



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 16 February 2021

**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**

Tuesday 9 February 2021

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**DEVELOPMENT APPLICATIONS COMMITTEE**  
**16 February 2021**

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

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 1 DECEMBER 2020**

**RECOMMENDATION**

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

**ATTACHMENTS**

**Attachment A:** 201201 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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### Attachment A

## CITY OF NEWCASTLE

**Minutes of the Development Applications Committee Meeting held in the Council Chambers, Level 1, 12 Stewart Avenue, Newcastle West on Tuesday 1 December 2020 at 8.25pm.**

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### PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, K Elliott, B Luke, J Mackenzie, A Robinson, E White and P Winney-Baartz.

### IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), B Smith (Director Strategy and Engagement), F Leatham (Director People and Culture), K Liddell (Director Infrastructure and Property), A Jones (Interim Director City Wide Services), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), S Moore (Acting Chief Financial Officer), M Murray (Chief of Staff), E Horder (Councillor Services/ Minutes), K Sullivan (Councillor Services/Meeting Support) and G Axelsson (Information Technology Support).

### APOLOGIES

#### MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

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

**Carried**

### DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

#### **Councillor Church**

Councillor Church declared a less than significant non-pecuniary interest in Item 43 - DA2018/00773 - 73-79 Railway Lane, Wickham as a former employer was engaged to assist with the sales and marketing of the project. He stated he would manage the conflict of interest by removing himself from the meeting for discussion on the item.

#### **Councillor Winney-Baartz**

Councillor Winney-Baartz declared a significant non-pecuniary interest in Item 42 - DA2020/00758 -59 Scenic Drive, Merewether stating she would manage the conflict by removing herself from the Chamber for discussion on the item.

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 17 NOVEMBER 2020**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Byrne

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

**Carried  
unanimously**

**DEVELOPMENT APPLICATIONS**

**ITEM-41                    DAC 01/12/20 - DA2020/00717- 5 HILLVIEW CRESCENT  
                                  THE HILL - DWELLING HOUSE - ALTERATIONS AND  
                                  ADDITIONS**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Byrne

- A. That the Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2020/00123 for dwelling house – alterations and additions at 5 Hillview Crescent, The Hill be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

**For the Motion:**                    Lord Mayor, Cr Nelmes and Councillors M Byrne, J Church, D Clausen, C Duncan, K Elliott, B Luke, J Mackenzie, A Robinson, E White and P Winney-Baartz.

**Against the Motion:**            Nil.

**Carried**

**ITEM-42                    DAC 01/12/20 - DA2020/00758 - 59 SCENIC DRIVE  
                                  MEREWETHER - DWELLING HOUSE - ALTERATIONS AND  
                                  ADDITIONS**

Councillor Winney-Baartz left the meeting for discussion on the item at 8.28pm.

**MOTION**

Moved by Cr Elliott, seconded by Cr Mackenzie

- A. That the Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2020/00758 for alterations and additions to a dwelling at 59 Scenic Drive Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
- C. That those persons who made submissions be advised of CN's determination.

**PROCEDURAL MOTION**

Moved by Cr Church, seconded by Cr Clausen

That the item be laid on the table until the Extraordinary Development Applications Committee on the 8 December 2020 in order to address concerns raised by local residents.

**For the Motion:**

Lord Mayor Cr Nelmes, Councillors M Byrne, J Church, D Clausen, C Duncan, K Elliott, B Luke, J Mackenzie, A Robinson and E White.

**Against the Motion:**

Nil.

**Carried**

Councillor Winney-Baartz returned to the meeting at 8.35pm.

**ITEM-43                    DAC 01/12/20 - DA2018/00773 - 73-79 RAILWAY LANE,  
WICKHAM - ALTERATIONS AND ADDITIONS TO A MIXED-  
USE DEVELOPMENT**

Councillor Church left the meeting for discussion on the item at 8.36pm.

**MOTION**

Moved by Cr Robinson, seconded by Cr Mackenzie

- A. That the Development Applications Committee, as the consent authority, note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, 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;
- B. That DA2018/00773 for proposed alterations and additions to the approved mixed-use development (DA2016/00384) involving four additional storeys, an additional 40 apartments, alterations to basement car parking and design of commercial tenancies at 73-79 Railway Lane, Wickham be approved and consent granted on a deferred commencement basis, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
- C. That those persons who made submissions be advised of CN's determination.

**PROCEDURAL MOTION**

Moved by Cr Clausen, seconded by Cr Elliott

That the item be laid on the table until the Extraordinary Development Applications Committee on 8 December 2020 to address concerns raised in discussion by Councillors.

**For the Motion:**

Lord Mayor Cr Nelmes, Councillors M Byrne, D Clausen, C Duncan, K Elliott, B Luke, J Mackenzie, A Robinson, E White and P Winney-Baartz.

**Against the Motion:**

Councillor B Luke.

**Carried**

Councillor Church did not return to the meeting prior to the meeting's close.

**The meeting concluded at 8.56pm.**

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### MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE 8 DECEMBER 2020

#### RECOMMENDATION

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

#### ATTACHMENTS

**Attachment A:** 201208 Extraordinary 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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### Attachment A

## CITY OF NEWCASTLE

**Minutes of the Extraordinary Development Applications Committee Meeting held in the Council Chambers, Level 1, City Administration Centre, 12 Stewart Avenue, Newcastle West on Tuesday 8 December 2020 at 6.08pm.**

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### PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, J Dunn, K Elliott, B Luke, J Mackenzie, A Robinson, E White and P Winney-Baartz.

### IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), B Smith (Director Strategy and Engagement), F Leatham (Director People and Culture), A Jones (Director City Wide Services), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), S Moore (Acting Chief Financial Officer), M Murray (Chief of Staff), J Vescio (Executive Officer), M Meehan (Media Advisor), K Sullivan (Councillor Services/Minutes), A Knowles (Councillor Services, Meeting Support), E Horder (Councillor Services/Meeting Support) and G Axelsson (Information Technology Support).

### MESSAGE OF ACKNOWLEDGEMENT

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

### PRAYER

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

### APOLOGIES

#### MOTION

Moved by Cr Clausen, seconded by Cr Luke

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

**Carried  
unanimously**

### DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

#### Councillor Winney-Baartz

Councillor Winney-Baartz declared a significant non-pecuniary interest in Item 44 - Supplementary Report - DA2020/00758 - 59 Scenic Drive, Merewether - Dwelling House - Alterations and Additions stating that she would manage the conflict by leaving the meeting for discussion on the item.

**Councillor Church**

Councillor Church declared a less than significant non-pecuniary interest in Item 45 - Supplementary Report - DA2018/00773 - 73-79 Railway Lane, Wickham stating that his reasons hadn't changed from recent weeks and would leave the meeting for discussion on the item.

**CONFIRMATION OF PREVIOUS MINUTES**

Nil.

**DEVELOPMENT APPLICATIONS**

**ITEM-44            DAC 08/12/20 - SUPPLEMENTARY REPORT - DA2020/00758 - 59  
SCENIC DRIVE, MEREWETHER - DWELLING HOUSE -  
ALTERATIONS AND ADDITIONS**

Councillor Winney-Baartz left the meeting for discussion on the item at 6.12pm.

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Clausen

1 Approve DA2020/00758 for dwelling house, alterations and additions at 59 Scenic Drive, Merewether for the following reasons:

- i) That the Extraordinary Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- ii) That DA2020/00758 for alterations and additions to a dwelling at 59 Scenic Drive Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- iii) That those persons who made submissions be advised of CN's determination.

**For the Motion:**

Lord Mayor, Councillor Nelmes and Councillors Byrne, Church, Clausen, Duncan, Dunn, Elliott, Mackenzie, Robinson and White.

**Against the Motion:**

Councillor Luke.

**Carried**

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Councillor Winney-Baartz returned to the meeting at the conclusion of the item at 6.15pm.

### **ITEM-45      DAC 08/12/20 - SUPPLEMENTARY REPORT - DA2018/00773 - 73-79 RAILWAY LANE, WICKHAM - ALTERATIONS AND ADDITIONS TO MIXED-USE DEVELOPMENT**

Councillor Church left the meeting for discussion on the item at 6.16pm.

#### **MOTION**

Moved by Cr Clausen, seconded by Cr Mackenzie

1 Approve DA2018/00773 for alterations and additions to the mixed-use development at 73-79 Railway Lane, Wickham for the following reasons:

- i) That the Extraordinary Development Applications Committee, as the consent authority note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the B4 Mixed-Use zone in which the development is proposed to be carried out; and
- ii) That DA2018/00773 for proposed alterations and additions to the approved mixed-use development (DA2016/00384) involving four additional storeys, an additional 40 apartments, alterations to basement car parking and design of commercial tenancies at 73-79 Railway Lane, Wickham be approved and consent granted on a deferred commencement basis, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- ii) That those persons who made submissions be advised of City of Newcastle's (CN) determination.

#### **For the Motion:**

Lord Mayor, Councillor Nelmes and Councillors Byrne, Clausen, Duncan, Dunn, Elliott, Luke, Mackenzie, Robinson, White and Winney-Baartz.

#### **Against the Motion:**

Nil.

**Carried**

## LATE ITEM OF BUSINESS

The Lord Mayor advised that she had been informed by the Chief Executive Officer of a late item of business and the business proposed was of great urgency on the grounds that the matter of *DA2015/0878.03 - 20A Hillview Crescent, The Hill - Modification to DA 2015/0878 - Including Changes to Floor Heights and Pitching of Roofs*, was required to go before Council prior to the next scheduled Development Applications Committee meeting.

The Chief Executive Officer outlined the reasons for Council to consider the late item of business:

- All matters are resolved and the matter is able to be determined.
- The report was unavailable at the time the DAC agenda was released due to only having Public Voice last week.
- Owners in financial hardship and until the modification DA is determined are unable to recommence construction of the development.
- Council has recently issued Notice of Intention for an Order to demolish non-compliant work.
- To hold the matter over to February is unreasonable and will result in serious financial impact to the owners and possibly not enable any work on the site.

### PROCEDURAL MOTION

Moved by Cr Clausen, seconded by Cr Winney-Baartz

The matter of DAC 08/12/20 - DA2015/0878.03 - 20A Hillview Crescent, The Hill - Modification to DA 2015/0878 - Including Changes to Floor Heights and Pitching of Roofs be heard as a late item of business in accordance with the Code of Meeting Practice and the reasons outlined by the Chief Executive Officer.

**For the Procedural Motion:** Lord Mayor, Councillor Nelmes and Councillors Byrne, Clausen, Duncan, Dunn, Elliott, Luke, Mackenzie, Robinson, White and Winney-Baartz.

**Against the Procedural Motion:** Nil.

**Carried**

The Lord Mayor ruled the matter of DAC 08/12/20 - DA2015/0878.03 - 20A Hillview Crescent, The Hill - Modification to DA 2015/0878 - Including Changes to Floor Heights was of great urgency on the grounds that it required a decision by Council before the next scheduled Development Applications Committee meeting.

**ITEM-46            DAC 08/12/20 - DA2015/0878.03 - 20A HILLVIEW CRESCENT,  
THE HILL - MODIFICATION TO DA 2015/0878 - INCLUDING  
CHANGES TO FLOOR HEIGHTS AND PITCHING OF ROOFS**

**PROCEDURAL MOTION**

Moved by Cr Mackenzie, seconded by Cr Byrne

Council adjourn for a 10 minute recess to read the report on the late item of business.

**Carried  
unanimously**

Council adjourned at 6.33pm and reconvened at 7.42pm.

Councillor Church returned to the meeting at 7.42pm.

It should be noted that due to technical issues there was a significant delay in reconvening the meeting. The Lord Mayor thanked Council staff for their efforts in resolving the issues and enabling Council to resume.

**MOTION**

Moved by Cr Church, seconded by Cr Elliott

The motion be refused on the following grounds and the existing DA from 2016 remain:

- 1        The proposed modification is inconsistent with the objectives of cl.4.3 'height of buildings' of Newcastle Local Environmental Plan 2012 (NLEP) and the modification results in a further breach of the maximum height development standard. The proposed height does not result in a development which is consistent with the desired built form [s.4.15(1)(a) *Environmental Planning and Assessment Act 1979* (EP&A Act)].
- 2        The proposed modification is inconsistent with the objectives of cl.4.4 'floor space ratio' (FSR) of NLEP and the modification results in a further breach of the FSR development standard. The proposed development results in a building with a density, bulk and scape which is incompatible with the desired built form [s.4.15(1)(a) *Environmental Planning and Assessment Act 1979* (EP&A Act)].
- 3        The proposed modification is inconsistent the requirements Newcastle Development Control Plan 2012, in the context of building form and amenity impacts on adjoining properties. [Section 4.15(1)(a) &(b) *Environmental Planning and Assessment Act 1979*]

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- 4 Insufficient information has been provided in respect of related unauthorised building work to enable the adequate evaluation of the modification and the suitability of the site for the proposed development [s.4.15(1)(b) *Environmental Planning and Assessment Act 1979* (EP&A Act)].
- 5 Submissions received in response to the public notification of the development application raised concerns of a nature and extent that establish that the proposed development will have unreasonable impacts in terms of overlooking, view loss and overshadowing and adversely impact on the residential amenity of surrounding lands [s.15(1)(d) EP&A Act].
- 6 The proposed development is not considered to be within the public interest [s. 4.15(1)(e) EP&A Act].

Councillor Clausen gave notice of a foreshadowed motion that being the recommendation of Council officers as outlined in the business papers and a Part B.

The motion moved by Councillor Church and seconded by Councillor Elliott was put to the meeting.

**For the Motion:** Councillors Church, Dunn, Elliott and Luke.

**Against the Motion:** Lord Mayor, Councillor Nelmes and Councillors Byrne, Clausen, Duncan, Mackenzie, Robinson, White and Winney-Baartz.

**Defeated**

### **MOTION**

Moved by Cr Clausen, seconded by Cr Byrne

### **PART A**

- A. That the Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That the Development Applications Committee 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 (FSR), 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 DA2015/0878.03 at 20A Hillview Crescent, The Hill be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.
- D. That those persons who made submissions be advised of CN's determination.

**PART B**

1. Council notes that compliance action is ongoing via a Development Control Order (DCO), and receives updates on progress in resolving significant outstanding non-compliances through the regulatory process.
2. Council does not relinquish its role as Principle Certifying Authority (PCA) without a resolution of the elected council.

Following discussion and to address overshadowing concerns expressed by Councillors, the following conditions of consent were proposed by the Manager Planning, Regulatory and Assessment to the Draft Schedule of Conditions:

**PART C**

The following two conditions of consent are to be included in the development consent issued:

**Condition 1**

**Prior to the issue of any Construction Certificate**

The absolute maximum building height of the development is to be limited to Real Level (RL) - 62.230. Detailed plans confirming the maximum building height are to be provided to the written satisfaction of City of Newcastle. The detailed plans together with the written confirmation from City of Newcastle are to be submitted to the Principal Certifier prior to release of any Construction Certificate.

