

COUNCIL ASSESSMENT REPORT

Panel Reference	2017HCC059
DA Number	DA2017/01546
LGA	Newcastle
Proposed Development	Alterations and additions to car park to include medical centre
Street Address	Lot 1 DP 1027546, Lot 2 DP 1027546, Lot 3 DP 1027546 and Lot 7 DP 741487 6-8 Lingard Street Merewether
Applicant/Owner	KDC Pty Ltd / Vital Healthcare Australian Property Pty Ltd
Date of DA lodgement	8 December 2017
Number of Submissions	Four
Zoning	B5 Business Development
Recommendation	Refusal
Regional Development Criteria	Pursuant to Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011, the application is referred to the JRPP as the proposed development is a health services facility with a capital investment value over \$5 million.
List of All Relevant Section 4.15 (1)(a) Matters	<p>Environmental planning instruments: s4.15(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. 71 - Coastal Protection • Newcastle Local Environmental Plan 2012 <p>Development Control Plan: 4.15 (1)(a)(iii)</p> <ul style="list-style-type: none"> • Newcastle Development Control Plan 2012 • Section 94A Development Contributions Plan 2009
List all documents submitted with this report for the Panel's consideration	<p>Appendix A - Documents submitted with the application</p> <p>Appendix B - External Referral Comments</p> <p>Appendix C - Clause 4.6 request</p> <p>Appendix D - Reasons for refusal</p>
Report prepared by	City of Newcastle
Report date	15 November 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
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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?	No
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e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

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
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Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions?	No
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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?	No
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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

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

A development application (DA2017/01546) has been lodged with the City of Newcastle (CN), seeking consent for:

- Construction of a three-storey health services facility comprising:
 - Four operating theatres
 - 17 consultation rooms
 - Office, waiting room and storage facilities
 - Medical gas storage
 - Ground level car park with 42 parking spaces
- Modification of previously approved two-storey car park (129 spaces)
- Alteration of pedestrian footpath and existing vehicle crossings
- Ancillary building and site works

The site is zoned B5 Business Development under Newcastle Local Environmental Plan 2012 (NLEP 2012). The proposed use is defined as a '*medical centre*', which is prohibited within the B5 Business Development zone under NLEP 2012. However, State Environmental Planning Policy (Infrastructure) 2007 provides for health services facilities (which are inclusive of a medical centre) to be permissible with consent in the B5 Business Development zone.

The proposal was placed on public exhibition for a period of 32 days from 22 December 2017 to 22 January 2018, in accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act), *Environmental Planning & Assessment Regulation 2000* (EP&A Regulation) and Section 8 of Newcastle Development Control Plan 2012 (DCP). Four submissions were received during the notification period.

The application was referred to Ausgrid in accordance to the provisions of State Environmental Planning Policy (Infrastructure) 2007. Ausgrid have outlined matters to be addressed in relation to the electricity network in any approval.

The key issues raised in the assessment relate to:

- Height and FSR variation
- Land contamination
- Streetscape
- Landscaping
- Parking
- Loading and waste management
- Acoustic impacts

The application is recommended for refusal as the development will not be in the public interest having regard to height and FSR variation, land contamination, streetscape, landscaping, parking, loading and waste management.

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to Section 4.5(b) of the EP&A Act as the proposed development is identified as regionally significant development in State Environmental Planning Policy (State and Regional Development) 2011, being development of a health services facility over \$5 million. The proposed development has a capital investment value of \$14,431,764.

1. INTRODUCTION

This report provides a detailed overview of the development proposal for a medical centre at 6-8 Lingard Street Merewether.

The development application is reported to the Hunter and Central Coast Joint Regional Planning Panel in accordance with Section 4.5(b) of the EP&A Act as the proposed development is identified as regionally significant development in State Environmental Planning Policy (State and Regional Development) 2011, as the development is classified as a health services facility with the value of works being over \$5 million. The capital investment value of the proposed development is \$14,431,764.

2. BACKGROUND

The current application proposes further additions to the multi-level car park approved under development application DA2016/00394 (approved 21 June 2016). The multi-level car park was originally for 50 basement parking spaces, to predominately replace the parking that was displaced by the additional operating theaters and wards approved on the north-western side of the main hospital at 23 Merewether Street Merewether (DA2015/10349).

The car park application (DA2016/00394) has been subsequently modified twice:

- i) increasing the parking to 90 spaces (approved 24 August 2017); and
- ii) increasing the parking to 129 parking spaces and speculative floor space (approved 16 March 2018). The final resultant design involves two basement levels and a ground level of parking for a total of 129 parking spaces. The design was also inclusive of a 245m² area which was for future medical uses on a speculative basis.

The current proposal proposes two additional levels above the current approval and specific uses of the speculative floor space on the ground floor as detailed in this report below.

State Significant Development

It is noted that a concept development application for the staged development of Lingard Private Hospital, with core development controls that will inform the design and assessment of future development applications, has been lodged with the Department of Planning and Environment (SSD 18_9537). Planning Secretary's Environmental Assessment Requirements were issued on 8 October 2018. Concurrent approval for stage 1 of the development was also proposed, comprising the demolition of existing structures at 18-20 Merewether St and construction of a health services facility with three levels of car parking and additional consulting suites, with the plans referencing the current application that is the subject of this report.

Greater Newcastle Metropolitan Plan 2036

This Plan was released in September 2018 and Strategy 4 is to *'grow health precincts and connect the health network'*. Lingard Hospital is identified as a health precinct. The actions in the Strategy for health precincts include:

- Facilitate the development of major health precincts.
- Respond to public transport and road network improvements and manage parking.
- Locate all new major health facilities in strategic centres, existing major health precincts or in locations that have a high level of public transport connectivity such as railway stations.

- Councils amending local plans to facilitate complimentary land uses within proximity of health precincts.

3. SITE DESCRIPTION

The subject site includes the following properties:

- 6 & 8 Lingard Street Merewether (see Figure 1 - Aerial View)

The two sites are zoned B5 Business Development (see Figure 2 - Zoning Map).

A carpark is currently under construction at 6-8 Lingard Street, as approved under DA2016/00394.

The overall site is an irregular shaped parcel, being 2,613m² in size, adjoining Lingard Street toward the west and Merewether Street toward the north.

The main existing hospital complex is located at 23 Merewether Street, located to the north of the site, across Merewether Street. The adjoining lands to the east and south area are a combination of various commercial and industrial uses. Townson Oval is located to the south-west across Lingard Street. The broader area is characterised by a combination of single dwellings and urban housing, varying in height from single-storey to three levels.

The nearest heritage items are the War Memorial in Mitchell Park, the Townson Oval Pavilion and the Junction Primary School, which are all items of local significance under NLEP 2012.

The proposal is permissible under Clause 57(1) of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP). The B5 Business Development is a '*prescribed zone*' for the purpose of Clause 57 of the ISEPP.



Figure 1: Aerial view of the site

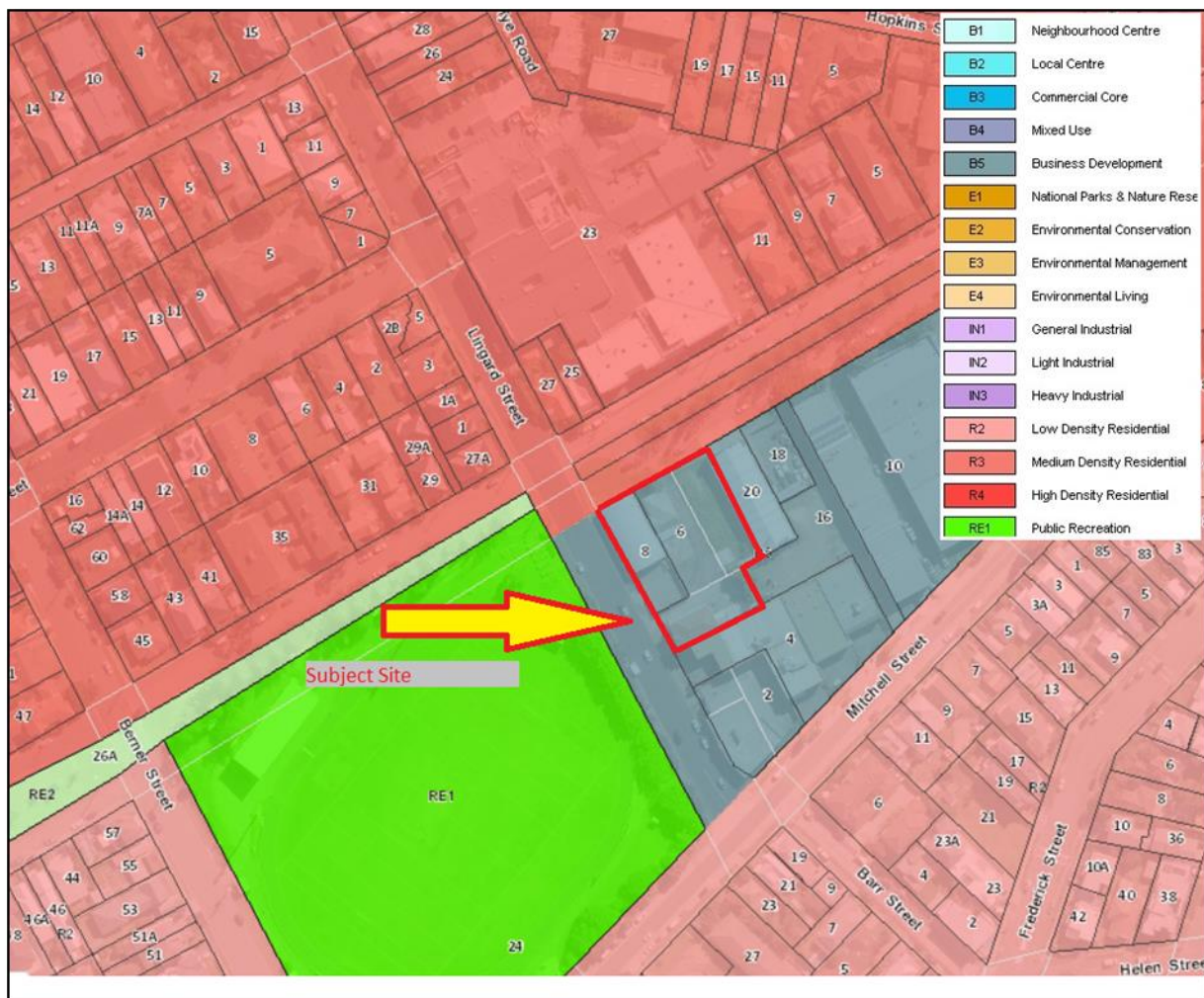


Figure 2: Zoning of site and surrounding area

4. PROPOSAL

A development application (DA2017/01546) has been lodged with Council seeking consent for:

- Construction of a three-storey health services facility comprising:
 - Four operating theatres
 - 17 consultation rooms
 - Office, waiting room and storage facilities
 - Medical gas storage
 - Ground level car park with 42 parking spaces
- Modification of previously approved two-storey car park (129 spaces)
- Alteration of pedestrian footpath and existing vehicle crossings
- Ancillary building and site works

The final overall development as proposed will consist of the following:

- Basement 2 - parking (approved DA2016/00394)
- Basement 1 - parking (approved DA2016/00394)
- Ground Level - parking plus two medical consulting rooms and service areas associated with overall proposal (ie the consulting rooms and service areas occupying the previous speculative floor space - the parking and speculative floor space was approved under DA2016/00394).
- Level 1 - four operating theatres and associated recovery areas, consulting rooms, offices and associated amenity/service areas.

- Level 2 - 15 consulting rooms and associated amenities.

