

THE CITY OF NEWCASTLE COUNCIL

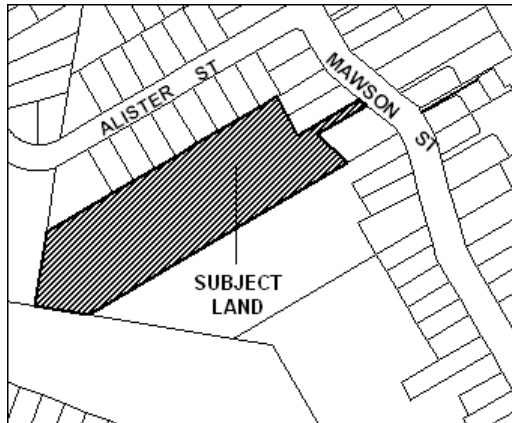
JRPP No.	2011HCC019
DA No.	DA2011/0390
Proposal	Demolition of existing structures and erection of 18 x three-bedroom and 11 x two-bedroom two-storey dwellings with basement carparking, associated landscaping and pool
Property	Lot 2412 DP 708599, 49 Mawson Street, Shortland NSW 2307
Applicant	Bigger Than Ben Hur Pty Ltd
Report By	Future City - City of Newcastle Council

Assessment Report and Recommendation

Executive Summary

Proposed Development

An application has been received seeking consent to demolish the existing dwelling and erect 18 x three-bedroom and 11 x two-bedroom, two-storey dwellings with basement carparking, associated landscaping and pool, at 49 Mawson Street, Shortland.



Subject Land: 49 Mawson Street, Shortland
(Map 295 – C1 as Gregory's Street Directory 27th Edition)

Referral to Joint Regional Planning Panel

Pursuant to the requirements of State Environmental Planning Policy (Major Development) 2005, the application is referred to the Hunter Central Coast Joint Regional Planning Panel (JRPP) as the development has a capital investment value of more than \$10,000,000. The value of the project is \$15,088,150.

The application was lodged and not determined by the Panel prior to the amendments to the *Environmental Planning and Assessment Act, 1979* taking effect on 1 October 2011 and therefore the JRPP remains the determining authority under the savings and transitional provisions of SEPP (State and Regional Development) 2011.

Permissibility

The site is zoned 2 (b) Urban Core under the Newcastle Local Environmental Plan 2003 (LEP2003) and is proposed to be zoned R2 Low Density Residential under the draft Newcastle Local Environmental Plan 2011 (DLEP2011). The proposal is categorised as 'urban housing' development and is permissible within the 2 (b) Urban Core zone and R2 Low Density Residential zone subject to development consent. All required owner(s) consent has been provided.

Consultation

The application was publicly exhibited in accordance with Newcastle Development Control Plan 2005 (NDCP2005) from 18 May 2011 until 31 May 2011. In response four letters of objection were received.

Advice was received from NSW Rural Fire service in consideration of bushfire risk against section 79BA of the *Environmental planning and Assessment Act 1979*.

Key Issues

The main issues identified in the assessment and/or raised in the submissions were as follows:

- Scale of variation proposed to height controls.
- Appropriateness of height and character having regard to the current and future zoning of the land.
- Loss of privacy to adjoining properties.
- Protection of riparian zone.
- Filling in a flood storage area.
- Risk from floodwaters.
- Acoustic impact.

Recommendation

That the Joint Regional Planning Panel refuse to grant consent to DA 2011/0390 for 'Demolition of Existing Structures and Erection of 18 x Three-Bedroom and 11 x Two-Bedroom Dwellings with Basement Carparking, Associated Landscaping and Pool' at No. 49 Mawson Street Shortland, for the following reasons:

1. The proposal will unnecessarily detract from the amenity of the neighbourhood and therefore does not satisfy the relevant objectives of the 2(b) Urban Core zone applying to the site under the Newcastle Local Environmental plan, 2003 and the relevant objectives of the R2 Low Density residential zone applying to the site under the draft Newcastle Local Environmental Plan, 2011.
2. The proposal does not respect and build upon positive aspects of local character, protect and enhance biodiversity or adequately address flooding hazards in accordance with the relevant aims and objectives of the Newcastle Local Environmental Plan, 2003.
3. The building height of the development exceeds the maximum height applying to the site under Element 5.2 – 'Urban Housing' of the Newcastle Development Control Plan, 2005 to the detriment of the existing visual amenity of the neighbourhood.
4. The development proposes filling in a flood storage area in excess of the maximum permissible and will cause unreasonable cumulative flooding impacts in other locations and therefore does not satisfy the relevant objectives of Element 4.3 – 'Flood Management' of the Newcastle Development control plan, 2005 or relevant matters for consideration of State Environmental Planning Policy 71 – Coastal Protection.
5. The design of the development does not satisfactorily manage the risk to life and property from flooding in that potential water entry points to the basement garage are below the probable maximum flood and therefore does not satisfy the relevant objectives of Element 4.3 – 'Flood management' of Newcastle development Control plan, 2005.

6. The design of the development proposes filling in the 'riparian zone' of an existing watercourse on the site and does not include an appropriate riparian buffer zone to protect the watercourse and therefore does not satisfy the relevant objectives of Element 4.3 – 'Flood Management' of the Newcastle Development Control Plan, 2005 or relevant matters for consideration of State Environmental Planning Policy 71 – Coastal Protection.
7. The upper level balconies of the proposed development would unreasonably detract from the privacy of the rear yard of an adjoining dwelling to the north west of the site and therefore is contrary to the relevant performance criteria and objectives of Element 5.2 – 'Urban Housing' of the Newcastle development Control plan, 2005.
8. The application has not satisfactorily demonstrated that the likely acoustic impacts of the proposed development will not have an unreasonable impact on the amenity of the neighbourhood.
9. Having regard to the above mentioned circumstances of the case, approval of the application would not be in the public interest.

1. Background

Application Chronology

Refer to **Appendix C** for a detailed chronology of the processing of the application.

2. Site and Locality Description

The subject property comprises Lot 2412 DP708599, 49 Mawson Street, Shortland, and is a 'battle-axe' allotment. The access handle has a frontage of 6.1m to Mawson Street and a length of 37.95m. The battle-axe lot itself is generally rectangular with a depth of 173.445m and 195.72m to the north-west and south-east boundaries respectively, with a width of approximately 60m. The site has a total area of 12,070m² (1.207Ha).

The site has a generally medium fall to the west with the rear portion becoming steeper as it falls into a natural watercourse and riparian zone which leads to the Hexham wetlands. These wetlands are listed under State Environmental Planning Policy No 14 - Coastal Wetlands. The site is generally devoid of vegetation other than a few large trees. It is occupied by a single storey brick dwelling and a number of detached sheds and outbuildings all of which are proposed to be demolished.