**Condition 2**

The balcony proposed to the southern elevation of the second floor of unit 1 as indicated on the approved plan '2D Issue C and dated 25/08/2020' is deleted (as marked in red on the approved plans). The proposed balcony does not form part of the approved development (DA 2015/0878.03).

Councillor Clausen and Councillor Byrne accepted the additional conditions of consent into the motion.

The motion moved by Councillor Clausen and seconded by Councillor Byrne, as amended, was put to the meeting.

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**For the Motion:**

Lord Mayor, Councillor Nelmes and Councillors Byrne, Clausen, Duncan, Mackenzie, Robinson, White and Winney-Baartz.

**Against the Motion:**

Councillors Church, Dunn, Elliott and Luke.

**Carried**

**The meeting concluded at 8.35pm.**

**DEVELOPMENT APPLICATIONS**

**ITEM-1                    DAC 16/02/21 - 150 DARBY ST, COOKS HILL -  
DA2018/01251.01 - REVIEW OF DETERMINATION - MIXED  
USE DEVELOPMENT - COMMERCIAL PREMISES AND  
SHOP TOP HOUSING**

**APPLICANT:            ROBERT ADRIAN DAWSON  
OWNER:                THE PROPRIETORS OF STRATA PLAN 88552  
NOTE BY:             GOVERNANCE  
CONTACT:             DIRECTOR GOVERNANCE / MANAGER REGULATORY,  
PLANNING AND ASSESSMENT**

**PART I****PURPOSE**

A Development Application DA2018/01251 was refused at the Development Applications Committee (DAC) on 18 February 2020 (Refusal issued 25 February 2020) for a mixed-use development, comprising ground floor commercial premises, shop top housing (consisting of nine apartments) and 13 car spaces at 150 Darby Street, Cooks Hill.

An application has been received seeking a Review of Determination of DA2018/01251, with amendments being made to the proposal as part of the request. The amended proposal is for a mixed-use development, comprising ground floor commercial premises, shop top housing (consisting of eight apartments) and 13 car parking spaces (including one accessible parking space).



**Subject Land: 150 Darby Street Cooks Hill**

The application is referred to the DAC for determination due to the previous refusal by Council and the number of submissions received.

Under the *Environmental Planning and Assessment Act 1979* (EP&A Act), the review of a determination made by Council is to be determined by the Council and not by a delegate of the Council.

The application was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) shortly after receipt of the application. This occurred between 3 August 2020 and 17 August 2020 and a total of 56 submissions have been received in response, comprising of 55 objections and one submission in support.

The plans were again revised at CN's request and the final amended plans placed on public exhibition between 20 November 2020 and 4 December 2020. This second round of exhibition resulted in seven submissions being received. Three Public Voice requests were also received.

The main categories of objection included the proposal not being consistent with the character of Darby Street and Cooks Hill Heritage Conservation Area, overdevelopment of the site (proposed height, bulk / scale, car parking, traffic and stacker inefficiency), mine subsidence, privacy, overshadowing and roof top open space.

Details of the submissions received are summarised at Section 3.0 of this report.

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

The proposal was considered at a meeting of the Public Voice Committee on 1 December 2020.

The applicant provided a commentary at the Public Voice Committee meeting in regard to the amendments made since the original application was refused by CN and the way in which the applicant has worked with CN to ensure the proposal is more sympathetic to the Heritage Conservation Area of Cooks Hill.

The concerns discussed at the Public Voice Committee meeting are addressed as part of the Planning Assessment at Section 5.0 of this report.

The applicant proposes the review of determination DA2018/01251 pursuant to Section 8.2 (formerly Section 82A) of the EP&A Act. The application lodged under the EP&A Act provides an applicant with an opportunity to request CN conduct a review where an application has been refused or conditions imposed. Such a review must be carried out by the DAC as the original determination was made by DAC (rather than a delegate of Council). As a consequence of the review, CN may confirm or change the determination. This report presents the relevant information to consider the review.

The review and issue of determination is required to take place within 12 months of the original determination, dated 25 February 2020. The review period was previously six months however was extended under changes to planning legislation as part of the COVID-19 pandemic.

It should also be noted that a Class 1 Appeal has been filed by the applicant and this was served upon CN on 24 December 2020. The determination made by CN will therefore inform the processing of the Appeal.

At CN officers request and through several discussions and meetings with the applicant, undertaken as part of the review assessment process, the plans have been revised several times to ensure changes to the articulation and materiality of the building will ensure the development is more sympathetic to the Heritage Conservation Area of Cooks Hill. In this regard, those amendments have primarily focussed on the façade, materiality and articulation.

These amendments were made in response to issues raised through the submissions and to further respond to the village character of Darby Street and the wider Cooks Hill Heritage Conservation Area requirements. These key revisions aim to mitigate the visual impacts of the proposed development overall by achieving a more neutral presence within the streetscape.

The amended plans were re-notified and have been made publicly viewable on CN's website.

A copy of the submitted plans is included at **Attachment A**. The various steps in the processing of the application to date are outlined in the processing chronology included at **Attachment C**.

## **Conclusion**

A review of the development revisions made to the original proposal has been undertaken by CN staff and are discussed throughout this report. The development is substantially the same in terms of the building footprint proposed, however the amendment provides for changes to the materiality and articulation of the building to ensure the development is sympathetic to the Cooks Hill Heritage Conservation Area and the Darby Street character and streetscape.

The application has been assessed against the EP&A Act and supporting environmental planning instruments as detailed in this report and is considered to be acceptable, subject to compliance with the schedule of conditions attached to this report.

## **RECOMMENDATION**

- 1 That Council approve DA2018/01251.01 for demolition of the existing building and construction of a mixed-use development comprising a commercial space on the ground floor and shop top housing, including associated car parking at 150 Darby Street Cooks Hill, subject to the imposition of conditions at **Attachment B**.

## **PART II**

### **1.0 THE SUBJECT SITE**

The site is known as 150 Darby Street, Cooks Hill being subject of a strata plan SP88552. The site is rectangular in shape and is 427m<sup>2</sup> in size with a frontage of

12.24m to Darby Street and a depth of 34.78m. A local road / unnamed laneway exists along the south western side of the building leading to a public car park at the rear of the site, which is owned by CN. The site contains a two-storey mixed-use building containing two dwellings on the upper level and a commercial premise at ground level.

Surrounding land uses to the south include a small two storey building used for commercial offices, immediately to the north is a two-storey free standing terrace style building used as a restaurant and to the north again is the Delaney Hotel. Development immediately to the west of the building include the CN car park and residential development beyond. Across Darby Street to the east there are several two storey terrace style buildings including, Darby Chambers. Most of these buildings are used for commercial business, restaurants, shops and similar uses with residential use generally above. Development generally maintains a two-storey scale along the Darby Street precinct within the Cooks Hill Heritage Conservation Area and main commercial precinct. Buildings within the immediate vicinity of the site likewise generally maintain a two-storey scale along the street edge with any higher elements set back from Darby Street.

The site is contained within the Cooks Hill Heritage Conservation Area. The site is not listed as a heritage item and is not identified as an archaeological site. The building is not classified as a contributory building under the Newcastle Development Control Plan 2012 (NDCP 2012).

Site inspections were carried out by CN staff on several occasions during assessment of the application. The site inspection photos illustrate the context of the proposed development below:



Figure 1 – Site viewed from the north from across Darby Street ‘Gilroan Court’.



Figure 2 – Site viewed from unnamed laneway (close to rear of site) and looking back towards Darby Street.



Figure 3 – Rear of site (directly behind parked vehicle to the right of the photograph) as viewed from public car park.



Figure 4 – Public car park looking towards adjoining residential development.



Figure 5 – View along unnamed lane from Darby Street into the rear of the site and public car park (subject site to the right).

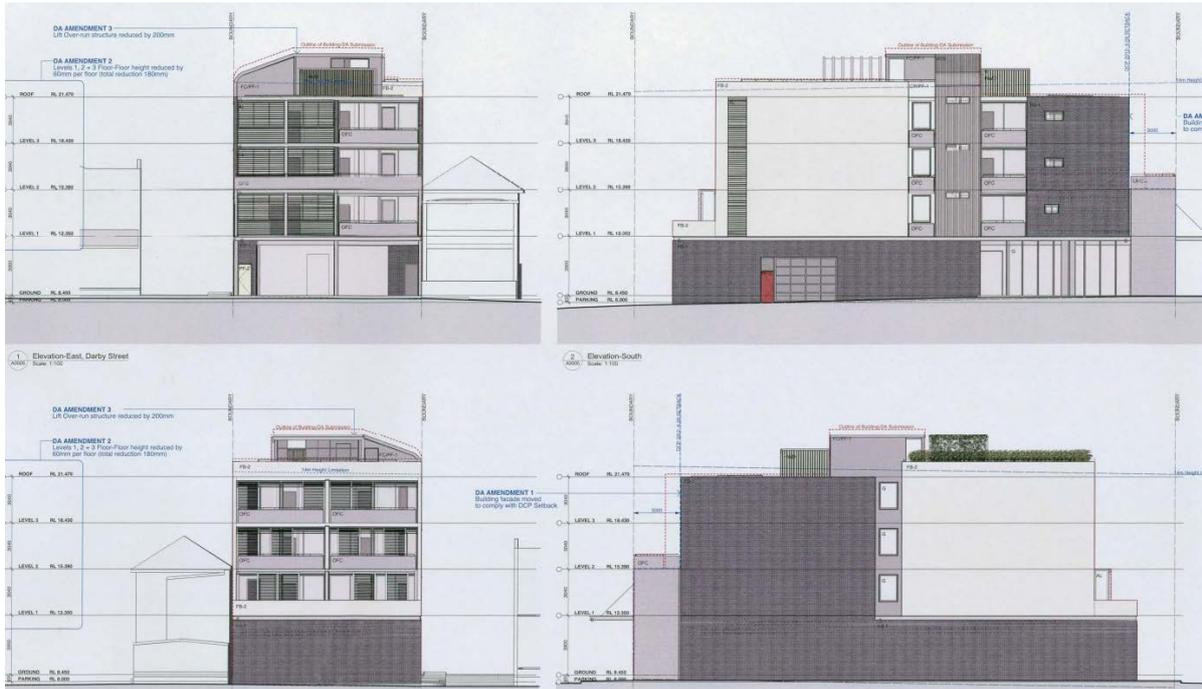
## 2.0 THE PROPOSAL

Development Application DA20190/01251 was refused by Council at the DAC Meeting held on 18 February 2020 and determination was issued at the Ordinary Council Meeting held on 25 February 2020 for the following reasons:

- i) *The proposed development is not consistent with the provisions of Newcastle Local Environmental Plan 2012, with respect to the height of buildings development standard, and the proposal to vary that development standard is not justified.*
- ii) *The proposed development will have an unreasonable impact on the built environment in the locality of the site, in terms of character, height, bulk, scale and visual appearance.*
- iii) *The proposed development is contrary to the public interest with respect to the proposed variation to height of buildings development standard of Newcastle Local Environmental Plan 2012, with respect to the impact on the built environment in the locality of the site.*

DA2018/01251 sought consent for demolition of existing structures and the construction of a four storey shop top housing development comprising commercial floor space at ground level and nine residential dwellings above and 13 car parks.

An extract from the original plans refused by CN are included below:



The applicant has sought a review of the determination pursuant to section.8.2 of the EP&A Act. The reasons submitted by the applicant to support the section.8.2 application is summarised below:

- a) *The applicant says ...meaningful and substantial changes have been proposed to comply with the height limit, production of a development that has a better interface with the street and to reduce the ultimate bulk and scale of the development.*

The applicants detailed submission in response to Council's reasons for refusal is contained within correspondence dated July 2020 prepared by Think Planners Pty Ltd., and it is noted that:

- i) *...the proposal relies on the prior traffic, heritage and other supporting reports which found the earlier scheme appropriate and the reduction in the scale of the development serves to ensure the prior findings of those reports remain.*
- ii) *the subject site is zoned B4 mixed-use with a maximum permitted FSR of 2:1 and a height limit of 14m under the Newcastle Local Environmental Plan 2012. (Note: the development now meets the 14m height limit and is below the required FSR).*
- iii) *The proposal aims to provide a built form that is consistent with Council's vision for the locality whilst aiming to set the tone and scale for future small-scale shop top housing and mixed-use developments within the locality and along Darby Street.*
- iv) *The subject area is ideal for future intensification as it is located within close proximity to a commercial centre, schools, public transportation and*

*recreational opportunities. The subject site is currently underutilising its full zoning potential which permits higher density of up to 14m including shop top housing developments. The proposal will contribute towards permitting the site to fulfil its zoning potential whilst being consistent with Council's vision for the subject area to accommodate mixed-use densities.*

- v) The development will contribute towards increasing additional housing and commercial opportunities within the subject block.*
- vi) Having regard to the benefits of the proposal and taking into account the absence of adverse environmental, social or economic impacts, and that the proposal represents an appropriate use of well-located land.*

The applicant, as indicated at the PV hearing on 1 December 2020, has made several changes since the original DA submission to ensure the development is sympathetic with the Cooks Hill Heritage Conservation Area. These changes have been made in response to CN's feedback, commentary from the Urban Design Consultative Group (UDCG), submission issues raised and the Conservation Area requirements.

Under the current application for review, subject of DA2018/01251.01, the applicant made a number of amendments as listed below:

- i) Removal of Unit 303 and the relocation of the outdoor common space (from the rooftop) to the front of level 3, thereby reducing the height of the building under the 14m maximum permissible height limit under the NLEP 2012;
- ii) Parapet changes to the Darby Street façade to increase the 'solid to void ratio' to ensure the development fits within the Heritage Conservation Area;
- iii) Addition of timber louvres to replace metal louvres;
- iv) The building contains a defined step (second storey) to present as a two-storey podium with recessive upper levels to align with previous UDCG commentary;
- v) Unit mix includes six x 1-bedroom units and two x 3-bedroom units (unit 303 removed);
- vi) Ground floor commercial space – 112m<sup>2</sup>, bin holding area, stairwell and 30m<sup>2</sup> of landscaping (provides for 7% of total deep soil zone) on the ground floor; and
- vii) 12 car parking spaces (stacker formation) are provided at ground level with use of car stackers for 12 vehicles (residents only) together with one accessible space making a total of 13 car spaces. The vehicle crossover

and driveway are to be accessed via the unnamed laneway and one motorcycle and bicycle space is also proposed.

At CN's request the applicant has also made several further changes to the materiality of the building and its articulation. These revisions included changes to the eastern and southern elevations to ensure they relate more sympathetically to the context of contributory buildings in the area. Greater emphasis was sought in relation to the two-storey form on the ground and first floor with a clear separation being provided between the lower brick section and the upper levels, to reinforce the predominant two-storey scale of Darby Street.

In addition, the brick work is further incorporated into the southern side elevation to frame the balconies at the first-floor level. Blade walls have been increased in thickness to visually anchor the building into the street and clearly define the two bays within the façade along Darby Street. Windows and openings are spaced and vertically proportioned and the appearance of the southern elevation improved. Landscaping in the communal terrace is proposed to soften the appearance of the building and sliding timber shutters are to be incorporated. The pergola to the open space area has changed to timber construction and not steel.

