



STATEMENT OF ENVIRONMENTAL EFFECTS

Tree removal, excavation and the construction of a shop top housing development, including basement car parking and associated landscaping

114-120 Cary Street
TORONTO

Prepared for: Toronto Investments No.1 Pty Ltd

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1. Introduction

1.1 OVERVIEW

This Statement of Environmental Effects (SEE) has been prepared by Planning Ingenuity on behalf of the applicant, and is to accompany a development application to Lake Macquarie City Council that seeks consent for the tree removal, excavation and the construction of a shop top housing development, including basement car parking and associated landscaping at No. 114-120 Cary Street, Toronto.

More specifically, the proposal seeks consent for tree removal, excavation and the construction of a mixed use development with associated car parking, landscaping and lot amalgamation. The development will comprise of a five storey shop top housing block fronting Cary Street and a five storey residential flat block fronting Arnott Avenue. Communal open space will be located at roof level of both blocks

Overall, the development will contain 929m² of commercial floor space, 108 apartments and 208 car spaces located over two levels of basement. Vehicular access (ingress and egress) is provided from Arnott Avenue.

All nine lots that make up the site will be amalgamated as part of the development.

This SEE demonstrates that the development meets the objectives of Zone B2 Local Centre and generally satisfies the relevant controls in the *Lake Macquarie Local Environmental Plan 2014* (LMLEP 2014), with the exception of a variation to the height of buildings development standard, both of which facilitate a superior massing arrangement with optimal façade articulation. The additional height also enables a distribution of floor space so that land at the rear of the site can be dedicated to Council as public domain along the sites Arnott Avenue frontage, to achieve consistency with the alignment that continues through this part of the Toronto Town Centre. The development is accompanied by a Clause 4.6 variation statement addressing this non-compliance.

Further, this SEE evidences that the proposal generally aligns with the objectives and controls in the *Lake Macquarie Development Control Plan 2014* (LMDCP 2014). Where there are variations to controls, these are justified throughout this SEE and the development remains consistent with the objectives of the relevant controls.

1.2 PURPOSE OF STATEMENT

The project has an estimated Capital Investment Value of \$36,654,768 and therefore the Hunter and Central Coast Regional Planning Panel is the relevant determination body.

The purpose of this Statement is to address the planning issues associated with the development proposal and specifically to assess the likely impact of the development on the environment in accordance with the requirements of Section 4.15 of the *Environmental Planning & Assessment Act, 1979* (EP&A Act).

This Statement has been divided into five sections. The remaining sections include a locality and site analysis; a description of the proposal; an environmental planning assessment; and a conclusion.

2. Site Analysis and Context

2.1 THE SITE

The subject site is known as No. 114-120 Cary Street, Toronto and comprises of nine individual lots, with the following legal descriptions:

- Lots 4, 5, 6 and 7 Section 6 DP 2505 (114-120 Cary Street);
- Lots 9 and 10 Section 6 DP 2505 (1 Bath Street);
- Lot 100 DP 874314 (2 Bath Street);
- Lot 8 Section 6 DP 2505 (Bath Street); and
- Lot 101 DP 1110774 (3 Arnott Avenue).

The location of the subject site is shown edged in red in the aerial image provided at **Figure 1** below.



Figure 1 Aerial image of subject site (source: SixMaps)

The site is irregular in shape with a frontage to Cary Street of 64 metres, a frontage to Victory Parade of 64.7 metres and a frontage to Arnott Avenue of 64 metres. The site has a total site area of 5957.5m².

The site is currently vacant and is located on a prominent corner, which is a gateway site into Toronto. The site is zoned B2 Local Centre under LMLEP 2014. The site contains a mixture of vegetation, with a number of small trees, weeds and grasses scattered across the site.

The site slopes down to the southwest. This slope is from a high point of around 5 metres AHD in the south-eastern portion of the site to around 3 metres AHD along the eastern boundary.

The site is not listed under LMLEP 2014 as a heritage item or located within a Heritage Conservation Area. However, the site is adjacent to the Toronto Heritage Precinct and falls within the Town Heritage Area of the Toronto Town Centre Area Plan. The site is located within the vicinity of the following listed heritage items:

- Heritage item 21 – Fassifern to Toronto Branch Railway Line;
- Heritage item 171 – Boatman's Cottage Lakefront; Boathouse and Winches Lakefront; and House;
- Heritage item 172 – Building Restaurant; and
- Heritage item 173 – Royal Motor Yacht Club Annexe.

An image of the site are provided at **Figure 2**.



Figure 2 Subject site (looking south-east)

2.2 SURROUNDING DEVELOPMENT

Immediately adjoining the site to the north is a McDonalds restaurant at No. 12 Bay Street, Toronto (**Figure 3**). The McDonalds site is relatively flat and has been raised with approximately 1.6m high retaining walls to approximately RL 5m in the western section of the site.



Figure 3 McDonald's at No. 12 Bay Street

Toronto Public School is located on the northern side of Bay Street.

The site abuts Arnott Avenue to the east, which provides vehicular access to the Royal Motor Yacht Club (**Figure 4**), a public wharf and residential dwelling houses fronting Lake Macquarie (**Figure 5**).



Figure 4 Royal Motor Yacht Club located eastwards of the subject site



Figure 5 Residential dwellings located eastwards of the subject site

The site adjoins Cary Street to the west, which is a busy 4 lane arterial road. The western side of Cary Street is characterised by undeveloped land, bushland, a coastal wetland and cycleway link to Fassifern.



Figure 6 Cary Street (looking south)

Toronto Bay is located to the east of the development site with groundwater dependent ecosystems to the west.

Adjoining the site to the south are remnants of an old heritage listed railway corridor known as the Fassifern to Toronto Branch Railway Line, which is on raised land with an elevation of approximately RL 4m, and Victory Parade, a local road connecting to Toronto Town Centre.



Figure 7 Heritage listed railway

3. Description of the Proposal

3.1 BACKGROUND

The site was the subject of a previous development application (DA419/2018) lodged with Lake Macquarie Council on 15 March 2018, for a development described as “*Mixed use development with commercial premises and residential flat building*”. The development was recommended for approval subject to deferred commencement and was reported to the Hunter and Central Coast Regional Planning Panel (“HCCRPP”) on 11 December 2019. The HCCRPP determined to refuse the application on a number of grounds.

The refusal was the subject of a Class 1 appeal Proceedings via the Land and Environment Court in *Toronto Investments No. 1 Pty Limited v Lake Macquarie City Council* (LEC Case No. 2020/00091325).

The Proceedings were discontinued following the matter being part heard. The primary matter that led to discontinuance related to geotechnical/groundwater matters that required further testing and analysis which could not be concluded in the timeframe of the Proceedings. That analysis has now been completed and is provided with this application. We note that built form issues were essentially resolved through the joint conferencing process leading to the hearing and that the new proposal is consistent with the form of development that was agreed by Council’s planning/urban design expert.

3.2 PROPOSED DEVELOPMENT

3.2.1 Development Summary

The proposal seeks consent for tree removal, excavation and the construction of a mixed use development with associated car parking, landscaping and lot amalgamation. The development will comprise of a five storey shop top housing block fronting Cary Street and a five storey residential flat block fronting Arnott Avenue. Communal open space will be located at roof level of both blocks

Overall, the development will contain 929m² of commercial floor space, 108 apartments and 208 car spaces located over two levels of basement. Vehicular access (ingress and egress) is provided from Arnott Avenue.

All nine lots that make up the site will be amalgamated as part of the development.

A breakdown of each level of the development is provided below.

Basement Level 2:

- 108 residential car spaces (including 12 disabled car spaces)
- 8 motorbike spaces
- Residential storage cages
- Fire stairs and lift access
- Plant equipment and services rooms

Basement Level 1:

- 100 car spaces, comprising of:
 - 32 residential spaces
 - 28 visitor spaces



- 38 commercial spaces (including three disabled car spaces)
 - 2 service spaces
- 4 motorbike spaces
- Car wash bay
- Bike storage for 13 bicycles
- Residential storage cages
- Cleaner / staff only WC and shower
- Fire stairs and lift access
- Plant equipment and services rooms

Ground Level:

- Commercial premises at ground floor level fronting Cary Street with a floor area of 929m². Outdoor dining is located at the southern and eastern end of the commercial tenancy.
- A commercial loading dock with loading bay and separate commercial / residential garbage storage at ground floor level with ingress from Arnott Avenue and egress (left only) onto Cary Street for service vehicles only.
- Separate residential lobbies to each building.
- Landscaping throughout, including deep soil zones in the northern, eastern and southern sides of the site.
- Road widening on Arnott Avenue to cater for an 8 metre wide carriageway width, 2.5 metre wide footpath and 1.5m wide verge for street trees. Kerb and gutter along the eastern side of Arnott Avenue.

Cary Street Block:

- The mixed use building fronting Cary Street is five storeys with commercial premises at ground floor level and residential levels above.
- Residential levels contain 43 apartments (8 x 1 beds, 26 x 2 beds and 9 x 3 beds).
- A communal rooftop terrace with foyer area, indoor kitchen and accessible WC is also provided.

Arnott Avenue Block

- The residential flat building fronting Arnott Avenue is five storeys in height, with residential apartments on all levels.
- Residential levels contain 65 apartments (10 x 1 beds, 40 x 2 beds and 15 x 3 beds).
- A communal rooftop terrace with foyer area, indoor kitchen and accessible WC is also provided.

3.2.2 Earthworks

Excavation is proposed to a maximum depth of RL -1.5 AHD, to provide two basement levels for parking, services and storage. Details of earthworks are provided within the accompanying Geotechnical Report prepared by Chameleon Geosciences Pty Ltd.

It is anticipated that groundwater will be encountered during excavation and therefore, the development will be subject to a Water Supply Work Approval for dewatering during the construction phase and any ongoing extraction will require a Water Access Licence. The development will therefore be Integrated Development under Section 90(2) of the *Water Management Act 2000*. It is anticipated that Water NSW will be consulted on the development and any General Terms of Approval will be imposed as conditions of consent.

The site is located within a mine subsidence district. Accordingly, the development is Integrated Development under Section 22 of the *Coal Mine Subsidence Compensation Act 2017*. As part of the original development application under DA419/2018, Subsidence Advisory NSW granted approval, subject to conditions, under Section 22 of the *Coal Mine Subsidence Compensation Act 2017* on 4 May 2018. This approval does not lapse until 4 May 2023 and

therefore remains valid. Given the proposal is of a lesser scale than the development subject to DA419/2018 and the mine parameters remain the same, it is proposed that the approval is maintained for this application.

3.2.3 Land Uses and Operation

The proposed development comprises 929m² of commercial floor space and 108 residential apartments. The commercial floor space is proposed at the ground level in the Cary Street block, with commercial storage and waste storage also located at Ground level in that block.

The subject application does not seek consent for the fitout of the commercial tenancy. Fitout and use, including hours of operation will be assessed and determined under separate development applications or CDC's in the future.

3.2.4 Residential Accommodation

The development proposes a total of 108 residential apartments in a variety of dwelling sizes. All dwellings have an open plan living and dining space with adjoining kitchen and an adjacent private open space in the form of a balcony or terrace. Of the 108 dwellings proposed, 12 constitute 'adaptable' dwellings.

A combination of dual aspect and single aspect dwellings are proposed. Dwelling configuration and arrangement ensures the development satisfies the solar access and cross ventilation requirements of the Apartment Design Guide. Storage will be provided in each dwelling as well as separately at Basement levels.

Dwelling composition analysis is provided in the table below.

Table 1 Dwelling composition		
Bedroom No.	No. of Dwellings	Dwelling Mix %
1 bedroom	18	17%
2 bedroom	66	61%
3 bedroom	24	22%
Total	108	100%

For details concerning apartment areas, balcony areas, solar access performance and the like, refer to Annexure A for the Apartment Design Guide (ADG) compliance table.

3.2.5 Access and Parking

One vehicular access point is proposed to the site from Arnott Avenue at the rear. This will be in the form of a two-way driveway, providing ingress and egress to the basement levels as well as access to the ground level loading bay. A further egress is provided onto Cary Street and will be for servicing vehicles with 'left turn only' onto the street.

Separate residential and commercial accesses from are provided to the Cary Street block, with separate residential access provided to the Arnott Avenue block. Common walkways are provided centrally within the site, providing pedestrian access between the two buildings.

Car, motorbike and bicycle parking is provided to comply with LMDCP 2014 parking rates. The servicing bay is capable of accommodating a Medium Rigid Vehicle (8.8m), expected to be the largest vehicle necessary to service the development.

A Traffic Impact Assessment Report has been prepared by McLaren Traffic Engineering and is submitted with the Development Application. The report confirms that suitable access and manoeuvring within the development and car

park can be achieved, and that the parking and servicing area layouts are compliant with the relevant applicable Australian Standards.

3.2.6 Trees and Landscaping

The proposed development will require the removal of sixteen (16) trees located within the site. All trees located within the adjoining public reserve are to be retained including the two Canary Island Date Palms which are listed on Council's Significant Tree Register.

It should be noted that as part of the development application under DA419/2018, a referral response from Council stated that the trees located within the site were not deemed suitable for retention. As such the proposed tree removal is considered acceptable, and an Arborist Report is not considered necessary.

The removal of trees will be mitigated by tree and vegetation planting proposed across the site, as detailed in the Landscape Plans prepared by Site Image and submitted with the Development Application.

The Landscape Plans detail the extent and location of planting as well as species selection, anticipated mature height and spread, and planter bed details. All site trees and shrubs are to be provided throughout the site, with extensive planting proposed in deep soil zones located on the northern, eastern, and southern sides, as well as centrally within the site.

Additional 'on structure' planting is proposed within the roof level communal open spaces for each block. Four (4) new street trees are also proposed along the Cary Street frontage and two (2) new street trees are proposed along the Arnott Avenue frontage of the site.

The Landscape Plans also demonstrate that both areas of communal open space will incorporate outdoor furniture, communal facilities and amenity planting, and will provide a highly functional and amenable environment for the enjoyment of residents and future occupants. Ground level common spaces and outdoor dining areas are also demonstrated to be highly functional and maximise amenity for future occupants and visitors.

3.2.7 Waste Management

Separate residential and commercial bin storage areas are proposed within the development. This includes a communal residential bin storage area and separate commercial bin storage within the Cary Street block at ground level. An additional communal residential bin storage area is provided at ground level within the Arnott Avenue block. These bin storage areas will have convenient access to the loading dock for waste collection.

A Waste Management Plan has been prepared by Elephant's Foot and is submitted with the Development Application. The Plan describes waste management considerations and processes for the construction and operational phases of the development, including anticipated waste generation, storage and collection methods.

3.2.8 Stormwater Management

Details of stormwater management incorporated into the development are provided in the Stormwater Management Plans prepared by Northrop Consulting Engineers. The plans include details of OSD, to be located within the basement level car parking areas. In addition, a 4m wide overland flow path is provided along the southern side of the site.

An Erosion and Sediment Control Plan is also included with the stormwater package.

4. Environmental Planning Assessment

This section of the Statement provides a planning assessment of the proposed development covering all relevant heads of consideration under s.4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979).

4.1 STATUTORY AND POLICY COMPLIANCE

The relevant matters for consideration under Section 4.15(1)(a) of the EP&A Act, 1979, are identified in the table below.