Existing development on adjoining properties comprises detached single dwellings to the north-west, south-east and north-east. To the south-west lies a Council reserve forming part of the riparian zone, which extends into the rear portion of the subject site.

The form of development in the immediate visual catchment consists of single and double-storey detached dwellings of various ages with some townhouse development in the locality.



Subject site: 49 Mawson Street, Shortland (Map 295 – C1 as Gregory's Street Directory 27th Edition)

3. Project Description

The applicants seek consent to demolish existing structures on site and erect 18 x three-bedroom and 11 x two-bedroom dwellings (total of 29 dwellings). The dwellings are sited in three sections. The 18 x three-bedroom dwellings are attached and located adjacent to the north-west boundary. The 11 x three-bedroom dwellings are attached, but grouped as two separate sections, and located adjacent to the north-east boundary. The buildings are two-storey above a basement carpark, extending to a height of up to 12.34m above exiting ground level and have an overall Floor Space Ratio (FSR) of 0.48:1.

The site is accessed via a battle-axe handle to basement carparking for 76 vehicles, including 18 visitor parking spaces. Each dwelling has an individual garage within the basement, providing 2 parking spaces each and storage area. The handle also provides for pedestrian access to Mawson Street by way of a separated pedestrian pathway. A rubbish collection area is situated at the allotment end of the access handle. The proposal also includes a swimming pool with associated covered area and extensive on-site landscaping.

Following initial assessment and concerns raised by Council officers primarily relating to excessive height and impact on the riparian zone at the rear, the proposal has been amended by reducing the overall height of the development by excavating the basement lower and deleting the majority of filled area at the rear of the site.

The development has a Capital Investment Value of \$15,088,150.

A copy of the amended plans is appended at **Appendix A**.

4. Consultation

The application was publicly exhibited in accordance with Newcastle Development Control Plan 2005 (NDCP2005) from 18 May 2011 until 31 May 2011. In response to public exhibition four letters of objection were received. The principal issues raised are:

- Overdevelopment of the site
- Traffic – Increased traffic movements and entry at bend in road will cause accidents.
- Privacy - Overlooking of properties fronting Alister Street. Concerned about balconies.
- Unattractive outlook from properties along Alister Street – looking at brick wall.
- Fencing – Want developer to erect boundary fencing of sufficient height for privacy to neighbours.
- Drainage – concerned about adequate drainage.
- Noise from pool equipment and other amenities.
- Devalue properties.
- Noise – increased car noise and pollution will affect health and wellbeing of residents.
- Fumes – from basement carpark
- Breezes – The height of buildings will block breezes.

5. Referrals

The proposal was referred to the NSW Rural Fire Service (RFS) under Section 79BA of the Act seeking advice in relation to bushfire threat.

Advice has been received by the RFS who support the proposal subject to conditions. A copy of the advice is at **Appendix B**.

The following internal referrals were made to Council officers:

- Environmental Services (Compliance Services Unit)
- Engineer Services (Stormwater, Flooding & Traffic)

The relevant comments received from the referrals are discussed in the assessment section of this report.

The development will involve works on waterfront land, as defined under the *Water Management Act 2000*. As such, a controlled activity approval will be required from NSW Office of Water before any works can commence. The applicants have not applied for an integrated development approval process; however have been advised of this requirement noting that it may have further implications in terms of design. The applicants have acknowledged this requirement but appear to not have sought this approval to date.

6. Section 79C Considerations

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

(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy (Major Development) 2005

Pursuant to the former requirements of State Environmental Planning Policy (Major Development) 2005, the application is referred to the JRPP as the development has a Capital Investment Value of more than \$10,000,000.

State Environmental Planning Policy (State and Regional Development) 2011

The new State Environmental Planning Policy (State and Regional Development) 2011 sets out the functions of Joint Regional Planning Panels in determining applications for regional development.

The most significant change to the regional development classes is that the Capital Investment Value (CIV) threshold for general development has been raised from \$10 million to \$20 million. This means that from 1 October 2011 new development applications lodged for development with a CIV under \$20 million will generally be determined by Council.

Under the savings and transitional provisions of the Policy development applications for development with a CIV between \$10 million to \$20 million lodged with Council before 1 October 2011 and not determined will continue to be determined by the relevant Regional Panel. This application was submitted to Council on 8 April 2011. Accordingly, the Joint Regional Planning Panel remains the determining authority for this application.

State Environmental Planning Policy 49 – Koala Habitat Protection

The SEPP applies to the Newcastle Local Government Area but the site does not constitute, *'potential koala habitat'*.

State Environmental Planning Policy 55 – Remediation of Land

The submitted Statement of Environmental Effects that *'It is believed that the present and previous use of the site were not potentially contaminating activities'*. Council's records do not identify any past contaminating activities on the site. The subject site is considered acceptable for continued residential landuse.

State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP65)

The proposed development does not meet the definition of a residential flat building (as dwellings Class 1a buildings under Building Code of Australia) and therefore the SEPP does not apply.

State Environmental Planning Policy 71 – Coastal Protection

The proposal has been assessed against clause 8 - *'Matters for consideration'* of the SEPP

The matters for consideration are the following:

'(a) the aims of this Policy set out in clause 2,'

Comment: Development is acceptable in relation to aims of the Policy.

'(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,'

Comment: N/A

'(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,'

Comment: N/A

'(d) the suitability of development given its type, location and design and its relationship with the surrounding area,'

Comment: Development is generally suitable.

'(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,'

Comment: N/A

'(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,'

Comment: N/A

'(g) measures to conserve animals (within the meaning of the [Threatened Species Conservation Act 1995](#)) and plants (within the meaning of that Act), and their habitats,'

Comment: N/A

'(h) measures to conserve fish (within the meaning of Part 7A of the [Fisheries Management Act 1994](#)) and marine vegetation (within the meaning of that Part), and their habitats.'

Comment: The natural watercourse at the rear of the site flows into the downstream Hexham Wetlands. The development does not adequately protect the riparian zone of the watercourse.

'(i) existing wildlife corridors and the impact of development on these corridors,'

Comment: N/A

'(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,'

Comment: N/A

'(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,'

Comment: N/A

'(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,'

Comment: No known impact.

'(m) likely impacts of development on the water quality of coastal waterbodies,'

Comment: The stormwater management design of the proposal is considered acceptable subject to conditions.

'(n) the conservation and preservation of items of heritage, archaeological or historic significance,'

Comment: N/A

'(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,'

Comment: The development facilitates urban consolidation.

