



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 June 2020

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

**VENUE:** Video conferencing platform Zoom

J Bath  
Chief Executive Officer

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

9 June 2020

### **Please note:**

*Meetings of City of Newcastle (CN) are webcast. CN accepts no liability for any defamatory, discriminatory or offensive remarks or gestures made during the meeting. Opinions expressed or statements made by participants are the opinions or statements of those individuals and do not imply any form of endorsement by CN. Confidential matters will not be webcast.*

*The electronic transmission is protected by copyright and owned by CN. No part may be copied or recorded or made available to others without the prior written consent of CN. Council may be required to disclose recordings where we are compelled to do so by court order, warrant or subpoena or under any legislation. Only the official minutes constitute an official record of the meeting.*

*Authorised media representatives are permitted to record meetings provided written notice has been lodged. A person may be expelled from a meeting for recording without notice. Recordings may only be used for the purpose of accuracy of reporting and are not for broadcast, or to be shared publicly. No recordings of any private third party conversations or comments of anyone within the Chamber are permitted.*

*The location of all meetings will be determined by the CEO in consultation with the Lord Mayor, having regard to any applicable Public Health Orders regarding COVID-19, and will be either via video conferencing platform or at an appropriate CN facility in accordance with the requirements of the Local Government Act 1993.*

**DEVELOPMENT APPLICATIONS COMMITTEE**  
**16 June 2020**

**CONTENTS**

<b>Item</b>	<b>Business</b>	<b>Page</b>
	<b>APOLOGIES/LEAVE OF ABSENCE</b>	
	<b>DECLARATIONS OF PECUNIARY / NON-PECUNIARY INTEREST</b>	
	<b>CONFIRMATION OF PREVIOUS MINUTES</b>	<b>3</b>
	MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 19 MAY 2020	3
	<b>DEVELOPMENT APPLICATIONS</b>	<b>12</b>
ITEM-17	DAC 16/06/20 - DA2019/01284 - 16 NORTHWOOD STREET ADAMSTOWN HEIGHTS - MULTI DWELLING HOUSING - DEMOLITION OF DWELLING, ERECTION OF FOUR TWO STOREY DWELLINGS, AND ONE LOT INTO FOUR LOT TORRENS TITLE SUBDIVISION	12
ITEM-18	DAC 16/06/20 - DA2020/00044 - 304/464 KING STREET NEWCASTLE WEST- SERVICED APARTMENT - TOURIST AND VISITOR ACCOMMODATION	39
ITEM-19	DAC 16/06/20 - DA2019/01231 - 503/464 KING STREET NEWCASTLE WEST - TOURIST AND VISITOR ACCOMMODATION - CHANGE OF USE	49
ITEM-20	DAC 16/06/20 - DA2019/01255 - 25 LLEWELLYN STREET, MEREWETHER - COMMERCIAL - PART CHANGE OF USE FITOUT AND SIGNAGE <b>(DISTRIBUTED UNDER SEPARATE COVER)</b>	

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

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 19 MAY 2020**

**RECOMMENDATION**

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

**ATTACHMENTS**

**Attachment A:** 200519 Development Applications Committee Meeting Minutes

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

**Attachment A**

**CITY OF NEWCASTLE**

**Minutes of the Development Applications Committee Meeting held via Video conferencing platform Zoom Tuesday 19 May 2020 at 6.31pm.**

---

**PRESENT**

The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, J Dunn (*retired 7.09pm*), K Elliott, B Luke, J Mackenzie, A Robinson, A Rufo, 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 (Interim Director City Wide Services), E Kolatchew (Planning Coordinator), H Sexton (Acting Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), S Moore (Acting Chief Financial Officer), G Mahood (Manager Property and Facilities), N Wells (Property Services Manager), A Knowles (Council Services/Minutes), K Sullivan (Council Services/Meeting Support) and S Ray (Information Technology Support).

**APOLOGIES**

Nil.

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

**Councillor Winney-Baartz**

Councillor Winney-Baartz declared a significant non-pecuniary interest in Item 14 - DA2019/01255 - 25 Llewellyn Street, Merewether stating she would manage the conflict by leaving the meeting.

**Councillor Dunn**

Councillor Dunn declared a non-pecuniary interest in Item 15 - DA2019/01000 - 134 - 142 Darby Street Cooks Hill as he had a client who owned properties within the vicinity and stated he would leave the meeting for discussion on the item.

**Cr Church**

Councillor Church declared a less than significant, no-pecuniary interest in Item 16 - DA2019/01146 - 106 Gosford Road, Adamstown as he owned property in Broadmeadow and stated he would remain in the meeting for discussion on the item.

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 28 APRIL 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-11 DAC 19/05/20 - DA2019/01176 - 16 CURRY STREET, MEREWETHER - DWELLING HOUSE - ALTERATIONS AND ADDITIONS**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Winney-Baartz

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of 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 DA2019/01176 for alterations and additions to a dwelling at 16 Curry Street Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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

**Against the Motion:** Nil.

**Carried**

**ITEM-12 DAC 19/05/20 - DA2019/00852 - 6 KING ST STOCKTON - MULTI DWELLING HOUSING AND STRATA SUBDIVISION**

**MOTION**

Moved by Cr Clausen, seconded by Cr Byrne

- A. That DA2019/00852 for multi dwelling housing and subdivision, at 6 King Street, Stockton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Byrne, Clausen, Church, Duncan, Dunn, Elliott, Luke, Robinson, Rufo, White and Winney-Baartz.

**Against the Motion:** Councillor Mackenzie.

**Carried**

**ITEM-13 DAC 19/05/20 - DA2019/01163 - 43 GREENLEAF ROAD KOORAGANG - INDUSTRIAL - ERECTION AND OPERATION OF WAREHOUSE AND DISTRIBUTION CENTRE**

**MOTION**

Moved by Cr Luke, seconded by Cr Byrne

- A. That DA2019/01163, for erection and operation of a warehouse and distribution centre at 43 Greenleaf Road Kooragang be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

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

**Against the Motion:** Nil.

**Carried**

**ITEM-14 DAC 19/05/20 - DA2019/01255 - 25 LLEWELLYN STREET, MEREWETHER - VETERINARY HOSPITAL**

Councillor Winney-Baartz was removed to the waiting room facility within Video conferencing platform Zoom at 6.48pm for discussion on the item.

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Clausen

- A. That DA2019/01255 for Veterinary Hospital – change of use from a commercial premise at 25 Llewellyn Street Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

**AMENDMENT**

Moved by Cr Rufo, seconded by Cr Elliott

An additional condition that the six (6) vehicle spaces that have been allocated with the development application be for use of staff only.

Councillor Church foreshadowed a substantive motion.

The mover and seconder of the motion accepted Councillor Rufo's amendment into the motion.

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

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Byrne, Clausen and Dunn.

**Against the Motion:** Councillors Church, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo and White.

**Defeated**

**MOTION**

Moved by Cr Church, seconded by Cr Elliott

That the development application is not approved on the basis that it is incompatible with the B1 zoning, it does not take into consideration the amenity of residents, the issues of overnight boarding and pet grooming.

**For the Motion:** Councillors Church, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo and White.

**Against the Motion:** Lord Mayor, Cr Nelmes and Councillors Byrne and Clausen.

**Carried**

Councillor Clausen gave notice to recommit Item 14 – DA2019/01255 – 25 Llewellyn Street, Merewether.

Councillor Winney-Baartz was returned to the meeting from the waiting room facility in Video conferencing platform Zoom at 7.09pm.

**ITEM-15 DAC 19/05/20 - DA2019/01000 - 134 - 142 DARBY STREET COOKS HILL - PUB - ALTERATIONS AND ADDITIONS**

Councillor Dunn left the meeting within the Video conferencing platform Zoom at 7.09pm for discussion on Item 15 – DA2019/01000 – 134-142 Darby Street Cooks Hill.

**MOTION**

Moved by Cr Luke, seconded by Cr Church

- A. That DA2019/01000 for alterations and additions to an existing pub including partial demolition and reconstruction of the ground floor facade and awning be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of the determination.

**For the Motion:**

Lord Mayor, Cr Nelmes and Councillors Clausen, Church, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

**Against the Motion:**

Councillor Byrne.

**Carried**

Councillor Dunn did not return to the meeting at the conclusion of the item within Video conferencing platform Zoom and it was noted he had retired from the meeting.

**ITEM-16 DAC 19/05/20 - DA2019/01146 - 106 GOSFORD ROAD, ADAMSTOWN - MULTI DWELLING HOUSING - DEMOLITION OF EXISTING DWELLINGS, ERECTION OF TWELVE DWELLINGS AND STRATA SUBDIVISION**

**MOTION**

Moved by Cr Mackenzie, seconded by Cr Duncan

- A. That DA2019/01146 for multi dwelling housing comprising the demolition of existing dwellings, erection of 12 townhouses, tree removal and strata subdivision at 106 - 108 Gosford Road, Adamstown be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

Councillor Church foreshadowed a substantive motion with reasons for refusal of the development application.

***MOTION***

*Moved by Cr Church, seconded by Cr Elliott*

*That the development application is not approved on the basis of overdevelopment of the site, a loss of privacy and sunlight for neighbours, the development is not 100 percent compliant and approval does not take on board the negative social impacts that have been expressed to Councillors by residents.*

Councillor Duncan foreshadowed a substantive motion with reasons for refusal of the development application.

**MOTION**

*Moved by Cr Duncan*

A *That DA2019/01146 for multi dwelling housing be refused for the following reasons:*

- i) The proposed development is not consistent with the objectives of the R3 zone of the Newcastle LEP 2012 in that the development will detract from the amenity of any existing nearby development and does not have regard to the desired future character. [Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979].*
- ii) The proposed development is not consistent with the provisions of Newcastle DCP 2012 with respect to setbacks and landscaping. [Section 4.15(1)(a)(iii) Environmental Planning and Assessment Act 1979].*
- ii) Submissions received in response to public notification of the development application have raised issues of a nature and extent that establish that the proposed development will have unreasonable impacts in terms of character, bulk, scale and amenity impacts. [Section 4.15(1)(d) Environmental Planning and Assessment Act 1979].*
- iv) The development is not in the public interest [Section 4.15(1)(e) Environmental Planning and Assessment Act 1979].*

B *That those persons who made submissions be advised of CN's determination.*

**PROCEDURAL MOTION**

*Moved by Cr Clausen, seconded by Cr White*

That Council lay this item on the table to allow for renotification of the amended plans to occur.

