

<b>JRPP No.</b>	2011HCC007
<b>DA No.</b>	10/1498
<b>Proposal</b>	Residential Apartment addition to existing hotel
<b>Property</b>	32 Church Street, Newcastle
<b>Applicant</b>	Michael Angus
<b>Submissions</b>	Nil
<b>Report By</b>	Future City Group – Newcastle City Council

### **Assessment Report and Recommendation**

#### **Executive Summary**

##### **Proposed Development**

The proposed development is for the construction of a residential apartment on the rooftop on the existing hotel known as the Grand Hotel. The apartment shall be two storeys in height, consisting of four bedrooms, kitchen, dining and lounge amenities and surrounding decks. The site subject premises is listed on the State Heritage Register and is covered by legislation pursuant to the Heritage Act, 1977. Items listed on the State Heritage Register are those items that have been identified as being of particular importance to the people of New South Wales. The proposed development is supported by a Section 60 Certificate from the NSW Heritage Council and endorsement from Council's Urban Design Consultative Group.

##### **Referral to Joint Regional Planning Panel**

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to clause 13C of *State Environmental Planning Policy (Major Development) 2005*, given that the proposed development is 20.1m in height.

#### **13C Coastal development to which Part applies**

*This Part applies to development within the coastal zone for any of the following purposes:*

.....

- (b) buildings or structures (other than minor alterations or minor additions to existing buildings or structures) that are greater than 13 metres in height, excluding any building that complies with all development standards relating to the height of such a building set by a local environmental plan that applies to the land on which the building is located,*

The height limit for the site is 10m under the Newcastle City Centre Local Environmental Plan (LEP) 2008. The proposal is over 13m in height and does not comply with the height limit and therefore the proposal is 'Regional Development' in accordance with this SEPP.

##### **Permissibility**

The site is zoned B4 Mixed Use Zone pursuant to Newcastle City Centre Local Environmental Plan 2008. The proposal is categorised as a dwelling and is permissible within the B4 zone subject to development consent. All required owner(s) consent has been provided.

### Consultation

In accordance with Council's Element 3.1 - Public Participation of the Newcastle Development Control Plan (NDCP) the application was notified from 20 January to 4 February and received no submissions.

The building is listed on the State Heritage Register and a Section 60 Certificate has been obtained under the NSW Heritage Act, 1977.

### Key Issues

The main issues identified in the assessment were as follows:

- Whether the proposed variation to the height limit is acceptable
- Whether the proposed variation to the maximum Floor Space Ratio (FSR) is acceptable
- Whether the proposed development is appropriate given the building is listed on the State Heritage Register.

### Recommendation

**Grant approval to [DA -10/1498], 'Residential Apartment Addition to Existing Hotel' subject to conditions contained in APPENDIX A.**

## 1. Background

The Heritage Impact Statement submitted in support of the application provided the following comments as background to the proposal:

**'Verandah reinstatement:** *The owner has made a commitment to conserve the heritage significance of the building displayed by his intention to reinstate the original ornate verandahs to the street facades for which he has gained DA approval (DA No 06/1261). The verandahs were removed in renovations in the 1930s.*

**Previous concept:** *In November 2007 the owner sought approval in principle from the NSW Heritage Office (now Heritage Branch) for a contemporary single storey rooftop residential addition (designed by EJE Architects.) However, the Heritage Branch did not support the proposal due to the visual impact on the facades when viewed from the surrounding streets.*

**On-site residence:** *As the owner currently resides on the upper floor of the premises he is seeking to achieve more comfortable and appropriate accommodation for his family and consequently return the upper hotel bedroom suites to the business thereby contributing to the viability of the verandah restoration project.*

*Subsequently the owner commissioned conservation architects OCP Architects to prepare a revised scheme to address the heritage impact concerns raised by the Heritage Branch. A preliminary sketch concept was prepared and discussed with a Heritage Branch representative.*

*As the revised concept was generally considered an improvement on the previous concept, OCP Architects developed the planning, massing and modelling of the rooftop addition to Development Application stage which is the subject of this report'.*

## 2. Site and Locality Description

The Grand Hotel was designed by architect James Henderson in 1891 and forms part of the Buchanan Terrace Group, a coherent townscape defining an entire street block along Church Street. The site is described as Lot 1 DP 343633, 32 Church Street Newcastle. The site is located on the corner of Church Street and Bolton Street. The site has an area of 360m<sup>2</sup> and frontage to both Church Street and Bolton Street.