The applicant has included the following additional changes to the plans as well as use of appropriate materials and finishes to ensure the development is sympathetic to the Darby Street streetscape and Cooks Hill Heritage Conservation Area:

- i) The addition of brick piers and thickening of the existing piers to the ground floor commercial component;
- ii) Recessed wall changes by 300mm and corbel added making the wall recess 350mm;
- iii) Extension of the 'heritage' brick to the two-storey section of the rear section of the building as requested;
- iv) Removal of the horizontal beam at the first-floor level; and
- v) Changes to the landscaping to reduce the height of front elements.

The Level 2 apartment has not been set back further, given the following justification from the applicant:

- i) *The building already steps back with a series of stepped increments from Darby Street;*
- ii) *The existing arrangement provides a strong accentuation between level 2 and level 3 from the streetscape (pushing level 2 back to align with level 3 would diminish this);*

*iii) Setting back level 2 with level 3 would give the building the appearance of a single storey which would be juxtaposed in a predominantly 2 storey streetscape; and*

*iv) The building complies with the NCC DCP setbacks.*

The material changes to the base brick, lightweight second storey and reduced window openings to the first-floor apartments are more closely related to the heritage character of the area. The design now represents a predominant two storey presentation to the streetscape with appropriate upper floor setback to the third level of 3m in compliance with the NDCP 2012 controls. A warmer face brick has been selected to minimise the impacts of the building when viewed from the streetscape and to blend in with the Heritage Conservation Area of Cooks Hill. Visual separation is now clearly delineated between the two-storey form and upper levels.



The building now has a much stronger emphasis on the two-storey built form of the ground and first floor. Clear separation is evident between the lower brick section and upper levels. The brick blade walls have been increased in thickness to anchor the building to the street and clearly define the two 'bays' of the façade. The composition of the façade fronting Darby Street is now more symmetrical with clearly defined 'bays' which reference the typical rhythm of the streetscape.

Simplification of the building form and use of vertically proportioned windows and openings has assisted to ensure the development is sympathetic to the Darby Street precinct and the Heritage Conservation Area of Cooks Hill. The development provides for a contemporary response and does not mimic other heritage buildings or contributory buildings in the street.

The application is referred to the DAC for determination due to the previous refusal by Council and the number of submissions received as well as the requirements of the section 8.2 review process.

### **3.0 PUBLIC NOTIFICATION**

The Review of Determination Application was publicly notified in accordance with CN's CPP on two occasions. The first round of notification resulted in receipt of a total of 56 submissions (comprising of 55 objections and one submission in support). Subsequent to this the amended plans were re-notified and made publicly viewable on CN's website. This second round of notification resulted in seven submissions in objection to the proposal.

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

#### **a) Statutory and Policy Issues**

- i) Non-compliance with the NLEP 2012 controls.
- ii) Non-compliance with the NDCP 2012 controls, more specifically heritage requirements.
- iii) Subsidence Advisory NSW approval.

#### **b) Amenity Issues**

- i) Unreasonable impact on built environment in regard to character, height, bulk, scale and visual appearance.
- ii) Privacy impacts.
- iii) Overdevelopment of the site.

#### **c) Design and Aesthetic Issue**

- i) Development is not sympathetic to the Cooks Hill Heritage Conservation Area nor the streetscape.
- ii) Development proposal does not respect the historic legacy of Darby Street and the contributory buildings in the area.

#### **d) Traffic and Parking Issues**

- i) Traffic safety and car parking issues (over utilised thoroughfare / car parking not adequate).
- ii) Stacker inefficiency and reduction in available car parking for commercial core.

A copy of the plans for the proposed development are at **Attachment A**. Details of the submissions received are summarised at section 3.0 of this report.

### **Public Voice Committee**

The proposal was considered at the Public Voice Committee Meeting held on 1 December 2020. Residents raised concerns with regards to the development not being consistent with CN's vision of Darby Street in regard to the locality specific provisions and the demolition of the existing building is contrary to the heritage requirements of the Cooks Hill Heritage Conservation Area. It was also suggested that the building was contributory and not neutral as indicated in the Heritage Technical Manual that accompanies the NDCP 2012. Issues were also raised in regard to upper floor setbacks, car parking and traffic.

The applicant provided a response to the issues which is discussed in further detail in section 5.8 of the report.

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

## **4.0 INTEGRATED DEVELOPMENT**

The proposal is not '*integrated development*' pursuant to section 4.46 of the EP&A Act, as the applicant has sought separate approval directly with the Subsidence Advisory NSW.

Integrated development was essentially designed to link those developments assessed under the EP&A Act with agencies that may be required to issue an approval, license, or permit.

The planning process allows for an applicant (at their own discretion) to seek direct approval from the relevant agencies, removing the requirement for the development to be lodged as integrated development. In this regard, CN is able to issue a determination without this agency approval in place. However, the applicant must obtain approval direct from those agencies prior to the issue of a Construction Certificate or works commencing on the site.

Conditions have been recommended to ensure that necessary approval is obtained from Subsidence Advisory NSW by the applicant prior to any Construction Certificate being issued.

## **5.0 PLANNING ASSESSMENT**

### **Section 8.2 Review of Determination**

The provisions of section.8.2 of the EP&A Act provides an applicant that is dissatisfied with the consent authority's determination of their DA with a mechanism

to seek an internal review of the original decision. When lodging a section.8.2 application the applicant is entitled to amend the original application.

The consent authority must review its decision on the basis of the amended application, however, the application must remain substantially the same. Section 8.2 further specifies that the review must be determined within six months (Note: this has been revised to within 12 months per COVID-19 orders) of the date that the applicant received notice of the original determination (in this instance being 25 February 2020). Where determination has been made by a delegate of Council the review must be completed by an officer that is not subordinate to the delegate who made the determination.

The applicant has submitted an amended application which is substantially the same. Further, the section 8.2 review has been completed by another officer not subordinate to the original determining officer. The review has been completed within the prescribed timeframe and is able to be determined by the elected members.

#### **Section 4.15 - Evaluation**

The application has been assessed under the relevant matters for consideration detailed in section 4.15(1) of the EP&A Act and supporting environmental planning instruments as detailed throughout this report.

#### **Heritage Legislation**

##### Heritage Act 1977

This State legislation makes provisions for the conservation of the State's environmental heritage whilst providing for identification, protection and registration of items of heritage significance and the operation of the NSW Heritage Council. The proposed development does not contain any listed heritage items and demolition of the building on the land does not trigger referral to the Office of Environment and Heritage (NSW Heritage).

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

##### **State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)**

State Environmental Planning Policy No.55 – Remediation of Land (SEPP No.55) aims to provide a State-wide planning approach to the remediation of contaminated land. In particular, clause 7(1)(b) and (c) of the SEPP require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

The subject site is not identified as contaminated land in CN's Contaminated Land Register, nor is the site known to have a history of potentially contaminated uses. Accordingly, the proposal on the land does not require further investigation under

this State Planning Policy. The development is considered to satisfy the relevant provisions of SEPP No.55.

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

The Vegetation SEPP (the SEPP) works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW. Part 3 of the Vegetation SEPP contains provisions similar to those contained in clause 5.9 of the NLEP 2012 (now repealed) and provides that the NDCP 2012 can make declarations with regards to certain matters, and further that Council may issue a permit for tree removal.

Part 3 of the Vegetation SEPP contains provisions similar to those contained in clause 5.9 of the NLEP 2012 (now repealed) and provides that the NDCP 2012 can make declarations with regards to certain matters, and further that Council may issue a permit for tree removal. The site is situated within a well-established commercial area precinct and the land is zoned B4 Commercial and Mixed-Use. The application does not seek consent for the removal of any trees on the site and therefore no further consideration of this State Policy is required.

### **State Environmental Planning Policy (BASIX) 2004**

The aim of this State Policy is to encourage sustainable residential development, by ensuring certain forms of development incorporate suitable provision of sustainable elements. The Policy requires a Basix Certificate to be submitted with the proposed development identifying a range of energy and water saving commitments that will be incorporated into the development.

A condition of consent has been recommended that the development be provided with a valid Basix Certificate. The changes made to the development are considered unlikely to require changes to the BASIX requirements, however as a precaution a condition has been included in the schedule of conditions to require a revised BASIX Certificate prior to the issue of a Construction Certificate.

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

The aim of this State Policy is not only to facilitate effective delivery of infrastructure across the State, but to ensure the provision of flexibility in relation to location of infrastructure and service facilities and to identify any concerns in relation to assessment of development, adjacent to particular types of infrastructure.

#### *Clause 45*

Clause 45 of the SEPP relates to development that includes penetration of the ground within the vicinity of 2m of underground electricity power line or an electricity power pole or within 10m of any part of an electricity tower. Development carried out within 5m of an exposed overhead electricity power line forms part of the

consideration of the site, noting the existing power lines across Darby Street in the vicinity of the site.

Referral to Ausgrid has been undertaken and it is noted that there are existing low voltage overhead electricity network assets in the Darby Street footpath. It has been recommended by Ausgrid that the developer liaise directly with Ausgrid in regard to the connection of the development to the adjacent electricity network infrastructure. Ausgrid will then assess whether any upgrade to the existing network will be required. Conditions have been included in the conditions schedule in regard to the development being constructed in compliance with Ausgrid requirements.

#### *Clause 101*

Clause 101 of the SEPP relates to development with frontage to a classified road and the consent authority must ensure the development does not compromise the effective and ongoing operations of a classified road and to prevent or reduce potential impacts of traffic noise and vehicle emissions on development adjacent to classified roads.

Darby Street is a classified road under the care and control of CN. Whilst the proposed access from the laneway is within 90m of a classified road the threshold requirements for referral to RMS are not triggered.

An acoustic report was provided with the original development application and an updated acoustic addendum email received in regard to the amended proposal. See the Acoustic impacts section of this report.

The proposal is not considered to impact the classified roadway nor adversely impact the safety, efficiency and operation of the classified road. In addition, the proposal will not generate any significant smoke or dust.

#### **State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings**

The aim of this State Policy, amongst other things is to improve the design quality of residential apartment development in New South Wales resulting in a better built form and aesthetics of buildings and of the streetscape and public spaces they define. The SEPP applies to residential flat / apartment developments that contain four or more dwellings in a building of three or more storeys and includes objectives to improve the quality of design through sustainable development principles.

CN's review panel, the UDCG, reviewed the application on two occasions on 15 November 2017 (preliminary) and 17 April 2019 (in response to the original application lodged). The UDCG found overall the development application was of good quality, incorporating recommendations by the group and following a commended pathway. It was noted at the time of the last meeting, that remaining detailed issues were to be resolved to the satisfaction of CN. The proposal overall was considered a good outcome on a constrained site.

Discussion was undertaken with the Heritage Architect from the UDCG in relation to design revisions received as part of the review process. The discussion related to the final proposal being more sympathetic to the Cooks Hill Heritage Conservation Area. The UDCG representative agreed with recommendations made by CN staff to the applicant, including the brick blade walls being thicker to anchor the building to the street and continuing the brickwork up to the second floor to provide an improved balance of brick and metal materials in order to ensure the appearance of the second floor integration with the brick base of the building. It was suggested the design amendments would provide a positive response to improved integration of the new works within the streetscape.

The SEPP also requires a consent authority to have regards to the provisions of the Apartment Design Guide (ADG). The ADG provides benchmarks for designing and assessing a residential apartment development.

### **General Apartment Controls**

The revised plans have been assessed in regard to the general apartment controls and the key issues are identified below:

#### **2A Primary Controls**

The modified application is acceptable in relation to the building form and guidelines. The building on the site will visually strengthen the location and provide an improved visual setting to the streetscape compared to the existing building on the land. The development establishes a scale and form of development appropriate for its location within the B4 Mixed-Use zoning where higher density residential developments are permitted.

The proposal provides for good presentation to the street and the adjacent laneway and provides for appropriate depth, bulk and landscaping, however additional landscaping has added to balcony areas to assist in reducing the impact of the development to the streetscape.

#### **2B Building Envelopes**

The amended design increased the setbacks on the second and third level fronting Darby Street in line with recommendations from the UDCG (made under the original application). The revised development is acceptable in relation to building envelopes and setbacks and compliance with the NDCP 2012 is achieved.

#### **2C Building Height**

The previous proposal exceeded the height limit and sought approval for an exception to development standards in regard to height. The development has been reduced in height and now complies with the 14m height limit under the NLEP 2012. See also the NLEP 2012 section of this report.

## **2D Floor Space Ratio**

The development complies with the FSR required of 2:1 (see the NLEP 2012 section of this report for further detail).

## **2E Building Depth**

The depth of the apartments was considered acceptable under the guidelines and was supported previously by the UDCG. The modified development does not change the depth of the apartments. Note: Apartment 303 has been deleted and the communal open space is re-allocated to the frontage of level 3.

## **2F Building Separation**

No changes have been proposed in regard to building separation. The proposal is acceptable.

## **2G Street Setbacks**

The development proposes a zero setback to the street edge which is consistent with the current B4 Mixed-Use zoning. Upper levels 2 and 3 are setback 3m from the front property boundary as required in the NDCP 2012 (Section 6.09 Darby Street, Cooks Hill).

## **2H Side and Rear Setbacks**

No changes are proposed to the side and rear setbacks as part of the modified proposal. The development is appropriate and acceptable.

## **Part 3 – Siting and Development**

The proposed development is infill development in an existing commercial and residential area of central Newcastle. The building has been designed to contribute to the regeneration of this part of Newcastle whilst reinforcing the heritage values with upgraded materiality and articulation of the building, whilst aligning with the B4 Mixed-Use zoning. The modified proposal includes removal of Unit 303 and relocates the outdoor common space to the front of level 3, thereby reducing the height of the building under the 14m maximum permissible height limit under the NLEP 2012.

The proposed building has been revised to ensure the development is compatible with the streetscape. The development is not in close proximity to other listed heritage items and the higher portion of the building is located to the rear of the site and adjacent to the public car park. 3D images (as noted below) have been provided demonstrating the proposal will respect contributory heritage items in area and will be sympathetic to the Cooks Hill Heritage Conservation Area.



The proposal will ensure the development is a prime contributor to the vibrancy of the Darby Street precinct and the Cooks Hill Heritage Conservation Area.

### 3C Public Domain Interface

No changes are proposed to the public domain interface which included reconstruction of a new pedestrian footway across Darby Street and new driveway off the public lane way. The developments response to the public domain interface is acceptable.

### T3D Communal and Public Open Space

The outdoor common space has been relocated to the front of level 3 facing Darby Street. This area includes a small pergola, sink and communal open space seating with a view of the city. The development will revitalise the precinct and provide an area for good social interaction. The relocation of the communal open space to the frontage of level 3 facing Darby Street also includes landscaping buffer to soften the development and to provide a landscaped edge to the streetscape. This landscape buffer also provides visual privacy to other development along Darby Street. This communal open space area is provided as a gathering space to allow the residents to develop a sense of community and give them an opportunity to congregate in a comfortable shared environment.