'(p) only in cases in which a development application in relation to proposed development is determined:

- (i) the cumulative impacts of the proposed development on the environment, and*
- (ii) measures to ensure that water and energy usage by the proposed development is efficient.'*

Comment: The development proposes excessive filling within a flood storage area and would therefore lead to cumulative displacement of floodwaters. Adequate measures for water and energy efficiency eg BASIX.

Newcastle Local Environmental Plan 2003

Clause 8 – Requirements for development

Clause 8 of the plan states:

'In addition to the other heads of consideration set out in section 79C(1) of the Act, the consent authority must have regard to the following particular matters before granting consent to the proposed development:

- (a) the relevant aims and general objectives of this plan,*
- (b) the relevant zone objectives nominated by this plan for the particular zone in which the land concerned is situated, as shown on the zoning map,*
- (c) any other relevant provision of this plan.'*

The proposed development is considered consistent with the aims and objectives of the plan other than:

Objective (a) of Aim 1:

'(a) respect and build upon positive aspects of local character and amenity'

The proposal, which proposes to significantly vary the height requirements of the Newcastle Development Control Plan 2005 and Draft Local Environmental Plan 2011, does respect the local character and amenity of the area.

Objectives (a) and (e) of Aim 2:

'(a) protect and enhance biodiversity'

'(e) address natural hazards and other risks such as flooding, bushfire, mine subsidence, landslip, coastal inundation, soil and groundwater contamination, acid sulphate soils and the like'

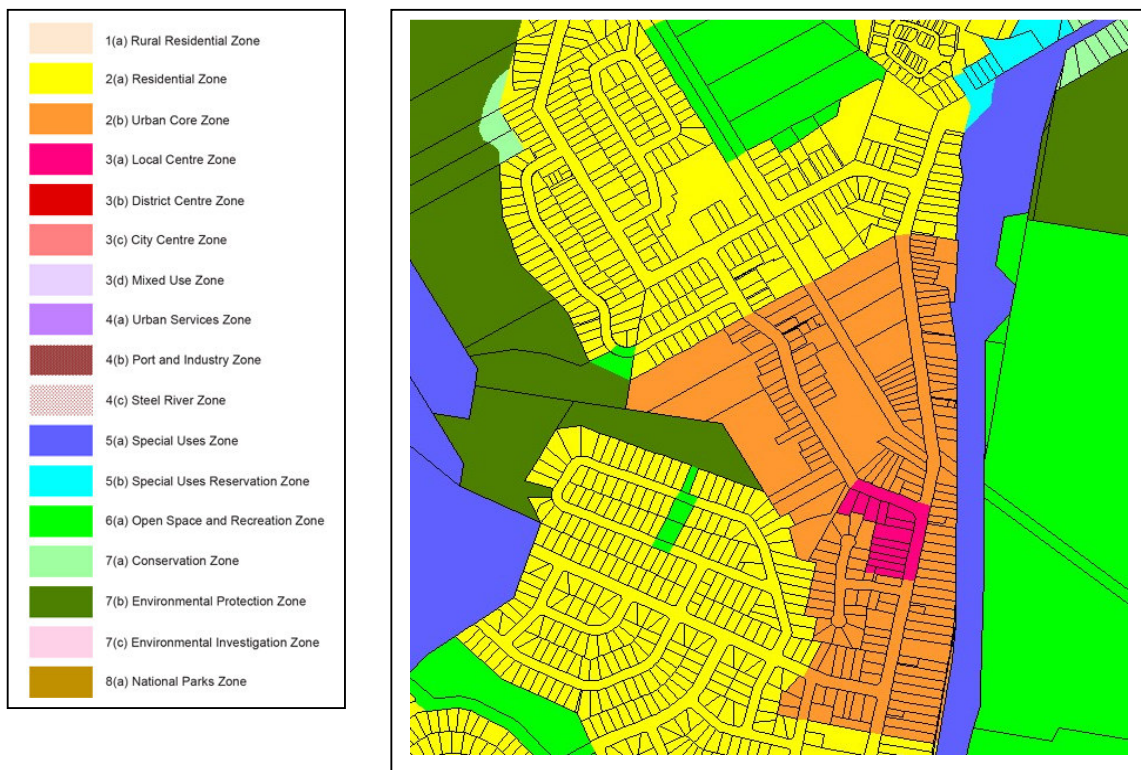
The design of the development proposes filling in the 'riparian zone' of an existing watercourse on the site and does not include an appropriate riparian buffer zone to protect the watercourse, contrary to objective (a).

The design of the development does not satisfactorily manage the risk to life and property from flooding, contrary to objective (e).

Clause 16 - Zonings

The site is zoned 2 (b) Urban Core under the Newcastle Local Environmental Plan 2003 (LEP2003). The proposal is categorised as 'urban housing' and is permissible within the 2 (b) Urban Core zone subject to development consent.

Below is an extract of the LEP2003 zoning map as it relates to the site.



The objectives of 2(b) Urban Core zone are:

- (a) *To provide for a diversity of housing types that respect the amenity, heritage and character of surrounding development and the quality of the environment.*
- (b) *To accommodate a mix of home-based employment-generating activities that are compatible in scale and character with a predominantly residential environment.*
- (c) *To accommodate a limited range of non-residential development of a scale and intensity compatible with a predominantly residential environment which does not unreasonably detract from the amenity or character of the neighbourhood or the quality of the environment.*
- (d) *To require the retention of existing housing stock where appropriate, having regard to ESD principles.'*

The proposal, which proposes to significantly vary the height requirements of the Newcastle Development Control Plan 2005 and Draft Local Environmental Plan 2011, is not consistent with relevant objectives of the 2(b) Urban Core zone. This consideration has been made noting that the proposal is generally inconsistent with the existing character, and future character of the surrounding development, as envisaged by the current planning controls.

Clause 25 - Acid Sulfate Soils

The site is affected by Class 2 and 5 Acid Sulphate Soils.

The NLEP 2003 requires consideration of:

- (a) *the adequacy of an acid sulphate soils management plan prepared for the proposed development in accordance with the Acid Sulphate Soils Manual, and*
- (b) *the likelihood of the proposed development resulting in the discharge of acid into ground or surface water.'*

A management plan has been submitted in support of the proposal and is considered to adequately address the requirements of the NLEP 2003 and manage any potential Acid Sulphate Soils.

Clause 26 - Bush fire prone land

The proposal has been referred to the NSW Rural Fire Service (RFS) for advice pursuant to section 79BA of the *Environmental Planning and Assessment Act 1979*. The RFS have provided advice supporting the proposal subject to conditions (A copy is attached at **Appendix B**).

