

COUNCIL ASSESSMENT REPORT

Panel Reference	2015HCC030
DA Number	DA 2015/10349
LGA	Newcastle City Council
Proposed Development	Construction of two storey addition to existing hospital, including new theatres and beds
Street Address	23 Merewether Street, Merewether
Applicant/Owner	Applicant - Doug Sneddon Planning Pty Ltd Owners - Vital Healthcare Australian Property Pty Limited
Date of DA lodgement	9/12/15
Number of Submissions	Eight during the first round of notification and two on the second round.
Recommendation	Approval
Regional Development Criteria (Schedule 4A of the EP&A Act)	The proposal is listed within Schedule 4A of the Environmental Planning and Assessment Act 1979, as being a development that has a capital investment value of more than \$5 million under cl 6 'Private Infrastructure & Community Facilities over \$5 million' as a health services facility. The application submitted to Council nominates the capital investment value of the project as approximately \$9,350,000 (as amended).
List of all relevant s79C(1)(a) matters	<p>Environmental planning instruments: s79C(1)(a)(i)</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy No. 55 - Remediation of Land • State Environmental Planning Policy No. 64 - Advertising and Signage • State Environmental Planning Policy No. 71 - Coastal Protection • Newcastle Local Environmental Plan 2012 (LEP) <p>Development Control Plan: s79C(1)(a)(iii)</p> <ul style="list-style-type: none"> • Newcastle Development Control Plan 2012 (DCP) • Section 94A Development Contributions Plan 2009
List all documents submitted with this report for the Panel's consideration	<p>Appendix A - Conditions of consent</p> <p>Appendix B - Documents submitted with the application</p> <p>Appendix C - Copy of applicants request for Clause 4.6 variation</p> <p>Appendix D - Copy of Ausgrid advice</p>
Report prepared by	Newcastle City Council
Report date	24 November 2016

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes / No**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes / No / Not Applicable**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP These Clauses have

been
addressed
within the
body of the
report below.

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Yes / No / Not
Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

**Yes / No / Not
Applicable**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

Yes / No

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

EXECUTIVE SUMMARY

Development application (No. 2015/10349) has been lodged with Council seeking consent for (as stated by the applicant):

- 'removal of the existing doctors car park (26 spaces) to make way for the construction of a two storey addition (1,700m²) at the western side of the existing hospital site to provide a new ground floor operating theatre suite containing 4 new operating theatres (overall + 3 theatres as 1 is lost in the internal alterations to the existing hospital) and a Level 1 Medical Ward providing 25 beds (overall + 24 additional beds as 1 bed is lost in the internal alterations to the existing hospital) and 3 new car spaces located at the rear of the proposed additions, accessed from Tye Street; and
- part internal refurbishment of the existing hospital (existing theatres and administration/amenities - 455m²).'

The site is zoned R3 under Newcastle Local Environmental Plan 2012 (LEP). The proposed use is defined as a health service facility, which is permissible with consent in the R3 zone.

The proposal was placed on public exhibition for a period of 32 days from 18 December 2015 to 19 January 2016 in accordance with the *Environmental Planning & Assessment Act 1979* (EP&A Act), *Environmental Planning & Assessment Regulations, 2000* (EP&A Regulations) and Section 8 of Newcastle Development Control Plan 2012 (DCP). Eight submissions were received during the original notification period.

The application was amended during the assessment period and the proposal was further exhibited for a period of 14 days from 24 August to 7 September 2016 in accordance with the *Environmental Planning & Assessment Act 1979* (EP&A Act), *Environmental Planning & Assessment Regulations, 2000* (EP&A Regulations) and Section 8 of Newcastle Development Control Plan 2012 (DCP). Two submissions were received during the additional notification period for the amended proposal.

The application was referred to the Mine Subsidence Board and Ausgrid in accordance with the provisions of s91 of *Environmental Planning and Assessment Act 1979* and State Environmental Planning Policy (Infrastructure) 2007.

The key issues raised in the assessment relate to:

- Height and visual impact
- Floor space/floor space ratio (FSR)
- Amenity impacts
- Parking

The proposal exceeds the height and FSR standards under the Newcastle LEP 2012 and the applicant has submitted a Clause 4.6 request to vary these standards.

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to Part 4 'regional development' of *State Environmental Planning Policy (State and Regional Development) 2011* as the proposed development is listed within Schedule 4A of the EP&A Act, as being a development that has a capital investment value of more than \$5 million under cl 6 'Private Infrastructure and Community Facilities over \$5 million' as a health service facility. The application submitted to Council nominates the capital investment value of the project as approximately \$9,350,000 (as amended).

The application is recommended for approval, subject to the conditions contained in **Appendix A**, and inclusive of the Clause 4.6 request to vary the height and FSR standards.

1. INTRODUCTION

This report provides a detailed overview of the development proposal for additions and alterations to the existing hospital at 23 Merewether Street, Merewether. The proposal involves the removal of the existing ground floor parking and construction of a two storey addition consisting of theatres on the ground floor and additional wards on the first floor.

The development application is reported to the Hunter and Central Coast Joint Regional Planning Panel in accordance with 23G and Schedule 4A EP&A Act, as the development has a capital investment value of more than \$5 million and falls under CI 6 'Private Infrastructure and Community Facilities over \$5 million' as a health service facility. The application submitted to Council nominates the capital investment value of the project as approximately \$9,350,000 (as amended).

2. BACKGROUND

The application as originally lodged proposes the following works as detailed by the applicant:

The proposed development involves the following works:

- *removal of the existing doctors car park (26 spaces) for the construction of a three storey addition (2,568m²) at the western side of the existing hospital site to provide a new ground floor theatre suite (3 new operating theatres) and two general ward levels providing 50 beds (overall + 49 additional beds as 3 beds are lost in the internal alterations to the existing hospital);*
- *part internal refurbishment of the existing hospital (existing theatres and administration/amenities - over 846m²); and*
- *provision of a new car park (50 spaces) fronting Merewether and Lingard Streets.'*

'Staging of Construction: It is proposed to construct the proposed works in two stages:

- *Stage 1: construct and commission use of the proposed new 50 space car park; and*
- *Stage 2: decant the existing car park and construct the proposed hospital additions.'*

The subject site for the original proposal included 23 Merewether Street and 6 Lingard Street, Merewether. Council's initial assessment and advice to the applicant indicated that support was unlikely to be given for the proposed third floor addition to the hospital and that the development should be withdrawn or amended removing the third floor.

The applicant while preparing an amended design for re-submission also lodged a separate development application (DA 2016/0394) for the construction of an additional 50 basement parking spaces at 6 Lingard Street (which formed part of the original development application). This application was separately approved under delegation on 21 June 2016.