Table 2 Section 4.15 Matters for Consideration				
EP & A Act, 1979.	Matters for Consideration	OK	See Comments	N/A
S4.15(1)(a)(i)	State Environmental Planning Policy (Resilience and Hazards) 2021	✓	✓	
"	State Environmental Planning Policy (Planning Systems) 2021	✓	✓	
"	State Environmental Planning Policy (Transport and Infrastructure) 2021	✓	✓	
"	State Environmental Planning Policy (Biodiversity and Conservation) 2021	✓	✓	
"	SEPP No. 65 – Design Quality of Residential Apartment Development	✓	✓	
"	SEPP (BASIX) 2004	✓	✓	
"	Lake Macquarie LEP 2014	✓	✓	
S4.15(1)(a)(iii)	Lake Macquarie DCP 2014	✓	✓	
S4.15(1)(a)(iv)	Any other prescribed matter			
	<ul style="list-style-type: none">AS 2601-1991: Demolition of structuresGovernment Coastal Policy	✓		✓

The matters identified in **Table 2** as requiring specific comment are discussed below.

The primary statutory documents that relate to the subject site and the proposed development are *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* (SEPP 65) and *Lake Macquarie Local Environmental Plan 2014* (LMLEP 2014). The primary non-statutory plan relating to the subject site and proposed development is *Lake Macquarie Development Control Plan 2014* (LMDCP 2014).

The relevant provisions and controls of the above Instruments and Plans are summarised in the following sections of this SEE.

4.1.1 State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) commenced on 1 March 2022, repealing and replacing three former SEPPs related to coastal management, hazardous and offensive development and remediation of land.



Of relevance to the proposed development are the following chapters:

- Chapter 2 Coastal management
- Chapter 4 Remediation of land

4.1.1.1 Chapter 2 – Coastal management

Chapter 2 of the SEPP gives effect to the objectives of the Coastal Management Act 2016 from a land use planning perspective, by specifying how development proposals are to be assessed if they fall within the coastal zone.

The site is mapped under the SEPP as a Coastal Environmental area and a Coastal Use area. Part of the site is also mapped as Proximity Area for Coastal Wetlands.

Chapter 3 of the SEPP provides developments standards for consideration by Council when considering development within these areas. The below table outlines the requirements under the SEPP and provides a response with regards to the proposal.

Table 3 Chapter 2 – Coastal management			
Clause / Control	Requirement	Proposal	Complies
2.8 Development on land in proximity to coastal wetlands or littoral rainforest	(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the <i>Coastal Wetlands and Littoral Rainforests Area Map</i> unless the consent authority is satisfied that the proposed development will not significantly impact on— (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or	The proposed development will be setback from the coastal wetland area, which is located on the opposite (western) side of Cary Street. The development incorporates stormwater management to ensure stormwater can be properly managed on site and will not adversely impact the biophysical, hydrological or ecological integrity of the adjacent wetland.	Yes
	(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.	As above – stormwater will be appropriately managed on site, including a 4m wide overland flow path on the southern side of the site. Any potential impacts on groundwater will be managed in accordance with GTA’s provided by Water NSW.	Yes
2.10 Development on land within the coastal environment area	(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following: (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,	The proposed development will not encroach the FBL and will not impact the waterway. The development will not result in any adverse impacts on the waterway. A Sediment Control Plan is submitted with this application and proposes control devices to manage runoff during the construction phase. Furthermore, concept stormwater plans are submitted with this application which complies	Yes

Table 3 Chapter 2 – Coastal management

Clause / Control	Requirement	Proposal	Complies
		with Council requirements and Australian Standards.	
	(b) coastal environmental values and natural coastal processes,	The development, when complete, will have no adverse impacts on the integrity and resilience of the biophysical, hydrological or ecological environment. The water quality will be maintained through management of stormwater on the site as stormwater from the roof will be collected and reused on the site or connected to Councils stormwater infrastructure.	Yes
	(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,	<p>The development takes place on land that has been previously disturbed. It will have no adverse impact on coastal environmental values or natural coastal processes. It is noted that the proposed development is located a considerable distance from the foreshore as the site does not directly adjoin the waterway.</p> <p>A stormwater plan is submitted with the application which identifies measures to ensure run-off to the waterway will have no adverse impacts. Sewerage and other waste water from the proposal will be piped through the existing sewer network to be treated in the typical manner. The site is not on any of the coastal lakes identified in Schedule 1.</p>	Yes
	(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	Selected vegetation on the site will be removed and supplemented with improved planting and more appropriate native species (as per the accompanying Landscape Plan).	Yes
	(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	The site is private and no public access to the foreshore is existing or proposed.	Yes
	(f) Aboriginal cultural heritage, practices and places,	The site is already disturbed and therefore it is unlikely that any Aboriginal cultural heritage items or places will be impacts as a result of the proposal.	Yes
	(g) the use of the surf zone.	The site is not located adjacent to a surf zone.	N/A
	(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:		
	(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or	The development has been designed and sited to avoid adverse impact, as outlined above.	Yes
	(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	As above.	Yes

Table 3 Chapter 2 – Coastal management

Clause / Control	Requirement	Proposal	Complies
	(c) if that impact cannot be minimised—the development will be managed to mitigate that impact	As above	Yes
2.11 Development on land within the coastal use area	(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:		
	(a) has considered whether the proposed development is likely to cause an adverse impact on the following:		
	(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	There is no existing public access through the site to the waterway. This will not be altered as a result of the proposal.	N/A
	(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,	The site will not overshadow, create a wind funnel or result in loss of views to or from any public place. The proposal has been designed with compliance to the relevant Council standards.	Yes
	(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,	The proposed development is for a high quality mixed use development which will complement the character of the area and enhance the vegetation and landscaping on the site. The proposed development will be setback from the waterway and will be of a scale and form that will not adversely impact on the visual amenity or scenic qualities of the waterway.	Yes
	(iv) Aboriginal cultural heritage, practices and places,	The site has already been disturbed by the existing development and use, therefore it is unlikely that any Aboriginal cultural heritage items or places will be impacts as a result of the proposal.	Yes
	(v) cultural and built environment heritage, and	The site does not contain any cultural and built environmental heritage items, and has been designed to complement the heritage significance of such items in the vicinity.	Yes
	(b) is satisfied that:		
	(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or	The development has been designed and sited to avoid adverse impact, as outlined above. The proposal is entirely outside the foreshore area.	Yes
	(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	As above.	Yes
	(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and	As above.	Yes

Table 3 Chapter 2 – Coastal management

Clause / Control	Requirement	Proposal	Complies
	(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.	The proposed development generally complies with the relevant provisions under LMLEP 2014 and LMDCP 2014. Minor non-compliances have also been justified and the overall development is considered to be compatible with the surrounding built character in terms of bulk, scale and general size. The proposed mixed use development is entirely compatible with the Town Centre character of the locality.	Yes

4.1.1.2 Chapter 4 – Remediation of land

Chapter 4 of the SEPP provides planning controls for the remediation of contaminated land and requires an investigation to be made if land contamination is suspected.

As outlined in the assessment report for DA419/2018:

“The provisions of SEPP 55 require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. In particular, this Policy aims to promote the remediation of contaminated land for the purposes of reducing the risk of harm to human health or any other aspect of the environment. The subject site is not known to be contaminated and given previous residential uses, is considered suited to its intended purpose as a mixed use development.”

In light of the above, no further investigation is required pursuant to Chapter 4 of the SEPP.

4.1.2 State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP) commenced on 1 March 2022, repealing and replacing three former SEPPs related to state and regionally significant development, Aboriginal land and concurrence authority for certain development.

4.1.2.1 Chapter 2 - State and Regional Development

The proposal has a capital investment value (“CIV”) of \$36,654,768. Therefore, as the CIV is more than \$30 million, the proposal is identified as regionally significant development. As such, the proposal will be determined by the Hunter and Central Coast Regional Planning Panel.

4.1.3 State Environmental Planning Policy (Transport and Infrastructure) 2021

State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP) commenced on 1 March 2022, repealing and replacing four former SEPPs related to infrastructure, transport, education and childcare.

Of relevance to the proposed development are the following chapter:

- Chapter 2 Infrastructure

4.1.3.1 Chapter 2 - Infrastructure

Chapter 2 of the SEPP seeks to facilitate the effective and timely delivery of infrastructure and protect existing infrastructure from incompatible development. The development has been assessed against the relevant Clauses of Chapter 2, as outlined below.



Clause 2.48 - Determination of development applications—other development

Clause 2.48 of the SEPP applies to developments that will have an impact on electricity infrastructure. Accordingly, electrical consultation has been made as part of this proposal, with an application to Ausgrid, made and Level 3 Design undertaken for the kiosk substation and easement to be included at the north western corner of the site. It is anticipated that further any comments will be dealt with by conditions of consent and further resolved at the Construction Certificate stage.

Clause 2.118 - Development with frontage to classified road

Cary Street is a classified road and therefore Clause 2.118 of the SEPP is applicable to the subject development. Clause 2.118 states the following:

- (2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*
- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
 - (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The proposed development includes vehicle access from Arnott Avenue, which is consistent with the abovementioned provisions. Egress for servicing vehicles is provided to Cary Street and will be 'left turn only', consistent with the previous DA and as agreed by TfNSW. A Traffic and Parking Impact Assessment has been prepared by McLaren Traffic Engineering and is submitted under a separate cover. The report addresses the traffic and parking impacts of the development and demonstrates that the development will not adversely impact the safety and efficiency of Cary Street or the surrounding road network.

In respect of the impacts of noise and emissions on the proposed development, the proposal is for a mixed use development with residential uses fronting Cary Street from Level 1 and above. These types of development are common in Toronto Town Centre along Cary Street. There is nothing to suggest that the proposed use will be unduly impacted by noise and emissions, subject suitable building design and construction as recommended in the accompanying Acoustic Report (refer to Clause 2.119 below).

Clause 2.119 - Impact of road noise or vibration on non-road development

Clause 2.119 of the SEPP applies to the residential component of the subject development. In particular, the clause seeks to ensure that the development is not likely to be adversely affected by road noise or vibration. The clause outlines the following considerations in this regard:

- (3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—*

(a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,

(b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

An Acoustic Report prepared by Spectrum Acoustic is submitted with the application and provides an acoustic assessment of the development, having regard to the relevant provisions of the SEPP, including Clause 2.119. The report demonstrates that, subject to recommendations contained in the report the proposed apartments will not be unduly impacted by road noise or vibration, consistent with the requirements of the SEPP.

Clause 2.121 - Traffic-generating development

The proposal includes a car park with more than 50 spaces and has direct access to a classified road (Cary Street). As such, pursuant to Schedule 3 of the SEPP the development is classed as traffic-generating development and thus Clause 2.121 is applicable to the proposed development. As outlined in the Traffic and Parking Impact Assessment prepared by McLaren Traffic Engineering, the development is not anticipated to adversely impact the safety and efficiency of Cary Street or the surrounding road network. Therefore, the proposal is consistent with the requirements of Clause 2.121.

As required by Clause 2.121, it is anticipated that the proposal will be referred to TfNSW for comment.

4.1.4 State Environmental Planning Policy (Biodiversity and Conservation) 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP) commenced on 1 March 2022, repealing and replacing 11 previous SEPPs.

Of relevance to the proposed development are the following chapter:

- Chapter 2 Vegetation in non-rural areas

4.1.4.1 Chapter 2 - Vegetation in non-rural Areas

Chapter 2 of 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. The SEPP is applicable to the subject development as it located on land zoned B2 Local Centre.

Chapter 2 of the SEPP regulates clearing that is not ancillary to development requiring consent. Whereas, clearing that is ancillary to development requiring consent will be assessed as part of the development assessment process. As such, the proposed removal of trees is ancillary to development requiring consent and will be assessed by Council's Tree and Landscape Officer.

The proposal includes the removal of sixteen (16) site trees. New tree planting is proposed throughout the site and on-structure, as illustrated in the accompanying Landscape Plans. Four (4) new street trees are also proposed along the Cary Street frontage and two (2) new street trees are proposed along the Arnott Avenue frontage of the site. As such, the development will enhance the landscape quality of the site and is entirely consistent with the aims of Chapter 2 of the SEPP.

4.1.5 SEPP No. 65 – Design Quality of Residential Apartment Development

SEPP No.65 – Design Quality of Residential Flat Buildings (SEPP 65) was gazetted on 26 July 2002 and applies to the assessment of Development Applications for residential flat developments of three or more storeys in height and containing at least four dwellings. Amendment 3 to SEPP 65 commenced on 17 July 2015 and implemented various

changes including the introduction of the Apartment Design Guide (ADG) to replace the Residential Flat Design Code. SEPP 65 applies to the proposal.

Schedule 1 of the Policy sets out the 9 'Design Quality Principles' and Clause 28(2) requires that the consent authority takes into consideration the following when determining an application:

- a. The advice (if any) of a relevant design review panel;
- b. The design quality of the residential flat development when evaluated in accordance with the design quality principles; and
- c. The Apartment Design Guide.

In relation to cl. 28(2)(b), and in order to satisfy cl. 50 of the Environmental Planning and Assessment Regulation 2000, a Design Verification Statement detailing compliance with the design quality principles has been prepared by Mark Lawler Architects and is submitted with the Development Application under a separate cover.

In relation to cl. 28(c) an ADG compliance table has been prepared and is attached at Annexure A.

Clause 30(1) of the SEPP states that a development application cannot be refused for reasons relating to ceiling heights, parking and internal apartment sizes, if it complies with the prescribed criteria for these matters as specified in the ADG. The proposal satisfies these controls, as outlined in the compliance table.

The compliance table identifies that the proposal is generally consistent with the relevant design criteria. Where other minor non-compliances are proposed they are considered acceptable on merit for the reasons detailed in the compliance table or below in relation to visual privacy (building separation).

4.1.5.1 Part 3F - Visual privacy (building separation)

Design Criteria 1 of Part 3F of the ADG prescribes setback requirements between proposed buildings and the side or rear boundaries of an allotment and are reproduced at **Table 4**. The objective of the design criteria is to ensure adequate separation distances are shared equitably between neighbouring sites to achieve reasonable levels of external and internal visual privacy. It is pertinent to note that the objective relates solely to visual privacy.

Table 4 Setback distances prescribed by the ADG		
Building height	Habitable rooms & balconies	Non-habitable rooms
Up to 12m (4 storeys)	6m	3m
Up to 25m (5-8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m

Part 3F provides that "*Separation distances between buildings on the same site should combine required building separations depending on the type of room*".

The proposed development provides compliant building separation to all neighbouring properties. However, there are some minor non-compliances with regards to separation between the two proposed blocks as part of the development. As illustrated on Figure 8 below, the proposal provides separation of between 10.1m and 15.3m between habitable rooms/POS of the proposed blocks. This is non-compliant with the 18m requirement under Part 3F.