Part 4 - Environmental Heritage conservation

The site does not contain any heritage items, and is not within a heritage conservation area. It is not considered that there are any heritage matters that would render the proposal unsuitable.

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

Draft Newcastle Local Environmental Plan 2011 (DNLEP 2011)

- Land Use Table

Under the DNLEP 2011, the site is proposed to be zoned R2 Low Density Residential. The proposal is categorised as a *'Multi-dwelling housing'*, which is identified as a form of *'residential accommodation'* under the DNLEP 2011. *'Residential accommodation'* is permissible within the R2 Low Density Residential zone subject to development consent.

The objectives of this zone are:

- *'To provide for the housing needs of the community within a low density residential environment*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents*

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

It is considered that the proposal is not consistent with the objectives of the R2 zone, specifically, that the proposal is inconsistent with a *'low density residential environment'* when having regard to the non-compliance with the height limit under DNLEP 2011.

- Clause 4.3 Height of Buildings

The DLEP 2011 contains a height development standard for the development site. This clause of the DLEP 2011 states:

- '(1) The objectives of this clause are to:*
 - (a) ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy, and*
 - (b) allow reasonable daylight access to all developments and the public domain.*
- (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.'*

The DNLEP 2011 map identifies this site as having an 8.5 metre height limit. The proposal does not comply with this control proposing a maximum height of up to 12.34 metres. The maximum height limit is the same as currently under the Newcastle Development Control Plan 2005 and is discussed further under that section of the report.

- Clause 4.4 Floor Space Ratio

The DNLEP2011 contains a floor space ratio (FSR) development standard for the development site. This clause of the DLEP2011 states:

- '(1) The objectives of this clause are as follows:*
 - (a) to provide an appropriate density of development consistent with the established centres hierarchy,*
 - (b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the centres hierarchy.*
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.'*

The DNLEP 2011 map identifies this site as having a 0.75:1 FSR limit.

The FSR of the development is **0.48:1** based on the following considerations:

- Total GFA = 5,485m²
- Site area excludes the access handle as per clause 4.5(4)(c) is 11,861m² (12,070m² – 209m²).
- FSR is 5,485/11,861 = 0.46:1.

GFA excludes any carparking to meet Council's requirements. Excess visitor parking and carwash accounts for an additional 175.5m² of GFA which brings the FSR up to 0.48:1.

The proposed development complies with the maximum FSR.

- Clause 5.13 Acid Sulfate Soils

The site is affected by Class 2 and 5 Acid Sulphate Soils.

A management plan has been prepared and is considered to adequately address the requirements of the DNLEP and manage any potential Acid Sulphate Soils.

- General comments regarding the status of the draft Instrument

Council resolved on 21 June 2011 that:

- '1. The revised draft Newcastle Local Environmental Plan 2011 and accompanying maps be adopted as Newcastle Local Environmental Plan 2011.*
- 2 The draft Newcastle Local Environmental Plan 2011 be referred to the Department of Planning and Infrastructure to obtain Parliamentary Counsel's opinion on whether it may be legally made.*
- 3 The adopted draft Newcastle Local Environmental Plan 2011 be referred to the Minister for Planning and Infrastructure for gazettal upon completion of the legal drafting, with a request that it not be made until draft Newcastle Development Control Plan 2011 becomes effective and if required Newcastle-specific provisions in relation to tree pruning and removal are included in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.'*

In terms of the status of this draft instrument, it is considered that in relation to this site, the DNLEP 2011 should be given reasonable weight, particularly noting that the proposed development controls are re-inforcing those controls which are already in place in the Newcastle DCP 2005. Gazettal of the DNLEP 2011 is expected within the next couple of weeks.

(a)(iii) any development control plans

Newcastle Development Control Plan (DCP) 2005

a) Element 3.1 - Public Participation

The proposal has been notified in accordance with this Element and four submissions received. The matters raised are discussed later in this report.

b) Element 4.1 – Carparking

The development satisfies the relevant requirement of the Element. Carparking demand is outlined below:

- Residential unit parking – The DCP requires 2 spaces per unit at 29 units = 58 spaces. Basement carpark has 2 parking spaces per unit (providing 58 total). The parking is in secure individual garages with roller door and stair access to unit above.

- Visitor parking – The DCP requires 1 space for first 3 units and 1 for every 5 thereafter = 7 spaces. Development incorporates 18 visitor spaces and 2 carwash bays, therefore complies.
- Motorcycle parking – The DCP requires 1 space per 20 car spaces = 3 spaces. This could be accommodated in excess visitor spaces.
- Bicycle parking – The DCP requires 1 space per dwelling plus 1 space per 10 dwellings for visitors. Each unit has storage in garage and additional bicycle racks are located in the central courtyard area.

Access - Advice received from Council's Engineering Services Unit (ESU) for the proposal initially raised concern in regard to manoeuvrability for vehicles within the basement carpark. Therefore the applicant was requested to submit a compliance report which demonstrates the development could comply with AS2890.1-2004. Engineering Services Unit reviewed the submitted report and advised:

'The applicant has supplied a report describing compliance with AS2890.1 in regard to the car parking arrangements for the development as requested by Council. Although the plans have not been amended, a review of the report indicates that AS2890.1 has been complied with in regard to these arrangements.'

In relation to the access handle, ESU has advised that the proposed design providing for a 3.5m wide ramp and separate pedestrian footpath with a 5.0m x 5.0m passing area at the front property boundary is appropriate for the development. The applicant has clarified that there will be appropriate signage erected notifying users of the shared pedestrian/passing area at the front property boundary.

Vehicular access to the development is therefore considered acceptable.

c) Element 4.3 – Flood Management

Flood storage area

A flood storage area under the DCP is defined as:

'Flood storage: is an area where flood water accumulates and the displacement of that floodwater will cause a significant redistribution of floodwaters, or a significant increase in flood levels, or a significant increase in flood frequency. Flood storage areas are often aligned with floodplains and usually characterised by deep and slow moving floodwater.'

The flood study for this area was updated at the end of 2011 with fringe, storage and floodway areas in the Hexham Wetlands examined. The rear part of the site is now shown as flood storage and therefore section 4.3.3 – 'Flood storage areas' applies. Only 20% of the site below the Probable Maximum Flood (PMF) level, in this case 6.66m Australian Height Datum (AHD), can be filled.

This issue has been raised with the applicant who has noted that the Flood Information Certificate issued by Council on 3 September 2010 (prior to the DA being lodged) did not identify the site as affected by flood storage area, and adds:

'Please note that the design of the floor levels of this development has been undertaken in good faith based on the information supplied by NCC in the Flood Information Certificate, being that no part of this property was affected by a flood storage area. Additionally, if there is an additional requirement for suspended floor techniques to be utilised to provide underfloor storage, this may be specified as a condition of consent and should not delay approval.'