### 3E Deep Soil Zones

Deep soil plantings are included in a strip of landscaping along the western elevation adjacent to the car park as noted on the plans. These plantings as noted in the initial report to CN were not considered necessarily to be deep soil plantings however, given the constraints of the site and the nature of the mixed-use development this was considered adequate. Since the original DA the applicant has substantially increased the amount of plantings across the site in terms of balcony areas to ensure the development provides a green buffer along Darby Street with use of upper floor planter boxes and plantings increased. The landscaping is primarily focussed along the roof top terrace. A recommended condition has been included to

ensure a landscape plan consistent with the concept design is provided in documentation for a Construction Certificate.

### **3F Visual Privacy**

Visual privacy was assessed under the original development application and was noted to be acceptable. This element of the development has not been amended. The western facing apartments were also noted to be in excess of 20m away from the closest neighbours in Dawson Street across the rear carpark.

The proposal clearly demonstrates that the separation distances are more than adequate and there is a public car park buffer to those apartments at the rear of the site. Additional landscaping has also ensured the privacy of future residents will be protected. Careful consideration of window location, balconies and screening ensures that visual and acoustic privacy is maintained.

### **3G Pedestrian Access and Entries**

No changes are proposed to the original proposal in this regard and pedestrian access and entry is acceptable.

### **3H Vehicle Access**

No changes are proposed to the original proposal in this regard and no issues are raised in relation to vehicle access.

### **3J Bicycle and Car Parking**

No changes are proposed to the original proposal in this regard and is acceptable and no further issues are raised in this regard.

### **4A Solar and Daylight Access**

The development achieves the 70% compliance requirement in the ADG for the minimum number of apartments to have solar access to living room and private outdoor space for 2 hours between 9am and 3pm. In addition, balconies however have been located in order to optimise solar access whilst ensuring adequate privacy is maintained. The rooftop communal open space area also assists in achieving a high level of solar access and is available for the use of future residents at all times. The proposal is acceptable.

### **4B Natural Ventilation**

The proposed apartments are able to achieve good ventilation and no concerns are raised in this regard.

### **4C Ceiling Height**

No changes are proposed to ceiling heights. The proposed ceiling heights are adequate.

#### **4D Apartment Size and Layout**

No changes are proposed to apartment sizes. Apartment 303 has been removed to enable the relocation of the communal open space to the frontage of level 3.

#### **4E Private Open Space and Balconies**

Balconies of all units have a minimum depth of 2m as required.

#### **4F Common Circulation and Spaces**

No issues have been identified in this regard.

#### **4H Acoustic Privacy**

Noise criteria requirements protect the community from excessive noise intrusion and assist in the preservation of amenity for specific land uses. CN also requires that dwellings achieve an acceptable level of acoustic privacy. Installed plant must meet noise emission limits and ensure that noise control included with plant is effective in reducing the sound levels in compliance with Australian standards, the Noise Police for Industry (2017) and as defined under the *Protection of the Environment Operations Act 1997* (NSW).

Noise impacts were assessed under the original DA and an acoustic report provided which was undertaken by a qualified acoustic engineer. That report demonstrated that the site is suitable for the development and recommended the report recommendations be implemented to address external noise (including road noise), and noise from nearby restaurants / cafés.

The review has included relocation of the communal open space area from the rooftop to the frontage of level 3. The communal open space is located closer to Darby Street which is exposed to external noise such as road noise and noise from nearby cafés and restaurants. The Acoustic consultant was requested as part of this review to include commentary in regard to the outdoor communal open space, now relocated to the third floor from the original rooftop location. Based on background noise level for the evening it was noted that there will be no adverse impacts as a result of assessed noise for the communal area. The revised plans were also referred back to the Acoustic Consultant and no issues have been raised in regard to the design achieving compliance with the relevant guidelines.

Overall, noise impacts are considered to be negligible, however, general conditions will be included to ensure the development is constructed in accordance with required relevant Australian environmental standards.

#### **4J Noise and Pollution**

The proposal does not raise any other concerns relating to noise and pollution that have not already been discussed throughout this report. General conditions have been recommended to be included in the schedule of conditions to ensure compliance with the *Protection of the Environment Operations Act*.

### **General Principles**

In regard to the general principles relating to SEPP 65 the following comments are made:

### **Context and Neighbourhood Character**

The modified proposal ensures the development is no longer reading as a four-storey building with removal of the rooftop open space and its relocation to the frontage of level 3 (as a result of removal of Unit 303). The built massing is reinforced through variation in materials and will reinforce the architectural form and the building will primarily read as containing a two-storey form to Darby Street with recessed upper third level more prominent to the rear carpark.

The building on the site will visually strengthen its location and provide an improved visual setting. Whilst the building will have a larger presence in the Darby Street precinct the footprint of the site is long and narrow with the bulk and main height of the building being located to the rear of the site. The building has been well articulated through the use of building modulation, position of balconies, size and distribution of windows and use of colours / materials to architecturally reflect the scale and proportioning of more traditional buildings in the Heritage Conservation Area of Cooks Hill.

### **Built Form and Scale**

The scale of the building has been carefully designed to provide appropriate height and bulk and to respond to the Darby Street streetscape and the Cooks Hill Heritage Conservation Area. The scale and proportion of the built form has been developed based on the detailed analysis of streetscape height, materiality, proportion and rhythm.

### **Density**

The development is supported by the B4 Mixed-use zoning, where higher density residential developments are permitted. The development provides for increased density in a housing form that relates to the feel of the locality. The dwellings provide for high quality residences in proximity to local businesses and the Darby Street shopping precinct which will assist to increase patronage in the area and sustain local business.

The proposed residential flat building is permissible on the site and is well located to encourage walking and cycling which is consistent with the B4 zoning.

**Resource, Energy and Water Efficiency**

The building has been designed with efficient use of natural resources, energy and water during construction and for the life cycle of the building. The design assists in the provision of solar access and meets the 70% ADG requirements, the communal rooftop area provides an appropriate space for residents to congregate, grow food or simply enjoy landscaping in a breakout area. Residents are also able to walk to shops, restaurants, hotels and the Central Business District (CBD) of Newcastle.

**Landscaping**

Landscaping will assist to improve presentation of the development to Darby Street, the carpark and visually in terms of the Heritage Conservation Area of Cooks Hill. The design approach provides for a landscaped edge to Darby Street and this buffer also provides privacy to balcony areas and softens the visual impact of the development when viewed from the streetscape and rear car park. Residents will be able to congregate in a shared environment and enjoy the sense of community that this proposal will provide.

**Amenity**

The building design has optimised amenity for the residents by providing efficient and well-proportioned room layouts, street facing windows, natural ventilation, privacy and appropriate outdoor areas.

**Safety and Security**

The building has a clear definition between its public and private spaces. Commercial ground floor activities will provide passive surveillance and façade activation to Darby Street. At the first-floor level, balconies and living room windows provide passive surveillance of Darby Street and the rear car park.

**Social Dimensions**

The introduction of this type of mixed-use development will enable a mix of individuals and family units to live within the community, increasing the diversity of the population and enriching the social fabric.

**Aesthetics**

The aesthetics of the building directly respond to the Cooks Hill Heritage Conservation area and the architectural style, form and details of buildings in the streetscape.

**Regional Environmental Plans**

There are no regional environmental plans that are relevant to the proposed development.

**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:

Land Use Table – Zoning

The site is zoned B4 Mixed-Use. The proposed development is defined as Mixed-use, one commercial and shop top housing (comprising eight dwellings) and is permissible within the B4 Mixed-use Zone.

Clause 2.7 – Demolition

The modified proposal will include demolition of buildings on the site and appropriate conditions can be imposed in this regard.

Clause 4.3 – Height of Buildings

The maximum building height for the site is 14m. The original application sought a variation for height to 17.02m. The proposed modification seeks a height reduction to 14m, and the proposal meets this requirement and is compliant with this clause. A 14m height plane has also been included on the plans to assist in reading the location of the 14m height plane.

Clause 5.10 Heritage Conservation

The objectives of this clause are to conserve the environmental heritage of Newcastle, conserve the heritage significance of heritage items and heritage conservation areas, including the associated fabric, settings and views. In addition, this clause also provides for the conservation of archaeological sites and conservation of Aboriginal objects and Aboriginal Places of heritage significance.

Background to original Development Application assessment

The original DA report to CN noted that many sites along Darby Street do contain previous layers of European development and that the remnant walls from the Old Oak Hotel or Lord Cardigan Hotel that were previously on the site were noted to not be significant as the building had been substantially altered over time. In addition, the remaining elements of previous buildings had lost their context and original finishes had also been lost. It was also noted that the rendered finish related to later changes which were not considered significant. Support for the demolition of the building was recommended at that time and it was considered that the building was likely to have been constructed after the key period of significance for the Cooks Hill Heritage Conservation Area (c.1850 to 1940). Reuse and retention of the building façade was not considered to be applicable given the building had been substantially altered over time. In addition, the form of the development was previously accepted by the UDCG Heritage Architect and the design of the development in terms of the context of higher density in the B4 Mixed-use zone.

### Modified proposal, the subject of the 82A review

The existing two storey rendered brick building contains a hipped tiled roof with an awning overhanging Darby Street. The façade is generally symmetrical with two pairs of timber framed hung windows at the first floor and a central stepped parapet displaying the building's name 'Gilroan Court'. Commercial tenancies are included on the ground floor.

The proposed development is in the vicinity of heritage item 183, 'Normanton' (residence) at 37 Dawson Street, Cooks Hill however it is not considered this item is in close proximity to the development nor is it considered that the proposal will have a significant impact on this item.

The site does not contain a listed item and is not identified as an archaeological site. An AHIMS search did not identify any Aboriginal sites or listed Aboriginal Places within 200m of the property.

The Cooks Hill Heritage Conservation area has a significant visual character and a variety of architectural styles and includes several contributory buildings and is associated with the Australian Agricultural Company as part of the original 2,000-acre grant owned by that company. An extract from the NDCP 2012 is noted below:

- i) *The Darby Street streetscape is eclectic and is characterised by two-storey commercial and retail development with a characteristic 'village' feel. There are a wide range of architectural styles represented, including Victorian, Federation, Interwar, Post war and contemporary buildings. On the western side of the street, adjacent to the subject site is a somewhat altered two-storey Victorian building operating as a restaurant. Further north is the Hotel Delaney, a significance landmark property. To the south are two, two-storey later 20<sup>th</sup> century developments with an uncharacteristic deep front setback with parking in front of the buildings. Across the road, on the eastern side of Darby Street, the streetscape is significantly more intact, with a high proportion of Victorian two-storey terraced buildings and neutral two-storey infill development.*

As noted by CN's Heritage Officer, the following NDCP 2012 section 6.02 – Heritage Conservation Areas (HCA) provides a Statement of Significance for the HCA:

*Cooks Hill Heritage Conservation Area is culturally significant on a number of levels. As a residential and commercial precinct, it is regarded for its special historical character, liveable streetscapes, diverse range of historic residential and commercial buildings and several tree lined streets. The age of the suburb, relative to other suburbs in Newcastle, is apparent in the style and form of buildings and eclectic street layout.*

Gilroan Court is noted as having a 'neutral' contribution to the HCA and it is unlikely the building was constructed prior to WW11.

Throughout this process CN has maintained the 'neutral' contribution to the HCA and remains firm in regard to this position. As noted in the current Heritage Technical Manual:

*“Neutral buildings - are buildings that are either altered to an extent where the construction period is uncertain, or are from a construction period which falls outside any Key Period of Significance for the heritage conservation area, but which reflect the predominant scale and form of other buildings within the heritage conservation area, and therefore do not detract from the character of the heritage conservation area. This ranking is assigned where the building is either so altered that the period and style is no longer evident, or it is a recent building which is of a height, form and scale which is consistent with the streetscape.”*

### Note

Initially the categories as developed in the Heritage Technical Manual for contributory buildings were starting points only and included merit considerations undertaken by officers for analysing buildings in the Cooks Hill Heritage Conservation Area. Over time the analysis of contributory buildings became more refined and site specific and reassessment of buildings and their contribution status took place. As such, the ranking criteria is not a ranking afforded to a listed heritage item. In addition, the building is not a listed heritage item and is not a contributory item.

The assessment of the application has concluded that the original building is not considered to fall within the key period of significance. The building on the site has been subjected to several changes over time and was rebuilt after demolition of the Lord Cardigan Hotel. The period and style of the building is not readily discernible and the very small section of the building containing the name 'Girroan Court' as noted on the frontage of the building between the modern windows does not reflect a predominant scale and significance that requires retention. Overall the front façade has been significantly changed and its retention is not required to reinforce the Heritage Conservation Area requirements of Cooks Hill. However, in order to retain a historic connection to the site and its important past, conditions requiring a detailed interpretation plan for the site and incorporation of interpretation elements have been included in the schedule of conditions.

Throughout the section 8.2 review, the historical context has been considered including the massing, scale, character and built form of contributory buildings that make up the village character of Darby Street and the wider Cooks Hill HCA.

As a result, throughout the assessment the applicant was advised that more emphasis should be placed on the two-storey form of the building to ensure it relates more appropriately to the two-storey context. Amendments were required to include a consistency of materiality across the ground and first floors. The upper levels were to be recessive and preference given to a lightweight construction with a clear break between the first floor and the upper levels. A warmer face brick instead of the proposed Austral Gaudi face brick was suggested to minimise the impact of the

building's scale. Windows and openings were required to better respond to the proportions of historical windows within the precinct.

The plans now include extension of the Masonry of the Southern Wall to the Darby Street second floor apartment to ground level to emphasise the second storey, including vertical openings more in keeping with heritage facades, material changes to emphasise the second storey. Changes to brick colour have been included to reduce the visual impacts of the proposal. The visual separation between the bulk of the two-storey form and upper levels has been reviewed in line with other historical development in the area.

The revised design has now picked up on cues from contributory buildings, thereby using heritage principles to inform the design. Setbacks that meet the minimum NDCP 2012 requirements and blend with the traditional form of contributory buildings in the streetscape result in a new and contemporary building form. The ground level articulation of the shop front / commercial space has been seen to transition from the upper residential to lower floor with the face brick which grounds the building to the streetscape and provides for an improved two storey context.

The development does not restrict views of the Heritage Conservation Area of Cooks Hill and the setbacks of the upper level ensure the development whilst maintaining a higher form at the rear in proximity to the car park will not impact the streetscape of Darby Street and the Cooks Hill precinct. The design provides for a contemporary response to the adjoining existing restaurant building and is now considered appropriate with the use of revised materials, colours and finishes. The articulation and use of these revised materials and finishes and the inclusion of additional landscaping combined with modified design, ensures the development is not highly dominant within the Cooks Hill precinct when viewed from the streetscape. The proposed floor to ceiling heights meet the controls of SEPP 65 and therefore cannot be reduced further.

The revised proposal is appropriate in relation to heritage considerations of the NLEP 2012 as it meets the requirements of the B4 zoning, SEPP 65, the NDCP 2012 and the proposal has mitigated the visual impacts of the building by achieving a more neutral presence in the streetscape to ensure the development does not significantly detract from the Cooks Hill Heritage Conservation Area.