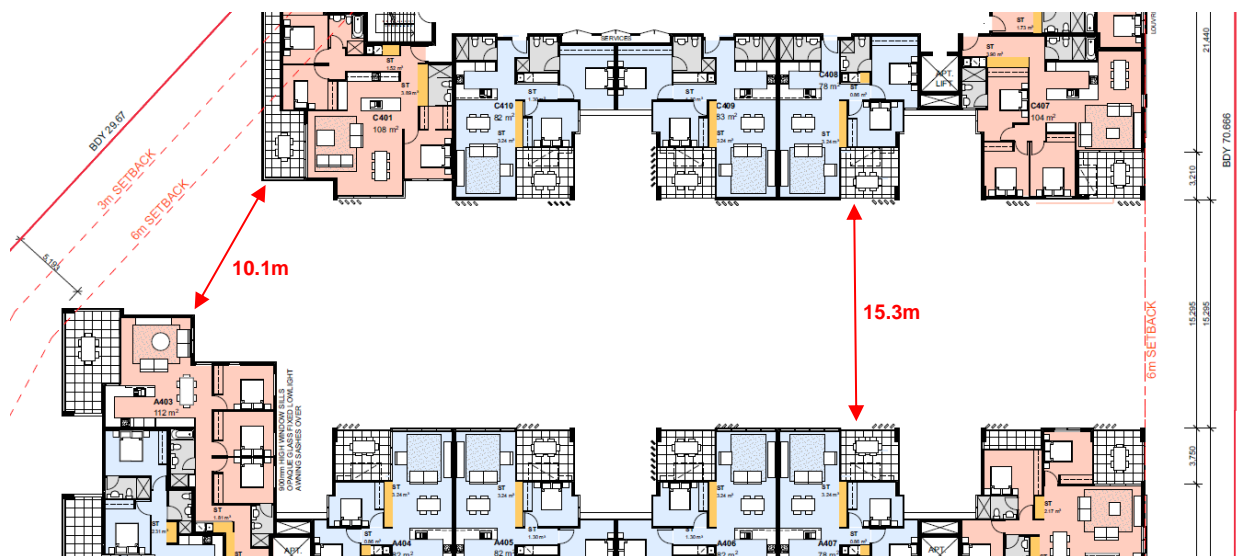


Figure 8 Extract from Level 5 floor plan illustrating building separation

Justification to reduced building separation

The objective of the Design Criteria relating to visual privacy is as follows:

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

With regards to the 10.1m separation on the southern end of the development, the building elevations of both blocks are designed so that they do not provide any direct cross-views between habitable rooms/balconies. Only oblique views are provided between these spaces and will not give rise to adverse visual privacy impacts for future occupants. Furthermore, as annotated on the floor plans, north-facing bedroom windows to Units A004, A104, A204, A304 and A404 incorporate high sills and obscure-glazing to avoid any overlooking between units.

With regards to the 15.3m separation between windows and balconies facing one another between the two buildings, it is noted that this numerical non-compliance is only minor (2.7m). Furthermore, the proposed units have been designed to include operable louvres that will enable future occupants to partially enclose windows and balcony spaces should they desire to do so in the future. This will ensure that future residents achieve a suitable sense of visual privacy.

On this basis, the proposal is consistent with Objective 3F-1, achieving reasonable levels of external and internal visual privacy and as such, a variation to the building separation requirement is considered acceptable in this instance.

4.1.6 SEPP Building Sustainability Index: BASIX 2004

A "BASIX Certificate" has been prepared and is submitted separately with this application. The certificate demonstrates compliance with the thermal comfort, energy efficiency and water efficiency requirements of SEPP BASIX. Commitments made under the BASIX Certificate are detailed on the architectural plans.

4.1.7 Lake Macquarie LEP 2014

LMLEP 2014 applies to the subject site which is identified as being largely within Zone B2 Local Centre. The proposal is characterised as a mixed used development, comprising of *commercial premises*, *shop top housing* and a

residential flat building which are permitted with consent in Zone B2. The proposed development is consistent with the objectives of Zone B2.

Annexure B provides a compliance table which addresses the relevant provisions of LMLEP 2014 and demonstrates that the proposal generally complies with the relevant provisions of LMLEP 2014, with the exception of the building height development standard. Accordingly, a written variation request pursuant to Clause 4.6 of LMLEP 2014 has been provided at Annexure C and demonstrates that the proposed variation enables a superior building form and design, and thus are justified in the circumstances.

4.1.8 Lake Macquarie DCP 2014

The Lake Macquarie Development Control Plan (LMDCP) 2014 applies to the site.

A response to the requirements of LMDCP 2014 is provided at Annexure D, where it is demonstrated that the proposed development achieves compliance with the majority of the DCP provisions. Where the proposal does not comply with the relevant controls of the DCP, it has been demonstrated that the objectives are still achieved and the variations are acceptable on merit, as described in the compliance table.

4.2 IMPACTS ON NATURAL & BUILT ENVIRONMENT

4.2.1 Topography & Scenic Impacts

The proposal involves earthworks to provide basement car parking and a level building pad for the development. The earthworks are required to facilitate a mixed use development in this Town Centre site and located car parking below ground, and therefore will not have any adverse topographical impacts on the locality.

There are no prominent scenic features such as significant trees, rock outcrops or the like existing on site. As demonstrated in the accompanying Visual Impact Assessment prepared by Mansfield Urban, *“the overall Visual Impact outcomes of this development in the current visual context is high but deemed to be commensurate with the expected visual outcomes of the project within the planning and visual site context”*.

4.2.2 Water & Air Quality Impacts

During construction, appropriate sediment and erosion controls will be installed and maintained to prevent migration of sediment laden water from the site. Once constructed, roof and surface water from the development will be captured and directed to on-site detention tanks, and subsequently discharged to Council's stormwater system. An 4m overland flow path is also provided on the southern side of the site and will assist in the management of overland stormwater flows across the site.

In terms of air quality, the site will be managed during construction to mitigate potential for dust generation. During operation, the proposed use, being for the purposes of residential accommodation, is not anticipated to generate any unusual odour or fumes. The proposal is unlikely to have any detectable impact on air quality.

4.2.3 Flora & Fauna Impacts

The redevelopment works necessitates removal of some sixteen (16) trees on the site, as would be expected given the Town Centre location and mixed use development anticipated by the applicable controls and zoning. All site trees have limited retention value and no significant flora or habitat for threatened fauna is identified on the site. Therefore, the proposal will have no significant adverse impacts on local flora and fauna.

4.2.4 Solar Access

Shadow diagrams for the proposed development are submitted with the Development Application. These diagrams indicate shadow cast by the proposed development at 9am, 12noon and 3pm on March 21, the winter solstice (June 21), and December 21.

Section 6.19 of Part 4 of the Lake Macquarie DCP 2015 provides solar access requirements which require:

2. At least 50% of the required area of private open space of each dwelling, and at least 50% of the required area of private open space of adjoining dwellings must receive a minimum of three hours of sunlight between 9am and 3pm on June 21. Council may accept a reduction in solar access for the development or adjacent sites if the topography and lot orientation is such that the three-hour standard is considered unreasonable.

The shadow diagrams submitted with this application show the proposed development satisfies the DCP requirements in relation to overshadowing. At the winter solstice, the shadow cast by the proposed development largely falls over the street and vacant land, and as such will not have any adverse solar access impacts on nearby residential development.

4.2.5 Views

There are no significant public or private views available through the site and none will be adversely impacted by the proposed development. The configuration and scale of the proposal is reasonably expected at the site and will not result in unacceptable view impacts from adjoining properties or nearby public places.

4.2.6 Acoustic & Visual Privacy

The primary communal open space areas are provided at roof level. These locations are most appropriate in regards to mitigating acoustic impacts on neighbouring properties i.e. noise emanating from the communal space will not be directed towards the noise sensitive rooms of existing or potential future development on nearby sites. Planter beds will be provided at the edges of communal open space areas to limit any potential overlooking impacts and will also contribute to the mitigation of noise transmission through screen planting.

The design and configuration of the development has also considered the need to protect the privacy of occupants of both the proposed dwellings and existing dwellings on neighbouring sites. The development complies with the building separation requirements to neighbouring sites, however there are a number of numerical non-compliances with ADG building separation criteria between the proposed blocks (refer to Section 4.1.5.1 of this SEE).

As outlined in Section 4.1.5.1, the proposed apartment configuration and window/balcony design has been carefully considered to limit any potential for adverse overlooking between apartments in the proposed development. As such, the levels of visual privacy achieved are considered to be satisfactory, in particular given the dense urban context of the site.

4.2.7 Heritage

The site is not listed under LMLEP 2014 as a heritage item or located within a Heritage Conservation Area. However, the site is adjacent to the Toronto Heritage Precinct and falls within the Town Heritage Area of the Toronto Town Centre Area Plan. The site is located within the vicinity of the following listed heritage items:

- Heritage item 21 – Fassifern to Toronto Branch Railway Line;
- Heritage item 171 – Boatman's Cottage Lakefront; Boathouse and Winches Lakefront; and House;
- Heritage item 172 – Building Restaurant; and
- Heritage item 173 – Royal Motor Yacht Club Annexe.

A Heritage Impact Statement ("HIS") has been prepared by John Carr Heritage Design and submitted with the application under a separate cover. The HIS concludes that the proposed development is considered to have minimal impact on the heritage values of the nearby listed heritage items, and concludes that:

"The redevelopment of this area for a mixed use residential complex has been on and off for over a decade. The Toronto Town Centre Plan has reinforced the importance of this site when entering the commercial area of the town from the north. The recent roadwork constructed to ease the traffic flow during weekday peak hours is another indication of the town as a growing centre on the western side of Lake Macquarie.

The proposed development varies from the scheduled heights shown in the DCP and this is discussed in detail in the Statement of Environmental Effects. From a heritage aspect, the scheme has been assessed as having minimal effect on both the Heritage Precinct and the nearby individually listed heritage items based on the overall design, the modelling of the facades, the setback off the former railway corridor, the partial screening from existing and proposed landscaping. Additionally the nearby items back onto the subject site and most have some form of building works providing a screen between the sites. These earlier buildings were specifically designed to address the waterfront with the western side as a service access and area for later garaging.

Due to the topography of the site, the proposed development sits low when viewed from the lake and blends in with the overall development on the waterfront, forming an effective backdrop. The former railway corridor will be largely preserved in its current visual format when either travelling east or west between Cary Street and the former railway station and platform.

The site has been referred to in previous DCP's as a "Gateway Site" to Toronto. The development of this site could also be considered in a similar manner as a gateway between the Toronto town centre and the Toronto heritage precinct. It provides a clear delineation on Cary Street between the commercial area and the residential area of the town."

4.2.8 External Appearance & Design

The development has been arranged to generally accord with the design principles and block controls set out in the Toronto Town Centre Precinct planning controls. The proposal adopts heights that exceed these controls, however this enables a superior building form with a distinct separation between the two proposed blocks, which consist of deep recesses at their elevations to reduce the perceived bulk and scale of the development. The proposed building footprint also enables a southern setback to provide extensive deep soil and landscaping, as well as opportunities for outdoor dining to active the ground level of the site.

Above the street wall height on Cary Street, residential levels will provide increased setbacks from the street to ensure the development achieves a 'human scale' and the streetscape is not visually overwhelmed by the subject development. The development purposefully provides a horizontal emphasis to the upper levels to ensure that the proposal will create a landmark development within the streetscape without appearing visually jarring or over-scaled when viewed along Cary Street or from neighbouring developments.

The external materials and colours proposed complement the building form and massing arrangement and results in a building with an excellent aesthetic quality and streetscape presentation. The proposed materials and colours are detailed on the material schedule included with the architectural plan set and include neutral tones so as to blend in with the surrounding vernacular and ensure that the development is not visually jarring when viewed from the lake.

Landscaping is proposed throughout the development, including extensive areas of tree and vegetation planting to all setbacks as well as within the public and communal open space areas at ground and roof level. This will enable the

growth of appropriate screen planting and canopy trees, and will increase tree canopy cover across the site. It will also soften the visual appearance of the development when viewed from neighbouring sites.

Overall the scale, bulk, massing, visual separation, design and form of the proposed development presents as a well-articulated and consciously designed development that relates well to the evolving streetscape context. The scale and form of the development is consistent with other developments in the Toronto Town Centre and continues the evolution of this part the Town Centre. As such, the proposed development will significantly enhance the appearance of the site and is compatible with the desired future character of the streetscape and wider Toronto Town Centre Precinct.

Photomontages are provided at **Figures 9 & 10** and illustrate the anticipated streetscape appearance of the development.



Figure 9 Perspective of the development viewed from Cary Street



Figure 10 Perspective of the development as viewed northwards along Cary Street

4.3 ECONOMIC & SOCIAL IMPACTS

The proposal provides for 108 new high-quality dwellings and new retail space in a highly accessible location within Toronto Town Centre and therefore assists in meeting the housing and employment needs of the community. The development will enhance the vitality and viability of the Town Centre.

The quantum and range of dwelling sizes, including dwellings capable of being adapted for people with a mobility impairment, will cater for a cross-section of the community and a range of household compositions, and is therefore considered to have a positive social impact.

Undertaking construction works will have some short-term positive economic impacts through employment generation in the construction industry, and associated sectors. In the longer term, high amenity living will be provided for the future residents and employment will be generated in the retail sectors. Furthermore, the development will increase the number of residents living in close proximity to Toronto Town Centre and this will translate into additional consumers for local businesses and services.

In light of the above, it is considered that the proposed development is likely to have only positive economic impacts in the locality.

4.3.1 Crime Prevention through Environmental Design

Part B of the Department of Urban Affairs and Planning's (now Department of Planning and Environment) *Crime Prevention and the Assessment of Development Applications: Guidelines* under Section 4.15 of the *Environmental Planning and Assessment Act 1979* identify four Crime Prevention through Environmental Design (CPTED) principles. Each of the principles seeks to reduce opportunities for crime and have been used to inform the NSW Police *Safer by Design Guidelines for Crime Prevention*. The principles are:

- Surveillance;

- Access control;
- Territorial reinforcement; and
- Space management

The subject development performs well in terms of achieving the safer by design guidelines for crime prevention. The development is deemed to be either safe or safe subject to the implementation of the following recommendations:

- All pedestrian entries to the site are overlooked by public and private vantage points;
- Residential and retail uses are clearly separated and access for members of the public is limited to retail spaces, avoiding private residential areas;
- The residential lobbies and vehicle entrances to the building are to be controlled by a security door with access being restricted by an intercom, key, code or card lock system;
- The main pedestrian access point to the buildings as well as the frontage of the buildings at the ground level is to be illuminated during the evening to a level that allows clear lines of sight from the street frontages;
- The street number and/or building name of the subject building is to be readily identifiable from Cary Street and Arnott Avenue;
- The car parking areas are to be illuminated during the evenings and signage and wayfinding through the car parking areas will be clear and legible;
- External lighting is to be installed and operated in accordance with the relevant Australian standards;
- All painted surfaces on the external parts of the street level are to be treated with a graffiti resistant coating;
- No 'blind spots' are provided in communal areas;
- CCTV camera systems will be located in communal space, including car parking areas; and
- Communal corridors and pathways within the building are to be well lit.

In light of the above, the proposed development is considered to perform well in regards to CPTED principles.

4.4 THE SUITABILITY OF THE SITE

4.4.1 Access to services

The site is located in Toronto Town City Centre and therefore has optimal access to public transport, and local services and facilities including shopping centres, professional and health services, and places of leisure. A number of primary and secondary school are all within walking distance of the site, while Lake Macquarie foreshore is situated a short walk to the east. Proximity to transport, shops, services and public open spaces enhances the status of the site as a desirable location for higher density mixed-use development incorporating residential accommodation and retail floor space.

As the site is within an established area, connections to electricity, sewer, telephone, and water supply are available.

4.4.2 Access and parking

Vehicular access/egress to the site for cars and motorcycles is proposed from Arnott Avenue at the rear. Pedestrian access from the car parking areas to the retail uses and residential levels above is facilitated by lobbies, stairwells and passenger lifts on each parking level.