The site has the following controls under NLEP 2012:

Control	Requirement	Proposed (from Applicant)
Floor Space Ratio	0.9:1 (2355/2617m ²)	1.69:1 (4423/2617m ²) 87.8% Variation
Height Limit	10.0m	14.06m Building / 16.14m Plant 40.6% / 61.4% Variations

In support of the non-compliance with the height and floor space ratio standards the applicant has submitted a Clause 4.6 Variation request to clauses 4.3 and 4.4 of NLEP 2012.

(Refer Figure 3 - Height of Buildings Map extract and Figure 4 - Floor Space Ratio Map extract).

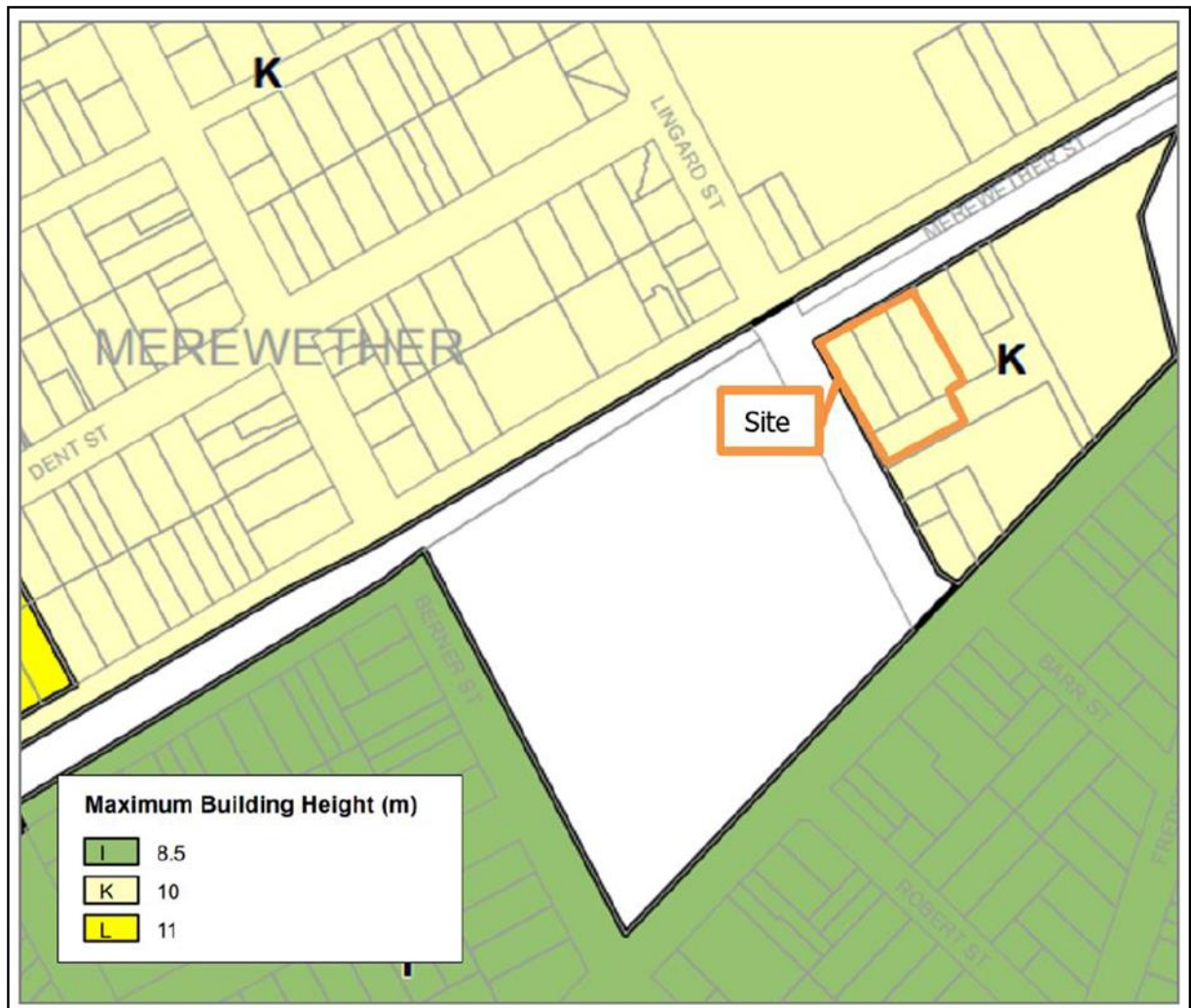


Figure 3 - Height of Buildings Map Extract - extracted from Statement of Environmental Effects

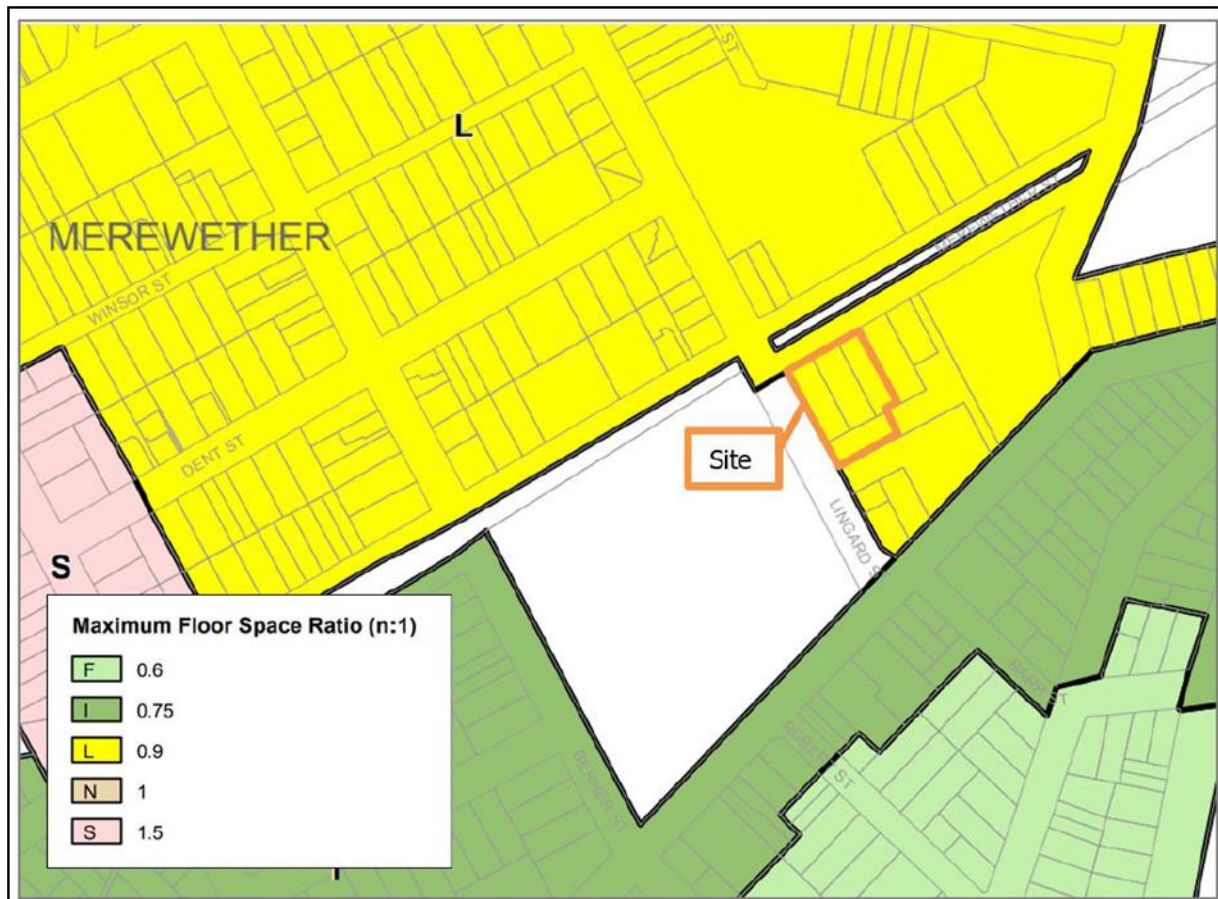


Figure 4 - Floor Space Ratio Map Extract - extracted from Statement of Environmental Effects

5. PLANNING ASSESSMENT

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

5.1.1 Section 4.5 – Joint Regional Planning Panels

Section 4.5 of the EP&A Act requires the Joint Regional Planning Panel to be the consent authority for development applications for health services facilities over \$5 million in capital investment value. The capital investment value of the proposed development is \$14,431,764.

5.1.2 Section 4.46 – Integrated Development

Integrated development was not proposed as part of the application.

5.1.3 Section 4.15(1) Evaluation

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

5.1.3.1 The 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 of the SEPP requires the Joint Regional Planning Panel to be the

determining authority for development included in Schedule 7 of the SEPP. This includes applications for health services facilities over \$5 million in value. The application is therefore referred to the Hunter and Central Coast Joint Regional Planning Panel for determination.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The ISEPP was introduced to facilitate the delivery of infrastructure across the State by improving regulatory certainty and efficiency.

Division 5 Electricity Transmission or Distribution - Development likely to affect an electricity transmission or distribution network

The application was referred to the Ausgrid in accordance to the provisions of the ISEPP. Ausgrid have outlined matters to be addressed in relation to the electricity network in any approval.

Division 10 Health Services Facilities

The ISEPP provides for any health services facilities (which is inclusive of a medical centre) to be permissible with consent within the B5 zone.

It is considered that the proposal is consistent with the broad aims of the ISEPP (ie under Clause 2) as extracted below and specifically 2(b):

"2 Aim of Policy

The aim of this Policy is to facilitate the effective delivery of infrastructure across the State by:

- (a) improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and*
- (b) providing greater flexibility in the location of infrastructure and service facilities, and*
- (c) allowing for the efficient development, redevelopment or disposal of surplus government owned land, and*
- (d) identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and*
- (e) identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and*
- (f) providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and*
- (g) providing opportunities for infrastructure to demonstrate good design outcomes."*

It is further noted that *Division 10 Health Services Facilities* of the ISEPP has no specific objectives which apply.

The operational details for the proposal have been amended during the assessment of the development. Notably, it has been indicated by the applicant that the site will not involve any in-patients overnight within the facilities and will only operate between 7am to 6pm.

The assessment has been made on the basis that the facilities are only proposed to operate between 7am to 6pm, involving only day surgeries, and that no patients from this facility (or the main hospital at 23 Merewether Street) would be on site outside these hours (ie no in-patients).

It is further noted that the land use, without any in-patients, constitutes a '*medical centre*' as opposed to a '*hospital*' as defined below (ie a hospital must have in-patients as per emphasis added below):

"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."

"medical centre" means premises that are used for the purpose of providing health services (including preventative care, diagnosis, medical or surgical treatment, counselling or alternative therapies) to out-patients only, where such services are principally provided by health care professionals. It may include the ancillary provision of other health services.

Note.

Medical centres are a type of **health services facility**—see the definition of that term in this Dictionary."

Traffic-generating development

The proposal does not constitute traffic generating development under the ISEPP, as the overall complex is under the relevant 200 bed criteria.

State Environmental Planning Policy No 33—Hazardous and Offensive Development

This policy requires consideration to be given to the storage and use of potentially hazardous and offensive materials.

The application has been assessed by CN's Senior Environment Protection Officer and is considered to be acceptable under the SEPP, as per the following assessment:

The Regulatory Services unit (RSU) has reviewed the Risk Screening Document prepared by Hazkem dated October 2018 which was submitted to support this application. The RSU notes the assessment has used the screening method as set out

in Table 1 from NSW Department of Planning Hazardous and Offensive Development Application Guidelines - Applying SEPP 33.

Table 1 determines the screening method to be used based on the class of dangerous goods. With reference to the proposed development, the applicant states that the class of storage of dangerous goods proposed is for non-flammable, non-toxic gas classified as a Class 2.2 dangerous good with sub-risk of Class 5.1 (Hazchem 2017).