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

**Against the Motion:** Councillors Church, Luke and Robinson.

**Carried**

The Lord Mayor noted that the two foreshadowed substantive motions moved by Councillors Church and Duncan had lapsed.

**ITEM-14 DAC 19/05/20 - DA2019/01255 - 25 LLEWELLYN STREET,  
MEREWETHER - VETERINARY HOSPITAL**

Councillor Winney-Baartz was moved to the waiting room facility within Video conferencing platform Zoom for discussion on the item at 7.40pm.

**PROCEDURAL MOTION**

Moved by Cr Clausen, seconded by Cr Mackenzie

Council recommit Item 14 – DA2019/01255 – 25 Llewellyn Street, Merewether for debate as for reasons per Clause 58 of the Code of Meeting Practice.

**For the Motion:** Lord Mayor, Councillor Nelmes and Councillors Byrne, Clausen, Duncan, Elliott, Mackenzie, Rufo and White.

**Against the Motion:** Councillors Church, Luke and Robinson.

**Carried**

**MOTION**

Moved by Cr Clausen, seconded by Cr White

- A. That DA2019/01255 for Veterinary Hospital – change of use from a commercial premise at 25 Llewellyn Street Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; with the following amendments:
- i) An additional condition that the six (6) vehicle spaces that have been allocated with the development application be for use of staff only.
  - ii) Replace Clause 17 with: “No animals are to be commercially boarded overnight (i.e. dogs and cats are to be temporary patients of the surgery only).”
- B. That those persons who made submissions be advised of CN's determination.

Councillor Elliott gave notice of a foreshadowed motion to lay the item on the table.

Councillor Church foreshadowed a substantive motion for refusal of the development application which was seconded by Councillor Luke.

**PROCEDURAL MOTION**

Moved by Cr Elliott, seconded by Cr Church

That the motion lay on the table in order to consult properly with the applicant and residents.

**For the Motion:** Lord Mayor, Cr Nelmes and Councillors Byrne, Clausen, Church, Duncan, Elliott, Robinson, Rufo, Mackenzie and White.

**Against the Motion:** Councillor Luke.

**Carried**

Councillor Winney-Baartz was returned to the meeting from the waiting room facility in Video conferencing platform Zoom for conclusion of the meeting.

**The meeting concluded at 7.52pm.**

**DEVELOPMENT APPLICATIONS**

**ITEM-17                    DAC 16/06/20 - DA2019/01284 - 16 NORTHWOOD STREET  
ADAMSTOWN HEIGHTS - MULTI DWELLING HOUSING -  
DEMOLITION OF DWELLING, ERECTION OF FOUR TWO  
STOREY DWELLINGS, AND ONE LOT INTO FOUR LOT  
TORRENS TITLE SUBDIVISION**

**APPLICANT:                FIREAN PTY LTD  
OWNER:                    FIREAN PTY LTD  
NOTE BY:                 GOVERNANCE  
CONTACT:                 DIRECTOR GOVERNANCE / MANAGER REGULATORY,  
PLANNING AND ASSESSMENT**

**PART I**

**PURPOSE**

An application (DA2019/01284) has been received seeking consent for multi dwelling housing, including the demolition of the existing dwelling house, erection of four, two-storey townhouses, associated retaining walls, landscaping and one lot into four lot Torrens Title subdivision at 16 Northwood Street, Adamstown Heights.

The submitted application was assigned to Development Officer, Thomas Howell, for assessment.

The application is referred to the Development Applications Committee for determination, due to the application being called in by Councillor Clausen and Councillor Winney-Baartz.

The application was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan, with 16 submissions being received.

The concerns raised by the objectors in respect of the proposed development include streetscape and character, setbacks, density, building height, traffic and parking.



**Subject Land: 16 Northwood Street  
Adamstown Heights**

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 19 May 2020. The issues raised included subdivision size, FSR, housing diversity, overdevelopment, character and streetscape impacts, height, setbacks, traffic and landscaping.

### Issues

- 1) Floor Space Ratio (FSR) – The proposed development has a FSR of 0.61:1 and does not comply with the FSR development standard of 0.6:1 as prescribed under cl.4.4 of Newcastle Local Environmental Plan 2012 (NLEP 2012). The variation is minor equating to an exceedance of 11.8m<sup>2</sup> or 1.6%.
- 2) Matters raised in the submissions including streetscape, character, setbacks, density, building height, traffic and parking.

### 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* and is acceptable subject to compliance with appropriate conditions.

### RECOMMENDATION

- A. That the Development Applications Committee, as the consent authority note the objection under Clause 4.6 Exceptions to Development Standards of the Local Environmental Plan 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2019/01284 for multi dwelling housing, including the demolition of the existing dwelling house, erection of four, two-storey townhouses, associated retaining walls, landscaping and one lot into four lot Torrens title subdivision at 16 Northwood Street Adamstown Heights 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.

### 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*<sup>1</sup> in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

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

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

## **PART II**

### **1.0 THE SUBJECT SITE**

The site is known as 16 Northwood Street, Adamstown Heights and has a legal description of Lot 42 in Deposited Plan 229217. The site is a corner allotment and has a total site area of 929.5m<sup>2</sup>. The site presents a frontage of 30.1m wide to Corrison Crescent to the east and a frontage of 27.9m to Northwood Street to the south. The subject site is identified as being flood affected and bush fire prone, the site is also located in a mine subsidence district.

Existing on the site is a detached single level residential dwelling located centrally on the site, with its primary frontage presenting east to Corrison Crescent. The existing dwelling is a brick and weatherboard structure with tiled roofing of typical age and architectural style for the area. The surrounding area predominantly consists of low-density residential dwellings. The subject site is within walking distance to Kotara High School and KU Bel Air Preschool, and within close proximity to Hudson Park and Kotara Westfield.

The subject slightly falls from the west of the site down towards the frontage to Corrison Crescent (east). The site contains one large canopy tree approved for removal under TA2019/00160.

### **2.0 THE PROPOSAL**

The applicant seeks consent for:

- i) Demolition of the existing dwelling;
- ii) Construction of four dwellings (two attached, two storey dwellings and two detached, two storey dwellings);
- iii) Associated retaining walls, landscaping and stormwater works; and
- iv) One into four lot Torrens title subdivision.

Amended plans were provided on 6 February 2020 in response to concerns from CN's Development Officer (Engineering) regarding the proximity of a driveway to a kerbside inlet pit. The plans were amended to relocate the driveway servicing unit 3.

### **3.0 PUBLIC NOTIFICATION**

The original application was publicly notified in accordance with CN's Community Participation Plan between 21 October 2019 to 18 November 2019, and 16 submissions were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

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

- i) Density – number of dwellings resulting in overdevelopment of the site and inappropriate use of Clause 4.1A.
- ii) Building height – excessive and inappropriate building height for the area.
- iii) Zoning objectives – do not meet objectives of the R2 Low Density Residential.

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

- i) Lack of open space and landscaping provided within the development.
- ii) Loss of trees and limited opportunity for compensatory planting.
- iii) Overshadowing of adjoining properties.
- iv) Loss of outlook to neighbouring properties.
- v) Loss of natural ventilation to adjoining properties.

#### **c) Design and Aesthetic Issues**

- i) Character – not compatible with the residential context of the neighbourhood which largely consists of detached one-storey and two-storey dwellings.
- ii) Bulk and scale – visual dominance of the development is unsympathetic with the streetscape.
- iv) Streetscape – impact on surrounding streetscapes and incompatible roof form.
- v) Setbacks – minimal front setbacks and loss of open space presenting to the corner of Northwood Street and Corrison Crescent.

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

- i) Traffic congestion – increased traffic generation and the current width of the road.
- ii) Increased demand for on-street parking – in competition with students, visitors and pick-up / drop-off from nearby school.
- iii) Obscuring view of traffic – obscure sightlines of drivers turning the corner of Northwood Street and Corrison Crescent.
- iv) No proposed bicycle parking.

**e) Miscellaneous**

- i) Construction impacts – impacts on neighbours and the safety of children arising from the construction process.
- ii) Waste collection – increase the need for waste collection and creating difficulties with on-street parking.
- iii) Negative social impact – the proposed development is unlikely to attract families to the area.
- iv) Positioning of rainwater tanks obscures side access to the proposed dwellings.
- v) Inappropriate development over the sewer mains.

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

**Public Voice Committee**

The proposal was considered at a meeting of the Public Voice Committee held on 19 May 2020. Residents raised concerns with regards to subdivision, FSR, housing diversity, overdevelopment, character and streetscape impacts, height, setbacks, traffic and landscaping.

The applicant provided a presentation in 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 (refer to **Attachment C**).

**4.0 INTEGRATED DEVELOPMENT**

The proposal is integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*, as approval is required from the NSW Rural Fire Service under Section 100b of the *Rural Fires Act 1997*, due to the proposed residential subdivision of bushfire prone land. The NSW Rural Fire Service granted their '*General Terms of Approval*', on 18 April 2020 (copy appended 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 *Environmental Planning and Assessment Act 1979*, 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 land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site. The proposal is acceptable having regard to this policy.

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

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) is one of a suite of Land Management and Biodiversity Conservation (LMBC) reforms that commenced in New South Wales on 25 August 2017.

The Vegetation 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 NLEP 2012 (now repealed) and provides that CN's Development Control Plan 2012 (NDCP 2012) can make declarations with regards to certain matters, and further that CN may issue a permit for tree removal.

