



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 18 August 2020

TIME: 6.00pm

VENUE: Audio Visual Platform Zoom

J Bath
Chief Executive Officer

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

11 August 2020

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DEVELOPMENT APPLICATIONS COMMITTEE
18 August 2020

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**FOR DOCUMENTS MARKED 'DISTRIBUTED UNDER SEPARATE COVER' REFER TO
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NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING MINUTES

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 200721 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

Attachment A

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held via video conferencing platform Zoom on Tuesday 21 July 2020 at 7.40pm.

PRESENT

The Deputy Lord Mayor (Councillor D Clausen), Councillors M Byrne, J Church, C Duncan, J Dunn, 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), K Liddell (Director Infrastructure and Property), F Leatham (Director People and Culture), A Jones (Interim Director City Wide Services), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), A Knowles (Councillor Services/Minutes), E Horder (Councillor Services/Meeting Support), S Ray (Information Technology Support) and G Axelsson (Information Technology Support).

APOLOGIES

MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

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

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Deputy Lord Mayor, Councillor Clausen

Deputy Lord Mayor, Councillor Clausen declared a less than significant interest in Item 22 – DA2020/00136 – 76 Linwood Street Wickham as his mother in-law owned property in the Linwood Estate and remained in the meeting for discussion on the item.

Councillor Rufo

Councillor Rufo declared a non-pecuniary significant conflict of interest in Item 22 – DA2020/00136 – 76 Linwood Street Wickham as he had a relationship with one of the objectors who had addressed the Public Voice Committee on the item and managed the conflict by removing himself from the meeting during discussion on the item.

Councillor Luke

Councillor Luke declared a less than significant non-pecuniary interest in Item 22 – DA2020/00136 – 76 Linwood Street Wickham as he owned a building in the area and remained for the discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING
16 JUNE 2020**

MOTION

Moved by Cr Mackenzie, seconded by Cr Byrne

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

Carried

DEVELOPMENT APPLICATIONS

**ITEM-21 DAC 21/07/20 - DA2018/00037 - 291 KING STREET
NEWCASTLE - CAR PARKING, SERVICED APARTMENTS,
CHILDCARE CENTRE AND COMMERCIAL PREMISES**

MOTION

Moved by Cr Church, seconded by Cr Robinson

- A. That the Development Applications Committee, as the consent authority, note the objection under clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at clause 4.4 FSR, and considers the objection to be justified in the circumstances and to be consistent within the B4 Mixed Use zone; and
- B. That DA2018/00037 for alterations and additions to an existing car parking station, including three additional levels (one level of car parking and two levels of commercial space), sixty serviced apartments and a childcare centre at 291 King Street, Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

AMENDMENT

Moved by Deputy Lord Mayor, Cr Clausen

Include as part of the motion the development consent for Development Application No.2016/01106 is to be surrendered. A Notice of Surrender of Development is to be submitted within 28 days of the date of this consent.

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

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

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

Against the Motion: Nil.

**Carried
unanimously**

**ITEM-22 DAC 21/07/20 - DA2020/00136 - 76 LINWOOD STREET,
WICKHAM - DWELLING HOUSE AND ALTERATIONS AND
ADDITIONS**

Councillor Rufo left the meeting for discussion on the item at 7.49pm.

MOTION

Moved by Cr Robinson

That DA2020/00136 for dwelling house – alterations and additions at 76 Linwood Street Wickham be **refused** for the following reasons:

- 1) The development does not adequately address the matters required to be demonstrated by Clause 4.6(3) of the NLEP 2012. [Section 4.15(1) Environmental Planning and Assessment Act 1979].
- 2) The development is not consistent with the objectives of the FSR development standard (Clause 4.4 of the NLEP 2012). [Section 4.15(1) Environmental Planning and Assessment Act 1979].
- 3) The development will not be in the public interest because it is not consistent with the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out. [Section 4.15(1) Environmental Planning and Assessment Act 1979].
- 4) The development will have substantial impacts on neighbouring properties in terms of bulk, scale, and overshadowing. [Section 4.15(1)(b) Environmental Planning and Assessment Act 1979].

Councillor Church gave notice of an alternative motion.

As there was no seconder, the motion moved by Councillor Robinson lapsed.

MOTION

Moved by Cr Church, seconded by Cr Mackenzie

That Council approve DA2020/00136 for dwelling house – alterations and additions at 76 Linwood Street Wickham as per the applicants 13 reasons outlined in the report as follows:

- 1) Under Council's LEP the land is zoned R2 Low Density Residential and the proposed development is a permissible use of the land;
- 2) The Applicant seeks an increase in FSR. The increase will not increase the building footprint;
- 3) It is our understanding that Council have received no objections to the proposed development from neighbouring properties;
- 4) As the proposed development is to occur within an existing building it is unreasonable to comply with current FSR requirements;
- 5) The additional area is to be used to accommodate the needs of the existing family and is not proposed to be used to increase the resident density of the dwelling;
- 6) Currently the dwelling accommodates parents and children. Grandparents visit to assist in the care of children as the mother has a brain tumour. The additional space will relieve the stress that the family is currently experiencing by trying to accommodate these people in the existing building;
- 7) Original plans presented to Don Maloney, Duty Planner, Newcastle City Council, included a bigger addition to the building. Mr Maloney suggested a decrease in the proposed development would be more acceptable to Council. The Applicant complied with Mr Maloney's advice;
- 8) The existing appropriately approved dwelling would have been in excess of Council's FSR when constructed. It is unreasonable for Council to now suggest that there is already an overdevelopment of the site;
- 9) The proposed development will not create a negative impact upon drainage or flooding of the local area as there is no increase in non-pervious areas;
- 10) The proposed development is of an appropriate height for its location and has been located and designed so as to not have an adverse visual impact;
- 11) The proposed building design will not create a negative impact on the streetscape;
- 12) The proposed development will provide a positive environmental impact; and
- 13) The variation is not considered to have any adverse amenity outcomes to existing and future uses of surrounding land.

Deputy Lord Mayor, Councillor Clausen, sought advice from the Manager Regulatory Planning and Assessment as there were no conditions of consent before the Council and suggested that the item lay on the table.

PROCEDURAL MOTION

Moved by Cr Luke, seconded by Cr Duncan

That Council lay the item on the table until the Extraordinary Development Applications Committee meeting on 28 July 2020 to allow for the drafted conditions of consent to be provided to Councillors.

For the Motion: Deputy Lord Mayor, Councillor Clausen and Councillors Byrne, Church, Duncan, Dunn, Elliott, Luke, Mackenzie, Rufo, White and Winney-Baartz.

Against the Motion: Councillor Robinson.

Carried

Councillor Rufo did not return to the meeting at the conclusion of the item.

The meeting concluded at 7.52pm.

**MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE
28 JULY 2020**

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 200728 Extraordinary Development Applications Committee Meeting Minutes

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

Attachment A

CITY OF NEWCASTLE

Minutes of the Extraordinary Development Applications Committee Meeting held via video conferencing platform Zoom on Tuesday, 28 July 2020 at 8.51pm.

PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, K Elliott, B Luke, J Mackenzie, A Robinson, A Rufo (*retired 9.16pm*), E White and P Winney-Baartz.

IN ATTENDANCE

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

APOLOGIES

Nil.

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Rufo

Councillor Rufo declared a non-pecuniary significant conflict of interest in DA2020/00136 - 76 Linwood Street, Wickham stating that he had a relationship with an objector who spoke at public voice on the development application and would remove himself from the meeting for discussion on the item.

Councillor Luke

Councillor Luke declared a non-pecuniary less than significant conflict of interest in Item 24 - Supplementary Report - DA DA2020/00136 - 76 Linwood Street, Wickham stating that he owned property in the Maryville area considered far enough away and not impacted by the development.

Councillor Clausen

Councillor Clausen declared a non-pecuniary less than significant conflict of interest in Item 23 - Development Application 2017/01376 - 495-501 Hunter Street and 364 King Street, Newcastle stating that he had been contacted by representatives of both the applicant and objectors who had identified during conversation as members of the same political party as he. Councillor Clausen stated that he had not met these people previously and would remain in the meeting for discussion on the item.

Councillor Clausen

Councillor Clausen declared a non-pecuniary less than significant conflict of interest in Item 24 - Development Application 2020/00136 - 76 Linwood Street, Wickham stating that he had been contacted by representatives of both the applicant and objectors who had identified during conversation as members of the same political party as he. Councillor Clausen stated that he hadn't met these people previously and would remain in the meeting for discussion on the item.

Councillor Clausen

Councillor Clausen declared a less than significant non-pecuniary interest in Item 24 - Development Application 2020/00136 - 76 Linwood Street, Wickham stating that his mother in law owned property in the vicinity of the Linwood Estate and he would remain in the meeting for discussion on the item.

Lord Mayor, Cr Nemes

The Lord Mayor declared a non-pecuniary significant interest in Item 23 - Development Application 2017/01376 - 495-501 Hunter Street and 364 King Street, Newcastle stating that the partner of a friend was working on the development and having learnt this since the Public Voice session was held for this item, the Lord Mayor advised she would remove herself from the meeting for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

Nil.

DEVELOPMENT APPLICATIONS

ITEM-23 EDAC 28/07/20 - DA2017/01376 - 495-501 HUNTER STREET & 364 KING STREET, NEWCASTLE - DEMOLITION OF BUILDINGS, ERECTION OF FIFTEEN STOREY MIXED USE DEVELOPMENT WITH THREE RETAIL/COMMERCIAL TENANCIES, 87 RESIDENTIAL UNITS, CAR PARKING AND SITE WORKS

The Lord Mayor left the meeting for discussion on the item at 8.55pm.

The Deputy Lord Mayor, Councillor Clausen, took the Chair.

MOTION

Moved by Cr Church, seconded by Cr Elliott

Development Application 2017/01376 be refused on the following grounds:

1. Significant setback non – compliance.
2. Significant negative impact on solar access to 36 apartments in the neighbouring development known as Sky Residences including 10 units which will have no direct sunlight at all.

3. Significant negative amenity impacts on existing apartments in the neighbouring Worth Place Apartments including the blocking of sunlight, reduction in air movement and loss of privacy to balconies and living spaces.
4. Ongoing and unresolved concerns raised by the Urban Consultative Committee (UDCC), particularly around privacy and the western boundary setback.
5. Advice from the UDCC that the proposal is not considered to exhibit design excellence and remains problematic in a number of significant respects.
6. Concerns over errors in fact in the traffic report with up to 100 cars per day.

Councillor Mackenzie foreshadowed the Officer's recommendation as outlined in the business papers.

PROCEDURAL MOTION

Moved by Cr Elliott, seconded by Cr Church

The matter lay on the table for a site inspection.

For the Procedural Motion: Councillors Church, Elliott, Robinson and Rufo.

Against the Procedural Motion: Deputy Lord Mayor, Cr Clausen and Councillors Byrne, Duncan, Luke, Mackenzie, White and Winney-Baartz.

Defeated

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

For the Motion: Councillors Byrne, Church, Luke, Robinson and Rufo.

Against the Motion: Deputy Lord Mayor, Cr Clausen and Councillors Duncan, Mackenzie, White and Winney-Baartz.

Defeated

On the basis that the votes were tied, the Deputy Lord Mayor stated that he had exercised the Chair's casting vote and declared the motion defeated.

Councillor Mackenzie proceeded to speak on the foreshadowed motion.

Clarification was sought on the vote on Councillor Church's substantive motion and Councillors agreed to recommit the vote.

PROCEDURAL MOTION

Moved by Cr Luke, seconded by Deputy Lord Mayor, Cr Clausen

The vote on the substantive motion be recommitted.

For the Procedural Motion:

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

Against the Procedural Motion:

Nil.

Carried

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

For the Motion:

Councillors Byrne, Church, Elliott, Luke, Robinson and Rufo.

Against the Motion:

Deputy Lord Mayor, Cr Clausen and Councillors Duncan, Mackenzie, White and Winney-Baartz.

Carried

The Lord Mayor returned to the meeting at the conclusion of the item at 9.16pm.

ITEM-24 EDAC 28/07/20 - SUPPLEMENTARY REPORT - 76 LINWOOD STREET WICKHAM

Councillor Rufo left the meeting at 9.16pm.

MOTION

Moved by Cr Church, seconded by Cr Elliott

- i) That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density Residential Zone in which the development is proposed to be carried out; and
- ii) That DA2020/00136 for dwelling house – alterations and additions at 76 Linwood Street, Wickham be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (**Attachment B**).

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For the Motion:

Lord Mayor, Cr Nelmes and Councillors Church, Elliott, Mackenzie, Luke, Robinson and White.

Against the Motion:

Councillors Byrne, Clausen, Duncan and Winney-Baartz.

Carried

Councillor Rufo did not return to the meeting prior to close of the meeting.

The meeting concluded at 9.22pm.

DEVELOPMENT APPLICATIONS

ITEM-25 DAC 18/08/20 - DA2018/00797 - 31-35 HUDSON STREET, HAMILTON - DEMOLITION OF STRUCTURES AND ERECTION OF FIVE STOREY MIXED USE DEVELOPMENT - INCLUDING RESIDENTIAL FLAT BUILDING AND COMMERCIAL PREMISES

**APPLICANT: STEVEN'S GROUP
OWNER: POWERFLOW PTY LTD
REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

PART I

PURPOSE

An application has been received seeking consent for the demolition of existing buildings, erection of a five-storey mixed use development comprising two commercial tenancies, forty residential apartments (residential flat building), associated carparking and remediation at 31-35 Hudson Street, Hamilton.

The submitted application was assigned to William Toose, Principal Planner, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to:

1. The construction value of the proposed development (\$12,121,891) being in excess of the staff delegation limit of \$10M; and
2. The proposed variation to the height of buildings development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (13.5% variation proposed).

The proposed development was publicly notified in accordance with the notification requirements of Newcastle Development Control Plan 2012 (NDCP 2012) which for this type of application required a public notification period of 14 days. In response, seven submissions were received, concerns raised by the objectors in respect of the proposed development included, building height, density, visual impact, overshadowing, privacy and traffic.



**Subject Land: 31-35 Hudson Street
Hamilton NSW 2303**

The plans were amended during the assessment process in response to recommendations of City of Newcastle (CN) officers and advice from the Urban Design Consultative Group (UDCG). The proposed amendments included a reduction in overall building height, increased building setbacks, increased landscaping, and improved amenity of the apartments.

The amended plans were not renotified as the amended design resulted in an improved outcome and lesser impact to surrounding properties and the environment. In accordance with the NDCP 2012 renotification was not required. The amended plans adequately addressed the recommendations of CN staff and the UDCG.

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.

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

Issues

- 1) The proposed development does not comply with the height of buildings development standard of 14m under the NLEP 2012. The proposed height of the building is 15.9m which equates to a 13.5% variation to the height of buildings development standard.

Conclusion

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

RECOMMENDATION

Vote by division

- A. That the DAC note the objection under clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and
- B. That DA2018/00797 for the demolition of existing buildings, erection of a five-storey mixed use development comprising two commercial tenancies, forty residential apartments, associated carparking and remediation at 31-35 Hudson Street, Hamilton 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 *EP&A Act 1979* requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

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

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

PART II

1.0 THE SUBJECT SITE

The site consists of four allotments known as 31-35 Hudson Street, Hamilton and have legal descriptions of Lots 30 and 31 in DP1083348 and Lots 1 and 2 in DP 197603. The subject site is rectangular in shape and has a total area of 2,023.6m². The site adjoins a single storey dwelling to the west, dwellings, and light industrial buildings to the south, and older single storey dwellings to the east.

The site currently contains commercial and light industrial buildings, with no building setbacks, no landscaping and no deep soil areas. The subject site is identified on CN's Land Contamination Register.

2.0 THE PROPOSAL

The applicant seeks consent for:

- i) Demolition of existing buildings;
- ii) Erection of 5-storey mixed use development;
- iii) Two ground floor commercial tenancies;
- iv) 40 residential apartments, including eight x one bedroom apartments and 32 x two bedroom apartments;
- v) Basement parking for 51 vehicles; and

vi) Site remediation works.

A number of design changes have been made to the originally submitted plans in response to the advice of the UDCG recommendations from CN officers. These design changes include:

- i) Increased side and rear setbacks of the fifth floor in order to increase building separation;
- ii) A reduction in overall building height from 18m to 15.9m;
- iii) Reconfiguration of units for improved internal amenity;
- iv) Improved activation of street through additional commercial floor area;
- v) Setting back of basement level from eastern side boundary to allow for landscaping;
- vi) Reconfiguration of communal open space to improve useability; and
- vii) Changes to building materials and façade.

The changes are further discussed within 4.0 Environmental Planning Assessment of this report.

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

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

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

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with the NDCP 2012. Seven submissions were received in response. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

- i) Building height
- ii) Bulk and scale
- iii) Overshadowing
- iv) Privacy
- v) Neighbourhood Character

- vi) Density
- vii) Traffic generation
- viii) Lack of parking
- ix) Lack of recreational space
- x) Contamination
- xi) Compliance with State Environmental Planning Policy No 65 (SEPP 65) and Apartment Design Guide (ADG)

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

The plans were amended during the assessment process in response to recommendations of CN officers and advice from the UDCG. The proposed amendments include a reduction in overall building height, increased building setbacks, increased landscaping, changes to materials and finishes and the reconfiguration of apartment layouts for improved amenity. The amended design resulted in a lesser impact to surrounding properties and the environment. Accordingly, re-notification was not required.

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

CN records identify the sites as being contaminated land. The policy and section 5.2 of the NDCP 2012 require a preliminary site investigation to be carried out in accordance with the 'Guidelines for Consultants Reporting on Contaminated Sites'.

SEPP 55 requires that where land is contaminated, CN must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

A Remediation Action Plan (RAP) has been submitted which outlines a remedial strategy requiring the removal of underground petroleum storage tanks, excavation

of the areas of identified soil contamination for disposal off site, followed by validation and backfilling with appropriately validated material.

Subject to the implementation of the RAP, the subject site is acceptable for the intended purpose. A number of conditions have been recommended in the Draft Conditions of Consent regarding the remediation of the site (refer to **Attachment B**).

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

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

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

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

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

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

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

The proposed development was considered by the UDCG on two occasions prior to lodgement of the application, and during the assessment period. The proposal was previously supported in principle, with a range of concerns needing to be resolved. The amended plans have adequately addressed the recommendations of CN and the UDCG.

A summary of the UDCG's advice in relation to the nine design principles is provided in the table below.

Design Quality Principles	Assessment
<p>Principle 1: Context and Neighbourhood Character</p> <p>The UDCG noted the following:</p> <p><i>“The site is within a block containing a mix of light industrial, commercial, and residential activities, and is within 400m walking distance to Hamilton Railway Station.</i></p> <p><i>The site adjoins a single storey dwelling to the west, dwellings and an industrial building to the south, and older single storey dwellings to the east. To the north it faces other low-scale commercial and residential buildings on the opposite side of Hudson Street.</i></p> <p><i>The site and the immediate area is flat and undistinguished, but it is a location undergoing gradual redevelopment to higher density, replacing the presently run-down existing buildings.</i></p> <p><i>There are no nearby listed heritage items, or distinctive buildings, so that it is very desirable for this development to set a high-quality benchmark for future nearby developments.”</i></p>	<p><u>Officer's Comments:</u></p> <p>Noted. No further comment.</p>

<p>Principle 2: Built Form and Scale</p> <p>The UDCG noted the following:</p> <p><i>“The site is zoned B4 Mixed Use under Newcastle LEP 2012, with an FSR of 2:1, and height limit of 14m. The proposal is compliant with the density controls.</i></p> <p><i>The provision of communal open space on the roof level provides an unacceptable increase in height.</i></p> <p><i>The removal of the communal rooftop area has reduced the overall height, which at 15.9m is now closer to the allowable height of 14m. This height can be accepted given that the overall amenity of the apartments is of a good standard.</i></p> <p>The UDCG raised the following issues:</p> <ul style="list-style-type: none"> • <i>The level 5 setbacks would not satisfy ADG requirement for 18m separation distances, assuming as is very likely, that development of similar scale will be proposed on adjoining properties to both sides and rear. To satisfy this reasonable requirement the fifth floor needs to be set back 9m from the common boundaries.</i> • <i>The central corridor has no natural light to the south end, and options should be explored for allowing this to be provided.</i> • <i>It would be desirable to relocate the northern stair so that it is adjacent to the entrance lobby, to give direct access for people preferring stair to lift access.</i> • <i>The lack of side boundary setbacks in the basement means that the extensive planting indicated on the plans at the sides is unlikely to be viable.</i> 	<p><u>Officer's Comments:</u></p> <p>The design remains compliant with the floor space ratio (FSR) and ADG setback requirements.</p> <p>The rooftop communal area has been relocated to ground level, at the rear of the property. This has resulted in a reduction in overall building height from 18m to 15.9m.</p> <p>The side and rear setbacks of the fifth floor have been increased to 9m from common boundaries which complies with ADG separation requirements.</p> <p>Central corridors on all floors have now been provided with natural light at both ends to improve amenity.</p> <p>Stairs have now been combined at the midpoint of the central corridor in order to improve access for residents.</p> <p>To minimise the need for raised planter beds along the eastern boundary, the basement level has been set back from eastern side boundary to allow for landscaping and deep soil planting.</p> <p>A long central corridor allows for the most efficient layout. To minimise the impact and perceived length of the corridor, the proposal has been amended by:</p> <ol style="list-style-type: none"> 1) Widened the corridor adjacent the lift, to create a waiting area; 2) Providing a lightwell and skylight between the lift and fire stairs, to provide natural light and ventilation to the heart of the building; and 3) Widening the endpoints of the corridors to create niches for apartment entry doors and avoiding a narrow tunnel feel.
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<ul style="list-style-type: none"> <i>The elongated central corridor remains a poor design aspect. Further consideration of increased entry setbacks, staggered alignment of apartment entries and the use of colour and texture to differentiate sections of the corridor could ameliorate this concern. There needs to be an increased setback of the lift entry on all floors to accommodate a waiting area and to assist manoeuvring of furniture.”</i> 	<p>The above amendments have addressed the concerns raised by the UDCG.</p>
<p>Principle 3: Density</p> <p>The UDCG noted the following:</p> <p><i>“The UDCG advise that the density of the proposal is compliant and acceptable.”</i></p>	<p><u>Officer's Comments:</u></p> <p>The proposed development remains compliant with FSR and ADG setback requirements.</p>
<p>Principle 4: Sustainability</p> <p><u>UDCG comments:</u></p> <p>The UDCG recommended the following amendments:</p> <p><i>“Provide top venting and natural lighting to inner bathrooms on the top floor has not been provided.</i></p> <p><i>It is a recommendation that natural light and ventilation should be provided to the basement carpark.”</i></p>	<p><u>Officer's Comments:</u></p> <p>General sustainability principles have been considered throughout the design process.</p> <p>Top venting and natural lighting of inner bathrooms to Level 5 has now been provided through a clearstory roof.</p> <p>To accommodate high-level windows into the basement would increase the height of the building, which is already over the height limit.</p> <p>The above amendments have addressed the concerns raised by the UDCG.</p>

<p>Principle 5: Landscape</p> <p><u>UDCG comments:</u></p> <p>The UDCG recommended the following amendments:</p> <p><i>“Reconsideration of basement configuration is highly desirable to ensure that substantial planting can be provided along the sides as well as rear of the development.</i></p> <p><i>The indicated screen planting to the eastern side pathway appears to be reliant on deep soil planting over the basement carpark. This remains an issue requiring raised ground levels adjacent to the neighbouring site.”</i></p>	<p><u>Officer's Comments:</u></p> <p>A 6m setback along the rear boundary of the site boundary provides substantial deep soil zone for landscaping and planting.</p> <p>Raised planter beds along the eastern boundary are no longer required, as the basement level has been set back from eastern side boundary to allow for landscaping and deep soil planting.</p> <p>The above amendments have addressed the concerns raised by the UDCG.</p>
<p>Principle 6: Amenity</p> <p><u>UDCG comments:</u></p> <p>The UDCG noted the following:</p> <p><i>“The applicant’s statement claims that 80% of apartments achieve cross-ventilation, although this does not appear to be the case. However, given the generally good standard of amenity of the apartments, some minor non-compliance with the ADG recommended 60% could be accepted.</i></p> <p><i>Shielding of bedrooms above the driveway has been provided by deck projections out from bedrooms.</i></p> <p><i>Although the lift has been relocated to remove the alignment with an apartment door, the lift location remains a major concern. As noted above, if the lift is not relocated the entry needs to be set back to accommodate a waiting bay and furniture removal.</i></p> <p><i>The location of the waste storage in the basement is remote from the lift and</i></p>	<p><u>Officer's Comments:</u></p> <p>This calculation has been amended to be reflective of the UDCG’s assessment.</p> <p>Planter boxes have been added to these balconies at the suggestion of the panel, providing a buffer to the driveway.</p> <p>The hallway adjacent the lift and lightwell have been widened to create a waiting area and space to manoeuvre furniture.</p> <p>The ability to reconfigure the basement and move the waste storage area without losing car spaces or deep soil area is limited. An alternative solution is now proposed, by relocating the waste storage area to the remnant space adjacent the substation, with easy roll-out to the road.</p> <p>The new location removes the need to move the bins up the driveway ramp; the residents can access the waste</p>

<p><i>vehicle ramps. Relocation should be considered relative to the rout of waste bin movement to the street.”</i></p>	<p>storage area via the covered awning area or around the side of the building.</p> <p>The above amendments have addressed the concerns raised by the UDCG.</p>
<p>Principle 7: Safety</p> <p><u>UDCG comments:</u></p> <p>The UDCG noted the following:</p> <p><i>“Satisfactory subject to clarification of fire exit compliance via the side passageway and through a gated common area.”</i></p>	<p><u>Officer's Comments:</u></p> <p>The electricity substation has been relocated and the gated common area has been removed to provide an unobstructed escape path from the fire stairs to the front boundary.</p> <p>The above amendments have addressed the concerns raised by the UDCG.</p>
<p>Principle 8: Housing Diversity and Social Interaction</p> <p><u>UDCG comments:</u></p> <p>The UDCG noted the following:</p> <p><i>“No viable communal spaces and facilities are included. The lack of communal facilities is unacceptable, particularly given that there are 40 apartments and potentially of the order of 100 future residents.”</i></p>	<p><u>Officer's Comments:</u></p> <p>The applicant’s preference is to have outdoor communal space. The ADG refers to communal open space as “an important environmental resource that provides outdoor recreation opportunities...” As such, the application proposes to keep the communal open space outdoors.</p> <p>Two communal open spaces are provided at ground level, at the rear of the property.</p> <p>Efforts have been made to improve the amenity of the two communal open spaces at the rear of the property.</p> <p>The configuration of two outdoor areas provides better solar access than one consolidated area directly to the rear of the building would receive, and having multiple, smaller communal areas provides the opportunity for more people to use the spaces simultaneously (two families having separate BBQs, etc).</p> <p>The above amendments have</p>

	addressed the concerns raised by the UDCG.
<p>Principle 9: Aesthetics</p> <p><u>UDCG comments:</u></p> <p>The UDCG noted the following:</p> <p><i>“All previous have been addressed and the appearance and character of the development can now be supported.”</i></p>	<p><u>Officer's Comments:</u></p> <p>Noted. No further comment.</p>
<p>Amendments Required to Achieve Design Quality</p> <p><u>UDCG comments:</u></p> <p><i>“The overall design has the potential to result in a high-quality outcome.”</i></p>	<p><u>Officer's Comments:</u></p> <p>The amended proposal is considered to address the recommendations of the UDCG and CN's assessment and is an acceptable form of development within the context of the site and its location.</p>

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

The ADG provides benchmarks for designing and assessing a residential apartment development. The following section contains an assessment of the development against key aspects of the ADG.

2B Building Envelopes

The ADG and section 3.03 of the NDCP 2012 both include controls regarding building envelopes. The side and rear elevations comply with the ADG setbacks as discussed under 3F Visual Privacy detailed below.

2C Building Height

Under the NLEP 2012 the site has a maximum height of 14m. The submitted height is approximately 15.9m and does not comply with this standard. The applicant has submitted a clause 4.6 variation request which is assessed under the NLEP 2012 clause 4.6 - Exceptions to development standards.

2D Floor Space Ratio (FSR)

The allowable FSR is 2:1 under the NLEP 2012. The submitted FSR is 1.93:1 and complies.

2E Building Depth

The proposed design meets the requirements of the ADG in terms of depth of the dwelling floor plates, ensuring adequate natural ventilation and sunlight.

2F Building Separation

The side and rear elevations comply with the ADG setbacks as discussed under 3F Visual Privacy detailed below. The proposal has blank side walls which are allowed as a zero setback. Overall, the building separation of the proposal is acceptable.

2G Street Setbacks

The proposed development has a front setback of 3m, in line with adjoining developments and the streetscape. The residential apartments have been set back further from the street, to provide relief and maintain a human scale at street level. The proposed street setbacks are acceptable having regard to the existing site context.

2H Side and Rear Setbacks

The side and rear elevations comply with the ADG setbacks as discussed under 3F Visual Privacy detailed below. The overshadowing impacts of the proposal are acceptable as discussed in Section 5.3 of this report.

3B Orientation

The orientation of the building and floor plans respond to the specific site conditions to allow for available views, optimising solar access to units and creating a high level of cross ventilation to all apartments.

The side and rear setbacks progressively increase as the building height increases to provide adequate building separation and solar access for neighbouring properties.

3C Public Domain interface

Amenity of the public domain is improved by providing an active commercial street frontage with the upper level apartments providing passive surveillance. Waste storage facilities are designed to minimise impact on the streetscape, building entry and amenity of residents. The proposal includes a number of additional street trees along Hudson Street to improve the quality of the public domain.