Class 2.2 dangerous goods are not incorporated in Table 1's Screening Method.

Given that the proposed development has been determined to be "not potentially hazardous" due to the oxygen (non-flammable gas) being excluded, further analysis is not needed to be carried out.

As such, the RSU has no objections to the proposed development based on SEPP 33 risks. Should the application be supported the RSU would address this by condition of consent using industry's best practice method of documenting compliance against the relevant Australian Standards, AS 4332-2004 "The storage and handling of gases in cylinders" and AS1894-1997 "The storage and handling of non-flammable cryogenic and refrigerated liquids" within the condition of consent."

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

SEPP 55 requires consideration to be given to previous uses on the site and whether the site needs to be remediated for future uses. SEPP 55 requires that where land is contaminated, the consent authority 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.

It is considered that the issue of land contamination has not been resolved, based on the available submitted information. The application has been assessed by CN's Senior Environment Protection Officer and their assessment is as follows:

The current application is considered to be a change of use (Medical Centre) which is a sensitive use under State Environmental Planning Policy (SEPP) 55 - Remediation of Land.

The applicant has submitted a letter prepared by Douglas Partners dated 31 October 2018 where it concludes:

"As per Clause 7 of the State Environmental Planning Policy No 55 – Remediation of Land, it is considered the consent authority can be satisfied that the site will be suitable for the proposed "Health Service Facility" use following appropriate remediation and validation as discussed above."

As no contamination investigation or reporting has been submitted demonstrating the site is suitable, the nature of the contamination is unknown and therefore the risks are unknown.

Given the proposed redevelopment includes a more sensitive land use and in order for the RSU to be satisfied that the land is suitable for the proposed development the RSU will require a contamination investigation to be carried out at 6-8 Lingard St Merewether.

It is also advised that Council may require the involvement of a Site Auditor to review or sign off on any contamination reports or RAPs submitted as per Council's Contaminated Land policy outlined in section 5.02 of the DCP.

This investigation is to satisfy Council that the land is suitable (or can be made suitable after remediation) for the purpose for which the development is proposed. The contamination assessment is to be carried out by a suitably qualified consultant and is required to be submitted to Council prior to further review of this application.

To date this matter has not been resolved and as such remains outstanding and therefore cannot be supported."

Newcastle Local Environmental Plan 2012 (NLEP 2012)

Clause 1.3 - Land to which Plan applies

NLEP 2012 applies to land identified on the 'Land Application Map'. The subject development occurs within this area.

Clause 2.3 - Land Use Table - Zoning

The site is zoned B5 Business Development under NLEP 2012.

The proposed use is defined as a 'medical centre', which is prohibited within the B5 zone under NLEP 2012.

Notwithstanding this, the ISEPP provides for 'health services facilities' (which is inclusive of a 'medical centre') to be permissible with consent in the B5 zone.

The proposed medical centre use is considered adequate in terms of the B5 zone objectives of NLEP 2012, notwithstanding that this zone under NLEP 2012 does not provide for health services facilities as permissible uses. It is further noted that, while the ISEPP enables the proposal as a permissible use, it does not have any associated objectives.

The B5 zone objectives are relatively specific having regard to the nature of the zone and its available permissible uses, as follows:

- *"To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To accommodate a wide range of employment generating uses and associated support facilities including light industrial, transport and storage activities."*

The first objective is written such that the reference 'business' is to be broadly interpreted to be inclusive to a wide range of uses (even when compared with the Standard Instrument - Principal Local Environmental Plan B5 - Business Development objectives and associated permissible uses). In this regard it is considered that a medical centre use could be considered to "support the viability of centres". It is questionable though that the scale of the proposed medical centre, increasing the overall size of the Lingard Hospital complex, is of an overall scale that would "support the viability of centres", having regard to the nearby centre at The Junction.

The proposal, being a medical centre use, could be considered to fall within "a wide range of employment generating uses and associated support facilities". Notwithstanding that the objective further references light industrial, transport and storage activities, the objective is not limited to these type of uses (though it is centred on them).

The proposed medical centre use is considered, on balance, to be adequate in terms of the zone objectives.

Clause 2.7 - Demolition

The proposal does not involve any demolition as part of the current application. Demolition on site was previously approved under DA 2016/00394.

Clause 4.3 - Height of Buildings

The Height of Buildings Map has a maximum height standard for the site of 10m (as shown in Figure 3). The proposed development has a maximum height of 16.14m to the top of plant and 14.06m for the main building. This represents a variation of 61.4% and 40.6% respectively to the height of buildings development standard.

The applicant has submitted a request under Clause 4.6 of NLEP 2012 to vary the height standard.

It is considered that the proposal is not acceptable having regard to the proposed variation to the development standard, the objectives of the standard and the objectives of the zone. Furthermore, it is considered that the proposal is not in keeping with the desired future character of the area and the public interest. This is discussed further within the assessment of the Clause 4.6 variation request below.

Clause 4.4 - Floor Space Ratio (FSR)

The maximum floor space ratio for the site is 0.9:1 (as shown in Figure 4). The proposed development has a floor space ratio of between 1.61:1 (approximately 78.9% variation) and 1.695:1 (1.7:1) (approximately 88.35% variation), based on Council's assessment of the application, and does not comply with the FSR development standard.

The applicant's Statement of Environmental Effects (SEE) indicates that the FSR is 1.69:1, with a gross floor area of 4423m² and a site area of 2613m² (87.8% variation).

The revised Clause 4.6 variation request indicates that the FSR is 1.62:1 (80.6% variation), although it is not clear on what basis the proposed floor space is decreased to 4246m² from that indicated in the SEE, as shown below:

Floor Space Ratio

Clause	Control	Proposal	Variation
Clause 4.4 – FSR	2351.7m ² (0.9:1)	4,246m ² (1.62:1)	1,894.3m ² (80.6%)

The two different FSR rates indicated by Council's assessment are a result of how 'gross floor area' could be interpreted.

Gross floor area is defined as:

"gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) **car parking to meet any requirements of the consent authority** (including access to that car parking), and (emphasis added)
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above."

Subsection (g) refers to parking to meet any "**requirements of the consent authority**" (emphasis added). The reference to 'requirements' raises the question whether this means:

- i) those specific controls adopted/gazetted by a Development Control Plan (DCP) or within a State Environmental Planning Policy, for example, or
- ii) the final parking rate that is agreed as a result of a planning assessment of a proposal inclusive of any requested variations to an adopted parking rate (eg DCP) due to individual circumstances (eg a decrease in parking due to proximity to a transport hub).

The current application, if the parking variation proposed by the applicant's traffic report is accepted, provides a surplus of parking for the combination of the hospital/medical centre complex (ie 23 Merewether Street & 6/8 Lingard Street). Alternatively, if the parking variation is not accepted, the proposal has a parking deficiency.

The alternative interpretations of subsection (g) above, impacts the extent of parking that contributes to the FSR (and also the future agreed surplus parking attributed to the site). The applicant's traffic consultant has argued for a 25% variation to the adopted parking rates under the Newcastle DCP 2012 which results in a surplus of 7 parking spaces on site that would contribute to FSR. If this parking variation is not accepted, the development has a deficiency of 16 parking spaces.

In Land and Environment Court case *Chen v Auburn City Council [2015] NSWLEC 1379*, the Commissioner Pearson, at 27 (as extracted below) addresses the question of how subsection (g) in terms of car parking should be interpreted, indicating that it is not to be based a merit assessment:

"27 The applicant's position is that applying the definition of "gross floor area", paragraph (g) would exclude the floor area of the garage if the Court is satisfied that off-street parking is required. The Court is, pursuant to s 39(2) of the Court Act, exercising the functions and discretions of the Council in determining this appeal. However, I do not accept that a determination on the merits that on-site parking should be provided in a particular instance could properly be described as "car parking to meet any requirements of the consent authority". Calculation of total floor area should not, in my opinion, rest on a subjective determination on the merits, particularly as in this instance the only evidence before the Court on which a conclusion that car parking should be provided is the evidence of the expert planners that as a general proposition, off street parking should be provided. The proper basis for determining what are "the requirements" of the consent authority should, in my opinion, be the planning controls applicable to the particular site and the form of development proposed for it."

While this case is in relation to a 'secondary dwelling', the context in relation to subsection (g) and the 'gross floor area' definition remains applicable to, and not altered by, the circumstances of the subject application.

Ultimately, the proposal exceeds the FSR standard based on both methods of calculation.

It is considered that the proposal is not acceptable having regard to the proposed variation to the development standard, the objectives of the standard and the objectives of the zone. Further, it is considered that the proposal is not in keeping with the desired future character of the area and the public interest. This is discussed further within the assessment of the Clause 4.6 variation request below.

Clause 4.6 - Exception to Development Standards

For proposed variations to development standards under NLEP 2012, the applicant must make a formal request under Clause 4.6 that specifically addresses the terms of Clause 4.6, particularly Clause 4.6(3). The applicant has submitted a Clause 4.6 variation request plus a supporting report titled 'Urban Design Strategy' by AE Design Partnership (13 September 2018) which is attached at **Appendix C**. Additionally, the consent authority must consider the written request from the applicant for the variation and 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)).

The applicant has submitted a detailed request (revised 8 October 2018) for the variation of the height of building (Clause 4.3) and FSR (Clause 4.4) development standards under Clause 4.6 of NLEP 2012.

The applicant's Clause 4.6 variation request relies on Land and Environment Court judgements including the following extracts:

'Wehbe V Pittwater [2007] NSW LEC 827 established the 'five part test' to determine whether compliance with a development standard is unreasonable or unnecessary based on the following:

- (1) Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives;*
- (2) Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary;*
- (3) Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;*
- (4) Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or*
- (5) Is the "zoning of particular land" unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable."*

"In the decision of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Chief Justice Preston has further clarified the correct approach to the

consideration of clause 4.6 requests including that the clause establishes two preconditions which must be satisfied before a consent authority has the power to grant a development consent that contravenes a development standard.

The first is that there must be a written request that addresses the matters set out in Clause 4.6(4)(a) and the second is that the proposal must be in the public interest because it is consistent with the objectives of the development standard sought to be varied and the objectives of the zone. The matters which the written request must address are set out in Clause 4.6 (3) and are that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

This finding is of particular significance as it is not simply a matter of whether a proposal has merit but rather notwithstanding that a project may have merit, it must also demonstrate that the compliance with the development standard which is sought to be varied is unreasonable or unnecessary in the circumstances of the case and that sufficient environmental planning grounds exist to justify the contravention of the development standard.

Similarly, it is not sufficient to simply demonstrate that the proposal is in the public interest and any negative impacts of the proposal can be appropriately mitigated. The correct test is whether it has been demonstrated that the project is in the public interest because it is consistent with the objective of the development standard sought to be varied and the objectives of the zone within which the development is located."

To utilise the provisions of Clause 4.6 under NLEP 2012, it must be firstly correctly established that the controls to be varied are 'development standards' as opposed to a prohibition (eg such as those addressed under Clause 5.4 where non-compliance cannot be varied and would otherwise result in a proposal being prohibited).

It is agreed that the applicant has correctly confirmed that both the height of building and FSR controls are development standards to which the provisions of Clause 4.6 of the Newcastle LEP 2012 can apply as extracted below:

"What are the development standards being varied?"