One tree is approved for removal under TA2019/00160. No vegetation on the adjoining properties or street trees will be adversely impacted by the development. The proposal has been assessed in accordance with the provisions of the Vegetation SEPP and NDCP 2012 and is satisfactory.

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

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

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

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

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of NLEP 2012. The proposed development is defined as 'multi-dwelling housing' which is a type of 'residential accommodation' and is permissible within the R2 Low Density Residential zone under NLEP 2012.

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

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

Comment: The proposed development consists of four, two storey dwellings broken up into distinct building forms responding to the prevailing low-density character of the street. The development provides a variety of housing choices.

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

Comment: The proposed development provides for additional housing options to meet a variety of changing needs.

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

Comment: The provision of modern two storey dwellings contributes to housing variety within the surrounding area. The bulk and scale of the development is consistent with the existing and desired future character of the locality.

#### Clause 2.6 - Subdivision—consent requirements

The development proposal includes one lot into four lot Torrens title residential subdivision. Clause 2.6 provides that the subdivision of land, other than exempt or complying subdivision, requires development consent. The applicant has sought development consent for the proposed subdivision under the subject development application.

#### Clause 2.7 - Demolition Requires Development Consent

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

#### Clause 4.1 - Minimum subdivision lot size

The lots resulting from the proposed one into four lot Torrens title subdivision do not comply with the minimum lot size prescribed under NLEP 2012. However, an exception to the minimum lot size may apply under clause 4.1A, as discussed below.

#### Clause 4.1A - Exceptions to minimum lot sizes for certain residential development

The application proposes the construction of a multi-dwelling housing development consisting of four units and one into four lot Torrens title subdivision. The proposal

meets the requirements of this clause as there will be a dwelling built on each proposed lot prior to the subdivision of the land

All proposed lots will be over the required 200m<sup>2</sup>. A recommended condition has been provided to ensure that the dwellings are constructed prior to the release of a subdivision certificate (refer to **Attachment B**).

#### Clause 4.3 - Height of Buildings

Under NLEP 2012 the site has a height of buildings development standard of 8.5m. The submitted maximum height is 7.7m and complies with this requirement.

#### Clause 4.4 Floor Space Ratio (FSR)

The proposed development will result in an FSR of 0.61:1, equating to an exceedance of 11.8m<sup>2</sup> or 1.6% above the FSR development standard for the subject land.

The applicant has submitted a clause 4.6 variation request to this standard. A detailed assessment of this request is provided under the Clause 4.6 Exceptions to Development Standards section discussed below.

#### Clause 4.6 - Exceptions to development standards

The proposed development contravenes Clause 4.4 'Floor space ratio' of NLEP 2012. The FSR Map provides for a maximum FSR of 0.6:1. The proposed development has a total of 569.5m<sup>2</sup> of combined floor space. The proposal results in an FSR of 0.61:1 (based on a site area of 929.5m<sup>2</sup>), which exceeds the maximum FSR for the site by 1.6%. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

In assessing the validity of the proposed variation, the following is assessed:

**(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.**

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

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

- i) Strict compliance with the numerical standard would result in removing the opportunity or potential to gain for any net off-street parking. Car parks 'required' by Council's controls do not create GFA in the calculation of FSR. Requiring only 1 space per town house the remainder of the provided double garages are calculated in FSR. This 1.6% increase offers considerable additional off street parking and strict compliance with this numerical control*

*may result in on street parking. Two spaces per townhouse offer a better development outcome than a 'compliant' scheme.*

- ii) Strict compliance with the development standard may result in a negative outcome for on-street parking supply.*
- iii) The variation presented in the form of actual GFA is minor, that by removing a car space altogether and decreasing the actual GFA may not reduce the building footprint and therefore achieve no environmental benefit;*
- iv) The development in their present form do not result in any significant amenity impacts and are well balanced in the street and corner location, that the removal of the additional floorspace would warrant any further change to the development. Strict compliance would simply remove the ability to park four extra vehicles.*

*Expanding further on the matters raised in sub clause (3)(a), the proposed development extensions and alterations are relatively minor and conducive to that of a typical multi dwelling development. The proposed request to vary the development standard will not be such to generate additional activity or traffic or affect the amenity.*

*It is on this basis that the current scheme is argued to be suitable in its current form and context. The resultant built form reflects and enhances the existing established character of the area by creating a suitable transition development. The scheme has been led from this approach and offers suitable and affordable households.*

Comment:

The proposed development provides for four, two storey dwellings located on a corner allotment. The arrangement of these dwellings retain consistency with the prevailing development pattern within the street – two dwellings present to Northwood Street to the south and two dwellings present to Corriston Crescent to the east. Each dwelling is provided with off-street carparking in excess of the requirements of NDCP 2012, with proposed unit 3 and 4 each provided with an attached double garage (to the Northwood Street frontage). In accordance with NLEP 2012, when calculating the gross floor area (GFA) exclusion of car parking to meet any requirements of the consent authority is applied. As the NDCP 2012 requires the provision of one carparking space per dwelling, any additional internal carparking is to be calculated as a part of the GFA. As such, the additional internal carparking arrangements to units 3 and 4 have been included in the final GFA calculation – creating an exceedance of 11.8m<sup>2</sup> or 1.6% to the prescribed FSR.

The objectives of Clause 4.4 'Floor space ratio' of NLEP 2012 are as follows:

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

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

The subject site is a corner allotment, and of larger lot size than the immediate surrounding properties. As such, the site can cater for a greater density without compromising the prevailing low-density residential context of the street. The proposal includes three separate built forms across the site, presenting a maximum of two-stories. The proposed dwellings are provided with adequate building separation, internally and to adjoining properties, and responds to the natural topography of the site, stepping down as the site falls to the east. The modern, articulated dwellings add interest and diversity to the sites context whilst adhering to the low-impact residential character of the area. Landscaping is also provided within the front setback to soften the appearance of the dwellings as viewed from the public interface. As such, the proposed building density, bulk and scale is considered reasonable and meets the objective of Clause 4.4 of NLEP 2012.

The proposed development is provided with seven off-street carparking spaces. The development allows compliant landscaped areas with each dwelling having direct access to adequate private open space. The orientation, scale and separation of the proposed dwellings do not create any unreasonable amenity, overshadowing or privacy impacts to adjoining properties. The development is also consistent with the objective of the R2 Low Density Residential zone, as the proposal seeks a form of housing that is responsive to the identified needs of the community, by providing diversity of housing in a low-density environment. Although this is the first type of development within this area, the proposal is considered to be compatible with the existing and desired future character of the area.

As the proposed development exceeds the prescribed FSR by only 1.6%, the variation is considered minor. Strict compliance is unnecessary and unreasonable as a compliant development would reduce the number of off-street parking with little impact to the overall building footprint. The proposed variation to the development standard does not create any unreasonable impact to adjoining properties or the existing streetscape and character. The proposed development is able to achieve the outcomes of Clause 4.4 and is mostly compliant with other relevant matters in NLEP 2012 and NDCP 2012.

**(4)(a) The consent authority is satisfied that:**

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and**
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out**

An assessment of the application of Clause 4.6 'Exceptions to development standards' of NLEP 2012 has been undertaken. The development application has

adequately addressed the matters required by Clause 4.6(3) of NLEP 2012, and the application is considered to be in the public interest as it is consistent with objectives of relevant standards, and the objectives of development within the prescribed R2 Low Density Residential zone.

**(b) The concurrence of the Planning Secretary has been obtained**

The Secretary's (ie. of the Department of Planning, Industry and Environment) concurrence to the exception to the FSR development standard as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS18-003 of 21 February 2018.

**Conclusion**

The proposed exception to the floor space ratio development standard of NLEP 2012 is an acceptable planning outcome and, in this instance, requiring strict compliance would be unreasonable and unnecessary. The proposed variation to the development standard does not cause any undue adverse environmental impacts, including impacts on neighbouring properties in terms of bulk, scale, overshadowing and on-street carparking generation, indicating the multi-dwelling design is suitable for the site.

The proposal is consistent with the intended urban form within the R2 Low Density Residential zone, having regard to the combination of controls under NLEP 2012 and NDCP 2012. The request for the floor space ratio of the proposed development to exceed the prescribed 0.6:1 is supported.

Clause 5.10 - Heritage Conservation

The site does not contain any items of heritage significance and is not located in a Heritage Conservation Area.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils and the proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

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

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

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

### 5.3 Any development control plan

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

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

##### Subdivision - Section 3.01

The subject site is a trapezoidal shaped corner allotment, presenting two frontages – Northwood Street to the south and Corrison Crescent to the east. As such, the proposed one lot to four lot Torrens Title subdivision presents two lots to each street frontage. Despite the splayed corner and angled eastern boundary, the proposed lots are mostly rectangular in shape. Each of the proposed lots can achieve adequate solar access with dedicated private open space areas orientated north and positioned so that potential internal overshadowing is minimised. The proposed lots have access to essential services such as water, sewer and electricity.

Three of the proposed lots do not maintain a minimum 15m wide frontage. However, each lot provides adequate open space and recreation areas with direct vehicle access to a public road without the requirement of easements. The proposed subdivision benefits from the corner allotment creating opportunity to facilitate greater housing diversity. As such, the proposal is satisfactory having regard to the requirements of this section.

##### Residential Development - Section 3.03

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

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

##### Principal controls (3.03.01)

###### *A. Frontage widths*

The site is mapped as being within a limited growth precinct. As such, the minimum required street frontage width for a multi-dwelling row housing development is 18m. The existing frontage to Northwood Street is 27.89m, the existing frontage to Corrison Crescent is 30.1m, which complies with this requirement.