The amended development application was submitted on the 18 August 2016 making various changes including removing the third storey addition and the 50 basement parking spaces at 6 Lingard Street, Merewether from the current application.

The amended application now lodged with Council is seeking consent for, as detailed by the applicant:

- *'removal of the existing doctors car park (26 spaces) to make way for the construction of a two storey addition (1,700m²) at the western side of the existing hospital site to provide a new ground floor operating theatre suite containing 4 new operating theatres (overall + 3 theatres as 1 is lost in the internal alterations to the existing hospital) and a Level 1 Medical Ward providing 25 beds (overall + 24 additional beds as 1 bed is lost in the internal alterations to the existing hospital) and 3 new car spaces located at the rear of the proposed additions, accessed from Tye Street; and*
- *part internal refurbishment of the existing hospital (existing theatres and administration/amenities - 455m²).'*

3. SITE DESCRIPTION

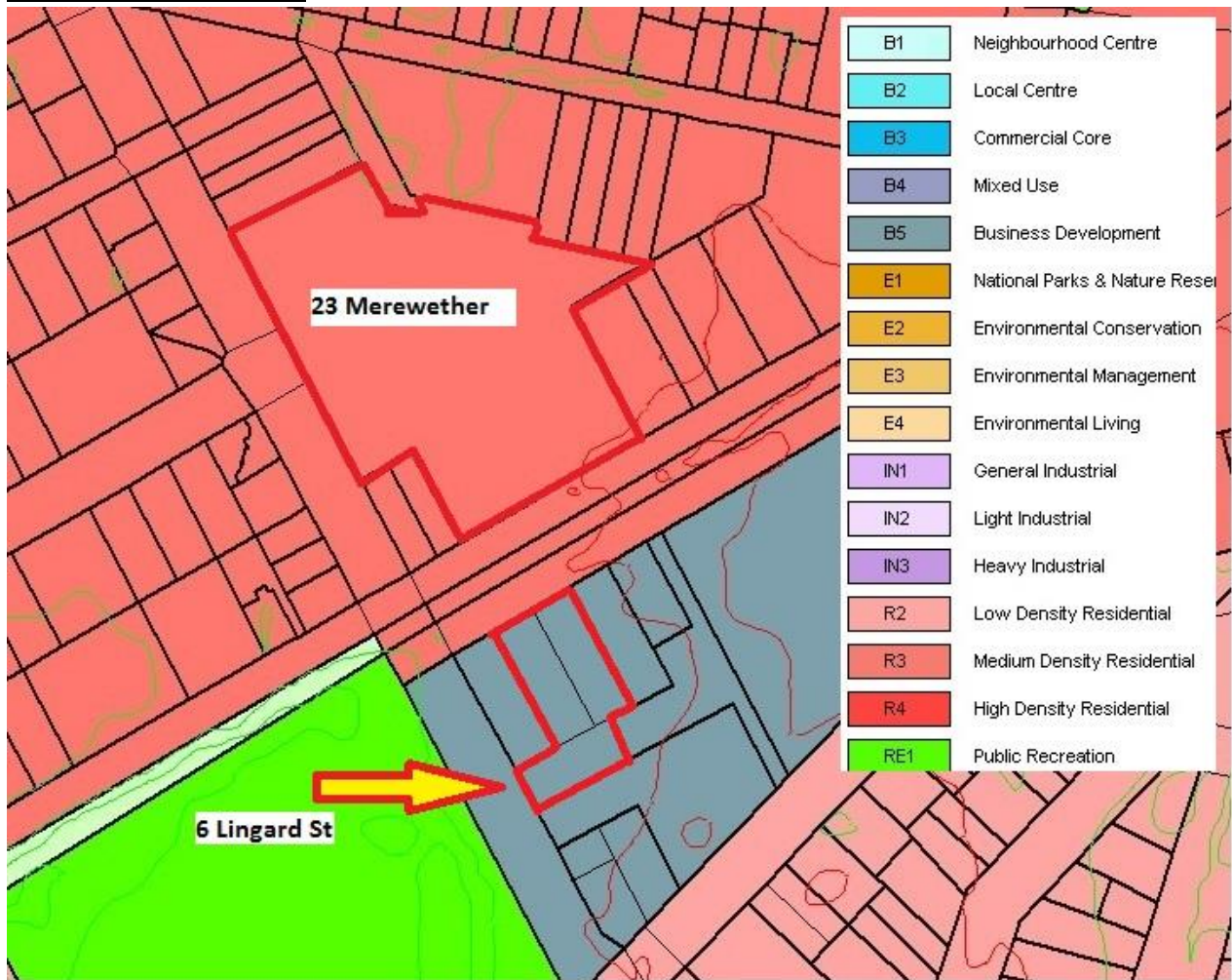
The original proposal involved the following properties:

- 23 Merewether Street; and
- 6 Lingard Street Merewether

The amended proposal now only includes 23 Merewether Street, Merewether (see Figure 1). 23 Merewether Street is zoned R3 Medium Density Residential under the Newcastle LEP 2012 (see Figure 2).

Aerial Map (Figure 1)



Zoning Map (Figure 2)

Lingard Private Hospital currently operates on 23 Merewether Street which is a large irregular shaped parcel of land being 1.032 hectares in area. This parcel has frontages to both Merewether Street (main frontage) and Lingard Street.

The 23 Merewether Street site is surrounded to the east, north and west predominately by residential properties (involving a combination of mostly single dwellings and multi-unit dwellings being single or two storey in height). To the south of the site is an existing commercial/industrial area.

The portion of the site being redeveloped by the proposal includes car parking for medical staff (i.e. 26 spaces), a loading area, plant and seven smaller trees and associated ground coverage. The parking area has its main access via Lingard Street.

The subject site and surrounding area is relatively flat in level.

Figures 3 and 4 below include photos of the subject site.

Figure 3: Merewether Street frontage of Lingard Hospital site looking north east.



Figure 4: Lingard Street frontage of Lingard Hospital site looking south east.