The applicant is correct in that at the time the development application (DA) was lodged the site was not identified as being affected by a flood storage area and therefore Council is implementing controls that were not applicable at the time the DA was lodged. Council's flood studies are continually being updated to reflect the best available information at the time and the DCP applies the latest flood information to a development. Flood management is a significant public interest issue that needs to be considered against the latest flooding information available. Furthermore, the DCP does not contain any saving and transitional provisions in this regard. Given these circumstances, Council could not reasonably apply a superseded flood study to the assessment of the subject application, even if that study was the applicable study at the time of lodgement. Having considered the applicant's request the ESU has advised the following in relation to the amended plans.

'In regard to the previously raised concerns with the filling of the site below the PMF level of RL 6.66m AHD and the flood storage nature of the site, as previously advised filling of the site is limited to 20%. A review of the amended plans indicates that the site is now proposed to be filled by 27.3%. This is not supported by Council.'

Risk to property

The DCP requires that:

- i) Floor levels of all occupiable rooms of all buildings are not to be set lower than the Flood Planning Level (FPL).*
- ii) Garage floor levels are to be set no lower than 300mm below the FPL. However it is recognised that in some circumstances this may be impractical due to vehicular access constraints. In these cases, garage floor levels should be as high as practicable.*
- iii) Basement garages may be acceptable where all potential water entry points are at or above the probable maximum flood (PMF), excepting that vehicular entry points can be at the FPL. In these cases, explicit points of refuge should be accessible from the carpark in accordance with the provisions for risk to life set out below.'*

The minimum proposed floor level is 9.55m AHD and therefore the habitable floor levels complies with the Flood Planning Level (FPL) for the site (i.e. minimum allowable occupiable room level) of RL4.3m AHD.

The basement level at RL3.5 AHD is more than 300mm below the FPL for the site of RL 4.3 AHD.

The applicant has sought to justify this by indicating that the basement is as high as possible and that all entry points are above the PMF.

The Engineering Services Unit (ESU) has reviewed the amended proposal and advised as follows:

'The proposed ramp from the pool area to the basement will allow PMF event flood waters to enter the basement car parking area. In accordance with Element 4.3.4 iii) of NCC's DCP 2005, basements are only acceptable where all entry points are at or above the PMF.'

Therefore the basement RL is not acceptable as the PMF event will be able to enter into the basement. Furthermore, the basement level could be increased on this site.

The basement level was only reduced to try and resolve the issue of the proposals exceedance of the height limit which is discussed elsewhere in this report.

Riparian zone

Council's Compliance Services Unit (CSU) provided the following comments in relation to the original proposed development:

'The south-western area of the proposed development site contains a watercourse and riparian vegetation (Typha sp). The watercourse flows into a State Environmental Planning Policy (SEPP) 14 – Coastal wetland. The Site Analysis Plan shows the riparian vegetation will be removed and utilised as a playground and terraced garden area. However, the Newcastle Development Control Plan (DCP) 2005 requires the protection of riparian zones and watercourses. To ensure adequate protection the Newcastle DCP 2005 requires riparian buffer zones to be implemented around existing watercourses. The proposed development, as it currently stands, does not meet the objectives of the Newcastle DCP 2005 as the development proposes to remove riparian vegetation and does not provide a buffer zone for the watercourse. Therefore, Council recommends the applicant review the layout of the proposed development with consideration of the riparian zone as defined in the Newcastle DCP 2005.'

In response to these concerns the applicant submitted the current amended proposal that deleted a large portion of the filled area at the rear. Council's Compliance Services Unit has reviewed the amended proposal but maintain concern:

'The Revised Floor Plan prepared by JCDWG dated 11 May 2012 shows the proposed development includes a retained riparian area. The retained riparian area includes the area currently occupied by reed species. However, the proposed development still includes filling below the bank of the riparian area to facilitate the pool area and pathways. The filling of the riparian area is contrary to the objectives of Element 4.3 of the Newcastle Development Control Plan (DCP) 2005 which prevents filling of the riparian zone and requires development to be situated outside of the riparian zone. Furthermore the Newcastle DCP 2005 also requires the implementation of a riparian buffer zone for protection of watercourses. The proposed development does not provide a riparian buffer zone to afford protection of the watercourse and does not meet the objectives of Element 4.3 of the Newcastle DCP 2005. Therefore, Council requires the proposed development be redesigned, with consideration of the objectives of Element 4.3 of the Newcastle DCP 2005, to include protection of the watercourse and implementation of an appropriate riparian buffer zone.'

The amended design is still not considered satisfactory in relation to provision of a riparian buffer zone.

Water Management Act, 2000

The development will involve works on waterfront land, as defined under the *Water Management Act 2000*. As such, a controlled activity approval will be required from NSW Office of Water before any works can commence. The applicants have not applied for an integrated development approval process; however, they have been advised of this requirement noting that it may have further implications in terms of design. The applicants have acknowledged this requirement but appear to not have sought this approval to date.

d) Element 4.4 – Landscaping

The application has been supported by a landscaping plan and report by Terra Aqua Sustainable Solutions which satisfies the submission requirements of the DCP.

The landscape plan proposes extensive landscaping across the site, with a number of medium sized trees, private courtyard areas and communal landscaped areas to the south east side and rear boundaries. The landscaping also incorporates a communal pool area. The landscaping is considered of a high quality and complies with the DCP requirements.

e) Element 4.5 Water Management

Council's ESU has reviewed the submitted Comprehensive Water Cycle Management Plan and advised:

'The revised plans indicate overflows discharging to the natural water course located within the subject property and across the riparian zone. This is satisfactory to Council for this development. As previously advised by Council Engineers, the proposed rainwater tank, underground detention tanks and drainage network within the site is in accordance with Councils requirements.'

f) Element 4.10 – Tree Management

Two significant trees are proposed to be removed to facilitate the proposal. The site is otherwise generally devoid of any significant vegetation. The subject trees could not be retained as part of the development and their removal is supported. Adequate compensatory planting is proposed.

g) Element 5.2 – Urban Housing

This Element of the DCP provides the principal design guidelines for urban housing development. The guidelines of the DCP build upon the visions and objectives of the Newcastle Urban Strategy. In this regard the subject site is located within a Moderate growth Precinct, which is described under the DCP as follows.

'Moderate Growth Precinct promotes a moderate increase in the number and diversity of dwellings that respect the local context of the neighbourhood.'

The principal design guidelines are discussed below, with the proposal being otherwise acceptable.