Yes, both standards are considered to be a development standard in accordance with the definition contained in Section 4(1) of the Environmental Planning and Assessment Act 1979 and not a prohibition"

The proposed variations as detailed within the applicant's revised Clause 4.6 variation request are extracted below:

Height

Clause	Control	Proposal	Variation
Clause 4.3 – Building Height	10m	Building height – 14.06m	4.06m (40.6%)
		Plant deck height – 16.11m	6.11m (61.1%)

Floor Space Ratio

Clause	Control	Proposal	Variation
Clause 4.4 – FSR	2351.7m ² (0.9:1)	4,246m ² (1.62:1)	1,894.3m ² (80.6%)

It is noted that the applicant's Statement of Environmental Effects and Clause 4.6 request elsewhere, both indicate that the proposed FSR variation was alternatively:

- 1.69:1 (ie 4423m² 87.8%)

CN's assessment of the FSR indicates that the ratio is between the following rates:

- 1.61:1 (ie 4207m², approximately 78.9% variation) and
- 1.695:1 (1.7:1) (ie 4429m², approximately 88.35% variation),

the difference being based on how 'gross floor area' may be interpreted (ie what is 'required' parking).

Based on CN's engineering assessment (and the legal discussion of 'required' parking within Clause 4.4 comments above) the proposal does not have a surplus of parking contributing to the FSR (ie the development is actually deficient) and, as such, the lower of the two of CN's FSRs (ie 1.61:1) is considered to be the applicable rate. In this respect the applicant's Clause 4.6 variation request is based on a similar, although slightly higher, FSR calculation (1.62:1) than CN's (ie 4246m² versus 4207m²), and hence the magnitude of the variation request has been properly made.

The absolute height of the building, based on the NLEP 2012 definition below, is the relevant basis to assess any Clause 4.6 request to vary the height of building development standard:

"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."

In this respect it is considered that the applicant has correctly detailed the maximum magnitude of the height of the building at 16.11m for the associated Clause 4.6 variation request to vary the height of building development standard.

Height & FSR Standard Variation 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), 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."*

Height & FSR Standard Variation 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 assessment below addresses Clause 4.6 and specifically Clauses 4.6(3) and 4.6(4) and support is not given for the proposed Clause 4.6 variations.

Height of Buildings Development Standard Variation Cl 4.6(3)

The applicant's written submission contends (ie based on the findings of Justice Preston's judgement within *Initial Action Ltd Pty v Woollahra Municipal Council [2018] NSWLEC 118* that the height standard is unreasonable or unnecessary in this instance (ie Cl4.6(3)(a)) as the proposal meets the objectives of the height of buildings Clause 4.3 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.*
- (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.*

Note. *See clause 7.9 for the maximum height of a building on land in Newcastle City Centre."*

The applicant's submission contends that the height exceedance is acceptable as:

"The proposed development has been designed by HSPC and consists of a high quality, architecturally designed building that makes a positive contribution to the street frontage and built form of Merewether Street and Lingard Street. The projection of the building above the height limit will not result in an overbearing visual impact, as the

exceedance is largely due to the plant deck which is set back from street level in the centre of the building.

The building will create a landmark that is identifiable and consistent with the leading contemporary hospitals. The expansion of Lingard with a purpose built building as proposed, supports the expansion of a much needed service sector as Newcastle City continues to undergo growth and transformation.

Furthermore, the height exceedance is primarily associated with the regulated height requirements of surgical rooms and operating theatres. Operating theatres in private hospitals must have a minimum height of 4.2m. The proposed development is compliant with the requirements as Level 1 has a floor to ceiling height of 4.2 metres (refer to Architectural Plans in Appendix A).

The proposed built form will reflect the emerging contemporary character of Merewether. The visual bulk of the building is broken up by the horizontal architectural expression of blue tinted glass in contrast to vertical 'fins'. Details of the façade and articulation are provided in the Architectural Plans appended at Appendix A."

It is considered that while the proposal's architecture is generally acceptable, this does not negate the issues of the height exceedance and the additional bulk and scale it contributes in this instance. Further, it is considered that the proposed development should have acceptable impacts in terms of architectural design, as a basic prerequisite to being approved.

It is not accepted that the height "*exceedance is largely due to the plant deck which is setback from the street level in the centre of the building*". The submitted plans and submitted Clause 4.6 variation request both clearly show that the proposed parapet and wall, for the majority building, are over 14m in height (ie 4m in excess of the 10m height of building development standard) with very little setback from the street (ie 0.9-2.59m) or side boundaries. It is further noted that the larger plant room on the south eastern side of the building is only setback 2.91m from the edge of the building and at over 16m in height (ie over 2 metres higher than the 14m main building wall height) would be a visible element contributing to the overall height, bulk and scale of the proposed development.

The discussion regarding the "*regulated height requirements of surgical rooms and operating theatres*" and the need for 4.2 metre ceiling heights is noted, but is considered to not be a basis to justify a variation to the 10m height standard. A two level proposal on the site could have been readily designed with 4.2m ceiling height and would have been compliant with the 10m height standard. The current development has been designed with all the plant room and the majority of a full floor level above the 10 metre height standard.

The applicant's submission further suggests that the proposal is acceptable and the height standard is unnecessary or unreasonable as the:

"sense of enclosure on the street is generally measured as a ratio; where the height of a street wall is measured against the width of a street (1:1)."

In this instance the applicant suggests the height is acceptable as, the street wall height of 14.06m versus the street width of 24m, is much less than a 1:1 ratio.

This submission is not accepted as an argument to justify the height standard exceedance. It does not follow that the proposal, at more than 6 metres above the height standard (ie 61% variation), is acceptable and that the standard is unreasonable or unnecessary on this basis. The height of the proposal is well beyond what is within the "*scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy*" under the Clause 4.3 height objective.

The applicant's submission further suggests that compliance with the standard *"would not achieve a greater planning or urban design outcome"* and is necessary to meet height requirements for operating theaters and medical rooms as follows:

"In this instance, the strict application of the development standard for maximum height is considered unreasonable and unnecessary and does not achieve a greater planning or urban design outcome. This is particularly relevant in this circumstance given the height is associated with higher ceiling requirements for operating theatres and medical rooms."

It is considered that compliance with the 10m height standard is appropriate in this instance, having regard to the height objective requiring that *"scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy"*. The applicant's submission that strict compliance *"does not achieve a greater planning or urban design outcome"* is not accepted.

The applicant's submission proposes that objective 4.3 (b) (i.e. solar access) is met as follows:

"Reasonable daylight access is provided to all surrounding developments (as shown in Shadow Diagrams - Figure 6, 7 and 8). The proposed development is located on a corner block which decreases the impact of the height exceedance. The 9.00am shadow shown in Figure 7, 8 and 9 cast over Lingard Street (21 September and 21 December) and Townson Oval (21 June). This will not result in any demonstrable detrimental impact to sensitive land uses, therefore the impact of the variation is negligible. The 3.00pm shadow falls on C3 church and CrashCorp. Neither of these land uses are residentially zoned or sunlight sensitive. The proposal therefore provides these sites with reasonable solar access."

The amenity of adjoining properties will not be diminished to any unreasonable extent as a result of the height exceedance. The proposed development does not compromise the ability of adjoining land to develop and achieve their intended built form. The proposed development achieves the objectives of this clause and therefore strict compliance with a 10 metre height limit would be unreasonable, unnecessary and would not achieve a greater planning or urban design outcome."

The objective of 4.3(b) of the height standard is:

"(b) to allow reasonable daylight access to all developments and the public domain."

It is considered that, when assessing a Clause 4.6 variation to a development standard, that the objectives should not be interpreted narrowly as any variation to the adopted standard will have long term consequences for current and future development.

The applicant has not provided shadow diagrams which address and compare a compliant development (ie a design which meets the height standard of 10m) with the current non-compliant proposal's shadowing impacts. This means that an assessment of the difference in the shadowing impacts cannot be accurately assessed and it is harder to justify that compliance is unnecessary or unreasonable in this instance.

It is further noted that a wide range of uses are permissible within the B5 Business Development zone as follows:

"Zone B5 Business Development

1 Objectives of zone

- *To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To accommodate a wide range of employment generating uses and associated support facilities including light industrial, transport and storage activities.*

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Amusement centres; Car parks; Centre-based child care facilities; Commercial premises; Community facilities; Correctional centres; Crematoria; Depots; Educational establishments; Flood mitigation works; Garden centres; Hardware and building supplies; Industrial retail outlets; Information and education facilities; Landscaping material supplies; Light industries; Mortuaries; Passenger transport facilities; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Restricted premises; Roads; Self-storage units; Service stations; Sex services premises; Signage; Specialised retail premises; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Wholesale supplies

4 Prohibited

High technology industries; Pubs; Restaurants or cafes; Roadside stalls; Any other development not specified in item 2 or 3"

It is considered that the proposed shadowing impacts on current surrounding development is acceptable and the applicant's submission in this respect is agreed. The neighbouring uses, being an automotive repair business and a place of worship (each having blank walls/no openings facing the proposed development and no effective outdoor usable spaces), are not unreasonably impacted by the proposal in terms of overshadowing. Further, it is considered that the extent of shadowing likely to impact on the public domain (especially Townson Oval) is minimal and considered to be acceptable.

Broadly it is considered that other possible future uses within the zone are largely 'commercial' in nature and the majority of the overshadowing impacts which would likely occur on these neighbouring sites, even as a result of a compliant proposal (eg 10m high and potentially built to the side boundaries), would typically be considered reasonable and acceptable.

It is noted that there are some uses permissible within the B5 zone which would be negatively and/or significantly affected by the extent of overshadowing (eg child care centres, educational establishments and potentially seniors or disability housing via the provisions of SEPP (Housing for Seniors or People with a Disability) 2004. It is considered that the likely shadowing impacts on these possible future uses is likely to be reasonable in this instance having regard to the context of the site and its B5 zoning (ie the case would likely be different if these uses were existing or if a residential zoning applied to the site).

Overall, it is considered that the applicant's submission has not justified that the design of the proposal will ensure that "*the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy*". The Clause 4.6 variation request has not provided a sufficient basis to justify why the '*established centres hierarchy*' should be set aside to allow the variation in this instance. It is considered that the applicant's submission has not demonstrated that compliance with the standard is "*unreasonable or unnecessary in the circumstances of the case*".

Finally, it is considered that the applicant has not demonstrated *"that there are sufficient environmental planning grounds to justify contravening the development standard"* in this instance.

Floor Space Ratio (FSR) Development Standard Variation CI 4.6(3)

The applicant's written submission contends that the variation to the FSR development standard is unreasonable or unnecessary (ie CI4.6(3)(a)) as it meets the objectives of the FSR Clause 4.4 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.*

(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.*

(2A) *Despite subclause (2), the maximum floor space ratio for a building on land in any zone in this Plan is to be determined as if the area of the access laneway of a battle-axe lot were not part of the area of the lot.*

Note.

See clause 7.10 for the maximum floor space ratio for a building on land in Newcastle City Centre."

The applicant's submission contends that the FSR exceedance is acceptable as:

"Despite the variation, the proposed development makes a positive contribution towards the streetscape of Merewether. The proposed density of the development is 1.69:1. The proposal is a modern architecturally designed building providing a high level of amenity on the site.

The bulk and scale of the development is minimized through high quality architectural design by HSPC. The visual bulk of the building is broken up by the horizontal architectural expression of blue tinted glass in contrast to vertical 'fins'. Details of the façade and articulation are provided in the Architectural Plans appended at Appendix A. The location of the proposed development on a corner site opposite Mitchell Park significantly reduces the impact of the floor space ratio exceedance.

The proposal represents an efficient use of land, providing essential medical infrastructure and high-quality health services to the community. The proposed development achieves the objectives of this clause and therefore strict compliance with an FSR of 0.9:1 would be unreasonable, unnecessary and would not achieve a greater planning or urban design outcome.

In addition, the proposed density is in keeping with the desired future character of urban renewal areas as expressed in the Greater Newcastle Metropolitan Plan. The Plan recommends urban densities of between 50 to 75 people per hectare for urban renewal corridors."

It is noted that proposed FSR calculations detailed by the applicant vary (ie Statement of Environmental Effects - 1.69:1 and request for Clause 4.6 variation 1.69:1 and 1.62:1).