###### *B. Front setbacks*

Taking advantage of the corner allotment, the development presents two dwellings to each street frontage. The allocated front setbacks are as follows:

- 1) Unit 1 – Corriston Crescent
- 2) Unit 2 – Corriston Crescent
- 3) Unit 3 – Northwood Street
- 4) Unit 4 – Northwood Street

The proposed front setbacks to both Northwood Street and Corriston Crescent are mostly consistent with the established building line, although, set slightly forward. The proposed setback to Corriston Crescent coincides with the bend of the road, as such, the external walls to this elevation have been staggered to follow the splay of the road to reduce building massing and bulk. The front setback to Northwood Street adequately addresses the corner arrangement of the site – generous provisions for landscaping and open space to this corner softens the appearance of the development. All proposed front setbacks maintain 5.5m allowing the adequate provision of landscaping and off-street carparking as well as creating an acceptable level of privacy and amenity for future occupation. The garages are also well integrated into the built form. As such, the proposed development is consistent with the performance criteria of this control.

Corriston Crescent is treated as the secondary street frontage allocated to unit 4. The numerical setback requirement to a secondary street frontage is 2.0m. Unit 4 is provided with a 2.0m setback to Corriston Crescent. This is acceptable.

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

The proposed side setbacks, and associated building envelopes comply with the numerical requirements of this control.

On corner allotments, the boundary opposite the primary frontage is taken to be the rear boundary. Due to the arrangement of dwellings on site, both street frontages are considered to be primary frontages. The western adjoining boundary is taken to be the rear setback to units 1 and 2, with units 3 and 4 creating a rear setback internally. It is noted that a small portion of the external first floor wall to unit 1 breaches the 6m rear setback, at 5.4m. A variation is considered acceptable, for the reasons outlined below:

- i) The orientation of units 1 and 2 follows the pattern and arrangement of dwellings to the north, as such unit 1 is provided with a landscaping strip at the rear western setback. This accommodates for sufficient landscaping treatments consistent with the existing streetscape.
- ii) The window openings to the first-floor western elevation are associated with bedrooms only. This allows the amenity and privacy of the adjoining property to the north and west be maintained.
- iii) The private open space areas to the adjoining northern and western properties maintain the minimum required two hours of direct sunlight.

The arrangement of units 3 and 4 provide minimal rear setback to their respective proposed rear boundary. Considering the siting of the dwellings, particularly the

separation of these units to the southern elevation of unit 2, the rear setback areas are mostly unusable due to potential internal overshadowing. Notwithstanding, private open space areas and principal living areas servicing units 3 and 4 have been appropriately orientated to receive a reasonable level of amenity, privacy and solar access. As such, this internal site setback is considered acceptable and achieves the objectives and controls within this section of the NDCP 2012.

#### *D. Landscaped Area*

The minimum required landscaped area for land zoned R2 Low Density Residential and identified as being located within the Limited Growth Precinct is 30%. A minimum deep soil zone of 15% is also required.

The proposed development provides landscaping areas within the front, side and rear setback, with direct access to these areas from each proposed unit. The total soft landscape area is approximately 298m<sup>2</sup> or 32%. The proposal has been supported by a landscape plan indicating appropriate deep soil depths for planting medium sized trees and other vegetation. The development satisfies the performance criteria of the NDCP 2012 controls in respect to landscaping requirements.

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

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

The proposed development provides four, two-storey dwellings separated into three distinct building forms. The modern, articulated dwellings consist of a variety of building materials and colours adding interest and diversity to the context of site whilst adhering to the existing building typology of the streetscape. Adequate building separation and the provision of soft landscaping to the front setback assists with minimising bulk and scale.

The corner arrangement of the site and the siting of buildings allows a reasonable level of amenity and privacy to adjoining dwellings and their private open space be retained. As such, the proposed development is considered to achieve the objectives and controls within this section of the NDCP 2012 and is acceptable.

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

The proposed development provides an appropriate interface with the public domain and allows for clear delineation between the private and public space. The entrance to each dwelling is clearly defined through the use of private pathways and openings. Casual surveillance is achieved with window openings to a habitable room overlooking the street and a balcony to each dwelling frontage.

The orientation of the private open space area servicing unit 4 is located within the front setback presenting to Corrison Crescent. As such, a 1.8m high masonry fence is proposed. Adequate screen planting is provided within the front setback to soften the built form as viewed from the street. The open splayed corner is also retained as

landscaping. As the masonry fence is sited 2.0m to a secondary frontage and incorporates adequate soft screening, the development achieves the objectives and controls within this section of the NDCP 2012.

Open panelled fencing to a maximum height of 1.2m is proposed within the front setback to all dwellings, this is acceptable.

*C. Pedestrian and vehicle access*

Each proposed dwelling presents to a street frontage with access to a driveway fronting a public road. The proposed carparking arrangement provides an appropriate area for vehicular manoeuvrability. Sufficient and safe pedestrian access has also been provided. As such, the proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

*D. Orientation and siting*

The proposed development has due regards for orientation and siting, with the proposed layout of each dwelling orientated to optimise solar access and maximise street surveillance. Shadow diagrams prepared by CKDS (dated 27 November 2019) demonstrate that the principal area of private open space and the windows to any living room of the adjoining property to the west can retain two hours of direct solar access between 9am and 3pm during the winter solstice.

The site falls from the west of the site down towards Corrison Crescent to the east. The dwellings step down responding to the natural topography on site limiting the amount of cut and fill required. Furthermore, all proposed dwellings are provided with a covered entry door and a window to a habitable room facing a public street.

*E. Building Separation*

The four dwellings are separated into three distinct built forms, two attached dwellings to the Corrison Crescent frontage and two detached dwellings to the Northwood Street frontage. The building separation between the three built forms do not meet the numerical requirements of this control, however, a variation is considered acceptable in this instance due to the following:

- i) The site retains a low-density residential presentation with the maximum two-story dwelling form. The proposed development is well-articulated, with a variety of external building materials and fenestration sympathetic to the prevailing character of the streetscape.
- ii) Adequate screen planting and open space is provided within the front setback to help soften the visual bulk of the proposal when viewed from the public interface.
- iii) The orientation and siting of the dwellings allows for adequate daylight access between buildings, with the arrangement of window openings allowing for a reasonable level of amenity and privacy for future occupation.

As such, the proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

*Amenity (3.03.03)*

*A. Solar and daylight access*

All proposed dwellings receive sufficient solar access to habitable rooms and private open space in excess of the minimum required two hours between 9am and 3pm at the winter solstice. Whilst there is some internal overshadowing between the proposed dwellings, the private open space areas and associated living rooms have been appropriately orientated to take advantage of direct sunlight. As such, the proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

*B. Natural ventilation*

All habitable rooms meet the ventilation requirements of the NDCP 2012.

*C. Ceiling heights*

The applicant proposes ceiling heights of 2.7m to all ground habitable rooms and 2.4m to all first floors. The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

*D. Dwelling size and layout*

All proposed dwellings meet the dwelling size and layout requirements of NDCP 2012. The internal layout of each dwelling provides a functional layout to accommodate an appropriate level of amenity for future occupation.

*E. Private Open Space*

The proposed development provides ground floor decks to each unit directly accessible from the internal principal living areas. Each nominated private open space area exceeds the required 16m<sup>2</sup> dimension and is well sited to capture adequate sunlight. As such, the proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

*F. Storage*

The proposed development achieves the storage requirements within this section of the NDCP 2012 and is acceptable.

*G. Car and bicycle parking*

The proposed development achieves the minimum garage setback distance required within this section of the NDCP 2012 and is acceptable. Car and bicycle parking

provision is further assessed within the NDCP 2012 Section 7.03 Traffic, Parking and Access.

*H. Visual privacy*

The proposed development has been sited and orientated to retain existing visual privacy as currently enjoyed by the adjoining properties to the north and west. The first-floor window to the northern elevation of unit 1 is provided with a higher sill height of 1.2m, this is acceptable. Windows presented to the first-floor western elevation are mostly bedroom windows and do not require any further privacy attenuation measures. One window to the first-floor western elevation of unit 3 is associated with the secondary living area, however, considering the blank facade presented by the adjoining property to the west, screening is not required. Each dwelling presents first-floor balconies orientated to face the street; appropriate screening is provided.

The arrangement of the dwellings and associated fenestration has been appropriately sited to allow visual privacy between the proposed dwellings on site.

*I. Acoustic privacy*

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and the development is acceptable.

*J. Noise and pollution*

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and the development is acceptable. No further noise assessment is required.

*Configuration (3.03.04)*

*A. Universal design*

All units are capable of compliance with the Liveable Housing Design Guidelines Silver Level and is acceptable.

*B. Communal area and open space*

Each dwelling within the development has access to adequate private open space. The acceptable solutions of this section do not apply as the development does not propose 10 or more dwellings.

*C. Architectural design and roof form*

The roof design is integrated into the overall building form and provides a positive contribution to the streetscape. The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

*D. Visual appearance and articulation*

The modern, articulated two-storey dwellings utilise a variety of external building materials and colours sympathetic to the existing residential character of the area. The development does not unreasonably impact on the amenity and privacy of adjoining dwellings. The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

*E. Pools and ancillary development*

The proposed development does not include the provision of swimming pools or other ancillary development. As such, the acceptable solutions of this section do not apply.

Environment (3.03.05)

*A. Energy efficiency*

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

*B. Water management and conservation*

Stormwater treatment and disposal has been addressed in accordance with Section 7.06 of the NDCP 2012. As such, the proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

*C. Waste management*

Adequate and screened bin storage for three residential waste bins are provided for each individual dwelling. Each proposed dwelling also maintains adequate site frontage to utilise CN's public collection service. As such, the proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

As discussed, the proposed development is considered acceptable in relation to Section 3.03 Residential Development of the NDCP 2012. The proposed development achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The development establishes a scale and built form appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining a reasonable level of privacy for adjoining neighbours.

Flood Management - Section 4.01

The subject site is just affected by Local Flooding in the PMF event. It is categorised as L2 low hazard. The site is not affected by the 1% AEP flood event.

In accordance with Section 4.01 Flood Management of NDCP 2012 the proposal is acceptable from a flood management perspective with no conditions required. Accordingly, the proposal is acceptable in relation to flooding.