Currently, the Hotel operates as an 'upmarket family friendly style hotel' incorporating a la carte dining room and bar areas. The first floor contains the original guest bedroom suites with the second floor mostly occupied by the owner as his family residence. The building is laid out as follows:

- Basement: Bar area and dance floor, toilets and stores
- Ground Floor: Bar area, dining area, kitchen, stores and toilets
- 1st Floor: Guest bedrooms
- 2nd Floor: Guest bedrooms and owner's residence.

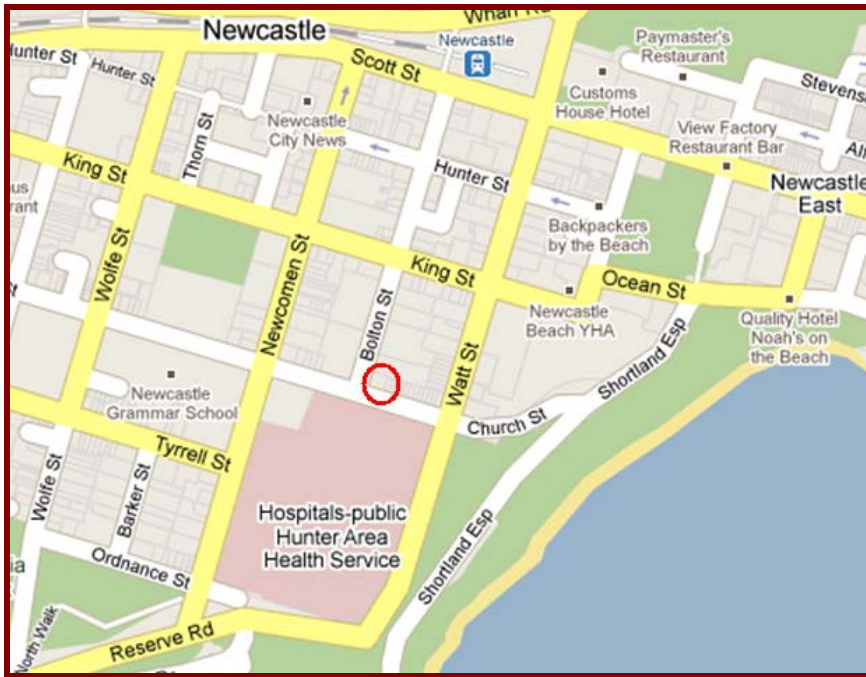


Figure 1 Subject Land

### 3. Project Description

The Statement of Environmental Effects prepared by ADW Johnson describes the proposal in the following terms:

*'The proposed development is for the construction of a residential apartment on the rooftop of the existing Grand Hotel building. The proponent has already gained approval from Council for the verandah reinstatement (DA-06/1261) and this does not form part of this application, however it has been included in some elevations to provide detail regarding the proposed finished facade.'*

*The apartment shall take the form of a rooftop addition to the existing hotel. The apartment shall be two storeys in height, consisting of four bedrooms, kitchen, dining, lounge, amenities and surrounding decks. The lower floor of the dwelling shall be supported by new fire rated steel beams inserted within the existing roof structure. The floor height being approximately 1.0 metre below the height of the existing parapet. Access to the dwelling shall be via a new fire rated stairwell from the upper floor of the Grand Hotel. The purpose of the rooftop apartment addition is to create a contemporary residential apartment on the roof of the hotel for the hotel owner and his family.'*

Plans and elevations are provided in APPENDIX B.

### 4. Consultation

In accordance with Element 3.1 - Public Participation of Council's Development Control Plan the application was notified from 20 January to 4 February and received no submissions.

## 5 Referrals

The proposal received internal comments from the following professional areas:

- Environmental Services (Compliance Service Unit)
- Heritage Officer
- Building Assessment Team
- Urban Design Consultative Group.

The comments received from the referrals are appended at **APPENDIX C – Referral Comments**. The comments from the Building Officer and Environmental Service Unit have been incorporated into the draft conditions of consent.