The proposed ground level commercial tenancies support street activation along Hudson Street, with multiple dwellings above ensuring a good interface to the public domain.

3D Communal and Public open space

Two communal open spaces for use of residents are provided at ground level, at the rear of the property. All communal open spaces are supported by landscaping and have been designed to offer a high-quality amenity for a variety of uses. There are also a number of public parks within walking distance of the development.

3E Deep Soil Zones

Approximately 241m² deep soil area is provided, equating to 12% of the site area, which complies with the ADG requirements.

3F Visual Privacy

Adequate building separation distances are shared equitably between neighbouring sites to achieve reasonable levels of external and internal visual privacy and maintain solar access to neighbouring properties. The proposed side and rear setbacks comply with the with the building separation requirements of this element.

3G Pedestrian Access and Entries

The main entry to the building is clearly defined and visible from Hudson Street. Access to the foyer separating public and private spaces is restricted to residents.

3H Vehicle Access

The basement carpark entry is located away from the pedestrian entry to the building and is clearly visible. Access to the basement parking is restricted to prevent unauthorised access.

3J Bicycle and Car Parking

Adequate off-street parking has been provided for each apartment. The driveway is identifiable with basement parking is not highly visible from the street.

4A Solar and Daylight Access

Living rooms and private open spaces of at least 70% of apartments receive a minimum of two hours direct sunlight between 9am and 3pm at mid-winter, which complies.

4B Natural Ventilation

All habitable rooms in all apartments have operable windows and / or glazed doors and can be naturally ventilated. While most apartments are single-aspect only, 60% are naturally cross-ventilated which is considered acceptable given the good standard of amenity of the apartments.

4C Ceiling Height

A 2.7m minimum floor to ceiling for habitable rooms and 2.4m minimum for non-habitable rooms has been achieved for all units while the floor plate depths allow for natural light into the spaces.

4D Apartment Size and Layout

All apartments exceed the minimum floor area requirements and all habitable rooms have at least one window that exceeds the minimum size requirements.

4E Private Open Space and Balconies

All apartments have a balcony with a minimum depth of 2m or greater. The configuration of balconies and apartments will provide a good level of surveillance to public and private areas. All ground floor apartments have a private open space exceeding 15m².

4F Common Circulation and Spaces

Each residential level includes eight apartments which are serviced by one lift core, which complies.

4G Storage

All apartments comply with the minimum storage requirements of this element.

4H Acoustic Privacy

The building layout has been designed to achieve minimisation of noise transfer to and from apartments. Acoustic treatments to walls, floors and ceilings further reduce noise transfer.

The proposal is acceptable having regard to SEPP 65, taking into consideration the design criteria in the ADG and comments received from the UDCG in respect of the design principles.

Newcastle Local Environmental Plan 2012 - (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject site is located within the B4 Mixed Use zone under the provisions of the NLEP 2012.

The proposal is a mixed-use development comprising commercial premises on the ground floor with a residential flat building above. The proposed development is permissible in the zone and consistent with the objectives for the zone.

The proposal is also considered to be consistent with the zone objectives, which are:

i) *To provide a mixture of compatible land uses.*

Comment: The proposed development provides an appropriate mix of compatible use and integrates commercial and residential uses on the site. The site is ideally located with respect to public transport and proximity to services and facilities. The proposed development allows for additional housing opportunities within proximity to services and facilities, commercial centres and employment transport nodes, while maintaining an acceptable level of residential amenity for nearby developments.

ii) *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

Comment: The proposal is within proximity of public transport which will encourage use of public transport, walking and cycling. The proposal will contribute to increased housing density in the area which will support nearby commercial areas.

iii) *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

Comment: The proposal is considered to support the viability of the Hamilton local centre through increased housing and employment opportunities within the area. Correspondingly, it is also considered that the proposal meets the zone objectives regarding the support for the existing commercial centres by maintaining a commercial street activation to Hudson Street. Furthermore, the introduction of additional residents within the area will be a positive impact on the viability of these centres due to increased demand for services and facilities.

The size of the proposed two commercial units is such that it is unlikely that their future use would have an impact on the proposed residential dwellings above or other uses within the area.

The density and scale of the proposed development responds to the development controls that apply to the site by providing higher density, mixed use developments in the area.

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a height of buildings development standard of 14m.

The proposed development will result in a maximum height of 15.9m, equating to an exceedance of 1.9m or 13.5% above the height of buildings development standard for the subject land.

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

Clause 4.4 Floor Space Ratio (FSR)

Under the NLEP 2012 the site has a FSR development standard of 2:1. The proposed development has a submitted GFA of 3,907.5m² based on a site area of 2,023.6m².

The proposed FSR is 1.93:1 and complies with this requirement.

Clause 4.6 - Exceptions to development standards

The proposed development exceeds the maximum building height of 14m under clause 4.3(2) of the NLEP 2012 by 1.9m, or 13.5%.

Clause 4.6 of the NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard. In assessing the proposal against the provisions of clause 4.6, it is noted that:

1. Clause 4.3 (Height of Buildings) is not excluded from the operation of this clause; and
2. The applicant has prepared a written request, requesting that CN vary the development standard and demonstrating that:
 - a) Compliance with the development standards is unreasonable or unnecessary in the circumstances of the case; and
 - b) There are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's written submission contends that enforcing compliance with the 14m building height development standard is unreasonable or unnecessary in the circumstances. An extract of the applicant's request to vary the development standard is provided below:

What are the objectives of the development standard?

The objectives of clause 4.3 – Height of Buildings are as follows:

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

The proposed scale is consistent with the desired and existing built form of the locale and established centre's hierarchy.

The building height does not negate reasonable daylight access to surrounding development and or the public domain.

How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The proposal in its current form does not negatively impact on surrounding development in regard to overshadowing, as a result of bulk and scale, nor does the departure result in overlooking.

The scale of the development is acceptable and will make a positive contribution towards the desired built form for the area. Furthermore, the 9m separation between the proposed development and neighbouring site allows ample daylight access to those properties and enhanced cross ventilation to the units.

Strict compliance with the Height of Building Map in this location would hinder the attainment of the "promotion and coordination of the orderly and economic use and development of land".

The proposal promotes social and economic welfare of the community via the proposed provision of housing and commercial development within an appropriate urban location, without prejudice to the surrounding natural or built environment.

Whilst exceeding the height limit, the proposal is in keeping with the intent of the development standard, which is to ensure that there are no negative impacts on neighbouring properties or the streetscape as a result of the height of buildings.

Are there Sufficient Environmental Planning Grounds to justify contravening the development standard?

From an environmental planning perspective, the following options have been considered:

- i) Reducing the floor to ceiling heights within units is a viable option, however, will not result in compliance with the development standard. Further, such a change would have a greater impact on the amenity of the proposed residential development for future residents than the benefit gained from such a reduction.

- ii) Delete units from the upper floor level. This would impact on the built form of the development and the variety and quantity of housing supply proposed to be provided by the development.
- iii) The implications of the reduction in yield as a result of deleting the upper level would be contrary to the Objects of the EP&A Act, in particular the promotion and coordination of the orderly and economic use of development and land.

Would strict compliance with the standard in your particular case, be unreasonable or unnecessary?

Strict compliance with the height limit is considered unreasonable and unnecessary for the following reasons:

- i) The minimum floor to ceiling height for the residential units as required by the SEPP 65 Guidelines is 2.7m. Reducing the proposed ceilings to a non-compliant height of 2.4m would result in a 1.5m overall reduction in height, which would not result in compliance with the development standard nor any discernible benefit in terms of minimising the scale or impact of the built form.
- ii) The proposed building height, bulk and scale is in keeping with the desired built form of the locale and surrounding development, as noted by the UDCG.
- iii) The proposed building height and design allows for an appropriate quantity and variety of housing supply along an urban transport corridor, which is appropriately zoned and earmarked for intensification.

Officer's comment

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

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of the NLEP 2012; and
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standards and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and
- c) The Secretary's (ie. of the Department of Planning, Industry and Environment) concurrence to the exception to the height of buildings development standard as required by clause 4.6(4)(b) of the NLEP 2012, is assumed, as per Department of Planning Circular PS18-003 of 21 February 2018; and
- d) The applicant has demonstrated that the proposed exception to the height of building development standard of the NLEP 2012 is an acceptable planning outcome and, in this instance, requiring strict compliance would be unreasonable and unnecessary; and

- e) The request for the height of the proposed building to exceed the 14m building height is supported.

Clause 5.10 - Heritage Conservation

The subject site does not contain any heritage items and is not within a Heritage Conservation Area.

Clause 6.1 - Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils. A requirement for an assessment of acid sulfate soils to be undertaken during excavation and construction works is included as a recommended condition. The proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

The proposed development will include excavation for one level of basement parking and footings. The level of earthworks proposed to facilitate the development is acceptable having regard to this clause.

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

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

5.3 Any development control plan

Newcastle Development Control Plan - (NDCP 2012)

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

Residential Development - Section 3.03

The proposal is acceptable having regard to the requirements of this section of the NDCP 2012. It is noted that the proposal has been assessed by the UDCG and is considered to be acceptable having regard to the provisions of SEPP 65 and the ADG which generally prevail in terms of the design criteria.

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

The impact on general outlook is considered acceptable having regard to the allowable height and scale for development under CN's adopted controls. Windows and balconies facing neighbouring properties comply with relevant separation requirements of the ADG.

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

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

Commercial Uses - Section 3.10

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

Flood Management - Section 4.01

The proposal has been assessed with respect to flood management and subject to the recommended draft Conditions of Consent is satisfactory. Details of the flooding assessment are outlined within section 4.2.3(b) of this report.

Mine Subsidence - Section 4.03

The site is not located within a proclaimed Mine Subsidence District.

Safety and Security - Section 4.04

The proposal is not a high-risk development that requires extensive measures to be incorporated to provide security for its occupants. The design aims to increase surveillance external to the building by providing large balconies overlooking the adjacent footpaths with clear lines of sight over the public space and private entrance.

Active and passive surveillance is achieved at both the front entry and carpark entry / exit by the location of the balconies. Street activation is achieved by the proposed commercial tenancies at ground level addressing the street.

Signage, lighting and management will be used to reinforce and encourage the appropriate use of communal areas.

Social Impact - Section 4.05

The proposed development, being a combination of commercial units and residential apartments above, is consistent with the zone objectives and is appropriate to the area. It is considered that the proposal is acceptable in terms of its social impacts.

The proposed development will have a positive impact within the community as it will provide additional well-designed and varied housing opportunities within the area.

It is unlikely that a residential development of this nature 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

A sediment and erosion management plan has been submitted with the application, with provisions to minimise sediments being removed from the site during the construction period. A condition is proposed to ensure that such measures are in place for the entire construction period.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Aboriginal Heritage - Section 5.04

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

Heritage Items - Section 5.05

This issue is discussed under clause 5.10 Heritage of the NLEP 2012.

Archaeological Management - Section 5.06

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

Heritage Conservation Areas - Section 5.07

The site is not located in a Heritage Conservation Area.

Landscape Open Space and Visual Amenity - Section 7.02

The site is currently devoid of any landscaping. The proposed development will improve the amenity of the site and will cater for substantial landscape elements not currently available on the site. In addition, four street trees are proposed to enhance the public domain.

The proposal is acceptable in terms of its landscaping outcomes. It is noted that these requirements overlap with criteria elsewhere within the NDCP 2012 and the provisions of the ADG.

Traffic, Parking and Access - Section 7.03

The proposal has been assessed with respect to traffic, parking and access and is acceptable subject to the recommended draft Conditions of Consent. Details of the traffic and parking assessment are outlined within section 5.6(b) of this report.

Section 7.05 - Energy efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012.

The proposal has been assessed against the relevant stormwater and water efficiency requirements and is acceptable. The proposal can comply with CN's policies relating to stormwater management. Appropriate conditions have been recommended in the draft Schedule of Conditions (refer to **Attachment B**) to ensure that the development meets the specified standards.

Waste Management - Section 7.08

A Waste Management Plan has been provided with the application. Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

There is sufficient space along the site's frontage to adequately store the bins on collection day. Waste collection vehicles will be able to stop along the site's frontage for pick-up at the driveway location without impacting traffic. It is a recommendation of this report that a condition of consent be included that to ensure bins are returned to the waste storage area immediately after collection.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the NDCP 2012. A total of seven submissions objecting to the proposal were received.

Comments are provided in section 5.8 below.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in the NDCP 2012.

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 EP&A Act and the *Environmental Planning and Assessment Regulation 2000*. In addition, a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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

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

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

a) Character, Streetscape, External Appearance, Urban Design, Height, Bulk and Scale

The application was considered by the UDCG and the final amended plans are considered to adequately address the main comments of the UDCG. Overall, it is considered that the design is appropriate having regard to its character, streetscape, appearance, height, bulk and scale.

b) Traffic, Access and Parking

The proposal has been assessed by CN's Senior Development Officer (Traffic) and found to be acceptable, subject to draft conditions included in **Attachment B**. CN's Senior Development Officer (Traffic) provided the following comments:

Traffic generation

The proposed development is supported by a Traffic Assessment Report. Hudson Street is a two-way local road under the care and control of CN, with a speed limit of 50km/h and approximately 12m in width.

The site currently operates as 3 commercial premises, which would have an estimated traffic generation of 40vtph based on a total GFA of 2,000m² and 2 trips per 100m² prescribed by the RMS Guide to Traffic Generating Developments. Factoring in the closure of the existing commercial premises, the development traffic represents a net reduction in the site's traffic generation.

Although the performance of the key intersections adjacent to the development has not been specifically addressed by the report, it can be deduced from reduction in traffic generation post-development, when compared with existing, that the traffic impact will be acceptable from an intersection performance perspective.

It is therefore anticipated that the proposed development will be adequately catered for by the local road network within the vicinity.

Driveway Design

The subject site is currently 4 individual lots each with its own driveway. The amended plans have been reviewed and adequate sight lines area is provided at the driveway entrance for pedestrian safety as per AS 2890.1 Figure 3.3 below.

The remaining existing driveway crossings will become redundant and will be removed as part of the development, providing approximately 3 on-street parking spaces. A condition of consent is included requiring them to be removed and reinstated with kerb and gutter, and footpath.

The proposed driveway access generally complies with Australian Standards and the NDCP 2012 guidelines. Conditions are recommended.

Parking demand

The proposed development comprises 8 x 1-bedroom units, 32 x 2-bedroom units and 94m² of commercial space on the ground floor fronting Hudson Street. Applying the above rates, the total car parking requirement for the proposed development is 51 car parking spaces (40 for residential, 8 for visitors and 3 for commercial), 41 bicycle spaces and 3 motorcycle spaces.

The proposal provision of 51 car spaces. Bike storage room (Class 2) is located in the basement carpark for bicycle parking. The amended plans include provision for 2 motorcycle parking spaces in accordance with section 7.03 of the NDCP 2012. An additional 3 on-street kerbside parking spaces will also be gained through the removal of the existing driveways across the Hudson Street frontage.

Adequate off-street parking has been provided for the development and car parking provisions comply with CN's requirements.

Waste Collection

The proposal has been amended to provide a waste storage area at the north eastern frontage of the site. This location is considered more appropriate than the previous remote location within the basement, as bins will be accessible for CN to service the residential waste collection. CN's Waste Collection Manager and UDCG raise no objection to the location of the waste storage area. The ratio and size of bins proposed is also considered acceptable. Waste collection is to involve retrieval of bins from the waste storage area and being return immediately after collection.

c) Stormwater Management

Stormwater

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

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

Flood Management

The subject site is identified as flood prone land. The flood affectation is limited to flash flooding in the Probable Maximum Flood (PMF) event only. The PMF level is noted as approximately 7.00m Australian Height Datum (AHD) with a flood classification of Flood Fringe - L2, H2. The vicinity of the site is not affected by the 1% AEP event and therefore no minimum Flood Planning Level is applicable to the development.

The crest of the proposed basement carpark driveway entry is set at Reduced Level (RL) 6.40m which is acceptable for meeting the minimum requirement. The basement will need to be protected to PMF level and therefore any external openings except for vehicular access such as vents will need to be set at 7.00m AHD.

The proposed ground floor commercial and residential areas are set at 6.40m AHD and comply with the NDCP 2012 requirements. The revised civil and architectural has indicated the proposed floor levels and conditions of consent are recommended to ensure that the construction certificate drawings reflect the proposed levels. An on-site flood refuge is not required. The proposal has adequately considered the impact of local flooding.

d) Amenity (Privacy, Overshadowing and Views)

Overshadowing

Residential properties located to the west of the site, on Hudson Street, will experience additional overshadowing throughout the morning. However, these properties will continue to receive full sunlight from 11:00am onwards.

Dwellings located to the east of the site, on Swan Street, will be overshadowed from 2:00pm onwards. These properties will continue to receive full sunlight during the morning to midday period.

Properties located directly to the south of the site, on Donald Street, will be progressively overshadowed throughout the day. These properties have limited open space and are largely occupied by buildings and hardstand area. Notwithstanding, the properties will continue to receive adequate solar access.

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

The proposal complies with CN's controls relating to floor space, building envelope and building separation. The applicant has provided comparative shadow diagrams which show the relative differences in overshadowing impact between a compliant 14m building and the current proposed building height at 15.9m. The diagrams show that the extent of additional shadowing resulting from the height variation does not have any significant additional impacts.

View Loss

There are no significant public or private views that will be impacted in this location.

The development will alter the general outlook due to the proposed changes in size and scale, however this is reasonable having regard to the prevailing development controls that apply to the site and other approved developments in the area.

Privacy

The proposed development has been designed to limit overlooking of neighbouring properties and within the development site itself. All the windows and balconies comply with prescribed building separation requirements given under the NDCP 2012 and the ADG.

e) Environment

Noise

The submitted Noise Impact Assessment (NIA) has addressed the potential for noise conflicts to occur between the proposed development and the surrounding light industrial land uses.

The NIA provides recommendations to address these issues and other aspects of the application as part of the design and construction of the proposed development. The recommendations will assist in achieving an appropriate residential amenity within the residential units.

Conditions have been recommended to address the noise issues associated with the proposed development.

Flood Management

The subject site is identified as flood prone land. The flood affectation is limited to flash flooding in the PMF event only. The PMF level is noted as approximately 7.00m AHD with a flood classification of Flood Fringe - L2, H2. The vicinity of the site is not affected by the 1% AEP event and therefore no minimum Flood Planning Level is applicable to the development.

The crest of the proposed basement carpark driveway entry is set at RL 6.40m which is acceptable for meeting the minimum requirement. The basement will need to be protected to PMF level and therefore any external openings except for vehicular access such as vents will need to be set at 7.00m AHD.

The proposed ground floor commercial and residential areas are set at 6.40m AHD and comply with the NDCP 2012 requirements. The revised civil and architectural has indicated the proposed floor levels and conditions of consent are recommended to ensure that the CC drawings reflect the proposed levels. An on-site flood refuge is not required. The proposal has adequately considered the impact of local flooding.

5.7 The suitability of the site for the development

The site is located in a Mixed-Use zone, in an established suburb and close to suitable infrastructure and facilities. The proposal constitutes an appropriate form of development that is consistent with the character and uses of the surrounding area. The proposal has been the subject of detailed re-design in accordance with the advice from the UDCG. The resultant scheme fits comfortably within the locality and which creates no significant adverse impacts on neighbouring property.

The proposal does not result in adverse social or economic impacts. It is considered that the proposal will have positive economic benefits in the area as the increased number of residents supports the demand for local services and facilities.

The proposal has been assessed against relevant legislation and policy with respect to land contamination issues and acoustic impacts on the future residential dwellings and it is concluded that the proposal is acceptable.

The proposal includes sufficient measures to address potential crime and safety issues.

The site is not affected by significant environmental constraints that would preclude development of the site. As such, the site is considered to be acceptable for the proposed development.

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

The application was notified in accordance with the NDCP 2012, in response seven submissions were received during the notification period.

The key issues raised within the submissions have been discussed previously in this report. The following table provides a summary of the other issues raised and a response to those issues.

Issue	Comment
Building height	The proposed height of 15.9m has been assessed as being acceptable in this instance. A detailed assessment of this matter has been undertaken under clause 4.6 of the NLEP 2012 and elsewhere within this report.
Bulk and scale	<p>The building mass and density is a function of the B4 Mixed Use zoning and the development standards that are prescribed for this site. The proposal is consistent with the intended future urban form within the area.</p> <p>As such, the proposed development is permitted in the B4 zone and complies with the relevant zone objectives. The proposal complies with CN's controls relating to floor space; building envelope and building setbacks and landscaping and is considered acceptable in this instance.</p>
Privacy	The proposal does not pose a significant impact on the adjoining properties, in terms of privacy and overlooking. Amended plans have increased building separation and privacy measures.
Neighbourhood character	The proposed development is considered acceptable having regard to the development controls that prevail in the area and CN's strategic intent for the B4 Mixed Use zone.
Density	The density of the proposed development complies with

	the NLEP 2012 and is acceptable. A high-quality standard of housing will be created to offer a range of suitable housing options in an established suburb close to suitable infrastructure and facilities.
Overshadowing	The overshadowing of adjoining buildings and the surrounding area is considered to meet the performance criteria CN's controls and is acceptable in this regard. Additional overshadowing is considered reasonable having regard to the orientation of the site, the zoning of the land and the prevailing development controls that apply to the site and surrounding area.
Traffic generation	The traffic impacts of the proposed development have been assessed and it has been determined that the existing road network has capacity to cater for the proposed development. A detailed assessment of traffic is provided under section 5.6(c) of this report.
Parking	Adequate off-street parking has been provided with the development and complies with CN's requirements.
Lack of recreational spaces	Outdoor communal open space for use of residents are provided at ground level, at the rear of the property. All communal open spaces are supported by landscaping and have been designed to offer a high-quality amenity for a variety of uses.
Safety and security	The proposal includes sufficient measures to address potential crime and safety issues. A detailed assessment of the measures proposed to address safety and security has been undertaken in respect to section 4.04 of the NDCP 2012 and elsewhere within this report.
Impacts on property values.	This concern is not a matter of consideration pursuant to section 4.15 of the EP&A Act.

As discussed in the above report, it is considered that the issues and concerns raised in the submissions do not warrant the refusal of the application in its present form or necessitate any further substantial amendments. The proposed development does not raise any other significant general public interest issues beyond matters already addressed in this report.

5.9 The public interest

This report has addressed the various concerns raised in the submissions received in response to the public notification and relevant referral procedures. The proposed

development does not raise any other significant general public interest issues beyond matters already addressed in this report.

The proposed development is in the public interest and the variation to the height standard is consistent with the objectives of clause 4.3, as the scale of the development makes a positive contribution towards the desired built form and is consistent with the established centres hierarchy. The proposal also allows for reasonable daylight access to the public domain and nearby developments.

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

The application has demonstrated that there will be no significant adverse traffic impacts and it is considered that the development does not cause any significant overshadowing, privacy impacts or view loss for adjacent properties.

The proposed development provides for the orderly economic development of the site for purposes for which it is zoned and will not have any negative social or economic impacts.

6.0 CONCLUSION

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

ATTACHMENTS

Item 25 - Attachment A: Submitted Plans - 31-35 Hudson Street, Hamilton

Item 25 - Attachment B: Draft Schedule of Conditions - 31-35 Hudson Street, Hamilton

Item 25 - Attachment C: Processing Chronology - 31-35 Hudson Street, Hamilton

Item 25 Attachments A to C distributed under separate cover

ITEM-26 **DAC 18/08/20 - DA2019/01097 - 15 NORTHUMBERLAND STREET, MARYVILLE - MULTI-UNIT - DEMOLITION OF DWELLING ERECTION OF THREE ATTACHED DWELLINGS AND TWO INTO THREE LOT SUBDIVISION**

APPLICANT: **GRAHAME DICKSON**
OWNER: **GRAHAME DICKSON**
REPORT BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

BACKGROUND

A Development Application (DA2019/01097) has been received seeking consent, for 'multi dwelling comprising three attached dwelling houses, two into three lot subdivision and demolition of existing dwelling house, at 15 Northumberland Street, Maryville.

The submitted application was assigned to Ethan Whiteman, Development Officer, for assessment.

A pre-lodgement meeting was not undertaken prior to the submission of the development application.



Subject Land: 15 Northumberland Street Maryville NSW 2293

The application is referred to the Development Applications Committee (DAC) for determination, due to the number of public submissions received and the significant community interest in the proposal.

The application was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and 43 submissions were received. In response to the issues raised and to CN's request for additional information, amended plans were lodged and the application was re-notified. Twenty-six submissions were received in the second round of notifications.

The concerns raised by the objectors in respect of the proposed development include bulk and scale, density, car parking, stormwater, waste management, privacy, overshadowing, construction impacts and the public interest.

The proposal was considered at a Public Voice Committee Meeting held on 21 April 2020. The Public Voice Committee heard from two objectors raising their concerns regarding, overdevelopment, character, stormwater, subdivision dimensions, traffic / parking, flooding and precedent.

The applicant also presented a response to the issues raised.

Details of the submissions received are summarised at Section 3.0 of Part II of this report and the concerns raised and discussed at the Public Voice Committee are addressed as part of the Planning Assessment at Section 5.0.

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

Issues

- 1) Public submissions raising concern over overdevelopment, character, amenity, stormwater, subdivision dimensions, traffic / parking, flooding and precedent.

Conclusion

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

RECOMMENDATION

Vote by division

- A. That DA2019/01097 for multi dwelling housing comprising three attached dwelling houses, two into three lot subdivision and demolition of existing dwelling house at 15 Northumberland Street Maryville 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 EP&A Act requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

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

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

PART II

1.0 THE SUBJECT SITE

The subject site comprises Lots 33 and 34 in Deposited Plan 5062 and is known as 15 Northumberland Street, Maryville. The site is rectangular in shape and is located on the eastern side of Northumberland Street. The lot has a frontage of 20.116 metres, a maximum depth of approximately 30 metres and a total area of 606.97m² (2 x 303m² lots). The site is sloping toward the rear boundary from the street, albeit with a fall of approximately 200mm. The site is identified as being flood prone.

The site contains minimal vegetation with existing improvements including a single storey weatherboard dwelling and a number of ancillary outbuilding structures of both an attached and detached nature (all to be demolished through the extent of this application). Vehicular access is currently from Northumberland Street via a 6 metre wide driveway crossing which also services a parking space benefitting the adjoining allotment to the north for which the subject site is burdened through easement. The subject parking space is to be retained throughout the extent of this development.

The site is surrounded by a mixture of older style dwelling houses of single and double storey form and contemporary housing developments. Medium density housing developments are evident throughout the broader locality. The subject site is located approximately 1.3km North-West of the Newcastle Central Business District (CBD) in what is essentially an inner-city suburb.

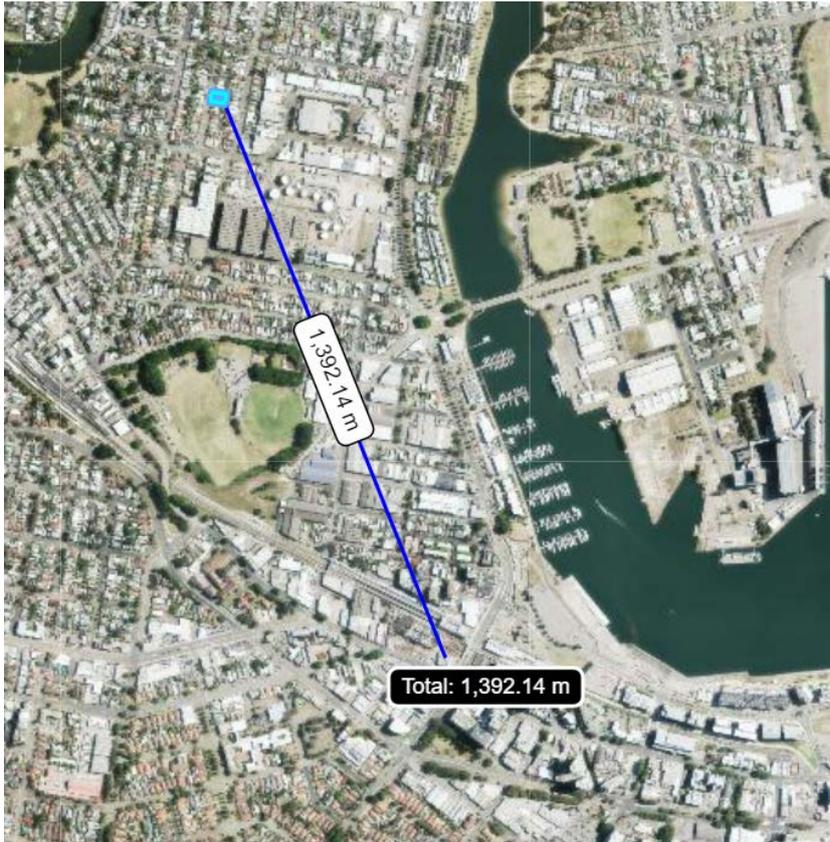


Figure 1: Distance from site to emerging Newcastle CBD.

2.0 THE PROPOSAL

The applicant seeks consent for:

- i) Demolition of existing dwelling and outbuildings;
- ii) Erection of multi dwelling housing comprising three, two storey attached dwellings; and
- iii) Two into three lot Torrens title subdivision.

In response to concerns raised by CN officers and objectors regarding the level of off-street car parking to be provided and waste management functionality, the original proposal has been amended. The amended plans include a revised front boundary setback to the garage of 5.5 metres allowing for further provision of off-street car parking, taking the total provision of on-site parking to six.