Notwithstanding this, it is considered, based on Council's calculations, that the proposed FSR is 1.61:1 and the current Clause 4.6 request is proposed on the correct magnitude of variation. It is notable that if the interpretation of 'gross floor area' was taken to be inclusive of proposed parking variations (ie as opposed to adopted rates, as discussed above) the proposed FSR would increase to 1.69:1.

It is agreed that the proposal is architecturally acceptable but this is considered to be a prerequisite for the development and does not support in a material way a Clause 4.6 variation request to exceed the FSR development standard. Notably, a smaller, FSR compliant development, could also be architecturally well designed.

The reliance on the recently adopted *Greater Newcastle Metropolitan Plan* (Sept 2018) as a basis to justify the proposed variations, especially in context of future desired character, is not accepted as discussed below within this report.

The visual appearance and bulk of the proposal, while partially articulated by the submitted architectural design, does not negate the overall size and scale of the proposal and its inherent proposed FSR.

It is not accepted that the corner location reduces the impact of the FSR exceedance. Conversely, it could be argued that the corner site location, based on the submitted design, makes the extent of proposed exceedance more obvious.

It is further noted that the additional FSR also contributes to additional traffic and parking impacts which would not exist except for the proposed additional floor space, which in this instance equates to almost a full floor level within the proposal. It is noted that CN's engineering assessment indicates that the proposal is deficient by 16 car parking spaces.

The applicant's submission that "*strict compliance would be unreasonable, unnecessary and would not achieve a greater planning or urban design outcome*" is not accepted in these circumstances. The applicant has not demonstrated that the FSR development standard is "*unreasonable or unnecessary*" and has not shown that there "*are sufficient environmental planning grounds to justify contravening the development standard*".

Clause 4.6 - 'Urban Design Strategy'

The applicant has also submitted a report titled '*Urban Design Strategy*' by AE Design Partnership (13 September 2018) which has been attached to the Clause 4.6 variation request associated with the proposal to vary the height (CI 4.3) and FSR (CI 4.4) development standards.

Several elements of the '*Urban Design Strategy*' re-address aspects that the applicant's Statement of Environment Effects and Clause 4.6 variation request and these aspects are not discussed again further here.

The '*Urban Design Strategy*' makes references to the SEPP 65, Apartment Design Guideline (ADG) and NLEP 2012 in terms of *residential accommodation* and medium density residential development. In this respect the '*Urban Design Strategy*' makes the following submissions:

- a) NLEP 2012 allows *residential flat buildings* (RFBs) in nearby residential zones and, where these RFB's are three storeys or more in height, SEPP65/ADG would apply,
- b) Any RFB, as a result of the ADG's recommended floor to ceiling heights would ultimately result in developments exceeding the applicable height and FSR developments standards as follows:

*"Height of building controls within the area of the site range between 8.5m to 14m (Refer to **Figure 4**). In order to meet minimum ceiling height requirements under Objective 4C-1 Design Criteria 1 of the ADG for four storey residential development, developments would typically require the minimum floor-to-floor heights:*

- *Ground Level: 3.3m*
- *Level 1: 3.1m*
- *Level 2: 3.1m*
- *Level 3: 3.1m*

This produces a total building height of 12.6m.

As such, development consistent with the ADG would not be viable within surrounding land use zones without exceeding the prescribed height of building control and by default floor space ratio controls."

- c) *That the "land use zoning of the site forms the 'boundary transition' between medium density residential development and low density residential development."*

The conclusions drawn from the above contentions submitted within the 'Urban Design Strategy' are not accepted.

That the nearby residential zones, R2 Low Density Residential and R3 Medium Density Residential, both allow *residential accommodation* which is inclusive of *residential flat buildings*, as detailed below, is correct:

"residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,*
- (b) boarding houses,*
- (c) dual occupancies,*
- (d) dwelling houses,*
- (e) group homes,*
- (f) hostels,*
- (g) multi dwelling housing,*
- (h) residential flat buildings,*
- (i) rural workers' dwellings,*
- (j) secondary dwellings,*
- (k) semi-detached dwellings,*
- (l) seniors housing,*
- (m) shop top housing,*

but does not include tourist and visitor accommodation or caravan parks."

It is further correct that any RFB which is three storeys or more in height would be likely affected by the provisions of SEPP65/ADG (ie although the required prerequisites are more detailed).

It is not accepted that 'within the area' of the subject site, the heights are between 8.5 to 14metres. The nearby heights are split predominately between 8.5 and 10 metres. The reference to 14 meters is considered to not be nearby to the site and refers to The Junction commercial area (ie zoned B2 Local Centre) which is over 300m north of the subject site on the northern side of Glebe Road. Similarly, it is not accepted that the 2:1 FSR's applicable to The Junction commercial area have any relevance to the current Clause 4.6 variation request for the site with its 0.9:1 FSR. Further, it is noted that the

surrounding FSR's are a combination of 0.75:1 (R2 zone) and 0.9:1 (R3 zone).

It is not accepted that it follows, as detailed within the submission, that four storey RFB's exceeding the height and FSR standards (ie at 12.6m based on the ADG) would be the typical resultant form of nearby residential development.

The basis of this argument is not supported as follows:

- The premise ignores that height standards apply to any RFB developments under NLEP 2012 (ie being 8.5m and 10m within the R2 and R3 zones respectively) by using an example of a four-storey proposal when two-storey and three-storey proposals could comply with the relevant height standards, and
- It infers that the ADG design criteria (eg floor to ceiling heights) has primacy over the height standards under CI 4.3 of NLEP 2012. This is fundamentally incorrect and any development would need to be designed to the height standard, rather than rely on the ADG as a basis to exceed it. A 12.6m high, four-storey proposal in an area where a 10m height standard applies, does not comply.
- It is not clear that the ADG requires 3.1m floor to ceiling heights as lower levels of 2.4-2.7m are allowable for residential development.
- The subject site's B5 Business Development zoning is not a *'boundary transition' between medium density residential development and low density residential development.* The subject site and lands bounded by Merewether, Lingard, Patrick and Union Streets, has historically been industrially zoned for many decades and was the subject of a planning proposal which rezoned the land to B5 in 2015, so to facilitate health services facility uses via the ISEPP. Elsewhere in the nearby area the transition between the R2 and R3 zone is at street interfaces.
- It is considered that the applicant's *'Urban Design Strategy'* submission has not correctly typified the future desired character having regard to the applicable environmental planning instruments, zoning, height and FSRs which apply.

The *'Urban Design Strategy'* submits that the subject site is within *"an urban renewal corridor"* as follows:

*"The site is located within an urban renewal corridor which will undergo significant changes to accommodate built form of **greater bulk and scale**.*

The desired future character of the area is derived from development provisions prescribed under Local Planning Strategy and Newcastle DCP 2012."

The *'Urban Design Strategy'* further submits:

- *The proximity of the site to the growth precincts identified in Newcastle DCP 2012 presents opportunity to expand The Junction and to provide the necessary community services to support the growing population in the precinct.*
- *Redevelopment on the site is consistent with the strategic direction within B5 Business Development zones, which envisions medium and higher density residential development characteristic of buildings producing FSR's between 1.5 and 2.1.*

The site is not within an urban renewal corridor or near any existing urban renewal corridor (ie the nearest being Tudor Street Hamilton, some 1.8 kilometres away). The B5 Business Development zone does not envision any future residential development

and no FSR's in the range of 1.5-2.1:1 are likely to be applicable to the B5 zone.

The site has been included in an area of a possible future urban renewal corridor within the recently adopted Greater Newcastle Metropolitan Strategy 2036 (Sept 2018). It is unknown when and of what nature any future planning changes would occur in this respect. It is considered that the Clause 4.6 request/strategy places disproportionate weight, in terms of the Clause 4.6 variation requests, on the Greater Newcastle Metropolitan Strategy 2036.

The *future desired character* is properly derived from NLEP 2012 and the Newcastle DCP 2012 and little weight in the assessment of a Clause 4.6 variation request should be placed on strategic/future planning documents such as the Greater Newcastle Metropolitan Strategy 2036. Additionally, these future planning strategies, not being certain and imminent, should not supplant current environmental planning instruments.

Height & FSR Standard Variation Cl 4.6(4)(a)(i)

It is considered that the applicant's Clause 4.6 variation request has not adequately addressed Clause 4.6(3), as detailed above within the report, as the request does not sufficiently justify that the proposed variations meets the requirements of Clause 4.6(3). While the proposal is considered to be acceptable in terms of its overshadowing impact, it is not considered that the proposals impacts on the built form, height, bulk and scale is reasonable having regard to the proposed variations with the additional height above the 10m height standard, and excess FSR beyond the 0.9:1 standard.

Height & FSR Standard Variation Cl 4.6(4)(a)(ii)

The height standard has two objectives (as previously quoted), firstly, regarding the scale of development making a positive contribution towards the desired built form, consistent with the established centres hierarchy and, secondly, allowing reasonable daylight access to all developments and the public domain.

It is considered that the proposal is acceptable in terms of the second objective in regard to daylight access.

It is not accepted that the proposed variation is in the public interest as the proposal does not meet the height standard objectives in terms of the desired built form and it is considered that the proposal is inconsistent with the *"established centres hierarchy"*.

It is considered that the proposed FSR variation is not in the public interest and does not meet either of the two FSR objectives under Clause 4.4. The proposed density, bulk and scale is inconsistent with *"the established centres hierarchy"*.

The applicant's Clause 4.6 submission argues that the proposal is in the public interest, as extracted below:

".. the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone.

The proposed development's ability to meet the objectives of the development standards sought to be varied are discussed at length in Section 6.1 of this variation justification report. It is clear from this discussion that the public interest will be well served by the proposed development's attainment of the objectives of these two development standards which are sought to be varied.

The intent of the Business Development zone is to accommodate a wide range of employment generating uses. The proposed development is a 'health service facility'

which will generate significant employment and is compatible with the objectives of the zone. It will complement the existing health facilities and strengthen the Newcastle City Core. It is therefore considered to be consistent with the objectives of the B5 Business Development zone as set out in Section 5 (page 14) of this variation justification report.

The proposed development will provide a number of significant public benefits to the community.

- It will provide an expansion to the variety of high quality health services on offer at the region's leading private hospitals, especially to the growing and ageing population. The proposed purpose built building supports the expansion of a much needed service sector as Newcastle City continues to undergo growth and transformation;*
- The proposed development will also generate employment in the expanding health sector and therefore provide ongoing economic and social benefits;*
- The proposed built form reflects the emerging contemporary character of The Junction / Merewether precinct as well as Newcastle City as a leading regional city; and*
- The building will create a landmark that is identifiable and consistent with leading contemporary hospitals making it a centre of excellence thereby attracting further leading surgeons and specialist to the area.*

It is considered that the public interest will be well served as the proposed development satisfies the objectives of the two development standards sought to be varied and the objectives of the zone within which the development is to be constructed. The height and floor space ratio exceedances do not outweigh these public benefits given the merits of the proposal."

The proposed medical centre use is prohibited within the B5 Business Development zone under NLEP 2012, with the development being permissible with consent via the provisions of the ISEPP. The proposed medical centre use is considered, on balance, to be adequate in terms of the zone objectives as previously discussed.

Notwithstanding that the proposed use is adequate in terms of the zone objectives, Clause 4.6(4)(a)(ii) of NLEP 2012 requires that the proposed development be "*in the public interest because it is consistent with.. objectives for development within the zone in which the development is proposed to be carried out*". This is relevant to the consideration of a Clause 4.6 variation as it relates to size and scale of the proposed development, as well as the category of planning use.

The B5 Business Development zone objectives provide limited direction to the size and scale of development within the zone (eg unlike the R2 zone where housing has a '*low density residential environment*' objective).