Bush Fire Protection - Section 4.02

The site is identified as bush fire prone. The application was referred to NSW Rural Fire Service as integrated development under Section 100(b) of the *Rural Fire Act 1997*. General Terms of Approval for the proposed development has been granted by NSW Rural Fire Service (copy appended at **Attachment D**).

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District (Guideline 2), and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

Safety and Security - Section 4.04

The proposed development has addressed crime prevention by the means of passive surveillance, territorial reinforcement, suitable landscaping and activation of the street frontage. The development meets the requirements of this section. Further crime risk assessment is not required for residential development less than 10 dwellings.

Social Impact - Section 4.05

It is considered unlikely that a development of the nature proposed would result in increased anti-social behaviour. The development provides for increased housing choice within the area, which is considered a positive social outcome.

Soil Management - Section 5.01

The submitted engineering plans prepared by Northrop (dated 27 November 2019) indicates that sediment and erosion management will be undertaken in accordance with the best practice guidelines outlined by CN. This is considered acceptable as the proposed development achieves the objectives and controls within this section of the NDCP 2012.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55. The site is not considered to have any contamination constraints that will impact on the development of the site.

Vegetation Management - Section 5.03

One tree is approved for removal under TA2019/00160. No vegetation on the adjoining properties or street trees will be adversely impacted by the development.

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

This issue is discussed under Clause 5.10 Heritage of NLEP 2012.

Archaeological Management - Section 5.06

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

Landscape Open Space and Visual Amenity - Section 7.02

The proposed development is identified as a Category 2 development. As such, a landscape plan has been provided with the application in accordance with this section. The submitted landscape plan prepared by Xeriscapes (dated 25 October 2019) demonstrates that the development provides a sufficient area for soft landscaping, with adequate screen planting proposed within the front setback and perimeter planting to the shared western and northern boundaries.

Three additional street trees have also been proposed which softens the appearance of the development as viewed from both street interfaces. Each dwelling is provided with an appropriate amount of open space through the use of decking and lawn areas. Therefore, the proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Traffic, Parking and Access - Section 7.03

Each dwelling provides at least one garage parking space which satisfies the NDCP 2012 parking requirements. Each garage is setback 5.5m which enables a stacked parking space in the driveway which satisfies visitor parking requirements. While no internal garage dimensions have been provided scaling from plans identifies that the internal dimensions appear to comply with AS2890.1 Parking Facilities.

No driveway profiles have been submitted however the change in levels between garage flood level and boundary suggest that compliant driveway gradients in accordance with AS2890.1 Parking Facilities could be achieved.

The local street network could cater for the minor increase in traffic movements associated with the subject development. Accordingly, the development is considered acceptable in relation to on-site parking and access subject to final details at construction certificate stage.

Section 7.06 - Stormwater

*The site plan and stormwater management plan have been amended to provide for a 1m offset from the driveway of Townhouse 3 to the existing Kerb Inlet Pit (KIP). This removes the need to relocate the KIP and is supported.*

The amended stormwater plan has not provided invert levels to demonstrate Pits J, K and the KIP have acceptable fall for stormwater disposal. However, surface levels of pits and KIP suggest that acceptable grades could likely be achieved. In the event that this was not achievable there are other drainage disposal options available, such as a possible easement across Proposed Lot 4 (Townhouse 4), if it were discovered at detailed design during Construction Certificate stage that the proposed disposal for Proposed Lot 3 was not achievable.

The stormwater management proposed is acceptable subject to recommended conditions of consent (refer **Attachment B**).

#### Waste Management - Section 7.08

Demolition and waste management during construction can be addressed by way of conditions of consent and have been included in the Draft Schedule of Conditions (refer **Attachment B**).

Adequate and screened bin storage for three residential waste bins are provided for each individual dwelling. Each proposed dwelling also maintains adequate site frontage to utilise CN's public collection service. This is acceptable.

#### Development Contributions

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

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

#### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. In addition, a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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

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

Impacts upon the natural and built environment have been discussed in this report in the context of all relevant policies, including NLEP 2012 and NDCP 2012 considerations. The proposed development will not result in any undue adverse impact on the natural or built environment. The development is located within a site suitably zoned for residential development and of a size able to cater for such development. The development is compatible with the existing character, bulk, scale and massing of the existing built form in the immediate area. The proposal will not have any negative social or economic impacts.

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

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

The site is located within an R2 Low Density Residential zone and the proposal is permissible. The proposed multi-dwelling housing development consists of four, two storey dwellings broken up into distinct building forms responding to the prevailing low-density character of the street. The proposed development provides for additional housing options to meet a variety of changing needs.

The provision of modern, well-articulated two storey dwellings are of a bulk and scale consistent with the existing and desired future character of the locality. Furthermore, the site is of a sufficient land size to enable the proposed development, whilst minimising the impact to neighbouring properties.

The site is located in an established residential area with good connectivity to a range of services and facilities. As such, the proposed development is suitable to the site.

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

The application was notified in accordance with CN's Public Participation Policy, between 21 October 2019 and 18 November 2019, during which time a total of 16 submissions were received, including two Public Voice requests.

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

Issue	Comment
Density, building height and zoning objectives	The proposed development comprises the erection of 'multi dwelling housing' which is a form of 'residential accommodation' as defined within NLEP 2012.

Residential accommodation is permitted with consent within the R2 Low Density Residential zone. As such, the proposed development is permitted within the zone. The development provides a variety of housing choices whilst presenting a low-impact residential design.

The proposed development complies with the proposed height of buildings development standard of 8.5m under NLEP 2012, with a maximum height of 7.7m.

Whilst the proposal results in an FSR of 0.61:1 (based on a site area of 929.5m<sup>2</sup>), which exceeds the maximum FSR for the site by 1.6%, a Clause 4.6 variation has been submitted demonstrating that compliance with the prescribed FSR is unreasonable and unnecessary. The breach offers additional off-street parking without creating excessive bulk or scale to the site.

The application of Clause 4.1A is accepted given each proposed lot is a minimum of 200m<sup>2</sup>, and a dwelling will be provided on each prior to the subdivision.

Character, streetscape and appearance

The dwellings are broken up into distinct building forms responding to the prevailing low-density residential character of the street. Two detached dwellings present to Northwood Street to the south, and two attached dwellings are presented to Corriston Crescent to the east. Adequate building separation to adjoining properties is provided. The modern, articulated dwellings consist of a variety of building materials and colours sympathetic to the existing streetscape. The proposed dwellings offer a range of housing options in a well-established and connected suburb.

Setbacks and fencing

The proposed front setbacks are mostly consistent with the established building line. The corner arrangement has been adequately addressed with open space and landscaping. Each dwelling is provided with a 5.5m setback to the front allowing the adequate provision of landscaping and off-street carparking as well as creating an acceptable level of privacy and amenity for future occupation.

The proposed setbacks to the northern and western side boundaries are compliant.

The first-floor rear setback does not comply with the numerical requirement of 6.0m being 5.4m. The proposed development complies with the performance criteria of

these controls, and as such is acceptable.

All proposed fencing complies with requirements of the NDCP 2012.

Loss of amenity, open space and overshadowing

The proposed development exceeds the minimum required landscaping area. A landscape plan and planting schedule was submitted as part of the application demonstrating adequate screen planting to the front setbacks to soften the appearance of the development as viewed from the streetscape. It is also noted that the splayed corner retains generous open space and landscaping.

The orientation and siting of the proposed dwellings allow the neighbouring properties to retain a reasonable level of amenity and privacy.

The adjoining properties are to continue to receive solar access to living room windows and private open space areas, in excess of the minimum requirements.

Traffic and parking

The proposed development provides a surplus of seven off-street carparking spaces for a total of twelve off-street carparking spaces.

The additional traffic generated by this development will not significantly impact the road network.

Construction, safety and social impact

The recommended conditions of consent include requirements for the applicant to comply with relevant Australian Standards for demolition as well as compliance with the National Construction Code.

The proposed development provides additional housing choice to the area which is considered a positive contribution to the area.

Waste collection

Adequate bin storage is provided to each dwelling behind the building line. Each dwelling maintains adequate site frontage to utilise CN's public waste collection service.

### **Public Voice Committee**

The proposal was considered at the Public Voice Committee Meeting held on 19 May 2020. Residents raised concerns with regards to subdivision, FSR, housing diversity, overdevelopment, character and streetscape impacts, height, setbacks, traffic and landscaping.

Issue	Comment
Subdivision and application of Clause 4.1A and Clause 4.6	<p><u>Applicant's response:</u> The proposed development is compliant with Clause 4.1A and does not seek a Clause 4.6 'Exception to development standards' to the minimum lot size.</p> <p>CN concurs with the applicant's comment. The application of Clause 4.1A is accepted given each proposed lot is a minimum of 200m<sup>2</sup>, and a dwelling will be provided on each prior to the subdivision. As such, a Clause 4.6 justification is not required for the application of Clause 4.1A.</p>
Exceedance to the prescribed FSR	<p><u>Applicant's response:</u> The development proposes a 1.6% exceedance to the FSR. This is as a result to the additional car parking spaces provided on site, which is in addition to the required car spaces under the NDCP 2012.</p> <p>CN concurs that the strict compliance with the prescribed FSR is unnecessary and unreasonable as a compliant development would reduce the number of off-street parking with little impact to the overall building footprint.</p>
Unnecessary housing diversity and there is already housing diversity in the area	<p><u>Applicant's response:</u> The proposed 'multi-dwelling housing' development is permissible in the R2 Low Density Residential zone. The proposed development meets the objectives in the NLEP 2012 by providing a diversity of housing forms and providing for housing needs within a low-density zone.</p> <p>CN concurs with the applicant's comments that the proposed development meets the land use objectives of the site.</p>
Impact to residential amenity due to bulk and scale, height and setbacks of the proposed development	<p><u>Applicant's response:</u> The proposed built form follows the natural topography of the site and is below the height limit of 8.5m. The dwellings are stepped down towards Corriston Crescent and are in scale with the existing adjoining properties. The proposed development provides separation between proposed built form on the site and to adjoining properties. The front setbacks maintain a compliant 5.5m setback.</p> <p>CN concurs that the proposed development is compliant with prescribed building height of NLEP 2012 and is able to meet all relevant performance criteria of NDCP 2012. The proposed development is of a scale in keeping with</p>

adjoining built form in terms of bulk and setbacks.