Servicing vehicles will also access the loading bay on the site from Arnott Avenue. However, in order to limit the amount of space used on site for vehicle manoeuvring, the servicing vehicle egress will be onto Cary Street. This egress will be 'left turn only' to limit any impact on the safe operation of Cary Street. The arrangement was previously agreed with TfNSW under DA419/2018 and is considered appropriate in this instance.

Table 5 below provides the required and proposed car, motorcycle and car parking spaces, which is compliant with the parking rates in LMDCP 2014.

Table 5 Parking Compliance	
Car Parking Requirement	Proposed
Residential:	
1 bed - 18 Units @ 0.5 per unit = 9 spaces	Residential = 140 spaces Visitor = 28 spaces
2 bed - 66 Units @ 0.75 per unit = 49.5 spaces	
3 bed+ - 24 Units @ 1 per unit = 24 spaces	
Visitor - 108 Units @ 0.25 per unit = 27 spaces	
Total = 83 resident and 27 visitor	
Retail:	
929m ² GFA @ 1 per 25m ² GFA = 37.1 spaces	Retail = 38 spaces (+ 2 service spaces)
Total Car Parking Requirement	Proposed
148 spaces	208 spaces
Motorcycle and Bicycle Parking Requirement [DCP]	Proposed
Motorcycle:	
One motorbike parking space for each 20 car parking spaces = 11 spaces	Motorcycle = 12 spaces
Bicycle:	
1 per 500m ² leasable floor area (employees) = 2 spaces	Bicycle = 13 spaces
1 per 10 car parking spaces (customers) = 11 spaces	

In addition to the above, a loading bay is provided at ground level adjacent to a bin holding area. The loading bay can accommodate a 8.8m Medium Rigid Vehicle to service both the residential and retail uses on site, including for waste collection.

A Traffic and Parking Assessment has been prepared by McLaren Traffic Engineering and is submitted with the Development Application. The assessment confirms that the car park layout, including access ramp, proposed parking spaces and associated aisle widths, are compliant with the relevant applicable Australian Standards.

4.4.3 Hazards

The site is not in an area recognised by Council as being subject to landslip or flooding and the proposed development is not likely to increase the likelihood of hazards occurring. Stormwater management on site will adequately deal with any potential stormwater flood risk associated with the development.

4.4.3.1 Bushfire

The site is bushfire prone and therefore a Bushfire Assessment Report has been prepared by Newcastle Bushfire Consulting and accompanies the application. The report establishes that the development does not comply with the acceptable solutions of Planning for Bush Fire Protection 2019 and offers an alternate solution to more accurately measure the bushfire attack level. This alternate solution is outlined in Section 8 of the report.

Based upon an assessment of the plans and information received for the proposal, the report makes the following recommendations:

"1. The proposed building works for the residential component of the building excepting the eastern elevation shall comply with BAL-19 in accordance with AS3959 (2018) Construction of buildings in bushfire-prone areas

or National Association of Steel-Framed Housing (NASH) Standard (1.7.14 updated) for Steel Framed Construction in Bushfire Areas as appropriate and the additional construction requirements of Planning for Bush Fire Protection (2019) Section 7.5.2.

2. The eastern elevation of the residential units shall comply with BAL-12.5 in accordance with AS3959 (2018) Construction of buildings in bushfire-prone areas or National Association of Steel-Framed Housing (NASH) Standard (1.7.14 updated) for Steel Framed Construction in Bushfire Areas as appropriate and the additional construction requirements of Planning for Bush Fire Protection (2019) Section 7.5.2.

3. The proposed building works for the commercial component of the building shall comply with Building Code Australia 2019 Structural Fire Safety requirements.

4. At the commencement of building works and in perpetuity, the entire property shall be managed as an inner protection area (IPA) as outlined within Appendix 4 of Planning for Bush Fire Protection 2019 and the NSW Rural Fire Service's document Standards for Asset Protection Zones.

5. Water, electricity and gas are to comply with Planning for Bush Fire Protection (2019) Section 7.

6. Landscaping is to be undertaken in accordance with Planning for Bush Fire Protection (2019) Appendix 4 and managed and maintained in perpetuity.

7. The building manager is recommended to prepare an Emergency /Evacuation Plan consistent with the NSW Rural Fire Service document Guidelines for the Preparation of Emergency/Evacuation Plan."

Subject to the above recommendations, the report concludes that there is buildable area onsite for the development with appropriate services and asset protection zones available. The proposed development can comply with the requirements of Planning for Bush Fire Protection 2019 guidelines as required under section 100b of the Rural Fires Act 1997. As part of the assessment process, it is anticipated that the report should be referred to NSW Rural Fire Service for the issue of a Bushfire Safety Authority.

4.5 THE PUBLIC INTEREST

The development aligns with the objectives of Zone B2 in that it will provide for the housing and commercial needs of the community in a mixed use building format that activates Cary Street. There is a tangible social benefit associated with increased housing and non-residential floor space provision in Toronto Town Centre, which has optimal access to services and public transport.

The development will provide for 108 high quality dwellings with access to multiple areas of communal open space for resident engagement and activity. The massing arrangement adopted generally aligns with that envisaged under precinct specific controls under Lake Macquarie DCP 2014, with any variations justified throughout this SEE. The proposed development has a high degree of façade articulation, modulation and integrated landscaping, and will result in a high quality urban form that will set the benchmark for redevelopment of land in the locality, consistent with the desired future character of Toronto Town Centre.

The proposal is generally compliant with relevant development standards, design criteria and planning controls, except where identified and justified within this SEE. The proposal seeks a variation to the building height development standard, however the breaches are considered to allow for a more appropriate distribution of development density and a higher quality, site responsive urban design outcome. For these reasons, the proposal is considered to be in the public interest.

5. Conclusion

This SEE accompanies a Development Application for tree removal, excavation and the construction of a shop top housing development, including basement car parking and associated landscaping at No. 114-120 Cary Street, Toronto. The proposed development has been assessed against the matters of consideration stipulated by Section 4.15 of the Environmental Planning & Assessment Act 1979, as well as relevant Council guidelines and policies.

The development proposal satisfies the objectives of Zone B2 and generally complies with the local provisions established by Lake Macquarie LEP 2014. The proposal seeks a variation to the height of buildings development standard, and the breaches enable a superior massing arrangement with optimal façade articulation, and is appropriate on this basis. Accordingly, a Clause 4.6 variation request is provided at Annexure C.

The proposed development provides a building envelope and design that will enhance the appearance of the streetscape and is generally consistent with controls and objectives within the Lake Macquarie DCP 2014. Where variations to controls are sought, these have been demonstrated throughout this Statement to provide a superior design outcome and remain consistent with the objectives of the controls, this being acceptable on merit.

The development proposal will provide for 108 new high-quality dwellings and new non-residential floor space within Toronto Town Centre and in close proximity to public transport and amenities.

This SEE and associated documentation demonstrates that the development proposal can be delivered without any significant adverse impact on the natural or built environment, and also that there are tangible social and economic benefits to be derived from the proposal.

The subject site has been zoned for mixed use purposes and is in an accessible location due to its proximity to the Town Centre, public transport, and local public facilities and open spaces. On this basis, the site is deemed to be entirely suitable for the proposed development. The delivery of higher density mixed use development in this location is consistent with State planning strategies, as well as the Council's relevant local plans and policies, and it is therefore in the public interest that the development be approved and delivered.

For these reasons, the proposal is considered to be worthy of Council's support.

ANNEXURE A

Apartment Design Guide – Compliance Table



Apartment Design Guide - Compliance Table

Clause / Control	Requirement	Proposal	Complies?
Part 3 Siting the development			
3D Communal Open Space	1. Communal open space has a minimum area equal to 25% of the site.	<p>The proposal includes a total of 1,345m² (23.2% of the site area) of COS provided at the ground and rooftop levels.</p> <p>The proposed spaces at the ground and rooftop levels vary in nature and provide both intimate and active zones for residents to enjoy. The COS at the ground floor provides quality seating areas adjacent to well-designed landscaping to provide spaces with high amenity for residents to enjoy. The rooftop COS provides space with larger tables and kitchens for gatherings, with excellent solar access throughout the day. The provision of COS is considered acceptable given all residential units are provided with the required private open space and communal open space has been maximised on the site, occupying both rooftop levels. The minor non-compliance is also considered appropriate given the adjacent public reserve at the corner of Carry Street and Victory Parade, and the sites proximity to the foreshore area long the Lake, in which residents can easily access and enjoy.</p>	On Merit
	2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	Rooftop COS will receive more than the required amount of direct solar access between 9am and 3pm at mid-winter.	Yes
3E Deep Soil Zones	1. Deep soil zones are to meet the following minimum requirements		The proposal includes 896.56m ² (15.48% of the site area) of deep soil.
	Site Area	Minimum Dimension	
	Less than 650m ²	-	
	650m ² to 1,500m ²	3m	
	Above 1,500m ²	6m	7% of the site area
3F Visual privacy	1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:	The proposed development provides compliant building separation to neighbouring properties. However, it does provide some minor numerical non-compliances between the two proposed blocks.	On Merit

Apartment Design Guide - Compliance Table

	<table><tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> <p>No building separation is necessary where building types incorporate blank party walls. Typically this occurs along a main street or at podium levels within centres</p> <p>Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	Further discussion is provide in Section 4.1.5.1 of this SEE.	
Building height	Habitable rooms and balconies	Non-habitable rooms													
Up to 12m (4 storeys)	6m	3m													
Up to 25m (5-8 storeys)	9m	4.5m													
Over 25m (9+ storeys)	12m	6m													
Part 4 Designing the Building															
4A Solar Access and Daylight	2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter	77 out of 108 (71.3%) apartments receive the minimum of 3 hours of direct solar access between 9am and 3pm during mid-winter.	Yes												
	3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	10 out of 108 (9.3%) of apartments receive no direct sun in mid-winter.	Yes												
4B Natural Ventilation	1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	99 out of 108 (91.67%) of apartments are naturally cross ventilated.	Yes												

Apartment Design Guide - Compliance Table

	2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	No cross-over or cross-through apartments exceed 18m in depth.	Yes										
4C Ceiling Height	<div>1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</div> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable rooms</td><td>2.4m</td></tr><tr><td>Two storey apartments</td><td>2.7m for main living area and 2.4m for second floor where its area does not exceeds 50% of the apartment area.</td></tr><tr><td>If located in mixed use areas</td><td>3.3m for ground and first floor to promote future flexibility of use.</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable rooms	2.4m	Two storey apartments	2.7m for main living area and 2.4m for second floor where its area does not exceeds 50% of the apartment area.	If located in mixed use areas	3.3m for ground and first floor to promote future flexibility of use.	Floor to ceiling heights are at least 2.7m in height.	Yes
Minimum ceiling height													
Habitable rooms	2.7m												
Non-habitable rooms	2.4m												
Two storey apartments	2.7m for main living area and 2.4m for second floor where its area does not exceeds 50% of the apartment area.												
If located in mixed use areas	3.3m for ground and first floor to promote future flexibility of use.												
4D Apartment Layout	<div>1. Apartments are required to have the following minimum internal areas:</div> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 Bedroom</td><td>70m²</td></tr><tr><td>3 Bedroom</td><td>90m²</td></tr></table> <div>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</div> <div>2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</div>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 Bedroom	70m ²	3 Bedroom	90m ²	<div>Each of the apartments meets the minimum internal floor space requirements.</div> <div>All habitable rooms contain a window that is adequately sized.</div>	<div>Yes</div> <div>Yes</div>
Apartment type	Minimum internal area												
Studio	35m ²												
1 bedroom	50m ²												
2 Bedroom	70m ²												
3 Bedroom	90m ²												

Apartment Design Guide - Compliance Table

	<div>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</div> <div>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</div>	<div>All habitable rooms comply with this requirement.</div> <div>No open plan layouts have depth greater than 8m</div>	<div>Yes</div> <div>Yes</div>															
	<div>1. Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space)</div> <div>2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</div> <div>3. Living rooms or combined living/dining rooms have a minimum width of:<ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments</div>	<div>All master bedrooms are at least 10sqm and other bedrooms are 9sqm.</div> <div>All bedrooms have a minimum dimension of 3m.</div> <div>All living rooms comply.</div>	<div>Yes</div> <div>Yes</div> <div>Yes</div>															
4E Open Space	<div>All apartments are required to have primary balconies as follows:</div> <table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>Studio</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom</td><td>8m²</td><td>2m</td></tr><tr><td>2 Bedroom</td><td>10m²</td><td>2m</td></tr><tr><td>3 Bedroom +</td><td>12m²</td><td>2.4m</td></tr></table> <div>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</div> <div>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m</div>	Dwelling type	Minimum area	Minimum depth	Studio	4m ²	-	1 bedroom	8m ²	2m	2 Bedroom	10m ²	2m	3 Bedroom +	12m ²	2.4m	<div>All apartments have access to a private balcony or terrace that meets the minimum area and depth.</div> <div>All ground level apartments have a terrace in excess of 15sqm in area and 3m in depth.</div>	<div>Yes</div> <div>Yes</div>
Dwelling type	Minimum area	Minimum depth																
Studio	4m ²	-																
1 bedroom	8m ²	2m																
2 Bedroom	10m ²	2m																
3 Bedroom +	12m ²	2.4m																



Apartment Design Guide - Compliance Table													
4F Common Circulation Space	1. The maximum number of apartments off a circulation core on a single level is eight.	No more than 7 apartments per circulation core.	Yes										
	2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40	Less than 10 storeys.	N/A										
4G Storage	1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:		Each apartment has compliant areas of storage, located within the apartment. Separate resident storage is also provided at basement level. A storage schedule is provided with the architectural plan set.										
	<table><tr><th>Dwelling type</th><th>Storage volume</th></tr><tr><td>Studio</td><td>4m³</td></tr><tr><td>1 bedroom</td><td>6m³</td></tr><tr><td>2 Bedroom</td><td>8m³</td></tr><tr><td>3+ Bedroom</td><td>10m³</td></tr></table>			Dwelling type	Storage volume	Studio	4m ³	1 bedroom	6m ³	2 Bedroom	8m ³	3+ Bedroom	10m ³
	Dwelling type	Storage volume											
	Studio	4m ³											
	1 bedroom	6m ³											
	2 Bedroom	8m ³											
	3+ Bedroom	10m ³											
At least 50% of the required storage is to be located within the apartment													



ANNEXURE B

Lake Macquarie LEP 2014 – Compliance Table



Lake Macquarie Local Environmental Plan 2014 - Compliance Table

Clause / Control	Requirement	Proposal	Complies?
Part 2 Permitted and prohibited development			
Land Use Table and Objectives of the zone			
Permissibility	B2 Local Centre Zone	<i>Commercial premises, shop top housing and residential flat buildings are permitted with consent.</i>	Yes
Zone Objectives	<p><u>Objectives of the Zone:</u></p> <ul style="list-style-type: none"> <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.</i> <i>To encourage employment opportunities in accessible locations.</i> <i>To maximise public transport patronage and encourage walking and cycling.</i> <i>To create spaces that are accessible and are a central focus for the community.</i> <i>To provide for housing as part of mixed use developments.</i> 	<p>The proposal is consistent with the objectives of Zone B2 as:</p> <ul style="list-style-type: none"> The proposed development is located within the Toronto Town Centre with good access to services including retail/commercial, health, community, and recreational. The proposed mixed use development provides for commercial and residential components that will serve the needs of people living, working and visiting the area. The proposed development will generate short and medium-term construction jobs within the locality. Furthermore, the ongoing operation of the commercial floor space will provide a number of long-term employment roles. The site is well located to optimise on existing facilities and public transport services, and thus supports less car dependency. The site links to an existing cycleway link to Fassifern, which is serviced by train. The development will create a highly accessible development within a central location for the community. The proposal offers a variety of unit types for a range of housing needs, supporting an increase in housing choice as part of a mixed use development. 	Yes