The first B5 Business Development zone objective does refer to "*a mix of business...that support the viability, of centres*" and it is questioned that the proposed development is really of a scale which would "*support the viability of centres*", having regard to the nearby centre at The Junction. In this respect, the Clause 4.6 variations proposed contribute to further extending the scale of the proposed development (and the overall hospital complex) beyond that which would be supporting the nearby centre and the B5 Business Development zone objectives. It is further considered that, notwithstanding public benefits broadly associated with the availability of medical services within the local area, this does not make the proposed variations within the public interest having regard to the zone objectives.

This B5 Business Development zone at Merewether has specific height (10m) and FSR (0.9:1) development standards, whereas other B5 Business Development zones under the NLEP 2012 have no development standards applicable. It is considered notable that this precinct has development standards which were resolved via a 2015 planning proposal and, as such, these development standards were considered and intended via that process. It is further noted that the 10m height and 0.9:1 FSR standards are the same that apply to the R3 Medium Density Residential zone that surrounds the site and the Lingard Hospital complex and that the main Lingard Hospital complex itself is zoned R3 Medium Density Residential, with the same applicable height and FSR's as the subject site.

It is considered, having regard to Justice Preston's judgement within *Initial Action Ltd Pty v Woollahra Municipal Council* [2018] NSWLEC 118) (see extract below), that the requested variations to height and FSR are not in the public interest having regard to the objectives of the respective standards and the zone objectives. Furthermore it is considered that the applicant's Clause 4.6 variation request has not demonstrated that the height and FSR standards are unreasonable or unnecessary in this instance:

"This finding is of particular significance as it is not simply a matter of whether a proposal has merit but rather notwithstanding that a project may have merit, it must also demonstrate that the compliance with the development standard which is sought to be varied is unreasonable or unnecessary in the circumstances of the case and that sufficient environmental planning grounds exist to justify the contravention of the development standard."

Similarly, it is not sufficient to simply demonstrate that the proposal is in the public interest and any negative impacts of the proposal can be appropriately mitigated. The correct test is whether it has been demonstrated that the project is in the public interest because it is consistent with the objective of the development standard sought to be varied and the objectives of the zone within which the development is located."

Height & FSR Standard Variation Cl 4.6(4)(b)

The Department of Planning advised via Planning Circular PS018-003 (21 February 2018) that concurrence of the Secretary could be assumed by a Regional Planning Panel for Clause 4.6 variations.

Height & FSR Standard Variation Cl 4.6(5)

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

Height & FSR Standard Variation Cl 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 zones).

Clause 5.6 - Architectural Roof Features

A small fin element is proposed within the Lingard Street elevation that would constitute a Clause 5.6 architectural roof feature. The top of the fin is almost at the height of the proposed plant rooms. It is further noted that the proposed building exceeds the 10m height standard being over 14m and the fin extends a further 1.59m above the height of the main building roof.

Overall the fin element is considered satisfactory but the height standard exceedances by the main building, and its associated plant rooms, remain a significant concern.

Clause 5.10 - Heritage Conservation

The subject site does not include any identified heritage items, having regard to the NSW State Heritage Register and NLEP 2012. The site does not include an identified archaeological site and is not located within a Heritage Conservation Area.

The nearest heritage items are the War Memorial and Townson Oval Pavilion, both located at Mitchell Park, and the Junction Primary School, which are all listed as Local heritage items under NLEP 2012. The proposal development is located such that there will be no significant impact on any of these heritage items.

The site has already been disturbed by construction (ie car park) 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 Sulfate Soils. The current development does not propose works that are 2m or more below natural ground level and a preliminary acid sulfate soils plan is not required.

Clause 6.2 - Earthworks

The proposal will not involve significant earthworks and is considered to be acceptable.

Major earthworks associated with the basement parking levels was separately approved under DA2016/00394.

5.1.3.2 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 Any development control plan (and section 94 plan)

The main 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.

There are limited controls under the DCP applying to the proposal. The proposal does not impact on vegetation or views and is considered to be acceptable. The proposal's height, visual appearance and character are discussed elsewhere within the report (Sections 5.1.3.1 & 5.1.3.7).

4.10 - Flood Management

The site is subject to flooding and the proposal has been assessed by CN's Senior Development Engineer 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 FLD2015/10033. 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.

DA2016/00394 and subsequent Section 96 applications plans have set the car parking driveway levels, which are considered acceptable. The car park driveway entry to the basement has been designed at 6.10m AHD which is above the minimum 1% AEP flood level of RL 5.8 m AHD.

The entry steps from Merewether St frontage is designed at 6.90m AHD which is above the PMF level of 6.70m AHD. A flood refuge area is provided above the carpark at 7.50m AHD, however the proposed new development will need to address the risks associated with flooding for future occupants. A flood management plan will be required to provide ongoing flood awareness and emergency procedures for occupants. This however could be addressed by a condition.

It is concluded the proposal is satisfactory from a flood management perspective."

4.03 - Mine Subsidence

The site is located within a proclaimed Mine Subsidence District. Any approval of the proposal would be subject to mine subsidence conditions.

4.04 - Safety and Security

The development is considered to be adequate in terms of Crime Prevention Through Environmental Design 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 is recommended to be placed on any consent that may be granted, to ensure that such measures are in place for the entire construction period.

5.02 - Land Contamination

An assessment regarding land contamination has been discussed under SEPP 55.

5.03 - Tree Management

The proposal does not affect any trees on the subject site. The site was already subject to an approval for a multi-level car park (DA 2016/0394) and the site originally did not have any significant trees.

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

An assessment of these heritage matters has been discussed under Clause 5.10 of NLEP 2012.

7.02 - Landscape, Open Space and Visual Amenity

The applicant has submitted a landscape concept plan that provides for a combination of trees (ie *Lagerstroemis fauriei* 'fantasy'), shrubs and groundcovers.

Notwithstanding that the landscape proposal is considered to be well designed, the majority of the proposed landscaping (ie trees, shrubs and ground covers) for the development is proposed to be located within the public road reserve and this is not supported. Very little of the proposed landscaping is located on the site of the proposed development.

The applicant's response to these issues is extracted below:

A collaborative approach to landscaping has been developed by HSPC Architects and Moir Landscape Architects. Moir have prepared a landscape concept plan illustrating how the landscaping will be integrated with the built form.

Section 7.02 Landscape, Open Space and Visual Amenity of the Newcastle Development Control Plan 2012 (NDCP 2012) does not specify landscaping provisions for health service facilities including the location of the landscaping and the amount of site coverage.

The proposed landscaping is a significant improvement to the landscaping that was previously on the site, and has since been demolished. Health Care are willing to work with Council to overcome any concerns Council may have relating to the landscaping proposed on site.

In terms of Section 7.02 and the applicant's submission, the following is relevant:

- i) Section 7.02 does address this type of development under '*special uses*' and would require a Category 3 landscape plan with the submitted proposal being over \$2 million in value,
- ii) Section 7.02 addresses landscaping on a development site. The current proposal predominately relies on public land to address the landscaping and any softening of the development's streetscape appearance in this respect via the use of this public land. The trees, shrubs and ground covers extend up to 6m into the road reserve but only occupy 2.1-2.5m of the subject site, for limited parts of the street frontage.

Section 7.02 requires that the landscaping be addressed within site boundaries as detailed by the general controls 7.02.02 extracted below.

7.02.02 General controls

Objectives

1. Provide an area on sites where appropriate that enables soft landscape and deep soil planting that permit the retention and/or planting of trees and shrubs that will grow to a large or medium size.

The proposal would need to be redesigned such that the landscaping design does not rely on the use of the adjacent road reserve. It is noted that there may be an opportunity to include some street trees in a revised design but no shrubs or ground covers should be approved on the road reserve/footway.

7.03 - Traffic, Parking and Access & 7.08 - Waste Management

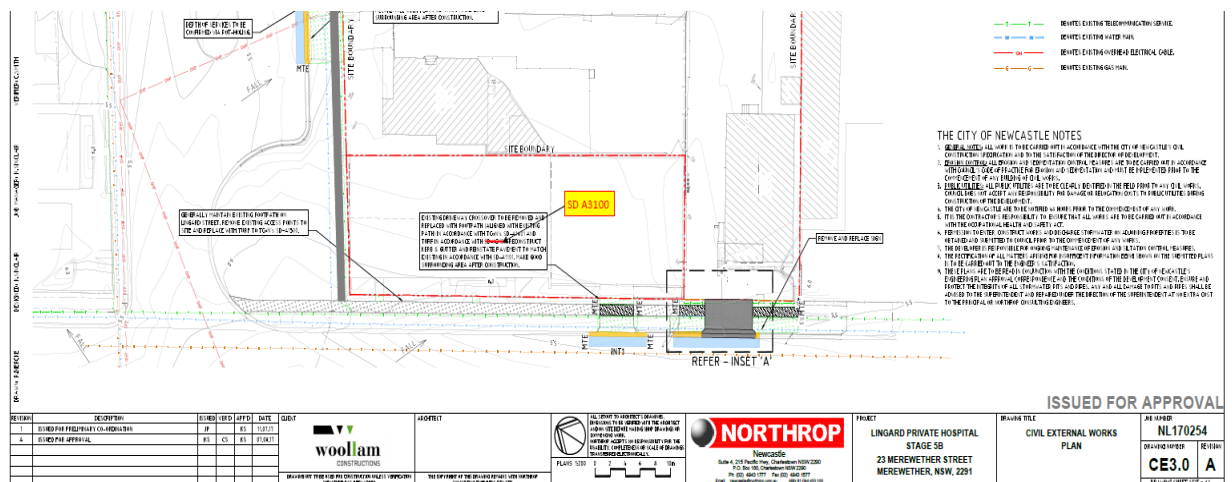
The application has been assessed by CN's Senior Development Engineer, with comments as follows:

"The submitted Traffic & Parking Assessment Report prepared by Intersect Traffic has been reviewed.

4.1 Driveway for Car Parking

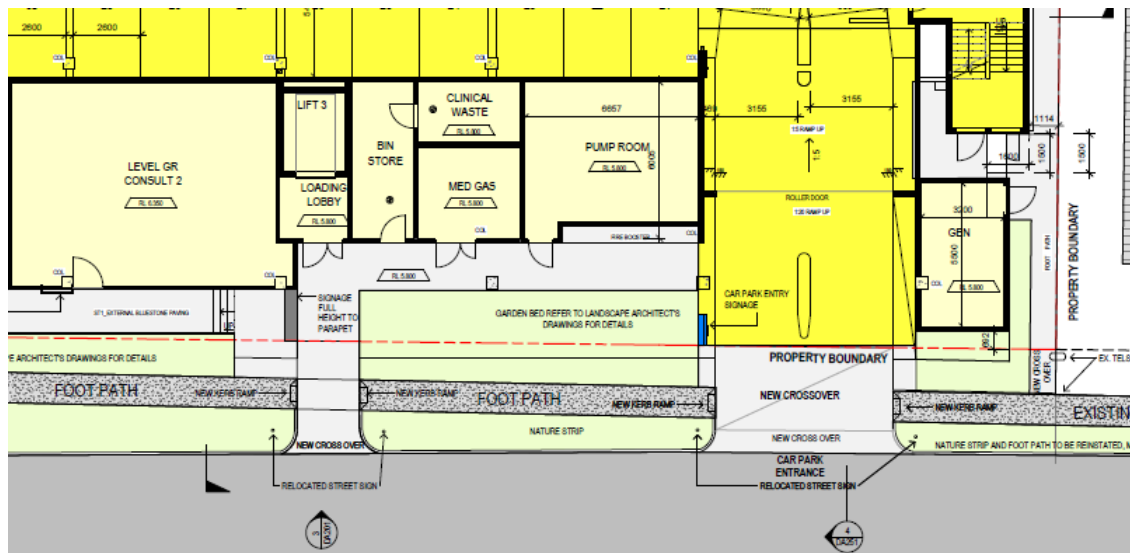
DA2016/00394 and subsequent Section 96 applications plans have set the car parking driveway levels and design. A Section 138 Roads Act application Ref. No. RA2017/00595 has been approved by Council. The driveway design from Lingard St has been resolved as part of the Section 138 application and is acceptable.