The table below details the attributes which affect the subject site:

Land Attributes

Attribute	Affected/Criteria
Land Contamination	Yes
Flood Prone Land	Yes
Bushfire Prone Land	No
Mine Subsidence District	Yes
Zoning	R3 - Medium Density Residential
Height	10.0 Metres
Floor Space Ratio (FSR)	0.9:1
Heritage Item/Heritage Conservation Area	No
Acid Soil Sulphate	Class 4
SEPP 71 Coastal Zone	Yes

4. PROPOSAL

The amended application now lodged with Council is seeking consent for (as detailed by the applicant):

- *"removal of the existing doctors car park (26 spaces) to make way for the construction of a two storey addition (1,700m²) at the western side of the existing hospital site to provide a new ground floor operating theatre suite containing 4 new operating theatres (overall + 3 theatres as 1 is lost in the internal alterations to the existing hospital) and a Level 1 Medical Ward providing 25 beds (overall + 24 additional beds as 1 bed is lost in the internal alterations to the existing hospital) and 3 new car spaces located at the rear of the proposed additions, accessed from Tye Street; and*
- *part internal refurbishment of the existing hospital (existing theatres and administration/amenities - 455m²)."*

The table below details the attributes of the proposal:

Proposal Attributes

Attribute	Existing	Proposed
Site Area	10,320m ²	10,320m ²
Floor Space	8598m ²	10,298m ² (1700m ² addition)
FSR	0.85:1	0.997:1 (Allowed 0.9:1 - 9288m ²).
Beds	98	121 (net 24 increase)
Staff (peak)	101	114
Parking	78	105 (includes 50 spaces approved under DA2016/394)

5. PLANNING ASSESSMENT

5.1 Environmental Planning and Assessment Act 1979 (EP&A Act)

5.1.1 Section 23G – Joint Regional Planning Panels

Section 23G and Schedule 4A (3) of the EP&A Act requires the Joint Regional Planning Panel (JRPP) to determine applications for development that has a capital investment value of more than \$5 million and falls under cl 6 'Private Infrastructure & Community Facilities over \$5 million' as a health service facility. The application submitted to Council nominates the capital investment value of the project as approximately \$9,350,000 (as amended).

5.1.2 Section 91 – Integrated Development

The application was referred to the Mine Subsidence Board in accordance to the provisions of s91 of *Environmental Planning and Assessment Act, 1979*. Advice from the Board has not been received within the 40 day period given under 91A(5) *Environmental Planning and Assessment Act, 1979*, and as such, conditions requiring that separate mine subsidence approval be obtained have been recommended within **Appendix A**.

5.1.3 Section 79C Evaluation

The proposal has been assessed under the relevant matters for consideration detailed in s.79C (1) EP&A Act as follows:

5.1.3.1 **Section 79C(1)(a)(i) provisions of any environmental planning instrument**

State Environmental Planning Policy (State and Regional Development) 2011

This policy sets out the functions of regional panels in determining applications for regional development. Clause 20 and 21 of the SEPP require the Joint Regional Planning Panel to be the determining authority for development included in Schedule 4A of the Act. This includes applications for development that has a capital investment value of more than \$5 million and falls under Cl 6 'Private Infrastructure and Community Facilities over \$5 million' as a health service facility. The application submitted to Council nominates the capital investment value of the project as approximately \$9,350,000 (as amended).

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) was introduced to facilitate the delivery of infrastructure across the State by improving regulatory certainty and efficiency.

The proposal is permissible with consent within the R3 - Medium Density Residential zone as a *health service facility* under Newcastle Local Environmental Plan, 2012 as discussed below.

The R3 Medium Density Residential zone is a prescribed zone under Clause 57 of the ISEPP and the proposal is also permissible with consent under the provisions of Clause 57 as a *health service facility*.

The proposal was referred to Ausgrid under the provisions of Clause 45 of the ISEPP to seek their comments regarding the proposal in context of the electricity transmission and distribution network. Ausgrid have raised no objections to the proposal subject to standard criteria regarding electricity supply and construction safety requirements as detailed within **Appendix D**.

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

This policy requires consideration to be given to previous uses on the site and whether the site needs to be remediated for future uses. Clause 7(1) (b) and (c) of SEPP No.55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

The original proposal included basement parking being erected at 6 Lingard Street which needed additional investigation (ie which has now been separately resolved under DA 2016/0394).

The subject site (23 Merewether Street) is listed as being affected by land contamination within Council's records.

It is not considered that the extensions to the existing hospital constitute a change of use under the provisions of Clause 7 of SEPP 55.

Council's Senior Environment Protection Officer has assessed the application and determined, following investigation of the historic records, that the land contamination on the site is not located in the area where the current development is proposed (ie the contaminated land is located towards the street frontage within Merewether Street). In terms of land contamination, Council's Senior Environment Protection Officer considers that the proposal is acceptable and there are no further requirements for the development in this regard and the provisions of SEPP 55 have been met.

State Environmental Planning Policy No. 64 - Advertising and Signage

The submitted proposal includes two signs (ie 1.2x4.0m and 0.8x2.75m – 'Lingard Private Hospital – each non-illuminated). The proposed signage is considered to be *building identification signs* under the provisions of the SEPP. The proposal has been assessed having regard to the provisions and objectives of the SEPP and is considered to be acceptable.

State Environmental Planning Policy No.71 - Coastal Protection

State Environmental Planning Policy No. 71 aims to protect and manage the New South Wales coast and foreshores and requires certain development applications in sensitive coastal locations to be referred to the Director-General for comment. It also identifies master plan requirements for certain developments in the coastal zone.

The proposed alterations and additions to the existing hospital development in this location will not impact on the foreshore or the interface with the waterways and related activities and as such is considered to be consistent with Clause 2 and 8 of SEPP 71. As such the application is acceptable under this policy.

Regional Environmental Plan

There are no regional environmental plans that are relevant to this proposal.

Hunter Regional Plan

The Hunter Regional Plan provides an overarching framework to guide land use plans, development proposals and infrastructure funding decisions. The NSW Government's vision for the Hunter is to be the leading regional economy in Australia with a vibrant new metropolitan city at its heart.

To achieve this vision the Government has set four goals for the region:

- The leading regional economy in Australia
- A biodiversity-rich natural environment
- Thriving communities

- Greater housing choice and jobs

The proposal is consistent with the aim of providing greater housing choice in existing communities, close to jobs and services and well supported by public transport and walking and cycling options.

Newcastle Local Environmental Plan 2012

Clause 1.3 – Land to which Plan applies

Newcastle Local Environmental Plan 2012 (LEP) applies to land identified upon the 'Land Application Map'. The subject development occurs within this area.