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN CPP and 43 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 – overdevelopment of the site
- ii) Building height

b) Amenity Issues

- i) Overshadowing of adjoining properties
- ii) Loss of privacy and overlooking of neighbouring sites

c) Design and Aesthetic Issues

- i) Bulk and scale – scale and massing, combined overall length of building is unsympathetic with streetscape.
- ii) Character - not compatible with the residential context of the immediate neighbourhood, which largely consists of single dwelling houses. Box form appearance not sympathetic with surrounding built form.
- iii) Subdivision – the proposal does not consider the resultant street frontage widths post subdivision.
- iv) Visual impact- dominant carparking area.
- v) Poor design- bedrooms are of minimal size and living areas are inadequate. Middle townhouse receives minimal sunlight.

d) Traffic and Parking Issues

- i) Car parking – loss of on-street car parking and non-compliance with Newcastle Development Control Plan 2012 (NDCP 2012) requirements for car parking.
- ii) Traffic impacts - associated with the construction phase and increased density of development.

e) Miscellaneous

- i) **Construction impacts** - concern regarding the impacts on neighbours arising from the construction process.

- ii) **Public interest** – the proposal is not within the public interest as it would set a precedent of three dwellings on two blocks in Maryville.
- iii) **Land use** - the proposal appears designed to appeal to students, increasing the transient nature of the neighbourhood, causing increased community stresses.
- iv) **Stormwater management** - roof water runoff and impervious area will increase pressure on existing street stormwater system.
- v) **Waste management** – poor layout and ventilation to internal bin storage in addition to lack of manoeuvrability and lack of access.

The current amended plans have also been publicly notified and 26 submissions have been received expressing continued concerns regarding the above matters in respect to the proposal.

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 Public Voice Committee meeting held on 21 July 2020. Residents raised concerns with regards to overdevelopment, character, stormwater, subdivision dimensions, traffic / parking, flooding, and precedent.

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

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

4.0 INTEGRATED DEVELOPMENT

The application does not require integrated approvals from another public authority as part of the development.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

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

The subject 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 considered to be acceptable having regard to this policy.

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

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 previously contained in clause 5.9 of Newcastle Local Environmental Plan 2012 (NLEP 2012) (clause now repealed) and provides that the NDCP 2012 can make declarations with regard to certain matters, and further that CN may issue a permit for tree removal.

The proposal has been assessed in accordance with the NDCP 2012 and is considered to be satisfactory.

State Environmental Planning Policy (Coastal Management) 2018 - (Coastal Management SEPP)

The subject site is located within the coastal environment area. The proposed development is not likely to result in an adverse impact upon any of the matters to be considered in clause 13(1) of this SEPP.

Further, the proposed development will not increase the risk of coastal hazards and the site is not subject to a coastal management program and is therefore considered to meet the provisions of clauses 15 and 16.

The proposed development is considered acceptable having regard to the applicable provisions of this SEPP.

State Environmental Planning Policy (Infrastructure) 2007 - (ISEPP)

This policy facilitates the effective delivery of infrastructure across the State. The development is subject to the following requirements of the ISEPP.

The proposal was required to be referred to Ausgrid in accordance with the ISEPP due to the proximity of works to existing electrical infrastructure. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

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

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

Newcastle Local Environmental Plan 2012 - (NLEP 2012)

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

Clause 2.1 - Land Use Zones

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

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

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

In this regard, the proposed development increases the diversity of housing types and styles available to provide for the needs of the community whilst establishing built form that is sited and designed to suitably respect the amenity and character of development within the surrounding locality.

Clause 2.6 - Subdivision—consent requirements

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

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.1 - Minimum subdivision lot size

Under the NLEP 2012 a minimum subdivision lot size afforded of 400m² is afforded to the subject site. The proposal includes the subdivision of the land from two into three lots, under a Torrens title arrangement. The three proposed lots do not comply with the minimum lot size however an exemption to the minimum lot size for certain residential development applies under clause 4.1A as discussed below.

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

The proposal includes the erection of three dwelling houses to be placed on separate lots. The proposal meets the requirements of this clause as there will be a development built on the site prior to the subdivision of the land.

The proposed lots will be over 200m² (203.4m², 200.17m² and 203.4m²), and a condition will be placed on any consent issued to ensure that the dwellings are built prior to the release of a subdivision certificate.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a height of buildings development standard of 8.5 metres. The submitted maximum height is 7.2 metres and complies with this clause.

Clause 4.4 Floor Space Ratio (FSR)

Under the NLEP 2012 the site has a FSR development standard of 0.6:1. The proposed development has a total approximate FSR of 0.6:1, through the establishment of a 363.08m² Gross Floor Area upon a site with an area of 606.97m².

The development complies with the maximum FSR requirements of clause 4.4. The proposed development is considered to be of a scale and bulk that is generally compatible with adjoining development and meets the objectives of this clause.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 3 acid sulphate soils and the proposed development is considered satisfactory in this regard as works are not proposed more than 1 metre below existing ground level and the proposal is not considered likely to result in disturbance to acid sulfate soils nor the lowering of the water table on adjacent land. The submission of an acid sulfate soils management plan is not considered to be required for the development works. The application is considered acceptable having regard to this clause.

Clause 6.2 - Earthworks

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

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 - (NDCP 2012)

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

Subdivision - Section 3.01

The proposed subdivision lot sizes have been discussed previously in section 4.5 of this report.

The proposal will contain a dwelling house on each resultant lot that will form a multi dwelling housing development. Consent is sought for multi dwelling housing with an assessment against section 3.03 of the NDCP 2012 contained within this report which concludes that each dwelling will comply with that section.

Accordingly, the lots resulting from the development are able to achieve adequate solar access, essential services such as water, sewer and electricity in addition to vehicular access to a public road and dwellings that present frontage to the street in order to general satisfy the objectives of section 3.01.03 (lot layout, sizes and dimensions).

It is considered the proposal is satisfactory having regard to the requirements of section 3.01 as it achieves the relevant aims of this section, namely:

- i) To minimise adverse impacts on the natural and built environments
- ii) To ensure that all lots are physically capable of development
- iii) To ensure lots have appropriate levels of amenity, services and access
- iv) To achieve efficient use of land

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 (Section 3.03.01)

A. Frontage widths

The subject site has a consolidated frontage to Northumberland Street of 20.116 metres. The frontage is compliant with the acceptable solutions of this section which requires a minimum 18 metres for the creation of multi dwelling housing in the R2 zone and is therefore acceptable.

B. Front setbacks

The proposed development originally sought consent for a 3.113 metres front boundary setback to the ground floor, with a forward projecting balcony element to the first floor. Whilst the proposed setback was compliant to the acceptable solutions given it was the average of dwellings 40 metres either side of the allotment, CN officers requested a revised front boundary setback to 5.5 metres at the ground floor to allow capacity for stacked parking upon the driveways.

Accordingly, the applicant submitted amended plans displaying a front boundary setback of 5.5 metres to the ground floor to the garage and front wall whilst retaining the first floor balcony projection forward of that building line. Whilst it is noted the front setback of the dwellings does not specifically comply with the acceptable solutions it is considered acceptable when assessed against the applicable performance criteria and would result in a more beneficial outcome than a compliant setback.

Further, the proposed front boundary setback allows for suitable landscaping to the front boundary and legible pedestrian access to the front of the dwellings.

C. Side and rear setbacks

The proposed development seeks consent for a minimum 920mm setback to both side boundaries at the ground floor and for a projecting articulation element limited to the stairwell up to a maximum height of 4.5 metres with the second storey contained to the applicable building envelope of 900mm up to a height of 4.5 metres then at an angle of 4:1 up to maximum height. The proposal is compliant with the acceptable solutions in this regard and is therefore acceptable.

The proposed development displays rear boundary setbacks exceeding the minimum requirement under the acceptable solutions of 3 metres up to 4.5 metres in height and 6 metres for the second storey and is therefore acceptable.

D. Landscaped area

In the R2 zone the acceptable solution requires a minimum landscaped area (as a percentage of site area) of 30% with a minimum deep soil zone of 15%. The proposed development retains 30% of the site area for the purposes of

landscaping. Further, approximately 156m² (25%) of the site is suitable for deep soil planting and a 3 metre wide landscaped area is located along the rear boundary.

The applicant has submitted a landscape plan, whilst this indicates an intent to provide an adequate amount of landscaping, details of the proposed plantings have not been provided. However, this matter can be satisfactorily addressed by way of condition of consent.

The development satisfies the acceptable solutions of the NDCP 2012 in respect to landscaping requirements and is therefore acceptable.

Siting the development (Section 3.03.02)

A. Local character and context

The built form, articulation and scale relate to the local character and context of the broader locality through the presentation of a modern contemporary design consistent to existing examples of redevelopment within relative proximity to the site.

The development does not unreasonably impact on the amenity and privacy of adjoining dwellings through placement on site with due consideration to boundary setbacks, locating living areas on the ground floor and adequate design treatment to areas of the dwellings capable of impacting upon visual privacy through overlooking.

The proposed development is acceptable having regard to this section of the NDCP 2012.

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. Direct visibility is provided to the front door and garage of each dwelling along paths and driveways from the public domain. The development is in keeping with the form and scale of built form within the broader locality. Variation is proposed within the design through the use of different window and porch sizing and location. First floor balcony elements are oriented to the street with front entry and windows to habitable rooms providing surveillance of the public domain.

The design and orientation of the dwellings living, and outdoor areas ensures the development is not likely to unreasonably impact upon the amenity or privacy of adjoining dwellings. The internal amenity is also considered to be satisfactory.

The applicant proposes the installation of 1 metre high fencing forward of the building line with a design that is considered acceptable, is effectively

incorporated into the building facades and does not cover the entire frontage. Landscaping will also be provided within the front setback to provide a visual buffer to the street. Further, a detailed landscape plan will be required as part of the recommended conditions of consent.

The proposed development is acceptable having regard to this section of the NDCP 2012.

C. Pedestrian and vehicle access

The proposed development provides an appropriate area for vehicular circulation / manoeuvrability. Sufficient and safe pedestrian access has been provided. The proposed development is acceptable having regard to this section of the NDCP 2012.

D. Orientation and siting

The proposed development has been suitably laid out having due regard for orientation and aspect. The developments siting is appropriate for the nature of the surrounding built environment. The private open space and living areas of all dwellings receive an adequate northerly aspect, with a minimum two hours achieved to the rear placed private open space at the winter solstice.

The development responds to the natural landform of the site and minimises earthworks (maximum 300mm fill). Further, each dwelling has a covered entry door and window of a habitable room (ie. front living room) facing the street. The proposed development is acceptable having regard to this section of the NDCP 2012.

Amenity (Section 3.03.03)

A. Solar and daylight access

Sufficient solar access is available to habitable rooms and private open space areas within the development to generally satisfy the NDCP 2012 relative objectives and is considered adequate with respect to the orientation of the site.

An analysis of the overshadowing found that the dwellings are provided two hours direct sunlight between 9am and 3pm at the winter solstice to the designated private open space and living room, particularly evident throughout the morning.

Further, the private open space and living space are connected to a larger rear yard space in each dwelling. The proposed development is acceptable having regard to this section of the NDCP 2012.

B. Ceiling heights

A recommended ceiling height of 2.7 metres is proposed within the NDCP 2012. The applicant proposes ceiling heights of 2.74 metres to ground floor

living space and 2.44 metres ceiling heights to the first floor bedrooms in order to satisfy the acceptable solutions and provide sufficient internal amenity.

C. Dwelling size and layout

The internal layout and spatial arrangement of the development is in accordance with the NDCP 2012 requirements and provides appropriate levels of amenity for future occupants. This is achieved through minimum floor areas compliant with the acceptable solutions of a minimum 115m² for a 3 bedroom dwelling (120.34m², 120m² and 123.54m²) in addition to compliant combined living areas and bedroom sizes. Some of the bedrooms display non-compliant minimum dimensions however revised plans demonstrate a level of functionality in order to satisfy the applicable performance criteria.

D. Private open space

The private open space areas provided to each dwelling are considered appropriate having regard to the nature of the development and their intended purpose. They provide reasonable levels of solar access and connectivity and are conducive to passive and active private recreational pursuits. The NDCP 2012 requires dwellings to have a minimum of 16m² of private open space, with a minimum dimension of 3 metres, adjacent to either a living or dining room or kitchen and 50% of this area is covered to provide shade and protection from rain.

Each dwelling has been provided with private open space which meets the minimum requirements and is connected to larger yard space and is therefore acceptable.

E. Storage

Adequate storage has been provided for the development in accordance with the NDCP 2012 requirement of 10m³, identified within the proposed garages. The development is acceptable in this regard.

F. Car and bicycle parking

The development has been designed to include one car space per dwelling, through provision of a single garage. Stacked parking is available upon the driveways which can sufficiently cater for visitor parking and sufficient area is available on site for secure bicycle storage and parking. The design of the car parking area meets the requirements of the NDCP 2012.

G. Visual privacy

The development does not adversely impact on the privacy of adjoining or adjacent neighbours through a design that predominantly orients outlook to the street and rear yard of each dwelling and incorporates adequate separation and mitigation through design to privacy sensitive space.

The development has also been designed to ensure adequate visual privacy between the proposed dwellings. This is achieved through a mirrored design together with provision of fencing and privacy mitigation through upper storey bedroom windows less than 2m² in area and containing living space to the ground floor. The proposal is acceptable having regard to visual privacy.

H. Acoustic privacy

The development has been designed to ensure the potential transfer of noise between dwellings is minimised. The location of openings and recreational areas have been suitably positioned on site.

Further, any consent issued will be conditioned having regard to the placement of any air conditioning units with consideration to neighbouring properties. The proposed development is acceptable having regard to this section of the NDCP 2012.

I. Noise and pollution

There is no infrastructure within close proximity of the site that generates noise levels likely to detrimentally impact upon the use of the proposed development. The proposed development is acceptable having regard to this section of the NDCP 2012.

Configuration (Section 3.03.04)

A. Universal design

The proposed development is not inconsistent with the objectives of achieving universal design features and there is scope to achieve flexibility in the design.

B. Architectural design and roof form

The development includes articulation within the built form. The design incorporates a mixture of building elements and materials which add visual interest and amenity to the development. The roof treatment is integrated into the building design and is in keeping with surrounding developments.

Further, the varied roof pitch and front facade modulation provides visual interest when viewed from public domain. The proposed development is acceptable having regard to this section of the NDCP 2012.

C. Visual appearance and articulation

Articulation is achieved through the provision of a porch area to the frontage of each dwelling. The facade is consistent with examples of modern contemporary design evident in redevelopment throughout the Newcastle Local Government Area (LGA) and the placement of the buildings and considered

design ensures that the development does not unreasonably impact upon the amenity and privacy of adjoining development.

The proposed development is acceptable having regard to this section of the NDCP 2012.

Environment (Section 3.03.05)

A. Energy efficiency

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

The submitted plans display suitable space for clothes drying purposes. The proposed development is acceptable having regard to this section of the NDCP 2012.

B. Water management and conservation

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

C. Waste management

Suitable waste storage and collection can be achieved for each dwelling. Bin storage is located either in the garage or screened from street view, as indicated upon the submitted plans.

The proposed method of waste storage and collection is discussed further in Section 7.08 of this report.

With the above considered, the proposed development is considered acceptable in relation to the NDCP 2012 section 3.03 and achieves relevant acceptable solutions and performance criteria for building form and residential amenity. The development establishes a scale and built form appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

Flood Management - Section 4.01

The subject site is located on flood prone land and is identified as being high risk in the probable maximum flood (PMF). A flood refuge is required and can be achieved at the second storey of each dwelling. The site is also flood storage; however, this only occurs during PMF events in which case building would be inundated and satisfies flood storage requirements. As such, the proposed floor levels are acceptable as they satisfy the flood planning requirements. Therefore, subject to the

recommended draft conditions of consent the proposal is satisfactory regarding flooding.

Safety and Security - Section 4.04

The overall building design and functionality, with frontage to Northumberland Street enables increased casual surveillance of all surrounding footpath areas.

The proposal achieves good surveillance by providing clear sight lines between private and public spaces, suitable landscaping and activation of the street frontages.

A crime risk assessment is not required for the type of development proposed however the proposal is not inconsistent to the principles of Crime Prevention through Environmental Design, namely: surveillance, access control, territorial reinforcement and space management and is not considered likely to result in an increase of opportunistic crime to occur at the site or immediate surrounds.

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 an area located within close proximity to essential services, which is considered a positive social outcome.

Soil Management - Section 5.01

The proposed development includes earthworks confined to the building footprint for the purposes of establishing minimum floor levels essential to minimise the potential impact of flood waters.

The earthworks proposed are considered to be acceptable as they are considered to facilitate a development that is adequately site responsive and are not considered to be excessive.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55.

Vegetation Management - Section 5.03

To facilitate the proposed works there will be an impact on an existing street tree. The proposed removal of the street tree will result in compensatory planting. The proposed development is considered acceptable having regard to vegetation management subject to recommended conditions of consent.

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.

Archaeological Management - Section 5.06

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

Landscape Open Space and Visual Amenity - Section 7.02

The proposal is a 'Category 2' development. The submitted plans demonstrate that the development provides a sufficient area for soft landscape, that a minimum 25% of the front setback and 3 metres at the rear boundary will be landscaped, however detailed planting descriptions have not been indicated. The provision of adequate landscaping can be addressed by way of conditions on any consent issued.

Traffic, Parking and Access - Section 7.03

In response to CN's initial request for additional information having regard to parking / access the applicant provided amended plans to satisfy the request. The plans demonstrate compliance with the NDCP 2012 including:

- i) Minimum 5.5 metres setback from garage to front boundary; and
- ii) Provision of six on-site parking spaces.

The proposed development type is not considered to result in significant increase in traffic flow. The proposed development is considered acceptable having regard to traffic, parking and access.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The application has been assessed against the provisions of sections 7.06 and 7.07 and the proposal is acceptable in relation to water management subject to compliance with the recommended conditions of consent.

Waste Management - Section 7.08

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

Waste bins are to be stored within the garages and other location suitably screened from street view and the street frontage allows for the presentation of the bins to the street for CN collection. Based on the submitted information, the proposal is considered to be acceptable.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days on two separate occasions in accordance with the NDCP 2012. A total of 43 submissions objecting to the proposal were received in the first round of notification, with 26 submissions received in the second round.

Comments are provided in section 5.8 below.

Development Contributions

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

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions (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 EP&A Act and the *Environmental Planning and Assessment Regulation 2000*. In addition, a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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

Hunter Regional Plan 2036

The Hunter Regional Plan 2036 is a 20 year blueprint for the future of the Hunter. The key vision of the plan is to ensure the region remains the leading regional economy in Australia with a vibrant new metropolitan at its heart.

One of four goals to deliver the vision of the creation of a leading regional economy in Australia is:

Goal 4: Greater housing choice and jobs. (The plan notes an additional 70,000 dwellings will be needed in the region by 2036.)

The plan notes that new housing may be focused in established areas through infill development and will also continue to be provided through greenfield development and that housing supply will be influenced by growth and change on the population across the region, and by the community's desire for greater housing choice. Further, it is noted the average household size is likely to decrease from 2.41 people in 2016 to 2.28 people in 2036.

Having regard to the intent of the plan, Local Environmental Plans and Development Control Plans and associated local government policies are the mechanisms to facilitate the provision of additional housing within the LGA.

On this basis, and with particular regard to Action 22.2 of the plan which seeks to encourage housing diversity, the proposed development is considered to be consistent with the intent of the plan as it would provide for additional housing choice in an acceptable location.

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

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

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

The development is compatible with the existing character, bulk, scale and massing of development in the broader locality. It is considered that the proposal will not have any negative social or economic impacts.

5.7 The suitability of the site for the development

The site is suitable for the proposed development as it is located in what is essentially an inner city suburb, well serviced by public transport, recreational lands, employment and education and community facilities. It is considered that adequate services and waste facilities are available to the development.

The constraints of the site have been considered in the proposed development, which includes potential impact from flood waters. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

On balance, it is considered the proposed development is a reasonable response to the characteristics of the subject site.

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

The application was notified in accordance with CN's CPP and 43 submissions were received during the notification period. Amended plans were received and re-notified. 26 submissions were received in the second round of notifications.

The key issues raised within the submissions have been discussed previously in this report. The following table provides a summary of the other issues raised and a response to those issues.

Issue	Comment
Construction impacts	The potential impacts experienced through the construction phase are mitigated / managed in accordance with conditions to be placed on any consent issued.
Waste management	<p>As discussed within section 5.3 of this report the proposed development is considered acceptable having regard to waste management.</p> <p>It is noted that amended plans have been received in response to the objectors and CN's initial concerns regarding the functionality / manoeuvrability of bins to the street frontage.</p> <p>The amended plans display adequate manoeuvrability to the collection points, with presentation for lot one now independent of the car parking easement.</p> <p>Further, adequacy of ventilation to the bin storage space is not a matter for consideration under section 4.15 of the EP&A Act.</p>
Land use	The proposed development seeks consent for multi dwelling housing, no consent is sought for a group home, boarding house etc.

Public Voice Committee

The proposal was considered at a Public Voice Committee meeting held on 21 April 2020. Residents raised concerns regarding overdevelopment, character, stormwater, subdivision dimensions, traffic / parking, flooding and precedent. Responses to these issues are provided below.

Issues raised	Response
Density - Overdevelopment of site	The proposed development includes an FSR compliant with the principal development standard applicable to the site and therefore is considered to be of an appropriate density. Further, the establishment of multi dwelling housing is permissible in the R2 zone with consent.
Character – Incompatible with existing 'village' character of locality. Largely single storey dwellings on 300sqm blocks	<p>The proposed development does not vary significantly from the ratio of dwellings to land, although the development is slightly more intensified with single dwellings on lots of over 200m².</p> <p>Although the dwellings will be attached, this is a</p>

	<p>function of providing a diversity of housing types, consistent with the R2 zone objectives. Further, it is noted the existing streetscape was largely formed prior to the introduction of the zone objectives that are now applicable. Additionally, it is noted the subject site is not located in a Heritage Conservation Area.</p>
<p>Stormwater management</p>	<p>The proposed development includes stormwater management developed in accordance with section 7.06 of the NDCP 2012 and is considered acceptable subject to compliance with conditions to be placed on any consent issued.</p>
<p>Subdivision dimensions- concern raised over resultant 9 metres wide frontages and 200sqm lots, registered easement on lot 34 in favour of lot 35 for parking. Easement major problem and needs to be added to the floor area (non-useable space)</p>	<p>The proposed development includes a two into three lot subdivision compliant with the requirements of clause 4.1A of the NLEP 2012. Clause 4.1A(3) of the NLEP 2012 allows for the creation of lots with a minimum size of 200m² in the subject zone, as a result of meeting the clause, narrower lot widths can be produced provided that the intended built form demonstrates consistency to applicable planning controls.</p> <p>Having regard to the exclusion of the registered easement to which the site is burdened from site area it is considered this land forms part of the subject allotment and whilst noted as non-usable space there is no requirement for this to be excluded from site area calculations as it is not specifically excluded for the purposes of calculating lot size as per the NLEP 2012.</p>
<p>FSR non-compliance (should include easement)</p>	<p>The submitted FSR calculations are considered to be correct and there is no requirement to include the registered easement for the purposes of parking as per the definition of gross floor area under the NLEP 2012.</p>
<p>R3 setbacks: the proposal seeks consent for medium density housing and therefore should be subject to R3 setbacks.</p>	<p>The proposed development seeks consent for multi dwelling housing however is to be undertaken on a site located within the R2 zone. Accordingly, as per the NDCP 2012, R2 setbacks apply.</p>
<p>Amenity - Excessive bulk, height, overshadowing, privacy, inappropriate box form.</p>	<p>The proposed development contributes to the diversity of housing types and styles available to the community, introducing clean, contemporary design with a variety of materials.</p>

<p>Non-compliant bedroom dimensions</p>	<p>The proposed development seeks consent for a maximum building height less than the maximum afforded to the subject allotment under the NLEP 2012. The proposed development does not display significant overshadowing impacts and is not considered to compromise visual privacy and therefore achieves acceptable amenity.</p> <p>The proposed development displays non-compliant bedroom dimensions to some of the bedrooms however is considered to achieve adequate functionality and compatibility with the applicable performance criteria.</p>
<p>Not within Public Interest - Large number of objections to DA</p>	<p>Whilst the large number of objections and significant community interest in the proposed development is noted, the concerns raised through public notification and the Public Voice Committee have been considered and the development is deemed to be consistent with CN's controls and acceptable.</p>
<p>Current land use - share house</p>	<p>The present use of the site is not a matter for consideration for assessment of the proposed development application where consent is sought for multi dwelling housing as per the NLEP 2012 definition.</p>
<p>No public benefit of the development</p>	<p>The proposed development provides for greater housing diversity in a suitable location, consistent with the zone objectives. Further, any consent issued will require a footpath upgrade and the planting of street trees, enhancing public amenity and therefore benefit.</p>
<p>Clause 4.6 exceptions should not apply</p>	<p>The proposed development does not seek to contravene any principal development standard afforded to the site under the NLEP 2012 and therefore does not seek to utilise clause 4.6 (exceptions to development standards) of the NLEP 2012.</p>
<p>Traffic and Parking issues</p>	<p><u>Traffic:</u> The provisions of the NLEP 2012 clause 4.1A encourages increased density. The proposal only contributes to the traffic on the local road network by one to two additional cars when compared to the potential of the existing two lots comprising the site.</p>

	<p>Accordingly, the proposal is not considered to significantly increase traffic flow throughout the surrounding locality.</p> <p><u>Parking:</u> The amended plans demonstrate that the car parking provision requirements of the NDCP 2012 have been met and allow for sufficient stacked parking without footpath intrusion.</p> <p>The proposed development will provide two off-street car parking spaces for each dwelling. The development will not rely on street parking, thus freeing up street parking altogether, consistent with CN objectives to cater for all parking off the street.</p> <p>The aggregate of garage doors constitute 36% (just over 1/3 of the street frontage) and thus do not form a continuous facade to the street frontage. Modern design and landscape elements help to ensure the street frontage is not dominated by garage doors.</p> <p>The performance criteria of the NDCP 2012 section 3.03.03G seek to ensure that <i>Car Parking is appropriate for the scale of the development</i>. In this instance, the design incorporates two spaces for each dwelling on-site, behind the front boundary, all within 36% of the width of the street frontage.</p> <p>The scale of the parking provided is designed to be subordinate to the boxed-out decks above each garage on the first floor, forward of the garage door. This ensures that the development will not appear dominated by parking and will read as residential development.</p>
<p>Precedent - This is the first three lot subdivision in this area and establishes a precedent</p>	<p>All applications are assessed upon individual merit. Notwithstanding, given the inner city location of the development lot expectation is afforded to redevelopment within the immediate locality noting the proposal does not establish precedent outside of the planning controls that apply to the site afforded through the applicable instruments. As a result, the proposal, displaying a compliant outcome, does not establish an undesirable precedent in planning terms because it is consistent with the NLEP 2012 and the NDCP 2012.</p>
<p>Flooding impacts</p>	<p>The proposed development has been designed to minimise the impact of floodwaters through the</p>

	<p>establishment of minimum floor levels and suitable flood refuge and is considered acceptable in this regard subject to compliance with conditions to be placed on any development consent issued.</p>
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5.9 The public interest

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

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

The proposal increases the diversity of housing types and form within the LGA, providing for the needs of the community whilst not creating significant adverse impact, and is consistent with the applicable zoning objectives.

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

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

6.0 CONCLUSION

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

ATTACHMENTS

Item 26 Attachment A: Submitted Plans - 15 Northumberland Street, Maryville

Item 26 Attachment B: Draft Schedule of Conditions - 15 Northumberland Street, Maryville

Item 26 Attachment C: Processing Chronology - 15 Northumberland Street, Maryville

Item 26 Attachments A - C distributed under separate cover

ITEM-27 DAC 18/08/20 - DA2020/00123 - 15 CLYDE STREET, STOCKTON - DWELLING HOUSE - ALTERATIONS AND ADDITIONS INCLUDING DEMOLITION OF OUTBUILDING

APPLICANT: W P NEALON
OWNER: W P NEALON
REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT

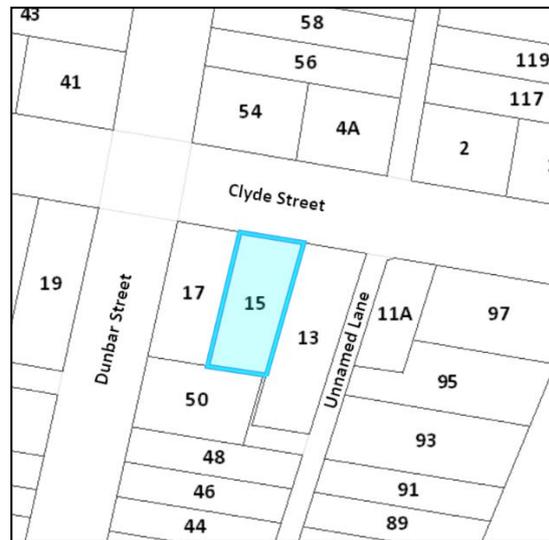
PART I

PURPOSE

An application (DA2020/00123) has been received seeking consent for *Dwelling house – alterations and additions including demolition of outbuilding* at 15 Clyde Street, Stockton.

The submitted application was assigned to Development Officer Michael Peisley for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the height of buildings development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (11.1% variation).



Subject Land: 15 Clyde Street, Stockton NSW 2295

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

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

Issues

- 1) The proposed variation to the height of buildings development standard, under the NLEP 2012.

- 2) The suitability of the development with respect to the relevant provisions of the Newcastle Development Control Plan 2012 (NDCP 2012).

Conclusion

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

RECOMMENDATION

Vote by division

- A. That the DAC note the objection under clause 4.6 Exceptions to Development Standards of the 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 DA2020/00123 for *Dwelling house – alterations and additions including demolition of outbuilding* at 15 Clyde Street, Stockton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject site comprises Lot 25 DP 129426. The lot is rectangular in shape, located on the southern side of Clyde Street, with a road frontage of 16.155 metres, a depth of 34.7 metres and a total area of 537.6m². The site is generally flat with a slight fall towards the rear boundary.