It is noted that the ramps on the public footpath as indicated in the architectural plans have not been approved and is generally not supported by Council due to the longitudinal footpath grades being compromised. See below part plan of the S138 Roads Act Approval.



4.2 Service Bay Use & Driveway Access for Service Bay

A new driveway is proposed for the service ramp and garbage pick-up. The submitted traffic report prepared by Intersect Traffic (Clause 11.5 briefs about the servicing) has stated that the proposed driveway will be used for servicing the development including private garbage pick-up. It is also assumed that servicing such as blood & heath test delivery, mail, general maintenance etc. may use the service bay (ie loading bay). The traffic report has not provided any information or data in regards to the frequency or number of potential vehicles using the service bay. Due to the nature of the development, it can be assumed that the proposed service bay and driveway will be regularly used and the service bay can be stated to be a Minor service area as per AS2890.2.



Neither the traffic report nor the SEE has indicated if any ambulance vehicles will be accessing the site. It is assumed that the ambulance may also use the service bay as Lift 3 links to the rest of the building via the loading lobby entry and service bay.

The traffic report states that waste collection will be privately managed. Generally, Medium or Heavy Rigid Vehicles (MRV or HRV) are used for such services. The development is proposing to use the reversing manoeuvre for entering into the service bay and exit in a forward direction.

The service bay is in close proximity to the proposed car park entry and frequent reverse movements will not only hinder through traffic flows on Lingard St (which has been acknowledged by the traffic consultant) but will also impact on the access to the car parking. Furthermore, reverse movements also creates additional risks for traffic accidents and compromises pedestrian access and safety. It is also noted that the streets are generally parked out and therefore manoeuvring and sightlines will be an on-going issue.

It is also noted that the service bay is adjoining the pedestrian path leading to the proposed building entrance and any reversing will compromise pedestrian safety and amenity within the site itself.

The proposed service bay does not meet the principles and criteria set in Councils DCP provisions for Traffic, Parking and Access and Australian Standard AS2890.2 Off-Street Commercial vehicle facilities.

The traffic report states that traffic controls (including pedestrian management) will be provided as part of the delivery management on a daily basis for the life of the development. The report also indicates that surgery staff will be trained as traffic controllers and be provided with appropriate Personal Protection Equipment (PPE) to manage traffic and states that service vehicles will call contact the surgery at least 30minutes prior to any delivery to ensure traffic control is in place. It is considered that this is not a realistic or practical approach to traffic management given the nature of development proposed, particularly given the multiple tenancies within the building. It is considered that the information provided has not demonstrated that there would be an appropriate method of traffic management in conjunction with the service bay proposed.

It is therefore concluded that the proposed servicing for the development is not acceptable. It is considered that for a development of this nature an on-site servicing

bay should be incorporated with safe and convenient access for all sized service vehicles. This should ensure forward entry and exit from the site.

Consultation with Transport & Traffic

Consultation has been carried out with Council's Traffic Team in regards to possible provision of a Loading Zone on the street as an option to assist in servicing the development. Council's Traffic Team has stated that an on-street Loading Zone generally at the location of the proposed Service Driveway could be considered subject to detailed information being submitted and approval attained from Newcastle City Traffic Committee. However, in general the provision of an on-street Loading Zone will remove the existing on-street parking spaces and is not a desired option.

Recommendations

- Based on the above, the proposed service bay (loading bay) driveway access and proposed operation methodology for the service bay is not supported.*
- Emergency service vehicle access provision has not been provided or even discussed in the DA and needs to be addressed.*

The applicant will need to consider alternative on-site design options for servicing the site, including garbage pick-up. It is considered that for a development of this nature an on-site servicing bay should be incorporated with safe and convenient access for all sized service vehicles. This should ensure forward entry and exit from the site.

4.3 Road Network and Traffic Generation

The submitted traffic report has provided the following traffic data:

Traffic count data has been sourced from the Traffic Report (2015) undertaken by GTA Consultants for the currently under construction alterations and additions to the Lingard Private Hospital. The data provided in the report identified that the following existing peak hour traffic volumes (2015) exist on the local road network.

Lingard Street – 400 vtph; and Merewether Street – 350 vtph.

Extrapolated to 2017 and 2027 traffic volumes by adopting a 1.5 % background traffic growth and allowing an increase of 24 vtph for the current hospital additions results in predicted 2017 and 2027 traffic volumes of;

*Lingard Street – 440 vtph (2017) and 510 vtph (2027); and
Merewether Street – 390 vtph (2017) and 450 vtph (2027).*

The report by Intersect Traffic has indicated that in 2017, Glebe Road shows peak traffic volume of 2,925 vtph which is expected to increase to 3,230 vtph by 2027. The traffic data indicates that there is capacity on the local roads to cater for the proposed developments without affecting the road network.

It is noted that the Traffic Report has not provided any information or data in regards to the Service Bay and has been discussed as part of Item 4.2 above.

4.4 Off-Street Parking Demand

DA2016/00394.02 has been assessed for the car parking development and a total of 129 off-street car parking have been provided for. The driveway design for the proposed car park has been assessed under this development.

Adequate Provision for bicycle parking and motorbike parking is also available within the car park to cater for the proposed development.

4.4.1 Car Parking

The off-street parking for the overall Lingard Hospital and its relation with the proposed development needs to be understood. The following recent history for Lingard Hospital is noted:

- *DA2015/10349 was approved by JRPP, Determination dated 06/12/2016. Condition 4(A) required a total of 105 off-street parking to be provided for the development. Prior to this development, Lingard Private Hospital development had 78 off-street parking (As per the plans in the approved drawing). 26 parking spaces (located at the north western end of the property adjacent to Tye St) were removed as part of the DA proposal. In accordance with the approved plans, Lingard Hospital retained approx. 52 off-street parking spaces at the south eastern car park, which is currently being used by the site. In accordance with DA2015/10349, parking deficiency of 53 spaces is noted (105 - (78-26)) = 53.*
- *DA2015/10349.01 - This DA did not impact on the car parking requirements.*
- *DA2015/10349.2 was Determination 05/06/2018. The DA proposed to change the bedding configuration of Lingard Hospital. A Traffic Report prepared by Intersect Traffic Ref. No. 18/015 dated 08/03/2018 was submitted with the DA. The traffic report had analysed the previous traffic reports for Lingard Hospital confirms that Lingard Hospital has a shortfall of 1 off-street parking.*

The traffic report provided by Intersect Traffic can be taken to contain the most updated parking data for Lingard Hospital (the report).

It can therefore be taken that Lingard Hospital's overall off-street car parking requirement was 106.

However, it appears that the Councils DA assessment has accepted the 1 off-street car parking deficiency and the therefore Condition 4(A) remained unchanged at 105 spaces required.

- *DA2016/00394 proposed at 6 Lingard St and 22-24 Merewether St proposed 50 car spaces to try to balance off-street parking deficiency spaces for Lingard Hospital.*
- *DA2016/00394.01 proposed 90 parking spaces, which meant that 37 additional spaces above the requirement of 53 spaces would be provided. The additional parking was to be used exclusively for Lingard Hospital.*
- *DA2016/00394.02 proposed to provide for 129 parking spaces within the car park, which meant that 76 additional spaces were available.*

Conclusion

Based on Council's records, it can be taken that a minimum of 53 off-street car parking spaces will need to be allocated for exclusive use for Lingard Hospital. This is to ensure that a total of 105 off-street car parking is provided for Lingard Hospital to

comply with Condition 4(A) of DA2015/10349. This means that under current approvals 76 additional spaces are available as surplus.

4.4.2 Car Parking Requirements for Proposed Development

The parking demand rates applicable to this development as day surgery and health consulting rooms will be as specified within Council's Traffic, Parking & Access DCP as Health Services Facility consisting of consulting rooms which are as follows:

Car parking to be provided at a rate of 1 space per practitioner plus 1 space per 2 other staff plus 2 spaces per practitioner for visitors.

The submitted traffic report prepared by Intersect Traffic has assumed the development ratio of practitioners to additional staff will be 2 per practitioner and each consulting room would have 1 practitioner while the day surgery would operate with 6 practitioners on site at any one time. Therefore, the submitted parking calculations have used a total of 23 practitioners for the development. The SEE prepared by KDC seems to have referenced the no. of practitioners as indicated in the traffic report.

Based on Council's DCP, Off-Street car parking requirement is as follow:

$$= (23 + (23 \times 2/2) + 23 \times 2) \\ = 92 \text{ car parks}$$

Parking Proposal for Development as follows:

The letter responding to Council's RFI prepared by KDC dated 08/10/2018 has indicated that a total of 74 parking spaces will be allocated for the new development.

The submitted traffic report has stated that "most medical practitioners operate out of a number of hospitals and offices that the likely peak occupancy of the health consulting rooms will be 75%".

The parking calculations provided by the traffic consultant are as follows:

$$\begin{aligned} \text{The peak parking demand for the day surgery and health consulting rooms will be} \\ \text{Number of car parks} &= \text{no. practitioners} + \text{no. practitioners} \times 2/2 + \text{no. practitioners} \times 2 \\ &= (23 + (23 \times 2/2) + 23 \times 2) \times 0.75 \\ &= 69 \text{ car parks} \end{aligned}$$

The submitted traffic report has indicated that the parking requirement for the development will be approx. 69 car spaces. This is based on the assumption that the consulting room will be occupied at the rate of 75%.

The submitted traffic report has not justified or provided any evidence on the proposed 75% occupancy rate, nor has the report specified where the variation figure of 75% has been adopted from.

- The justification of the reduced number of parking spaces therefore is not acceptable.

The submitted architectural plans and DA2016/00394.02 for the car park provides a total of 129 car spaces out of which approx. 53 will be required for the Lingard Hospital and therefore only 76 spaces remain.

Conclusion

The development is therefore short of 16 off-street parking spaces and is not compliant to Councils Traffic, Parking and Access DCP and is therefore not supported.

4.5 Parking Management

Clarification was requested from the applicant in regards to the allocation and management of the parking spaces for the existing Lingard Hospital and for the proposed development. Parking management information has not been provided to Council since the initial request, rather the applicant has indicated in their response to Council that they are going to accept conditions in this regard.

The management of the parking is a critical element in regards to the management of the off-street parking. The allocation of parking and management of visitor parking need to be resolved if parking is to be shared between buildings. The proposed development and the management of Lingard Hospital could be changing ownerships or even changes such as the requirement for payment to access the parking, which in turn will likely impact on the on-street parking demand in the surrounding streets. These are just some of the factors that Council considered when requesting a parking management plan. A condition in this regards is not possible as Council does not have any information in regards of the operational agreements for the proposed development and Lingard Hospital. Factors such as staffing and doctor numbers are unknown and full assessment cannot be properly made.

Recommendations

The submitted response to Councils previous request for information has not addressed.

- *The submitted plans have not indicated the allocation of the parking spaces for the development and Lingard Hospital. The parking spaces will need to be confirmed on the plans and allocated to the relevant development.*
- *Visitor parking will need to be indicated on the plans.*
- *The applicant is to confirm if the 78 parking spaces at the Lingard Hospital site have been provided.*
- *The management of the 53 off-street parking for the Lingard Hospital within the proposed development will also need to be confirmed (ie 105 - 78).*
- *The applicants will need to confirm if the proposed car park will incur fees for parking.*
- *A parking management plan will need to be prepared to manage the proposed parking, including the allocated Lingard Hospital parking.*
- *Has not fully justified the parking shortfall of 16 spaces associated with the subject development.*

4.6 On-Street parking Demand

It is noted that the Lingard Hospital has been going through a major redevelopment in the past few years resulting in a very high demand for on-street parking. Recent public submissions to Council indicate that the streets are generally parked out during visiting hours and staff arrival times and there is a very high demand for on-street parking in the area. The impact from demand in parking and the on-going developments at the hospital appear to be expanding to surrounding streets. In this regard, discussions between Council's Development and Traffic Teams has led to the understanding that traffic & parking changes will be required to be done for the Lingard Hospital precinct for medium-long term on-street parking management.