Lake Macquarie Local Environmental Plan 2014 - Compliance Table

Part 4 Principal development standards

4.3 Height of buildings	<p>(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</p> <p><i>Maximum height of buildings:</i></p> <ul style="list-style-type: none"> • 10m (to reserve); • 13m (Cary Street); and • 16m (Arnott Street). 	The maximum height of the proposal breaches each of the LEP height limits. Accordingly, a variation request pursuant to Clause 4.6 is provided at Annexure C .	No
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Part 5 Miscellaneous Provisions

5.10 Heritage conservation	<p>(4) Effect of proposed development on heritage significance The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).</p> <p>(5) Heritage assessment The consent authority may, before granting consent to any development:</p> <p>(a) on land on which a heritage item is located, or</p> <p>(b) on land that is within a heritage conservation area, or</p> <p>(c) on land that is within the vicinity of land referred to in paragraph (a) or (b),</p> <p>require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</p>	<p>The site itself is not identified as an item of environmental heritage, nor is the site within a heritage conservation area. However, the site is adjacent to the Toronto Heritage Precinct and there are a number of heritage items located in the vicinity of the site, being:</p> <ul style="list-style-type: none"> • Heritage item 21 – Fassifern to Toronto Branch Railway Line; • Heritage item 171 – Boatman's Cottage Lakefront; Boathouse and Winches Lakefront; and House; • Heritage item 172 – Building Restaurant; and • Heritage item 173 – Royal Motor Yacht Club Annexe. <p>A Heritage Impact Statement has been prepared and submitted with the application under a separate cover. The HIS demonstrates that the proposal will have minimal impact on the heritage values of the nearby listed heritage items. Accordingly, the development is acceptable with regards to heritage impacts.</p>	Yes
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Lake Macquarie Local Environmental Plan 2014 - Compliance Table

Part 7 Local Provisions - General

7.1 Acid Sulfate Soils	<p>(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.</p> <p><i>Class 5 - Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.</i></p>	As per the previous DA (DA419/2018), it is not anticipated that any acid sulfate soils will be encountered on the site. As such, it is anticipated that conditions of consent will require an Acid Sulphate Management Plan to be prepared and approved prior to the issue of a CC for implementation for the proposed construction site.	Yes
7.6 Earthworks	(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:	-	-
	(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,	<p>A Geotechnical Report has been prepared by Chameleon Geosciences Pty Ltd and has been submitted with this Development Application. The Report makes recommendations regarding excavation techniques and earth retention and implementation of these recommendations will ensure no detrimental effect on local soil stability.</p> <p>Stormwater Management Plans have been prepared by Northrop Consulting Engineers and is submitted with this Development Application. The drainage concept incorporates on-site detention which is designed to Council specifications and ensures that the development will not have a detrimental effect on drainage patterns.</p>	Yes
	(b) the effect of the development on the likely future use or redevelopment of the land,	The proposed land modification works will facilitate the proposed redevelopment of the site. The proposed earthworks will not inhibit the future redevelopment potential of adjoining sites.	Yes
	(c) the quality of the fill or the soil to be excavated, or both,	If encountered, fill material will be reused on site where possible with excess disposed of at a licenced waste management facility.	Yes
	(d) the effect of the development on the existing and likely amenity of adjoining properties,	The earthworks component of the development has the potential to have some short term impact on the amenity of adjoining development. The Geotechnical Report makes recommendations in relation to	Yes

Lake Macquarie Local Environmental Plan 2014 - Compliance Table

		excavation methods which will be implemented to mitigate amenity impacts during construction. No long term amenity impacts as a result of excavation works are anticipated.	
	(e) the source of any fill material and the destination of any excavated material,	No significant filling works are proposed. Excavated materials disposed will be disposed of at a licenced waste management facility	Yes
	(f) the likelihood of disturbing relics,	The site is not identified as an area that contains, or is likely to contain, relics of significance and has previously been developed. The likelihood of encountering relics is therefore minimal. A standard condition of consent in relation to discovery of significant relics is anticipated in this regard.	Yes
	(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,	It is anticipated that the proposed excavation will encounter groundwater. Therefore, referral to Water NSW is expected and General Terms of Approval will be imposed on any consent in relation to a Water Supply Work Approval for dewatering.	Yes
	(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	It is anticipated that standard environmental management conditions of consent will be imposed on any approval.	Yes
7.10 Residential development in certain business zones	(4) Development consent must not be granted to development for the purposes of a hostel, residential flat building or seniors housing on land in Zone B2 Local Centre, unless it is part of a mixed use development in which most of the ground floor of the building facing the primary street has an active street frontage and the consent authority is satisfied that it is to be used for the purposes of commercial premises or a health services facility.	The proposal is for a mixed use development, with the residential flat building component located at the rear, away from Cary Street (the primary frontage). The ground floor of the front building contains commercial premises and activates the majority of the Cary Street frontage of the site, thus consistent with the requirements of this clause.	Yes
7.21 Essential services	(1) Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required: (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage,	The site is located in a town centre with access to existing infrastructure. As detailed on the Architectural, Stormwater and Civil plans, the stormwater, sewerage and electricity infrastructure can be incorporated into the development. Detailed design of utilities and services will be finalised at CC stage. Suitable vehicle access is also provided to the site, as previously agreed with Council and TfNSW.	Yes



Lake Macquarie Local Environmental Plan 2014 - Compliance Table			
	(d) stormwater drainage or on-site conservation, (e) suitable vehicular access.		



ANNEXURE C

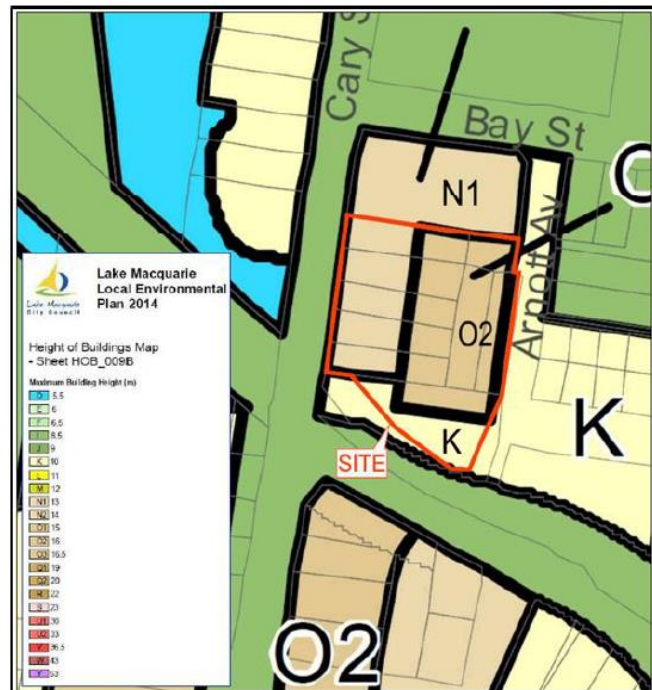
Clause 4.6 Variation – Height of Buildings



Clause 4.6 variation statement – maximum height (clause 4.3)

1. INTRODUCTION

Clause 4.3 of LMLEP 2014 relates to the maximum building height for the site, as prescribed by the Height of Buildings Map. As illustrated below, there are three maximum building heights applicable to the site, being 10, 13, and 16 metres.



Given the split height limits that apply to the site, the maximum height variation differs across the site, and therefore the maximum percentage variation occurs for a minor 480mm balcony projection on the southernmost part of the Arnott Avenue building, being 16.84m in height and resulting in a 6.84m (68.4%) variation to the 10m height limit for that part of the site.

The maximum heights for various part of the site are outlined in the table below.

Height Control	Proposed Height	Variation
10 metres	16.84m (Arnott Avenue building)	6.84m (68.4%)
	16.05m (Cary Street building)	6.05m (60.5%)
13 metres	20.34m	7.34m (56.5%)
16 metres	20.14m	4.24m (26.5%)

Proposed building heights are illustrated in the sections and height blankets for the amended proposed development in **Figures 12 to 15** below:

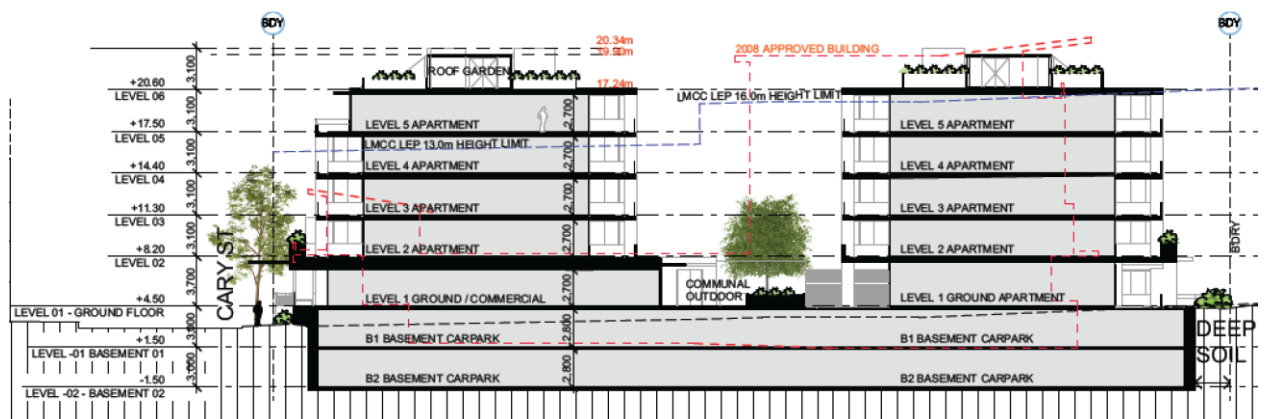


Figure 12 Section A of the proposed development.

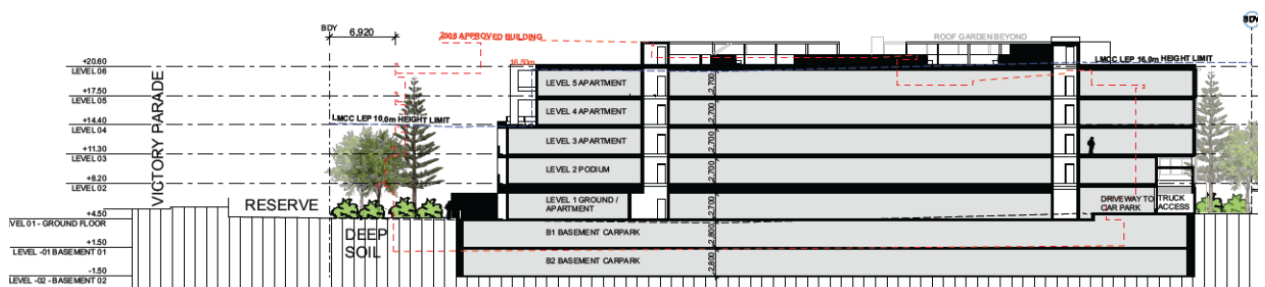


Figure 13 Section B of the proposed development.



Figure 14 LEP Height Limit Diagram – View 1

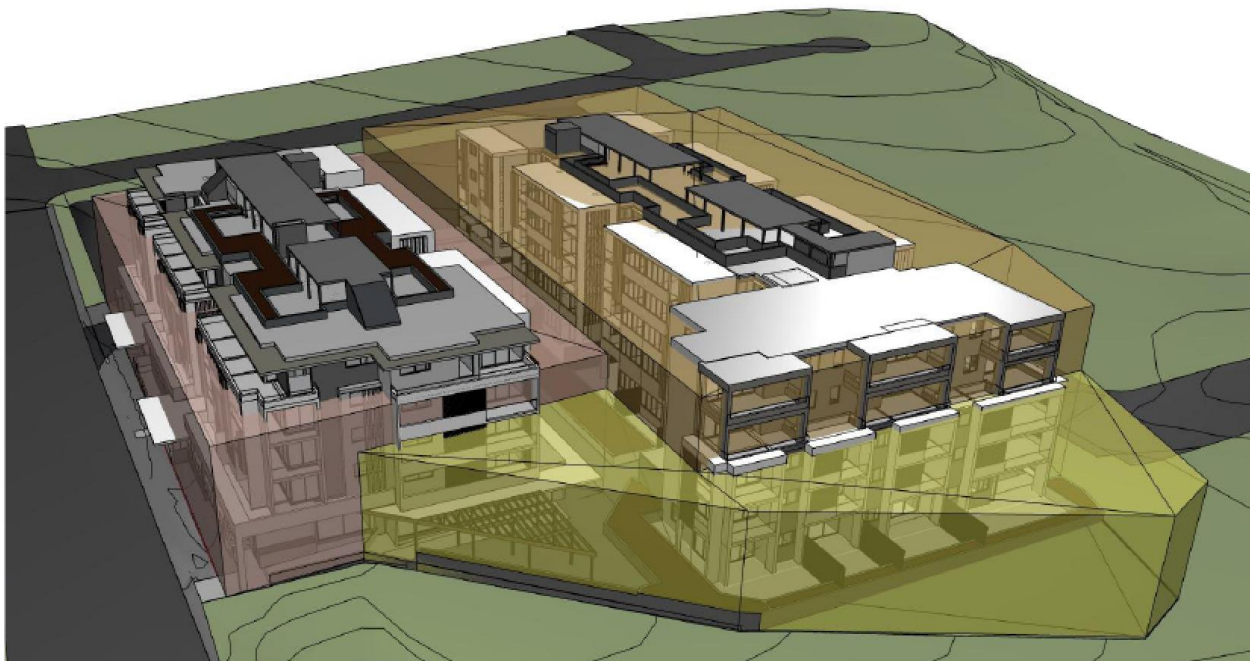


Figure 15 LEP Height Limit Diagram – View 2

3. OBJECTIVES AND PROVISIONS OF CLAUSE 4.6

That maximum height control is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP.

The objectives and provisions of clause 4.6 are as follows:

- (1) *The objectives of this clause are as follows—*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

(4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(ca) clause 2.8, 6.1 or 6.2.”

The development standards in clause 4.3 are not “expressly excluded” from the operation of clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, for example, subclause 4.6(6).

It is hereby requested that a variation to this development standard be granted pursuant to Clause 4.6 so as to permit the following maximum building heights:

- 16.84m for the part of the site with a 10m height limit which equates to a numerical variation of 6.8m (68.4%);
- 20.34m for the part of the site with a 13m height limit which equates to a numerical variation of 7.34m (56.5%);
- and
- 20.14m for the part of the site with a 16m height limit which equates to a numerical variation of 4.24m (26.5%).

4. THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREAONSABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

Of relevance to Clause 4.6(3)(a), in *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgement goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to Wehbe and states:

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case. Requiring strict compliance with the standard is unreasonable or unnecessary because:

- the development is consistent with the standard and zone objectives, even with the proposed variation (refer to Section 7 below);
- there are no additional significant adverse impacts arising from the proposed non-compliance; and
- important planning goals are achieved by the approval of the variation.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.



