

Applicant's Statement addressing NCC's Recommendation in the JRPP Assessment Report for 2011HCC019

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.

- a. The proposed townhouse development will offer somewhat sophisticated and prestigious two and three bedroom dwellings providing residents with easy access to Shortland Village and a variety public transport options.
- b. The proposal is in keeping with the vision of the Newcastle Urban Strategy and will provide a greater variety of housing to meet the needs of the Shortland community. The proposed development respects and helps retain the local character of the area through providing urban consolidation that is not dominated with driveways and garages like the majority of 'villa' style urban housing developments. It will improve housing choice in the area and given the proximity to public transport, with bus services located directly on Mawson Street, it should improve the use of public transport within the area.
- c. The proposed townhouse development is also in keeping with the objectives of the 2(b) Urban Core zone applying to the site under the Newcastle Local Environmental plan, 2003 as it provides for a diversity of housing types that respect the amenity, heritage and character of surrounding development and the quality of the environment.
- d. At the time this Development Application was lodged, the draft Newcastle Local Environmental Plan, 2011, had not yet been finalised and reported to Council.

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.

- a. This statement appears to directly contradict Council's Assessment Report

where it states towards the bottom of page 8 "The proposal... .. does respect the local character and amenity of the area.

- b. The applicant believes that the proposed development respects and builds upon positive aspects of local character through providing urban consolidation whilst not affecting the streetscape character in any way.
- c. The proposed development aims to protect and enhances biodiversity through the planting of a variety of native flora which should encourage more native fauna into the area. It will also provide natural filtering of the stormwater runoff that currently flows as groundwater directly into Shortland Wetland, carrying unchecked sediment and turbidity.
- d. The proposed development aims to adequately address flooding hazards in accordance with the relevant aims and objectives of the Newcastle Local Environmental Plan, 2003 which I shall address later.

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.

- a. The building height of some of the townhouses within the proposed development may exceed the maximum height applying to the site under Element 5.2 – 'Urban Housing' of the Newcastle Development Control Plan, 2005 in minor ways, but overall the buildings predominantly comply with Element 5.2 in relation to height.
- b. Any exceedance of the maximum height allowed under Element 5.2, will not be to the detriment of the existing visual amenity of the neighbourhood as given the slope of the site, the buildings visual heights will be similar to those in the public streetscape on both Mawson and Alistair Streets, and any possible visual detriment to the adjoining Alistair Street properties will be caused by the type A units facing the north-west situated wholly within the building envelope. These units will fully obscure the units to the south-east of the development which may exceed the envelope.

- c. Element 5.2 specifies that for Moderate Growth precincts, buildings are to be contained within the building envelope defined by planes projected at 45 degrees from a height of 4.5 metres above natural ground level at the side boundaries, to a maximum of 8.5 metres. The Element does not indicate that building heights should be calculated with reference to spot heights, but rather with reference to projected planes.
- d. The height profile lines shown on the elevations, are direct projections from the contours shown on the detail survey. They align with the outer face of the walls of each building in accordance with Council's letter of 20 April 2012 which states "height profiles should be taken at outer faces of walls of each building". The definition of a plane, is a flat surface on which a straight line joining any two points on it would wholly lie. If the height profile lines were indeed indicated as planes projected at 45 degrees from a height of 4.5 metres above natural ground level at the side boundaries, to a maximum of 8.5 metres, they would be somewhat higher, particularly to the south-east and would render the type B units wholly within the building envelope, and so the height profile lines shown on the elevations are somewhat conservative.
- e. These height profile lines shown on the elevations do not appear to align with Council's scaled calculations of the Building RL heights in the spot height analysis at page 18 of Council's Assessment Report where heights are also not taken at outer faces of the walls of each building.
- f. The height profiles shown on the elevation sheets DA201 & DA 202 indicate where the buildings may possibly exceed the 8.5m height limit and demonstrate that this is substantially less than the maximum of 3.84m as calculated by Council's scaling and use of spot heights. It is estimated that the maximum deviation from the allowable height provided by Element 5.2, is more in the order of 1 to 2m and not 3.48m as estimated by Council.

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.

- a. Flood Information used in the design of the proposed townhouse development was obtained from the FLOOD INFORMATION CERTIFICATE - 49 MAWSON ST SHORTLAND issued on 3 September 2010 which states (underlining used for emphasis):

Is any part of the site affected by a floodway? No

Is any part of the site affected by a flood storage area? No

Estimated 1 % Annual Exceedence Probability event level 3.8mAHD

Highest Property Hazard Category P1

Estimated Probable Maximum Flood Level 6.66mAHD

Highest Life Hazzard Category L1

It goes on to state:

Development in a floodway is not generally allowable due to likely redistribution of flood water. Not Applicable

Filling of a flood storage area by more than 20% is not generally allowable due to redistribution of flood water. Not Applicable

Flood Planning Level (Minimum allowable floor level for occupiable rooms in any new development is): 4.3mAHD

Is onsite flood refuge required? No

- b. Additionally, Council's Request for additional information of 26 March 2012 states (underlining used for emphasis):

"The basement level at RL3.5 AHD is 300mm below the 1% AEP flood level of RL3.8m AHD and is therefore not acceptable. The basement needs to be at least at the 1% AEP flood level of RL3.8mAHD."