The proposal is not identified as 'integrated development' and does not require any concurrences. The applicant obtained a Section 60 Certificate under the NSW Heritage Act 1977 prior to submitting the development application to Council. The Certificate is valid for 5 years and was issued with a number of conditions. The Section 60 Certificate is included in **APPENDIX D**.

## 6. Section 79C Considerations

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 79 C(1) of the Environmental Planning and Assessment Act, 1979, as detailed hereunder.

### (a)(i) the provisions of any environmental planning instrument

#### Newcastle Local Environmental Plan 2008

- Clause 11 Land Use Zones

The subject property is located within the B4 Mixed Use zone under the provisions of the Newcastle City Centre Local Environmental Plan, 2008 (the NCC LEP), within which zone the proposed development is permissible with Council's consent. The proposed development is also consistent with the zone objectives which include:

- *'To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To encourage a diverse and compatible range of activities including;*
  - *commercial and retail development, and*
  - *cultural and entertainment facilities, and*
  - *tourism, leisure and recreation facilities, and*
  - *social, education and health services, and*
  - *higher density residential development.*
- *To create opportunities to improve the public domain and pedestrian links within the Mixed Use zone; and*
- *To protect and enhance the unique qualities and character of special areas with the Newcastle city centre.'*



Figure 2 Clause 11 Land Use Zones

Development Standard	Requirement	Proposal	Compliance
Clause 21 Height of Buildings	Maximum height limit 10m	20.1m	No
Clause 23 Floor Space Ratio	Maximum FSR 1.5:1	FSR 4.35:1	No

#### Principal Development Standards

The NCC LEP allows a range of land uses on the site which is zoned B4 Mixed Use, including residential flat buildings, serviced apartments, hotel accommodation, retail premises, and commercial office premises. It also sets out a number of development standards (including maximum building height and floor space ratio), as well as provisions to encourage design excellence.

The LEP 2008 via clauses 24 and 28 enables the applicant to vary the development standard. The applicant is seeking to vary the height of the proposed dwelling via clause 24 and vary the FSR via clause 28. The applicant is not able to use clause 24 to vary the FSR as the adjoining building to the north, 61 Bolton Street, Newcastle East, has an FSR less than the proposed building.

## Clause 21 – Height of Buildings

Clause 21 of the NCC LEP indicates that 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, subject to the exceptions in respect of City East provided under Clause 24.

The subject land is located within an area on the Height of Buildings Map which sets the maximum height of development at 10 metres.

The existing building is approximately 12.7m in height,. The proposed development nominates a maximum roof height of 21m. However, in accordance with the provisions of Clause 24 outlined below, the height of the proposed development is considered to be in keeping with the adjoining building height and is therefore able to be approved on this basis.

## Clause 23 - Floor Space Ratio

Clause 23 of the NCC LEP 2008 indicates that, the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The subject site is located within an area on the Floor Space Ratio Map which sets the maximum Floor Space Ratio at 1.5:1.

The proposed development has a gross floor area of 1585.7m<sup>2</sup>. The total size of the site is 364.1m<sup>2</sup> and the existing FSR is 3.72:1. The proposed FSR is therefore 4.35:1 which exceeds the maximum FSR limit.

**Comment [p1]:** What is the existing FSR of the hotel ?

## Clause 24 – Exception to Clauses 21 and 23

Clause 24 of the LEP applies in respect of the City East precinct which includes the subject site. The clause stipulates inter alia:

- (2) *The consent authority may consent to development that causes a building to which this clause applies to exceed the maximum height set by Clause 21 to the height of an existing building adjoining the site; and*
- (3) *The consent authority may consent to development that causes the floor space ratio of a building to which this clause applied to exceed the maximum floor space ratio set by clause 23 up to the floor space ratio of an existing building on an adjoining site; and*
- (4) *The height or floor space ratio of a building to which this clause applies may only exceed the maximum height or floor space ratio set by Clause 21 or 23, up to the height or floor space ratio permitted under this clause, if the consent authority is satisfied that the building, having regard to development on the adjoining site, achieves an appropriate urban design outcome.*
- (5) *In considering whether a building achieves an appropriate design outcome, the consent authority must have regard to:*
  - (a) *an urban design analysis indicating how the building will integrate with the surrounding natural and urban environment (including existing streetscapes, built form, heritage values, view corridors and open space), and*