The site is currently occupied by a detached single storey dwelling with an associated single storey garage located in the south western corner of the site. The general form of development in the immediate area consists of a mixture of original dwellings, newly renovated dwellings and modern architectural designed dwellings up to two stories in height. They range in architectural style, reflecting the ongoing development since the establishment of Stockton as a suburb.

2.0 THE PROPOSAL

The applicant seeks consent for dwelling house – alterations and additions including demolition of outbuilding.

The proposed development consists of the following elements:

- i) Two storey addition / alteration over the rear of the existing single storey dwelling incorporating three new bedrooms, bathroom, rumpus room and a walk-in linen storeroom.
- ii) Attached single garage to the western side of the existing dwelling.
- iii) Attached covered timber deck to the southern side of the existing dwelling.
- iv) Attached storage and caravan garage at the rear south western side of the property.
- v) Proposed ground floor level addition / alteration to include new open family, dining, kitchen space with island, a new laundry and internal stairs added into existing dining room.
- vi) Minor changes to the existing roof configuration of existing dwelling from tiles to new metal cladding to match proposed roof.

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

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Participation Plan. No submissions were received as a result of the notification process.

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy 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 considered to be acceptable having regard to this policy.

State Environmental Planning Policy (Coastal Management) 2018

The subject site is located within the coastal zone and is specifically mapped as being within the coastal environment area and coastal use area. The proposed development is satisfactory with regard to the provisions of the SEPP.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

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

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

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

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

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the existing detached garage located in the south western corner of the site and sections of the existing dwelling. Conditions are recommended to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum building height of 8.5 metres. The submitted height is approximately 9.44 metres, exceeding the prescribed maximum building height by 0.94 metres or 11.1%.

The applicant has submitted a request for a variation to this development standard, as required by clause 4.6 of the NLEP 2012. Refer to the discussion under clause 4.6 - Exceptions to Development Standards below.

Clause 4.4 Floor Space Ratio (FSR)

Under the NLEP 2012 the subject site has a maximum floor space ratio (FSR) of 0.75.

The submitted FSR is 0.50 and complies with this requirement.

Clause 4.6 - Exceptions to development standards

The application involves a proposed building that exceeds the maximum building height under clause 4.3 of the NLEP 2012.

Under the NLEP 2012 the site has a maximum building height of 8.5 metres. The submitted height is approximately 9.44 metres, exceeding the prescribed maximum building height by 0.94 metres or 11.1%.

The area of roof that exceeds the maximum 8.5m height limit by 0.94m is located at the top portion of the roof pitch and extends in along the roof ridge for the length of the proposed addition (approximately 11m in length).

The objectives of clause 4.3 of the NLEP 2012 are:

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

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

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

The applicant has prepared a written request, as required by clause 4.6(3), that seeks to justify the contravention of the development standard.

In assessing the proposal against the provisions of clause 4.6, it is noted that:

1. Clause 4.3 of the NLEP 2012 is not expressly excluded from the operation of this clause; and
2. The applicant has prepared a written request, requesting that CN vary the development standard and demonstrating that:
 - a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - b) There are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's request to vary the development standard is summarised as follows:

How is strict compliance with the development standard unreasonable or unnecessary in this particular case. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?

There is only a small section of the peak of the roof that will exceed the building height restriction by a small amount, as the block drops away from the street by a similar amount, when viewed from the street the building will not appear to be higher than the allowable limit. Changing the roof angle to allow compliance would result in an unsightly mismatched extension and would detract from the appearance of the dwelling.

Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.

Yes, contravening the standard will allow for a building that will enhance the built environment, allow for the second story addition in a design that complements the existing building by matching the existing as built roof angles and allow for retention of the original double brick section of the residence.

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

- i) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of the NLEP 2012.

- 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 R2 Low Density Residential zone in which the development is proposed to be carried out.
- iii) The Secretary's concurrence to the exception to the building height development standard, as required by clause 4.6(4)(b) of the NLEP 2012, is assumed, as per NSW Planning and Environment circular PS 18-003 of 21 February 2018.
- iv) The proposed building height exceedance is considered to be a reasonable variation and it will have minimal impact on neighbouring properties in terms of bulk, scale, privacy, overshadowing and view loss. The proposed exceedance of the maximum building height does not add unnecessary bulk and scale to the development. The proposed scale of the development is not out of character with existing dwellings within Clyde Street and the wider surrounding area.
- v) The building height of the proposed development is supported and that compliance with the development standard is unreasonable and unnecessary in this case.

Clause 5.10 - Heritage Conservation

Under the NLEP 2012, the subject property is not listed as a heritage item nor is it located within a Heritage Conservation Area.

A heritage item exists in the vicinity of the proposed development (approximately 53m east) - "Beach Cafe" (115 Mitchell Street), as indicated in Schedule 5 of the NLEP 2012.

The proposed development is designed and located in such a way that the heritage significance of the heritage item will be conserved. The proposed development is not considered to generate any impacts with respect to the heritage item. The existing space around the heritage item that enables its' interpretation to be retained. Significant views and lines of sight to the heritage item are unaffected by the proposed development.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulfate 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 considered to be acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

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

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

5.3 Any development control plan

Newcastle Development Control Plan (NDCP 2012)

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

Single Dwellings and Ancillary Development - Section 3.02

The following comments are made concerning the proposed development and the relevant provisions of section 3.02.

Density - Floor Space Ratio (3.02.01)

Under the NLEP 2012 the subject site has a maximum FSR of 0.75:1. The submitted FSR is 0.50:1 and complies with this requirement.

Height of Buildings (3.02.02)

Under the NLEP 2012 the site has a maximum height of 8.5 metres. The submitted height is approximately 9.44 metres and exceeds this requirement. Refer to section 5.1 of this report for details of the applicant's request for the proposed building height variation and the assessment of that request.

Street frontage appearance (3.02.03)

The existing setback is retained. The proposed development meets the acceptable solutions of section 3.02.03.

Side / rear setbacks (building envelope) (3.02.04)

The proposed development does not meet several of the acceptable solutions of section 3.02.04:

- i) Minor encroachment by eave on east elevation building envelope for the length of the upper floor addition (approximately 11m).
- ii) Exceedance of maximum height of building envelope by 0.94m.
- iii) Rear setback of the storage shed and caravan garage less than prescribed 3m (0.65m at closest point to southern boundary).

- iv) Side setback of the caravan garage less than prescribed 0.9m (0.65m at closest point to western boundary).
- v) Height of the western boundary wall of the caravan garage (0.385m higher than prescribed 3m for boundary walls)

A performance based assessment of the proposal has been completed and the proposed development achieves the relevant performance criteria within section 3.02.04 of the NDCP 2012. The bulk and scale of the proposed development:

- a) *Is consistent with that of the existing built form prevailing in the street and locality.*

The proposal is not inconsistent with the existing built form in the locality.

- b) *Does not create overbearing development for adjoining dwelling houses and their private open space.*

The relative location of windows and physical separation between the proposed dwelling and the neighbours' living areas and principal areas of private open space is considered to be sufficient to not create unreasonable impacts.

- c) *Does not impact on the amenity and privacy of residents in adjoining dwelling houses.*

The location of windows is considered to be sympathetic to the adjoining dwelling houses and satisfactorily protects the privacy of neighbours.

- d) *Does not result in the loss of significant views or outlook of adjoining residents.*

The proposed development meets the acceptable solutions of section 3.02.09 of the NDCP 2012. That is, adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development.

- e) *Provides for natural light, sunlight and breezes.*

It is acknowledged that the solar access to the adjoining neighbours will be reduced by the proposed development, however, it is considered that the extent of the impact is reasonable. Natural light and breeze paths will still be provided for with the proposal.

Landscaping (3.02.05)

The site area is 537.6m², generating a requirement for 20% (ie. 108m²) of the site to be provided with landscaping. The total area of proposed landscaping is approximately 130m² and meets the NDCP 2012 requirements.

Private open space (3.02.06)

The proposed private open space area is satisfactory and meets the NDCP 2012 requirements.

Privacy (3.02.07)

The privacy of the proposed development and the adjoining neighbours is satisfactory and meets the NDCP 2012 requirements.

The relative location of windows and physical separation between the proposed dwelling and the neighbours' living areas and principal areas of private open space is considered to be sufficient to create a reasonable level of privacy between those premises.

Solar access 3.02.08)

The proposed development complies with the NDCP 2012 requirements as it does not significantly overshadow north facing living area windows and the principal area of private open space of adjacent dwellings.

View sharing (3.02.09)

The proposed development meets the acceptable solutions of section 3.02.09 of the NDCP 2012. That is, adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development.

Car parking and vehicular access (3.02.10)

The proposed development is considered to be satisfactory and to meet the NDCP 2012 requirements as vehicles can enter and exit the site in a safe manner.

Development within a Heritage Conservation Areas (3.02.11)

The subject site is not located within a Heritage Conservation Area.

Ancillary development (3.02.12)

The proposed garages are satisfactory in accordance with the NDCP 2012 requirements.

The proposed development is satisfactory in relation to section 3.02 of the NDCP 2012 and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The development establishes a scale and built form that is appropriate for its location. The proposal

provides an appealing presentation to the street with appropriate residential amenity, whilst maintaining privacy for adjoining neighbours.

Flood Management - Section 4.01

The subject site is not impacted by flooding. No further flood management considerations are required with respect to section 4.01.

Soil Management - Section 5.01

The proposed development is satisfactory with respect section 5.01 of the NDCP 2012.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees nor have an impact on any declared vegetation.

Heritage Items - Section 5.05

Section 5.05.06 relates to development in the vicinity of a heritage item.

A heritage item exists in the vicinity of the proposed development - "Beach Cafe" (115 Mitchell Street). The proposed development is not considered to generate any impacts with respect to the heritage item. The curtilage around the heritage item that enables its' interpretation is retained. Significant views and lines of sight to the heritage item are unaffected by the proposed development.

Traffic, Parking and Access - Section 7.03

The proposed development is required to provide on-site car parking in accordance with the rates set out in Table 1 of section 7.03.02 of the NDCP 2012. As a dwelling house with gross floor area greater than 125 m², the proposed development is required to have a minimum of two car parking spaces. The proposal is satisfactory in this regard.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed stormwater drainage system includes a rainwater tank for water re-use within the dwelling, with the rainwater tank overflow connected to the street kerb and gutter. The proposed stormwater management plan is satisfactory and in accordance with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued. Based on the submitted information, the proposal is acceptable.

Public Participation – Community Participation Plan

The proposed development was publicly notified in accordance with CN's Community Participation Plan and no submissions have been received in response.

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 Regulation 2000 (Regulations).

As consent is being sought for the demolition of the existing outbuilding and sections of the existing dwelling, clause 92 of the Regulations requires CN to take into consideration the provisions of AS2601 - Demolition of Structures. The proposed demolition is satisfactory and compliance with AS2601 will be included in the conditions of consent for any demolition works.

Clause 94 of the Regulations is considered to apply, pursuant to the provisions of clause 94(1)(a). It is not considered appropriate to require the existing building to be brought into total compliance with the Building Code of Australia. However, it is considered appropriate to require hardwired smoke alarms to be installed. It is noted that a prescribed condition of the consent will require the new work to comply with the Building Code of Australia.

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

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

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

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

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

5.7 The suitability of the site for the development

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

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

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

The application was notified in accordance with CN's Community Participation Plan, and no submissions were received.

5.9 The public interest

The proposed development is satisfactory having regard to the principles of ecologically sustainable development. The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment. The development is in the public interest and will allow for the orderly and economic development of the site.

6.0 CONCLUSION

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

ATTACHMENTS

Item 27 Attachment A: Plans and elevations of proposed development - 15 Clyde Street, Stockton

Item 27 Attachment B: Draft Schedule of Conditions and reasons for the determination and consideration of community views – 15 Clyde Street, Stockton

Item 27 Attachment C: Processing Chronology - 15 Clyde Street, Stockton

Item 27 Attachments A - C distributed under separate cover

ITEM-28 **DAC 18/08/20 - DA2018/00266.01 - 21-25 BRUNKER ROAD, ADAMSTOWN - MODIFICATION - MIXED USE COMMERCIAL AND SHOP TOP HOUSING - CHANGE OF USE TO SENIOR LIVING WITH INCREASED RESIDENTIAL UNITS AND CHANGE TO OVERALL BUILDING HEIGHT**

APPLICANT: **KINGSTON BUILDING AUSTRALIA**
OWNER: **BRUNKER ROAD HOLDINGS PTY LIMITED**
REPORT BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

PURPOSE

A Section 4.55 application (DA2018/00266.01) has been received seeking consent to modify an approved four-storey mixed use development at 21 – 25 Brunker Road, Broadmeadow.

The development was approved in 2019 and comprised of a ground floor cafe, associated car parking and 28 residential units above. The approved scheme relied on minor non-compliances to the numerical height of building and floor space ratio (FSR) development standards.

The proposed modification is seeking to change the approved land use of the development to seniors living self-contained dwellings. Alterations and additions, including a communal rooftop area, are also proposed to support and enable the change of use.

The submitted application has been assigned to William Toose, Principal Planner, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the height of buildings development



Subject Land: 21-25 Brunker Road Broadmeadow NSW 2292

standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (16.2% variation proposed).

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

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

Issues

1. The proposed development (as modified) does not comply with the height of buildings development standard of 14m under the NLEP 2012. The proposed height of the building is 16.27m which equates to a 16.2% variation to the height of buildings development standard.
2. The proposed development (as modified) does not comply with the FSR development standard of 1.5:1 under the NLEP 2012. The proposed FSR is 1.65:1 which equates to a 9.8% variation to the FSR development standard.

Conclusion

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

RECOMMENDATION

Vote by division

- A. That the DAC note the variation to the height of building development standard under the NLEP 2012 and consider the variation to be justified.
- B. That the DAC note the variation to the FSR development standard under the NLEP 2012 and consider the variation to be justified.
- C. That DA2018/0266.01 to modify the approved mixed-use development at 21 - 25 Brunner Road, Adamstown be approved, and consent granted, subject to compliance with the conditions set out in the draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject site is known as 21 – 25 Bruncker Road, Adamstown. The site has an area of 1,582m², and has frontage to Bruncker Road and Koree Street. The site generally slopes from the north west to the south east. Current built improvements on the site include four detached weatherboard dwellings and associated ancillary structures.

2.0 THE PROPOSAL

The purpose of the application is to modify the current development consent to enable the use of the site for seniors living, comprising 29 independent living units (self-contained dwellings) which will be owned and operated by the 'Oak Tree Group' as a retirement village under the provisions of the *Retirement Villages Act 1999*.

The proposed modification application includes the following:

- i) Change the approved land use from a mixed-use development incorporating shop top housing to seniors housing.
- ii) Amend the number and mix of apartments from 28 to 29 units. (comprising five x one bedroom apartments (some including studies), 23 x two bedroom apartments, and one x three bedroom apartment).
- iii) Minor changes to elevations to reflect the amended unit layout.
- iv) Introduction of a community centre with managers office in place of the ground floor commercial tenancy.
- v) Inclusion communal roof top terrace area and ambulant lift overrun.
- vi) Reconfiguration of ancillary elements such as storage areas, plant rooms, bike store, bin storage, and egress paths.
- vii) Provision of 35 parking spaces including 11 accessible parking spaces.
- viii) Inclusion of a roof top photo voltaic cell solar cell system.

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's Community Participation Plan. No submissions were received as a result of the notification process.

5.0 PLANNING ASSESSMENT

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

The modification application was lodged under section 4.55(2) of the EP&A Act, which requires that the consent authority be "satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted".

Assessment of the modification application has been made and it is considered that the current proposal is substantially the same as the originally approved development for the following reasons:

- i) The approved development allows for residential accommodation in the form of a residential flat building. The modification application does not propose significant changes to the previously approved building, rather design modifications to ensure the building meets the functional accommodation needs of seniors in an 'independent living' environment and the requirements of the operator.
- ii) Seniors housing is a land use which remains consistent with the zone objectives.
- iii) While the number of units is increasing by one, there is a reduction in number of bedrooms from 62 bedrooms (approved) down to 54 (proposed). Therefore, the proposed modification will not result in an intensification of use.
- iv) Amenity impacts, such as solar, acoustic, and privacy are similar to the approved scheme.
- v) The development will be of similar appearance when viewed from the public domain.
- vi) There will be no change in impact or potential impacts to the natural environment as a result of the proposal.
- vii) With the exception of the breach to the numerical height and FSR standards, the development will remain compliant with all other numerical standards under the NLEP 2012 and Newcastle Development Control

Plan 2012 (NDCP 2012). It should be noted that the approved scheme also relied on minor breaches to the numerical height and FSR standards.

The proposed development is considered to be substantially the same development to that originally approved. The proposed change of use and associated design amendments are considered to be of a minor nature and of minimal impact.

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 proposed modification does not impact on the original assessment. No further investigations have been undertaken or considered relevant in the assessment of the proposed modifications.

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

The aims of the Vegetation SEPP are to protect the biodiversity value of trees and other vegetation in non-rural areas of the State and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. The Policy applies to the Newcastle Local Government Area. The application does not propose any vegetation removal and is considered consistent with the provisions of the Vegetation SEPP.

State Environmental Planning Policy (Coastal Management) 2018 - (Coastal Management SEPP)

The site is within the coastal management area. The proposal is considered satisfactory with regard to the aim and objectives of the policy. The proposed modification does not impact on the original assessment.

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

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

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 - (SEPP Seniors)

This Policy aims to encourage the provision of housing that will:

- a) Increase the supply and diversity of residences that meet the needs of seniors or people with a disability;
- b) Make efficient use of existing infrastructure and services; and
- c) Be of good design.

As described in clause 4 of SEPP Seniors, the site is land to which this policy applies, being land zoned for urban purposes where residential flat buildings are permitted. The site is identified for urban purposes on account it is zoned R4 High Density Residential zone within the NLEP 2012 under which residential flat buildings are permitted. Additionally, the site is not land described in clause 4(6)(a) – environmentally sensitive land.

Clause 15 in Chapter 3 expresses that development, despite the provisions of any other environmental planning instrument, may be carried out in accordance with this policy. In this instance, the requirements of this section are applicable given that seniors housing is a land use which is not permissible in the R4 High Density Residential zone. SEPP Seniors therefore prevails over the NLEP 2012.

The site is identified for urban purposes on account it is zoned within the R4 High Density Residential zone under the provisions of the NLEP 2012 whereby residential flat buildings are permitted. Additionally, the site is not land described in clause 4(6)(a) – environmentally sensitive land.

The dwellings will be occupied for seniors housing as provided in clause 18 of SEPP Seniors. Additionally, the facility will be managed in accordance with the provisions of the *Retirement Villages Act 1999*.

The proposed development achieves the aims of SEPP Seniors by providing various housing types to accommodate seniors, within close proximity to existing services and infrastructure, that will meet the needs of an ageing demographic within the area. The proposed development is considered to be consistent with existing and desired future character for the locality, as provided in the NDCP 2012. The proposal is compatible with the scale of the surrounding built form.

The applicant has undertaken a detailed assessment of the proposal against the relevant provisions and design guidelines of SEPP Seniors. This assessment demonstrates that the proposal satisfies the relevant site related design requirements and development standards applicable to ‘self contained dwellings’.

- i) All apartments are accessible to people with a disability. Each apartment has direct access to the street footpath along Bruncker Road from the entry foyer.

- ii) Access is provided so that a person using a wheelchair can use all communal areas and common facilities associated with the development.
- iii) The proposed car parking arrangement includes provision for 35 parking spaces, with a total of 54 bedrooms proposed. The development generates demand for 22 parking spaces and therefore complies.
- iv) All living areas, kitchens, bedrooms, balconies are capable of complying with circulation and storage requirements, including suitable appliances and fixtures.

A condition of consent will be included requires the proposed development to be occupied by people over the age of 55 in addition to a restriction on title imposed under section 88E of the *Conveyancing Act 1919* (refer to **Schedule B**). The proposed application is acceptable in this regard.

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

The Urban Design Consultative Group (UDCG) reviewed the proposal on two occasions during the assessment of the original application and a commentary of the main points is summarised below:

“The proposed development is in character with the intended higher density residential character of this locality, whereas the current use of the site is predominantly commercial and industrial in character.

The proposed development density is generally in accordance with local development guidelines and desired future character of the area without compromising the amenity of the development or its surroundings.

All apartments meet or exceed the minimum areas and layouts specified under Apartment Design Guide (ADG) guidelines. All apartments have balconies that meet or exceed the minimum areas and depths specified by the ADG. The majority of units benefit from cross flow ventilation and meet the minimum 2 hours of direct solar access.”

The proposed development does not involve a substantial redesign of the approved residential flat building and remains compliant with SEPP 65 and the ADG. Seniors housing represents a positive social outcome for the site and the addition of a communal roof top terrace is typically supported by CN’s UDCG because it encourages social interaction between the residents. The modification was not considered necessary to be reviewed by UDCG due to their support of the original development and the minor nature of the proposed changes.

Newcastle Local Environmental Plan 2012 - (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is included within the R4 High Density Residential under the provisions of the NLEP 2012. The subject application seeks to modify the development consent to permit seniors housing. While seniors housing is a form of residential accommodation which is not permitted in the zone, the application seeks to rely on the provision of SEPP which allows for seniors housing on land which is zoned for urban purposes and where residential flat buildings are permitted.

The proposed development is consistent with the objectives of the R4 High Density Residential zone, which are:

- i) To provide for the housing needs of the community within a high density residential environment.
- ii) To provide a variety of housing types within a high density residential environment.
- iii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- iv) To promote a denser urban form along transport corridors while respecting the residential character of adjoining streets.
- v) To maximise redevelopment and infill opportunities for high density housing within walking distance of centres.

The proposal will continue to present as a four storey residential apartment building of a height and scale consistent with the approved built form and compatible with the existing and desired future character of the locality.

Modifying the development consent to permit a seniors housing development will add to the diversity of housing stock while providing an opportunity for local residents to age in place.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a maximum height of building development standard of 14m.

The objectives of clause 4.3 of the NLEP 2012 are:

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

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

The criteria provided under the NLEP 2012 clause 4.6 has been used as a guide to the merit assessment of the height of building development standard variation request, for consistency and clarity (noting that there is no formal requirement for such a request).

The approved development has a maximum height of 14.95m. The proposed modifications will result in the building having a maximum building height of 16.27m above the existing ground level. The increase in building height relates to the height of the lift overrun, with the proposed height predominantly matching the height of the approved development, much of which sits underneath the NLEP 2012 14m height limit under the approved and proposed scheme.

The amended design requires a lift capable of accommodating a stretcher, and therefore has necessitated a larger lift overrun. The communal rooftop space will serve as an extension of the open space areas afforded to each of the units whilst also serving as a space where residents can interact. The inclusion of a communal roof top terrace is typically supported by CN's UDCG because it encourages social interaction between the residents.

Clause 4.4 Floor Space Ratio (FSR)

Under the NLEP 2012 the site has a maximum 1.5:1 FSR.

The objectives of clause 4.4 of the NLEP 2012 are:

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

The criteria provided under the NLEP 2012 clause 4.6 has been used as a guide to the merit assessment of the height of building development standard variation request, for consistency and clarity.

The proposed development will result in an FSR of 1.65, equating to an exceedance of 235m² or 9.8% above the FSR development standard for the subject land.

The modifications have resulted in a gross floor area (GFA) of 2,608m² which amounts to an increase of 213m² when compared to the approved scheme. These changes are the outcome of providing modified unit layouts, corridors, lobbies and common space areas to meet the circulation and functional needs of seniors and people with a disability persons.

The additional GFA will be insignificant in terms of the overall scale of the development which largely remains within the approved development footprint and building envelope.

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

- i) The visual impacts of the modified proposal to the immediately adjoining properties to the west and south are very limited. The roof top terrace has been carefully designed to minimise the visual impact of the exceedance in height. Similarly, the overshadowing and privacy impacts are comparable to the original development and are considered to be acceptable.
- ii) It is considered that compliance with the height of buildings and FSR development standards are unnecessary in terms of the modified proposal and there are sufficient environmental grounds to justify contravening the development standard in this instance.
- iii) The modified proposal is consistent with the public interest as it meets the relevant objectives of the R4 High Density Residential zone, as previously quoted, and is consistent with the objectives of the NLEP 2012 clause 4.3 height of buildings and FSR development standards.

Clause 5.10 - Heritage Conservation

The site is not identified as a heritage item and is not located within a heritage conservation area.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils and the proposed modification does not impact on the original assessment.

Clause 6.2 - Earthworks

No changes are proposed to the approved civil concept and the likely impacts of earthworks will be minimal and acceptable.

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

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

5.3 Any development control plan

Newcastle Development Control Plan (NDCP 2012)

The main planning requirements of relevance in the NDCP 2012, as applicable to the current application to modify the development, are discussed as follows:

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 of the NDCP 2012:

Principal controls (3.03.01)

- a) Frontage widths
- b) Front setbacks
- c) Side and rear setbacks
- d) Landscaped Area

The approved development was assessed and considered acceptable in respect to these controls and the ADG under SEPP 65. The current proposal does not propose any significant changes to these aspects.

Siting the development (3.03.01)

- a) Local character and context
- b) Public domain Interface
- c) Pedestrian and vehicle access
- d) Orientation and siting
- e) Building Separation

The approved development was assessed and considered acceptable with respect to these controls and the ADG under SEPP 65. The current modified proposal does not have any notable change to these aspects of site planning, apart from that arising from the proposed increase to the height for roof top terrace.

The proposed change to the height for the roof top terrace is considered to be minimal and acceptable given the setbacks to surrounding properties. The amended proposal is considered reasonable in terms of the local character and context.

Amenity (3.03.03)

- a) Solar and daylight access
- b) Natural ventilation
- c) Ceiling heights
- d) Dwelling size and layout
- e) Private Open Space
- f) Storage
- g) Car and bicycle parking
- h) Visual privacy
- i) Acoustic privacy
- j) Noise and pollution

The approved development was assessed and considered acceptable with respect to these controls and the ADG under SEPP 65. The proposed increase in height for the roof top terrace has no impact on the above controls.

Configuration (3.03.04)

- a) Universal design
- b) Communal area and open space
- c) Architectural design and roof form
- d) Visual appearance and articulation
- e) Pools and ancillary development

The approved development was assessed and considered acceptable with respect to these controls and the ADG under SEPP 65. The proposal does not impact on these aspects, apart from the visual appearance of the proposed building. As noted above, the inclusion of the roof top terrace is considered to be a positive design response and acceptable with minimal impact on the streetscape given the setbacks from all boundaries.

Environment (3.03.05)

- a) Energy efficiency
- b) Water management and conservation
- c) Waste management

The approved development was assessed and considered acceptable in respect to these controls and the Apartment Design Guide under SEPP 65. The current proposal does not have any notable effect on these aspects.

The proposed development is acceptable in relation to the abovementioned NDCP 2012 section and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The development establishes a scale and built form that is appropriate for its location within the R4 High Density Residential zone. The proposal provides an attractive presentation to the street with good residential amenity, while maintaining privacy for adjoining neighbours.

Flood Management - Section 4.01

The proposal has maintained the approved levels for driveway access and ground floor. Accordingly, the proposal is acceptable in relation to flooding.

Traffic, Parking and Access - Section 7.03

Based on SEPP (Housing for Seniors or People with a Disability) prescribed parking rate, a total of 27 spaces plus one staff parking is required. A total of 35 parking spaces are proposed, including 11 disabled spaces and one car wash bay. The proposal is acceptable in this regard.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

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

The proposed development is well designed, providing a positive addition to the site's corner location whilst maintaining an appropriate interface with surrounding commercial and residential developments. The proposed density and built form, as well as the provision of seniors housing, is considered beneficial to the locality and the transitioning nature of the Adamstown Renewal Corridor.

The proposed development will not have any adverse impacts on the natural or built environment. The development is considered to be compatible with the existing character, bulk, scale and massing of development in the immediate area.

5.7 The suitability of the site for the development

The site is located in a R4 High Density Residential zone, in an established suburb and close to suitable infrastructure and facilities.

The proposal does not result in adverse social or economic impacts. The proposal includes sufficient measures to address potential crime and safety issues.

The proposal constitutes an appropriate form of development that is consistent with the existing and future character of the area.

The site is not affected by significant environmental constraints that would preclude development of the site.

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

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

5.9 The public interest

Approval of the development will result in a positive outcome which will improve the diversity of housing in the locality and assist in meeting the housing needs for an aging population. This will be achieved through providing an appropriately located and well-designed facility which will accommodate seniors who remain to be independent, mobile and active.

There is sufficient infrastructure (transport, reticulated services) to accommodate the predicted demands of the occupants.

Approval of the development (as modified) will be in the public interest.