5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3) (b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

*"The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31]."*

The assessment of this numerical non-compliance is also guided by the recent decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 whereby Justice Pain ratified the original decision of Commissioner Pearson. The following planning grounds are submitted to justify contravening the maximum building height:

1. The proposed building envelope has been carefully considered and responds to the site context. The proposed development adopts a building form with pronounced height along Cary Street, reducing to the east towards the Lake foreshore and allowing increased building separation through the middle of the site. This also allows for the prominent corner location to be emphasised, providing a 'gateway' development to the Town Centre.



This approach is considered to provide a superior urban design outcome to the reduced heights along Cary Street as envisaged by Clause 4.3 of LMLEP 2014. This view has been supported by the Urban Design Review Panel on 10 May 2017 who – in relation to the previous scheme which included increased height adjacent to Cary Street - stated that:

“...The Panel was of the view that the consultants’ arguments in support of a building of greater height facing Cary Street had merit, and potentially offered a better urban outcome than the previously approved low-scale development proposal, which was considered to be a rather understated response, and at a scale that did not fulfil the aim stated of the Town Centre Plan for the site to be a northern gateway site to the Toronto business area. Further, the suggestion that this site could readily “bookend” the recently completed Anglican Care seniors-living development located just under the ridge to the southern end of the township, was considered sound...”

Therefore, the increased height, as a direct consequence of the proposed height breach, provides a positive response to the streetscape and is consistent with the desired future character for the locality.

2. There are other examples of buildings with similar height breaches that have been approved in the Toronto Town Centre. This includes the Anglican Care seniors housing development (DA/1058/2012) located at No. 18 Warhurst Avenue, located on the southernmost end of the Town Centre. The provision of two similarly sized and styled developments on either end of the Town Centre, visible from one another, will appear as ‘bookend’ developments to provide a gateway to the Town Centre, providing a consistent scale that can be viewed within the built form context of the Town Centre.
3. The proposed development will not give rise to adverse impacts on nearby heritage items as a result of the height breach. Indeed, the breach enables the location of the tallest parts of the development towards Cary Street and away from heritage items located on the eastern side of Arnott Avenue, on the Lake foreshore. Therefore, the proposal, as a direct consequence of the height breach, minimises the impact on the setting of these heritage items, including Boatman’s cottage, lakefront boathouse and winches, lakefront and house at No. 4 Arnott Avenue, and restaurant and Royal Motor Yacht Club annexe at No. 6 Arnott Avenue. Moreover, the proposal will not prejudice any significant views towards landmark heritage items and buildings within the Town Centre, including the Toronto Hotel and Anglican Church.
4. The proposed height variation for the Arnott Avenue building over the part of the site with a 10m height limit is only applicable to a modest 480mm balcony projection on the southernmost part of the building. This projection will not be obviously perceivable to the general passer-by.
5. It is considered that there is an absence of any significant material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Specifically:
 - a. The height breach creates no significant additional overshadowing to adjoining properties when considering the extent of overshadowing against the backdrop of the applicable planning controls and the existing development. That is, the maximum height breach does not create any significant additional overshadowing impacts on the primary living areas or private open space of adjoining dwellings. As such, the elements of the building that breach the height limit would have an insignificant additional impact on the overshadowing of adjoining properties;



- b. The height breach does not result in any significant additional privacy impacts. The extent of privacy impacts caused by the height breach will have no greater impact on the privacy of adjoining properties when compared to the existing elements of the building or those elements that comply with the height of buildings development standard. The loss of privacy caused by the non-compliant elements would be insignificant; and
 - c. The height breach is not anticipated to result in significant additional view loss. The proposed development has been carefully designed to be no higher than the crowns of surrounding trees and the development will not give rise to additional adverse impacts on view sharing over and above a height compliant development. As such, the elements of the building that breach the height limit would have an insignificant additional impact on the views of adjoining properties.
- 6. The proposed development meets the objectives of the development standard and meets the objectives of the B2 Local Centre zone (as further detailed in Section 7 below).
- 7. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
 - a. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for mixed use commercial and residential uses (1.3(c));
 - b. The proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development, particularly the focus of the built form towards Cary Street and transition down towards the Lake foreshore. The additional height does not significantly impact the amenity of the neighbouring properties and has been designed in such a way to ensure the additional height is recessive from the public domain and is compatible with the streetscape character and Town Centre context of the locality.

The proposal results in a high quality, contemporary development which is suited to the site, is consistent with the character of the locality and will not have any adverse impact on the amenity of adjoining properties in terms of privacy, solar access, views and bulk and scale.

These are not simply benefits of the development as a whole, but are benefits emanating from the height breach.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

"86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of



minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard."

As outlined above, in many respects, the proposal will provide for a better planning outcome than a strictly compliant scheme. At the very least, there are sufficient environmental planning grounds to justify the variation.

6. THE APPLICANT'S WRITTEN REQUEST HAS ADEQUATELY ADDRESSED THE MATTERS REQUIRED TO BE DEMONSTRATED BY SUBCLAUSE (3), (CLAUSE 4.6(4)(a)(i))

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 7a below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

7. 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 (CLAUSE 4.6(4)(a)(ii))

7a. Objectives of the Development Standard

The relevant objectives of clause 4.3 are as follows:

- (a) to ensure the height of buildings are appropriate for their location,*
- (b) to permit building heights that encourage high quality urban form.*

In order to fulfil the requirements of subclause 4.6(4)(a)(ii), each of the objectives of clause 4.3 are addressed in turn below.

Objective (a) *seeks to ensure the height of buildings are appropriate for their location.*



The proposed development, as a direct consequence of the height breach, facilitates an appropriate scale of development on the basis of a better design outcome and improved amenity for occupants, which is considered to be a positive outcome within the context of the B2 Local Centre zone.

Despite the height breach, the significance of surrounding heritage items including the Toronto Hotel is visually maintained and their settings are not adversely affected by the proposed building. The scale of development is reduced towards the east as the site and surrounds falls towards the Lake Macquarie foreshore. Furthermore, the proposed development creates a 'gateway' to Toronto to indicate entry into the Toronto Town Centre by providing a higher density landmark development of high architectural merit.

The approach to the site and Toronto Town Centre from the north along Cary Street presents the site in a low part of the approach that allows for the proposed height without dominating the streetscape. Rather, the approach encapsulates the Anglican Care building at the southern end of the Town Centre which the proposal responds to, creating 'bookend' developments at either end of the Town Centre.

It is appropriate to focus the development on the busy Cary Street side of the site with higher built form in that location rather than on the quieter and more sensitive Arnott Avenue side. The building utilises the topography of the land by positioning lower building height sloping toward the lake and recreation allowing for appropriate density in a design that considered surrounding slope of the land.

A scheme that achieves strict compliance with the building height controls would concentrate the same building envelopes into lower forms that would result in reduced building separation, reduced access to sunlight, reduced area of ground floor communal open space and deep soil, and deeper apartments with reduced internal amenity. Rather, the proposal improves all of these aspects by creating taller building envelopes at the appropriate locations. Internal and external amenity is enhanced by the design through access to space, light and ventilation that is encouraged through high quality design within the taller building envelopes.

Overall, the proposed buildings are appropriate for the site as the siting and design results in minimal privacy impacts to neighbours. Courtyards are generally located on the ground floor and are oriented around the building and internal on the podium level. In this regard the additional height proposed will not increase the potential for overlooking of neighbouring properties, particularly as the building is adjacent to a public reserve and commercial premise. Further, the proposed height is commensurate with the height of the surrounding tree canopy and as such the portions of the development that exceed the building height control do not result in any significant loss of views.

As such, the proposed development is of a scale that is compatible with the site characteristics and Town Centre context. Furthermore, the proposed development provides a height transition from the busy classified road (Cary Street) to lower scale heritage developments along the Lake Macquarie foreshore. Concentrating the tallest parts of the development to the west of the site also results in benefits in terms of neighbouring residential amenity. These benefits, both in terms of the superior urban design outcome and enhanced amenity are a direct consequence emanating from the proposed height breaches.

The proposal therefore satisfies objective (a).

Objective (b) seeks to permit building heights that encourage high quality urban form.

The proposed development provides for high quality built form, high levels of solar access and excellent internal living spaces. The design facilitates appropriate development of the site with encroachment into the maximum permissible building height justified on the basis of a better design outcome and improved amenity for occupants, which is considered to be a positive outcome within the context of the B2 Local Centre zone, and as previously encouraged by the Urban Design Review Panel.





As the proposed development is across a number of lots with varying height limits the design has been undertaken in a manner which enables the building to be viewed as a single development albeit articulated across the site rather than uniformly breaking the massing up in a complicated and disjointed manner to comply with the prescribed height limits. Instead, the built form steps down appropriately to the more sensitive surrounding context to the east. Therefore, the proposed height breaches provide a superior urban design outcome in the context of the site and its Town Centre location.

The site has a 75 metre frontage to Cary Street and is located at the intersection of Cary Street and Victory Parade that signifies the northern entry to Toronto Town Centre. As such, it forms a prominent location within the locality that is suitable for a prominent built form response that will emphasise this corner 'gateway' location. The proposal increases the building height along the Cary Street frontage to reinforce the hierarchy of this corridor and the site's prominent location at the intersection of two major roads. The desire to create a statement that will be considered a landmark to bookend the northern entry to Toronto is evident in the overall design outcome. The ability to consolidate the lots and achieve a different building design to that proposed in the Town Centre Area Plan DCP provides for additional high quality and visually interesting architectural features and options that would not be available with a compliant building.

The objective of the clause would be defeated or thwarted with greater height to Arnott Avenue as the buildings would not be appropriate for this end of the site, adjacent to nearby heritage items and would have an inferior urban form when compared to the subject proposal.

The proposal therefore satisfies objective (b).

7b. Objectives of the Zone

The objectives of the B2 Local Centre Zone are 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 create spaces that are accessible and are a central focus for the community.*
- *To provide for housing as part of mixed use developments.*

The proposal satisfies the zone objectives for the following reasons:

- *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.*

The site is ideally situated at the northern entry to Toronto at the interface between residential, business and recreational land uses. The land uses that are proposed by this proposed development include commercial uses at ground floor level. The mixed use development provides for a significant opportunity for future commercial activities in the building that directly satisfy and meet with the objectives of the zone. The proposed commercial uses that are coupled with a high density residential component will provide for further retail, business and community uses for the proposed residential occupants, the existing residents and the broader community.

- *To encourage employment opportunities in accessible locations.*

There will be further intensification of existing commercial activity with the ground floor including commercial floor space. This will increase employment opportunities and when consideration is given to the availability of public transport



in close proximity to the proposal it can then be concluded that this proposal meets with the stated objectives of the zone.

- *To maximise public transport patronage and encourage walking and cycling.*

The site located as the “gateway” to Toronto Town Centre, and the increased density is warranted as it provides access to transportation, services and facilities. The bus network that traverses Cary Street and the nearby Toronto centre provides access to and within Lake Macquarie and further to Newcastle and connections to rail transport. Furthermore, facilities and services within the Toronto Town Centre are readily accessible by walking and cycling.

- *To create spaces that are accessible and are a central focus for the community.*

The proposal represents a landmark building in a “gateway” location that provides a high quality architectural design. Proposed ground level commercial uses directly front Cary Street, as well as the adjacent Toronto to Fassifern former rail line now used as a public reserve for pedestrians and bicycles.

The opportunity to access commercial, residential and recreational spaces and interact with the lake and the broader natural and built environment further enhances the proposal's central focus for the community.

- *To provide for housing as part of mixed use developments.*

The proposal provides residential accommodation as part of a high quality mixed use development within an accessible town centre location . It will provide for the housing needs of the area by providing a variety of dwelling sizes for local residents and the broader community.

8. CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED (CLAUSE 4.6(4)(b))

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

9. WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6(5)(a))

Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

10. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum building height. The proposed height non-compliances allow the built form to be located away from sensitive neighbouring properties and responds positively to the topography of the site and surrounds. They also provide an enhanced urban design response to the Town Centre context.

The development will see significant visual enhancements to the existing site, which is currently underutilised. Furthermore, there will be no adverse residential amenity impacts beyond what would be reasonably expected from a fully compliant scheme and the height breaches will enable enhanced levels of amenity for future occupants of the proposed development.



As such, there is no public benefit in maintaining strict compliance with the development standard. The proposed building height exceeds the maximum building heights by the following:

- 16.84m for the part of the site with a 10m height limit which equates to a numerical variation of 6.84m (68.4%);
- 20.34m for the part of the site with a 13m height limit which equates to a numerical variation of 7.34m (56.5%); and
- 20.14m for the part of the site with a 16m height limit which equates to a numerical variation of 4.24m (26.5%).

Nonetheless, the proposed development will provide a built form that is entirely compatible with the streetscape and desired future character of the Toronto Town Centre. Importantly, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

11. CONCLUSION

Having regard to all of the above, it is our opinion that compliance with the maximum height development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.



ANNEXURE D

Lake Macquarie DCP 2014 – Compliance Table



Lake Macquarie Development Control Plan 2014 - Compliance Table

Clause / Control	Requirement	Proposal	Complies?
Part 4 – Development in Business Zones			
2 Context and Setting			
2.1 Site Analysis	1. A Site Analysis Plan must be submitted that identifies the existing conditions relating to the subject site, and the surrounding land that may influence the design process.	A Site Analysis has been prepared and is included as part of the Architectural drawings.	Yes
2.2 Scenic Values	1. A landscape and visual impact assessment is required for development identified in Table 1 unless specified by Council. A landscape and visual impact assessment must be prepared in accordance with section 7.3 of the Scenic Management Guidelines.	The site is located in Scenic Management Zone 5. A Visual Impact Assessment has been prepared by Mansfield Urban Pty Ltd and accompanies this application. The assessment concludes that the development will visually improve the current site condition and have minimal and expected visual impacts over time.	Yes
	2. Developments must be designed and sited to complement their location through: i. the retention of existing vegetation, ii. incorporating appropriate landscaping, iii. minimising cut and fill, iv. building design and articulation compatible with natural context, and v. colour and material selection.	Refer to accompanying Visual Impact Assessment and Design Principle Statement prepared by Mark Lawler Architects.	Yes
	3. For developments visible from the coastline, Lake Macquarie, and adjacent waterways, or from significant ridgelines, external finishes should be non-reflective and muted in tone.	The development includes utilises neutral tones and materials that are non-reflective.	Yes
2.3 Geotechnical	2. A geotechnical report prepared by a geotechnical engineer must accompany an application for all other development as specified in Council's Geotechnical Slope Stability Guidelines. The report must be prepared in accordance with these Guidelines.	A Geotechnical Assessment that has been prepared for the proposed development.	Yes

