

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	2018HCC010
<b>DA Number</b>	DA/419/2018
<b>LGA</b>	Lake Macquarie City Council
<b>Proposed Development</b>	Mixed use development with commercial premises and residential flat building
<b>Street Address</b>	114-120 Cary Street, 1, 2, 3, 5 Bath Street and 3 Arnott Avenue, Toronto
<b>Applicant/Owner</b>	Toronto Investments No.1 PTY LTD C/- Mark Lawler Architects
<b>Date of DA lodgement</b>	15 March 2018
<b>Number of Submissions</b>	20 submissions (19 against and 1 in support)
<b>Recommendation</b>	Approval subject to deferred commencement
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	General development that has a Capital Investment Value over the \$30 million threshold for Regional Development
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (Building Sustainability Index) 2004</li> <li>• State Environmental Planning Policy No.14 (Coastal Wetlands)</li> <li>• State Environmental Planning Policy No. 55 (Remediation of Land)</li> <li>• State Environmental Planning Policy No.65 (Design Quality of Residential Apartment Development)</li> <li>• State Environmental Planning Policy No.71 (Coastal Protection)</li> <li>• Lake Macquarie Local Environmental Plan 2014</li> <li>• Lake Macquarie Development Control Plan 2014</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Attachment A: Draft Conditions of Consent</li> <li>• Attachment B: Amended Architectural Plans</li> <li>• Attachment C: Amended Landscape Plans</li> <li>• Attachment D: Amended Engineering Plans</li> <li>• Attachment E: Design Review Panel endorsed recommendations</li> <li>• Attachment F: Clause 4.6 (Exceptions to development standards)</li> <li>• Attachment G: Summary of submissions</li> <li>• Attachment H: External agencies responses</li> <li>• Attachment I: Alternate Contributions Schedule for 124 dwellings</li> </ul>
<b>Report prepared by</b>	Georgie Williams, Senior Development Planner
<b>Report date</b>	25 November 2019

**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?	<b>Yes</b>
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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?	<b>Yes</b>
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**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?	<b>Yes</b>
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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?	<b>No</b>
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**Conditions**

Have draft conditions been provided to the applicant for comment?	<b>Yes</b>
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## **Executive Summary**

### **Development Application DA/419/2018**

<b>Proposal:</b>	Mixed use development with commercial premises and residential flat building
<b>Address:</b>	114 Cary Street, TORONTO (Lot 4 Sec 6 DP 2505) 116 Cary Street, TORONTO (Lot 5 Sec 6 DP 2505) 118 Cary Street, TORONTO (Lot 6 Sec 6 DP 2505) 120 Cary Street, TORONTO (Lot 7 Sec 6 DP 2505) 1 Bath Street, TORONTO (Lot 10 Sec 6 DP 2505) 2 Bath Street, TORONTO (Lot 100 DP 847314) 3 Bath Street, TORONTO (Lot 9 Sec 6 DP 2505) 5 Bath Street, TORONTO (Lot 8 Sec 6 DP 2505) 3 Arnott Street, TORONTO (Lot 101 DP 1110774)
<b>Applicant:</b>	Mark Lawler Architects
<b>Owner:</b>	Toronto Investments No.1 Pty Ltd (owner's consent has been provided)
<b>Lodged:</b>	15 March 2018
<b>Zoning:</b>	B2 Local Centre
<b>Integrated Authority:</b>	Subsidence Advisory NSW Water NSW
<b>CIV:</b>	\$35,466,887
<b>Assessing Officer:</b>	Georgie Williams, Senior Development Planner
<b>Recommendation:</b>	Approval subject to deferred commencement

This report assesses the proposal against relevant State, Regional and Local Environmental Planning Instruments and Policies, in accordance with Section 4.15(1) of the Environmental Planning and Assessment Act, 1979.

The development proposes a mixed use development (commercial premises and residential flat building) on the site (refer to Figure 1-4 below) including:

- Excavation to accommodate two levels of basement car parking (268 car spaces in total) with vehicular access from Arnott Avenue. The basement levels include:

#### Basement level 1 for commercial / visitor use:

- 123 commercial car spaces including five disabled car spaces;
- 24 visitor spaces are provided as dual use sharing with the commercial car spaces;
- Five motorbike spaces;
- Car wash bay;

- Trolley storage;
- Bike storage;
- Cleaner / staff only WC and shower;
- Pedestrian ramp to ground floor level.