- (b) *the views of any group or panel established by Council to consult on urban design on the extent to which the building integrates with that surrounding environment."*

The applicant has provided the following justification to address the above clause:

*'In the City East Precinct and in the vicinity of the site there are a number of structures that exceed the height of the Grand Hotel, and exceed 10 metres in height in general. As outline above, Clause 24 of the LEP makes provision for buildings within the "City East" precinct to exceed the maximum building height where the development up to the height of an existing building on an adjoining site. A site inspection identifies that the adjoining commercial building to the north, being the Commonwealth Law Courts, exceeds the height of the Grand Hotel and is located on a lower site. The Commonwealth Law Court building accommodates rooftop plant equipment which increases the actual height of the building. Additionally, the court buildings to the south of Church Street, exceed both the 10 metre height limit and the existing height of the Grand Hotel. Therefore the proposed height of the development is allowed under this clause.'*

The proposed development satisfies the provisions of Clause 24, given that the height of the adjoining building is consistent with the proposed development. The applicant has submitted the required urban design analysis which demonstrates that the proposed development will effectively integrate with the surrounding urban environment and Council's Urban Design Consultative Group has also indicated that the proposed development is acceptable in this regard.

**Clause 28 Exceptions to development standards**

- (1) *' The objectives of this clause are:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *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) *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) *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*
    - (iii) *if the development is on land that comprises, or on which there is, an item of environmental heritage that is listed on the State Heritage Register under the Heritage Act 1977 or in Part 1 of Schedule 5 to this Plan or that is subject to an interim heritage order under the Heritage Act 1977, the development will retain the heritage significance of the item, and*
  - (b) *the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*
- (6) *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).*
- (7) *This clause does not allow 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) *a development standard in Part 5 (other than clause 38 (4)).*

The Statement of Environmental Effects provides the following comments in relation to clause 28:

*'Clause 28 of the Newcastle City Centre LEP provides the Council with flexibility in applying the development standards identified previously. It is considered that the proposed development is consistent with Clause 28(3)(a) that the compliance with the development standards is unreasonable or unnecessary in this instance due to the following factors:*

- *The proposed development will have no greater environmental impact within the locality than the existing structure on the site or adjoining structures;*
- *The proposed additions achieve an appropriate design outcome, considering:*
  - *Existing streetscape,*
  - *Heritage values, and*
  - *View corridors.*

- *The proposed development is consistent with the objectives of the Clause 21 (as addressed previously); and,*
- *The proposed development will not establish a poor planning precedent in regard to the development standards of maximum building height and/or floor space ratio.*

*There is a definite public benefit in supporting the overall development proposal for the Grand Hotel. The works proposed, including current approval for re-instating of the verandahs, will ensure the viability of the Hotel in the long term and maintain the Heritage significance of the building. The building is significant in architectural style and fits within the existing fabric of Church Street, and is also significant in linking the site to an important period of development, and specific development project, within the 1890s period of Newcastle.*

*Further, the Grand Hotel provides a positive social impact via up market accommodation within the CBD for tourists and visiting professionals, as well as other dining and social interaction within the licensed premises.'*

In accordance with the provisions of clause 28, Council is able to approve the variation to the FSR subject to a satisfactory urban design outcome.

The proposed development satisfies the provisions of the above clause, given that they have demonstrated that the development standard is unreasonable and unnecessary in this instant and will achieve an appropriate urban design outcome. The applicants have submitted the required urban design analysis indicating that the proposed development will effectively integrate with the surrounding urban environment and Council's Urban Design Consultative Group has also indicated that the proposed development is acceptable in this regard.

**Comment [p2]:** Have they or are we making that assessment ?

In terms of clause 28(4)(b) of the Newcastle Local Environmental Plan 2008 Council has assumed the Director General's concurrence under Planning Circular PS08-003 for the variation in height and floor space ratio. The applicant has demonstrated that the proposed development is in the public interest by creating a design that would have minimal impact on existing building.