The proposal is supported from a heritage perspective and the proposal meets the objectives and provisions of this clause of the NLEP 2012.

#### Clause 6.1 – Acid Sulfate Soils

The subject site is identified as containing Class 4 Acid Sulfate Soils (ASS). The objective of clause 6.1 is to ensure that development does not disturb, expose or drain ASS and cause environmental damage.

The original development included minor excavation for the car stacker and footing works associated with the development and no further conditions are required to be imposed in regard to Acid sulfate soils.

Clause 6.2 –Earthworks

Clause 6.2 aims to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposed amended development involves minimal earthworks to facilitate the construction of the footings and the car stacker. Appropriate conditions have been included in this regard.

**Section 4.15 (1)(a)(ii) – Draft Environmental Planning Instruments**

**Greater Newcastle Metropolitan Plan 2036 / Hunter Regional Plan 2036**

The Greater Newcastle Metropolitan Plan 2036 (DGNMP) sets out the strategies and actions to drive sustainable growth across Cessnock City, Lake Macquarie City, Maitland City, Newcastle City and Port Stephens communities which make up Greater Newcastle.

The outcomes of the Plan assist in the delivery of the Hunter Regional Plan 2036 goals namely, to be the leading regional economy in Australia with a biodiversity-rich natural environment, thriving communities and greater housing choice and jobs. The DGNMP is an overarching planning document and does not contain provisions which are relevant to the proposed development. The Hunter Regional Plan 2036 includes revitalisation of the Newcastle City Centre and includes leveraging the city centre's urban amenity, industrial heritage, harbour and ocean frontage and access in the region.

Draft amendments to the NDCP 2012 were recently on public exhibition until 14 September 2020. The Draft NDCP 2012 amendments revised outdated references, in addition to addressing minor issues related to ambiguity in clauses or misalignment with CN's policy or industry standards. Amendments have been made to the following sections of the NDCP 2012, however these amendments do not alter the assessment criteria of these chapters and consequently do not impact on the acceptability of the development:

- i) Section 4.02 Bushfire Protection – not applicable;
- ii) Section 7.03 – Traffic, Parking and access;
- iii) Section 7.08 – Waste Management; and
- iv) Section 9.0 – Glossary.

**Section 79C(a)(iii) – Development Control Plans (and Development Contributions Plan)**

**Newcastle Development Control Plan 2012**

The NDCP 2012 applies to the proposed development.

Compliance with the relevant controls are set out below:

Commercial Uses - Section 3.10

This section of the NDCP 2012 aims to ensure new development makes a positive contribution to the local context and that activates street frontages that result in provision of a safe and accessible environment, whilst promoting uses that attract pedestrian traffic along ground floor street frontages in a business zone.

The proposed development does not contain any residential development at the street level, however does include a commercial entry which activates the streetscape built to the front boundary of the site and includes an awning on Darby Street that provides for all weather protection into the commercial component of the building. In addition, the design of the development also ensures that direct contact (visually and physically) occurs between the street and the interior of the building as a result of the design and form of the building.

Articulation of the upper levels results in appropriate visual form that supports the development being built to the front boundary on the ground level. In this regard, the development reinforces the street edge whilst providing appropriate visual interest and articulation of the building form.

The development includes a secure car park area and the articulation of the building form is visually interesting and ensures the development is complementary to the existing development in the area and the streetscape. The character, scale and massing of the development has been taken into account and the proposed development is not considered to be out of context with this B4 mixed-use zone as the proposal has also taken into account the requirements of the Heritage Conservation Area of Cooks Hill.

Mine Subsidence Section 4.03

The site is mapped within a mine subsidence area and separate approval is required from Subsidence Advisory NSW under the *Coal Mine Subsidence Compensation Act 2017*.

The proposal is not '*integrated development*' pursuant to section 4.46 of the EP&A Act, as the applicant has sought separate approval directly with the Subsidence Advisory NSW. See the integrated development section earlier in this report which notes the applicant chose to seek its own approval direct from the Mine Subsidence Advisory Board.

Conditions have been recommended to ensure that necessary approval is obtained from Subsidence Advisory NSW by the applicant prior to any Construction Certificate being issued.

Safety and Security Section 4.04

This section of the NDCP 2012 assists to provide actual and perceived safe environments and to minimise opportunities for crime and anti-social behaviour. The development enables the natural surveillance of Darby Street and relocation of the communal open space area to the frontage of level 3 also assists in this regard. The development is satisfactory in relation to this control.

Social Impact Section 4.05

This section of the NDCP 2012 requires consideration of both positive and negative social impacts and how social impacts of change can be best managed and mitigated.

The development provides for social and ultimately, economic benefits through the provision of additional housing and the opportunity for a commercial business on the site in line with the objectives of the zone which provides for provision of a mixture of compatible land uses. In this regard, the commercial component of the development will provide services for those who live, work and visit the local area but the proposal will provide for additional housing. The culmination of services and housing ensures there is more interaction between the new development and the existing community and the availability of housing in close proximity to services and commercial facilities as well as creation of additional employment opportunities during the construction phase.

Soil Management Section 5.01

CN requires development to provide erosion and sediment controls during site preparation, construction and ongoing use of the land. Erosion and sediment controls will be required to be implemented before, during and until completion of works in accordance with CN requirements and this was assessed under the original DA and conditions are included in the conditions schedule in this regard.

Land Contamination Section 5.02

See the SEPP 55 section of this report.

Vegetation Management Section 5.03

No removal of vegetation is proposed as part of the development. Landscaping is included to ensure the proposal is sympathetic to the streetscape and the Heritage Conservation Area of Cooks Hill.

### Aboriginal Heritage Section 5.04

No sites of Aboriginal significance are contained on the site as noted in the original report.

### Archaeological Management Section 5.06

The site is not listed in the Newcastle Archaeological Management Plan 1997 or the NLEP 2012 as an *Archaeological site*, as noted in the original report.

### Heritage Conservation Areas – Section 6.02

This section of the NDCP 2012 provides an understanding of the history and diversity (within a thematic and historic context) of Heritage Conservation Area requirements and notes that infill development should respect the design of its neighbours and the character of the Heritage Conservation Areas. Detrimental impacts of non-contributory buildings should be ameliorated and removed and improvement of the contextual design and visual impacts of sites to reinforce the Heritage Conservation Area should be included. In this regard, it is noted that the NDCP 2012 Heritage requirements are also discussed in clause 5.10 of the NLEP 2012 section of this report.

The development complies with setback controls of the NDCP 2012 and this issue was also specifically supported by the UDCG. The development also meets the requirements of the B4 Mixed-use zoning of the site. The subject site is not designated as an item of environmental heritage under the NLEP 2012 and whilst the proposed building is situated within the Heritage Conservation Area of Cooks Hill it is not in close proximity to any heritage items. The nearest heritage item, Item 183 is the *Normanton* (residence) at 37 Dawson Street, Cooks Hill.

Growing the residential community in this area will result in activation of the streetscape, expand the walking community, support local businesses and strengthen neighbourhoods. Denser mixed-use developments are encouraged through the B4 zone together with infill development which is sympathetic to the Cooks Hill Heritage Conservation Area.

Given the design outcome that has now been submitted it is considered the proposal has provided for an acceptable compromise which takes into account the B4 land use zoning, the Heritage Conservation Area of Cooks Hill and the historic contribution of the Darby Street precinct to the development of Cooks Hill. It has been concluded that the development will not have a detrimental impact upon the Heritage Conservation Area of Cooks Hill and its contributory items and that the materiality and articulation of the development has been improved and is supported by landscape plantings. Further, development on the land will enable a higher order use as provided for in the zone objectives and will capitalise on the location of the site in the Darby Street commercial precinct. The development will also be sympathetic to the public domain and is readily accessible from Darby Street.

The proposal is supported subject to recommended conditions to be imposed in the attached schedule of conditions.

### Darby Street Cooks Hill - Section 6.09

As discussed throughout this report, the proposal will not result in any significant impacts within this locality (subject to the imposition of the appropriate conditions of consent). The proposal has been designed to fit with the topography of the site whilst addressing the streetscape, site context and character of Darby Street and the Cooks Hill Heritage Conservation Area. The proposal meets the height and density controls and the higher portion of the building is setback adjacent to the CN car park.

The materials palette is considered satisfactory and includes a combination of face brick and lighter masonry combined with reduced window opening to the first-floor apartment to ensure the proposal can capture elements of the Heritage Conservation Area. Balcony areas are well integrated into the site and front balconies assist to strengthen the form of development in terms of existing development in the street and the stepped form of the design levels which reduce the overall mass of the building when viewed from the streetscape.

The development is contemporary and whilst it is proposed as a new development it uses modern details to re-interpret the traditional requirements of the Heritage requirements of the Cooks Hill Heritage Conservation Area. A requirement for a detailed Interpretation Plan has been included in the schedule of conditions attached to this report. The design of this is required to be approved by CN prior to the issue of a Construction Certificate.

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

The concept landscaping along the elevation of the car park will assist to ensure the proposal positively upgrades the site from its current state and will soften and enhance the view of the development from the streetscape and car park. The plantings adjacent to the car park will also assist in provision of privacy together with the balcony plantings.

A final landscape plan with details of species and height at maturity prepared by an accredited landscape consultant will be required to be a Construction Certificate in order for the species details to be finalised. All landscaping will be required to be permanently maintained in good condition and additional conditions will be imposed in regard to maintenance of landscaping, to ensure the development maintains high quality landscaping in this Heritage Conservation Area.

The proposal provides for an acceptable landscape outcome.

### Traffic, Parking and Access Section 7.03

Car parking was assessed under the original development application and found to be acceptable with a deficiency of one car park.

The current proposal has removed one unit however still includes 13 car spaces for the eight residential units and one commercial space. In this regard the development is required under the NDCP 2012 to provide a minimum of one space per dwelling (total 8), plus one space per five dwellings thereafter or part thereof for visitor car parking (allowance 2 spaces) plus one space per 50m<sup>2</sup> for business office retail (112m<sup>2</sup> - 2 space requirement). This makes a total requirement of 12 car parks. The proposal provides for a total of 13 car spaces (including one accessible space). One motorcycle space has been provided and a designated area for bicycle parking x 10 which is considered acceptable.

The proposal is therefore able to meet the car parking requirements under the NDCP 2012.

In addition, the issue of pedestrian safety and queuing addressed with submission of additional information as part of the original DA and it was noted that conditions were included to ensure a specific car lift system was proposed to ensure the efficiency of the car stacker. The proposal was found to be satisfactory in regard to traffic generation and no significant concerns were identified in regard to traffic conflicts or design of the proposal from an engineering perspective.

The proposal enables vehicles to enter and exit the site in a forward direction and pedestrian access from Darby Street is not expected to be impacted given this low speed environment. Conditions have been recommended such as pedestrian sight splays to ensure safety for pedestrians in this area.

Darby Street is a classified road under the care and control of CN. Whilst the proposed access from the laneway is within 90m of a classified road the threshold requirements for referral to RMS are not triggered.

No further issues are raised in regard to access or egress from the site and whilst the proposal is considered to generate some additional traffic this is considered to be minor and that such trips can be accommodated without causing delays, or traffic impacts to the surrounding road network. In this regard the traffic generated by the development is insignificant in comparison with existing traffic generated by the public car park.

The proposal will not adversely impact the local and state road network.

#### Energy Efficiency Section 7.05

See the SEPP Basix section of this report – the proposal does not raise any concerns in regard to energy efficiency.

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

No changes are proposed to the original development in regard to stormwater management and conditions are included in this regard.

Waste Management Section 7.08

No changes are proposed to the original development in regard to waste management and conditions recommended in the conditions schedule to ensure waste is collected from the car park refuse storage area, serviced from Darby Street and returned directly to the refuse storage area within a short period of time after collection, to ensure bins do not remain for extended periods at the kerbside.

Street Awnings and Balconies Section 7.10

A full awning is provided along Darby Street and no changes are proposed in this regard.

Development Adjoining Laneways Section 7.11

The development satisfies this section of the NDCP 2012.

**Newcastle Section 7.11 / 7.12 Development Contribution Plan 2009 (formerly s.94A Plan)**

Conditions were included on the original DA for the levy of contributions applicable to the development.

**Section 4.15(C)(a)(iiia) – Planning Agreements**

No planning agreements are relevant to the proposal.

**Section 4.15(C)(a)(iv) – The Regulations (and other Plans and Policies)**

The application has been considered pursuant to the provisions of the EP&A Regulations and other relevant plans and policies as outlined below. The development will be required to comply with AS 2601 – Demolition of Structures, conditions can be imposed in regard to demolition works.

**Section 4.15C(1)(a)(v) – Coastal Management Plan**

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

**Section 4.15(C)(1)(b) – Other Impacts of the Development**

The social, economic and environmental impacts of the development have been considered within this section 8.2 review.

The visual impacts of the development have been mitigated through the revised design and the impacts upon the Cooks Hill Heritage Conservation Area are not considered significant enough to warrant refusal of the application. The development is recommended for approval and the original determination outcome of refusal is not considered to be in alignment with the revised plans.

The proposal will improve the visual integrity of the streetscape and no adverse impacts are anticipated. The context of this locality comprises a combination of residential and commercial uses encouraged by the zone objectives in this regard increased density on the land is consistent with the growth of central Newcastle.

The proposal has taken into account the strong heritage character and history of Darby Street throughout this design review as part of the 8.2 review process to ensure the proposal is sympathetic to the surrounding historic buildings and the Cooks Hill Heritage Conservation Area.

The development will make a positive economic and social contribution to the community by offering additional employment during the construction phase, the operation of the commercial component and will also increase the availability of residential accommodation in the Darby Street precinct.

### Social and Economic Impacts

The development provides for social and ultimately, economic benefits through the provision of additional housing and the opportunity for a commercial business on the site in line with the objectives of the zone which provides for a mixture of compatible land uses. In this regard, the commercial component can not only provide services for those who live, work and visit the local area but assist to reinvigorate the Darby Street area as well as providing additional housing on the land in proximity to community services, cafés, restaurants and other retail development.

The culmination of providing services, housing and facilities ensures that there is more interaction between new development and the existing community. Bringing the community together will result in social cohesion and enhancement of social values and overall net community benefits. In addition, the development will make a positive social and economic contribution in this locality.

### Utilities

The site is serviced by town water, sewer, electricity and telecommunications. A section 50 Compliance Certificate will be conditioned to be provided prior to the issue of a Construction Certificate. A condition will also be included in regard to compliance with Ausgrid requirements.

### Stormwater Management

A concept stormwater management plan was provided with the original proposal and is acceptable. No changes are proposed in regard to stormwater and conditions will be included in regard to further details being provided at the Construction Certificate stage.

In addition, it is noted that the site is not located within an identified flood prone area. The site is situated outside of the Probable Maximum Flood (PMF) extent and both a flood refuge and evacuation route are available. No flood related restrictions apply to the proposal.