Basement level 2 for residential component:

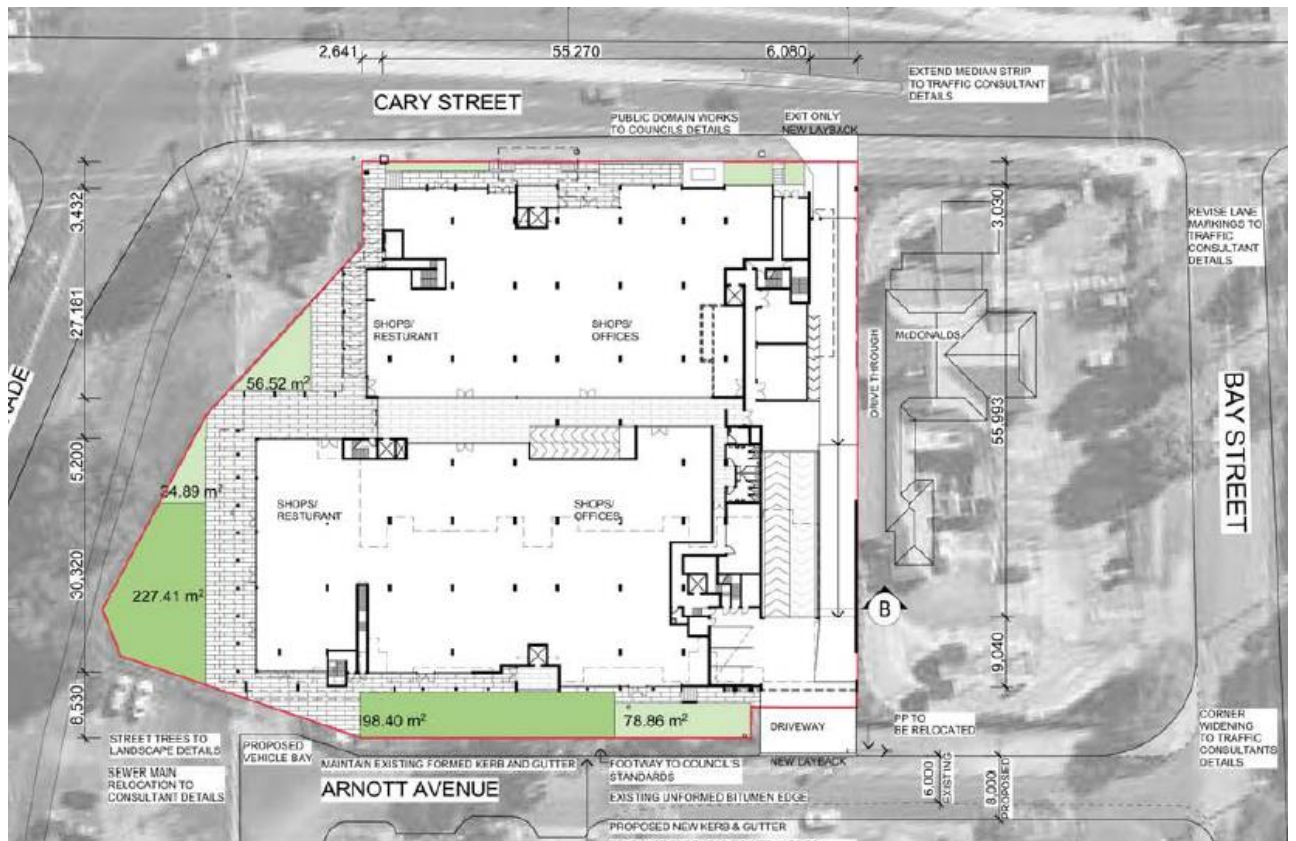
- 145 car spaces including 12 disabled car spaces;
- 4 motorbike spaces;
- Storage.
- Commercial premises at ground floor level (identified as Level 1) with two potential tenancies identified as shops/restaurant and shops/office (1210m<sup>2</sup>) fronting Cary Street and two potential tenancies identified as shops/restaurant and shops/office (1641m<sup>2</sup>) fronting Arnott Avenue and Victory Parade / the reserve;
- A commercial loading dock, three service delivery car spaces and separate commercial / residential garbage storage at ground floor level with ingress from Arnott Avenue and egress onto Cary Street for service vehicles only;
- Residential flat building with 124 units in total including:
  - 25 x 1 bedroom;
  - 78 x 2 bedrooms;
  - 21 x 3 bedrooms;
- The massing break up is achieved with two main building forms (Cary Street Block and Arnott Avenue / Victory Parade Block) separated by a large communal landscaped outdoor space at podium level on Level 2.