6.0 CONCLUSION

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

ATTACHMENTS

Item 28 Attachment A: Submitted Plans – 21 - 25 Bruncker Road, Adamstown

Item 28 Attachment B: Draft Schedule of Conditions – 21 - 25 Bruncker Road, Adamstown

Item 28 Attachment C: Processing Chronology – 21 - 25 Bruncker Road, Adamstown

Item 28 Attachments A - C distributed under separate cover

ITEM-29 **DAC 18/08/20 - DA2019/01351 - 18 - 20 MEREWETHER STREET, MEREWETHER - ARTISAN FOOD AND DRINK PREMISES - ALTERATIONS AND ADDITIONS AND CHANGE OF USE**

APPLICANT: **MODUS OPERANDI BREWING CO**
OWNER: **IAN BOWER PROPERTIES PTY LIMITED**
REPORT BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

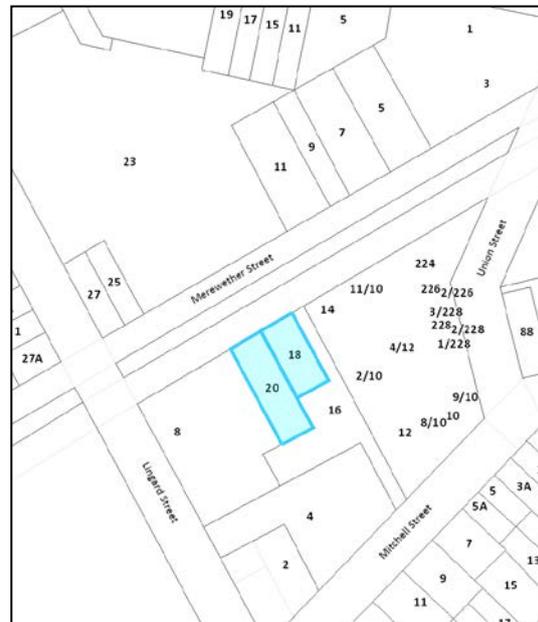
PART I

PURPOSE

An application (DA2019/01351) has been received seeking consent for an artisan food and drink premises, including alterations and additions and change of use at 18-20 Merewether Street, Merewether.

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

The application is referred to the Development Applications Committee (DAC) for determination, due to the number of public submissions received. The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan. A total of 40 submissions were received, and 39 were in objection to the proposal.



**Subject Land: 18-20 Merewether Street
Merewether NSW 2291**

The objector's concerns include noise; anti-social behaviour; air quality; traffic, parking and transport; number of licensed premises in the area; and proposed hours of operation.

Details of the submissions received are summarised at Section 3.0 of Part II of this report and the concerns raised and discussed at the Public Voice (PV) Committee are addressed as part of the Planning Assessment at Section 5.0.

The proposal was considered at the PV Committee meeting held on 16 June 2020. The PV Committee heard from two objectors raising their concerns regarding parking; anti-social and alcohol related behaviour; and noise.

Following the PV Committee meeting and subsequent consultation with CN staff, additional information was provided in relation to maximum patron numbers, and safe dispersal of patrons, in order to reduce the potential for impacts to nearby residential properties and the adjacent hospital.

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

Issues

- 1) Public submissions raising concern over potential impacts relating to noise; anti-social behaviour; air quality; traffic, parking and transport; number of licensed premises in the area; and proposed hours of operation.

Conclusion

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

RECOMMENDATION

Vote by division

- A. That DA2019/01351 for an artisan food and drink industry including alterations and additions and change of use at 18-20 Merewether 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.

Political Donation / Gift Declaration

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

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

The applicant has answered **no** to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the*

application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?

PART II

1.0 THE SUBJECT SITE

The site is known as 18-20 Merewether Street, Merewether and has a legal description of Lot 10, Section 3, in Deposited Plan 111239 and Lot 4 in Deposited Plan 218920. The combined lots form an irregular L-shaped block on the southern side of Merewether Street. The subject site has a frontage of 30.55m to Merewether Street, a maximum depth of 31.97m to the eastern boundary and 45.91m to the western boundary, with a total area of 1174.8m². The site has a relatively flat topography. The subject site is identified as being flood affected and is also located in a mine subsidence district.

18 Merewether Street comprises vacant land, while 20 Merewether Street is currently occupied by a warehouse that was previously used as a mechanical repair depot, and a smash repairer. The site is bounded by business development zoned lots to the east, south, and west, and residential zoned lots to the north. The residential lots to the north are part of the Lingard Private Hospital buildings and 8 Lingard Street to the west is also part of the Lingard Private Hospital site.

2.0 THE PROPOSAL

The applicant seeks consent for an artisan food and drink premises comprising alterations and additions and a change of use to an existing warehouse. The applicant proposes the operation of the Modus Operandi microbrewery from the site. Modus Operandi is an established brewery and craft drink manufacturer which currently operates out of Mona Vale. The principal purpose of the proposed development is to manufacture craft beer, with 98% of volume manufactured being sold off-site.

In addition to the principal purpose of the manufacturing of craft drink from the premises, ancillary uses including retail sale of craft drink and food, public tastings, tours, workshops shall also occur on site. The site will have a maximum capacity of 200 persons Monday to Thursday, and 297 persons Friday to Sunday. Incorporating more than one ancillary use is permitted under the definition of an artisan food and drink industry, and the retail, public tasting, tours, workshops are considered ancillary to the manufacturing of craft beer.

The construction works associated with the proposed use are as follows:

- i) Demolition of existing boundary fencing and internal walls within the existing warehouse.
- ii) Fit out to accommodate the making of craft food and drink, including a retail area for the sale of products and facilities for holding tastings, tours and workshops.

- iii) An 85m² addition to the north-eastern side of the existing warehouse.
- iv) Provision of associated parking and bicycle facilities (4 staff car parking spaces – 2 spaces provided within the existing warehouse, 2 visitor spaces, 1 disabled space, 15 customer bicycle racks, 6 staff bicycle racks within the warehouse, and 3 motorbike spaces).
- v) Public domain works such as kerb and gutter, driveway crossover and turf to CN road reserve.

A covered outdoor area totalling 265m², with 53m² associated with the brewery, 155m² for use by the public including kids play area, and 43m² associated with the entry and proposed bicycle parking.

The proposed hours of operation are as follows:

- i) Brew house: Monday to Friday - 7am to 7pm, and Saturday - 7am to 2pm
- ii) Ancillary uses: Monday to Thursday – 11am to 11pm, Friday and Saturday – 11am to 12am, and Sunday – 11am to 10pm
- iii) Deliveries: Monday to Friday - 7am to 5pm

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

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

3.0 PUBLIC NOTIFICATION

In accordance with CN's Community Participation Plan, this type of application requires a public notification period for 14 days, however in this instance the notification period was extended to allow for the holiday period. Accordingly, the application was placed on public notification from 8 January 2020 to 28 January 2020, during this time 40 submissions were received.

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

a) Statutory and Policy Issue

- i) Land use definition – that the proposed use did not fall within the definition of 'artisan food and drink industry' which is a type of 'light industry'.
- ii) Permissibility within the zone – that the proposed development was not permissible in the B5 Business Development zone.

- iii) Contamination – that the site is contaminated and not suitable for the proposed use.

b) Amenity Issues

- i) Noise – adverse noise impacts to adjoining properties which include residential dwellings.
- ii) Anti-social behaviour – the proposed use will result in increased anti-social behaviour associated with consumption of alcohol at the site.
- iii) Air quality – adverse air quality impacts will arise as a result of the brewery processes.

c) Traffic and Parking Issues

- i) Traffic and parking issues – impact to local traffic and parking conditions within the surrounding locality.
- ii) Lack of public transport – lack of public transport in the locality.

d) Miscellaneous

- i) Number of licensed premises in the Local Government Area (LGA) – concern raised with the number of existing licensed premises.
- ii) Hours of operation – that the hours of operation will impact on the amenity of the area.

Public Voice (PV) Committee

The proposal was considered at a PV Committee meeting held on 16 June 2020. Residents raised concerns with regards to parking; anti-social and alcohol related behaviour; and noise. Councillors also raised concerns regarding potential social impact of the proposal.

Following the PV Committee and subsequent consultation with CN, the proposal was amended to remove special events from the proposal. Any consent for special events that are considered to be outside the normal operation of the premise are to be the subject of a separate application. Additional information was also provided in relation to maximum patron numbers, and safe dispersal of patrons, and safety in order to reduce the potential for impacts to nearby residential properties and the adjacent hospital.

The information included:

- 1) Breakdown of maximum patron numbers:
 - i) Midweek numbers (Monday - Thursday) 200 patrons

- a) Tastings – 20
 - b) Tours – 20
 - c) Masterclasses – 20
 - d) Retail sales – 40
 - e) In-house retail dining - 100
- ii) Weekend numbers (Friday – Sunday) 300 patrons
- a) Tastings – 40
 - b) Tours – 40
 - c) Masterclasses – 30
 - d) Retail sales – 40
 - e) In-house retail dining - 150
- 2) Dispersal of patrons:
- i) Outdoor areas to close at 10:00pm.
 - ii) Patrons able to remain in indoor areas only after 10:00pm until close (maximum capacity of 147 patrons).
 - iii) All patrons to be advised of the closing time for outdoor and indoor areas verbally by a staff member at least 30 minutes prior to close.

The applicant provided a Social Impact comment in the Statement of Environmental Effects (SoEE) which outlines the positive social impacts of the proposal. While a Social Impact Assessment (SIA) has not been provided, further detail regarding the measures for the minimisation of potential negative social impacts were provided for in a revised Plan of Management (PoM). It is acknowledged that the applicant will also need to provide a Community Impact Assessment for the application for a liquor licence to Liquor and Gaming NSW.

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

4.0 INTEGRATED AND DESIGNATED DEVELOPMENT

Integrated Development

The proposal is 'integrated development' pursuant to section 4.46 of the EP&A Act. The site is within a proclaimed mines subsidence district and requires the concurrence of Subsidence Advisory NSW under section 22 of the *Coal Mine Subsidence Compensation Act 2017*. General terms of approval have been provided by Subsidence Advisory NSW.

Designated Development

The proposal has been considered against Part 1, Schedule 3 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation). The development does not have an intended capacity of more than 30 tonnes per day or 10,000 tonnes per year. While located within 500m of a residential zone, the development is not likely to significantly affect the amenity of the neighbourhood by reason of odour, traffic or waste. The development does not propose to release effluent or sludge in or within 100m of a natural waterbody or wetland, or in an area of high water table, highly permeable soils or acid sulphate, sodic or saline soils. The proposal is therefore not designated development.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

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

Information held by CN indicated the site has operated a mechanical repair depot in the past and more recently as a smash repairer and may be potentially contaminated. Records also held by CN stated that an underground fuel tank had been removed from the site, however no validation records could be found.

As an intensification of the site was proposed, consideration was given in relation to potential contamination impacts from vapours associated with the underground fuel tank. As such the applicant supplied CN with a Detailed Site Investigation where intrusive earthworks were carried out across the site. The assessment concluded that no underground fuel tank was located on site (in accordance with records held by CN), and demonstrated that following sampling, no samples were identified above the adopted land use criteria for the site and as such, the site is deemed suitable for

the intended use. The proposal is therefore considered to be 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 the NLEP 2012 that are primarily relevant to the proposed development.

Clause 2.1 - Land Use Zones

The subject property is included within the B5 Business Development zone under the provisions of the NLEP 2012, within which zone the proposed development is permissible with CN's consent.

The proposed development is consistent with the objectives of the B5 Business Development zone, which are:

- i) To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres.
- ii) To accommodate a wide range of employment generating uses and associated support facilities including light industrial, transport and storage activities.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of existing boundary fencing and internal walls within the existing warehouse. Conditions are recommended to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a height of buildings development standard of 10m. The submitted maximum height is 9m and complies with this requirement.

Clause 4.4 Floor Space Ratio (FSR)

Under the NLEP 2012 the site has an FSR development standard of 0.9:1. The submitted FSR is 0.80:1 and complies with this requirement.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulfate 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 considered to be acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

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

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

5.3 Any development control plan

Newcastle Development Control Plan - (NDCP 2012)

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

Industrial Development - Section 3.13

The aim of this section is to promote the efficient and economic use of the city's industrial resources by ensuring that development proposed is appropriate to industrial areas. The proposal for an 'Artisan Food and Drink Industry' is defined as 'light industry' under the NLEP 2012.

3.13.01 Site coverage

The proposal provides for landscaping to the rear, car parking, and access to loading areas in the front setback, and the existing front setback is to be retained.

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

3.13.02 Character and amenity

The proposed design, bulk and scale of the addition to the existing building is compatible with the surrounding built form and does not significantly impact on the amenity of any nearby development. Traffic impacts, hours of operation and impacts from noise and other emissions have been considered, and conditions of consent are recommended to mitigate any undue impact.

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

3.13.05 Loading, unloading and servicing areas

The site has an existing roller door access for loading and unloading, which can be accommodated within the allotment.

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

Flood Management - Section 4.01

The site is flood prone and is within the flood storage area for the Probable Maximum Flood (PMF) event. The proposed Finished Floor Levels and compensatory flood storage have been assessed on a merit basis, and are considered acceptable, subject to recommended conditions of consent.

Mine Subsidence - Section 4.03

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

Safety and Security - Section 4.04

The proposal is a light industry with a food and drink component that is to be a licensed premises and trade past 7pm. The applicant has provided a section on Crime Risk Assessment within the SoEE that addresses Crime Prevention Through Environmental Design (CPTED). NSW Police and CN's Licensed Premises Reference Group considered the proposal and raised no objection regarding safety and security. In addition, the PoM was reviewed by CN's Community Planner (Safety) and no objections were raised.

4.04.02 General principles

Having regard to the general principles contained within this section of the NDCP 2012 (exterior design and layout, surveillance, lighting and signage / wayfinding), the proposal provides a clearly identifiable entry that faces Merewether Street. Within the premise sightlines are provided from the outdoor area to Merewether Street, and the design provides for controlled pedestrian access. Appropriate lighting is to be installed within the parking and outdoor areas, and CCTV is to be installed to increase risk of detection and to further deter possible offenders.

Social Impact - Section 4.05

A SIA has not been provided however the proposal includes a Social Impact Comment (SIC) within the SoEE which details the envisaged economic opportunities of both construction jobs and jobs for local community members during normal business operations. The SIC details the proposal as a service, providing hospitality, and educational and recreational activities. The management of any potential negative impacts to the social aspects of the area have been addressed in the PoM.

Following the PV, the applicant provided a revised PoM which included procedures for the dispersal of patrons, anti-social / alcohol related behaviour, and perceived risk / safety. This includes:

Dispersal of patrons

- i) Staff to advise patrons of closing times for outdoor and indoor areas at least 30 minutes prior to close.
- ii) Staff trained to assist patrons in ordering a taxi, assisting with ride share apps, and having access to nearby public transport timetables.
- iii) Clear signage at exit stating "Please respect our neighbours and leave quietly and safely" plus information on taxis, ride share and public transport.
- iv) Assigned staff member at closing to monitor and ensure the quiet, safe and effective dispersal of patrons.
- v) Utilising effective lighting in accordance with "Design Guidelines for Licensed Venues" at the exit point to dispel any groups and individuals guiding them to action more effectively.
- vi) Patrons will be encouraged to remain inside the premises until their taxi / ride-share has arrived or a designated driver of a vehicle associated with the patrons leaving the premises.
- vii) The duty manager and staff will monitor any patrons not disbursing and making unreasonable noise or other disturbances and if observed doing so, will direct them to respect the amenity of residents in this immediate precinct.
- viii) The duty manager will notify the police that patrons have not complied with directions from a duty manager or staff. The duty manager and staff shall cooperate with security guards, NSW Police and CN officers when required.

Anti-social / alcohol related behaviour

- i) Procedures for dealing with disruptive and anti-social behaviour.
- ii) Education in the Responsible Service of Alcohol.

Security and Safety

- i) Installation of appropriate signage.
- ii) Complaints register to be kept on the premises.
- iii) Security cameras / CCTV to be installed.

- iv) Duty manager and staff responsible for the control of noise generated by patrons leaving the facility in accordance with the dispersal of patrons' procedures above.

The revised PoM was reviewed by CN's Social Planner and no objections were raised from a social planning perspective. In addition, the staggered closing time commencing at 10:00pm for the outdoor area and 11:00pm / 12:00pm for indoor area, allows for the dispersal of patrons to commence and be spread out over a greater period of time. It is acknowledged that the applicant will also be required to provide a Community Impact Assessment for the application for a liquor licence to Liquor and Gaming NSW. Social impact is considered satisfactorily met.

Soil Management - Section 5.01

Minimal ground works are required for foundation works for the proposed addition to the existing building. Conditions are recommended to require appropriate erosion control measures for the duration of the construction phase.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55.

Landscape Open Space and Visual Amenity - Section 7.02

The original proposal incorporated some planting to the front setback. The proposal was amended to facilitate increased car parking and improved vehicular access, and as a result minimal landscaping is currently proposed within the front setback. The proposal includes landscaping within the site to the eastern and southern boundaries of the outdoor area to facilitate deep soil and planting. CN's Development Engineers have recommended conditions requiring public domain works which include a new footpath on the service road frontage; reconstruction of a widened driveway; reinstatement of the turfed verge between the western roller door and the western property boundary; and installation of a new stormwater pipe connection to the street kerb.

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

Traffic, Parking and Access - Section 7.03

The proposal is considered to increase the likely demand for parking above previous requirements. The proposed development has been calculated on the NDCP 2012 industrial activity rate for the brewery / mezzanine area which requires one space/100m² of gross floor area; and the restaurant / café rate for the proposed seating which requires one space / three seats. In addition, a maximum patron capacity of 297 patrons is proposed. Assuming an average vehicle occupancy rate

of three people and that 80% patrons arrive by private vehicles potential parking demand of up to 80 vehicles may be generated.

The development is proposing seven car spaces (one of which is recommended to be removed) leaving a provision of six spaces (two visitor, one disabled, and three staff). Three motorbike parking spaces and 21 bike parking spaces are provided which are considered to exceed the NDCP 2012 requirement.

The application includes a detailed traffic assessment providing results of spot parking demand surveys conducted at varying days and times in the vicinity of the development. The surveys indicated ample vacant spaces during evenings and weekends to accommodate the required parking. The traffic assessment, and both the car parking provision and access has been assessed by CN's Development Officer (Traffic) and they are considered acceptable subject to recommended conditions of consent.

The proposed vehicular access also provides a suitable location for access to taxi and ride share vehicles for patrons.

Section 7.05 - Energy efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed development increases the total impervious area of the combined sites. The proposed stormwater management and storage for the development is considered satisfactory, subject to recommended conditions of consent.

Waste Management - Section 7.08

A Waste Management Plan has been provided with the application. The proposal provides for bulk storage bins, and kerbside waste collection using the service road by a private waste contractor. The location for kerbside bin pick-up is proposed directly opposite the customer entry at 18 Merewether Street utilising wheel out / wheel back type bins. This location offers the shortest travel path to wheel the bins onto the road reserve and would assist in minimising any potential pedestrian and cyclist conflicts. The on-site manager is to wheel the bins out to the kerb for collection and wheel bins back to the dedicated storage within the site when empty, and a recommended condition of consent will be included requiring garbage bins to be presented on the service road no earlier than the scheduled time of kerbside collection, and not to remain at kerbside after collection.

Based on the submitted information, the proposal is acceptable.

Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in the NDCP 2012.

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 EP&A Act and the EP&A Regulation. 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 relevant policy, including the NLEP 2012 and the NDCP 2012 considerations. In addition, the following impacts are considered relevant:

a) Traffic, Parking, and Access

The proposed development has been the subject of a Traffic Impact Assessment submitted with the application, providing results of spot parking demand surveys conducted at varying days and times in the vicinity of the development. The surveys indicated ample vacant spaces during evenings and weekends to accommodate the required parking. The traffic assessment, and both the car parking provision and access has been assessed by CN's Development Officer (Traffic) and they are considered acceptable subject to recommended conditions of consent. The proposed vehicular access also provides a suitable location for access to taxi and ride share vehicles for patrons.

Following the PV Committee meeting, and concerns raised regarding the proposed use, the applicant clarified the breakdown of the expected patron numbers within the premise (which is detailed in section 3.0). The potential demand for up to 80 parking spaces for a maximum capacity of up to 297 patrons remains unchanged. The peak demands for the artisan food and drink business are expected to be of an evening or weekend and the provided traffic assessment indicates an availability of ample vacant spaces during evenings and weekends to accommodate the peak parking demand generated from the development.

Public Domain

The following public domain works are considered to be required in connection with the development and will be subject to separate approval under section 138 of Roads Act.

Works	Reason
Construct 1.2m wide concrete pedestrian footpath along the frontage of 18 and 20 Merewether Street as per CN's Standard Drawing A1401	To enhance pedestrian amenity and safety due to increased pedestrian demand from the development. The new footpath will connect to proposed footpath on the service road frontage of 8 Lingard Street approved under DA2019/00062.
Fully reconstruct widened driveway (approximately 26m) as per CN's Standard Drawing A1300	To clearly define new 1.2m wide concrete footpath and pedestrian / cyclist priority.
Partially remove existing driveway crossover and reinstate kerb and turfed verge between the western roller door and western property boundary	To improve pedestrian amenity and provide continuity of turfed verge similar to the west of site.
Install new stormwater pipe connection to the street kerb	To support stormwater discharge from the site as per the stormwater management plan.

Parking Layout

The proposed parking arrangement at the front boundary is supported subject to the following requirements:

- i) The small car space for staff parking (No. 2) and corresponding driveway width parallel to the space is removed ie. between the western roller door and the western property boundary. Kerb and turfed verge are reinstated in this section along with new 1.2m wide concrete footpath.
- ii) The widened driveway (approximately 26m) is fully reconstructed to clearly define new 1.2m wide concrete footpath. The driveway crossover and concrete footpath in road reserve to be constructed in plain finish concrete as per CN's Standard Drawings A1300 and A1401 respectively.
- iii) A bollard is installed in the shared space of disabled parking in accordance with AS/NZS 2890.6-2009: Off-street parking for people with disabilities.
- iv) Wheel stops are installed at the 4 x angle parking spaces to prevent vehicle overrunning into the proposed addition.

- v) Convex safety mirrors are installed on both sides of the roller door within property boundary to improve visibility for drivers exiting service / delivery bay and staff parking.

Recommended conditions of consent have been included to address the above.

Site Servicing

The proposed site servicing is considered acceptable on a merit-based assessment due subject to recommended condition of consent.

b) Amenity (acoustics, odour, contamination)

Acoustics

The proposed development has been the subject of an Acoustic Assessment, submitted with the application. Having regard to potential amenity impacts arising from the proposed development, the proposal is considered satisfactory subject to recommended conditions of consent requiring:

- i) The outdoor area to be closed from 10:00pm every night.
- ii) Outdoor patron numbers limited (maximum 147).
- iii) Amplified levels to be set at no more than 86dB(A).
- iv) Within 6 months of operation, a noise emissions report confirming implementation of acoustic treatments be submitted to CN.
- v) Compliance with the Operational Noise Assessment, and PoM.

Odour

The proposed development has been the subject of a qualitative Air and Odour Assessment submitted with the application. The proposed development will not result significant odour impacts. As such, subject to recommended conditions of consent prohibiting the generation of offensive odour and, in the case that offensive odours should occur, an odour assessment should be undertaken, and appropriate controls implemented.

Contamination

Information held by CN indicated the site has operated a mechanical repair depot in the past and more recently as a smash repairer and may be potentially contaminated. Records also held by CN stated that an underground fuel tank had been removed from the site, however no validation records could be found. As an intensification of the site was proposed, consideration was given in relation to

potential contamination impacts from vapours associated with the underground fuel tank.

The proposed development has been the subject of a Detailed Site Investigation submitted with the application which concluded that no underground fuel tank was located on site; and that following sampling, no samples were identified above the adopted land use criteria for the site.

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

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

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

5.7 The suitability of the site for the development

The site is located within a B5 Business Development and is suitable for the proposed development. The site is an appropriate size to accommodate the proposed development while protecting the natural and built environment, and adequate services and waste facilities are available to the development.

The site it is located in an area which is serviced by nearby public transport and community facilities. At-grade access to the site will be available for pedestrians, from adjacent roads and public transport. Having regard for the location and the availability of public transport services, it is considered that the proposed use is satisfactory in respect of its accessibility.

The constraints of the site have been considered in the proposed development, which includes flooding, contamination, acid sulfate soils and heritage. The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development. The proposed development, subject to conditions, is considered to minimise the impact on the amenity of neighbouring properties.

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

The application was notified in accordance with CN's Community Consultation Plan. 40 submissions were received during the notification period, including two PV addresses.

The key issues raised within the submissions have been discussed previously in this report. The following table provides a summary of the issues raised and a response to those issues.

CITY OF NEWCASTLE

Issue	Comment
Land use definition	'Artisan food and drink industry' is a type of 'light industry' under the NLEP 2012.
Permissibility within the zone	B5 Business Development zones land; 'light industry' permissible with consent.
Contamination – previous contamination concern	CN's Environmental Service Unit (ESU) considered the history of the site and the Detailed Site Investigation provided and raised no objections to the proposal with regard to contamination.
Noise	The applicant has provided an Operational Noise Assessment which has been reviewed by CN, and consideration has been given to the noise impact upon current and future residential receivers. CN's ESU have recommended to condition the use of the outdoor area to 10:00pm each night, patron numbers limited to 150 outside, and amplified entertainment set at 86dB(A).
Anti-social behaviour – concern with potential increased anti-social behaviour associated with consumption of alcohol at the site	The management of any potential negative impacts to the social aspects of the area have been addressed in the PoM and includes education in the Responsible Service of Alcohol; procedures for dealing with disruptive and anti-social behaviour; installation of appropriate signage; and detailed information relating to the availability of access to taxis, ride-shares, and public transport. A complaints register is also proposed to be kept on the premises.
Air quality - adverse air quality impacts will arise as a result of the brewery processes	An Air and Odour Assessment has been provided and reviewed by CN.
Traffic and parking issues - impact to local traffic and parking conditions within the surrounding locality	The application has been supported by a Traffic Assessment which provides justification for the parking rates applied by the applicant.
Lack of public transport – concern over a lack of public transport in the locality	The site is serviced nearby by public transport, Union Street (to the north-east) and Mitchell Street (to the south) and are both serviced by buses and are within 135 to 200m walking distance from the subject site.
Number of licensed premises in the LGA – concern over existing number in the area	This concern is not a matter of consideration pursuant to section 4.15 of the EP&A Act.

Hours of operation – impact on the amenity of the area	The proposal includes a number of activities (tastings, tours, masterclasses, retail, and in-house dining), anticipated to occur at varying times. The dispersal of patrons is to be managed occur through the natural timeline of an evening’s consumer needs, reflective of the above breakdowns, in order to avoid having large numbers of patrons being removed at once. Conditions are recommended restricting the use of the outdoor area to 10:00pm each night, patron numbers limited to 150 outside.
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Public Voice (PV) Committee

The proposal was considered at the PV Committee meeting held on 16 June 2020. Residents raised concerns with regards to parking; anti-social and alcohol related behaviour; and noise. Councillors also raised concerns regarding potential social impact of the proposal.

Following the PV Committee meeting and subsequent consultation with CN staff, additional information was provided in relation to maximum patron numbers, and safe dispersal of patrons, in order to reduce the potential for impacts to nearby residential properties and the adjacent hospital.

The additional information was not re-notified as it was deemed to reduce impact to neighbouring residents. The additional information however was made publicly viewable on CN’s website.

The objectors' concerns are addressed below:

Issue	Comment
Parking	The application has been supported by a Traffic Assessment which provides justification for the parking rates applied by the applicant.
Anti-social (alcohol related) behaviour	The applicant has provided a PoM with details of procedures regarding Responsible Service of Alcohol; and disruptive and anti-social behaviour. Following the PV, the PoM was revised to include additional measures regarding maximum patron numbers, safe dispersal of patrons, anti-social / alcohol related behaviour, and perceived risk / safety. Conditions of consent will restrict the indoor and outdoor areas to 147 and 150 patrons respectively; and require the outdoor area to be closed by 10:00pm each night.
Noise	The applicant has provided an Operational Noise Assessment which has been reviewed by CN, and consideration has been given to the noise impact upon current and future residential receivers. CN’s ESU have recommended to condition the use of the outdoor area to

	10:00pm each night, patron numbers limited to 150 outside, and amplified entertainment set at 86dB(A).
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5.9 The Public Interest

This report has addressed the various concerns raised in the submissions received in response to the public notification and relevant referral procedures. The proposed development does not raise any other significant general public interest issues beyond matters already addressed in this report.

The application has demonstrated that there will be no significant adverse traffic impacts and it is considered that the development will not cause significant impacts for adjacent properties.

The proposed development provides for the orderly economic development of the site for purposes for which it is zoned and has minimised any potential negative social or economic impacts.

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

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

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

6.0 CONCLUSION

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

ATTACHMENTS

Item 29 Attachment A: Submitted Plans – 18-20 Merewether Street, Merewether

Item 29 Attachment B: Draft Schedule of Conditions and reasons for the determination and consideration of community views – 18-20 Merewether Street, Merewether

Item 29 Attachment C: Processing Chronology – 18-20 Merewether Street, Merewether

Item 29 Attachment D: General Terms of Approval – Subsidence Advisory NSW – 18-20 Merewether Street, Merewether

Item 29 Attachments A - D distributed under separate cover

ITEM-30 **DAC 18/08/20 - DA2019/01378 - 131 BEAUMONT STREET, HAMILTON - SHOP TOP HOUSING - CHANGE OF USE FROM SERVICED APARTMENT AND ALTERNATIONS AND ADDITIONS**

APPLICANT: **STEPHEN ROSE ARCHITECTS**
OWNER: **THE PROPRIETORS OF STRATA PLAN 62579**
REPORT BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

PURPOSE

An application (DA2019/01378) has been received seeking consent to change the use to an existing serviced apartment to a shop top housing (dwelling) and associated additions, including the construction of an outdoor living area at 131 Beaumont Street, Hamilton.

The submitted application was assigned to Damian Jaeger, Senior Development Officer, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the floor space ratio (FSR) development standard contained at clause 4.4 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.



**Subject Land: 131 Beaumont Street
Hamilton NSW 2303**

The additions proposed under the application are minor in nature comprising 85.8m² and result in a 3.1% increase to the developments FSR. Notwithstanding, the proposed addition results in the total FSR of the building exceeding the current FSR standard by 47.5%. The existing development was approved at a time where there was no applicable FSR standard relating to the site.