**Section 4.15(C)(1)(c) – Suitability of the site for the Development**

The land is zoned B4 Mixed-Use which permits the development on the site. The proposed development has been found to be consistent with the zone objectives and the land is fully serviced in terms of reticulated water and sewer and has access to utility services. A section 50 will be required to be obtained from Hunter Water prior to the issue of a Construction Certificate together with approval from the Mine Subsidence Advisory Board. In addition, the development will be required to comply with the requirements of Ausgrid as included in the conditions schedule.

The locality includes a mix of commercial and residential uses and the site is located in close proximity to public transport and existing commercial services. The proposal will not result in significant cumulative impacts that cannot be mitigated and managed through the imposition of appropriate conditions of consent. The site is therefore suitable for the proposed development.

**Section 4.15(C)(1)(d) – Submissions**

The section 8.2 application was required to be notified or advertised in accordance with the EP&A Regulations and CN's Public Participation Policy between 3 August 2020 and 17 August 2020. A total of 56 submissions were received (55 in objection and one in support). The latest amended plans have also been publicly notified between 20 November 2020 and 4 December 2020 and seven submissions were received in response.

The key submission issues are detailed below together with CN's response.

**Summary of Submissions – Section 8.2 Review – 150 Darby Street, Newcastle – DA2018/01251.01**

Issue	City of Newcastle Response
<b>Statutory and Policy Issues</b>	
Non-compliance with the NLEP 2012 controls	This has been assessed and detailed throughout the report and found to be satisfactory.
Non-compliance with the NDCP 2012 controls, more specifically heritage requirements	This has been assessed and detailed throughout the report and found to be satisfactory.
Mine Subsidence approval	See the Integrated Development section of this report.
<b>Amenity Issues</b>	
Unreasonable impact on built environment in regard to character, height, bulk, scale and	The revised design has mitigated the concerns raised in this regard to height, bulk, scale, and visual appearance. The development now provides a design which is contemporary in nature and includes

<p>visual appearance</p>	<p>architecture of appropriate scale, form and massing in the Heritage Conservation Area. The development will be in alignment with requirements for commercial and mixed-use development and whilst providing a building in this location with increased density, height and scale the proposal has been amended to ensure it does not detract from the existing village feel of Darby Street and the Cooks Hill Heritage Conservation Area. Therefore, whilst this development is relatively new in this location of Darby Street the proposed building responds sympathetically to the existing development in Darby Street given the setbacks of the residential units from Darby Street and the bulk of the building being located towards the rear of the site.</p> <p>The proposed residential units will provide for upper floor balconies orientated to protect the privacy of neighbours and separation distance from the rear of the development across the public car park is considered to be more than adequate given a distance in excess of 20m. The commercial component of the building is simple in design and integrates well with the streetscape. The provision of landscaping across the site assists to ensure the development is sympathetic to the streetscape and is respectful of the existing character of the area.</p>
<p>Privacy impacts</p>	<p>This issue has been assessed and detailed throughout the report and found to be satisfactory.</p>
<p>Overdevelopment of the site</p>	<p>This has been assessed throughout the report and found to be satisfactory – the proposal meets the requirements of the zone objectives, the NLEP 2012 and the NDCP 2012 requirements. In addition, the development has been supported by the Urban Design Consultative Group on two occasions. Whilst a higher density format of development is permissible in the B4 zone, this has been weighed up against the preservation of existing streetscapes in the Darby Street and Cooks Hill Conservation Area and the development has been found to provide a good outcome that results in a more contemporary form of development including a commercial component whilst including a high level of amenity on the land.</p>

<b>Design and Aesthetic Issues</b>	
Development is not sympathetic to the Cooks Hill Heritage Conservation Area nor the streetscape.	This has been assessed and detailed throughout the report and the revised design has been found to be satisfactory. A detailed assessment is provided throughout the report and the building has a defined base and articulation of the frontage is achieved through vertical proportions, front balconies which assist to strengthen the form of the development in terms of existing development in the street, roof form and simple glazing. In addition, materials and finishes will ensure the building does not dominate the streetscape. The development also engages at a pedestrian and street level.
Development proposal does not respect the historic legacy of Darby Street and the contributory buildings in the area.	This has been assessed and detailed extensively throughout the report and the revised design has been found to be satisfactory. Conditions have been included in regard to provision of an Interpretation Plan for the site.
<b>Traffic and Parking Issues</b>	
Traffic safety and car parking issues (overutilised thoroughfare / car parking not adequate).	This has been assessed throughout the report and no changes are proposed to the original proposal in which traffic and parking issues were found to be satisfactory.
Stacker inefficiency and reduction in available parking for commercial core.	This has been assessed throughout the report and no changes are proposed to be original proposal in which traffic and parking issues were found to be satisfactory.

**Public Voice**

The proposal was considered at the Public Voice Committee Meeting held on 1 December 2020. Residents raised concerns with regards to the development not being consistent with CN’s vision of Darby Street in regard to the locality specific provisions, the demolition of the existing building is contrary to the heritage requirements of the Cooks Hill Heritage Conservation Area. It was also suggested that the building was contributory and not neutral as indicated in the Heritage Technical Manual that accompanies the NDCP 2012. Issues were also raised in regard to upper floor setbacks, car parking and traffic.

The applicant also made a presentation and the key issues from both presentations are summarised below:

Issue	Applicant commentary
<i>Design changes</i>	<p>The applicant indicated at the PV that the proposal has been amended several times in line with the requests of CN staff and Councillors, the UDCG and to ensure the development was more sympathetic to the Cooks Hill Heritage Conservation area and the Darby Street precinct.</p> <p>It was also noted that the second storey form and setback had been accepted by CN and by the UDCG on two occasions and was fully compliant with the NDCP 2012 controls in meeting the required setbacks for the upper floors. In addition, it was also confirmed that the development provides for appropriate car parking and a full traffic assessment was submitted with the original proposal. An explanation was also provided by the applicant to Councillor Luke in regard to the operation of the car stacker.</p>
<i>Development more sympathetic to the Heritage Conservation Area of Cooks Hill and the Darby Street streetscape</i>	<p>The building now meets the required height limit of 14m and is under the FSR controls for the site. The building articulation has been revised and addresses the issue of bulk and scale. The setback of the upper floor meets the requirements of the UDCG in terms of SEPP65 requirements and CN's NDCP 2012 controls. The applicant also noted in their presentation that the existing building is non-contributory (which is confirmed by CN's Heritage Officer) in terms of the heritage conservation area.</p>
<i>Throughout the extensive development assessment process from the lodgement of the original DA to now, the applicant has worked extensively with CN in terms of amendments and at all times has followed the process requirements and worked to revise the proposal in line with CN requirements.</i>	The applicant seeks the support of CN.

## CITY OF NEWCASTLE

The Public Voice Committee also heard from two objectors raising their concerns in regard to the following issues:

<b>Issue raised by Objector at PV meeting</b>	<b>City of Newcastle Response</b>
<i>The development is substantially the same, however that height has been reduced.</i>	Noted. In this regard, the development is substantially the same in terms of its general footprint on the site. The height has been reduced and is compliant with the NLEP 2012.
<i>The development does not meet CN's vision for Darby Street, in particular, in regard to locality specific provisions of the NDCP 2012.</i>	The proposal is being undertaken in the B4 Mixed-use zone which allows for a 14m height limit. The zoning also allows for a higher density than what generally exists within the precinct. The general form of development is therefore consistent with the intent of the zone objectives. The building façade and materiality has undergone several changes and is now sympathetic to the existing Heritage Conservation Area of Cooks Hill and the Darby Street, streetscape. The proposal represents a balance between the zoning of the land and the Heritage Conservation Area requirements.
<i>Demolition of the existing building is contrary to the heritage requirements for a building they say is clearly contributory – assessment based on submission from the National Trust.</i>	This issue has been investigated numerous times throughout the assessment of the original development application and as part of this review process. Research undertaken in relation to past approvals and use and the information available identifies that the building is rated as providing a 'neutral' contribution to the Cooks Hill Heritage Conservation Area. Several site inspections have been undertaken and the remnant portion of brickwork suggested to be re-used and retained from the previous building onsite or the Lord Cardigan Hotel is not readily discernible and is so altered by the post 1938 structure it appears no longer evident. A further site inspection has been undertaken by CN staff and it is

	<p>noted that construction within the building suggest the building as it presently stands appears to be more than likely constructed outside the key period of significance for the Cooks Hill Heritage Conservation Area. In addition, the very small section of the façade with the name 'Gilroan Court' appears to be the only section retained from the previous flats building and is a small section within the upper façade in between the upper windows only. Retention of this small portion of wall is insignificant in the larger context and this is discussed further in the heritage section of this report.</p>
<p><i>Indicated the key significance period is from 1850 to 1949 and that the building was contributory at the time of the lodgement of the original DA – suggest the change to the Heritage Technical Manual in regard to contributory buildings changed between lodgement of the DA and the time the report to CN for the original building occurred. In any event they say it is not reasonable to demolish and replace the building with a non-contributory building.</i></p>	<p>The building is neutral and has been assessed on that basis as discussed elsewhere in this report. The key significance period for the Cooks Hill Heritage Conservation Area is considered to be from 1850 – 1940.</p>
<p><i>Concerns raised about the building previously being mapped as contributory in previous versions of the Heritage Technical Manual.</i></p>	<p>There have been several versions of the Heritage Technical Manual, however the criteria and therefore definition for a <i>contributory building</i> was also changed under those different versions of the Manual.</p> <p><b><u>Superseded versions of Heritage Technical Manual / DCP commentary</u></b></p> <p><b>Heritage Technical Manual (4 September 2014)</b> - contained a contributory buildings map only for Cooks Hill HCA along with definitions for the contributory buildings ranking (contributory, neutral, non-contributory). Note this was a starting point only by CN for ranking of all buildings.</p>

	<p><b>Ranking for 150 Darby Street, Cooks Hill: Contributory Building, however this was subject to different criteria than the current contributory building criteria.</b></p> <p><u><a href="#">Review of HCAs Final Report, June 2016</a></u> - contained contributory buildings maps for all HCAs (except the CBD) using definitions similar (although slightly different) to 4 September 2014 Heritage Technical Manual for the contributory buildings ranking.</p> <p><b>Ranking for 150 Darby Street, Cooks Hill: Contributory Building however, subject to different criteria than the current contributory building criteria.</b></p> <p><b>Heritage Technical Manual (Updated 2 August 2019)</b> – did not contain any contributory buildings maps (and removed the Cooks Hill HCA contributory buildings map to avoid conflict / confusion with the new definitions provided by DCP 6.02, version 3, adopted 23 July 2019 / commenced 6 August 2019) and also no contributory buildings definitions provided.</p> <p><b>Ranking for 150 Darby Street, Cooks Hill: <u>No map / ranking provided</u></b></p> <p><u><a href="#">DCP 6.02 (version 3, adopted 23 July 2019 / commenced 6 August 2019)</a></u> – provides definitions for contributory buildings (contributory, neutral, non-contributory) and inserts ‘Key Period of Significance’ into the HCA Heritage Significance Statements in the NDCP 2012 for the first time, these contributory building definitions are very different to those in the 2016 HCAs Report and the 2014 Technical Manual.</p> <p><b><u>Current Version of the Heritage Technical Manual</u></b></p>
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	<p><b>Heritage Technical Manual (version 4, 3 February 2020)</b> - contains maps for all 8 x HCAs using the current NDCP 2012, 6.02 definitions (adopted 23 July 2019 / commenced 6 August 2019) for the ranking – these current contributory buildings definitions are very different to those in the 2016 HCAs Report and the 2014 Technical Manual).</p> <p><b>Ranking for 150 Darby Street: Neutral Building.</b></p> <p>As noted earlier in the report - initially the categories as developed in the Heritage Technical Manual for contributory buildings were starting points only and included merit considerations undertaken by officers for analysing buildings in the Cooks Hill Heritage Conservation Area. Over time the analysis of contributory buildings became more refined and site specific and reassessment of buildings and their contributory status took place. It should be noted that the ranking criteria is not a ranking afforded to a listed heritage item. The building is not a listed heritage item and is not a contributory item.</p>
<i>Suggests the balcony setback to the first floor is not compliant with DCP controls.</i>	The setback to the first floor is compliant with NDCP 2012 controls.
<i>No visitor car parking is provided.</i>	This was addressed in the original DA report to Council and is referred to in the NDCP 2012 section of this report. Proposed car parking is considered satisfactory.
<i>Car park exit is not compliant with Australian Standards.</i>	The exit driveway, car stacker and access were all assessed under the original DA and found to be acceptable and no other issues are raised in this regard. It is noted however, that conditions are recommended in the schedule of conditions in relation to the

	garage exit and requirement to install audible / flashing beacon warning system to alert pedestrians and cyclists on footpath and install convex safety mirrors.
<i>Stackers are ineffective leading to traffic queuing and issues along the public roadway.</i>	This matter was addressed in the original DA report. The stacker system is considered to be an acceptable parking system in this instance, given the constrained nature of the site. CN engineering staff have previously assessed this requirement and no further issues are raised in this regard.

**Section 4.15(C)(1)(e) – Public Interest**

The proposal is consistent with the B4 Mixed-use zoning of the land and the NLEP 2012. The proposal provides with housing in a highly accessible location to commercial facilities and the revised design has taken into account concerns about the proposal within the Heritage Conservation Area of Cooks Hill as well as other key submission issues.

The development will also provide for employment opportunities during the construction phase which has the potential to boost the local economy and provide benefits to local businesses within the Newcastle area. In addition, the development provides for social benefits through provision of additional housing in line with the objectives of the zone.

**CONCLUSION**

The development application review has been completed and has been found satisfactory against the heads of consideration under section 4.15 of the EP&A Act. The modified plans have been assessed against the NLEP 2012 and the NDCP 2012 and have found to be satisfactory.

The proposal has been amended to ensure that functional issues and more significant issues such as the development being sympathetic to the Heritage Conservation Area have been addressed.

The proposal will not result in any significant impacts within this locality (subject to the imposition of the appropriate conditions of consent). The proposal has been designed to fit with the topography of the land whilst addressing the streetscape, site context and character of Darby Street and the Cooks Hill Heritage Conservation Area.

In addition, the proposal will assist to activate the streetscape and it is therefore recommended that the proposed development should be supported.

**RECOMMENDATION**

- A That Council approve DA2018/01251.01 for demolition of the existing building and construction of a mixed-use development comprising a commercial space on the ground floor and shop top housing (comprising eight residential units) including associated car parking at 150 Darby Street Cooks Hill, subject to the imposition of conditions in the attached schedule at **Attachment B**.
- B That those persons who made submissions be advised of CN's determination.