- c. It is noted that these levels as stated in Council's letters of 26 March 2012 and 20 April 2012 are identical to those stated in the Flood Information Certificate however Council is now determining that the site is located in a Flood Storage Area.
- d. Even if it is determined that the proposed development is situated in a flood storage area and the filling required is in excess of the maximum permissible, it is unlikely to cause unreasonable cumulative flooding impacts in other locations as the area proposed to be filled is but a small fraction of a percentage of the flood storage area afforded by the Shortland and Hexam Wetlands. Additionally, conditional consent could be granted through the additional requirement for suspended floor techniques to be utilised to provide underfloor storage, and this may be specified as a condition of consent.

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.

- a. The Newcastle DCP 2005 Element 4.3 Flood Management states at s4.3.4:

- 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.

- b. As previously outlined, the applicant notes that none of Council's revised flood levels have changed: the revised Estimated Probable Maximum Flood Level (PMF) has not changed and is still 6.66m AHD.

- c. The applicant therefore seeks consideration from the Joint Regional Planning Panel to place a condition of deferred consent, requiring that prior to final approval the applicant provides details of a minor redesign of the proposed ramp from the pool area to the basement, in particular the access point to the basement carpark area, in order to ensure that it is situated at or above the PMF of 6.6m AHD and thereby satisfactorily manage the risk to life and property from flooding through removing this one remaining potential water entry point to the basement garage area.

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.

- a. The construction of the proposed development will protect all of the existing remnant riparian vegetation as well as providing additional planting of native flora to assist in filtering the current flow of turbid groundwater created by stormwater flowing directly across this relatively large fully cleared property.

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.

- a. The proposed development aims to not unreasonably detract from the privacy of the rear yard of an adjoining dwelling to the north west of the site and the applicant believes that this concern may be ameliorated through the provision of a condition of consent requiring obscure glazing to the balustrades of unit balconies facing the north-westerly dwellings on Alistair Street in order to ensure adequate privacy for the neighbouring properties as well as the future occupants of the townhouses. This obscure glazing is to be installed prior to the issue of an Occupation Certificate for these units.

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.

- a. The proposed development will not have an unreasonable impact on the amenity of the neighbourhood, in fact it will have a beneficial impact through the reduction in noise caused through trucks entering and leaving the property at all hours on the night. Currently, and for at least the last 20 years, trucks have been housed on the property that come and go at all hours on a daily basis. Once the development is completed, the only trucks that will regularly enter and leave the property are garbage-trucks that will only affect nearby residents on a weekly basis, rather than the current daily basis. The applicant seeks to refer to a letter from Mr Glen Powell outlining his regular driving of trucks on and off the property.

9. Having regard to the above mentioned circumstances of the case, approval of the application would not be in the public interest.

- a. Having regard to the circumstances previously outlined and the options available to grant deferred approval on condition that the applicant addresses the minor redesign elements previously discussed, the applicant seeks that the Joint Regional Planning Panel give reasonable consideration to granting deferred approval for the proposed development as it will provide substantial benefits to the Shortland community through both providing economic stimulus during the construction process, and later through providing housing options that currently do not exist for the residents in the Shortland area.

Glen Powell
5 Alistair Street
Shortland NSW 2307

7 June 2012

To Whom It May Concern:

I am the former owner of 49 Mawson Street, Shortland, and currently own a neighbouring property at 5 Alistair Street, Shortland.

I am a horse-trainer and have had a variety of trucks, including most recently a Mitsubishi 11 tonne (GVM) horse-float that have been for more than 20 years, and still are, housed at 49 Mawson Street, Shortland.

I have driven these trucks up the driveway to exit the property onto Mawson Street, on a more than daily basis, at a variety of early morning times ranging from 4:00 am to dawn, as I train my horses at dawn before I drive my truck back to the property. I again leave with the truck in the mid-afternoon, in order to train until dark.

When my horses are attending races, I have often returned as late as 2:00 am and have subsequently unloaded the horses creating a substantial amount of noise. I have never received any complaints from any of the neighbours regarding the noise from my vehicles leaving or returning to the property at all hours of the day and night.

My neighbour at 53 Mawson Street is Mr Ray Hile, who until recently operated an earth-moving business from his home, and his tip-truck with bob-cat excavator used the driveway adjacent to 49 Mawson Street on a daily basis.

Yours faithfully,

Glen Powell

A handwritten signature in black ink, appearing to be 'Glen Powell', written in a cursive style.