Lake Macquarie Development Control Plan 2014 - Compliance Table

2.5 Mine Subsidence	<p>1. Where an application is made for the construction of a structure or building within a Mine Subsidence District, written concurrence must be obtained from the Mine Subsidence Board. Written concurrence should be obtained prior to the application being submitted to Council.</p> <p>2. Written concurrence from the Mine Subsidence Board is not required for certain works that have deemed approval under the Mine Subsidence Board's publication 'A Guide for Council Staff'.</p>	As part of the original development application under DA419/2018, Subsidence Advisory NSW granted approval, subject to conditions, under Section 22 of the <i>Coal Mine Subsidence Compensation Act 2017</i> on 4 May 2018. This approval does not lapse until 4 May 2023 and therefore remains valid. Given the proposal is of a lesser scale than the development subject to DA419/2018 and the mine parameters remain the same, it is proposed that the approval is maintained for this application.	Yes
2.7 Acid Sulfate Soils	<p>1. Development must be sited or designed to avoid the disturbance of Acid Sulfate Soils or potential Acid Sulfate Soils.</p> <p>2. Where the disturbance of Acid Sulfate Soils is unavoidable, a Preliminary Acid Sulfate Soil Assessment report must be submitted with the development application, in accordance with the NSW Acid Sulfate Soils Planning Guidelines.</p> <p>3. Where a Preliminary Acid Sulfate Soil Assessment report identifies potential adverse impacts, a detailed assessment report and management plan must be submitted, in accordance with the NSW Acid Sulfate Soils Planning Guidelines.</p> <p>4. Any Acid Sulfate Soils must be identified on the site analysis plan.</p>	The site is mapped by Council as containing acid sulfate soils (Class 5). An acid sulfate management plan will be prepared prior to construction and will form part of the contractors CEMP.	Yes
2.8 Stormwater Management	<p>1. A Water Cycle Management Plan must be submitted for all development except single dwelling houses and dual-occupancy developments. The Water Cycle Management Plan must provide details of the management of stormwater, and the measures proposed to mitigate the effects of stormwater on adjoining or downstream sites in accordance with Council's Water Cycle Management Guidelines.</p> <p>2. A Site Stormwater Drainage Plan must be submitted for all single dwelling houses and dual occupancy development proposals. The Site Stormwater Drainage Plan must be prepared in accordance with Council's Water Cycle Management Guidelines.</p>	A Stormwater Management Plan has been prepared by Northrop Consulting Engineers.	Yes

Lake Macquarie Development Control Plan 2014 - Compliance Table

	<p>3. On-site measures must be implemented to maintain water quality, and to minimise the volume of stormwater run-off and the rate at which stormwater leaves the site.</p> <p>4. A maximum of 10% of run-off from built impermeable surfaces may be discharged directly to the drainage system. The remaining 90% of run-off must be captured for reuse, or managed through infiltration and retention measures prior to being discharged to the drainage system.</p> <p>5. Stormwater management systems should be visually unobtrusive and integrated within site landscaping, car parks or building structures.</p> <p>6. All developments (except dwelling house or dual occupancy) that involve the re-use of stormwater or the use of recycled water must demonstrate compliance with the Australian Guidelines for Water Recycling and the licensing requirements of the Water industry Competition Act 2006.</p> <p>7. Stormwater management systems must be designed in accordance with the Water Cycle Management Guidelines.</p>		
2.12 Bushfire	1. Development must comply with the NSW Planning for Bushfire Protection Guidelines.	A Bushfire Assessment Report has been prepared. Refer to discussion in Section 4.4.3.1 of this SEE.	Yes
2.13 Flora and Fauna	1. Where the proposed development is likely to have an impact on native vegetation or fauna habitat, or where five or more native trees are proposed to be removed, a flora and fauna assessment must be submitted with the development application. The flora and fauna assessment must be prepared in accordance with Council's Flora and Fauna Survey Guidelines.	<p>The subject site is effectively devoid of vegetation with some regrowth on the vacant site.</p> <p>Proposed landscaping will provide significant positive visual impact to the site in the form of dedicated plantings that add opportunity for recreation, shade and visual interest.</p>	Yes
2.15 European Heritage	<p>1. A Heritage Assessment and Statement of Heritage Impact must be submitted to Council where a proposed development:</p> <ul style="list-style-type: none"> i. incorporates, or is adjacent to an item of heritage significance; ii. is located within a heritage conservation area, or, iii. has been identified by Council to have particular circumstances that warrant it. 	Refer to Statement of Heritage Impact has been prepared by John Carr Heritage Design.	Yes

Lake Macquarie Development Control Plan 2014 - Compliance Table

2.16 Aboriginal Heritage	1. Where a development will disturb the ground surface and the natural ground surface has not been significantly disturbed, the development application must demonstrate that adequate due diligence has been undertaken.	All work will occur on land that has previously been disturbed. A search of the Aboriginal Heritage Information System found no Aboriginal site or places on the site or within 50 metres. The proposed development is unlikely to impact on an item of Aboriginal heritage item.	N/A
2.18 Social Impact	1. A Social Impact Assessment (SIA) must be prepared in accordance with the Social Impact Assessment Guidelines, and submitted with the development application in the following circumstances: i. the development is identified in the following table, or ii. the development is valued at \$5,000,000 or greater, or iii. the development has a floor area greater than 3000m2, or iv. where Council identifies that particular circumstances warrant it.	The proposed development will have a positive impact on the area by delivering a wider range of housing choice to Toronto. The diversity of apartment designs and sizes will result in a range of affordable price ranges. This in turn will ensure the social diversity of the locality is enhanced. The proposed commercial space will facilitate access to services and facilities for residents of the building.	Yes
2.19 Economic Impact	1. An economic impact assessment must be prepared and submitted to Council at the discretion of the assessing officer under the following circumstances: i. Where development is valued at \$5,000,000 or greater, or ii. Where the proposed development has a floor area greater than 5000m2, or iii. Where the development is inconsistent with the zone objectives.	An economic impact assessment was prepared for the previous DA (DA419/2018) and remains relevant to the proposed development.	Yes
2.20 Lot Amalgamation	1. Site amalgamation should not result in an isolated lot that is unviable for redevelopment to the scale and intensity desired for the locality.	Lots will be amalgamated to create a development site. No isolated lots will be created.	Yes
2.21 Utility Infrastructure	1. All existing and additional utility infrastructure must be identified, and an assessment of whether these services need to be upgraded for the proposed development, at the site planning stage. 2. The location of existing and proposed electricity kiosk substations, fire hydrants, along with clearance areas and access ways must be identified and shown on building and landscape plans.	Noted.	-

Lake Macquarie Development Control Plan 2014 - Compliance Table

	3. Council may require the provision of underground electricity services for the full length of the primary frontage of a development.		
2.22 Sites Where a Concept Plan is Required	<p>1. Where development is proposed on site(s) that exceeds 4000m² in area or that are identified as a 'Concept Plan Required' site in an Area Plan in Part 10, 11 or 12 of this DCP, a Concept Plan for the site must be prepared and submitted to Council as a Stage 1 Development Application.</p> <p>2. A comprehensive urban design analysis of the site and its urban context must be prepared by a suitably qualified and experienced professional.</p> <p>3. The urban design analysis must be used to inform and guide preparation of the Concept Plan.</p>	The site is identified as a Concept Plan Site. A Concept Plan was submitted to Council in October 2016 and discussed in detail with Council. This Concept Plan is still relevant and applicable to this DA as this proposal represents the considered development following the Concept Plan.	Yes
3 Streets and Public Space			
3.2 Pedestrian Links Through Buildings	<p>1. A pedestrian link through a building must:</p> <ul style="list-style-type: none"> i. be a minimum of four metres in width, and ii. have a minimum floor to ceiling height of four metres, and iii. incorporate non-discriminatory access, and iv. incorporate CPTED principles, and v. include signage to identify the link. <p>2. The alignment of the pedestrian link must ensure a clear line of sight from end to end.</p> <p>3. The building elevation at ground level fronting the pedestrian link must include suitable uses that encourage pedestrian activity along with windows, entries, and architectural detail that supports casual surveillance and provides interest.</p> <p>4. Development must include lighting for the length of the pedestrian link and the entries.</p>	Effective movement of pedestrians will be provided through the site. Pedestrians will interact with the adjacent reserve, roads and shops / restaurants. The proposed design has been developed around moving in and around the site to enhance through traffic, commercial opportunities and casual interactions for the community.	Yes
3.3 Footpath Dining	1. Footpath dining must only be located in areas where it is possible to maintain a two metre wide clear pedestrian through route.	Opportunities for outdoor dining are provided on the southern and eastern sides of the Cary Street block.	Yes

Lake Macquarie Development Control Plan 2014 - Compliance Table

	<p>2. The two metre wide clear pedestrian route should be located along the building frontage to assist with navigation for the vision impaired.</p> <p>3. New development for café use must include opening or retractable windows or doors below awning level that occupy at least 75% of the façade area.</p> <p>4. The design of footpath dining areas must be integrated with other street uses and infrastructure such bus stops, pedestrian crossings, poles, trees, bins, seats and planter boxes.</p> <p>5. Footpath dining areas adjacent to vehicle parking or no standing lanes must maintain a 600mm clear area, measured from the face of the kerb for access and egress.</p> <p>6. A wheelstop must be provided for each rear to kerb parking space that abuts a footpath dining area.</p>	<p>In addition, as shown in the architectural plans there are a number of linkages to the footpath. Connection with public spaces is a critical design consideration that has informed building location and layout.</p> <p>Landscape plans and site analysis highlight connections between the site and surrounds and how the site may interact with the environment.</p>	
3.4 Streetscape Improvements	<p>1. Development must result in improvement to the amenity and appearance of adjoining footpaths or public domain.</p> <p>2. Works undertaken within the public domain must be consistent with the provisions of the relevant Streetscape Master Plan and Council's Streetscape Technical Guidelines.</p> <p>3. Where there is not a relevant Streetscape Master Plan for a town centre, Council will specify the extent and type of street trees, footpath paving, pedestrian lighting, street furniture, public art and the like.</p>	<p>As part of this development there will be public domain improvements along Cary Street and Arnott Avenue. Landscape plans indicate proposed planting on site and adjoining spaces, including street frontage. Proposed landscaping includes ground cover and larger vegetation to provide a mix of height and density across the site to soften the built form. The landscaping will also encourage interaction between the site and surrounds.</p>	Yes
3.5 Non-Discriminatory Access	<p>1. Building entries must be located where there is the smallest level change from the public footpath to the ground floor interior.</p> <p>2. The design and construction of development must ensure that non-discriminatory access is provided to enable all users of that development to access the same level of service and use.</p> <p>3. Where floor levels are raised to accommodate flooding or projected sea level rise, the design of non-discriminatory access must incorporate an external terrace or internal floor space set at</p>	<p>An Access Report has been prepared to consider equitable access for all throughout the development.</p>	Yes

Lake Macquarie Development Control Plan 2014 - Compliance Table

	<p>an intermediate level between the footpath and general ground floor level of development.</p> <p>4. Where development is listed in Table 6, a Disability Access Audit must be prepared, in accordance with Council's non-discriminatory access guideline, and submitted to Council. An accredited access consultant must prepare the Disability Access Audit.</p>		
3.6 Lighting	<p>1. Development must include external lighting that provides at least 20 lux illumination at the building entrance and to the footpath at the street boundary, or the boundary with a public place.</p> <p>2. External lighting must be located on the building façade and below awning level.</p> <p>3. External lighting must be designed and sited in accordance with the relevant Australian Standard to minimise glare on surrounding dwellings, commercial and retail premises, and public spaces.</p> <p>4. Footpath lighting must incorporate low energy design features such as:</p> <ul style="list-style-type: none"> i. Energy efficient lamps and lenses; ii. Daylight sensors and timer controls; and iii. Lamps located at an effective height and spacing 	Lighting design and specifications will be detailed prior to the issue of a Construction Certificate. This can be secured by conditions of consent.	Yes
4 Active Street Frontage			
4.1 Ground Floor Residential Uses in the Business Zone	<p>2. Development in the B4 Mixed Use Zone that provides small offices or home offices on the ground floor, may satisfy the requirements of Clause 7.10 in LMLEP 2014, provided that each office and each ground floor residential unit has:</p> <ul style="list-style-type: none"> i. frontage to the street, ii. direct entry from the street that is visible from the footpath, iii. direct access to the parking area, iv. a minimum floor to ceiling height of 3.0m, v. a minimum area of 30m², vi. basic facilities such as a sink and toilet, 	<p>No office space is proposed as part of the development.</p> <p>Residential apartments are proposed on the ground level of the Arnott Avenue building and are consistent with the requirements of this controls as well as the ADG.</p>	Yes

Lake Macquarie Development Control Plan 2014 - Compliance Table

	<p>vii. a front terrace or deck facing the street with a maximum height above the street of 1.0m, and</p> <p>viii. a landscape area of at least 10m² between the street and front entry that satisfies the landscape requirements for planting in front setback areas.</p> <p>3. For the purposes of Clause 7.10 in LMLEP 2014, each ground floor office in the B4 Mixed Use Zone must have a dedicated parking space where the office area exceeds 40m².</p>		
4.2 Ground Floor Levels	<p>1. Where floor levels are raised to accommodate flooding or projected sea level rise the building design must incorporate either:</p> <p>i. an external terrace within the front setback area that is set at an intermediate level between the footpath and the main ground floor and is suitable for outdoor trading, or:</p> <p>ii. an internal floor space at the street frontage that is set at an intermediate level between the footpath and the main ground floor and is suitable for active use or display.</p> <p>2. For all other sites the difference in level between the public footpath and the internal floor level at any point on the street boundary must not exceed 600mm (refer to Figure 4).</p> <p>3. Where floor levels are raised to accommodate flooding or projected sea level rise an intermediate floor areas must be designed and built to withstand temporary inundation.</p>	<p>Effective movement of pedestrians will be provided through the site. Pedestrians will interact with the adjacent reserve, roads and shops / restaurants. The proposed design has been developed around moving in and around the site to enhance through traffic, commercial opportunities and casual interactions for the community.</p> <p>Building levels are a response to the site and surrounding environment. Interaction with footpaths has also considered other areas including the adjacent reserve and Arnott Avenue.</p>	Yes
4.3 Ground Floor Entries	<p>1. On sites that slope along the street boundary the building entry must be located to minimise the difference between the footpath level and the internal floor level.</p> <p>2. Solid framing or solid wall elements must be used to distinguish entries from window display areas.</p> <p>3. Fully glazed doors within fully glazed frontages are not an acceptable design solution.</p> <p>4. Signage must be incorporated into the façade design to identify the tenancy and address.</p>	<p>Access to the ground floor commercial component is off Cary Street and Arnott Avenue. A mix of steps and ramps are provided as appropriate. The ground level access will provide high exposure for the resultant tenants of the commercial space.</p> <p>As detailed on the DA drawings entries for both the commercial and residential component of the development are clearly recognisable and will ensure easy access for all users.</p>	Yes

