equating to an exceedance of 30.64m<sup>2</sup> or 12.6% above the prescribed maximum FSR for the subject land.

Clause 4.6 - Exceptions to Development Standards

The applicant has submitted a written request that seeks to vary the Floor Space Ratio (Clause 4.4) development standard in accordance with Clause 4.6 of the NLEP 2012.

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

The Objectives of this clause are:

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

The proposed development results in a variation of 30.64m<sup>2</sup>, exceeding the principal development standard for the allotment by 12.6%. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012. An assessment of the Clause 4.6 variation request is included beneath.

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

The Floor Space Ratio (Clause 4.4) development standard in the NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act.

The Floor Space Ratio (Clause 4.4) development standard is not expressly excluded from the operation of Clause 4.6.

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

The applicant has prepared a written request for the purposes of Clause 4.6(3).

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

The applicant's clause 4.6 Variation Request written response seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unnecessary, stating that the objectives of the development standard are achieved notwithstanding non-compliance.

The objectives outlined in Clauses 4.4 (Floor Space Ratio) are as follows:

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

A summary of the justification provided within the applicant's written request is provided below:

*'The proposal will result in an appropriate density that is consistent not only with areas of residential accommodation located nearby, but the forthcoming change in dynamic of Mayfield's urban fabric. As discussed later in this report, the variation to the FSR development standard has only arisen due to the proposed double garages being provided for each dwelling. The garages do not present to the principal frontage of the site and the second storey of the development has been set in from the lower floor to provide articulation. The second storey also utilises a different material to the lower storey to provide differing textures and reduce the overall bulk and scale of the development. Moreover, the building is compliant with the maximum building height standard prescribed by Clause 4.3 of NLEP 2012. The increased density on the site proposed under the development application is sympathetic to the existing neighbourhood and the bulk and scale of the development is satisfactory in terms of offsite impacts.'*

#### CN Officer Comment

It is agreed that in this instance enforcing strict adherence to the maximum 0.6:1 floor space ratio development standard would be unnecessary as the proposed development would meet the objectives of Clause 4.4 (FSR) of NLEP 2012 despite the exceedance to the standard. The development provides a density which is consistent with the local area and the emerging density of the Mayfield area, and the building density, bulk and scale makes a positive contribution towards the desired built form.

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

#### **Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?**

In Initial Action, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole. The applicant's response to Clause 4.6(3)(b) provides the following specific environmental planning grounds to justify the breach of the standard:

*'The proposal does not undermine the objectives of the R2 zone, despite its non-compliance with the FSR development standard. Moreover, the FSR objectives pursuant to Clause 4.4(1) are still achieved by the development, notwithstanding the non-compliance.'*

*Therefore, strict compliance with this standard is unwarranted because the non-complying variation contributes little to the overall building bulk, depth and height of the development and allows for future car parking demand to be accommodated on the site. The proposal matches the low-density established context, and is thereby*

*orderly development that meets both community and user needs, and accounts for the site's environmental constraints. Furthermore, with the exception of the FSR standard, the proposal is generally compliant with the planning controls within NDCP 2012.'*

CN Officer Comment

The proposed development complies with the remainder of the Principal Development Standards of the NLEP 2012 and meets the applicable performance criteria contained within the NDCP 2012. It is accepted that there are sufficient environmental planning grounds to support contravening the development standard.

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

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

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

This provision does not require consideration of whether the objectives have been adequately addressed, rather, that 'the proposed development will be in the public interest because it is consistent' with the relevant objectives.

*Objectives of Clause 4.4 (Floor space ratio)*

It is considered that the proposed development is consistent with the objectives of Clause 4.4 (Floor space ratio) as the proposed development is of an appropriate density, consistent with the established centres hierarchy. Moreover, the proposed development's density, bulk and scale is consistent with the built form as identified by the centres hierarchy.

*Objectives of the R2 Low Density Residential Zone*

The objectives of the R2 Zone are as follows:

- a) *To provide for the housing needs of the community within a low-density residential environment.*
- b) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*



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

The development is consistent with the objectives of the R2 zone as the proposed development provides additional housing to meet the needs of the community with a density appropriate to existing and intended built form context that respects the amenity, heritage and character of surrounding development and the quality of the environment.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the R2 zone. The proposal is satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

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

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

### Conclusion

It is considered that the requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the floor space ratio development standard.