The proposed development also proposes a variation to the building height development standard contained at clause 4.3 of the NLEP 2012. The variation to height represents a 1% variation to the height standard (0.17m over the standard of 17m). The overall existing building height exceeds the maximum height standard

of 17m, having a maximum height of 19.51m, as the existing rooftop is tiered, and the proposed addition sits below the highest point of the existing roofline. The existing development was approved at a time where there was no applicable building height standard relating to the site.

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Public Participation Policy and no submissions have been received in response.

Issues

- 1) The proposed variation to the Height of Buildings development standard, under clause 4.3 of the NLEP 2012.
- 2) The proposed variation to the FSR development standard, under clause 4.4 of the NLEP 2012.
- 3) Overshadowing impacts.
- 4) Architectural and urban design aspects.
- 5) Impact on the heritage significance of the nearby items.

Conclusion

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

RECOMMENDATION

Vote by division

- A. That the DAC note the objection under clause 4.6 Exceptions to Development Standards of the 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 B2 Local Centre zone in which the development is proposed to be carried out; and
- B. That the DAC note the objection under clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.4 and the objectives for development within the B2 Local Centre zone in which the development is proposed to be carried out; and

- C That DA2019/01378 for change the use from a serviced apartment to shop top housing and associated additions including construction of outdoor living area at 131 Beaumont Street Hamilton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The subject property comprises SP 62579, 131 Beaumont Street, Hamilton and is a rectangular site 1050.2m² in area. The site is located on the south eastern corner of Beaumont and Tudor Streets, Hamilton. The subject site has a street frontage of 40.995 metres to Tudor Street and 25.665 metres to Beaumont Street.

The site consists of an existing five storey mixed use building with parking on the ground floor to the rear. The current ground floor consists of various retail premises including a cafe. The existing development consists of 38 serviced apartments and the current proposal is located on the eastern side of the fifth floor. The underlying site is relatively flat, and the existing building occupies the entire site.

The existing development on the surrounding sites consists of a mixture of retail, business and office premises along Beaumont and Tudor Streets. On the northern side of Tudor Street, at 94 Tudor Street, is an existing heritage listed church. The existing bank (Greater Bank) on the south west corner of Beaumont and Tudor Streets is also heritage listed. Towards the south of the subject site is also a mix of residential developments predominately being single dwellings.

2.0 BACKGROUND AND THE PROPOSAL

Background

The existing development (DA1998/0665) was approved on 9 July 1998 as a mixed-use development consisting of retail premises on the ground floor and 38 serviced apartments above. A strata subdivision of the serviced apartments was also approved under DA 2000/0636 in 2000.

Proposal

The applicant seeks to change the use of the existing serviced apartment to a shop top housing dwelling use and associated additions. The development comprises the following works:

- i) Change of use of Unit 402 from serviced apartment to shop-top housing, including the incorporation of the adjoining existing bedsit within this unit.
- ii) Addition of an outdoor living space (78m²) including deck area (20m²).
- iii) Minor internal alterations to accommodate the proposed outdoor living space, including:
 - a) installation of an additional new north-facing window; and
 - b) replacement of an existing brick wall; and
 - c) addition of a sliding door (providing access to the proposed outdoor living space); and
 - d) addition of new timber stairs (providing access to the proposed outdoor living space); and
 - e) enclosure of the existing outdoor deck, increasing the general internal living area by 7.8m²; and
 - f) incorporation of the bedsit into Unit 402, by cutting a new opening into the existing wall between existing bedroom 3 and the bedsit.

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

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

3.0 PUBLIC NOTIFICATION

The proposed development was publicly notified in accordance with CN's Public Participation Policy and no submissions have been received in response.

4.0 INTEGRATED DEVELOPMENT

The proposal is integrated development pursuant to section 4.46 of the EP&A Act, as approval is required from Subsidence Advisory NSW under the Coal Mine Subsidence Compensation Act 2017. The proposal was approved by Subsidence Advisory NSW without conditions.

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

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

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

The subject 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 considered to be acceptable having regard to this policy.

State Environmental Planning Policy (Coastal Management) 2018 - (Coastal Management SEPP)

The proposal is not within the coastal zone and the development is not affected by this SEPP.

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

A BASIX Certificate was lodged with the application demonstrating that the development is acceptable in terms of energy efficiency. A condition of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate.

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

It is advised that while SEPP 65 does apply to shop top housing, generally it only applies under the following provisions:

- “(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:*
 - (a) the development consists of any of the following:*
 - (i) the erection of a new building,*
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,*
 - (iii) the conversion of an existing building, and*
 - (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2*

- metres above ground level (existing) that provide for car parking),
and
(c) the building concerned contains at least 4 or more dwellings.”*

The current proposal does not involve the conversion of the existing building involving four or more dwellings and, as such, the provisions of the SEPP does not apply to this current application.

Notwithstanding, even if the provisions of the SEPP were to apply it is noted that the proposal relates to an existing historic development. The subject dwelling is a rooftop apartment and receives adequate sunlight and cross ventilation. With the addition of the outdoor living and deck area, sufficient open space has been provided. The proposal would be acceptable on merit having regard to the overarching principals of the SEPP.

State Environmental Planning Policy (Infrastructure) 2007 - (ISEPP)

The proposal is located with frontage to a classified road, Tudor Street as such clause 101 of the ISEPP applies. Vehicular access to the site is via Murray Street and remains unchanged. Further the proposed development does not result in increased parking requirements.

In addition, the ISEPP sets criteria for acceptable sound levels within dwellings adjacent roads and railway lines. Whilst the use of the site for shop top housing (dwelling) is considered to be a sensitive use, the applicant has submitted a Noise Impact Assessment which identifies that the subject site is suitable for the intended purpose. The Noise Impact Assessment demonstrates that the existing apartments on level 2 of the building satisfy the ISEPP requirements in regard to the road noise generated from Beaumont Street and, as such, the proposal on the top floor will also comply. No further works or conditions are required in this respect.

Accordingly, the development is satisfactory with respect to the provisions of the ISEPP.

Newcastle Local Environmental Plan 2012 - (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The subject property is located within the B2 Local Centre zone under the provisions of the NLEP 2012, within which zone the proposed development is permissible with CN's consent.

The proposed development is consistent with the objectives of the B2 Local Centre zone, which are:

- i) To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- ii) To encourage employment opportunities in accessible locations.
- iii) To maximise public transport patronage and encourage walking and cycling.
- iv) To provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.
- v) To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of the Newcastle City Centre.

The development results in the change of use of the existing serviced apartment as a shop top housing (dwelling) which is consistent with the fourth limb of the objectives. The proposal is consistent with the objectives of the B2 Local Centre zone.

Clause 2.6 - Subdivision—consent requirements

The proposal will require the consolidation of two strata lots so as to combine the previous two-bedroom service apartment strata lot and the strata lot which was the bedsit into the single three-bedroom shop top housing dwelling.

A condition has been included in the Draft Schedule of Conditions (refer to **Attachment B**) to address this issue.

Clause 2.7 - Demolition Requires Development Consent

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

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a height of buildings development standard of 17m. The submitted proposal has a maximum height of 17.17m which exceeds the standard. This represents a 1% variation to the height standard (0.17 metres above).

The existing rooftop of the building has a tiered form and the western portion is already higher than the current proposal being approximately 19.51m. The existing development was originally approved at a time when there was no height development standard applicable to the site under the earlier environmental planning instrument.

Notwithstanding that a portion of the building is already approved above the height standard, a further clause 4.6 variation request to this standard is required to address the current proposal. The applicant has submitted the required clause 4.6 variation request to this standard. Refer to discussion under clause 4.6 Exceptions to Development Standards below.

Clause 4.4 Floor Space Ratio (FSR)

Under the NLEP 2012 the site has an FSR development standard of 2:1. The proposal results in the total development having a maximum FSR of 2.95:1 and represents a 47.5% variation to the FSR standard. However, the majority of the FSR exceedance already exists as part of the historic approved development. The current proposal only increases the size of the overall development by 85.8m² changing the existing FSR from 2.86:1 to 2.95:1 (3.1% increase in FSR approximately). The 85.8m² consists of 78m² of outdoor living area and 7.8m² increase due to internal works.

It is noted that the original development was approved at a time when there was no FSR development standard applicable to the site under an environmental planning instrument. Notwithstanding, a clause 4.6 variation request to this standard is required to address the current proposal. Accordingly, the applicant has submitted the required clause 4.6 variation request to this standard. Refer to discussion under clause 4.6 Exceptions to Development Standards below.

Clause 4.6 - Exceptions to development standards

The applicant has submitted two clause 4.6 requests to separately address the variations to height and FSR development standards. Each of these variation requests are assessed below.

Planning Secretary concurrence clause 4.6(4)(b)

It is advised that the proposal requires approval of the DAC due to the proposed FSR variation being above the delegation provisions for clause 4.6 variations of 10% or less. This is also in accordance with the provisions of clause 4.6(4)(b) (as extracted below) and the Planning Secretary's assumed concurrence requirements under planning system circular PS2020-002.

“(4) Development consent must not be granted for development that contravenes a development standard unless —

(b) the concurrence of the Planning Secretary has been obtained.”

The Planning Secretary's concurrence is assumed based on planning system circular PS 2020-002, and contains the following restrictions:

“The Secretary's concurrence may not be assumed by a delegate of council if:

- *the development contravenes a numerical standard by greater than 10%; or*
- *the variation is to a non-numerical standard”*

Due to the FSR variation being greater than 10% (ie. 47.5%) the proposed development requires determination by the DAC.

Development Standard clause 4.6 Variation Request – clause 4.3 Building Height

The subject site has a height development standard of 17m. The proposal has a height of 17.17m, being 0.17m over the height standard (1% variation).

The existing building, due to its tiered form rooftop, is already over the height limit having a total height of approximately 19.51m toward the western side of the site (approximately 2.51% variation). Notwithstanding this existing exceedance of the height standard, further variations, even if a lesser amount are still required to make a clause 4.6 variation request.

Development standard is unreasonable or unnecessary in the circumstances of the case clause 4.6(3)(a)

The applicant’s clause 4.6 variation request submits that the height standard in this instance is unnecessary / unreasonable as the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The height development standard (clause 4.3 of the NLEP) is extracted below:

“4.3 Height of buildings

(1) The objectives of this clause are as follows —

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

In terms of the first limb of the objective (clause 4.3(1)(a)) the applicant makes the following submissions:

The height exceedance generated by the proposed additions does not significantly alter the scale of the development and its contribution to the desired built form of the locality.

The site is identified in both the Newcastle Development Control Plan (NDCP) and the Newcastle Local Planning Strategy (NLPS) as:

- *part of the Hamilton Renewal Corridor (Precinct 2 - Beaumont Street Intersection);*
- *part of 'Beaumont Street Hamilton'; and,*
- *being a 'Local Centre (Major)'.*

Precinct 2 in the Hamilton Renewal Corridor seeks 'buildings reinforcing the street edge towards the corner of Tudor and Beaumont Streets'. As one of the taller buildings within the area, the existing building provides a positive contribution to this desired built form. The proposed addition will not reduce this contribution and the overall scale of the development will not significantly change, given the proposed addition sits within the existing building envelope and is setback from the property boundary. Additionally, the Statement of Heritage Impact (SOHI) prepared for the proposed works states that "the height of the additional level has been restricted to the existing height of the fourth level. This will allow for conservation of the current streetscape presentation as the ridge line is unchanged (p.14)." This demonstrates that the proposed additions are capable of ensuring the positive contribution to built form is continued.

Within 'Beaumont Street Hamilton' (in the NDCP), the site is identified as a 'landmark approach', being a corner site along two of the main thoroughfares of Hamilton (Beaumont and Tudor Streets). As a corner building, the site is highly visible and acts as a landmark. This status will not be affected by the height exceedance, especially given the exceedance subject to this Variation Request is less than the overall height exceedance of the existing building.

Hamilton is identified as a 'Local Centre (Major)' within the NLPS centres hierarchy. Local Centres act as a shopping and business centre for the area, with commercial services (including retail) mixed with medium and higher density residential uses. The height exceedance will not alter the function of Hamilton as a Local Centre and will not reduce the role of the existing building as a provider of temporary accommodation and retail and commercial uses.

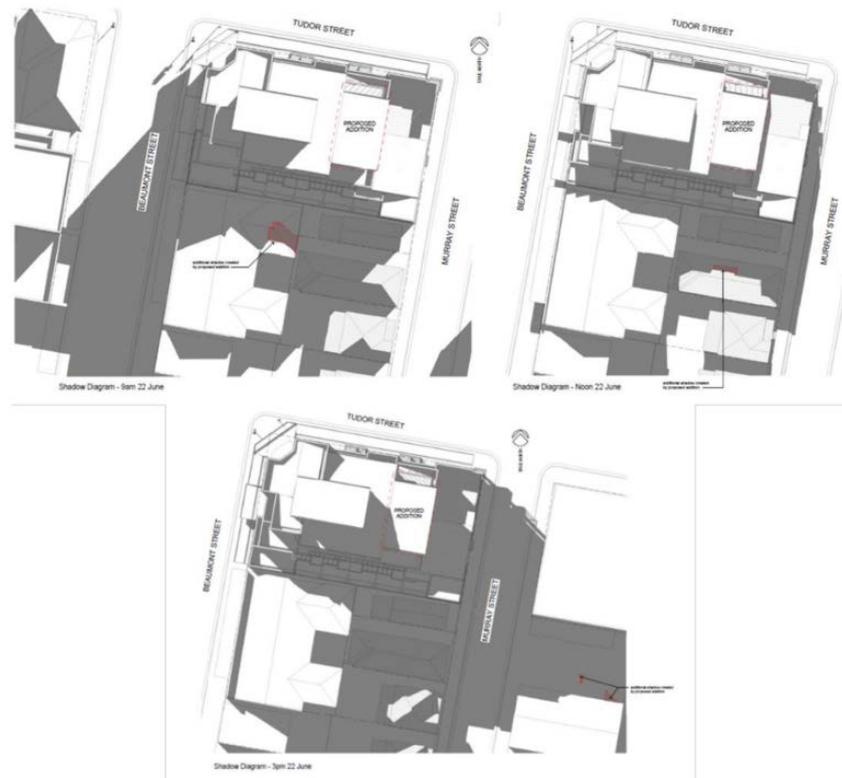
As such, the proposed additions are consistent with the established centres hierarchy and do not prevent the existing building from making a positive contribution to the desired built form of the Hamilton Renewal Corridor and Precinct 2 of 'Beaumont Street Hamilton'.

In terms of the second limb of the objective (clause 4.3(1)(b)) the applicant makes the following submissions:

"Shadow diagrams have been prepared for the proposal by Stephen Rose Architects and are included in the Architectural Plans submitted with this DA (Appendix 1, Drawings A09-A10). Figure 3 has been extracted from the Architectural Plans. This extracted figure demonstrates that shadows cast by the new addition will be confined to the roof area of nearby dwellings and an existing car parking space. No additional overshadowing of living areas, private open space or the public domain would occur as a result of the proposed addition.

Importantly, shadows cast by the non-compliant components of the new addition will be exceedingly negligible, including during the winter solstice. This

will ensure that reasonable daylight access to neighbouring developments and the public domain is maintained as a result of the height non-compliances.”



It is considered that the applicant has demonstrated that the proposed height variation is unnecessary in this instance. The architectural design of the proposal, size and scale of the variation, having regard to the curved roof being compatible with the design of the existing roof forms, is considered to meet the objectives of the height standard. The proposed design ensures that the development remains consistent with the established centres hierarchy and represents a positive contribution to the location and desired built form notwithstanding that the proposal represents a further exceedance of the height standard in this instance.

The submitted shadow diagrams (extract above) also more clearly shown at **Attachment A**, demonstrate that the proposed additions result in negligible additional shadowing impacts, with the majority of the additional shadowing falling onto the rooftops of surrounding dwellings. The proposal does not result in any additional overshadowing of public domain areas. The additional shadowing is acceptable and reasonable having regard to the provisions of the Apartment Design Guidelines and the Newcastle Development Control Plan 2012 (NDCP 2012) – section 3.03 Residential Development which would be the basis on which the impacts of shadowing would be typically considered.

There are sufficient environmental planning grounds to justify contravening the development standard clause 4.6(3)(b)

The extracts summarised below outline the applicant’s submission with this respect to this element of the clause 4.6 variation.

“The potential environmental impacts of the proposal include visual impact on the local area, impact on nearby heritage items and the Hamilton Business Centre Conservation Area, amenity for the future residents and overshadowing of neighbouring dwellings.”

“Visual impact on the local area

The proposed additions would have very little impact on the surrounding area as they extend and complement the existing stepped form of the building and continue the existing roof line. Additionally, the proposed additions are setback from the property boundary and key roads and are also lower than the highest point of the building (located at the top of the plant room). The exceedance is therefore minor, a mere 0.17m over the height limit compared to the 2.51m exceedance of the overall building.

The visual impact of the height exceedance is also reduced through the effective integration of the proposed additions with the existing built form. The curved roof responsible for the exceedance imitates the existing roof design. This reduces the visual prominence of the proposed addition as, to a viewer, it appears to be a single, consistent line of curved roof. It is therefore the integrative design of the proposed addition that is responsible for the exceedance. To alter this design would draw attention to the addition, generating a greater visual impact.

This visual impact is also reduced as the proposed exceedance is not visible from the immediate streetscape on Beaumont Street, given its north-eastern location within the building envelope. From Tudor Street the proposed addition will appear as a continuous line of curved roof and is not the highest point of the building. The height of the proposed addition has also been restricted to the existing height of the fourth-floor roof. The SOHI states that this allows for the conservation of the current streetscape presentation as the ridge line is unchanged (p.14).

In concert with the aforementioned impact on the streetscape, the location of the proposed addition on the third-floor roof also reduces the potential visual impact. For pedestrians along Murray, Tudor and Beaumont Streets, the existing streetscape presentation and active street frontage will remain unchanged. This vastly reduces the immediate visual impact of the proposed additions and retains existing pedestrian accesses and sightlines.

As such, the proposed additions and their subsequent height exceedance have considered potential visual impact and mitigated these impacts through design, integration with the existing building design and location. Thus, the height exceedance is considered to have a minimal impact on the local area.”

Impact on heritage items and Heritage Conservation Area

The proposal is located near two heritage items and with the Hamilton Business Centre Conservation Area (HCA) and it is submitted that the proposal “..*would not have an impact on the heritage values...*” on either of these aspects “...*as the design of the additions respects the existing building line and does not draw attention from the nearby heritage buildings.*”

“The proposed building was constructed circa 1990s and is identified as a non-contributory building. It does not reflect the typical heritage values associated with the HCA.”

The applicant submits that the development minimises its impacts by the proposed additions being sited “..*entirely within the existing building envelope..*” and the combination of the design, setbacks and light weight limiting the visual impact of the proposal in terms of streetscape, urban form and therefore has an acceptable impact on the nearby heritage items and HCA.

Amenity for future residents

The proposal involves the change of use from a serviced apartment to shop top housing. The proposed additions to the existing serviced apartment form part of the amenity improvements sought in changing the unit from temporary residential accommodation to permanent accommodation as shop top housing. The height variation arises from the roofed outdoor living area proposed which adds 78m² outdoor living space resulting in a total of 105.8m² aimed at providing a high level of amenity for the proposed three bedroom shop top housing apartment.

Overshadowing of neighbouring buildings

As discussed above, “..*the overshadowing resulting from the proposed additions is minimal and will not impact the amenity of the dwellings adjacent.*” “*Therefore, the proposed height exceedance does not increase the overshadowing of neighbouring buildings in such a way as to reduce their existing solar access and amenity.*”

It is considered that the applicant has demonstrated that there are sufficient environmental planning grounds to justify contravening the height development standard. The visual impacts and heritage impacts of the proposal are considered to be negligible. The external impacts of the proposal are considered to be acceptable particularly in terms of privacy and overshadowing.

Clause 4.6 Variation Request - Further Assessment (clause 4.6(4))

In the assessment of a clause 4.6 variation request a consent authority must be satisfied as follows:

“(4) Development consent must not be granted for development that contravenes a development standard unless —

- (a) *the consent authority is satisfied that —*
 - (i) *the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Planning Secretary has been obtained.”*

Clause 4.6(4)(a) is assessed below. As outlined earlier in this report concurrence from the Planning Secretary has been provided in accordance with planning system circular PS 2020-002.

Applicants Written Request (clause 4.6(4)(a)(i))

The applicants written clause 4.6 variation request has adequately addressed the matters required to be demonstrated by subclause 4.6(3).

Public Interest (clause 4.6(4)(a)(ii))

The public interest element has two components under the subclause being:

- i) Objectives of the development standard (ie. height); and
- ii) Objectives of the particular zone (ie. B2 Local Centre zone).

Objectives - Height

The applicant’s submissions within the clause 4.6 variation request, under clause 4.6(3)(a) above (ie. standard being unreasonable / unnecessary), is based on the objectives of the development standard being achieved notwithstanding the proposed development does not comply with the numerical criteria.

As discussed, it is considered that the applicant’s submission demonstrates that the proposed clause 4.6 variation meets the objectives of the development standard which has two limbs (eg. built form / established centres hierarchy and daylight access).

The proposed variation is relatively small in this instance compared to the development standard (ie. 0.17m variation to allowable height 17m), the proposed addition is considered to be well integrated within the resultant design and is considered to be acceptable in terms of the desired built form and the established centres hierarchy.

In addition, the proposal is considered to be in the public interest in terms of the access to daylight. The extent of additional overshadowing is negligible due to the combination of the curved proposed roof and relatively low profile. The submitted shadow diagrams demonstrate that the proposed height variation, and the addition

overall, generates minimal additional overshadowing and that the majority of the additional overshadowing falls onto the roof tops of the adjoining properties.

The proposal is considered to be in the public interest as the proposal is consistent with the objectives of the development standard.

Objectives – B2 Zone

The consent authority must also be satisfied that the proposed development and associated clause 4.6 variation is in the public interest as the proposal is consistent with the B2 Local Centre zone objectives as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.*
- *To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of the Newcastle City Centre.”*

In this respect it is considered that the proposal and its associated clause 4.6 variation is in the public interest as the development is consistent with the zone objectives for the reasons outlined below:

- i) The proposal does not impact negatively on the provision of retail, business, entertainment, and community uses in the local area. Conversely, the adaption of the service apartment use to shop top housing (dwelling) with associated improved outdoor living area, is a positive public interest outcome that supports the first limb of the zone objectives.
- ii) The proposal and its associated clause 4.6 variation does not impact negatively on employment opportunities and is considered to ultimately provide a permanent dwelling which would further support local employment opportunities by allowing residential accommodation in close proximity to places of employment.
- iii) The proposal does not negatively impact on this objective. Arguably, the use for shop top housing (dwelling) has greater potential for the proposal to maximise public transport patronage and encourage walking and cycling.
- iv) The development is considered to meet the 4th limb of the B2 zone objective as the proposal results in a permanent dwelling which will have positive affect on active retail and business frontages.

- v) The proposal is considered to be consistent with the 5th limb of the B2 zone objective as it will have no negative impact on the centres hierarchy and the viability of the Newcastle City Centre.

The development is acceptable having regard to the proposed height development standard clause 4.6 variation request.

Development Standard clause 4.6 Variation Request – clause 4.4 FSR

The site has an FSR development standard of 2:1 under the NLEP 2012. The submitted proposal has a maximum FSR of 2.95:1 and represents a 47.5% variation to the FSR standard. However, the majority of the FSR exceedance already existed as part of the existing built development. The current proposal only increases the size of the overall development by 85.8m² changing the existing FSR from 2.86:1 to 2.95:1 (3.1% increase in FSR approximately). The 85.8m² consists of 78m² of outdoor living area and 7.8m² increase due to internal works.

Development standard is unreasonable or unnecessary in the circumstances of the case clause 4.6(3)(a)

The applicant's clause 4.6 variation request submits that the FSR standard in this instance is unnecessary / unreasonable as the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The FSR development standard (clause 4.4 of the NLEP) is extracted below:

“4.4 Floor space ratio

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

In terms of the first limb of the objective (clause 4.3(1)(a)) the applicant makes the following submissions:

“The site is identified in both the Newcastle Development Control Plan (NDCP) and the Newcastle Local Planning Strategy (NLPS) as:

- part of the Hamilton Renewal Corridor (Precinct 2 - Beaumont Street Intersection); and,*

- *being a 'Local Centre (Major)'*.

The NDCP states that Precinct 2 has a target of 60 additional dwellings. The proposed development will provide two additional dwellings to the corridor, contributing to the realisation of this target. The proposed development therefore provides an appropriate density for the locality.

The NLPS identifies Hamilton as a 'Local Centre (Major)' in its commercial centres hierarchy. Local Centres act as a shopping and business centre for the area, with commercial services (including retail) mixed with medium and higher density residential uses. The existing building is currently a mixed-use building, featuring commercial and retail uses on the ground floor, with serviced apartments above. This use supports the Hamilton Local Centre as it provides both shopping opportunities and medium-density residential along two of the main thoroughfares of Hamilton (Tudor and Beaumont Streets). Consistent with this centre classification, the proposed development will provide well-located additional housing density in the centre and will not compromise the existing mixed-use configuration. The proposed dwelling will likely continue to rely on the local centre for shopping and entertainment, reinforcing Hamilton as a Local Centre. A minor (4%) increase in the FSR of the building would not reduce this relationship, the existing role of the building within the locality and would not increase population density; the proposed dwelling does not seek to increase the number of bedrooms and therefore potential residents. Instead, the proposed additions would provide improved residential amenity for the proposed fourth-floor dwelling.

As such, the proposed works do not impede the provision of appropriate density and reflect the existing place of Hamilton in the local centres hierarchy outlined in the NLPS. The proposed works are therefore consistent with clause objective (a)."

In terms of the second limb of the objective (clause 4.3(1)(b)) the applicant makes the following submissions:

"The bulk and scale of the existing building make a positive contribution towards the desired built form outlined in the centres hierarchy. The site acts a strong corner building at the Beaumont and Tudor Streets intersection and reflects the post-earthquake renewal of Beaumont Street. The Statement of Heritage Impact (SOHI) prepared for the site states that the proposed works would not have a detrimental impact upon the symmetry or massing of the host building (pg. 14), demonstrating that the building would continue to have a positive contribution to the desired built form following the proposed works. The SOHI also states that the proposed works will not impede upon the visual presentation of the building to both Tudor and Beaumont Streets (pg. 14).

This is largely due to the design of the proposed additions, which minimises visual impact by utilising setbacks from both the property boundary and existing building line, and through the continuation of the existing building's materials and colour scheme.

Therefore, the variation will not significantly alter the building's bulk, scale and positive contribution towards the desired built form for the centre. The development is thus consistent with objective (b)."

The applicant has demonstrated that the proposed FSR variation is unnecessary and unreasonable in this instance as the objectives of the standard has been met notwithstanding non-compliance with the numerical standard. The additional FSR proposed does not have any real impact on the "established centres hierarchy" considering the relative small scale of the additional floorspace proposed in context of the existing building. The proposed change of use, and resultant floorspace, is considered to be consistent with the desired built form.

There are sufficient environmental planning grounds to justify contravening the development standard clause 4.6(3)(b)

The extracts and summaries below outline the applicant's submission with this respect to this element of the clause 4.6 variation.

"Visual Amenity from Tudor Street

The existing building is a prominent feature in the local area, due to its location on the corner of Beaumont and Tudor Streets and its relative height within the locality. However, the proposed additions would not reduce the visual amenity of the building or impact on the surrounding streetscape. This has been achieved through careful design considerations and the use of appropriate materials and colours.

The design of the proposed addition has ensured it is located within the property boundary, with a northern boundary setback of approximately 2.8m, an eastern boundary setback of approximately 9.3m and a southern boundary setback of approximately 8.7m. Cumulatively, these setbacks reduce the visual impact of the building from street-level. In addition to the property boundary setbacks, the design also employs building envelope setbacks, with the proposed addition substantially set back behind the existing building line. This also minimises visual impact from the street level.

The materiality and colour scheme chosen for the proposed additions also contributes to a reduced visual impact. The material choices for the proposed works include:

- brick;*
- powdercoat aluminium windows;*
- lightweight fire-rated walls;*
- a glass and aluminium balustrade; and,*
- a curved metal roof.*

Each of these materials has been chosen as a reflection of the existing building design and would match the existing materiality and style of the building.

Similarly, the colour scheme for the proposed additions would reflect the existing building colour palette.

The proposed addition therefore promote[s] good design and amenity of the built environment, as per objective (g) of the Environmental Planning and Assessment Act 1979 (EP&A Act), as they seek to integrate the proposed additions into the existing building form and maintain the existing visual amenity associated with a key corner site in the locality.

Combined, the careful design, chosen materials and colour scheme of the proposed addition effectively minimise the visual impact on Tudor Street and will ensure the existing visual amenity is maintained. Thus, the FSR exceedance which occurs as a result of the proposed addition has minimal impacts on visual amenity.

Impact on heritage items and Heritage Conservation Area

The site is located within the Hamilton Business Centre Conservation Area and is within the vicinity of two listed heritage items. The proposed additions would not have an impact on the heritage values associated with both the Heritage Conservation Area (HCA) and the nearby heritage items, as the design of the additions respects the existing building line and does not draw attention from the nearby heritage buildings.

The Hamilton Business Centre Conservation Area (hereafter referred to as the HCA) has strong social and economic heritage values, with its key period of significance occurring from circa 1870 to 1940. The proposed building was constructed circa 1990s and is identified as a non-contributory building. It does not reflect the typical heritage values associated with the HCA.

The nearby heritage items are identified as I148 (Scots Kirk Presbyterian Church) and I149 (Former Bank of New South Wales) (see Figure 2).