Lake Macquarie Development Control Plan 2014 - Compliance Table

4.4 Ground Floor Glazing	<p>1. The façade below awning level must include clear glazed windows with low sills or retractable glazed doors.</p> <p>2. The clear glazing area below awning level must be at least 50% of the façade area.</p>	As detailed on the DA drawings and photomontage images the front façade will include the appropriate glazing necessary to ensure the development allows a visual connection between Cary Street and the commercial ground floor component.	Yes
4.5 Street Awnings	<p>2. The awning on primary pedestrian streets must be at least 2.7 metres deep, or extend to within 600mm of the kerb face, except where Council requires a variation to accommodate street planting within the footpath area.</p> <p>3. Development in the B4 Zone must provide a solid box awning that is at least two metres deep for at least 50% of the building frontage, including the entrance to the building.</p> <p>4. The vertical distance from the footpath to the underside of an awning must be between three and 3.6 metres at any point.</p> <p>5. Awnings must use materials that are sun, rain and wind proof.</p> <p>6. Awnings must drain towards the building, and be supported by approved stormwater disposal methods.</p>	<p>The existing streetscape does not involve or encourage extensive awnings, compliance with this requirement would not provide a positive outcome on the streetscape and the proposed front elevation will provide a positive visual impact to the street.</p> <p>Awnings have been provided to stairs and ramps into the building to allow for safe movement in all weather conditions.</p>	Yes
5 Access and Parking			
5.1 Traffic and Vehicle Access	<p>1. A Traffic Impact Statement must be prepared and submitted where:</p> <p>i. More than 1000m² Gross Floor Area is proposed; or</p> <p>ii. Direct access is required for an arterial or sub-arterial road; or</p> <p>iii. The main entry driveway is within 50 metres of a signalised intersection.</p>	A Traffic and Parking Impact Assessment has been prepared by McLaren Traffic Engineering. The assessment found the proposed design generally meets the relevant requirements and objectives of AS2890.1, AS2890.2 and AS2890.6 and the design is sufficient for all parking, loading and servicing uses.	Yes
5.2 Design of Parking and Service Areas	<p>2. Basement parking should be provided on all sites that have sufficient area for access and circulation at a basement level.</p> <p>3. On-site car parking and servicing facilities must be located at a basement level or at the rear of development.</p> <p>4. Car parking and driveway areas must be located to minimise disruption to pedestrian movement, safety and amenity on the public footpath.</p>	<p>Covered and secure parking is provided, sufficient for commercial spaces, and resident parking for all apartments, via basement car parking facilities.</p> <p>Approval has previously been granted from the TfNSW for truck exit left turn only on to Cary Street so that trucks can enter and exit the site in a forward direction without need for turning,</p>	Yes

Lake Macquarie Development Control Plan 2014 - Compliance Table

	5. Car park design must include direct, safe, and well-marked pedestrian routes from the car park to building entries.	reversing and disrupting vehicle movement on Cary Street and Arnott Avenue.	
5.3 Bike Parking and Facilities	<p>1. The following bike facilities must be provided for customers and short term users:</p> <p>ii. For developments requiring over 50 car parking spaces, a flat 10% ratio of bike parking spaces/car parking spaces applies.</p> <p>3. The following bike facilities must be provided for employees:</p> <p>i. One employee bike parking space for each 10 employees, or part thereof;</p> <p>ii. One personal locker per two employee bike parking spaces;</p> <p>iii. One unisex change room and one shower for developments greater than 1000m2 GFA and less than 2500m2 GFA;</p> <p>iv. One female change room with one shower and one male change room with one shower, for developments greater than 2500m2 GFA; and</p> <p>v. One additional shower (in each change room) for each additional 5000m2 GFA up to a maximum of five showers in each change room.</p>	Compliant and secure bike parking and associated facilities are provided at Basement Level 1.	Yes
5.4 Motor Bike Parking	1. Development must provide one motorbike parking space for each 20 car parking spaces (as required in Table 7: Parking Rates).	12 motorbike spaces are provided at basement levels.	Yes
5.5 Car Parking Rates	3. The number of car parking spaces provided must be consistent with the specifications of Table 7.	<p>Development type</p> <p>1 Bedroom 18 Units @ 0.5 per unit (Required: 9 Provided: 18)</p> <p>2 Bedroom 66 Units @ 0.75 per unit (Required: 49.5 Provided: 74)</p> <p>3 Bedroom 24 Units @ 1 per unit (Required: 24 Provided: 48)</p> <p>Residential Visitor 108 Units @ 0.25 per unit (Required: 27 Provided: 28)</p> <p>Residential Total Required: 110 Provided: 170</p>	Yes

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		Shops / Office 929m ² GFA @ 1 per 25m ² GFA (Required: 37.1 Provided: 38 + 2 service/delivery spaces) Commercial Total Required: 38 Provided: 40 Total Required: 148 Provided: 208	
6 Development Design			
6.2 Front Setbacks – Main Street Shops in B1, B2 and B3 Zones	1. Development on land zoned B1 Neighbourhood Centre, B2 Local Centre or B3 Commercial Core must be built to the primary street boundary for the full width of the building. 2. On corner lots, development on land zoned B1 Neighbourhood Centre, B2 Local Centre or B3 Commercial Core must be built to the secondary street boundary for the full depth of the building. 3. On upper levels, development must be set back at least three metres from the primary street boundary, and for corner lots, development must be set back three metres from the secondary street boundary, as shown in 8.	The following front setbacks are proposed: - Built to the front boundary at ground level on Cary Street - Setback at least 3m from Cary Street on upper levels	Yes
6.4 Façade Articulation	1. Articulation of the building façade must define the scale and extent of each shop or office at the street frontage. 2. For development built to the street boundary, street level entries must not be recessed more than one metre from the surrounding façade wall. 3. For development built to the street boundary, the change in wall alignment at street level for all façade elements, except entries, must not exceed 600mm. 4. Upper level balconies may encroach up to 600mm into the front setback area, for a maximum of 50% of the building façade width. 5. On upper levels, balconies, entry awnings, sun shading devices, cornices and the like may project up to 600mm into the front setback area. 6. Blank façade walls must not exceed five metres in length.	The building includes extensive articulation to all elevations, utilising a variety of setbacks, building projections and materials to break up the bulk of the building form.	Yes

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6.6 Building Separation	1. Mixed use development that includes residential levels must meet the building separation requirements for residential flat buildings are contained within SEPP 65 – Design Quality of Residential Flat Buildings, and the accompanying Apartment Design Guide	The Cary Street and Arnott Avenue buildings are separated by an 15m wide communal area. This massing arrangement is in line with the Block Plan indicated in the Toronto Town Centre Area Plan.	Yes
6.7 Side and Rear Setbacks	1. Where possible, development must be built to the side boundary at street level, and to the second level for a depth of no more than 12 metres measured from the street boundary, as shown in Figure 10.	The following side setbacks are proposed: - 6m to the east - 3m to the west This is consistent the previous proposal (DA419/2018) and provides suitable separation to neighbouring properties and streets.	On Merit
6.8 Minimum Landscaped Area	1. All development must provide a minimum landscaped area of 20% of the total site area. 3. The deep soil planting area must have a minimum width of three metres to allow for the planting of trees and shrubs that will grow to be mature plants. Optimise the extent of deep soil zones beyond the site boundaries by locating them contiguous with deep soil zones of adjacent properties.	The proposal provides a total landscaped area of 1473m ² (25.4%). Complies.	Yes
6.9 Building Depth	1. Residential floor space should not exceed 18 metres in depth, unless all habitable floor space is within nine metres of an adequate natural light source. 2. Retail, business, or office floor space should not exceed 30 metres in depth, unless all floor space is within 15 metres of an adequate natural light source.	Building depths are compliant.	Yes
6.10 Maximum Occupied Area	1. The floor space above ground level and within three metres of the rear setback line must not occupy more than 50% of the maximum possible area.	The Arnott Avenue building complies.	Yes
6.11 Setback from Residential Zoned Land	1. Development adjacent to residential zoned land must comply with the setbacks in Table 8 – Setbacks from residential zoned land – see below.	A rear setback of 4.4m is proposed, which provides a setback in excess of 9m to adjacent R2 zoned land.	Yes

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	<i>Ground level – 3m</i> <i>Level 2 – 6m</i> <i>Level 3 – 9m</i>										
6.12 Building Height	<p>1. Development must comply with the maximum height as shown on the height of building map in LMLEP 2014 and the number of storeys as shown in Table 9 – Maximum number of storeys – see below.</p> <table><tr><td>Permissible Height</td><td>Maximum No. of Storeys</td></tr><tr><td>10</td><td>2</td></tr><tr><td>13</td><td>3</td></tr><tr><td>16</td><td>4</td></tr></table>	Permissible Height	Maximum No. of Storeys	10	2	13	3	16	4	The proposal includes heights that exceed the LEP provisions. Refer to Clause 4.6 variation request at Annexure C.	On Merit
Permissible Height	Maximum No. of Storeys										
10	2										
13	3										
16	4										
6.13 Building Height at the Street	<p>1. In the B2 and B3 zone, development must provide at least two storeys in height along the primary street boundary for at least 50% of the frontage(s).</p> <p>2. On corner lots, the maximum height of development must occur at the corner element.</p>	The ground floor and first floor balcony alignments present a two storey podium to Cary Street.	Yes								
6.19 Solar Access and Orientation	<p>2. At least 50% of the required area of private open space of each dwelling, and at least 50% of the required area of private open space of adjoining dwellings must receive a minimum of three hours of sunlight between 9am and 3pm on June 21. Council may accept a reduction in solar access for the development or adjacent sites if the topography and lot orientation is such that the three-hour standard is considered unreasonable.</p>	Refer to ADG compliance table at Annexure A.	Yes								
6.21 Visual Privacy	<p>2. Living areas, habitable rooms and windows of dwellings must be orientated to minimise overlooking. The effective location of doors, windows, and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.</p> <p>4. The windows of habitable rooms of one dwelling must be located so as to minimise direct or close views (less than 9 metres away) into the windows of habitable rooms of other dwellings.</p>	The development has been designed to minimise any overlooking of neighbouring properties and between the proposed blocks through building separation, windows placement and design. This ensures that there are no close direct views between habitable rooms and balconies of neighbouring apartments and dwellings.	Yes								

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	5. Balconies and decks of one dwelling must be located so they minimise direct or close views (less than 9 metres away) to the balconies, decks, or habitable rooms of any adjoining dwelling.		
6.22 Acoustic Privacy	<p>1. Developments near existing noise generating activities, such as plant, services, roads and industry, must be designed to mitigate the effect of noise on the occupants of dwellings.</p> <p>2. Where viable, noise sensitive areas – such as bedrooms and private open space in mixed use developments – must be located away from noise sources.</p> <p>3. Building structures must be designed to minimise the transmission of sound, particularly to sleeping and living areas in adjoining developments.</p>	Refer to accompanying Acoustic Report.	Yes
8 Operational Requirements			
8.1 Waste Management	1. Applications must provide a completed Demolition Waste Management Plan (WMP) (where there are demolition works) and a Construction WMP (for all construction works), in accordance with Chapter 2 (for Demolition) and Chapter 3 (for Construction) of the Lake Macquarie City Council Waste Management Guidelines.	Refer to accompanying Waste Management Plan.	Yes
Part 9.13 Special Land Uses – Residential Flat Buildings			
13.1 Site Requirements	<p>1. The development site must have a minimum area of 800m².</p> <p>2. The development site must have direct frontage to a public road.</p> <p>3. The development site must have a minimum width of 20 metres at that road frontage.</p>	<p>The site exceeds 800m².</p> <p>The site has frontages to public road.</p> <p>The site exceeds 20m at the street frontage.</p>	Yes
13.2 Housing Mix	<p>1. A mix of dwelling types and sizes must be provided as follows:</p> <ul style="list-style-type: none"> i. studio apartments maximum 15%, ii. 1 bedroom apartments maximum 30% iii. 2 bedroom apartments minimum 40% iv. 3+ bedroom apartments minimum 15% 	A range of dwelling types is provided.	Yes

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13.4 Side Setbacks	1. Side setbacks for Residential Flat Buildings must be a minimum of 3 metres.	Complies.	Yes
13.5 Site Coverage	1. The maximum site coverage for Residential Flat Buildings, including ancillary development, must not exceed 65%.	The proposal is for a mixed use development and therefore this control is not applicable.	N/A
13.13 Adaptable Dwellings	1. For proposals for more than 10 dwellings, one adaptable dwelling must be provided for every 10 dwellings.	Complies.	Yes
Part 10.4 – Area Plans – Toronto Town Centre			
2.1 Block Controls	<p>1. Development must make a positive contribution to the desired future character of the town centre as described in Section 1.4.</p> <p>2. A development proposal must address the requirements of the relevant Block Plan and Section(s), as shown in Figures 6-26.</p> <p>3. Site planning and building design must be based on a comprehensive site and context analysis</p>	The scale and form of the development is generally consistent with the previous proposal (DA419/2018) and will contribute positively to the context of the site. The development is supported by a context analysis as part of the architectural plan set that demonstrates that the development will make a positive contribution to Toronto Town Centre.	On Merit
3.1 Scenic Quality	<p>1. A development proposal must include a 3D electronic model of the development that can be viewed from the surrounding streets, the foreshore reserve, and from the lake, for selected development sites up to 500 metres from the foreshore.</p> <p>2. The height, scale and setback of development in the area bounded by Victory Parade, Carey St and Brighton Avenue must be designed to protect the visual prominence of the Toronto Hotel and the spire of the Anglican Church, as shown in Figure 3 - Toronto Town Centre Structure Plan.</p> <p>3. Development must maintain, or contribute to a continuous tree canopy on the ridgeline along Excelsior Parade when viewed from the lake foreshore, and from the lake.</p>	Refer to Visual Impact Assessment prepared by Mansfield Urban.	Yes
5.2 Site Access Cary Street	1. For lots with frontage to Cary Street, a development application for intensification of use must include an investigation of an alternative vehicle access to the site other than Cary Street.	Vehicle access is provided from Arnott Avenue. An egress onto Cary Street is provided for servicing vehicles only, as previously supported by TfNSW.	Yes

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6.1 Building to the Street Boundary	<p>1. Development must be built to the street boundary, as shown in the Block Control Plans and Sections (Figures 6-26).</p> <p>2. Development on the west side of Cary Street between Bay Street and The Boulevarde must achieve at least one storey built up to the street boundary, for at least 50% of the lot frontage.</p> <p>3. Development on the east side of Cary Street between Bay Street and The Boulevarde must achieve at least two storeys built up to the front setback line, for at least 75% of the lot frontage.</p> <p>4. Development on The Boulevarde between Cary Street and Victory Parade must achieve at least two storeys built up to the boundary, for at least 90% of the lot frontage, except for sites with access lanes or heritage constraints.</p>	The development is generally consistent with the setbacks outlined in the Block Control Plans.	Yes
6.2 Building Height	<p>1. The maximum number of storeys must comply with the Block Controls, as shown in Figures 6-26.</p> <p>2. Where an Area Plan does not specify height in storeys development must not exceed 3 storeys and 13m in height.</p>	The maximum number of storeys exceeds those illustrated in the Block Control Plans. This is justified in the Clause 4.6 variation request at Annexure C.	On Merit
6.3 Maximum Occupied Area	<p>1. Development must be consistent with the maximum occupied area controls, as shown in the Block Controls and Sections (Figures 6-26).</p>	The development is generally consistent.	Yes
6.4 Building Exteriors	<p>1. Buildings visible from the foreshore or the lake must be predominantly finished in muted tones and neutral colours. White and brightly coloured finishes must be restricted to small detail elements.</p>	The development will be finished in neutral external colours and non-reflective materials.	Yes
7.1 Trees on Private Land	<p>1. Development on sites south of Brighton Avenue must provide at least a 10 metre rear setback for the retention of existing trees and the planting of new trees.</p> <p>2. Development on sites south of Brighton Avenue must include planting and maintenance of at least one advanced local native tree for every 100m² of site area.</p> <p>3. Development on sites with frontage to Cary Street must include installation and maintenance of at least one advanced local native</p>	New street trees are proposed along Cary Street, as outlined in the accompanying Landscape plans.	Yes



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	tree for every 5 metres of frontage not occupied by the building, in addition to general tree planting required for car parking areas. The additional trees must be installed within 5 metres of the front boundary, to maximise their visibility from Cary Street.		
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