Increased traffic generation and obstruction of sightlines

Applicant's response:

Over generous on-site carparking provisions retain cars off-street and retains on-street carparking for school overflows.

CN concurs that the proposed development provides a surplus of off-street carparking. The maintenance of the generous corner setback retains safe vehicular and pedestrian sightlines.

The proposed development is out of character for the area and is not sympathetic to the streetscape

Applicant's response:

The proposed development maintains generous setbacks, strengthened by the landscaped corner element. The dwellings are formed within three blocks to reflect and repeat the dwelling pattern of the street. The front setback to Corrison Crescent is stepped respecting the established front setback to blend with the character of the street. The proposed material palette maintains the thread of the area with a proposed masonry base, a lightweight upper floor with the roof forms following the street as it steps down. The modern design is compatible with the eclectic character of the surrounding area.

CN concurs with the applicant's comments that the distinction of three building forms, and the two-storey nature of the dwellings respond to the prevailing low-density residential character of the surrounding area.

The proposed development does not pose any unreasonable impact to the streetscape or adjoining properties. As such, the adjoining properties retain a reasonable level of amenity, privacy and solar access. The proposed development is provided with a surplus of off-street carparking spaces and is not considered to create any significant traffic generating impacts.

All submission 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 outcomes of all relevant controls of NLEP 2012 and NDCP 2012 as discussed elsewhere within this report.

## 5.9 The public interest

The proposed development is consistent with the aims and design parameters contained in the NLEP 2012 and NDCP 2012 and other relevant Environmental

Planning Instruments discussed within this report. The development is consistent with the objectives of the R2 Low Density Residential zone.

The proposed development will not have any adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The proposed development is in the public interest as it provides for a variety of housing options within an established residential area. In addition, the proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services.

The proposed development is satisfactory having regard to the principles of ecologically sustainable development. Furthermore, the proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

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

## 6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

## ATTACHMENTS

**Item 17 Attachment A:** Submitted Plans – 16 Northwood Street Adamstown Heights

**Item 17 Attachment B:** Draft Schedule of Conditions - 16 Northwood Street Adamstown Heights

**Item 17 Attachment C:** Processing Chronology - 16 Northwood Street Adamstown Heights

**Item 17 Attachment D:** General Terms of Approval - NSW Rural Fire Service - 16 Northwood Street Adamstown Heights

**Item 17 Attachments A to D distributed under separate cover.**

**ITEM-18                    DAC 16/06/20 - DA2020/00044 - 304/464 KING STREET  
NEWCASTLE WEST- SERVICED APARTMENT - TOURIST  
AND VISITOR ACCOMMODATION**

**APPLICANT:                DANIEL NEIL LYNCH & MARNIE LOUISE LYNCH  
OWNER:                     D N LYNCH & M L LYNCH  
NOTE BY:                  GOVERNANCE  
CONTACT:                  DIRECTOR GOVERNANCE / MANAGER REGULATORY,  
PLANNING AND ASSESSMENT**

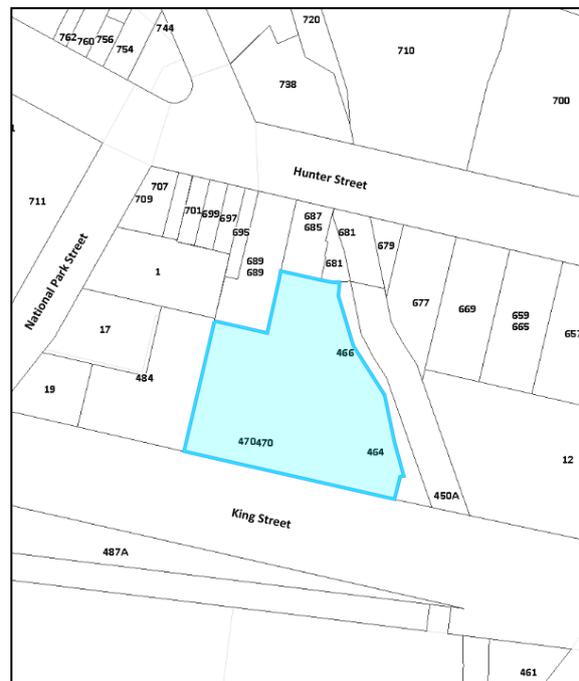
**PART I**

**PURPOSE**

An application (DA2020/00044) has been received seeking consent for the change of use of an existing apartment (the development site), to a serviced apartment, a type of tourist and visitor accommodation, at 304/464 King Street Newcastle West 2302. No building works are proposed.

The submitted application was assigned to Development Officer, Stacey Stephens, for assessment.

The development site is located within the mixed-use development known as 'Verve Apartments', approved under DA2016/00346 which granted development consent for "demolition of buildings, erection of 20 storey mixed use development including 197 residential apartments, 3 ground level retail units, 2 first floor commercial units, 4 floors of parking, (257 spaces) associated site works and 202 lot strata subdivision".



**Subject Land: 503/464 King Street  
Newcastle West NSW 2302**

The application was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP), between 30 January – 17 February 2020, with 15 submissions being received.

The concerns raised by the objectors in respect of the proposed development include: incompatible land use (residential), fire safety requirements, amenity of

occupants in regard to potential noise impacts and anti-social behaviour associated with short-term rental accommodation and requirement for strata owners consent. The objectors declined the opportunity to make a presentation at a meeting of the Public Voice Committee.

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 application is referred to the Development Applications Committee for determination, due to the application being called in by Councillor Clausen and Councillor MacKenzie.

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

### Issues

- 1) Amenity – submissions raised concerns that the proposed development would result in an adverse impact upon the amenity of surrounding residents as a result of noise and anti-social behaviour.
- 2) Owners consent – submissions identified that there was a requirement for Strata Corporation consent.

### Conclusion

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

### RECOMMENDATION

- A. That DA2020/00044 for serviced apartment (change of use), at 304/464 King Street, Newcastle West, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. 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 development site is known as 304/464 King Street, Newcastle West, and is legally described as Lot 9 in Strata Plan 99314. The site is located in a mixed-use strata complex building known as the 'Verve Apartments'. The development site comprises an existing one-bedroom apartment located on the third floor.

### **2.0 THE PROPOSAL**

The applicant seeks consent for the change of use from a residential apartment to a serviced apartment. Serviced apartments are type of tourist and visitor accommodation as defined by the Newcastle Local Environmental Plan 2012 (NLEP2012). No works are proposed under the application.

The applicant has submitted the operational details of the proposed use as follows:

- i) Maximum number of occupants – two people.
- ii) Minimum length of stay – two nights.
- iii) Check in/check out times – 10:00am to 6:00pm. Guests arriving outside these times will be required to make arrangements to collect keys from the manager off-site.
- iv) Staff - limited to a cleaner being required for a maximum of two to three hours each day.

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 appended at **Attachment C**.

### **3.0 PUBLIC NOTIFICATION**

The application was publicly notified for a period of 17 days, between 30 January – 17 February 2020, in accordance with CN's Community Participation Plan (CPP). The notification period was extended to allow for the holiday period (New Year's) as required by the CPP, and 15 submissions were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

**a) Statutory and Policy Issues:**

- i) BCA requirements – potential for fire safety upgrades and change of building classification.
- ii) Owners consent - Requirement for strata corporation consent.

**b) Amenity Issues:**

- i) Amenity - Potential noise impacts and anti-social behaviour.
- ii) Conflicting land use – use for the purposes of a serviced apartment will be conflict with the residential nature of surrounding apartments.

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

**Public Voice Committee**

The proposal was not considered at a meeting of the Public Voice Committee as the objectors declined the opportunity to make a presentation.

**4.0 INTEGRATED DEVELOPMENT**

The proposal is not '*integrated development*' pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*.

**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 *Environmental Planning and Assessment Act 1979*, 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 land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site. The proposal is acceptable having regard to this policy.

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

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

Clause 2.1 - Land Use Zones

The development site is located in the B3 Commercial Core zone under NLEP 2012. The proposed development is defined as 'serviced apartment', a type of 'tourist and visitor accommodation', and is permissible with development consent on land zoned B3 Commercial Core.

The proposed development is consistent with the objectives of the B3 Commercial Core zone, which are:

- a) *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- b) *To encourage appropriate employment opportunities in accessible locations.*
- c) *To maximise public transport patronage and encourage walking and cycling.*
- d) *To provide for commercial floor space within a mixed use development.*
- e) *To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.*
- f) *To provide for the retention and creation of view corridors.*

The proposal is considered to meet the objectives of the zone by offering a type of land use that is compatible with the existing mixed-use building and surrounding uses. The site is located in the Newcastle City Centre, in close proximity to public transport, services and facilities.

Part 7 Additional local provisions — Newcastle City Centre

The development site is located within the Newcastle City Centre. There are several 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, being a change of use to serviced apartment, is consistent with the objectives of Part 7 of NLEP 2012.

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

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

**5.3 Any development control plan**

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

Tourist and Visitor Accommodation - Section 3.09

The proposal is for a change of use to a serviced apartment, which is defined as a type of tourist and visitor accommodation. The aim of this section is to encourage tourist and visitor accommodation where permissible and ensure that tourist and visitor accommodation has minimal effect on surrounding development and the environment.

The proposal is considered to be consistent with the aims of NDCP 2012 Section 3.09 as serviced apartments are permissible in the B3 Commercial Core Zone. As the apartment contains one bedroom with a maximum occupancy of two people that will be managed professionally, the use is considered to have minimal adverse impacts on surrounding development and the environment.