Clause 2.3 Land Use Table - Zoning

The site is zoned R3 Medium Density Residential under the Newcastle LEP 2012 and the zone objectives and provisions are detailed below:

'Zone R3 Medium Density Residential

1 Objectives of zone

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To allow some diversity of activities and densities if:*
 - (i) the scale and height of proposed buildings is compatible with the character of the locality, and*
 - (ii) there will be no significant adverse impact on the amenity of any existing nearby development.*
- *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development:*
 - (i) has regard to the desired future character of residential streets, and*
 - (ii) does not significantly detract from the amenity of any existing nearby development.*

2 Permitted without consent

Environmental protection works; Home occupations

3 Permitted with consent

Attached dwellings; Boarding houses; Car parks; Child care centres; Community facilities; Educational establishments; Emergency services facilities; Exhibition homes; Exhibition villages; Flood mitigation works; Group homes; Health services facilities; Home-based child care; Home businesses; Multi dwelling housing; Neighbourhood shops; Places of public worship; Recreation areas; Residential accommodation; Respite day care centres; Roads; Seniors housing; Tourist and visitor accommodation

4 Prohibited

Any development not specified in item 2 or 3'

The development is acceptable having regards to the objectives of the zone as it will provide for a diversity of activities within the zone at a scale and height which is compatible with the character of the locality. It will also not result in significant adverse impacts on the amenity of nearby existing development.

Broadly it is considered that the proposal is acceptable in regards to the third zone objective; '*To enable other land uses that provide facilities or services to meet the day to day needs of residents*'.

The existing hospital complex certainly provides facilities and services to residents. In context of meeting '*facilities or services to meet the day to day needs of residents*' this should be interpreted widely as to what constitutes both '*day to day needs*' and '*residents*' in that residents within at least the Newcastle Local Government Area will need ready access to medical/hospital services. Any narrow application of this objective would result in several permissible uses within the zone being considered unacceptable (e.g. *exhibition villages, places of public worship and tourist and visitor accommodation*) and it is considered that this was not the intended planning outcome of this specific objective.

It is further noted that the remaining zone objectives relate solely to housing and residential developments and as such, it is considered that the proposed development is acceptable in this regard as these objectives are not directly applicable. It is further advised that the current application involves only the redevelopment of the existing hospital site and there is no net loss of land available to possible housing developments.

The proposed development is defined as a *hospital* which is permissible as a *health services facility* under the LEP within the subject zone as detailed below.

'health services facility means a building or place used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes any of the following:

- (a) a medical centre,
- (b) community health service facilities,
- (c) health consulting rooms,
- (d) patient transport facilities, including helipads and ambulance facilities,
- (e) hospital.'

'hospital means a building or place used for the purpose of providing professional health care services (such as preventative or convalescent care, diagnosis, medical or surgical treatment, psychiatric care or care for people with disabilities, or counselling services provided by health care professionals) to people admitted as in-patients (whether or not out-patients are also cared for or treated there), and includes ancillary facilities for (or that consist of) any of the following:

- (a) day surgery, day procedures or health consulting rooms,
- (b) accommodation for nurses or other health care workers,
- (c) accommodation for persons receiving health care or for their visitors,
- (d) shops, kiosks, restaurants or cafes or take away food and drink premises,
- (e) patient transport facilities, including helipads, ambulance facilities and car parking,
- (f) educational purposes or any other health-related use,
- (g) research purposes (whether or not carried out by hospital staff or health care workers or for commercial purposes),
- (h) chapels,
- (i) hospices,
- (j) mortuaries.

Note. Hospitals are a type of **health services facility**—see the definition of that term in this Dictionary.'

Clause 4.3 Height of Buildings

The Height of Buildings Map has a maximum height limit for the site of 10.0m.

It is confirmed that the *building height* as defined under the Newcastle LEP 2012 is inclusive of plant and similar as detailed below:

'building height (or height of building) means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.'*

The applicant has detailed the varying proposed building heights of the amended development as follows:

- *'a predominant main roof parapet of RL 15.665 at the Lingard Street frontage resulting in a building height of 9.3m and a predominant roof parapet along the mid northern elevation facing neighbouring residential properties of RL 14.965 resulting in a building height of 8.6m;*
- *various building articulation elements along the Lingard street front and northern building elevations have a height of between RL 15.965 and RL 16.215 resulting in a building height of 9.6m and 9.85m respectively at these points;*
- *the roof top plant screen has a height of between RL 17.557 and RL 17.644 resulting in a building height of between 11.192m and 11.279m.*

Consequently, the proposed amended development generally complies with the 10m maximum permissible building height applicable to the subject land under Clause 4.3 (2) of Newcastle LEP 2012, except for the proposed roof plant enclosure screen which has a height of between 11.192m and 11.279m.

The applicant has submitted a Clause 4.6 variation request as part of the application seeking variation to the 10.0 metre height standard, as it is considered to be unreasonable or unnecessary in the circumstances of the case. The Clause 4.6 variation is addressed in detail below and the applicant's Clause 4.6 variation request is attached in **Appendix C**.

Clause 4.4 Floor Space Ratio

The maximum floor space ratio for the site is 0.9:1. The proposed amended development has a floor space ratio of 0.997:1 which does not comply with this requirement.

The applicant has submitted a Clause 4.6 variation request as part of the application in that strict compliance with the 0.9:1 floor space ratio (FSR) standard is unreasonable or unnecessary in the circumstances of the case. The Clause 4.6 variation is addressed in detail below and the applicant's Clause 4.6 variation request is attached in full at **Appendix C**.

Clause 4.6 Exception to Development Standards

The applicant has submitted a detailed request for the variation of the height (Clause 4.3) and floor space ratio (FSR - Clause 4.4) development standards under Clause 4.6 of the Newcastle LEP 2012.

The proposed variations as detailed below:

- The height standard for the site is 10m and the rooftop plant exceeds the standard being between 11.192m to 11.279m in height (ie the remainder of the proposed additions comply).
- The maximum floor space ratio for the site is 0.9:1. The proposed amended development has a floor space ratio of 0.997:1 which does not comply with this requirement. Floor space of 10,298m² is proposed (ie FSR 0.997:1, 1010m² more than the development standard) whereas a maximum of 9288m² is allowed under the 0.9:1 development standard.

To allow variations to development standards under the Newcastle LEP 2012 the applicant must make a formal request under Clause 4.6 which specifically addresses the terms of Clause

4.6, particularly Clause 4.6(3) (ie the applicant's Clause 4.6 variation request is attached at **Appendix C**). Additionally, the consent authority must consider the written request from the applicant for the variation plus be satisfied that the proposal will be in the public interest being consistent with the objectives of the relevant standards and the objectives of the zone (Clause 4.6(4)).

Clause 4.6(3)

The applicant's written request for the Clause 4.6 variation must demonstrate the proposal is justified under Clause 4.6(3(b)), as follows:

- '(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.'*

It is considered that the applicant's Clause 4.6 variation request (as attached at **Appendix C**) meets these requirements as detailed above.