**ATTACHMENTS**

- Item 1 Attachment A:** Submitted Amended Plans - 150 Darby Street, Cooks Hill
- Item 1 Attachment B:** Draft Schedule of Conditions – 150 Darby Street, Cooks Hill
- Item 1 Attachment C:** Processing Chronology – 150 Darby Street, Cooks Hill

**Item 1 Attachments A-C distributed under separate cover**

# CITY OF NEWCASTLE

Development Applications Committee Meeting 16 February 2021

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**ITEM-2**                    **DAC 16/02/21 - 11 ARGYLE STREET, NEWCASTLE - DA2020/00189 - MIXED-USE - STAGED DEVELOPMENT FOR ALTERATIONS AND ADDITIONS AND PART CHANGE OF USE**

**APPLICANT:**            **SENTINEL REGIONAL OFFICE PTY. LTD.**  
**OWNER:**                **SENTINEL REGIONAL OFFICE PTY LTD**  
**REPORT BY:**            **GOVERNANCE**  
**CONTACT:**             **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

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## PART I

### PURPOSE

A Development Application (DA2020/00189) has been received seeking consent for the staged redevelopment of the property comprising of alterations and additions to the current building, a part change of use of the building from car park to office accommodation and the erection of an additional floor of office accommodation. The subject site is at 11 Argyle Street Newcastle.

The site is currently occupied by an existing six storey mixed-use building which provides a mix of private car parking (levels 1 to 4) and office accommodation (levels 5 to 6).



**Subject Land: 11 Argyle Street Newcastle**

The submitted application was assigned to Senior Development Officer (Planning), Gareth Simpson, 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) and building height development standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation. The application was also called in by Councillor MacKenzie, Councillor White and Councillor Duncan.

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and 22 submissions have been received in response.

A summary of the concerns raised in the submissions include:

- i) Height in excess of the maximum building height for the site
- ii) FSR in excess of the maximum FSR for the site
- iii) Impact on viewing corridors
- iv) Overlooking concerns to surrounding residential properties
- v) Impact on the solar access of surrounding residential properties
- vi) Increased noise impacts to surrounding properties
- vii) Reduction in on-street car parking spaces
- viii) Structural damage to surrounding buildings as a result of the development
- ix) Incorrect information in the application.

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

The proposal was considered at a Public Voice Committee Meeting held on 1 December 2020. The issues raised included overlooking to surrounding residential properties, noise impacts to surrounding residential properties, excessive building height, excessive FSR and incorrect development application information. Following the Public Voice meeting for this application, the applicant has amended the proposed additional level to ensure it is setback from the building line.

This results in an additional level that will not be readily visible from street level. In addition, the proposed plant area has been located to the south-west corner of the site. The proposed plant area is lower than the roof line of the proposed addition and enclosed in an acoustic and visual privacy screen.

### **Issues**

1. Clause 4.6 Variation Request to clause 4.3 Height of Buildings (HOB) development standard under the NLEP 2012.
2. Clause 4.6 Variation Request to clause 4.4 FSR development standard under the NLEP 2012.
3. Matters raised in the submissions including height, view loss, overshadowing, car parking reduction and overlooking have been satisfactorily addressed by the applicant.

## Conclusion

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

## RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the 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 4.3 and the objectives for development within the B4 Mixed-Use zone in which the development is proposed to be carried out; and
- C. That DA2020/00189 at 11 Argyle Street, Newcastle be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- D. That those persons who made submissions be advised of CN's determination.

## Political Donation / Gift Declaration

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

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

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

## PART II

### 1.0 THE SUBJECT SITE

The subject site is known as 11 Argyle Street, Newcastle and is legally known as Lot 100 DP 714041. The site is located on the southern side of Wharf Road and on the eastern side of Argyle Street and is generally square in shape.

The lot has a frontage of 52.58m to Wharf Road and 60.78m to Argyle Street and a total area of 2,920.63m<sup>2</sup>. The site is sloping away from Wharf Road. The site is located to the north of the former Newcastle rail line which is currently vacant.

The site is occupied by a six-storey building comprising a private car park on levels 1 - 4 and office accommodation on levels 5-6. Access to the car park is from Argyle Street. To the east of the building is a residential property located at 265 Argyle Street with further residential units located to the north. To the west of the site is a state heritage listed building (311 Wharf Road) known as Argyle House.

The site is zoned B4 Mixed-Use under the NLEP 2012 and is also located within the Newcastle City Centre Heritage Conservation Area (HCA), and is subject to mine subsidence.

### 2.0 THE PROPOSAL

The applicant seeks consent for the staged change of use of the fourth floor of the existing building from a car park to office accommodation and the erection of an additional floor of office accommodation on the building.

The proposal involves:

- i) Alterations to the building to convert the existing parking level on the fourth floor to approximately 2,400sqm of office accommodation over two stages with Stage 1 consisting of 1,107sqm and Stage 2 of 1,293sqm.
- ii) The erection of an additional level of office accommodation consisting of approximately 2,200sqm resulting in a seven-storey building.
- iii) Car parking spaces in the existing building will be used by the office accommodation.

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

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

### **3.0 PUBLIC NOTIFICATION**

The application was publicly notified for a period of 14 days between 20 March 2020 and 3 April 2020, in accordance with CN's CPP. A total of 22 submissions were received during the notification period.

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

#### **a) Statutory and Policy Issues**

- i) The proposed building height is in excess of the maximum building height for the site.
- ii) The proposed FSR is in excess of the maximum FSR for the site.
- iii) The additional level will impact on view corridors.

#### **b) Amenity Issues**

- i) The development results in overlooking and privacy impacts to surrounding properties.
- ii) The development will result in solar access and overshadowing impacts to neighbouring properties.
- iii) The development will increase noise impacts to neighbouring properties.

#### **c) Traffic and Parking Issues**

- i) The development will reduce the number of off-street car parking spaces, resulting in additional car parking on the street.

#### **d) Miscellaneous**

- i) The construction of the additional floor will result in structural damage to surrounding properties.
- ii) The information provided in the development application submission is incorrect.

### **Public Voice Committee**

The proposal was considered at a Public Voice Committee Meeting held on 1 December 2020. Residents raised concerns with regards to overlooking, overshadowing, noise impacts, excessive building height, excessive FSR and incorrect development application information.

The applicant provided a response to the issues which is discussed in further detail in section 5.8 of the report.

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

#### **4.0 INTEGRATED DEVELOPMENT**

The proposal is integrated development pursuant to section 4.46 of the EP&A Act, as approval is required from Subsidence Advisory NSW under section 22 of the *Coal Mine Subsidence Compensation Act 2017*. Subsidence Advisory NSW granted their 'General Terms of Approval', on 23 September 2020 at **Attachment D**.

#### **5.0 PLANNING ASSESSMENT**

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

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

###### **State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)**

SEPP 55 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject site is not identified on CN's Land Contamination Register as having contained any past contaminating activities on the site. The proposed works do not involve excavation or ground works. The proposed development does not increase any exposure risk, accordingly further investigation is not required.

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

The Vegetation SEPP (the SEPP) works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW. Part 3 of the Vegetation SEPP contains provisions similar to those contained in clause 5.9 of the NLEP 2012 (now repealed) and provides that the NDCP 2012 can make declarations with regards to certain matters, and further that CN may issue a permit for tree removal.

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

###### **State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP)**

The Coastal Management State Environmental Planning Policy (SEPP) came into effect on 3 April 2018. The SEPP seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the *Coastal Management Act 2016* (the Act).

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

The development is within the coastal use and coastal environment areas. An assessment of the development has been undertaken in respect of the coastal use and coastal environment areas and the development is not inconsistent with 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 included within the B4 Mixed-Use zone under the provisions of the NLEP 2012, within which the proposed development is permissible with CN's consent.

The proposed development is consistent with the objectives of the B4 Mixed-Use zone, which are:

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

Comment:

The development provides for office accommodation which is considered to be compatible with the surrounding land uses. The development is considered to provide for additional employment opportunities which will support nearby commercial centres. Further, the subject site is located in Newcastle CBD in close proximity to a range of public transport options.

#### Clause 2.7 - Demolition Requires Development Consent

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

#### Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of 20m. 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 maximum height of 22.76m, equating to an exceedance of 2.7m or 13.8% above the HOB development standard for the subject land.

#### Clause 4.4 Floor Space Ratio

Under the NLEP 2012 the site has a FSR development standard of 1.5:1. The submitted FSR is approximately 3.3:1. 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 3.3:1, equating to an exceedance of 120% above the prescribed maximum FSR for the subject land.

It is noted, and discussed further below, that the existing building was constructed prior to the implementation of the current development standards that apply to the site. In addition, the car parking in the building is included within the FSR figure as it is in excess of CN's car parking requirements for all office floor space (existing and proposed) within the building.

#### Clause 4.6 - Exceptions to Development Standards

The development proposes to exceed the maximum building height for the site. The applicant has submitted a clause 4.6 variation request to the maximum building height development standard. An assessment of this request against the relevant provisions of clause 4.6 are provided below.

#### **Height of Buildings**

The applicable maximum building height development standard is 20m. The development has a maximum building height of 22.76m which represents a 13.8% variation to this development standard.

#### **Clause 4.6(2)**

***Is the provision to be varied a development standard? And is the development standard excluded from the operation of the clause.***

The maximum building height 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 maximum building height development standard is not expressly excluded from the operation of clause 4.6.

**Clause 4.6(3)(a)**

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

The submitted 'Clause 4.6 Assessment', prepared by Monteath & Powys (dated 12 May 2020) constitutes a written request for the purposes of clause 4.6(3).

In *Wehbe* 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. 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, as follows:

- i) *“Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?”*
- ii) *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?*
- iii) *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*
- iv) *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?*
- v) *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 applicants 'Clause 4.6 Variation Request – Height of Buildings' written response 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 maximum building height development standard are:

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

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

*Objective: (a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy:*

- i) The height of the proposal positively contributes to the bulk and scale within an area undergoing revitalisation.
- ii) The design of the additional floor is in keeping with the current architectural theme of the building (ie. the relationship between the buildings and its surrounds will not change significantly) and its height, bulk and scale is not inconsistent with other buildings in the locality.
- iii) The setbacks included in the additional level provide the building with additional visual interest and create a visual balance to the development. In addition, there are regional and local planning strategies which identify the site as a strategic centre and is considered to be part of the urban renewal around key transport nodes.

*Objective: (b) to allow reasonable daylight access to all developments in the public domain:*

- i) The proposal allows reasonable daylight access to all developments and the public domain.
- ii) The Solar Study demonstrates the proposal will have minimal impact on daylight access to neighbouring developments and the public domain.
- iii) The additional level has been setback along the boundary of the Nautilus Apartments to the east to allow more sunlight and increased privacy.

#### Comment

It is agreed that the built form of the development will make a positive contribution to the city centre streetscape, consistent with the scale of development envisaged by the applicable planning provisions.

The non-compliance is minor and the shadow diagrams submitted with the application demonstrate that the overshadowing impact of the development on adjoining properties would not be noticeably impacted as a result of the additional

height. The development does not result in any overshadowing of key public domain areas.

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

- i) The site is an existing urban area, provides an effective re-use of space within an existing building footprint and does not have any significant environmental issues or degrade the natural resources of NSW.*
- ii) The site has positive economic and social benefits through construction jobs, ongoing economic flow on effects from additional commercial office space. The proposal promotes the urban renewal of Newcastle and is located close to public transport nodes.*
- iii) There are no significant environmental issues as identified in the Statement of Environmental Effects, and no cultural or historic heritage will be impacted. The proposal provides a positive environmental impact in the re-use and additions to an existing structure reducing demolition waste and negating additional resources that would be required for the construction of a new building.*
- iv) The exceedances will not result in any additional amenity, overshadowing, streetscape or heritage impacts. The non-compliant rooftop elements will not be visible from the adjacent streets, nor easily noticeable from any nearby development.*

Comment

The written request outlines environmental planning grounds which adequately justify the contravention.

**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 the 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 HOB 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 4.3 'height of buildings'*

The development is considered to be consistent with the objectives of clause 4.3 'height of buildings' as the scale of the development makes a positive contribution to towards the desired built form, consistent with the established centres hierarchy. The development also allows reasonable daylight access to all surrounding development.

*Objectives of the B4 Mixed-Use Zone*

The objectives of the B4 Mixed-Use Zone are as follows:

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

The development proposal is consistent with objectives of the B4 Mixed-Use Zone because the proposal:

- i) Contributes to a mixture of compatible land uses in the area by providing employment generating floorspace in proximity to a range of compatible uses.*

- ii) The development is located in an accessible location which will assist in maximising public transport patronage and encouraging walking and cycling. The provision of employment generating floorspace will service the day to day needs of future residents which will also encourage walking.
- iii) The additional employment generating floorspace within the development will support nearby and adjacent commercial centres.

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 Department of Planning and Environment advised via Planning Circular PS20-002 (5 May 2020) that concurrence of the Secretary could be assumed for a variation to a maximum building height development standard that is greater than 10%. Concurrence is therefore assumed in this case.

Comment

The heads of satisfaction required by clause 4.6 of the NLEP 2012 have been reached and there is power to grant development consent to the proposed development notwithstanding the breach of the building height control.

**Floor Space Ratio**

The applicant has submitted a clause 4.6 variation request to the FSR development standard, an assessment of this request against the relevant provisions of clause 4.6 is provided below.

*Floor Space Ratio (FSR)*

The applicable maximum FSR development standard is 1.5:1. The existing building has a FSR of 1.7:1 which represents a variation of approximately 13% to the maximum FSR development standard for the site. The proposed development has a FSR of 3.3:1, the extent of variation is 120%.

***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 submitted 'Clause 4.6 Assessment', prepared by Monteath & Powys (dated 12 May 2020) constitutes a written request for the purposes of clause 4.6(3).

The five circumstances established in *Wehbe* in which it could be reasonably argued that the strict application of a development standard would be unreasonable and / or unnecessary were outlined within the clause 4.6 variation assessment of FSR above.

The applicants clause 4.6 Variation Request written response 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 justification provided within the applicants written request is provided below:

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

- i) The proposed FSR provides an appropriate density to an existing and approved commercial building in the locality.
- ii) There are regional and local planning strategies which identify the site as a strategic centre and is considered to be part of the urban renewal around key transport nodes. The proposal provides further commercial floor space within close proximity to the light rail system within an existing structure. The density is consistent with the intended city hierarchy.

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

Following the Public Voice meeting for this application, the applicant has amended the proposed additional level to ensure it is setback from the building line. This results in an additional level that will not be readily visible from street level. The setbacks included in the additional level provide the building with additional visual interest and create a visual balance to the existing approved development.

#### Comment

As specified within the clause 4.6 FSR discussion, it is agreed that the built form of the development will make a positive contribution to the city centre streetscape, consistent with the scale of development envisaged by the applicable planning provisions. The additional gross floor area has been accommodated within the proposed design to ensure that the density and bulk and scale of the development make positive contribution towards the built form in the locality.

The non-compliance does not result in any additional unreasonable impacts to adjoining properties compared to a compliant design. The FSR is significantly impacted by the fact that the existing building operates as a private car park and, as such, car parking in excess of that required by CN's controls has been included in the FSR calculation, resulting in an elevated FSR figure.

As such, the applicants written request is 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.***

As outlined above 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.

The applicants response to clause 4.6(3)(b) is addressed in section 4 of the written request (pg.11), and provides the following specific environmental planning grounds to justify the breach of the standard:

- a) The proposal is considered both a strategic centre and a metropolitan centre close to public transport and within walking distance of employment and services in the Newcastle city centre. The regional and local planning policies promote the revitalisation of the Newcastle area in this way. The site is an existing urban area, provides an effective re-use of space within an existing building footprint and does not have any significant environmental issues or degrade the natural resources of NSW.