Sitting entirely within the existing building envelope, the following design measures have been utilised to reduce the impact of the proposed addition:

- *setback of 2.8m from Tudor Street property boundary, reducing impact on other buildings and pedestrian sightlines;*
- *setback of 9.3m from the Murray Street property boundary, reducing impact on adjoining buildings;*
- *location on western side of the site, resulting in no visual interaction with Beaumont Street; and,*
- *lightweight, glass-based design which integrates with the existing design of the building to minimise visual impact from street level and nearby heritage items.*

The result of these design measures is an outdoor living space which integrates with the existing building form and therefore does not detract from the heritage values of the nearby heritage items and the overall HCA.

It is noted that the locations of the nearby heritage items are somewhat removed from the site, reducing the overall potential impact of the proposed addition (see Figure 2)."



Figure 2: Map of the HCA (in red hatching) and nearby heritage items (in gold). The site is outlined in yellow with the relevant heritage items identified. Base source: Planning Portal.

"The SOHI identifies that views to and from the former Bank NSW is not impacted, and the views to and from the Scots Kirk Presbyterian Church will not be detrimentally impacted (p.15). This demonstrates that the design measures effectively minimise any impacts on the nearby heritage items. Additionally, the proposed works were assessed as being generally sympathetic with The Hamilton Business Centre Conservation Area (p.16), demonstrating that the design measures will not detrimentally impact the HCA.

The proposed addition therefore promotes the sustainable management of built and cultural heritage, as per objective (f) of the EP&A Act.

As such, the FSR exceedance which results from the provision of the proposed addition has a minimal impact on the HCA and nearby heritage items. The proposed addition has implemented design measures which sufficiently address any potential impacts on the Hamilton Business Centre Conservation Area and the two nearby heritage items."

Amenity for future residents

"The Development Application for which this clause 4.6 was prepared involves both the proposed addition and a change of use from 'serviced apartment' to 'shop top housing'. This means a change of use from tourist and visitor accommodation (temporary accommodation) to residential accommodation (permanent accommodation). The needs of the future residents have been considered when designing the proposed addition, as well as when seeking the change of use.

The proposed addition seeks to ensure the provision of appropriate amenity for the future residents of the resulting residential apartment. It would provide 78m² of north-east facing outdoor living space, which can be used for a myriad

of activities and which would provide good solar access to the space. In addition to this space, a 20m² deck is proposed, as are internal alterations (7.8m²) which will provide access to the proposed addition. Combined, these three areas will provide 105.8m² of additional private space for future residents, increasing the amenity associated with the apartment.

It is noted that the proposed future residential apartment is exceedingly well-located for a dwelling, with easy access to transport services, a variety of shops and services and other nearby centres. These factors, combined with the proposed addition, create a high-amenity environment in which to create residential dwellings.

Providing this form of amenity is consistent with objective (g) of the EP&A Act, which seeks to promote good design and amenity of the built environment.

As such, the proposed addition and the FSR exceedance resulting from it would contribute to the amenity of the proposed dwelling and would assist in creating a quality residential apartment in Hamilton.”

The applicant has demonstrated that there are sufficient environmental planning grounds to justify contravening the FSR development standard. The visual impacts and heritage impacts of the proposal are acceptable and the proposed design integrates well into the existing development and the streetscape. The increased living areas for the proposal are a positive outcome in terms of the proposed shop top housing dwelling although this is not as a significant basis to support the variation as the previous elements. The increased FSR is only 85.8m² with the further 20m² being an external deck area that does not constitute FSR. The proposed FSR variation is acceptable and there are sufficient environmental planning grounds to justify contravening the FSR development standard.

Clause 4.6 Variation Request - Further Assessment (clause 4.6(4))

In the assessment of a clause 4.6 variation request a consent authority must be satisfied as follows:

- “(4) Development consent must not be granted for development that contravenes a development standard unless —*
- (a) the consent authority is satisfied that —*
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3); and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out; and*
 - (b) the concurrence of the Planning Secretary has been obtained.”*

Clause 4.6(4)(a) is assessed below. As outlined earlier in this report concurrence from the Planning Secretary has been provided in accordance with planning system circular PS 2020-002.

Applicants Written Request (clause 4.6(4)(a)(i))

The applicant's written clause 4.6 variation request has adequately addressed the matters required to be demonstrated by subclause 4.6(3).

Public Interest (clause 4.6(4)(a)(ii))

The public interest element has two components under the subclause being:

- i) Objectives of the development standard (ie. FSR); and
- ii) Objectives of the particular zone (ie. B2 Local Centre zone).

Objectives – FSR

The applicant's clause 4.6 variation request, under clause 4.6(3)(a) above (ie. standard being unreasonable / unnecessary), is based on the objectives of the development standard being achieved notwithstanding the proposed development does not comply with the numerical criteria.

As discussed earlier in the report, it is considered that the applicant's submission demonstrates that the proposed clause 4.6 variation meets the objectives of the development standard which has two limbs (eg. Density / established centres hierarchy and desired built form / established centres hierarchy).

The proposed variation is the result of the relatively small additional FSR that is proposed (85.8m²) to the existing building which is already in excess of the allowable FSR. The existing building being approved at a time when no FSR development standard applied under the relevant environmental planning instrument (NLEP 1987). The proposal is acceptable in terms of the proposed density and desired built form in context of the established centres hierarchy.

The proposed development, and associated variation, are considered to be in the public interest being consistent with the objectives of the development standard.

Objectives – B2 Zone

The consent authority must also be satisfied that the proposed development and associated cl.4.6 variation is in the public interest as the proposal is consistent with the B2 Local Centre zone objectives as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

- *To provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.*
- *To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of the Newcastle City Centre.”*

The proposal and its associated clause 4.6 variation are in the public interest as the development is consistent with the zone objectives as detailed below:

- i) The proposal does not impact negatively on the provision of retail, business, entertainment and community uses in the local area. Conversely, the adaptation of the service apartment use to shop top housing (dwelling) and associated improved outdoor living area, is a positive public interest outcome that supports the first limb of the zone objectives.
- ii) The proposal does not impact negatively on employment opportunities and is considered to ultimately provide a permanent dwelling which would further support local employment opportunities by allowing residential accommodation near places of employment.
- iii) The proposal does not negatively impact on this objective. It is considered that there is a somewhat greater potential for the proposal to maximise public transport patronage and encourage walking and cycling.
- iv) The development is considered to meet the 4th limb of the B2 zone objective as the proposal results in a permanent dwelling which will have positive affect on active retail and business frontages.
- v) The proposal is considered to be consistent with the 5th limb of the B2 zone objective as it will have no negative impact on the centres hierarchy and the viability of the Newcastle City Centre.

The development is acceptable having regard to the proposed FSR development standard clause 4.6 variation request.

Clause 5.10 - Heritage Conservation

The site is located within the Hamilton Business Centre Heritage Conservation Area (HCA). This is listed as Conservation Area clause 2 in schedule 5 of the NLEP 2012. The site is not listed as a heritage item, is not identified as an archaeological site and is not identified being located in proximity to items of Aboriginal Heritage. However, the subject site is located in proximity to two heritage items:

1. Scots Kirk Presbyterian Church – 94 Tudor Street, Hamilton; and
2. Former Bank of NSW – 103 Tudor Street, Hamilton.

A Statement of Heritage Impact (SoHI) prepared by Heritas was submitted with the development application. The proposal and SoHI has been assessed by the heritage officer and is acceptable having regard to the Hamilton Business Centre HCA and the two nearby heritage items at 94 and 103 Tudor Streets.

The application satisfies clause 5.10 of the NLEP 2012, as the proposed development would not have any adverse impact on the character of the Hamilton Business Centre HCA and surrounding heritage items.

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District. Approval is required from Subsidence Advisory NSW under the *Coal Mine Subsidence Compensation Act 2017*. The proposal was approved by Subsidence Advisory NSW without conditions.

Aboriginal Heritage - section 5.04, Heritage Items - section 5.05 and Heritage Conservation Areas - section 5.07

This issue is discussed under clause 5.10 Heritage of the 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'.

Part 6.00 Locality Specific Provisions

Hamilton Renewal Corridor - section 6.06

The subject site is within precinct 2 – retail / commercial focus under section 6.06. The proposal is consistent with the character statement for precinct 2 targeting 60 additional dwellings. It is considered that the proposed additions are acceptable in terms of height and FSR as discussed under clause 4.6 above.

Section 6.06 of the NDCP 2012 requires that the following provisions of section 3.03 – Residential Development be addressed for renewal corridor developments:

- i) Landscaped area
- ii) Siting the development
- iii) Amenity
- iv) Configuration
- v) Environment.

Landscaped area

Under section 3.03 landscaped area percentages are set by zoning (eg. R2, B4) and no minimum landscape area percentage applies within the B2 zone. It is noted that footprint of the existing building already covers the entire site and there are no other landscape areas, such as on a podium, within the site.

Siting the development

The proposed additions utilise existing space at the roof top of the development and otherwise does not affect the overall siting of the development. The proposed additions are acceptable in respect to siting.

Amenity

The proposed additions will maintain at least two hours of sunlight between 9am to 3pm to the shop top housing dwelling and its associated balcony area.

The proposal will maintain natural ventilation and is considered to meet the requirements of this section.

The size of the proposed shop top housing (dwelling) with the additions is approximately 177m² and meets the required area of 115m² for three-bedroom dwellings. Similarly, the floor to ceiling height is approximately 3.5m and meets the minimum requirement of 2.7m.

The proposed shop top housing (dwelling) has at least 43m² balconies which are north facing and will receive direct sunlight plus another 20m² of balconies on the southern side of the building. The roofed outdoor living area provides a further 78.0m² of open space for the use of the residents.

The proposal is for a change of use from a serviced apartment to a shop top housing dwelling and is acceptable in terms of storage considering the combined areas within the dwelling and the available space within the proposed outdoor living area.

The relative position of the proposed works and the associated walls is such that the development will not result in any increases in privacy impacts on neighbouring properties. The proposed southern and eastern windows of the outdoor living area are setback from the boundaries such that the existing building form below largely blocks any angle of view into neighbouring properties, view are of roof tops of

neighbouring properties and / or is otherwise separated by as sufficient distance to be considered acceptable in terms of privacy.

In terms of acoustic privacy, the proposal is acceptable. The proposed outdoor living area has windows on the southern and eastern elevations which are at a height and relative position above neighbouring development, and the floors below, that they do not pose any unreasonable acoustic impacts. The northern elevation consists of doors which open onto a 20m² balcony and is considered acceptable as it is comparable to the already existing balcony arrangement in terms of acoustic impacts.

Configuration

The existing apartment is accessible via a lift and is otherwise considered to be acceptable in terms of 'liveable housing design guidelines'.

The existing building covers the entire site and does not have any communal area or open space. The current proposal does not have impacts in this respect and is acceptable.

The roof design and proposed additions are well integrated within the overall existing building form. The proposed additions will have an acceptable visual appearance and articulation having regard to the design and appearance of the existing building.

Environment

The application includes a BASIX certificate confirming that the proposal is acceptable in terms of the proposed additions. The proposed change of use from a serviced apartment to shop top housing (dwelling) is acceptable and does not have unreasonable impacts on energy efficiency, water management or waste management.

Setbacks / Upper Setbacks

The proposed additions do not comply with the upper setback requirements of section 6.06. The infill area towards Beaumont Street is a very small exceedance of approximately 200mm (front setback).

The side and rear setbacks are based on a variable upper level setback. The proposed exceedance varies between 4.2m - 6.45m horizontally.

Notwithstanding these exceedances, the design of the proposal is considered to be acceptable. The existing building was approved before any of the Renewal Corridor sections were adopted or envisioned under the NDCP 2012. In this respect the existing building on all elevations already exceeds the upper setbacks under section 6.06. It is further advised that the exceedances of the existing building are more significant than those which are currently proposed on the top floor with the existing building being approximately 2 ½ storeys (approximately 9.5m vertically and 8.5m horizontally) outside the envelope.

The proposed additions do not materially result in any unreasonable impacts in terms of neighbouring sites, architectural appearance, streetscape or heritage. The proposed design is well integrated into the architecture of the existing building. The impacts are minimised and the integration maximised via the proposed design replicating the low scale curved roof forms of the existing building plus mirroring ‘step-down’ tiering of existing roof form.

The proposal is considered to be acceptable in terms of upper level setbacks under the provisions of section 6.06 of the NDCP 2012.

Beaumont Street Hamilton - Section 6.10

The existing building was approved prior to the current provisions of section 6.10. Notwithstanding this, it is considered that the height, architectural design and urban form the existing building and proposed addition is well designed and consistent with the commercial character of Beaumont Street area. The original building was approved with an intentionally strong corner element towards the intersection of Beaumont Street and Tudor Street. The proposed rooftop additions are considered to be well designed and integrate with the existing building such that the visual appearance outcomes are acceptable.

The height variations are addressed under clause 4.6 above within the report. It is further advised that the proposal does not meet the envelopes and setbacks under section 6.03 (and section 6.03 prevails over section 6.10) as discussed within the report above and is acceptable in this instance.

The proposed additions have no negative impact on view corridors.

Traffic, Parking and Access - Section 7.03

The proposed change of use to a three-bedroom shop top housing (dwelling) requires 1.4 parking spaces under the NDCP 2012 and complies providing two spaces.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The alterations and additions proposed as part of this development do not change the existing amount of hardstand areas existing on the site. The proposed roofed outdoor living area is located over an area which is already a roof top area and, as such, the amount of overall hardstand areas remains the same. The proposed additions will direct the rainwater from the proposed rooftop, via gutters, to the existing onsite drainage system. Accordingly, the proposal is considered acceptable in relation to water management.

Waste Management - Section 7.08

The proposed change of use from a serviced apartment to a three-bedroom shop top housing dwelling will result in no changes to the existing waste management onsite.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days and no submissions were received.

Development Contributions

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

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions (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 EP&A Act and the *Environmental Planning and Assessment Regulation 2000*. In addition, a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for the minor amount of any demolition works. No Coastal Management Plan applies to the site or the proposed development.

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

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

Overshadowing, Privacy and View Loss

The proposed development will not have any undue adverse impacts in terms of overshadowing, privacy, or view loss. The potential overshadowing and privacy impacts are considered to be reasonable and relatively minor as discussed under clause 4.6 and section 6.03 above.

It is considered that the proposal has no effect in terms of view loss as there are no real views angles across this property. The proposal will result in a very minimal change to the outlook of surrounding properties, being a small decrease in visible open sky, which is considered to be acceptable in context of the proposed design, zoning and location of the development.

5.7 The suitability of the site for the development

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

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

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

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

5.9 The public interest

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

6.0 CONCLUSION

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

ATTACHMENTS

Item 30 Attachment A: Plans and elevations of proposed development – 131 Beaumont Street, Hamilton

Item 30 Attachment B: Draft Schedule of Conditions and reasons for the determination - 131 Beaumont Street, Hamilton

Item 30 Attachment C: Processing Chronology - 131 Beaumont Street, Hamilton

Item 30 Attachments A - C distributed under separate cover

**ITEM-31 DAC 18/08/20 - DA2020/00181 - 35 WARABROOK BLVD,
WARABROOK AND 6 HAKEA PLACE, WARABROOK - PET
CREMATORIUM - ALTERATIONS TO THE EXISTING
BUILDING, INTERNAL FIT OUT AND SIGNAGE**

**APPLICANT: PET ANGEL FUNERALS PTY LTD
OWNER: COMPASSION AUSTRALIA
REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

PART I

PURPOSE

A Development Application (DA2020/00181) has been received seeking consent for the change of use to a pet crematorium, including alterations to the existing building, internal fit out and signage.

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

The application is referred to the Development Applications Committee (DAC) for determination, due to the application being called in by Councillor Church and Councillor Rufo and the number of submissions.

The application was publicly notified in accordance with City of Newcastle's (CN) Community Participation Policy (CPP), with 133 submissions being received.

The concerns raised by the objectors in respect of the proposed development include compliance with legislation and policy, proximity to sensitive land-uses, health and environmental impacts, noise, odour, property devaluation, traffic and parking.

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.



Subject Land: 35 Warabrook Boulevard, Warabrook and 6 Hakea Place, Warabrook NSW 2304

The proposal was considered at the Public Voice (PV) Committee meeting held on 21 July 2020. The issues raised included site location, health and air quality impacts, character and amenity impacts and public interest.

Issues

- 1) Matters raised in the submissions including compliance with legislation and policy, proximity to sensitive land-uses, health and environmental impacts, noise, odour, property devaluation, 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* (EP&A Act) and is acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

Vote by division

- A. That DA2020/00181 for the change of use to a pet crematorium – including alterations to the existing building, internal fit out and signage at 35 Warabrook Boulevard and 6 Hakea Place, Warabrook 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 *EP&A Act 1979* requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

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

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

PART II

1.0 THE SUBJECT SITE

The site consists of two allotments known as 35 Warabrook Boulevard and 6 Hakea Place, Warabrook and have legal descriptions of Lot 1 in Deposited Plan 854010 and Lot 59 in Deposited Plan 881025, respectively. The subject site is rectangular in shape and has a total site area of 4,230m². The site is a corner allotment presenting a frontage of 56.45m wide to Warabrook Boulevard to the south-west and a frontage of 89.56m wide to Hakea Place to the north-west. The subject site is identified on CN's Land Contamination Register.

Existing on the site is a detached metal-clad office and workshop with flat roof to the western-corner of the site. The remaining site is covered by concrete hardstand with a shipping container and old fuel storage tank to the centre of the site and a metal demountable building to the rear. The subject site adjoins low density residential dwellings to the north, north-east and north-west, and light industrial development to the east and south-east. The site is the last light industrial zoned allotment travelling north-west along Warabrook Boulevard before entering Warabrook Lakes Estate – a low-density residential area.

The subject site is relatively flat, with a small portion of land along the north-western boundary inclining and then falling towards the Hakea Place frontage. The site contains some medium sized trees and other vegetation to both Warabrook Boulevard and Hakea Place frontages.

2.0 BACKGROUND

A development application (DA2020/00259) for the consolidation and two into two lot subdivision of the subject site is currently under assessment at the time of writing this report. The assessment of the subdivision application has no implications on this current development application.

3.0 THE PROPOSAL

The applicant seeks consent for the change of use to a pet crematorium, including alterations to the existing building, internal fit out and signage.

The proposed works include:

- i) Internal alterations and fit out of existing building for use as a pet crematorium, including alterations to the internal floor plan to accommodate new reception area, new office and the installation of a cremator, associated shelving and benches and a freestanding cool room.
- ii) New chimney stack projecting approximately 2m above the existing roof.
- iii) Removal of rear awning and shipping container.

- iv) Conversion of one garage roller door on the south-east elevation of the building to a solid external wall and the installation of external decorative cladding.
- v) New flush wall business identification sign to the south-west elevation of the building.

The proposed use of the site as a pet crematorium includes:

- i) The operation of the facility to cremate approximately 30-40 small pets (of an average weight of 15kg) per day. The animals will be collected from clinics or homes by a small transport van and transported to the facility – no personal deliveries will be made to the site. The proposed cremator will have three chambers to allow the cremation of three pets at a time – the primary chamber burns at approximately 1000°C, incinerating all biological matter, including virus and bacterial microbes preventing the spread of animal disease. The remains of the animal are then placed into an urn, no biological waste is left at the site.
- ii) Prior to incineration the animals will be stored in a cool room for a maximum of 48 hours. The animals remains, post incineration, will either be delivered to owners or collected within 5 days after cremation.
- iii) Deliveries of urns and office equipment will occur on a weekly basis.
- iv) Other waste not associated with deceased animals will be stored at the rear of the facility and removed weekly by a private contractor.
- v) The proposed operating hours are as follows:
 - a) Cremator: 7am to 5pm, Monday to Friday
 - b) Office: 7am to 5pm, Monday to Friday and 8am to 2pm, Saturday
 - c) The whole facility will be closed on Sundays and Public Holidays
- vi) The facility will employ between three and six staff members.

Amended plans were received on 1 June 2020 in response to CN's concern regarding the relocation of the existing driveway and the proximity of the new driveway to the proposed carparking arrangements. The amended plans included the following changes:

- i) Retention of the existing driveway servicing the site from Warabrook Boulevard.

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

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

4.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days in accordance with CN's Community Participation Plan. During the notification period 133 submissions were received. The amended plans retaining the existing driveway, were not renotified.

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

a) Statutory and Policy Issues

- i) Zoning objectives – does not meet objectives of the IN2 Light Industrial zone and conflicts with the adjoining R2 Low Density Residential zone.
- ii) Vision and goals of Newcastle – conflicts with the strategies and outcomes for the Warabrook business precinct and the wider future strategic goals for Newcastle as outlined in the Greater Newcastle Metropolitan Plan 2036 (GNMP 2036).
- iii) State legislation – insufficient against Schedule 1 of *Protection of the Environment Operations Act 1997* (NSW), unreasonable use of the site in respect to *Public Health Act 2010* (NSW), *Work Health and Safety Act 2011* (NSW), *Enclosed Lands Protection Act 1901* (NSW).
- iv) Best practice and industry regulation – inadequate to assess and monitor pet crematorium in lieu of Federal or State regulating body.
- v) Categorisation of Development Application – assessment of application as commercial use as opposed to industrial.
- vi) Notification – inadequate duration and scope of notification of Development Application.

b) Site and Contextual Issues

- i) Location of subject site – proximity of subject site to sensitive land uses including residential, aged-care, childcare, health facilities, recreation, places of worship, retail and RAMSAR wetlands.
- ii) Nature of use – unpleasant use; not in keeping with surrounding residential and light industrial use and activities. Oversupply of existing pet crematoriums in the greater Hunter region.
- iii) Inadequate separation – insufficient fencing and buffer zone between proposed activity on site and adjoining properties. Precedence in Australia for pet crematoriums being located outside densely residential populated areas.

c) Operational Issues

- i) Emergency management – no operational plan if the premises faces blackout or machinery failure or if vehicles experience traffic incident whilst transporting animals.
- ii) Dumping of animals – no preventative measures to stop members of the public from dumping animals on the streets adjoining the subject site.
- iii) Unquantifiable risks – unknown inputs into the cremator including animal toys, collars, body bags.

d) Amenity, Health and Environmental Issues

- i) Air quality – release of toxic emissions and spread of animal disease, reduction of air quality, visible emissions and increase in smoke opacity. Deposit of pollutants on sensitive receivers including gardens, clothing, people, houses, wetlands, lakes and recreational facilities.
- ii) Health – detrimental impact to the physical health of humans, particularly the vulnerable populations and people with respiratory issues. Psychological and mental health impact on the community including children and living pets.
- iii) Noise – unreasonable transfer of operational noise to adjoining properties attributable to cremator, ventilation, air-conditioning, cool room generator and vehicular movements entering and exiting the site.
- iv) Odour – unreasonable transfer of offensive odours to adjoining properties as caused by the cremation process.
- v) Natural environment – negative impact on the surrounding natural environment and RAMSAR wetland ecosystem, impact to native bird and frog populations, polluted water runoff into surrounding parks, wetlands and lakes.
- vi) Not in the public interest – negative outcomes of proposed development far-outweigh the economic benefit. The estimated six jobs do not add to job growth of Warabrook’s existing economic and employment hub.

e) Traffic and Parking Issues

- i) Traffic generation – increased through-traffic along Warabrook Boulevard and increased vehicular movements entering and exiting the subject site.
- ii) On-street carparking generation – increased on-street carparking requirements reducing road visibility for entering and exiting vehicles on adjoining sites and reduced carparking accessibility for adjoining residents and businesses.

f) Miscellaneous

- i) Property values – devaluation of property prices and resale value.
- ii) Lodgement documents – inaccuracies in submitted Traffic Report, plans do not show crematorium, flawed Acoustic Report, accuracy of wind in Air Quality Report, unjustified comments in Statement of Environmental Effects.

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

Public Voice (PV) Committee

The proposal was considered at the PV Committee Meeting held on 21 July 2020. Residents raised concerns with regards to site location, health and air quality, character and amenity and the lack of public interest.

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

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

5.0 INTEGRATED DEVELOPMENT

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

6.0 PLANNING ASSESSMENT

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

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

The subject site is identified on CN's Land Contamination Register. This is due to the existing above ground fuel tank at the centre of the site. As there are no intrusive works proposed within the vicinity of the tank, and as the nature of the

proposed development does not increase any exposure risk, no further investigation in this regard is required.

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

The Vegetation SEPP (the SEPP) works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW. Part 3 of the Vegetation SEPP contains provisions similar to those contained in clause 5.9 of the Newcastle Local Environmental Plan 2012 (NLEP 2012) (now repealed) and provides that the Newcastle 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.

The subject site contains four medium sized trees to the south-western boundary of the site fronting Warabrook Boulevard. No trees are to be removed or encroached on as caused by the proposed development. As such, the provisions of the Vegetation SEPP do not apply.

State Environmental Planning Policy No 33 — Hazardous and Offensive Development - (SEPP 33)

A 'hazardous industry' under SEPP 33 is one which, when all locational, technical, operational and organisational safeguards are employed continues to pose a significant risk. The development proposal is for a pet crematorium. 'Crematoria' is not considered to be a hazardous, or potentially hazardous, industry. Accordingly, it is considered that the use does not trigger the requirement for preliminary hazard assessment under SEPP 33.

State Environmental Planning Policy No 64 — Advertising and Signage - (SEPP 64)

The proposed signage is acceptable having regard to SEPP 64 requirements and the nature of the development.

Greater Newcastle Metropolitan Plan 2036 (GNMP 2036) and Local Strategic Planning Statement (LSPS) – Newcastle 2040

The GNMP 2036 sets out strategies and actions that will drive sustainable growth across Cessnock City, Lake Macquarie City, Maitland City, Newcastle City and Port Stephens communities, which together make up Greater Newcastle. The LSPS guides CN's land use planning for the next 20 years. Under the GNMP 2036, the desired role of Warabrook Business Park Precinct is 'to promote business uses that grow engineering, research and high-tech manufacturing jobs.' Whilst the proposed pet crematorium is not considered to fall within these categories, its operations is unlikely to impact the viability of businesses in surrounding sites. The proposed development is not considered to create any adverse environmental impact or inhibit any of the 16 planning priorities outlined in the LSPS. Furthermore, 'crematoria' is a

permissible use within the IN2 Light Industrial zone as prescribed under the NLEP 2012. As such, the proposed development is considered acceptable in this regard.

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 site is included within the IN2 Light Industrial zone under the provisions of the NLEP 2012. The proposed development is defined as 'crematoria' and is permissible within the IN2 Light Industrial zone under the NLEP 2012.

The proposed development is consistent with the objectives of the IN2 Light Industrial zone, which are:

- i) To provide a wide range of light industrial, warehouse and related land uses.
- ii) To encourage employment opportunities and to support the viability of centres.
- iii) To minimise any adverse effect of industry on other land uses.
- iv) To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- v) To support and protect industrial land for industrial uses.

Comment: The proposed pet crematorium is a related land use, defined as 'crematoria' under the NLEP 2012 and is permissible within the IN2 Light Industrial zone. The proposed development will provide for employment opportunities, with up to six staff to manage the day-to-day operations of the site. The application has been supported by an Operational Management Plan (OMP), Air Quality Assessment (AQA) Report, Noise Assessment Report and Traffic and Parking Assessment Report which details that the development will not cause any adverse impact to the surrounding residential land uses.

Clause 4.3 - Height of Buildings

Under the NLEP 2012, the Height of Buildings Map does not apply to the subject site (Lot 1 DP 854010, 35 Warabrook Boulevard, Warabrook). The proposed works include a new flue projecting 2m above the existing roof. 'Building height' as defined by the NLEP 2012 excludes chimneys when calculating the height of buildings. Accordingly, the maximum building height remains 7.09m. This is acceptable.

Clause 4.4 Floor Space Ratio (FSR)

Under the NLEP 2012, the FSR map does not apply to the subject site (Lot 1 DP 854010, 35 Warabrook Boulevard, Warabrook). The proposal does not increase the existing building footprint.

Clause 5.3 – Development near zone boundaries

The objectives of this clause is to ‘provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone.’ The proposed development is permissible in the IN2 Light Industrial zone as ‘crematoria’ and does not rely on a permissible use on an adjoining lot. As such, this clause does not apply.

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

No earthworks are proposed as part of this development.

6.2 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.

6.3 Any development control plan

Newcastle Development Control Plan - (NDCP 2012)

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

Industrial Development - Section 3.13

3.13.01 Site Coverage

The subject site is predominantly covered by hardstand. The proposed development does not increase the existing building footprint or add any additional hard surface to the site. Accordingly, the proposed development is acceptable in this regard.

3.13.02 Character and amenity

Whilst the development is visible from the public domain, the site is bound by a substantial earth mound, fencing and vegetation to the north-western boundary concealing most of the built form as viewed from adjoining residential allotments.

The proposed works include minor cosmetic upgrades to the external facade to allow the conversion of one garage roller door on the south-east elevation of the building to a solid external wall and the installation of external decorative cladding. The proposed materials consist of a combination of pre-cast concrete panels, vertical colour bond cladding and timber aluminium slats, which is consistent with the surrounding industrial development. The existing bulk and scale of the building is to remain unchanged and does not create any unreasonable shadowing impact to adjoining allotments. The proposed cosmetic upgrades to the existing building are sympathetic to the existing mixed-use character of the area.

The close proximity of residential allotments to the north-east, north-west and west is noted. The subject site shares a boundary with residential land to the north-east (Coachwood Drive), and is separated by approximately 30m, across Hakea Place, to residential dwellings to the north-west. Light industrial zoned land adjoins the site to the south and east, also noting two approved childcare centres are present in this zone on Rosegum Road, the closer being approximately 180m from the development site. The development application has been supported by appropriate consultant reports detailing the minimisation of any potential adverse amenity impact to adjoining residential allotments. The application has been referred to CN's Environmental Services Unit for assessment.