The Clause 4.6 variation request has demonstrated that the proposed floor space ratio is acceptable and therefore that strict compliance with the prescribed floor space ratio standard would be unnecessary in this instance. In this regard, the Clause 4.6 variation request is supported.

### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 2 acid sulfate soils. A site specific acid sulfate soils management plan (ASSMP) has been prepared for the development. A requirement to comply with the ASSMP is included as a condition of consent.

### Clause 6.2 - Earthworks

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

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

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

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

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

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

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

**5.3 Any development control plan**

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

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

Subdivision - Section 3.01

3.01.02 Subdivision design

The proposed lots are oriented to facilitate living areas and private open space towards the north, and have access to services.

3.01.03 Lot layout, sizes and dimensions

The proposed lots are rectangular in shape and provide sufficient street frontages to enable parking and vehicular access, recreation and landscaping. Concept stormwater plans for the proposed development demonstrate that each proposed lot is capable of draining independently of the other.

The front setbacks of the proposed dwellings are consistent with the existing streetscape and the side and rear setbacks do not result in undue impact upon the amenity and privacy of adjoining dwellings. The proposed dwellings will have landscaped areas in excess of the 10% required and suitable areas of private open space, and appropriate levels of parking and access.

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

### Residential Development - Section 3.03

The objective of this section of the NDCP 2012 is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form, maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form.

The following comments are made concerning the proposed development and the relevant provisions of Section 3.03:

#### *Principal controls (3.03.01)*

##### *A. Frontage widths*

While the site has a 10.058m frontage (William Street), it has been demonstrated that the site is wide enough to accommodate the proposed development while respecting the amenity of adjoining development.

##### *B Front setbacks*

The proposed setback from William Street is 4.122m, and the minimum proposed setback to the Short Street secondary frontage is 1.059m. Despite the secondary street setback being less than 2m, the setback varies along the secondary frontage from 1.059m up to 1.668m and is considered to be compatible with the local streetscape.

##### *C. Side and rear setbacks*

Dwelling 1 and 2 have a 920mm setback to the northern boundary which is considered acceptable. Both dwellings have areas to the rear which are setback in excess of 3m and provide sufficient areas for landscape and deep soil, as well as outdoor recreation for future occupants.

##### *D. Landscaped Area*

A total of 140.03m<sup>2</sup> or 34.6% of the site is proposed to be landscaped and is of a usable size and proportion to provide outdoor recreation and planting of trees.

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

##### *A. Local character and context*

The built form, articulation and scale relate to the desired local character of the area and the context, and does not unreasonably impact on the amenity and privacy of adjoining dwellings and their private open space.

*B. Public domain Interface*

Private open space is located behind the building line of the primary road frontage, and direct visibility is provided to the front door and garage along paths and driveways from the public domain.

*C. Pedestrian and vehicle access*

Suitable pedestrian and vehicle access is provided, and the garages are integrated into the development.

*D. Orientation and siting*

The shadow diagrams demonstrate that the proposed development does not reduce solar access to the living room and private open space of adjoining dwellings. The development responds to the natural landform of the site, minimising earthworks.

*E. Building Separation*

The proposed dwellings are attached and have adequate space for landscape and access to daylight. Articulation in the built form helps to reduce visual bulk.

*Amenity (3.03.03)*

*A. Solar and daylight access*

The orientation of the proposed development ensures the dwellings receive suitable access to sunlight.

*B. Natural ventilation*

All habitable rooms meet the ventilation requirements of the DCP.

*C. Ceiling heights*

A recommended ceiling height of 2.7m is proposed.

*D. Dwelling size and layout*

The internal layout and spatial arrangement of the development provides appropriate levels of amenity for future occupants.

*E. Private open space*

Each dwelling has been provided with private open space which exceeds the minimum requirements. The private open space areas provided to each dwelling are considered appropriate having regard to the nature of the

development and their intended purpose, have reasonable levels of solar access and connectivity, and are conducive to passive and active private recreational pursuits.

*F. Storage*

Adequate storage has been provided for each dwelling.