- Side and Rear Setbacks – Buildings are required to fit within an envelope defined by a plane projected at 45 degrees at a height of 4.5m above ground level at the boundary. The proposal complies with the required side and rear setbacks other than the western corner of dwelling 01A (north-west corner of building) which encroaches approximately 0.9m outside the envelope. This is considered a minor encroachment and the proposed side setbacks are generally considered acceptable.
- Private Open Space – The DCP requires each dwelling to have 25m² of private open space. Each dwelling has well over 25m² courtyards. The rear courtyards of the dwellings would require retaining walls to provide level areas which would satisfy the performance criteria for usable open space. It is not clear how this would be achieved based on the details on the current plans.
- Landscaping – The DCP requires a minimum of 25% of the site to be landscaped, of which 25% needs to be deep soil zone. The DCP also

requires a minimum of 3m landscaped strip along a boundary. The proposal provides approximately 31% of the site to landscaping (including riparian zone at rear), the majority of which is deep soil zone. Additional landscaping is provided within the central courtyard area (above basement carpark).

- Building appearance – The proposed development is of a contemporary design which is considered acceptable as there are no heritage constraints.
- Building height – The DCP provides for a maximum height limit on the site of 8.5m above existing ground level. Likewise the draft NLEP 2011 provides for a height limit of 8.5m on the site.

The following height analysis has been undertaken at the highest points of the development, namely where it steps down the hillside.

(Intentionally blank)

Spot Height Analysis

Location	Ground RL (Source: Detail survey by Cooper and Blackley, dated 29/04/2005)	Building RL	Height above ground level	Compliance with 8.5m height limit
Pool enclosure	RL 1.15 At rear of building	RL11.4 Scaled from plans – Plans provide no actual nominated RL	10.25m	Exceeds 1.75m
South-East Buildings				
Dwelling 01B - Roof peak (west end)	RL 4	RL14.11	10.11m	Exceeds 1.61m
Dwelling 01B - Gutter (south-west corner)	RL3.2	RL13.11	9.91m	Exceeds 1.41m
Dwelling 03B - Roof peak (west end)	RL 4.9	RL 17.14	12.24m	Exceeds 3.74m
Dwelling 03B - Gutter (south-west corner)	RL 3.8	RL 16.14	12.34m	Exceeds 3.84m
Dwelling 06B - Roof peak (west end)	RL 8.3	RL 17.14	8.84m	Exceeds 0.34m
Dwelling 08B - Roof peak (west end)	RL 9.4	RL 20.18	10.78m	Exceeds 2.28m
Dwelling 11B - Roof peak (east end)	RL 11.0	RL 20.18	9.18m	Exceeds 0.68m
North-West Building				
Dwelling 01A - Roof peak (west end)	RL 3.6	RL 14.11	10.51m	Exceeds 2.01m
Dwelling 01A - Gutter (south-west corner)	RL 2.4	RL 13.11	10.71m	Exceeds 2.21m
Dwelling 07A - Roof peak (west end)	RL 8.2	No RL shown on plan but scales at RL 16.8	8.6m	Exceeds 0.1m
Dwelling 07A - Gutter (south-west corner)	RL 7.2	RL 15.8	8.6m	Exceeds 0.1m
Dwelling 13A - Roof peak (west end)	RL 11.2	RL 20.189	8.99m	Exceeds 0.49m
Dwelling 18A - Roof peak (east end)	RL 12.8	RL 20.189	7.39m	Complies 1.11m

The submitted plans contain a number of deficiencies in relation to RLs:

- Sheets DA201 & 202 (elevations) - No RL nominated for roof height of dwelling 07A to 12A inclusive, or pool enclosure – For the purpose of this assessment the roof heights scale at 16.8 and 11.4 respectively.
- Inconsistencies in basement RL - Sheet DA102 (basement) nominates RL 6.55 for lower level of basement whereas Sheets DA201 & 202

(elevations) nominate a level of RL 3.5 – For the purpose of this assessment report a basement RL 3.5 has been used.

The submitted elevation plans Sheets DA201 & 202 includes height profiles that indicate that the proposal generally complies with the DCP height limit of 8.5m. It was not clear where these height profiles had been taken as they are not annotated on the plans; however the applicant has subsequently advised via email that they are taken at the outer face of the external walls. The spot height analysis above identifies that they do not provide an accurate indication of the proposal's compliance against the DCP height limit and should not be relied on.

It is evident that the proposed development in fact results in significant departures from the DCP height limit. The buildings adjoining the south-east boundary (Dwelling type B) in particular depart by up to 3.84m.

The applicant has indicated that they believe the proposed amended development now generally complies with the height limit and therefore have not provided any justification for the current height variation. The applicant did provide the following request for variation to the height limit for the original proposal.

'The maximum height limit of the proposed development is substantively within the specified allowable maximum height for the site shown on the Height of Buildings Map (shown in Part D of the DCP), being 8.5m, however due to the slope of the site and the extremely low existing ground level at the western extremity it is necessary to fill this lower portion of the site in order to ameliorate the possibility of future flooding through providing that the minimum floor level of the basement carparking of the proposed development is 6.55 metres AHD so that the townhouses and their associated garages should not be affected by flooding into the future.'

'Therefore compliance with the height control is not possible for 8 of the south-western type "B" 2 bedroom townhouses and so this application hereby requests that the maximum height requirement for this development be varied in line with this specific performance criteria accordingly, as compliance with this control is unreasonable and/or unnecessary as the variation is minor and the development proposal otherwise satisfies the objectives and performance criteria of this section and the other requirements of the Element relating to streetscape, daylight, sunlight and privacy are satisfied.'

In consideration of this request the proposed height variation is considered to not be minor. Furthermore the topography of the site and flooding do not in themselves justify a departure from the height guidelines. These factors are development constraints that need to be accounted for in the design and can reasonably be expected to limit the development yield on the site.

The proposal is clearly of a height well in excess of what is expected of the Moderate Growth Precinct within which the site is situated. Therefore the proposed development is not only inconsistent with the scale of existing surrounding development but also inconsistent with the desired future character of the area. Such a scale of development would be more compatible with that envisaged under Council's Substantial Growth Precincts where a height limit of 10m is nominated. In this regard to support such a height variation would effect a change to Council's adopted density hierarchy,

contrary to the Newcastle Urban Strategy, Newcastle DCP 2005 and draft NLEP 2011 and would not be in the public interest.

The primary environmental impact from the height exceedance is incompatibility with surrounding character. Shadow diagrams submitted with the application indicate the proposal still complies with the DCP requirements for overshadowing being 3 hours to adjoining living room windows. Nevertheless, a compliant development would result in less overshadowing impacts.