**Comment [p3]:** Are we sure the PS covers this ?

#### Clause 46 - Heritage Conservation

The subject premises has been identified as being a heritage item as follows:

- Listed on State Heritage Register and is covered by legislation pursuant to the Heritage Act, 1977. Items listed on the State Heritage Register are those items that have been identified as being of particular importance to the people of New South Wales;
- On Schedule 5 of the Newcastle City Centre LEP 2008 as item of State Significance (Buchanan Terraces also individually listed);
- Located within The Hill Conservation Area in the Newcastle City Centre LEP 2008;
- Listed on Register of National Estate as part of the Buchanan Terrace Group;
- Classified by National Trust (NSW).

The site is located within the Newcastle City Centre Heritage Conservation Area, as described in Schedule 6 of the NCC LEP. A Heritage Impact Statement (HIS), prepared by OCP Architects Consultants, has been submitted in support of the application. The HIS advises:

*'The hotel owner and his family currently reside within the hotel and seek to improve their accommodation by creating a contemporary residential apartment on the roof of the hotel. By living on the hotel premises and working shift-work hours the owner/proprietor has found that he can happily deal with day to day business demands as well as spend time with his family.'*

*The client's brief calls for 4 bedrooms (or 3 bedrooms and study) and a large open planned living / dining /kitchen / family area. To take advantage of the sunny northwest aspect living areas open onto a large roof top terrace with district views and potential ocean views. The current proposal evolved from a single storey design concept by EJE Architects in 2007 which was rejected by the Heritage Branch due to its closeness to the parapet as well as the proposed residential aesthetic. The proposed addition was visible when viewed from the surrounding streets and its impact on the facades and overall building was not acceptable.*

*Concept: OCP Architects has prepared a concept that provides a greater set back from the parapet thus reducing its visual impact to the facades. In reducing the rooftop residence "footprint" and to retain the briefed floor area, the proposal has introduced an upper level master bedroom suite which is set back even more substantially and located in the far north east corner of the building roof.*

*Site analysis: From the Site Analysis drawing the massing and modelling criteria has been determined an upper storey form that falls within a gradient line drawn from street level to top of the building parapet – to top of the proposed single storey roof - to top of the upper level roof ie placing the bulk where it is least visible. (Refer to photomontage and sight line diagrams Site Analysis Dwg No DA-02.)*

*Aesthetics: The building aesthetic is essentially a simple contemporary "rectilinear box" enclosed in lightweight cementitious panels and glass walls all clad with sun-control louvers. Flat roofed and without a visible eaves the proposed form is relatively neutral. The planning and modelling revolve around the existing hotel lightwell which is an important natural light source for both the hotel and the proposed residence.*

*Construction methodology: The construction method has been planned to cause minimum impact to the existing building fabric. New fire rated steel beams are proposed supported off the internal load bearing brick walls and located within the (current) skillion roof space. The original ceilings of the top floor of the hotel will be retained. A new fire rated concrete floor is proposed between the residence and the hotel below.'*

The plans and accompanying HIS have been examined by Council's Heritage Officer who raises no objection to approval of the application.

State Environmental Planning Policy No 71—Coastal Protection

The SEPP applies to the Newcastle Local Government Area. The proposed rooftop apartment is consistent with the above policy.

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

The SEPP applies to the Newcastle Local Government Area and is applicable to the dwelling proposed. The applicants have submitted a BASIX certification demonstrating that the design of the proposed dwelling complies with energy rating requirements.

State Environmental Planning Policy (Infrastructure) 2007

The SEPP applies to the Newcastle Local Government Area but, having regard to the provisions of clause 104 – Traffic Generating development and Schedule 3, the application does not involve any elements requiring consideration under the provisions of the SEPP.

State Environmental Planning Policy (Major Development) 2005

The SEPP applies to the Newcastle Local Government Area and under clause 13C (b) of the SEPP, the proposal is required to be referred to the JRPP as discussed earlier .

**(a)(ii) the provisions of any draft environmental planning instrument**

Draft Newcastle Local Environmental Plan 2011

The subject property is included within the B4 Mixed use zone under the provisions of the Draft Newcastle Local Environmental Plan 2011, within which zone dwellings are not permissible.