The proposed development will add to the high demand for on-street parking. The development will therefore be required to undertake further detailing for traffic and parking management assessment in the precinct to ensure that the area is better managed for on-street parking.

The applicant's planners have indicated in their response to CN that they are going to accept conditions in this regard.

- *It is recommended that the owners of Lingard Hospital engage a Traffic Consultant to develop a masterplan for the management of on-street parking in the direct vicinity of the Lingard Hospital. The detailed information including monitoring of parking and parking counts and the recommendations for the management of parking is to be provided to Council with this development.*
- *The submitted masterplan prepared by KDC should be considered while preparing the On-Street Parking Plan.*

The above items could be resolved with conditions.

5.0 Conclusion

Some elements of the development including Flooding and Stormwater aspects are generally satisfactory and can be conditioned.

However, the proposed service bay (loading bay) and the off-street parking management are integral components of the proposed development and it is considered that the operation and function of the proposed development is highly dependent upon the proper functionality of the service bay and the off-street car parking.

As indicated in Item 4.2, 4.4 and 4.5 above, adequate information and justification has not been provided to conclusively demonstrate that the development can be sustained and the operational functions appropriately managed.

It is therefore concluded that the development cannot be supported based on the information that has been submitted to Council to date.

Conditions for other assessment elements can be provided upon satisfactorily demonstrating that the development is serviceable and parking can be managed."

Based on the advice received from CN's Senior Development Engineer, it is considered that the proposed development is not satisfactory in respect of servicing via a loading bay or in respect of off-street parking management.

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 with respect to energy efficiency, if the application is approved.

7.06 - Stormwater

The application has been assessed by CN's Senior Development Engineer and is considered to be acceptable, as detailed below:

"It is noted that the stormwater design within the carpark has catered for the overall development at 6-8 Lingard St in terms of detention requirements and future connections for discharge.

Reuse and Detention

DA2016/00394 and subsequent Section 96 applications plans had allowed for stormwater reuse for the proposed development. The proposed development has a hardstand roof area. Stormwater harvesting and reuse has been proposed with a 12KL reuse tank/detention tank, which will be used for landscaping purposes. An orifice is proposed which will limit the outlet flows to the public drainage system. The detention tank will cater for stormwater discharge from the basement and hard surface areas from the building including the terraces and open areas and will detain stormwater before discharge.

The basement parking areas have been provided with a pit and pump system which would cater for seepage water and any other run-off to be pumped out.

The development is proposed to discharge to the public drainage pit on Merewether St via a new drainage connection.

The submitted concept proposal complies with City Stormwater guidelines and is supported.

It is concluded the proposal is satisfactory from stormwater design and management perspective."

7.09 - Outdoor Advertising and Signage

The application has not included any specific signage details.

8.00 - Public Participation

The proposal was placed on public exhibition for a period of 32 days from 22 December 2017 to 22 January 2018, in accordance with the EP&A Act, EP&A Regulation and Section 8 of the DCP. Four submissions were received during the notification period.

A summary of the submissions received in respect of the proposed development are included within Section 5.1.3.9 below.

Newcastle Section 94A Development Contribution Plan

The application attracts a Section 7.12 Contribution pursuant to Section 4.17 of the EP&A Act 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 25J of the EP&A Regulation.

5.1.3.4 Planning agreements

No planning agreements are relevant to the proposal.

5.1.3.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Regulation.

5.1.3.6 Coastal management plan

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

5.1.3.7 The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Character, Streetscape, Visual Appearance & Design

The proposal, in principle, is acceptable in terms of character, visual appearance and design, considering the site's position and the B5 Business Development zoning, but would need to be re-designed at a lower scale.

The overall height, bulk, scale and size of the proposal remains an issue as addressed under NLEP 2012 Clause 4.3, 4.4 and 4.6 assessment above.

The setbacks of the proposal at ground level were largely established as a result of the last modification to the car parking application (DA2016/00394.02). The current proposal, with the two upper proposed floors extending vertically from these setbacks, and cantilevering further forward, has limited opportunity to mitigate the overall height, bulk, scale and size of the proposal. Additionally, these setbacks provide limited opportunity to provide landscaping to soften and mitigate the streetscape and visual appearance of the current proposal's overall height, bulk, scale and size (noting that proposed landscaping is largely located on the road reserve, as discussed under Section 7.02 of the DCP).

Solar Access/Overshadowing

The subject site is located on the north-eastern corner of Lingard Street and Merewether Street and, as a result, morning sun overshadowing generated by the proposal on 21 June falls on the streets and nearby Mitchell Park. The overshadowing of the adjacent building (ie a church at 14-16 Mitchell Street) increases from midday until 3pm, when the building is predominately in shadow. This overshadowing, while significant, is considered to not be unreasonable in this instance. The church has only a blank wall facing the proposed development (ie no windows which are impacted) and the 'commercial' type zoning is such that the extent of overshadowing in this circumstance is considered to be reasonable. The shadowing impact on the automotive repair business to the north east is very similar to that of the church and is considered to be reasonable.

Views & Outlook

The proposal does not have an adverse impact on adjoining premises in terms of views.

The development will alter the general outlook, due to the proposed changes in size and scale but this is considered to be reasonable having regard to the zoning and the nature of the immediate adjoining uses and the existing buildings.

Privacy

The site has north-eastern and a south-eastern boundaries to neighbouring properties. The northern-eastern boundary has a series of highlight windows (ie minimum sill heights 1800mm from finished floor level) and these are acceptable in terms of privacy impacts toward the north, in terms of the current and any likely future developments.

The south-eastern elevation has two large sections of windows which extend from the street front to over 31m towards the rear boundary, along the side boundary. These windows currently face a blank wall, being the neighbouring church building, with approximately 3.3m setback to the common boundary. It would be appropriate that the windows have a privacy

treatment (eg obscured glass for the full height) to minimise impact on future neighbouring development.

Noise

The application has been assessed by CN's Senior Environmental Protection Officer and is considered to be acceptable as detailed below:

"Acoustics

The proposal sought development consent for 24 hour operation and as such, given the potential for adverse acoustic impacts the RSU required an acoustic assessment be prepared and submitted for review. The applicant has submitted a Noise Assessment prepared by Muller Acoustic Consulting dated 5 October 2018 to support the proposed development. The Noise Assessment has modelled operations over a 24hr period, however is only expected to operate during daytime hours only (i.e. 7:00am to 6:00pm) (Section 2).

The following noise sources were modelled:

- *Mechanical rooftop plant condensers (x 14 units), SWL 71dBA, LAeq(15min);*
- *Truck deliveries (day only 7am to 6pm assumed to be unloading in Lingard Street adjacent to Loading Lobby), SWL 92dBA, LAeq(15min);*
- *Cars entering car park (via carpark entrance of Lingard Street), SWL 72dBA, LAeq(15min) (constant for all periods);*
- *Backup generator operation, SWL 105dBA, LAeq(15min) (as per MAC Report, MAC180606-04LR1); and*
- *Car door slams (night/maximum assessment only), SWL 85dBA, LAmax assumed to occur at Lingard Street carpark entrance.*

All sources (except truck deliveries as these will be restricted to daytime hours only ie 7:00am to 6:00pm) were modelled to occur over 24 hours 7 days a week.

Drawing Number DA251 Revision B prepared by HSPC Architects dated 14 November 2017 shows the plant room on the roof of the proposed development which is enclosed in "Acoustic Aluminium Louvers". The RSU notes in Section 2 the Noise Assessment states " This assessment presents the results, findings and recommendations of project operational noise emissions to surrounding commercial and residential receivers and references plans for the project (HSPC, 2017), (see Attachment B) taking into account the following noise sources." Therefore, the RSU can assume the resultant noise levels for the proposal have taken into account the rooftop attenuation.

Table 8 in Section 7 of the Noise Assessment demonstrates that the operation of the hospital during the daytime periods will comply with the Project Noise Trigger Levels at all identified sensitive receivers.

As such, the RSU has no objections to the proposal on acoustic grounds and should this application be supported a condition of consent restricting all deliveries to day time hours only will be supplied."

5.1.3.8 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 Any submissions made in accordance with this act or the regulations

The application was notified and advertised in accordance with the EP&A Act and EP&A Regulation and four submissions were received. The issues raised in the submissions are responded to in the below table.

Issue	Assessment Comment
<p>Height & FSR Variations/Visual Appearance Impacts - Concern regarding the extent of exceedances, specifically height, bulk and scale. The proposed height is not appropriate for predominately a residential area and that the community expect that Council will require consistency with Newcastle LEP 2012 requirements.</p>	<p>Agreed - the proposed height and FSR variations are considered to be unsatisfactory.</p>
<p>Streetscape - Concern that the design of the overall proposal is not consistent with the existing predominately residential streetscape.</p>	<p>Partially Agreed - the proposed height exceedance is agreed as a concern. The character and architectural appearance of the building at a lower height and scale would likely be acceptable. It is considered that the development, having regard to B5 Business Development zone, would broadly be acceptable in terms of the architectural design/style proposed, subject to the height and FSR aspects being resolved.</p>
<p>Traffic & Parking - Concern that the FSR exceedances lead to negative impacts in the surrounding neighbourhood in terms of traffic and parking.</p>	<p>CN's engineers have assessed the submitted proposal and do not raise concerns in terms of its traffic impacts, accepting that suitable road capacity exists within the nearby streets. However, concerns remain with respect to the parking impacts of the proposal.</p>
<p>Construction Timing/Parking - Concern that the required 50 spaces within 6 Lingard Street will not be completed in time to address the loss of parking by the hospital extension (DA2015/10349). All of the proposed car parking needs to remain operational while any new floor space is being constructed.</p>	<p>Agreed. The applicant sought to provide temporary parking at Gibson Street with an associated shuttle bus service to address the delay in parking construction.</p>
<p>Parking - The parking at 6 Lingard should be untimed and free to ensure staff, visitors and patients are encouraged to use it rather than park on the residential streets. One parking space per two staff is insufficient and will result in increased on street parking issues.</p>	<p>The one space per two other staff is the adopted rate under the DCP. As discussed within the report above, concerns remain with the parking provided. <i>"Untimed and free"</i> parking combines two different issues. It is not agreed that untimed parking will ensure less parking impact on the street (ie often the use of timed parking with a fee structure will encourage turnover of spaces). The charging for parking has been the subject of various Land and Environment Court determinations and broadly an operator could charge nominal fees to address maintenance and operation of a car park (ie though it cannot be run as a commercial car park).</p>

Traffic - Concern that traffic volumes/impacts will be exacerbated by the current proposal.	CN's engineers have assessed the submitted proposal and do not raise concerns in terms of its traffic impacts, accepting that suitable road capacity exists within the nearby streets.
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5.1.3.10 The public interest

A proposed medical centre use would be considered to be in the public interest, offering additional health services to the Newcastle area and beyond. Notwithstanding this, the overall size and scale of the proposed development as submitted is not supported in this instance and considered to not be in the public interest.

6. CONCLUSION

The proposal is considered to be unacceptable against the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

7. RECOMMENDATION

That the Hunter and Central Coast JRPP, as the consent authority, refuse development consent to DA2017/01546 for alterations and additions to car park to include a medical centre, at 6-8 Lingard Street, Merewether, pursuant to Section 4.16 of the EP&A Act subject to the reasons in **Appendix D**.