#### Safety and Security - Section 4.04

NDCP 2012 Section 4.04 Safety and Security applies to any development that contains Tourist and Visitor Accommodation. The applicant has provided the following measures to address potential issues of anti-social behaviour.

- i) Maximum number of occupants – two people.
- ii) Minimum length of stay – 2 nights.
- iii) Check in/check out times – 10:00am to 6:00pm. Guests arriving outside these times will be required to make arrangements to collect keys from the manager off-site.
- iv) Staff - limited to a cleaner being required for a maximum of two to three hours each day.
- v) Phone access is provided for both guests and residents to the manager of the facility as required.
- vi) A bonding system will also be implemented where in the case of damage or disturbance occurs the bond will be forfeited.

Recommended conditions of consent have been provided which require the submission of a Plan of Management prior to commencement of use, and which stipulate operational details of the serviced apartment (refer **Attachment B**). The Plan of Management shall incorporate a contact telephone number for the operator of the serviced apartment which shall be available 24 hours a day and 7 days a week. The contact number must also be available to adjoining neighbours.

The proposed change of use is not considered to pose an increased risk of anti-social behaviour. Normal residential noise is expected from the property. Notwithstanding, a condition of consent which provides that the use of the development is not to give rise to any offensive noise, as defined under the *Protection of the Environment Operations Act 1997* (NSW) is recommended.

The change of use is consistent with NDCP 2012 Section 4.04.

#### Part 6.00 Locality Specific Provisions

##### Newcastle City Centre - Section 6.01

The site is located within the Newcastle City Centre 'West End' Character Area. The proposal does not involve building work and is considered to be consistent with the objectives of NDCP 2012 Section 6.01.

#### Heritage Conservation Areas - Section 6.02

The site is located within the Newcastle City Centre heritage conservation area. The proposed change of use does not propose any works that are likely to impact on the heritage significance of the conservation area. The proposed use will not impact on the conservation area. The application is consistent with this clause.

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

The property is required to have one parking space under CN's NDCP 2012 controls. The property has an allocated car parking space in the basement. The guests and staff (i.e. cleaner and property manager) will have access to the use of the allocated car space. The proposed development will have a negligible impact on local traffic and is acceptable.

#### Development Contributions

The *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposal is exempt from incurring a levy, as detailed in CN's Development Contributions Plans as there is no cost of works associated with the proposal.

### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

There are no demolition works proposed. Further, no Coastal Management Plan applies to the site or the proposed development.

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and NDCP 2012 considerations. The proposed development will not result in any unreasonable adverse impact upon the natural or built environment. The development is located within a site suitably zoned for use as a serviced apartment.

Subject to the recommended conditions of consent (refer **Attachment B**) the use can be suitably managed so as to not adversely impact adjoining residents by way of noise or other antisocial behaviour. The proposal will not have any negative social or economic impacts.

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

The site is suitable for the proposed development as it is located in the 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.

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

The application was publicly notified in accordance with CN’s Community Participation Plan (CPP) between 30 January – 17 February 2020, during which time 15 submissions were received. No Public Voice requests were received in respect to the application.

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

Issue	Comment
BCA requirements – potential for fire safety upgrades and change of building classification	The proposal does not trigger any change to existing BCA requirements or fire safety upgrades.
Requirement for Owner’s Corporation consent	No physical works are proposed to be undertaken within the common areas, as such the owner’s consent of the body corporate is not required.
Concern with noise impact from proposed development	A maximum number of two guests permitted in the dwelling, which is proposed to be conditioned accordingly. The noise expected from the development would be compatible with that of a normal dwelling.
Concern with social impact of proposal	The applicant has proposed operational details which demonstrates that the use can be suitably managed so as to not adversely impact adjoining residents by way of noise or other antisocial behaviour. Subject to the recommended conditions of consent, the proposal is unlikely to result in any adverse social impact.
Unsuitability of property for tourist and visitor accommodation	The site is within the B3 Commercial Core Zone. ‘Serviced apartments’ are a type of ‘tourist and visitor accommodation’ and therefore permissible within consent. The proposal is for the change of use of the dwelling to a ‘serviced apartment’. Accordingly, the proposal is permissible and considered a suitable use for the development site.
Concern with security	The proposal does not impact on the current security

<p>impact of proposal</p>	<p>arrangements within the building. Anyone wishing to stay at the property will be required to book through a booking agent. Accordingly, it will not be possible for people to arrive off the street to stay at the property. Furthermore, guests of the property will be required to comply with the operational requirements in addition to the strata management rules. The use of the property for short term rental accommodation is not inconsistent with the use of the property as a dwelling.</p>
<p>Setting of precedence for building/wider LGA</p>	<p>Each future application will be assessed on merit in accordance with the relevant context of the site.</p>
<p>Intent of Strata By-Law for use as short-term rental accommodation</p>	<p>The Strata By-Laws provides:  <i>6.4(a) Unless you obtain consent from Council for a change of use of your Apartment, you must use your apartment for residential accommodation purposes only. For the avoidance of doubt this means that you must not enter into or allow a lease or licence of your Apartment for a period of less than 12 consecutive weeks unless you have obtained consent from Council to permit use of the your apartment for short term accommodation and have complied with any conditions attaching to that consent.</i></p> <p>The applicant is therefore seeking Council consent, in accordance with this By-Law. Notwithstanding, the Strata By-Laws are not a matter of consideration pursuant to Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
<p>Concern with how serviced apartment will be managed</p>	<p>The applicant proposes that a serviced apartment manager located remotely from the site will manage the use of the proposal. Further that a bonding system that will be implemented where in the case that damage of disturbance occurs the bond will be forfeited. Subject to the recommended conditions of consent the proposal is considered acceptable.</p>
<p>Impacts on property values.</p>	<p>This concern is not a matter of consideration pursuant to Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i>.</p>

**5.9 The public interest**

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 *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

**ATTACHMENTS**

**Item 19 Attachment A:** Submitted Plans – 304/464 King Street, Newcastle West

**Item 19 Attachment B:** Draft Schedule of Conditions - 304/464 King Street, Newcastle West

**Item 19 Attachment C:** Processing Chronology - 304/464 King Street, Newcastle West

**Item 19 Attachment A to C - Distributed under separate cover**

**ITEM-19                    DAC 16/06/20 - DA2019/01231 - 503/464 KING STREET  
NEWCASTLE WEST - TOURIST AND VISITOR  
ACCOMMODATION - CHANGE OF USE**

**APPLICANT:                DANIEL NEIL LYNCH & MARNIE LOUISE LYNCH  
OWNER:                    D N LYNCH & M L LYNCH  
REPORT BY:                GOVERNANCE  
CONTACT:                 DIRECTOR GOVERNANCE / MANAGER REGULATORY,  
PLANNING AND ASSESSMENT**

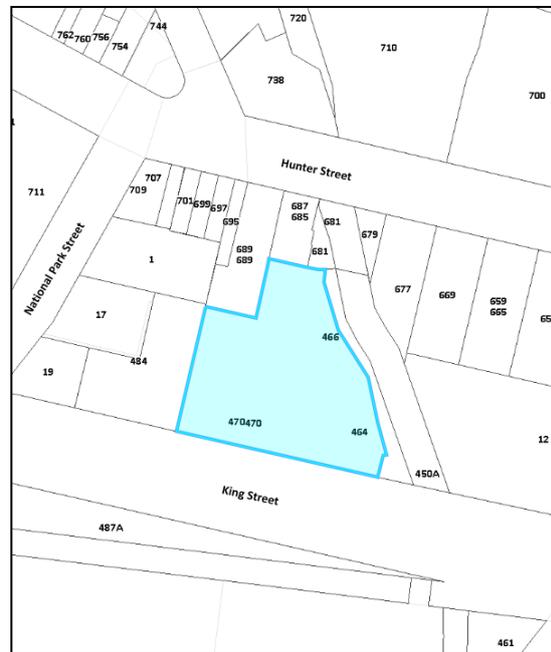
**PART I**

**PURPOSE**

An application (DA2019/01231) has been received seeking consent for the change of use of an existing apartment (the development site), to a serviced apartment, a type of tourist and visitor accommodation, at 503/464 King Street, Newcastle West. No building works are proposed.

The submitted application was assigned to Development Officer, Stacey Stephens, for assessment.

The development site is located within the mixed-use development known as 'Verve Apartments', approved under DA2016/00346 which granted development consent for "demolition of buildings, erection of 20 storey mixed use development including 197 residential apartments, 3 ground level retail units, 2 first floor commercial units, 4 floors of parking, (257 spaces) associated site works and 202 lot strata subdivision".



**Subject Land: 503/464 King Street  
Newcastle West NSW 2302**

The application was publicly notified in accordance with City of Newcastle’s (CN) Community Participation Plan (CPP), between 16 December 2019 – 22 January 2020, with 38 submissions being received (including two late submissions).

The concerns raised by the objectors in respect of the proposed development include: incompatible land use (residential), fire safety requirements, amenity of occupants in regard to potential noise impacts and anti-social behaviour associated with short-term rental accommodation and requirement for strata owners consent.

The objectors declined the opportunity to make a presentation at a meeting of the Public Voice Committee.

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 application is referred to the Development Applications Committee for determination, due to the number of submissions received.

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

### Issues

- 1) Amenity – submissions raised concerns that the proposed development would result in an adverse impact upon the amenity of surrounding residents as a result of noise and anti-social behaviour.
- 2) Owners consent – submissions identified that there was a requirement for Strata Corporation consent.

### Conclusion

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

### RECOMMENDATION

- A. That DA2019/01231 for serviced apartment (change of use), at 503/464 King Street, Newcastle West be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. 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 development site is known as 503/464 King Street, Newcastle West, and is legally described as Lot 18 in Strata Plan 99314. The site is located in a mixed-use strata complex building known as the 'Verve Apartments'. The development site comprises an existing one-bedroom apartment located on the fifth floor.