The draft objectives are:

- *To provide a mixture of compatible land uses to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To support the Commercial Core zone and Local Centre zone while providing for the daily needs of the Mixed Use zone.*

Within the draft LEP shop top housing is permissible in the zone with development consent. Shop top housing is defined as:

**'shop top housing'** means one or more dwellings located above (or otherwise attached to) ground floor retail premises or business premises'.

The proposed development is therefore consistent with the objectives of Draft Newcastle Local Environmental Plan 2011.

**(a)(iii) any development control plans**

Newcastle Development Control Plan, 2005

- Element 3.1 Public Participation

The proposal was notified in accordance with this element and no submissions were received.

- Element 4.1 Parking and Access

There is no vehicular access into the site. The addition of one additional dwelling is unlikely to have any significant impact on the availability of kerbside parking in the local area. The owner and his family are currently occupying a number of hotel units.

**Comment [p4]:** Do you want to add a comment about the dwelling being occupied by people already residing in the hotel ?

- Element 5.7 Cooks Hill, The Hill and Newcastle East

The relevant section of the above element includes:

*'5.7.2 f) Scale, massing and character of additions*

*Additions should be designed to respect the form and style of the existing building - they should be of a scale that does not overwhelm the existing building.*

**Comment [p5]:** David, the indents etc are confusing here. I'm not sure what you are quoting and what are you commenting on. One option is to indent all direct quotes and italicise and then either no indent/standard type/heading called comment for your assessment.

*Guidelines*

- i) Additions visible from the street should be undertaken in a manner that is consistent with the style of the building and using matching materials and details. Additions which will form part of the streetscape should appear as if they were designed as part of the original building.*
- ii) In the design of pavilion additions or rear additions that are not visible from the street or other public area they can be designed in a more modern manner but should nevertheless respect the design of the existing building.*

*5.7.2 h) Roofs and chimneys*

*The roof shape is one of the key determinants of the overall form of a building. Roofs are particularly prominent components of streetscape character as they are generally the only part of the building that is read against the sky.*

*The roof form and pitch vary markedly with each different style of architecture. The roofs of additions should match the form and details of the original roof as closely as possible.*

*Guidelines*

- i) New roof forms should generally be massed in a similar manner to the original. Care should be taken to avoid using details that never existed or that are overly fussy and/or belonging to another style.*
- ii) The introduction of new elements on to roofs such as skylights, solar collectors and antennae etc. should be carefully considered. These should be of an unobtrusive design and preferably located on the rear roof plane, so that they are not visible from the street.*

The Heritage Impact Statement has provided the following comments in addressing the above clauses:

*'Concept: OCP Architects has prepared a concept that provides a greater set back from the parapet thus reducing its visual impact to the facades. In reducing the rooftop residence "footprint" and to retain the briefed floor area, the proposal*

*has introduced an upper level master bedroom suite which is set back even more substantially and located in the far north east corner of the building roof.*

*Site analysis: From the Site Analysis drawing the massing and modelling criteria has been determined an upper storey form that falls within a gradient line drawn from street level to top of the building parapet - to top of the proposed single storey roof - to top of the upper level roof ie placing the bulk where it is least visible. (Refer to photomontage and sight line diagrams Site Analysis Dwg No DA-02.)*

*Aesthetics: The building aesthetic is essentially a simple contemporary "rectilinear box" enclosed in lightweight cementitious panels and glass walls all clad with sun-control louvers. Flat roofed and without a visible eaves the proposed form is relatively neutral. The planning and modelling revolve around the existing hotel lightwell which is an important natural light source for both the hotel and the proposed residence.'*

The proposed development has thus demonstrated that the proposal will have minimal impact on the heritage façade given the setback from roofline. The applicant has submitted the required urban design analysis which demonstrates that the proposed development will effectively integrate with the surrounding urban environment and Council's Urban Design Consultative Group has also indicated that the proposed development is acceptable in this regard.

**Comment [p6]:** Has it. I'd like to see more analysis or comment from you as the assessing officer on this.

**(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into.**

Not applicable.

**(a)(iv) any matters prescribed by the regulations**

The proposal is considered to be satisfactory.