- b) The site has positive economic and social benefits through construction jobs, ongoing economic flow on effects from additional commercial office space. The proposal promotes the urban renewal of Newcastle and is located close to public transport nodes.
- c) There are no significant environmental issues as identified in the Statement of Environmental Effects, and no cultural or historic heritage will be impacted. The proposal provides a positive environmental impact in the re-use and additions to an existing structure reducing demolition waste and negating additional resources that would be required for the construction of a new building.
- d) The additional height has been identified to have no additional impacts than what would be interpreted from the design if it met the NLEP 2012 height limit.

Comment

The written request outlines environmental planning grounds which adequately justify the contravention. The additional FSR does not result in any inconsistency with the desired built form of the locality. In addition, the proposed FSR is impacted on by the fact that the existing building is a private car park, with the car parking in excess of CN's requirements being included in the FSR calculation. This ultimately affects the final FSR for the site.

**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 applicants written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the 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 applicants response to the satisfaction of the objectives of the FSR standard was considered under the clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, 'the proposed development will be in the public interest because it is consistent', with the relevant objectives.

*Objectives of clause 4.4 'floor space ratio'*

The development is consistent with the objectives of clause.4.4 FSR as the proposed development is of an appropriate density which is consistent with the established centres hierarchy. Further, the proposed building density, bulk and scale are considered to make a positive contribution to the designed built form as identified by the centres hierarchy.

*Objectives of the B4 Mixed-Use Zone*

The objectives of the B4 Mixed-Use Zone and an assessment which concluded that the development was consistent with the zone objectives, has been outlined earlier within the clause 4.6 variation to the HOB standard above and is applicable to the clause 4.6 variation assessment for the FSR request.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of clause 4.6(4)(a)(ii) of 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 Department of Planning and Environment advised via Planning Circular PS20-002 (5 May 2020) that concurrence of the Secretary could be assumed for a variation to a maximum building.

Comment

The heads of satisfaction required by clause 4.6 of the NLEP 2012 have been reached and there is power to grant development consent to the proposed development notwithstanding the breach of the FSR development standard.

The applicants clause 4.6 variation requests to both the clause 4.3 'height of buildings' and clause 4.4 FSR development standards are well founded. Accordingly, it is recommended that the DAC note the objections under clause 4.6 'exceptions to development standards' and consider the objections to be justified in the circumstances.

Clause 5.10 - Heritage Conservation

The site is located within the Newcastle Centre Heritage Conservation Area and is located within proximity to Local (remains of AA Co bridge and fence and the former tramway station to the south) and State (Argyle House) heritage items. The existing building is used as a private car parking station with office floor space on the upper floors and is not considered to have heritage value. It is considered that the design of the proposed development is not unsympathetic to its surrounding area and does not compromise the heritage qualities of its surrounds.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 3 and Class 4 acid sulphate soils and the proposed development is considered satisfactory in this regard. No works are proposed greater than 1m below ground surface and, as such, the development is unlikely to disturb any acid sulphate soils.

Part 7 Additional Local Provisions — Newcastle City Centre

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

Clause 7.3 - Minimum Building Street Frontage

This clause does not apply as the subject site is within the B4 Mixed-Use zone.

Clause 7.4 - Building Separation

This clause requires that a building must be erected so that the distance "to any other building is not less than 24m at 45m or higher above ground". The proposed building is less than 45m above ground and this clause does not apply.

Clause 7.6 - Active Street Frontages in Zone B3 Commercial Core

The subject site is within the B4 Mixed-use zone. Accordingly, this clause does not apply.

Clause 7.10 - Floor Space Ratio for Certain Development in Area A

The subject site is not identified as being within 'Area A' on the FSR Map. Accordingly, the provisions of this clause do not apply to the proposal.

Clause 7.10A - Floor Space Ratio for Certain Other Development

The proposed development has a site area of greater than 1,500m<sup>2</sup>. Accordingly, the provisions of this clause do not apply to the proposal.

**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 - (NDCP 2012)**

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

Commercial Uses - Section 3.10

*3.10.01 Height of buildings*

The development exceeds the maximum building height for the site as prescribed under clause 4.3 of the NLEP 2012. A clause 4.6 request has been provided requesting the variation to the building height development standard.

*3.10.02 Density - floor space ratio*

The development exceeds the maximum FSR for the site under clause 4.3 of the NLEP 2012. A clause 4.6 request has been provided requesting the variation to the FSR development standard.

*3.10.03 Streetscape and front setbacks*

The development retains the existing buildings front setback. The proposed additional floor of accommodation is consistent with the setback of surrounding properties.

The development maintains the existing pedestrian access to the building from the street frontage in compliance with this control.

*3.10.04 Side and rear setbacks*

Following the Public Voice meeting where a request was made to provide setbacks, the development was amended to provide for setbacks to the proposed additional floor. The setbacks range from 3.9m to 6.1m. The proposed side and rear setbacks in accordance with the Building Code of Australia and is considered to be acceptable in respect of privacy and the solar access of adjoining properties.

*3.10.06 Building design and appearance*

The development is consistent with the built form in the locality and it reflects the future desired character of the area. The design of the proposed addition will make a positive contribution towards the desired built form of the area.

The proposed addition to the building provides for a setback that meets setback requirements. In addition, the plant area has been amended to relocate it away from the residential premises. The amended plant location is in the south-west corner of the site and is enclosed in an area of acoustic and visual screening ensuring it will not be visible from the street. Given this, it is not considered that an impact will occur to the design of the existing building. The development is consistent with this control.

*1.10.07 Views and privacy*

The development has been assessed having regard to potential view loss impacts. Given the development comprises a single additional storey to the existing building only, it is not considered to substantially affect existing views from surrounding dwellings including the Nautilus Apartment building to the east of the site. An assessment has been undertaken of the views and vistas identified in section B2 of the NDCP 2012 section 6.01.

The subject site is not affected by any views and vistas identified in this section. The subject site is not affected by any grand vistas or views and is considered acceptable. The development does not unreasonably obscure views to heritage or familiar dominant landmarks. There are no identified views or vistas that affect the site. The site is in proximity to heritage items (remains of A Co. bridge and fence, Argyle House) however, the development proposes the retention of the existing building on site and the proposed additional floor is sufficiently setback to ensure that views to the items will not be impacted.

*Flood Management - Section 4.01*

The development does not propose to alter the ground level or existing flood management regime of the existing building. Accordingly, no assessment of flood management is considered necessary.

*Mine Subsidence - Section 4.03*

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

*Aboriginal Heritage - Section 5.04*

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

*Heritage Items - Section 5.05*

The site is not listed as a heritage item however there are two heritage items in proximity to the site, namely:

1. Argyle House
2. Remains of AA Co. Bridge and Fence

In respect of bulk and scale, the development proposes an additional floor to the existing car park building. This floor has been sufficiently setback from the edge of the building as to not impact on the visual character of the heritage items.

Therefore, the development is not considered likely to result in adverse impact on the surrounding heritage items.

- i) Part 6.00 Locality Specific Provisions*
- ii) Newcastle City Centre - Section 6.01*

As the development proposes an addition to the existing building on site, a number of the Newcastle City Centre controls do not apply to the development. The setbacks proposed by the latest development plans comply with this section. The building depth and bulk will not be significantly impacted on by the proposed addition as the addition is significantly setback from the existing building line.

The building exterior is consistent with the façade treatment of the existing building which is considered appropriate. It is not anticipated that the proposed development will have a significant impact on view corridors or vistas. The site is identified at the edge of the view corridor map. Based on the direction of the arrow, it falls within the view corridor looking from the Cathedral towards the harbour. Given the additional level will only increase the height of the building by 3m, that it is on the periphery of the corridor and that the view is so broad (ie. not targeted at one specific object) the impacts are considered minor and inconsequential.

The subject site is within the Darby Plaza area. The proposed development will contribute to the intended future character of Darby Plaza and will not compromise the objectives for the precinct in creating open space, retaining a view corridor and pedestrian connection to the Newcastle Harbour.

### *Heritage Conservation Areas - Section 6.02*

The proposed building envelope is consistent with the massing and scale of surrounding properties and is not considered to result in an unacceptable impact to the amenity of surrounding properties. The building is identified as a non-contributory building and the development proposes the retention of the existing building on site. The development proposes the erection of an additional level on the existing building on site. The proposed addition is sufficiently setback from the building edge to ensure it does not result in a dominant element within the streetscape. The development reflects the general scale of the streetscape and is considered acceptable. The development proposes materials that reflect the materials of the existing building and surrounding area.

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

The development proposes to utilise the existing car parking on site to accommodate the car parking requirement. In total, the development requires 198 spaces and there are 241 car parking spaces on site.

The remaining 43 car parking spaces are to be retained for use by the private car park.

Whilst the development will result in a loss of spaces in the private car park this is considered acceptable as CN have no control over the number of spaces provided in the private car park. Given that all required car parking for the office accommodation can be provided on site, the development is in compliance with CN's car parking controls and is acceptable.

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

The development will use the existing stormwater management system in the building which provides for collection of rainwater from the roof and storage of the water on site to be discharged into CN's stormwater drain. Conditions of consent are recommended to ensure the proposed addition utilises the existing stormwater management system in the building.

*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 and the Environmental Planning and Assessment Regulation 2000.

In addition, a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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

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

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

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

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

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

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

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

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

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

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

The application was notified in accordance with CN’s Community Consultation Plan. 22 submissions were received during the notification period, including two Public Voice requests.

Following the Public Voice meeting for this application, the applicant has amended the proposed additional level to ensure it is setback from the building line. This results in an additional level that will not be readily visible from street level.

These plans were not required to be notified as the impact from the amended development was considered to be less than the impact from the original proposal.

The key issues raised within the report and a response to those issues is provided below.

Issue	Comment
Incorrect information provided in the development application information	Errors were identified within the originally submitted documentation. Following a request by the assessing officer, these errors were corrected. The current DA information has been checked and is accurate.
Overdevelopment of the site	The development has been assessed and is considered acceptable in respect of bulk, mass and scale. Following the Public Voice meeting for this application, the applicant has amended the proposed additional level to ensure it is setback from the building line. This results in an additional level that will not be readily visible from street level.

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	The development is not considered to be overdevelopment of the site.
Lack of setbacks for the proposed additional floor	Following the Public Voice meeting for this application, the development has been amended to provide for setbacks to all existing building facades. These setbacks range from 3.9m to 6.9m and achieve the required setbacks, therefore are compliant in respect of CN's controls.
Noise impacts	<p>Following the Public Voice meeting, the development has been amended to relocate the proposed plant area away from the adjacent residential building to the east of the site and to provide it within an enclosure for acoustic and visual privacy.</p> <p>The amended location of the plant is now in the south-west corner of the site. The plant will be located beneath the roof line of the proposed addition and is within an enclosure providing acoustic and visual privacy. No plant will be visible from the street level as a result of this. Given this, the development will not result in an unacceptable impact on the noise levels of surrounding properties.</p>
Overlooking impacts	<p>Following the Public Voice meeting, the development has been amended to setback the additional floor 6.1m from the eastern building line of the existing building. This ensures the proposed addition is approximately 7.9m from the closest part of the adjacent residential building. This will help to minimise the potential for overlooking. In addition, the proposed windows facing the residential building will be required to be opaque glazing as a condition of consent.</p> <p>In addition, a condition of consent has been provided that requires the windows in the eastern side of the additional level to be opaque. The development will therefore not impact on the privacy of surrounding properties.</p>
Impacts on viewing corridor	The subject site is not located within a viewing corridor.
Loss of car parking in the private car park	Sufficient car parking is provided on site for the development. In addition, as a private car park, CN do not have the ability to control the level of car parking provided by the private car parking operator.
Setting a bad precedent for the locality	The development has been assessed against CN's controls and is considered acceptable.

Impact of development on wind movement in the surrounding streets	The development results in an additional setback floor only to the existing building. Given the minor nature of the addition, the development will not impact on the wind movement in the streets surrounding the site.
Concern of impact of additional floor on mine subsidence	The development has been assessed by Subsidence Advisory NSW and General Terms of Approval (GTA's) have been issued.

**Public Voice**

The proposal was considered at a Public Voice Committee Meeting held on 1 December 2020. Residents raised concerns with regards to overlooking, overshadowing, noise impacts, excessive building height, excessive FSR and incorrect development application information.

The applicant has provided the following response to these issues.

<b>Issue</b>	<b>Comment</b>
<b>Overlooking to surrounding residential properties</b>	The development has been designed to minimise overlooking to surrounding properties with windows located to avoid direct overlooking to the living areas of surrounding buildings. Following the Public Voice meeting, amended plans were submitted by the applicant which resulted in the eastern boundary of the additional floor being setback approximately 7.9m from the closest point of the adjacent residential building. This further reduces any potential overlooking concerns.
<b>Overshadowing to surrounding residential properties</b>	Detailed overshadowing assessments have been provided with the development application which demonstrate that adequate solar access is maintained to the surrounding residential properties. Following the Public Voice meeting, the applicant provided amended architectural plans resulting in the proposed additional floor being setback approximately 7.9m from the adjacent residential building. As a result, overshadowing is further reduced to the residential building.
<b>Noise Impacts to surrounding residential properties</b>	The development will comply with the relevant Australian Standards in respect of noise impacts. Following the Public Voice meeting, the proposed plant area was relocated to the south-west of the building's roof area. Significantly reducing potential noise impacts to the residential building to the east of the site. In addition, the plant area will be enclosed in an acoustic and visual privacy screen so will not be visible or noticeable from the surrounding streets.

<b>Excessive Building Height</b>	A clause 4.6 request to vary the maximum building height has been submitted with the development application. The proposed building height is not considered to impact on the amenity of surrounding properties and is considered acceptable. An assessment of this request is provided in section 5.0 of this report.
<b>Excessive Floor Space Ratio</b>	A clause 4.6 request to vary the maximum FSR ratio has been submitted with the development application. The proposed FSR is considered acceptable. An assessment of this request is provided in section 5.0 of this report.
<b>Incorrect Development Application Information</b>	Updated information was provided to clarify the development proposal. All submitted information is considered to accurately reflect the development proposal.

The proposed development does not pose any unreasonable amenity impact to the adjoining properties. The proposed development is provided with compliant off-street carparking spaces and is not considered to create any significant traffic generating impacts.

All submissions received have been considered, and as such concerns raised in the submissions do not warrant the refusal of the application in its current form or necessitate any further amendments.

The proposed development has been found to be consistent with the objectives and relevant controls of the NLEP 2012 and the NDCP 2012 as discussed elsewhere within this report.

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**.

## 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 2 Attachment A:** Submitted Plans - 11 Argyle Street, Newcastle

**Item 2 Attachment B:** Draft Schedule of Conditions - 11 Argyle Street, Newcastle

**Item 2 Attachment C:** Processing Chronology - 11 Argyle Street, Newcastle

**Item 2 Attachment D:** General Terms of Approval – Subsidence Advisory NSW

**Item 2 Attachments A - D distributed under separate cover**