### 2.0 THE PROPOSAL

The applicant seeks consent for the change of use from a residential apartment to a serviced apartment. Serviced apartments are type of tourist and visitor accommodation as defined by the Newcastle Local Environmental Plan 2012 (NLEP 2012). No works are proposed under the application.

The applicant has submitted the operational details of the proposed use as follows:

- i) Maximum number of occupants – two people.
- ii) Minimum length of stay – one night.
- iii) Check in/check out times – 10:00am to 8:00pm. Keys are to be collected from an off-site security deposit box. Guests will be provided with a unique code to access keys following up-front payment for accommodation being made.
- iv) Staff - limited to the property manager and a cleaner who will attend the premises at the end of each short-term stay. In the event the premises are let for longer terms, provision is made for regular cleaning to be undertaken within that term.

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 appended at **Attachment C**.

### 3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 30 days, between 16 December 2019 – 22 January 2020, in accordance with CN's Community Participation Plan (CPP). The notification period was extended to allow for the holiday period (Christmas) and 38 submissions were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

#### a) Statutory and Policy Issues:

- i) BCA requirements – potential for fire safety upgrades and change of building classification.

- ii) Owners consent - Requirement for strata corporation consent.

**b) Amenity Issues:**

- i) Amenity - potential noise impacts and anti-social behaviour.
- ii) Conflicting land use – use of the purposes for a serviced apartment will conflict with the residential nature of surrounding apartments.

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

Public Voice Committee

The proposal was not considered at a meeting of the Public Voice Committee as the objectors declined the opportunity to make a presentation.

**4.0 INTEGRATED DEVELOPMENT**

The proposal is not '*integrated development*' pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*.

**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 *Environmental Planning and Assessment Act 1979*, 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 land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site. The proposal acceptable having regard to this policy.

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

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

Clause 2.1 - Land Use Zones

The development site is located in the B3 Commercial Core zone under NLEP 2012. The proposed development is defined as 'serviced apartment', a type of 'tourist and

visitor accommodation', and is permissible with development consent on land zoned B3 Commercial Core.

The proposed development is consistent with the objectives of the B3 Commercial Core zone, which are:

- a) *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- b) *To encourage appropriate employment opportunities in accessible locations.*
- c) *To maximise public transport patronage and encourage walking and cycling.*
- d) *To provide for commercial floor space within a mixed use development.*
- e) *To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.*
- f) *To provide for the retention and creation of view corridors.*

The proposal is considered to meet the objectives of the zone by offering a type of land use that is compatible with the existing mixed-use building and surrounding uses. The site is also located in the Newcastle City Centre in close proximity to public transport, services and facilities.

#### Part 7 Additional local provisions—Newcastle City Centre

The development site is located within the Newcastle City Centre. There are several 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 NLEP 2012.

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

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

#### **5.3 Any development control plan**

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

##### Tourist and Visitor Accommodation - Section 3.09

The proposal is for a change of use to a serviced apartment, which is defined as a type of tourist and visitor accommodation. The aim of this section is to encourage tourist and visitor accommodation where permissible and ensure that tourist and visitor accommodation has minimal effect on surrounding development and the environment.

The proposal is considered to be consistent with the aims of DCP Section 3.09 as serviced apartments are permissible in the B3 Commercial Core Zone. As the apartment contains one bedroom with a maximum occupancy of two people that will be managed professionally, the proposed use is considered to have minimal adverse impacts on the surrounding development and the environment.

Safety and Security - Section 4.04

NDCP 2012 Section 4.04 Safety and Security applies to any development that contains Tourist and Visitor Accommodation. A Plan of Management was submitted outlining the following measures to address the potential issues of anti-social behaviour.

- i) Maximum number of occupants – 2 people.
- ii) Minimum length of stay – 1 night.
- iii) Check in/check out times – 10:00am to 8:00pm. Keys are to be collected from an off-site security deposit box. Guests will be provided with a unique code to access keys following up-front payment for accommodation being made.
- iv) The operation of the premises will be professionally managed by a specialist property management firm that focuses solely on short term visitor accommodation.
- v) Staff associated with the land use is limited to the property manager and a cleaner who will attend the premises at the end of each short-term stay. In the event the premises are let for longer terms, provision is made for regular cleaning to be undertaken within that term.
- vi) A bonding system will also be implemented where in the case if damage or disturbance occurs, the bond will be forfeited.

Recommended conditions of consent have been provided which require the submission of a revised Plan of Management prior to commencement of use, and which stipulate operational details of the serviced apartment (refer **Attachment B**). The updated Plan of Management shall incorporate a contact telephone number for the operator of the serviced apartment which shall be available 24 hours a day and 7 days a week. The contact number must also be available to adjoining neighbours.

A condition of consent has been provided within the recommended conditions (refer **Attachment B**) in respect to the proposed operational details of the serviced apartment.

The proposed change of use is not considered to pose an increased risk of anti-social behaviour. Normal residential noise is expected from the property. Notwithstanding, a condition of consent which provides that the use of the development is not to give rise to any offensive noise, as defined under the *Protection of the Environment Operations Act 1997* (NSW) is recommended.

The change of use is consistent with NDCP 2012 Section 4.04.

Part 6.00 Locality Specific Provisions

Newcastle City Centre - Section 6.01

The site is located within the Newcastle City Centre 'West End' Character Area. The proposal is considered to be consistent with the objectives of NDCP 2012 Section 6.01.

Heritage Conservation Areas - Section 6.02

The site is located within the Newcastle City Centre Heritage Conservation Area. The proposed change of use does not propose any works that are likely to impact on the heritage significance of the conservation area. The application is consistent with this clause.

Traffic, Parking & Access - Section 7.03

The property is required to have one parking space under CN's NDCP 2012 controls. The property has an allocated car parking space in the basement. The guests and staff (i.e. cleaner and property manager) will have access to the use of the allocated car space. The proposed development will have a negligible impact on local traffic and is acceptable.

Development Contributions

The *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposal is exempt from incurring a levy, as detailed in CN's Development Contributions Plans as there is no cost of works associated with the proposal.

**5.4 Planning agreements**

No planning agreements are relevant to the proposal.

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

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

There are no demolition works proposed. Further, no Coastal Management Plan applies to the site or the proposed development.

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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and NDCP 2012 considerations. The proposed development will not result in any unreasonable adverse impact upon the natural or built environment. The development is located within a site suitably zoned for use as a serviced apartment.

Subject to the recommended conditions of consent (refer Attachment B) the use can be suitably managed so as to not adversely impact adjoining residents by way of noise or other antisocial behaviour. The proposal will not have any negative social or economic impacts.

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

The site is suitable for the proposed development as it is located in the 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.

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

The application was publicly notified in accordance with CN’s Community Participation Plan (CPP), between 16 December 2019 – 22 January 2020 and 38 submissions were received in response. No Public Voice requests received in respect to the application.

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

Issue	Comment
BCA requirements – potential for fire safety upgrades and change of building classification	The proposal does not trigger any change to existing BCA requirements or fire safety upgrades.
Requirement for Owner’s Corporation consent	No physical works are proposed to be undertaken within the common areas, as such the owner’s consent of the body corporate is not required.
Concern with noise impact from proposed development	A maximum number of two guests permitted in the dwelling. The noise expected from the development would be compatible with that of a normal dwelling.
Concern with social impact of proposal	The applicant has proposed operational details which demonstrates that the use can be suitably managed so as to not adversely impact adjoining residents by way of noise or other antisocial behaviour. Subject to the recommended conditions of consent, the proposal is unlikely to result in any adverse social impact.
Unsuitability of property for tourist and visitor accommodation	The site is within the B3 Commercial Core Zone. ‘Serviced apartments’ are a type of ‘tourist and visitor accommodation’ and therefore permissible with consent. The proposal is for the change of use of the dwelling to a ‘serviced apartment’. Accordingly, the proposal is permissible and considered a suitable use for the development site.
Concern with security impact of proposal	The proposal does not impact on the current security arrangements within the building. Anyone wishing to stay

	<p>at the property will be required to book through a booking agent. Accordingly, it will not be possible for people to arrive off the street to stay at the property. Furthermore, guests of the property will be required to comply with the operational requirements in addition to the strata management rules. The use of the property for short term rental accommodation is not inconsistent with the use of the property as a dwelling.</p>
Setting of precedence for building/wider LGA	<p>Each future application will be assessed on merit in accordance with the relevant context of the site.</p>
Intent of Strata By-Law for use as short-term rental accommodation	<p>The Strata By-Laws provides:  <i>6.4(a) Unless you obtain consent from Council for a change of use of your Apartment, you must use your apartment for residential accommodation purposes only. For the avoidance of doubt this means that you must not enter into or allow a lease or licence of your Apartment for a period of less than 12 consecutive weeks unless you have obtained consent from Council to permit use of the your apartment for short term accommodation and have complied with any conditions attaching to that consent.</i></p> <p>The applicant is therefore seeking CN consent, in accordance with this By-Law. Notwithstanding, the Strata By-Laws are not a matter of consideration pursuant to Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
Concern with the how serviced apartment will be managed	<p>The applicant has identified that the development will be professionally managed by a specialist property management firm that focuses solely on short-term rental accommodation. This firm will ensure adherence to Strata By-Laws and that a bonding system will be implemented, where in the case that damage of disturbance occurs the bond will be forfeited. Subject to the recommended conditions of consent the proposal is considered acceptable.</p>
Impacts on property values.	<p>This concern is not a matter of consideration pursuant to Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i>.</p>

**5.9 The public interest**

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 *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in Attachment B are included in any consent issued.

**ATTACHMENTS**

**Item 18 Attachment A:** Submitted Plans – 503/464 King Street, Newcastle West

**Item 18 Attachment B:** Draft Schedule of Conditions - 503/464 King Street, Newcastle West

**Item 18 Attachment C:** Processing Chronology - 503/464 King Street, Newcastle West

**Item 18 Attachments A to C - Distributed under separate cover**