Clause 4.6(4)

The consent authority must not grant consent to a Clause 4.6 variation unless it is satisfied with the matters under Clause 4.6(4) as detailed below:

- '(4) Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Secretary has been obtained.'*

The detailed assessment below addresses Clause 4.6 and specifically Clauses 4.6(3) and 4.6(4) demonstrating that these clauses have been satisfied.

Height Standard Variation (Cl4.6(3))

The applicant's written submission contends that the variation to the height standard is relatively minor and limited to an area which has substantial setbacks from the side boundaries such that it *'...mitigates its visual impact and will not result in any significant amenity impacts on neighbouring properties.'* The applicant further argues that the *'...proposed building height exceedance does not reduce the opportunity for neighbouring properties or public areas to receive satisfactory exposure to sunlight.'*

It is considered that strict compliance with the height standard is unnecessary in this instance as the merit impacts from the variation are acceptable (ie visual appearance and overshadowing) due to the relative location where the height variation occurs on the site. The plant room is sufficiently setback from the boundaries and the edge of the proposed additions is located 12.4m from the north western boundary (to adjacent neighbours) and 19.3m from Lingard Street. Furthermore it is considered that the impacts (eg visual appearance and overshadowing) of the proposal, when compared to a development complying with the height

standard (ie the proposed plant meeting the height standard), would be very similar to such an extent that compliance in this instance would be unnecessary.

It is noted that the applicant's submission reviews Preston CJ in *Wehbe v Pittwater Council* (2007) NSWLEC 827 in relation to the height variation. This review, while contributing to the overall comprehensive CI 4.6 variation request, is not accepted in relation to the fifth matter raised suggesting that the '*...R3 Medium Density Residential zone is considered to be inappropriate given its existing developed character and it would be more appropriate for the subject land to be zoned SP2 Infrastructure (Health Services)*' having no height controls. Notwithstanding that John Hunter Hospital is zoned SP2 Infrastructure (Health Services Facility) under Newcastle LEP 2012, it is not accepted that Lingard Private Hospital warrants similar treatment under the LEP. John Hunter Hospital is a regional state government facility while Lingard Private Hospital is a private facility permissible within the R3 Medium Density Residential zone. Regardless of this, support is still given for the Clause 4.6 height standard variation.

Height Standard Variation CI 4.6(4)(a)

Height Standard Objectives

The height objectives under Clause 4.3 are as follows:

'4.3 Height of buildings

(1) *The objectives of this clause are as follows:*

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

The applicant contends that the proposal is not within an '*established centre*' which is not strictly correct as this term within the objectives is misleading. The effective term is '*established centres hierarchy*' and refers to the interacting hierarchy of development standards, zoning and applicable land uses within the Newcastle LEP 2012 which operate on a 'hierarchy' basis. Notwithstanding this, it is considered that the height of the proposal is acceptable having regard to the variation proposed and the public interest. The additional height proposed by the plant room is well setback from the side boundaries and edge of the proposed additions, such that the overall form of the development is acceptable having regard to the character of the area (ie both the existing and future desired form).

It is considered that the height variation resulting from the proposed plant room is acceptable having regard to solar access and overshadowing (ie '*daylight access*'). The proposed plant room is setback a sufficient distance from the side boundaries, including Lingard Street and otherwise located south/south east of neighbouring adjacent properties. The submitted shadow diagrams demonstrate that the additional height variation posed by the plant room does not contribute to any greater impacts on neighbouring properties (ie the shadows from the plant room falls on Lingard Street or within the subject site).

Zone Objectives- Height CI 4.6(4)(a)

The objectives of the R3 zone have been assessed within Section 5.1.3.1 - Clause 2.3 and the overall development is considered to be acceptable. The impacts of the proposal, having regard to the zone objectives, are considered to be acceptable in terms of the public interest including the height variation proposed by the plant room.

Floor Space Ratio (FSR) Standard Variation Cl 4.6(3)

The applicant states that the FSR variation is acceptable because:

- (i) *'the FSR that applies to the land is aimed at controlling residential density and '..does not have any particular relevance to the „institutional“ character of hospital development on the subject land or the specific built form and building requirements for hospital construction*
- (ii) *in view of the limited capacity of the site to provide additional health services for the community, it is necessary to make the most efficient use of the land currently available for hospital expansion, by providing multiple level hospital facilities in a manner consistent with the built form of hospital facilities located elsewhere in the City.'*
- (iii) *as indicated in the accompanying Statement of Environmental Effects the proposed exceedence of the maximum permissible floor space ratio development standard in this case does not result in any adverse impacts on the public domain generally, or the residential amenity of neighbouring properties.'*
- (iv) *..strict compliance with the 0.9:1 floor space ratio development standard is unreasonable or unnecessary in the particular circumstances because the objectives of the development standard are achieved, notwithstanding non-compliance with the standard.'*
- (v) *...proposed exceedence of the 0.9:1 maximum permissible floor space ratio development standard does not result in any adverse impacts on the public domain generally, or the residential amenity of neighbouring properties..'*
- (vi) *'the visual presentation of the proposed development to Lingard Street reflects the architectural themes and established bulk and scale of the existing hospital;'*
- (vii) *'other than for the minor exceedence of the roof top plant screen enclosure, the proposed hospital additions are compliant with the applicable 10m maximum permissible building height'*

The first point above is not accepted in terms of the operation of the FSR within the R3 zone. It is considered that the remaining points are valid in terms of the FSR standard and variation to the standard should be supported in this instance.

The additional 1010m² of floor space involved in the floor space ratio variation results in a proposed built form which is considered to be reasonable as was addressed within section 5.1.3.1 of the report below including the variation to the building envelope. The additional floor space proposed by the FSR variation is acceptable in terms of its character, visual impacts and appearance, size, bulk and scale. The proposal is considered to be reasonable in terms of overshadowing, privacy, views and outlook. In this respect it is considered that it would be unnecessary in this instance to require compliance with the FSR standard.

Floor Space Ratio Objectives Cl 4.6(4)(a)

The floor space ratio objectives under Clause 4.4 are as follows:

'4.4 Floor space ratio

(1) *The objectives of this clause are as follows:*

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

The applicant states that the FSR variation is acceptable in terms of the FSR objectives because:

- *'The subject land is not located within a centre.'*
- *'In view of the limited capacity of the site to provide additional health services for the community, it is necessary to make the most efficient use of the land currently available for hospital expansion (i.e. the current doctors car park at the north-western corner of the site) and provide for the construction of a building of two levels'*
- *'It is considered that the scale and architectural presentation of the proposed hospital additions make a positive contribution to the built character of the locality and do not result in any adverse visual or amenity impacts. It is in the public interest for the proposed development to be approved in order to provide additional specialist medical facilities/services to the community.'*

As previously stated it is considered that the FSR standard operates on a 'hierarchy' basis and the first point is not accepted.