**(b) the likely impacts of the development**

- Visual Appearance

The Statement of Environmental Effects provides the following comments in relation to the proposal:

*'Overall the proposal will continue to allow an appreciation of the hotel building's original configuration and heritage integrity. Passersby can view and appreciate the setting of the building in the late Victorian Classical style streetscape, in conjunction with the surrounding terraces, without noticeable impact. Visitors and guests can enjoy the revitalised charm and ambience of the Hotel within its corridors and rooms without any internal impacts to the heritage fabric.'*

The visual appearance of the proposed development was discussed with the Urban Design Group who indicated that: *'the group raised no concerns regarding the design of the proposal, noting that the addition would not be evident from the street and that it therefore did not raise any urban design issues.'*

- Potential Health Risk from cooling tower

There is a cooling tower located on the rooftop of the adjacent building at 61 Bolton Street. The cooling tower is inspected routinely by Council in accordance with the Public Health Microbial Control Regulation and serviced/tested every few months to ensure compliance with the appropriate Australian Standards.

The proposed location of the dwelling being in close proximity to the cooling tower was discussed with Council's Compliance Service Unit (CSU). The Unit does not consider this to pose any significant potential impacts based on the tower being located above the height of the roof of the proposed dwelling and that there are no doors/windows on the side of the proposed building adjacent to the plant.

- Potential Noise Impact

The potential noise impact from the cooling tower was also discussed with CSU. They have recommended a condition requiring appropriate acoustic attenuation being incorporated into the design of the proposed dwelling to ensure that noise levels within the habitable rooms comply with the relevant national standard prior to the release of the Construction Certificate (CC). The proposed plans also show a wall and stairwell between the plant and bedroom areas which will mitigate noise impacts on the future residents.

**(c) the suitability of the site for development**

The proposed development is considered appropriate for the site.

**(d) any submissions made in accordance with this Act or the Regulations**

The application was notified in accordance with Council's Notification Policy and no submissions were received.

**(e) the public interest**

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

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

**7. Conclusion**

Subject to various conditions, the proposal is acceptable against the relevant considerations under section 79C.

**8. Recommendation**

That the Joint Regional Planning Panel grant consent to DA 10/1498, subject to the conditions contained in **Appendix A**.

## APPENDIX A - Conditions of Consent

### A General Conditions

- A1 The proposed development being carried out strictly in accordance with the details set out on the submitted plans prepared by Otto Cserhalmi and Partners dated 10 June 2010, Drawings No DA – 01, Locality and Site Plan, DA – 02 Site Analysis, DA 03 Proposed Floor Plans, DA 04 Elevations, DA 05 Sections and Elevations , the Statement of Environmental Effects prepared by ADW Johnson and on the Application form, except as otherwise provided by the conditions of this consent.

**Note:** Any proposal to modify the terms or conditions of this consent whilst still maintaining substantially the same development to that approved, will require the submission of a formal application for Council's consideration in accordance with the provisions of Section 96 of the Environmental Planning and Assessment Act, 1979.

**Reason:** To confirm and clarify the terms of Council's approval.

### B Conditions which must be satisfied prior to the demolition of any building or Construction

- B1 Nil.

### C Conditions which must be satisfied prior to the issue of any construction certificate

- C1 Appropriate acoustic attenuation shall be incorporated into building design to ensure that noise levels within habitable rooms comply with the Australian/New Zealand Standard Acoustics-*Recommended design sound levels and reverberation times for building interiors* (AS/NZS 2107:2000). Full details are to be included in the documentation for a Construction Certificate.

**Reason:** To protect the amenity of residents and ensure compliance with appropriate building standards in relation to noise.

- C2 The existing and new window openings to the light well are to be protected in accordance with Parts C 3.3 and C3.4 of the Building Code of Australia. Full details are to be included in the documentation for a Construction Certificate application.

**Reason:** To ensure compliance with the Building Code of Australia.

- C3 Window openings in the external walls which are required to have an FRL in accordance the Part C3.2 of the Building Code of Australia are to be protected in accordance with Part C3.2 of the Code. Full details are to be included in the Construction Certificate application.

**Reason:** To ensure compliance with the Building Code of Australia.

- C4 All areas not provided with natural ventilation in accordance with the provisions of the Building Code of Australia being provided with an adequate mechanical ventilation system complying with Australian Standard 1668, Parts 2 "The use of mechanical ventilation and air conditioning in buildings". Full details are to be included in the documentation for a Construction Certificate application.