- Floor Space Ratio – The DCP provides for a maximum FSR of 0.75:1 for the site. The proposal at 0.48:1 complies.
- Privacy – The performance criteria of the DCP in relation to visual privacy states:

'Development is designed so that the privacy of each individual dwelling and adjacent existing dwellings are protected, with particular regard to private open spaces and windows of habitable rooms.'

Measures utilised to ensure that this standard is satisfied may include:

- *Proper consideration of privacy outcomes at the site planning stage;*
- *Screening, including lattice or mature planting;*
- *Offset windows;*
- *Innovative balcony design; or*
- *Separation distances.'*

The design of the development potentially compromises privacy to the adjoining properties to the north-west (which front Alister Street) with the upper level balconies to every dwelling facing into the rear of these properties. Such a design is considered contrary to the first dot point of the performance criteria.

Both Council officers and objections received raised concern in relation to loss of privacy to the adjoining properties to the north-west (which front Alister Street) as the upper level balconies to every dwelling face into the rear of these properties. In response to these concerns the applicant has indicated that adequate separation distances are available.

In relation to separation distances the DCP requires a distance of 12m from the living area of the proposed dwellings to the principal areas of private open space of other dwellings. The upper level balconies of dwelling Type A adjoin a living area (and also bedroom) and therefore are considered living areas. The privacy separation distance is generally around 15m, other than to the rear yard of No. 17 Alister Street, which is approximately 10m. The proposal therefore does not comply with the DCP in this area. The privacy separation to other properties is acceptable; furthermore the landscape plans proposes Bottlebrush trees along this boundary which will also assist in reducing impact of the development on the amenity of these properties.

- Site facilities – The DCP requires consideration of garbage storage and collection. The proposal includes a rubbish collection area on-site and each dwelling has storage in garage. The proposal is considered acceptable in this regard. The development would require a communal letterbox at the street frontage. This could be addressed by an appropriate condition of consent.

In summary the proposed development is not considered acceptable in relation to building height and privacy. It is therefore considered that it does not meet the objective of the Moderate Growth Precinct as it does not respect the local context of the neighbourhood.

(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

Height

The Newcastle DCP 2005 provides a maximum height limit on the site of 8.5m. Likewise the draft NLEP 2011 provides a height limit of 8.5m on the site.

As discussed previously in this report the height of the proposal of up to 12.34m is considered excessive having regards to Council's adopted policy and is not considered acceptable.

Character

The proposed development is designed in a contemporary architectural style which is considered acceptable considering the site is not within a heritage conservation area.

Privacy

As outlined previously in this report the design of the development is not acceptable in relation privacy impacts upon No. 17 Alister Street.

Noise

Council's Compliance Services Unit (CSU) requested an acoustic assessment addressing potential noise impacts from the development. CSU reviewed the applicant's submission and advised as follows:

'The email prepared by Robert Frohlich (applicant) dated 14 May 2012 notes noise levels of up to 72dB(A) may potentially be experienced at the nearest residential receivers from activities such as collection of waste. Noise may also be received from vehicles entering and exiting the proposed development via the single accessway. No acoustic mitigation measures have been proposed as part of the development as the movement of passenger vehicles and waste collection vehicles are considered short-term. However, no assessment of sleep disturbance criteria or assessment against project specific or amenity noise criteria has been undertaken. Therefore, Council considers the potential noise impacts from the proposed development have not been adequately assessed. Council recommends consideration of potential noise mitigation measures, such as acoustic fences, be included within the assessment.'

It is evident that noise levels are likely to create unreasonable impacts unless suitable mitigation measures are proposed. It has not been demonstrated how this will be addressed and accordingly the proposal is not considered acceptable in relation to noise impacts.

Overshadowing

The submitted shadow diagrams indicate that the proposed development does not unreasonably impact neighbouring properties.

Traffic/Access

In relation to impacts upon the local road network Council's Engineering Services Unit (ESU) has provided the following comment:

'Using traffic generation rates recommended by the RTA it is concluded the proposal is likely to generate an additional 17 vph in the AM and PM peak periods. This additional traffic represents less than 10% of the weekday peak hour traffic on Mawson Street therefore on its own would not have a noticeable impact on the levels of service experienced by motorists on Mawson Street. No objection is raised to the proposal on traffic grounds.'

As outlined previously in this report, the ESU advice indicates that the proposed design providing for a 3.5m wide ramp and separate pedestrian footpath with a 5.0m x 5.0m passing area at the front property boundary is appropriate for the development. The applicant has clarified that there will be appropriate signage erected notifying users of the 'shared' pedestrian/passing area at the front property boundary.

Riparian Zone

As outlined previously in this report the rear of the site contains a riparian zone that flows into SEPP 14 wetland approximately 230m downstream. While the amended design is an improvement on the originally submitted proposal it still proposes works within this area and provides no buffer. The impact on the riparian zone of this watercourse is not considered acceptable.

The proposal is otherwise considered acceptable in relation to likely impacts upon the environment.

(c) the suitability of the site for development

In terms of site constraints, the site is identified as bushfire prone and is affected by flooding. Having regard to these considerations, it is considered that the site is suitable for the proposal. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

It is considered that the proposal is satisfactory in relation to climate change.

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

Four submissions were received in relation to public notification. The principal issues raised were as follows:

- Overdevelopment - The proposed development represents an overdevelopment of the site.

Comment: This matter should be considered against Council's adopted planning controls. In this regard the proposal complies with the maximum FSR for the site but exceeds the height limit in a number of places. The departure from the height limit is not justified in the circumstances of the case and therefore the proposal is considered an overdevelopment of the site.

- Traffic/access – Increased traffic movements and entry at bend in the road may cause accidents.

Comment: As previously outlined in this report advise from Council's Engineering Services Unit indicates that the local road network could accommodate the marginal increase in traffic expected to be generated from the development. No objections were raised to the location of the entry/exit to the site. It is noted that the design of the access enables vehicles to enter and exit the site in a forward manner and provides a passing bay to avoid vehicles cuing within the road itself. The proposed development is considered acceptable in this regard.

- Parking – The proposed development would result in increased on-street parking demand.

Comment: The applicant has provided the following response to these concerns:

'In the design of the townhouses considerable consideration has been given to providing amenable parking facilities for the development's residents and visitors as well as service and emergency service vehicles. The proposed townhouse development should not have a major affect on street parking along Mawson street, as additional off-street parking, in excess of the requirements of the Newcastle DCP, is provided.'

The proposal provides on-site parking spaces in excess of the requirements of the DCP and is therefore considered acceptable in relation to on-site parking.

- Privacy – Loss of privacy to rear of properties that front Alister Street. In particular concern was raised in relation to the upper level balconies.