Overall it is considered that the proposal is acceptable in terms of the FSR objectives. It is agreed that the proposal makes a positive contribution to the desired form within the area notwithstanding that the proposed design and use is as a hospital. It is considered that the overall height, size, bulk and scale is similar to that which could otherwise be proposed as a possible residential development allowable within the zone under Council's current planning controls.

Zone Objectives CI 4.6(4)(a)

The objectives of the R3 zone have been assessed within Section 5.1.3.1 - Clause 2.3 and the overall development is considered to be acceptable.

The impacts of the proposal, having regard to the zone objectives, are considered to be acceptable in terms of the public interest including the FSR variation proposed.

CI 4.6(4)(b)

The Department of Planning advised via Planning Circular PS08-003 (9 May 2008) that concurrence of the Secretary could be assumed for Clause 4.6 variations.

CI 4.6(5)

As discussed above, the Secretary is not required to provide concurrence for the variation of the development standard.

CI 4.6(6)

The development does not propose a subdivision and/or is within a zone excluded from the operation of Clause 4.6 (ie rural or environmental sensitive zones).

An assessment of the variation request has been undertaken and it is considered that the development adequately addresses the matters required to be demonstrated by clause 4.6(3). In addition, the proposed development, including the variations to the height and floor space standards, are in the public interest being consistent with the objectives of these standards and the objectives for development within the R3 zone.

An extract of the applicant's request for a clause 4.6 variation is attached at **Appendix C**.

Clause 5.5 Development within the Coastal Zone

The proposed development will not impact on access to the foreshore. It also will not impact on the amenity of the foreshore through overshadowing or loss of views from a public place. The site contains little vegetation at present and therefore the development will not have a negative impact on existing ecosystems or biodiversity in the area. An adequate stormwater management system has been proposed as part of the development to minimise any impacts from water and effluent disposal.

Clause 5.6 Architectural Roof Features

It is advised that the majority of the proposed additions do not exceed the 10.0m height standard under the Newcastle LEP 2012 being 9.85m in height or below. The proposed plant will be 11.279m in height and is it confirmed that the provisions of Clause 5.6 do not apply to the plant room exceedance as it does not form an architectural roof feature. The proposed development will need to rely on an acceptable Clause 4.6 request for the height variation to be supported.

Clause 5.10 Heritage Conservation

The subject site does not include any identified heritage items having regard to the NSW State Heritage Register and Schedule 5, Part 1 of the Newcastle LEP 2012. The site does not include an identified archaeological site or is located within a Heritage Conservation Area.

The nearest Heritage Items are located at Mitchell Park being the War Memorial (I317), the Townson Oval Pavilion (I318) and the Junction Primary School (I618), which are all Local items under the Newcastle LEP 2012. These items are located approximately 230+ metres and 140+ metres respectively from the subject site. The proposal development is located such that there will be no impacts on any of these heritage items.

The existing site has already been disturbed by construction (eg car parking) and, as such, it is considered unlikely that the site would contain any remaining items of Aboriginal heritage or archaeological relics.

Clause 6.1 Acid Sulfate Soils

The subject site is identified as containing Class 4 Acid Sulphate Soils (ASS). The development does not propose works two metres or more below natural ground level and a preliminary acid sulfate soils plan was not required.

Clause 6.2 Earthworks

The proposal will not involve significant earthworks and is considered to be acceptable subject to conditions of consent and the proposal complies with the provisions of the DCP.

5.1.3.2 *Section 79C(1)(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition*

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

5.1.3.3 *Section 79C(1)(a)(ii) any development control plan (and section 94 plan)*

The planning requirements of relevance in the Newcastle Development Control Plan 2012 (DCP) are discussed in detail below.

3.11 Community Services

This section of the DCP applies to various land uses including health service facilities. Having regard to the provisions and objectives of this Section of the DCP, the proposal is considered to be acceptable having regard to character and location of surrounding buildings, views, access and existing vegetation and topography.

4.02 - Flood Management

The site is subject to flooding and the proposal has been assessed by Council's Senior Development Engineer and is considered to be acceptable, as detailed below, subject to conditions of consent.

'The site is flood prone and a flood information certificate has been issued for the site. This indicates the 1 % AEP for the site is RL 5.8 m AHD the PMF is RL 6.7 m AHD and a flood refuge is required. Note flooding in the area is only flood fringe so no flood controls associated with flood storage areas applies.

The plans show a suitable ground level RL for the new building RL 6.365 providing at least 565 mm freeboard over the 1 % AEP flood level and being a 2 storey construction suitable flood refuge is available on the 1st floor level above RL 6.7 m AHD.

It is concluded the proposal is satisfactory from a flood perspective.'

4.03 - Mine Subsidence

The mine subsidence aspects have been discussed within Section 5.1.2 of the report above.

4.04 - Safety and Security

The development is considered to be adequate in terms of Crime Prevention Through Environmental Design (CPTED) principles:

- surveillance
- access control
- territorial reinforcement
- space management.

4.05 Social Impact

The provision of additional health service facilities within residential areas is considered to result in positive social and economic outcomes considering the access to health services and additional employment opportunities associated with the construction of the additions/alterations and operation of the hospital.

5.01 Soil Management

A Sediment and Erosion Management Plan has been submitted with the application to minimise sediments being removed from the site during the construction period. A condition has been placed on the consent to ensure such measures are in place for the entire construction period.

5.02 - Land Contamination

A detailed assessment has been discussed under SEPP 55 in regards to land contamination.

5.03 - Tree Management

The submitted proposal results in the removal of seven smaller to medium growing trees (six being located towards the north western boundary of the site) interspersed with ground covers.

A landscape concept plan has been submitted with the application which proposes six replacement trees and associated shrubs towards the north western corner of the subject site and along the northern western boundary (ie the trees being 'magnolia little gem'). The overall outcome is considered to be acceptable having regard to the loss of the existing trees and the replacement landscaping.

5.04, 5.05, 5.06 and 5.07 Aboriginal Heritage, Archaeological Management, Heritage Items & Heritage Conservation Areas

A detailed assessment has been discussed under Section 5.1.3.1 - Clause 5.10 in regard heritage.

7.01 - Building Design Criteria

The matters listed within Section 7 of the DCP regarding height and FSR have been addressed under Section 5.1.3.1 above.