Cary Street Block

- Residential development fronting Cary Street (Levels 2 to 6) with 12 apartments per floor providing a mix of units;
- Level 7 provides for the communal rooftop terrace.

Arnott Avenue / Victory Parade Block

- The building fronting Arnott Avenue is five storeys in height;
- Residential development fronting Arnott Avenue and Victory Parade (Levels 2 to 5) with 17 apartments per floor (Levels 2-3) and 15 apartments per floor (Levels 4-5) providing a mix of units;
- Landscaping.



**Figure 1 – Proposed site plan**



**Figure 2 – Eastern elevation (Arnott Avenue)**



**Figure 3 – Western elevation (Cary Street)**



**Figure 4 – Southern elevation (Victory Parade)**

### **Reasons for determination**

The development has been assessed against the matters for consideration that apply to the land to which the development application relates as outlined in Section 4.15 of the Environmental Planning and Assessment Act, 1979 as follows:

- subject to the satisfaction of deferred commencement conditions, the development meets the requirements of the Lake Macquarie Local Environmental Plan 2014 and other relevant environmental planning instruments;
- consideration has been given to proposed instruments which have been the subject of public consultation;
- subject to the satisfaction of deferred commencement conditions, the development generally complies with Lake Macquarie Development Control Plan 2014 with any variations to the controls outlined and justified within this assessment report;
- considering the likely impacts of the development on the natural and built environments, the development is considered to provide balanced and appropriate outcomes;
- the suitability of the site for the development, including characteristics and constraints of the land have been considered and it was found the land as being suitable for the development;
- matters of public interest have been taken into account in relation to social, economic and environmental outcomes.

Based on the balance of the matters considered, the development application is recommended for approval subject to the satisfaction of deferred commencement conditions. Details of the assessment are contained in the assessment report below.

### **Community interest**

The assessment of the proposed development under Section 4.15(1) of the Environmental Planning and Assessment Act, 1979 has considered the community views. The development application was notified in accordance with the Development Notification Requirements outlined in Section 1.15 of Part 1 of Council's Development Control Plan 2014 as adopted by Lake Macquarie City Council.

From the notification period, 20 submissions (19 against and one in support) were received in relation to the proposed development. The matters raised in these submissions were considered as part of the assessment of the proposed development. For detailed comment regarding the matters raised in the submissions refer to Section 4.15(1)(d) of this report.

## **Site, context and development history**

The legal description of the development site is:

114 Cary Street, TORONTO (Lot 4 Sec 6 DP 2505)  
116 Cary Street, TORONTO (Lot 5 Sec 6 DP 2505)  
118 Cary Street, TORONTO (Lot 6 Sec 6 DP 2505)  
120 Cary Street, TORONTO (Lot 7 Sec 6 DP 2505)  
1 Bath Street, TORONTO (Lot 10 Sec 6 DP 2505)  
2 Bath Street, TORONTO (Lot 100 DP 847314)  
3 Bath Street, TORONTO (Lot 9 Sec 6 DP 2505)  
5 Bath Street, TORONTO (Lot 8 Sec 6 DP 2505)  
3 Arnott Street, TORONTO (Lot 101 DP 1110774)

The site is irregular in shape (refer to Figure 5 below) with a frontage to Cary Street of 64m, a frontage to Victory Parade of 64.7m and a frontage to Arnott Avenue of 64m. The site has a total site area of 5957.5m<sup>2</sup> with a relatively gentle slope, and is located at approximately 4.0m above sea level in a valley between rising landforms to the north and south.