*G. Car and bicycle parking*

The development has been designed to include two car spaces per dwelling, through provision of a double garage, and sufficient area is available on site for secure bicycle storage and parking.

*H. Visual privacy*

The development does not adversely impact on the privacy of adjoining or adjacent neighbours, and the development has been designed to ensure adequate visual privacy between the two dwellings.

*I. Acoustic privacy*

The development has been designed to ensure the potential transfer of noise between dwellings is minimised.

*J. Noise and pollution*

There is no development or infrastructure within close proximity that generates noise levels that will detrimentally impact upon the use of the living and bedrooms.

*Configuration (3.03.04)*

*A. Universal design*

The proposed development is consistent with the objectives of achieving universal design features and there is scope to achieve flexibility in the design.

*C. Architectural design and roof form*

The development includes articulation within the built form and the roof treatment is integrated into the building design and is in keeping with the existing streetscape character and surrounding developments.

*D. Visual appearance and articulation*

Articulation is achieved through the provision of a porch area to the frontage of each dwelling. The facade is consistent with local development and the development does not unreasonably impact upon the amenity and privacy of adjoining development.

*Environment (3.03.05)*

*A. Energy efficiency*

A valid BASIX certificate has been submitted for the development. Conditions requiring compliance with BASIX requirements ensures that the development will incorporate passive environmental design.

*B. Water management and conservation*

Subject to the inclusion of conditions of consent the proposed development achieves compliance with water management and conservation requirements.

*C Waste management*

Suitable waste storage and collection is provided for each dwelling.

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

Soil Management - Section 5.01

A sediment and erosion management plan has been provided. A condition is included on the consent to ensure adequate sediment and erosion control measures are in place for the construction period.

Land Contamination - Section 5.02

As discussed elsewhere within this report, the site is not considered to have any contamination constraints that will impact on the development of the site.

Vegetation Management - Section 5.03

To facilitate the proposed works there will be an impact on an existing tree.

In support of the proposed works, the applicant has submitted an arborist's report that details species, location, size, health and value. The report is prepared generally in accordance with CN tree assessment requirements, and it is considered that the proposed tree removal is acceptable. A detailed Landscape Plan has been prepared as part of the development that will sufficiently compensate for its removal.

The proposed driveway crossovers on the Short Street frontage will impact on designated planting spaces 55374 and 55375. A condition of consent is included requiring the developer to plant two trees via City Greening Services.

Aboriginal Heritage - Section 5.04

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

Landscape Open Space and Visual Amenity - Section 7.02

The proposal is a 'Category 2' development. A landscape plan has been submitted which demonstrates that the development provides a sufficient area for soft landscape, and detailed plantings. A condition of consent is included requiring landscaping to be provided in accordance with the landscape plan.

Traffic, Parking and Access - Section 7.03

The internal access arrangements and turning paths of vehicles entering the site are acceptable. The parking rate requirements have been met on the site which requires that one space per dwelling be provided. Double garages have been provided to each dwelling.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The submitted stormwater plan is acceptable, providing for minimum 4000-litre tanks for each dwelling with overflow to the street gutter. An easement is required to drain water, minimum 0.9m wide over Lot 1 to benefit Lot 2 and a condition of consent is included requiring the easement to be provided.

Waste Management - Section 7.08

The proposal provides for on-site storage facilities. Sufficient area exists to facilitate the storage and collection of garbage bins for each unit. Management of waste during construction can be addressed by way of conditions of consent.

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

Development Contributions

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

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

**5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

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

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations. The proposed development will not have any undue adverse impact on the natural or built environment. The development is compatible with the existing character, bulk, scale and massing of development in the immediate area. It is considered that the proposal will not have any negative social or economic impacts.

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

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

The constraints of the site have been considered in the proposed development.

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

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

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

**5.9 The public interest**

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

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

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

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

**6.0 CONCLUSION**

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



**ATTACHMENTS**

**Item 21 Attachment A:** Plans and elevations of proposed development / as amended – 9 William St Mayfield

**Item 21 Attachment B:** Draft Schedule of Conditions and reasons for the determination & consideration of community views – 9 William St Mayfield

**Item 21 Attachment C:** Processing Chronology – 9 William St Mayfield

**Item 21 Attachments A - C distributed under separate cover**