Air quality and odour

The proposed use being a 'pet cremation' meets the definition of waste disposal (thermal treatment) under the *Protection of the Environment Operations Act 1997* (NSW). Schedule 1 of the Act provides for waste disposal (thermal treatment) to be a scheduled activity (ie. requires a license from the NSW Environment Protection Authority (EPA)) if it involves processing more than 200 tonnes of waste per year.

The proposed pet crematorium is operational five days a week, Monday - Friday, with 'approximately 30-40 animals of an average 15kg cremated on a single day'. Assuming the upper limit for the number of animals processed per day, the crematorium produces a total figure of 156 tonnes per year. Notwithstanding the estimated load, the cremator specifications note the maximum body weight capacity of the equipment is 68.04kg / hour, as such resulting in a maximum output load of approximately 177 tonnes per year. On this basis, and in accordance with the proposed operation hours of the cremator, the development does not exceed the 200-tonne threshold.

There are no specific industry guidelines or standards relating to a pet crematorium operating at below licensing limits in NSW. The "Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales" is listed as an

EPA-approved guideline. An AQA Report has been submitted and prepared in accordance with the "Approved Methods". The two levels of impact assessment as prescribed by the EPA are as follows:

- i) Level 1 – screening-level dispersion modelling technique using worst-case input data.
- ii) Level 2 – refined dispersion modelling technique using site-specific input data.

The AQA report provides a description of the proposed cremator. The "B&L Cremation Systems, Model BLP500M3" to be installed at the site is a modern low-emission system incorporating the following:

- i) Fuji Temperature controllers installed to regulate the Primary Chamber, Secondary Chamber, and Flue (Exhaust) temperatures;
- ii) Electronic Manufacturing Services model SCR Opacity Monitor installed;
- iii) Auxiliary air is supplied from the main control fan with a butterfly valve, actuated by a servo motor, if increased opacity is detected; and
- iv) Best practice minimum two second residence time of exhaust gases within the secondary chamber to effectively mitigate odour and particulates.

Due to the location of the site and proximity to residential allotments, sensitivity to air emissions as a result of the cremator can be anticipated. A range of potential air pollutant emissions from the cremator are identified in the report. These are sourced from both the combustion of the LPG fuel and biological remains. The report also describes the emission estimate techniques, emission factors and emission rates for use in dispersion modelling. A year of hourly site-specific meteorological data was generated using the TAPM (The Air Pollution Model published by CSIRO) software for use in the modelling.

Using these various inputs, dispersion modelling was conducted to "determine whether the addition of the air pollutant emissions released from the pet cremator to representative ambient concentrations (where applicable) measured by the NSW Government, satisfies the relevant impact assessment criteria at surrounding sensitive uses".

- i) Level 1 dispersion modelling determined the proposed development complies with all pollutant assessment criteria except for the 24-hour averaging period for PM_{2.5} and PM₁₀, which is already exceeded in the ambient environment (ie. the existing conditions without the proposed development).
- ii) Level 2 refined dispersion assessment for PM_{2.5} and PM₁₀ determined no additional exceedances of the 24-hr impact assessment.

The proposed development will produce a variety of air emissions all below the assessment targets when considered in their own right. Excluding, the fact that the surrounding area already exceeds the threshold for two days per year, the highest predicted concentration for PM_{2.5} (from the cremator alone) on any day, is 6.4 – the impact assessment criterion is 25. For PM₁₀, highest level predicted is 6.4 (again, because the pollutants from the cremator are all less than PM_{2.5} size) – impact assessment criterion is 50. As such, the AQA Report determines that the proposed development will not result in unacceptable impacts to the existing ambient levels in the locality and associated air emissions fall within the EPA-approved guidelines.

The AQA Report describes the secondary combustion to be used in the equipment as “best practice” to “effectively mitigate odour and particulates”. The very high temperature combustion achieved by the unit and the residence time in the secondary chamber would be effective controls over odour.

An OMP was submitted with the application. The OMP includes:

- i) The responsibilities for the plan’s implementation.
- ii) Detailed operating instructions for the equipment.
- iii) Compliance testing within 60 days of commissioning, confirm and certify that airborne emissions satisfy the assessment criteria.
- iv) Follow-up emissions testing.
- v) Daily visual monitoring of emissions.
- vi) Daily, weekly, monthly, six-monthly and annual maintenance activities.
- vii) Complaints handling (including public access to out-of-hours phone number and email address) and investigation procedure.
- viii) The recording of the activity and maintenance logs and complaints.

A condition of consent (refer **Attachment B**) will require the implementation of this OMP during the operation and use of the development.

Acoustic privacy

The subject site is bound by a substantial earth mound / retaining wall (approximately 2m high) surmounted by an acoustic fence (also approximately 2m high) to the north-west and north-east (facing the residential receivers). This was installed to mitigate impacts from the industrial-zoned land to the adjacent residential areas. Notwithstanding this, a Noise Assessment Report has been submitted with the application. Predictions of operational noise levels from the cremator unit and via the above roof level flue were modelled at nearby sensitive receivers (ie. adjoining residential properties). All calculations in the report assumed the ‘worst-

case scenario'. The results determined the proposed development complies with operation noise requirements.

Considering the above, the proposed development is unlikely to cause materially detrimental effects to adjoining residential areas. As such, the proposal is considered acceptable in this regard.

3.13.03 Open storage and work areas

There are no proposed open storage or work areas associated with the development. Waste generated by the administrative operations of the pet crematorium are to be managed through general and recyclable waste receptacles to be stored at the rear of the existing building and screened from public view.

All operations of the pet crematorium are to be undertaken within the internal footprint of the existing building. This is acceptable.

3.13.04 Building setbacks

The setbacks as created by the existing building onsite remain unchanged.

3.13.05 Loading, unloading and servicing areas

The loading and unloading areas associated with the existing building will remain substantially the same. The existing building is set behind established vegetation and fencing. The service area, orientated south-east and away from the adjoining residential allotment, will therefore be suitably screened. All servicing will occur onsite.

3.13.06 Parking and vehicle access

The proposed car parking and vehicle access is consistent with the provisions of the NDCP 2012. Further details are discussed under section 7.03 Traffic, Parking and Access of the NDCP 2012.

Safety and Security - Section 4.04

The proposed development retains the existing 1.8m high chain link fence and associated palisade style security gates at the entry and exit. This is acceptable.

Social Impact - Section 4.05

The proposed development does not generate the requirement of a Social Impact Assessment.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any significant vegetation from the site.

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 the NLEP 2012.

Archaeological Management - Section 5.06

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

Landscape Open Space and Visual Amenity - Section 7.02

The proposed development does not include any extensive alterations or additions to the external footprint of the existing building onsite. As such, the provisions of this section do not apply.

The application was referred to CN's City Greening Team for comments regarding the proposed driveway and removal of two street trees. Comments were received refusing the removal of the two street trees along Warabrook Boulevard. Amended plans were provided 1 June 2020 retaining the existing driveway. As such, no street trees are proposed for removal.

Traffic, Parking and Access - Section 7.03

The parking provision for an industrial activity is one space per 100m² of gross floor area (GFA) or one space per two staff, whichever is greater. The existing building is 377.25m² with the proposed development anticipated to employ between three and six staff. As such, a minimum requirement of four off-street parking spaces is required.

The proposed development provides four off-street parking spaces which complies with the requirements of the NDCP 2012. The carparking spaces are formalised in accordance with all relevant Australian Standards.

A Traffic and Parking Report was submitted with the application determining that traffic generated by the proposed development is minimal and reduces the overall traffic demands currently generated by the existing use on site.

Section 7.05 - Energy efficiency

The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed development does not increase the stormwater captured onsite nor will it modify the quality of the water entering the waterways. Accordingly, the proposed development is consistent with the relevant aims and objectives of the NDCP 2012.

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**).

As outlined in the submitted Statement of Environmental Effects 'the facility will not generate any biological or chemical waste. Office waste such as paper and cardboard packaging will be recycled, general waste will be separated. All waste will be stored in skip bins at the rear of the building and collected by a private contractor.' This is acceptable.

Advertising and Signage - Section 7.09

The proposed development includes one business identification sign to the south-east elevation. The proposed sign is defined as a flush wall sign under the definitions outlined in section 7.09 of the NDCP 2012.

The proposed sign on the south-eastern elevation and is 900mm x 2400mm in size and does not detract from the desired future character of the streetscape nor create any excessive visual clutter. The proposed positioning of the sign does not pose any safety risk. As such, the proposal meets the requirements of the NDCP 2012.

Development Contributions

The EP&A Act 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.

6.4 Planning agreements

No planning agreements are relevant to the proposal.

6.5 The regulations (and other plans and policies)

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

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

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

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

Air quality

As detailed above under section 3.13.02 (Character and amenity) the NDCP 2012, the proposal has been supported by an AQA Report and assessed by CN's Environmental Services Unit. The report concludes that "the proposed pet cremator will comply with the relevant impact assessment criteria at all surrounding sensitive uses". Given this conclusion, CN has no objection to the proposed development based on the predicted compliance with air emission criteria.

Odour

As detailed above under section 3.13.02 (Character and amenity) the NDCP 2012, the AQA Report and associated cremator specifications note that the secondary combustion chamber is designed to operate with minimum residence time of two seconds to effectively control potential odour and smoke emissions.

Noise

As detailed above under section 3.13.02 (Character and amenity) the NDCP 2012, the proposal has been supported by a Noise Assessment Report. The report determines that the proposed use will not generate noise outside the tolerance limits set for industrial precincts. The noise modelling also concludes that the proposed development should not have a significant adverse noise impact on the sensitive residential areas located in close proximity to the subject site.

The proposed development will not have any undue adverse impact on the natural or built environment. The proposed building and site layout has been designed in a way that maximises the use of the site, while achieving acceptable design outcomes.

It is considered that the proposal will not have any negative social or economic impact. Importantly, the proposal will preserve the economic function of the site and will help to increase local employment opportunities both in the management of the pet crematorium, as well as providing flow-on economic benefits for other veterinary and cremation businesses opportunities.

6.7 The suitability of the site for the development

The site is suitable for the proposed development as it is consistent with the objectives of the IN2 Light Industrial zone under the NLEP 2012 and generally

compliant with the NDCP 2012 relevant controls. It is considered that adequate assessment has been undertaken, determining that there will be no adverse impact to the amenity of the natural or built environments as a result of the development. The site can facilitate development that is in keeping with the mixed-use characteristics of Warabrook.

The design of the development has considered the surrounding development and is consistent with the surrounding land use. The proposed development also provides additional employment opportunities in the ongoing operation of the pet crematorium.

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

The application was notified in accordance with CN's Public Participation Policy, between 11 March 2020 and 25 March 2020, during which time a total of 133 submissions were received, including two PV requests.

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

Issue	Comment
Zoning objectives	The proposed development for the change of use to pet crematorium is defined as 'crematoria' under the NLEP 2012 and is permissible in IN2 Light Industrial zoning. The development provides for employment and does not adversely impact the surrounding industrial and residential land uses.
Strategic vision and goals of Newcastle	The development does not detract from the viability of other businesses within the Warabrook Business Precinct nor does it create adverse amenity or environmental impact. The site has been suitably zoned for such development and accounts for employment.
Conflict with state legislation	<p>In accordance with Schedule 1 of <i>Protection of the Environment Operations Act 1997 (NSW)</i> the proposed waste outputs of the development does not require licencing from the EPA.</p> <p>The consideration of <i>Public Health Act 2010 (NSW)</i>, <i>Work Health and Safety Act 2011 (NSW)</i>, <i>Enclosed Lands Protection Act 1901 (NSW)</i> are not applicable to the proposed development.</p>
Regulation of operation	As the proposed development does not require licensing from the EPA, the operations of the crematorium are self-regulating. CN does not require ongoing monitoring of the proposed operations. CN, as a regulating body, can investigate compliance on a complaint basis.

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Categorisation of Development Application	The development application has been assessed as an industrial development type in accordance with all relevant environmental planning instruments.
Concerns over length and nature of notification process	The proposal was notified in accordance with CN's Public Participation Policy.
Site location and separation	<p>The site is zoned as IN2 Light Industrial and 'crematoria' is permitted with consent. It is noted that due to the proximity of the development site to sensitive residential allotments, sensitivity to air emissions as a result of a cremator at the site can be anticipated. The application has been supported by appropriate consultant reports determining that there are to be no adverse amenity impacts to adjoining residential allotments.</p> <p>Furthermore, the existing site has been purposely delineated by a substantial earth mound / retaining wall (approximately 2m high) surmounted by an acoustic fence (also approximately 2m high) to mitigate impacts from the industrial-zoned land to the adjacent residential areas.</p>
Nature of use and oversupply of pet crematoriums in the greater Hunter region	The proposed use is permissible with consent within the IN2 Light Industrial zone as prescribed by the NLEP 2012. The viability of a business model is not a matter of consideration pursuant to section 4.15 of the EP&A Act.
Operational management	An OMP has been submitted with the application detailing regular maintenance procedures of the cremator, monitoring of emissions and complaint handling. Access to out-of-hours contact phone numbers and email addresses are provided to manage complaint and public enquiries.
Health and air quality impacts	As detailed above under section 3.13.02 (Character and amenity) the NDCP 2012, the proposal has been supported by an AQA Report and assessed by CN's Environmental Services Unit. Whilst the cremator is to release additional emissions, the report concludes that "the proposed pet cremator will comply with the relevant impact assessment criteria at all surrounding sensitive uses".
Acoustic privacy	A Noise Assessment Report has been submitted with the application determining the proposed development complies with operation noise requirements.
Odour	As detailed above under section 3.13.02 (Character and amenity) the NDCP 2012, the AQA Report and associated cremator specifications note that the secondary combustion

	chamber is designed to operate with minimum residence time of two seconds to effectively control potential odour and smoke emissions.
Impact to the natural environment	As detailed above under section 3.13.02 (Character and amenity) the NDCP 2012, the proposal has been supported by an AQA Report and assessed by CN's Environmental Services Unit. Whilst the cremator is to release additional emissions, the report concludes that "the proposed pet cremator will comply with the relevant impact assessment criteria at all surrounding sensitive uses".
Public interest	<p>The proposed development is consistent with the aims and controls contained in the NLEP 2012 and the NDCP 2012 and other relevant environmental planning instruments discussed within this report. The development is consistent with the objectives of the IN2 Light Industrial zone.</p> <p>The proposed development will not have any adverse impact on the natural or built environment and will not result in any significant impacts on the amenity of adjoining industrial and residential premises. The development is in the public interest as it provides continued employment, minimal environmental impact and is within an established light industrial precinct.</p>
Traffic and parking generation	The proposed development is provided with four off-street carparking spaces in compliance with the NDCP 2012. A Traffic and Parking report has also been submitted with the application determining the proposed development is unlikely to cause adverse impact to the existing road network.
Impacts on property values	This concern is not a matter of consideration pursuant to section 4.15 of the EP&A Act.
Inadequacy of lodgement documents	The development application has been considered with consideration to section 4.15 of the EP&A Act.

Public Voice (PV) Committee

The proposal was considered at the PV Committee meeting held on 21 July 2020. Residents raised concerns with regards to site location, health and air quality impacts, character and amenity impacts and the lack of public interest.

Issue	Comment
Inappropriate site location, a minimum	The Australasian Cemeteries and Crematoria Association (ACCA) is a non-profit organisation that promotes and

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<p>100-200m buffer should be provided</p>	<p>facilitates the professional development of its members. The organisation provides codes of practice, guidelines and research projects including the 'environmental guidelines for crematorias and cremators' which outlines the desirability of crematoriums to include a 100m - 200m buffer zone to residential premises. The ACCA is not a regulating body, and the responsibility to determine development consent is prescribed under section 4.15 of the EP&A Act. Pursuant the NLEP 2012, 'crematoria' is a permissible development type within a prescribed IN2 Light Industrial zone.</p> <p>Furthermore, the site has been suitably subdivided for light industrial activity, with substantial earth mounding, retaining walls and fencing provided to the north-eastern and north-western boundaries adjoining residential development. The development application has been supported by an AQA Report determining that emissions from the cremator are able to comply with relevant EPA guidelines. As such, the proposed development is not considered to create any adverse impact to the amenity of the surrounding area.</p>
<p>Health and air quality, inadequacy of the AQA Report and ongoing monitoring of the crematorium</p>	<p>The Level 1 Assessment modelling undertaken in the AQA Report for the proposal demonstrates that the activity complies, with the exception of the minor exceedances of PM₁₀ and PM_{2.5}. This is why the Level 2 Assessment was completed. It is demonstrated that these exceedances were due to already elevated levels of background (ambient) particulate. This can be caused by climatic or naturally occurring events such as bushfires as occurred in 2019.</p> <p>The Newcastle Local Air Quality Monitoring Network (NLAQMN) is a network monitoring stations located at Stockton, Carrington and Mayfield that monitors the impacts of industrial activity in and around the Port of Newcastle. The stations continuously monitor levels of sulfur dioxide, oxides of nitrogen, PM₁₀ and PM_{2.5}. and publishes real time data. The NLAQMN is administered by the EPA, operated by OEH, and funded by industry, including commercial shipping and railway activities. Industries in the Newcastle Local Government Area that hold an EPA environment protection licence and emit particulate matter, sulfur dioxide, or oxides of nitrogen pay for the construction and operation of the network via a levy. As this is not proposed to be one of these industries ie. its scale of operation does not warrant an Environment Protection Licence (EPL) or regulation by the EPA, it is not</p>

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	<p>reasonable or practical to require the proponent to monitor these emissions.</p> <p>In addition, the application has been supported by an OMP detailing regular maintenance procedures of the cremator, monitoring of emissions and complaint handling. Access to out-of-hours contact phone numbers and email addresses are provided to manage complaint and public enquiries.</p>
<p>Character and amenity: visual impacts from smoke opacity and flue</p>	<p>In accordance with the cremator specifications, auxiliary air is supplied from the main control fan with a butterfly valve, actuated by a servo motor, if increased opacity is detected. Further to this, the submitted OMP details daily visual monitoring of emissions, with include: “a nominated staff member shall regularly assess emissions from the cremator during operation by way of visual inspection of the flue emissions. Records shall be kept where inspections identify any air quality issues that require further action to change or modify and the outcomes of such actions.”</p> <p>The building form is to be retained, with the addition of a flue projecting 2m above the existing roof level. The site is unaffected by a maximum height restriction, and the height of the flue is not considered to be a dominant feature as viewed from the public interface.</p>
<p>Public interest</p>	<p>The proposed development is consistent with the aims and controls contained in the NLEP 2012 and the NDCP 2012 and other relevant environmental planning instruments discussed within this report. The development is consistent with the objectives of the IN2 Light Industrial zone.</p> <p>The proposed development will not have any adverse impact on the natural or built environment and will not result in any significant impacts on the amenity of adjoining industrial and residential premises. The development is in the public interest as it provides continued employment within an established light industrial precinct.</p>

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

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

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

6.9 The Public Interest

The proposed development is consistent with the aims and controls contained in the NLEP 2012 and the NDCP 2012 and other relevant environmental planning instruments discussed within this report. The development is consistent with the objectives of the IN2 Light Industrial zone.

The proposed development will not have any adverse impact on the natural or built environment and will not result in any significant impacts on the amenity of adjoining industrial and residential premises. The development is in the public interest as it provides continued employment within an established light industrial precinct and provides a service for the community.

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.

7.0 CONCLUSION

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

ATTACHMENTS

Item 31 Attachment A: Submitted Plans, 35 Warabrook Boulevard, Warabrook and 6 Hakea Place, Warabrook

Item 31 Attachment B: Draft Schedule of Conditions, 35 Warabrook Boulevard, Warabrook and 6 Hakea Place, Warabrook

Item 31 Attachment C: Processing Chronology, 35 Warabrook Boulevard, Warabrook and 6 Hakea Place, Warabrook

Item 31 Attachments A - C distributed under separate cover

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Development Applications Committee Meeting 18 August 2020

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**ITEM-32 DAC 18/08/20 - DA2020/00044 - 304/464 KING STREET,
NEWCASTLE - TOURIST AND VISITOR ACCOMMODATION
- SERVICED APARTMENT**

**APPLICANT: A HUGHES
OWNER: L T SEEGER & R M MCPHERSON
REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

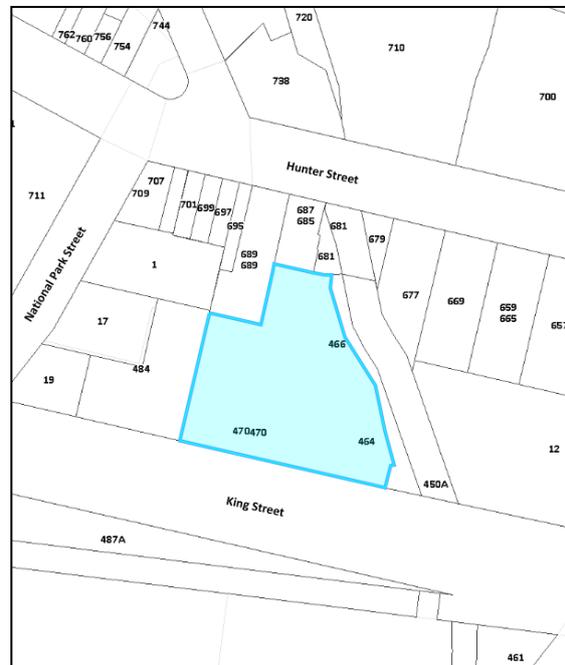
PART I

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. 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, three ground level retail units, two first floor commercial units, four floors of parking (257 spaces), associated site works and 202 lot strata subdivision"



**Subject Land: 304/464 King Street
Newcastle West**

The application was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) between 30 January 2020 - 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 application was scheduled to be considered at the Public Voice (PV) on 19 May 2020 (May PV) due to the application being called in by Councillor Clausen and Councillor MacKenzie. However, as no applications were registered for PV, the application was forwarded to the Development Applications Committee (DAC) for determination on 16 June 2020. Prior to the DAC meeting it was identified that a number of submitters were not notified of the May PV. Given that all interested parties were not given the opportunity to make an application to PV, Councillors resolved to lay the application on the table to enable PV to be undertaken. In accordance with this resolution, the application was considered at a meeting of the PV Committee held on 21 July 2020.

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 DAC 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* (EP&A Act) and is acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

Vote by division

- 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 a 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 – 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 2020 - 17 February 2020, in accordance with CN's 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) Building Code of Australia (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 conflicted with the residential nature of surrounding apartments.

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

Public Voice Committee

The proposal was considered at a PV Committee meeting held on 21 July 2020. The objector's raised concerns with regards to owners' consent, site compatibility and Strata By-Laws. The assessing officer has provided the following response to these issues raised.

a) Owners Consent – Owners Corporation

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.

b) Strata By-Laws

CN was notified in July 2020 that Strata By-Law 6.4 was amended to prohibit Short-Term Rental Accommodation.

Consideration of the Strata By-Laws is not a relevant matter for consideration under section 4.15(1) of the EP&A Act.

Notwithstanding, it is understood that the amendment to the Strata By-Law prohibiting Short-Term Rental Accommodation will prevent the applicant acting on the consent should approval be granted.

c) 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.

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

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

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy 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 the 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 the 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 the 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 consistent with the aims of the 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

The 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 to **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 the 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 the 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 and Access - Section 7.03

The property is required to have one parking space under the NDCP 2012 controls. The property has an allocated car parking space in the basement. The guests and staff (ie. 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 EP&A Act 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 EP&A Act 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 the relevant policy, including the NLEP 2012 and the 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 to **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 CPP between 30 January 2020 – 17 February 2020, during which time 15 submissions were received. The application was considered at a PV Committee meeting held on 21 July 2020.

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.

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<p>Concern with security impact of proposal</p>	<p>The proposal does not impact on the current security 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 Local Government Area (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:</p> <p><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 EP&A Act.</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 EP&A Act.</p>

The following table provides a summary of the issues raised at the PV Committee meeting held on 21 July 2020 and a response to those issues.

Owners 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.
Strata By-Law Prohibiting Short-Term Rental Accommodation	<p>CN was notified in July 2020 that Strata By-Law section 6.4 was amended to prohibit Short-Term Rental Accommodation.</p> <p>Consideration of the Strata By-Laws is not a relevant matter for consideration under section 4.15(1) of the EP&A Act.</p> <p>Notwithstanding, it is understood that the amendment to the Strata By-Law prohibiting Short-Term Rental Accommodation will prevent the applicant acting on the consent should approval be granted.</p>
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.

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 EP&A Act and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Item 32 Attachment A: Submitted Plans - 304/464 King Street, Newcastle

Item 32 Attachment B: Draft Schedule of Conditions - 304/464 King Street, Newcastle

Item 32 Attachment C: Processing Chronology - 304/464 King Street, Newcastle

Item 32 Attachments A - C distributed under separate cover

NOTICES OF MOTION

ITEM-17 **NOM 18/08/20 - NOTICE OF MOTION TO RESCIND A COUNCIL RESOLUTION - ITEM 23 OF EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE 28/07/20 - DA2017/01376 - 495 - 501 HUNTER STREET AND 364 KING STREET, NEWCASTLE**

COUNCILLORS: **D CLAUSEN, C DUNCAN, P WINNEY-BAARTZ AND E WHITE**

PURPOSE

Councillors Clausen, Duncan, Winney-Baartz and White have submitted the following rescission motion in respect of Item 23 - EDAC 28/07/20 - DA2017/01376 – 495-501 Hunter St and 364 King Street Newcastle, Demolition of buildings, erection of fifteen storey mixed use development with three retail/commercial tenancies, 87 residential units, car parking and site works, for consideration at the Ordinary meeting of the Council to be held 25 August 2020.

The following Notice of Motion was received on 29 July 2020 from the abovenamed Councillors.

MOTION

- 1 That the resolution of the Extraordinary Development Applications Committee (DAC) of 28 July 2020 with respect to DA2017/01376 be rescinded under Section L of the adopted Code of Meeting Practice.
- 2 That DA2017/01376 lay on the table and be referred to the Urban Design Consultative Group for further review, noting concerns raised by Councillors and the community. Council officers continue discussions with the applicant to seek to resolve outstanding areas of concern.

BACKGROUND

At an Extraordinary Development Applications Committee (EDAC) on 28 July 2020, Councillors voted to refuse DA2017/01376.

The development was refused on the following grounds:

1. *Significant setback non – compliance.*
2. *Significant negative impact on solar access to 36 apartments in the neighbouring development known as Sky Residences including 10 units which will have no direct sunlight at all.*
3. *Significant negative amenity impacts on existing apartments in the neighbouring Worth Place Apartments including the blocking of sunlight, reduction in air movement and loss of privacy to balconies and living spaces.*

4. *Ongoing and unresolved concerns raised by the Urban Consultative Committee (UDCC), particularly around privacy and the western boundary setback.*
5. *Advice from the UDCC that the proposal is not considered to exhibit design excellence and remains problematic in a number of significant respects.*
6. *Concerns over errors in fact in the traffic report with up to 100 cars per day.*

The refusal was made against the recommendation and advice of Council Officers, and a number of the grounds for refusal cited are factually incorrect. Inconsistent with protocol, it is understood that the reasons for refusal were not developed in consultation with Council officers.

This significantly compromises Council's ability to defend this matter should it escalate to the Land and Environment Court, which could lead to a costly outcome for ratepayers, and a poor outcome for objectors.

We additionally note that when this matter was previously considered by the elected council at Public Voice on 16 July 2017, a significant pecuniary conflict of interest was declared and the mover of the refusal motion excused themselves from the discussion.

To be clear, this rescission motion does not seek to approve the development. Rather, this motion seeks for the elected Council to reconsider the matter, and refer the development proposal back to the Urban Design Consultative Group for further feedback, and for Council Offices to continue discussions with the applicant to resolve outstanding areas of concern.

ATTACHMENTS

Attachment A: Signed Rescission Motion from Councillors Clausen, Duncan, Winney-Baartz and White

Attachment B: Resolution of Extraordinary Development Applications Committee 28 July 2020

Attachment A

Notice of Motion: Rescission of Refusal of DA2017/01376 – 495-501 Hunter St and 364 King Street Newcastle: Demolition of buildings, erection of fifteen storey mixed use development with three retail/commercial tenancies, 87 residential units, car parking and site works.

Background:

At an Extraordinary Development Applications Committee (EDAC) on 28 July 2020, Councillors voted to refuse DA2017/01376.

The development was refused on the following grounds:

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Motion:

1. That the resolution of the Extraordinary Development Applications Committee (DAC) of 28 July 2020 with respect to DA2017/01376 be rescinded under Section L of the adopted Code of Meeting Practice.
2. That DA2017/01376 lay on the table and be referred to the Urban Design Consultative Group for further review, noting concerns raised by Councillors and the community. Council officers continue discussions with the applicant to seek to resolve outstanding areas of concern.

Signatories:

Cr Clausen
Cr Duncan
Cr Winney-Baartz
Cr White

Submitted 29 July 2020

Attachment B

ACTION ITEM

Development Applications Committee
Tuesday, 18 August 2020

**SUBJECT: 2010 DEVELOPMENT APPLICATIONS COMMITTEE
MEETING STANDARD**

RESOLVED: (Councillors Church/Elliott)

Development Application 2017/01376 be refused on the following grounds:

1. Significant setback non – compliance.
2. Significant negative impact on solar access to 36 apartments in the neighbouring development known as Sky Residences including 10 units which will have no direct sunlight at all.
3. Significant negative amenity impacts on existing apartments in the neighbouring Worth Place Apartments including the blocking of sunlight, reduction in air movement and loss of privacy to balconies and living spaces.
4. Ongoing and unresolved concerns raised by the Urban Consultative Committee (UDCC), particularly around privacy and the western boundary setback.
5. Advice from the UDCC that the proposal is not considered to exhibit design excellence and remains problematic in a number of significant respects.
6. Concerns over errors in fact in the traffic report with up to 100 cars per day.