The site is currently vacant and is located on a prominent corner, which is a gateway site into Toronto.

Immediately adjoining the site to the north is McDonalds at 12 Bay Street, Toronto. Toronto Public School is located on the northern side of Bay Street.

The site abuts Arnott Avenue to the east, which provides vehicular access to the Royal Motor Yacht Club, a public wharf and residential dwelling houses fronting Lake Macquarie.

The site adjoins Cary Street to the west, which is a busy 4 lane arterial road. The western side of Cary Street is characterised by undeveloped land, bushland, a coastal wetland and cycleway link to Fassifern.

Adjoining the site to the south are remnants of an old heritage listed railway corridor known as the Fassifern to Toronto Branch Railway Line, and Victory Parade, a local road connecting to Toronto Town Centre.

The site is not listed as a heritage item or located within a Heritage Conservation Area. The site is adjacent to the Toronto Heritage Precinct and falls within the Town Heritage Area of the Toronto Town Centre Area Plan. The site is located within the vicinity of the following listed heritage items:

- Heritage item 21 – Fassifern to Toronto Branch Railway Line;
- Heritage item 171 – Boatman's Cottage Lakefront; Boathouse and Winches Lakefront; and House;
- Heritage item 172 – Building Restaurant; and
- Heritage item 173 – Royal Motor Yacht Club Annexe.



The site is affected by the following constraints:

- Geotechnical zone T5;
- Bushfire prone land – part parcel;
- Mine subsidence; and,
- Maximum building height of 10m (Victory Parade), 13m (Cary Street) and 16m (Arnett Avenue).

The application proposes removal of all vegetation on site.



Figure 5 – Aerial photograph of the site and surrounds



## **Relevant History**

### **DA/1495/2005**

Council approved a mixed use development on the site on 23 April 2007 including:

- Demolition of existing dwelling houses and structures;
- Construction of a mixed use development comprising retail and commercial tenancies at ground floor level with mezzanine and a five storey residential flat building with 44 units;
- Excavation to accommodate basement car parking with 113 spaces;
- Associated public domain improvements;
- Landscaping; and
- Subdivision.

**Note:** This approved development catered for road widening on Arnott Avenue to align with the adjoining McDonald site.

### **DA/1495/2005/A**

Under the former provisions of Section 96(2) of the Environmental Planning and Assessment Act, 1979, the following modifications were approved by Council on 19 August 2008:

- Residential: increase in units from 45 to 55 with an increase in height, reconfiguration of unit layouts, balconies and lobby areas;
- Commercial: deletion of walkway and mezzanine level, addition of commercial floor space on level 1;
- Car park: reconfiguration and increase in car parking from 113 to 142 spaces and changes in levels;
- Landscaping: relocation of Oak tree;
- Communal open space: deletion of approved communal open space with new swimming pool, change rooms and outdoor area on commercial rooftop; and
- Materials and finishes: changes to balustrade treatments and location of selected materials.

### **PL/97/2016**

A pre-lodgement meeting was held with Council on 12 July 2016 to discuss a mixed use development on the site. In summary and in accordance with the controls contained within Part 4 (Development in Business Zones), Section 2.22 (Sites where a concept plan is required) of Development Control Plan (DCP) 2014, Council advised on preparation of an urban design analysis for review by Council's Design Review Panel (DRP).

### **SEPP65/20/2016**

A concept meeting with the DRP was held on 8 February 2017.

### **SEPP65/20/2016/A**

A further concept meeting with the DRP was held on 10 May 2017.

## **DA/419/2018**

The current application was lodged with Council on 15 March 2018.

Following a preliminary assessment, Council requested amended plans and additional information on 6 June 2018.

Additional information was submitted on 20 and 28 August 2018 including submission of a revised clause 4.6 and Visual Impact Assessment (VIA).

Following a more detailed assessment, the applicant was advised on 29 October 2018 that Council staff had reviewed the amended clause 4.6 and submitted VIA; in light of new case law (Initial action Pty Ltd v Woollahra Council); could not support the proposed building height to Cary Street. The road widening issue also remained unresolved.