**Reason:** To ensure the provision of adequate ventilation in the interest of public health and safety.

**D Conditions which must be satisfied prior to the commencement of any development work**

D1 Nil.

**E Conditions which must be satisfied during any development work**

E1 All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**Reason:** To confirm a condition of consent prescribed by the Environmental Planning & Assessment Regulation 2000.

E2 Construction/demolition work that generates noise that is audible at residential premises being restricted to the following times:

- Monday to Friday, 7:00 am to 6:00 pm;
- Saturday, 8:00 am to 1:00 pm;

With no noise from construction/demolition work to be generated on Sundays or Public Holidays.

**Reason:** To prevent 'offensive noise' from construction/demolition sites in order to safeguard the amenity of the neighbourhood

E3 A Construction Certificate application for this project is to include a list of fire safety measures proposed to be installed in the building and/or on the land and include a separate list of any fire safety measures that already exist at the premises. The lists must describe the extent, capability and basis of design of each of the measures.

**Reason:** To advise of information that must accompany an application for a Construction Certificate for the project.

**F Conditions which must be satisfied prior to any occupation or use of the building**

F1 Nil.

**G Conditions which must be satisfied prior to the issue of any Subdivision Certificate**

G1 Nil .

**H Conditions which must be satisfied during the ongoing use of the development**

H1 Nil.

**I Other Agency Conditions**

I.1 All work shall be carried out in accordance with the following documentation:

- 'a) Drawings DA\_01 Issue D, DA\_02 Issue D, DA\_03 Issue D, DA\_04 Issue D, and DA\_06 Issue D prepared by OCP Architects, dated 10th June 2010; DA\_05 Issue D prepared by OCP Architects, dated 5th February 2009;
- b) Statement of Heritage Impact prepared by OCP Architects, dated 22nd June 2010; and
- c) Statement of Environmental Effects prepared by ADW Johnson.

**Nominated Heritage Consultant:**

- 2) All heritage work shall be supervised by a qualified heritage consultant to ensure that the impact of the works on the heritage significance of the building is minimised and all work has been carried out in accordance with the approved documentation and the conditions of this consent.
- 3) All work shall be carried out by suitably qualified tradesmen with practical experience in conservation and restoration of similar heritage items. The nominated heritage consultant in Condition 2 shall be consulted prior to the selection of appropriate tradesmen.

**Site Protection & Works:**

- 4) Significant built elements are to be adequately protected during the works from potential damage. Protection systems must ensure historic fabric is not damaged or removed.

**Archival Recording:**

- 5) An archival photographic recording of the affected aspects is undertaken prior to the commencement of works, in accordance with the Heritage Council document, Photographic Recording of Heritage Items using Film or Digital Capture. The original copy of the archival record shall be deposited with the Heritage Branch, an additional copy shall be provided to the Newcastle City Council.

**Compliance:**

- 6) This approval shall be void if the activity to which it refers is not physically commenced within five years after the date of the approval or within the period of consent specified in the relevant development consent granted under the Environmental Planning and Assessment Act, 1979, whichever occurs first.'

**J Advisory Notes**

- J1 Prior to commencing any construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (the 'Act') are to be complied with:
  - a) A Construction Certificate is to be obtained in accordance with Section 81A (2) (a) of the Act.
  - b) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A (2) (b) of the Act and form 7 of schedule 1 to the Regulations.
  - c) Council is to be given at least two days notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act and Form 7 of Schedule 1 to the Regulations.

**Reason:** To advise of matters to be resolved prior to the commencement of work.

- J2 Prior to the occupation of a new building, or, occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the erection of the building. An application for an Occupation Certificate must be set out in the form of the relevant part of Form 12 of the Environmental Planning and Assessment Regulations and must be accompanied by the relevant information required by Form 12.

**Reason:** To ensure compliance with Section 109M of the Environmental Planning and Assessment Act 1979, as amended.

**APPENDIX B – Plans and Elevations**

## **APPENDIX C – Referral Comments**

Comments from Internal and External Agencies

## **APPENDIX D - Section 60 Certificate**