Setbacks

The existing hospital has a setback to Lingard Street which is variable between 0.6-2.1 metres and the proposed development maintains the alignment of the hospital being between 0.4-1.0 metres, notwithstanding that the DCP nominates a setback of 5.0 metres. The Lingard Street is the secondary site frontage for the hospital, Merewether Street being the primary frontage with setbacks of 7-9 metres. It is considered, having regard to the form of the hospital and the variable front setbacks within Lingard Street being from zero to 7.0 metres, that the current proposal is acceptable.

The proposal meets the building envelope for the rear setback. The proposal has a variation of approximately 1.2-1.6metres on the upper floor of the development for the building envelope for the side setback. This is largely due to the protrusion of various elements of articulation in the proposed buildings elevation. The building and subject elevation, is on the southern side of neighbouring development and the variation to the building envelope in this instance does not contribute to overshadowing of neighbouring properties and is considered to be acceptable in terms of visual appearance and size.

Overall the proposal is considered to be acceptable in terms of character, streetscape, visual appearance and material, height, bulk and scale.

Views

The surrounding area is relatively flat and it is considered that there are limited distinct views available to the surrounding properties and no direct views effectively enjoyed by the surrounding dwellings.

The proposal will result in a change to the general outlook in the area due to the height and scale of the proposal which replaces an open hospital carpark (ie approximately 13m by 49m in area).

It is considered that this change to the outlook is reasonable having regard to the strategic outcomes for the area and the allowable planning controls.

The overall impacts in terms of views and outlook are considered acceptable in this instance.

Solar Access/Overshadowing

The position of the proposed additions, relative to the neighbouring properties, is such that the majority of the shadowing impacts fall onto the adjoining road or within the subject property. There will be an additional impact on properties at 7 to 11 Lingard Street in the early morning but these properties will still retain at least 3 hours of solar access between 9am to 3pm on the 21 June, as required under the DCP. There are no overshadowing impacts from the proposal during 9am to 3pm on the 21 June, on the adjoining properties along the north western boundary of the site.

The proposed hospital addition does not have open space requirements that require solar access. The design of the additions is such that it is considered to be acceptable having regard to the solar access that the building achieves.

Privacy

The relative position of the proposal to neighbouring properties is such that only the north western boundary is of concern in terms of potential privacy impacts. To address any potential privacy impacts the development incorporates:

- a) Highlight windows on the ground floor level with a minimum window sill 1700mm from the finished floor level. It is advised that these ground floor windows are all associated with operating theatres and already pose a limited concern in terms of potential privacy impacts.
- b) Obscured glass (ie opaque film) on the first level windows to a height of 1700mm from the finished floor level (ie effectively acting as a highlight window) for the new wards/beds.

These measures are sufficient to ensure that the development is reasonable in terms of privacy impacts.

Noise

The application has been assessed by Council's Senior Environment Protection Officer and is considered to be acceptable subject to conditions as detailed below:

'The Acoustics Report prepared by RCA Australia dated September 2016 provides an assessment of potential noise impacts on existing residential receivers from the existing and proposed mechanical plant associated with the hospital. Table 7 of the Acoustics Report prepared by RCA Australia dated September 2016 shows the calculated noise levels from the existing mechanical plant (scenario one) and the proposed mechanical plant arrangement (scenario three). Table 7 shows the existing mechanical plant does not currently meet the monitored project specific noise criteria, but noise from the relocated plant and additional plant (scenario three) will be significantly reduced compared to the existing noise received at residential receivers. While the relocation of existing mechanical plant and addition of a new mechanical plant platform will generally meet the day and evening project specific criteria the noise from the mechanical plant will exceed the night time project specific criteria. However, the modelled received noise level from the new mechanical plant arrangement represents a reduction in noise received compared to the current operational noise from the hospital facility. The RSU has requested potential alternative acoustic mitigation measures be investigated to further reduce night period noise levels, but alternative measures would result in higher received noise levels compared to the currently submitted plans. Therefore, the acoustic mitigation measures outlined in the Acoustics Report prepared by RCA Australia dated September 2016 represent reasonable and feasible measures to reduce noise from the hospital facility.

While the proposed development does not meet the night period project specific noise criteria the implementation of acoustic mitigation measures outlined in the Acoustics Report prepared by RCA Australia dated September 2016 and relocation of rooftop mechanical plant platforms results in a reduction in noise levels received from the existing hospital facility. Council has not received noise complaints regarding the existing mechanical plant from the hospital facility and due to the potential reduction in noise from the mechanical plant the proposed development is unlikely to result in 'offensive noise' for existing residential dwellings. The acoustic mitigation measures outlined in the Acoustics Report prepared by RCA Australia dated September 2016 are required to be implemented and certified by an appropriately qualified acoustical consultant and will be addressed by an appropriate condition of consent.'

The operation of the loading dock area adjacent Tye Street, which is relatively close to neighbouring residential properties, will be restricted in its hours of operation (ie no use between

10pm and 7am) to ensure that it does not result unreasonable amenity impacts and/or *offensive noise* under the *Protection of the Environment Operations Act, 1997*.

Fencing

Fencing 1.8m high will be required as a condition of consent (see condition 50) which is typical for residential areas.

Utilities and Services

The existing site is already used as a hospital and, as such, has access to all utilities including electricity, telephone, water and sewer. The application will be required to obtain a Section 50 from Hunter Water Corporation to address any amplification requirements resulting from the development. Similarly, the development will be required to make application to Ausgrid to address any requirements for electricity supply upgrades. A waste management strategy has been submitted to address construction and operational wastes and is considered to be acceptable.

7.02 Landscape, Open Space and Visual Amenity

The proposal has submitted a landscape concept plan by a landscape architect which has been assessed and is considered to be acceptable.

7.03 Traffic, Parking and Access

The application has been assessed by Council's Senior Development Engineer and is considered to be acceptable subject to conditions of consent, as detailed below:

'Vehicular access, driveway design and crossing location.

The proposal involves the removal of an access to Lingard Street with the loss of the doctor's car parking. Servicing will continue to be off Tye Street as it has historically been done. The development is unlikely to change existing servicing of the site as identified in the traffic assessment report. Suitable swept turning paths are provided given the low traffic volume low vehicle speed environment in Tye Street.

Overall the proposed servicing arrangements which are the same as the current servicing arrangements are considered satisfactory.

Traffic Generation

The traffic report has identified that the proposal will generate up to 21 vehicle trips per hour in the critical PM peak period and that this will not adversely impact on the local road network as the existing road network has sufficient spare capacity to cater for this additional traffic without it impacting on current levels of service on the road network. I concur with this finding and am satisfied there will be no adverse traffic impacts from the development. No additional information required.

Parking Demand

The traffic report has identified that on completion of Stage 5 a total of 97 car spaces is required while the hospital provides a total of 105 spaces with the construction of the Lingard Street car park (ie which was approved under a separate DA 2016/00394). This is considered satisfactory however the occupation of the extension should be subject to completion of the Lingard Street car park previously approved.