The applicant and their traffic engineer met with Council staff on 6 November 2018 to discuss road widening.

A formal request was made to Council on 9 November 2018 requesting an extension of time to respond to Council.

Formal written advice, dated 20 December 2018, advised Council staff did not support such a significant variation to a statutory height control through application of clause 4.6 (Exceptions to development standards). It was recommended Level 6 be deleted from the Cary Street block. A five storey development with roof top terrace which would still result in a variation to the statutory height control, was supported by Council staff, subject to the provision of a technically robust written variation under clause 4.6 (Exceptions to development standards) of LMLEP 2014 supporting the amended plan.

The applicant was advised should they wish to pursue the proposed height to Cary Street in its current form, an amendment to LMLEP 2014 for building height should be made.

The applicant met with Council staff including Justin Day, Head of Development and Planning, on 23 January 2019, to discuss the above issue. It was agreed at this meeting to overcome the impasse between Council staff and the applicant on the issue of building height, a revised clause 4.6 taking into consideration recent case law would be submitted to Council and reported to the RPP to gain direction. This occurred on 1 May 2019.

Following the RPP briefing, additional information was submitted on 18 July 2019, which is the subject of this assessment.

## **SEPP65/20/2016/B**

The development application was considered by the DRP on 13 June 2018 (refer to SEPP 65 comments).

### **Regional Planning Panel**

An initial briefing was held with the RPP on 30 August 2018.

A further briefing was held with RPP on 1 May 2019 to discuss the issue of building height and application of clause 4.6 (Exceptions to development standards).

## Detailed Assessment

### Environmental Planning and Assessment Act 1979

Applicable State, Regional and Local Environmental Planning Instruments and Policies are detailed hereunder. Where not explicitly detailed, it is considered those instruments or policies are not relevant to the proposal.

#### Section 4.15: Potential matters for consideration

##### Section 4.15 (1) (a) (i) the provisions of any EPI's

##### State Environmental Planning Policy (State and Regional Development)

In accordance with Schedule 7 (Regionally significant development) Part 2 (General Development over \$30 million) of the SEPP, the proposed development has a capital investment value over \$30 million and is therefore regionally significant development.

The Hunter and Central Coast Regional Planning Panel will determine the development application.

##### State Environmental Planning Policy (Infrastructure) 2007

##### Ausgrid

Pursuant to Clause 45(2) of the SEPP Infrastructure, the proposal was referred to Ausgrid for comment. Ausgrid provided their comments on 18 April 2018 as follows:

*"Ausgrid requires that due consideration be given to the compatibility of proposed development with existing Ausgrid's infrastructure, particularly in relation to risks of electrocution, fire risks, Electric & Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development."*

Subject to approval, a condition is recommended to ensure compliance with Ausgrid requirements.

##### Road and Maritime Services (RMS)

Pursuant to Clause 100 (Development on proposed classified road) and Clause 104 (Traffic-generating developing) of the SEPP Infrastructure, the proposal was referred to the RMS for comment.

The RMS initially advised Council on 31 May 2018 of the following issues:

Cary Street (MR217) is a classified (State) road and Bay Street is a local road. RMS concurrence is required for connections to Cary Street with Council consent, under Section 138 of the Act. Council is the roads authority for these roads and all other public roads in the area.

The RMS objected to the development on the following grounds:

**Traffic Impact Statement:** The Traffic Impact Statement (TIS) from McLaren dated 22 February 2018 does not correctly demonstrate the operation of the Cary Street and Bay Street intersection. RMS have reviewed and undertaken the following amendments to the submitted SIDRA models:

- The Cary Street northbound departure kerbside lane is not a continuous lane. It is a 70 metre short lane with parking;

- The Cary Street southbound approach kerbside lane is not a continuous lane. It is a 90m short lane with parking;
- Bay Street is not two 3.3m lanes on approach, it is one wide 4.8m lane;
- The intersection cycle time is not 50 seconds in the AM peak and 60 seconds in the PM peak. The cycle time is between 100 and 110 seconds;
- Running the models with the above parameters altered, the intersection with development operates at an overall Level of Service (LoS) F in the AM and PM;
- Roads and Maritime have reviewed options to minimise the impact from the development on the queue and delays at the intersection, and recommend that further consideration be given to Bay Street being widened to two lanes on approach to Cary Street, fronting the McDonalds site.
- Running the model with the additional lane on Bay Street results in improved delays, queue lengths and LoS to LoS C in the AM peak and LoS B in the PM peak.
- It is recommended that an updated Traffic Impact Statement be submitted, including modelling of the requested amendments plus 10 years of growth on the road network.