Comment: The applicant provided the following response in relation to these concerns:

'The design of the townhouses is that they are of two stories with all main living areas situated on the ground floors and incorporating underground parking to minimize disturbance to neighbouring properties.'

'The retention of visual privacy for adjacent properties has been a consideration in the design of the proposed townhouse development. Windows have been located so as to maximise visual privacy for adjacent dwellings and from common areas. The minimum distance that windows are setback from any boundary are approximately 4.5 metres from the north-west boundary and these provide over 22 metres separation from the nearest dwelling along this boundary, being number 11 Alister Street.'

As outlined previously in this report the design incorporates a number of upper level balconies facing towards the north-west. The balconies of the development serve little purpose as each proposed dwelling has ample open space at ground

level and there are no significant views to capture from the elevated decks. However, adequate privacy separation distances are achieved in accordance with the Newcastle DCP 2005 other than to No. 17 Alister Street. The proposed development is not considered acceptable in this regard.

- Visual impact – The proposed development grounds would result in an unattractive outlook from properties along Alister Street looking at brick wall.

Comment: This elevation is adequately articulated to provide visual interest; however the height in part is excessive.

- Fencing – To facilitate privacy a neighbour has requested that the developer erect boundary fencing of sufficient height.

Comment: It is considered appropriate that a new 1.8m fence be erected to all common boundaries. This could be addressed as a condition of consent.

- Drainage – The proposed development may not have adequate drainage.

Comment: The applicant has submitted a stormwater management plan which has been reviewed by Council engineers against the NDCP 2005 and is considered to adequately manage stormwater.

- Devalue properties – The proposed development would devalue property values.

Comment: This concern was unsubstantiated; however in any regard it is not considered a valid planning consideration.

- Noise – Increased noise impacts from cars, pool equipment and other amenities.

Comment: As outlined previously in this report Council's Compliance Services Unit requested an acoustic report in relation to noise impacts. The Unit is still not satisfied that the issue of noise impacts has been satisfactorily resolved. The proposed development is therefore not considered acceptable in relation to noise impacts.

- Fumes – Fumes from basement carpark impacting upon neighbouring properties.

Comment: Any exhaust fumes from basement would be adequately dispersed.

- Breezes – The height of buildings will block breezes.

Comment: The separation distances between the subject proposal and adjoining properties are considered sufficient to allow breezes.

- Water easement – The proposed development may affect a water easement on the eastern side of the property.

Comment: A review of the title history of the site could find no evidence of any easement along the eastern boundary. In any regard the buildings are setback from the eastern boundary.

- Sewer line – The development will adversely affect sewer lines in the area.

Comment: Hunter Water Corporation is the responsible authority in relation to sewerage infrastructure and has provided approval to the subject application. The proposal is therefore considered acceptable in this regard.

- Wetland – The proposed development will impact upon the nearby wetland.

Comment: In terms of impact on the nearby wetland it is important that stormwater be appropriately discharged into the natural watercourse and that the riparian zone vegetation at the rear of the site is retained and protected. The submitted stormwater management plan appropriately discharges stormwater to the rear in accordance with the Newcastle DCP 2005. The amended proposal does not adequately protect the riparian zone and is not considered acceptable in this regard.

(e) the public interest

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

In summary the proposed development:

- Will cause unreasonable disturbance to the watercourse and associated riparian zone at the rear of the site that leads to SEPP 14 listed wetland downstream.
- Proposes excessive fill in a flood storage area.
- Does not satisfactorily manage the likely risk to life and property from flooding.
- Unjustifiably departs from Council's adopted height controls.
- Would unreasonably detract from the privacy of an adjoining dwelling.
- Does not satisfactorily address the likely acoustic impacts of the proposal.

Having regard to these circumstances, approval of the application would not be in the public interest.

7. Conclusion

Subject to various issues, the proposal is unacceptable against the relevant considerations under section 79C.

8. Recommendation

That the Joint Regional Planning Panel refuse to grant consent to DA 2011/0390 for 'Demolition of Existing Structures and Erection of 18 x Three-Bedroom and 11 x Two-Bedroom Dwellings with Basement Carparking, Associated Landscaping and Pool' at No. 49 Mawson Street Shortland, for the following reasons:

1. The proposal will unnecessarily detract from the amenity of the neighbourhood and therefore does not satisfy the relevant objectives of the 2(b) Urban Core zone applying to the site under the Newcastle Local Environmental plan, 2003 and the relevant objectives of the R2 Low Density residential zone applying to the site under the draft Newcastle Local Environmental Plan, 2011.
2. The proposal does not respect and build upon positive aspects of local character, protect and enhance biodiversity or adequately address flooding hazards in accordance with the relevant aims and objectives of the Newcastle Local Environmental Plan, 2003.

3. The building height of the development exceeds the maximum height applying to the site under Element 5.2 – ‘Urban Housing’ of the Newcastle Development Control Plan, 2005 to the detriment of the existing visual amenity of the neighbourhood.
4. The development proposes filling in a flood storage area in excess of the maximum permissible and will cause unreasonable cumulative flooding impacts in other locations and therefore does not satisfy the relevant objectives of Element 4.3 – ‘Flood Management’ of the Newcastle Development control plan, 2005 or relevant matters for consideration of State Environmental Planning Policy 71 – Coastal Protection.
5. The design of the development does not satisfactorily manage the risk to life and property from flooding in that potential water entry points to the basement garage are below the probable maximum flood and therefore does not satisfy the relevant objectives of Element 4.3 – ‘Flood management’ of Newcastle development Control plan, 2005.
6. The design of the development proposes filling in the ‘riparian zone’ of an existing watercourse on the site and does not include an appropriate riparian buffer zone to protect the watercourse and therefore does not satisfy the relevant objectives of Element 4.3 – ‘Flood Management’ of the Newcastle Development Control Plan, 2005 or relevant matters for consideration of State Environmental Planning Policy 71 – Coastal Protection.
7. The upper level balconies of the proposed development would unreasonably detract from the privacy of the rear yard of an adjoining dwelling to the north west of the site and therefore is contrary to the relevant performance criteria and objectives of Element 5.2 – ‘Urban Housing’ of the Newcastle development Control plan, 2005.
8. The application has not satisfactorily demonstrated that the likely acoustic impacts of the proposed development will not have an unreasonable impact on the amenity of the neighbourhood.
9. Having regard to the above mentioned circumstances of the case, approval of the application would not be in the public interest.

APPENDIX A – Plans of the proposed development – 49 Mawson Street, Shortland

APPENDIX B – Referral Comments

Comments from External Agencies

Agency	Comments
NSW Rural Fire Service	Attached letter dated 15 November 2011

APPENDIX C – Processing Chronology – 49 Mawson Street, Shortland