Note suitable motorcycle parking was provided in the Lingard Street car park while bicycle racks and storage areas should be provided in the new extension.

Alternate Transport Modes

The proposal does not significantly increase the demand for alternate transport modes such that additional services and / or facilities are required.'

7.05 Energy Efficiency

The proposal is considered to be acceptable in terms of energy efficiency. At the construction certificate stage the application will be required to demonstrate compliance with Section J of the Building Code of Australia in regard to energy efficiency.

7.06 Stormwater

The application has been assessed by Council's Senior Development Engineer and is considered to be acceptable subject to conditions of consent, as detailed below:

'As the proposed hospital extensions do not increase the hardstand area on the site the stormwater requirements under the DCP do not apply and essentially new stormwater drains can connect directly to the existing property drainage. The proposal however is to provide a new stormwater re-use and detention tank with overflow to Council's drainage pit on Lingard Street. No objection to the proposed drainage treatment is raised.'

7.08 Waste Management

The waste management was addressed under 7.01 *Building Design Criteria* of the DCP above and is considered to be acceptable.

7.09 Outdoor Advertising and Signage

The submitted proposal includes two signs (ie 1.2x4.0m and 0.8x2.75m – 'Lingard Private Hospital –each non-illuminated) and has been assessed under Section 5.1.3.1 under the provision of SEPP 64.

8.00 Public Participation

The proposal was placed on public exhibition for a period of 32 days from 18 December 2015 to 19 January 2016 in accordance with the *Environmental Planning & Assessment Act 1979* (EP&A Act), *Environmental Planning & Assessment Regulations 2000* (EP&A Regulations) and Section 8 of Newcastle Development Control Plan 2012 (DCP). Eight submissions were received during the original notification period.

The amended proposal was placed on a further public exhibition for a period of 14 days from 24 August to 7 September 2016 in accordance with the *Environmental Planning & Assessment Act 1979* (EP&A Act), *Environmental Planning & Assessment Regulations 2000* (EP&A Regulations) and Section 8 of Newcastle Development Control Plan 2012 (DCP). Two submissions were received during the additional notification period for the amended proposal.

A summary of the submissions received for the amended proposal are included within Section 5.1.3.9 below.

Newcastle Section 94A Development Contribution Plan

The application attracts Section 94A Contributions pursuant to section 80A(1) of the *Environmental Planning and Assessment Act 1979* and the Newcastle Section 94A Development Contributions Plan. A contribution of 1% of the cost of development would be payable to Council as determined in accordance with clause 25(j) of the Environmental Planning and Assessment Regulation 2000 (see condition 3).

5.1.3.4 Section 79C(1)(a)(ia) Planning agreements

No planning agreements are relevant to the proposal.

5.1.3.5 Section 79C(1)(a)(iv) the regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act and Regulation 2000*. In addition, compliance with AS 2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

5.1.3.6 Section 79C(1)(a)(v) Coastal management plan

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

5.1.3.7 Section 79C(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

These matters have been addressed within the SEPP, NLEP 2012 & DCP sections above including design aspects, acoustic, traffic, parking and heritage impacts.

i) Flora and Fauna.

There is no remnant native vegetation located on the subject land and the proposed development therefore has no adverse impact on native flora, fauna, wildlife corridors or critical habitat.

5.1.3.8 Section 79C(1)(c) the suitability of the site for the development

These matters have been addressed within the SEPP, NLEP 2012 & DCP sections above.

5.1.3.9 Section 79C(1)(d) any submissions made in accordance with this act or the regulations

The amended application was notified and advertised in accordance to the Regulations and Newcastle DCP 2012 and two submissions were received. The following issues were raised in the submissions.

Objection	Comment
<u>Amenity Issues</u> <ul style="list-style-type: none"> The non-compliance with the DCP has a significant impact on the amenity, privacy and value of my property. The proposal will reduce solar access to neighbouring dwellings (ie 24 Lingard Street/10 Tye Street). The development will result in privacy impacts on neighbouring properties. The proposed plant on the roof will result in unreasonable acoustic impacts. Deliveries to the hospital will result in unreasonable acoustic impacts with deliveries occurring at 4.30am and should be restricted. 	<ul style="list-style-type: none"> The assessment report addresses the NLEP and DCP compliance and the proposed variations. The proposal is considered to be acceptable. The acoustic impacts have been specifically addressed within the report. Conditions have been recommended in regard to the hours of operation for the loading dock. Impact on property values is not a planning consideration.
<u>Design & Aesthetic Issues</u> <ul style="list-style-type: none"> The proposal does not meet the side 	<ul style="list-style-type: none"> The assessment report addresses the NLEP and DCP compliance and

boundary setbacks (ie building envelope) and the setback should be increased or height decreased (especially as this is a commercial development).	variations and considers the proposal to be acceptable.
<u>Traffic & Infrastructure Issues</u> <ul style="list-style-type: none"> Impacts from service and delivery vehicles using Tye Street and accessing the loading area (especially considering how narrow Tye Street is). The revised loading area will not have sufficient vehicular access for service vehicles to entry/exit in a forward manner. 	<ul style="list-style-type: none"> The vehicular access aspects have been specifically addressed within the report. The revised loading dock will have sufficient vehicular access for medium rigid vehicles (ie up to 12.5m in length).

5.1.3.10 Section 79C(1)(e) the public interest

The development is in the public interest as it will enable the orderly and economic development of the site.

6. CONCLUSION

Subject to a number of relevant conditions as recommended in the attached draft condition schedule, the proposal is considered to be acceptable against the relevant heads of considerations under section 79C of the Environmental Planning and Assessment Act 1979.

7. RECOMMENDATION

- A. THAT the Hunter and Central Coast JRPP, as the consent authority, notes the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.3 Height of Buildings and Clause 4.4 Floor space ratio, and JRPP considers the objection to be justified in the circumstances and consistent with the aims and objectives of the relevant LEP clauses; and
- B. THAT the Hunter and Central Coast JRPP, as the consent authority, approve development consent to DA2015/10349 (2015HCC030 DA) for the construction of a two storey addition to the existing hospital including new theatres and beds at 23 Merewether Street, Merewether, pursuant to Section 80 of the EP&A Act subject to the conditions in Appendix A; and
- C. THAT those persons who made submissions be advised of the determination.

APPENDIX A - Recommended conditions of consent

APPENDIX B - List of documents submitted with the application

APPENDIX C - Copy of applicants request for Clause 4.6 variation

APPENDIX D - Copy of Ausgrid advice