**Access to Cary Street:** On 7 February 2017, RMS advised access from the site onto Cary Street could be considered. However, RMS must be satisfied the impact to safety and efficiency is minimal. It was recommended the TIS be updated to include:

- A service vehicle management plan, detailing how the access will be restricted to all vehicles except the minimal large vehicles expected each week;
- Demonstrate that the driveway is adequately designed to provide left turn only from site service vehicle driveway, ensuring that service vehicles can stay in the kerbside lane when exiting;
- A strategic design in accordance with the RMS CADD manual showing the extension of the concrete central median on Cary Street to physically prevent right turning vehicles from the driveway, and
- Sight lines from the driveway to pedestrians in accordance with AS2890.1.

Additional information was submitted including an updated traffic report and Sidra files on 28 August 2018, which was re-referred to the RMS. The RMS advised Council in writing, dated 14 September 2018, they maintain objection to the development for the following reasons:

- There is no service vehicle management plan.
- The demonstration of the left only service vehicle exit from the site is not shown. A plan is provided showing the truck travelling through the site, but the plan does not show the swept path of the vehicle entering Cary Street.
- There is no plan showing the requested extension of the concrete median on Cary Street.
- There is no plan or discussion relating to the sight lines from the driveway to Cary Street and pedestrians on the footpath.

- The Bay Street approach to the Cary Street TCS does not have two detectors as stated in the report.
- Modelling this intersection with Bay Street as one wide lane instead of the two narrow lanes, which is what occurs due to the lack of two detectors, yields a poor level of service in the AM and PM peak. The installation of the two separate lanes improves the operation of the intersection.
- Roads and Maritime consider the impact of the additional trips from this development on the Bay Street TCS results in the need for the intersection to be upgraded to two lanes on the Bay Street approach, with two detectors being provided. Roads and Maritime consider that this will require the widening of the Bay Street pavement. As the current width of the nature-strip fronting McDonalds is approximately 6.5 metres wide, it is unlikely that any property acquisition will be required for the works.

Supplementary traffic information was submitted directly to the RMS on 5 February 2019 and formally to Council on 18 July 2019. The application was re-referred back to the RMS who advised Council on 29 July 2019 of the following:

- **Service vehicle entry to Cary Street:** This median extension appears satisfactory, and a design in accordance the RMS CADD manual should be submitted to RMS via Council for review prior to determination.
- **Operation of Bay Street TCS:** The setback of the stop line in Bay Street to 10m is the maximum setback in accordance with the RMS Traffic Signal Design, section 6.2. However, this has identified that the SU / HRV truck and bus have issues with the left turn in. It is considered that HRV should be restricted from using this site, and that all vehicles to the site should be a maximum size of MRV. Whilst the layout has identified that HRV cannot successfully make the left turn both now and post upgrade, any additional HRV above that which already use Bay Street should be limited.

Bay Street at Cary Street will require the following upgrade works:

- Additional detectors located in both the approach lanes.
  - Extra pedestrian detection on the crossings, which can be added as part of the software upgrade required to add the extra detector in.
  - New TCS lantern posts at the relocated stop line.
  - Removal of existing line marking and provision of new line marking.
- The applicant should undertake discussions with Council and the school / school bus operator regarding any impact on the existing school bus stop opposite McDonalds, due to the proposed lane narrowing on Bay Street.
- Further design or modelling detail may be required prior to Council determining the matter.
- In principle, Roads and Maritime consider the proposed amendments could improve the intersection, and could be an acceptable option to mitigate the impact of the development on Bay Street, subject (but not limited to) the above amendments, Roads and Maritime and Council's satisfaction.



- **Driveway sight lines:** Whilst this is a matter for Council to review, the sight lines as demonstrated appear to comply with AS2890.1.
- **WAD:** Any amendments to the TCS at Bay Street, and the median extension on Cary Street will require a Works Authorisation Deed (WAD) to be entered into with Roads and Maritime.
- It is noted that the requested strategic design of the median is outstanding. It is considered the strategic design in accordance with the RMS CADD manual shall also be submitted for the Bay Street adjustments, and include evidence regarding discussions with Council, Toronto Public School and the school bus operator.

Comment: The applicant is of the opinion they have addressed all RMS issues. However, it is noted the requested strategic design of the median is outstanding and no evidence of discussions with Council, Toronto Public School or the school bus operator has been provided. Accordingly, it is the recommendation of this report that a deferred commencement condition be imposed requiring that the applicant submit additional traffic information to the satisfaction of the RMS. This will include the preparation of a Service and Loading Management Plan to co-ordinate the arrival and departure of service vehicles. It should be highlighted the TIS has indicated no loading and servicing operations will occur during school zone time given the proximity to Toronto Public School. This will be conditioned.

#### **State Environmental Planning Policy (Building Sustainability Index) 2004**

The development achieves compliance with the minimum requirements of BASIX and is therefore considered satisfactory. A standard condition is recommended to ensure BASIX commitments are fulfilled.

#### **State Environmental Planning Policy (Coastal Management) 2018**

This development application was lodged on 15 March 2018 prior to the commencement of SEPP (Coastal Management) 2018 on 3 April 2018.

Clause 21 of the Coastal Management SEPP states '*The former planning provisions continue to apply (and this Policy does not apply) to a development application lodged, but not finally determined, immediately before the commencement of this Policy in relation to land to which this Policy applies*'.

Former planning provisions include SEPP 14 (Coastal Wetlands), which is considered below:

#### **State Environmental Planning Policy No.14 (Coastal Wetlands)**

The subject site is located within 100 metres of SEPP 14 (Coastal Wetland) number 863.

The impact of the development in relation to Clause 7(2) of SEPP 14 is required as follows:

- (a) *the environmental effects of the proposed development, including the effect of the proposed development on:*
  - (i) *the growth of native plant communities,*
  - (ii) *the survival of native wildlife populations,*
  - (iii) *the provision and quality of habitats for both indigenous and migratory species,*

- (iv) *the surface and groundwater characteristics of the site on which the development is proposed to be carried out and of the surrounding area, including salinity and water quality,*
- (b) *whether adequate safeguards and rehabilitation measures have been, or will be, made to protect the environment,*
- (c) *whether carrying out the development would be consistent with the aim of this policy,*
- (d) *the objectives and major goals of the “National Conservation Strategy for Australia” (as set forth in the second edition of a paper prepared by the Commonwealth Department of Home Affairs and Environment for comment at the National Conference on Conservation held in June, 1983, and published in 1984 by the Australian Government Publishing Service) in so far as they relate to wetlands and the conservation of “living resources” generally, copies of which are deposited in the office of the Department,*
- (e) *whether consideration has been given to establish whether any feasible alternatives exist to the carrying out of the proposed development (either on other land or by other methods) and if so, the reasons given for choosing the proposed development,*
- (f) *any representations made by the Director of National Parks and Wildlife in relation to the development application, and*
- (g) *any wetlands surrounding the land to which the development application relates and appropriateness of imposing conditions requiring the carrying out of works to preserve or enhance the value of those surrounding wetlands.*

Accordingly, an Environmental Management Plan (EMP), prepared by Envirotech, dated November 2018 was submitted.

Council's Ecologist reviewed the submitted EMP and advised there is a high degree of uncertainty in the submitted report, and no quantitative information regarding depth, migration patterns and extent of groundwater table, or surface water quality. The report assumes any excess water generated from excavation pump out (which would flow into the SEPP 14 wetland via Council's drainage system) would overflow into nearby Stoney Creek, however based on contour mapping this would require a water level change of >1m for overflow to occur.

No assessment of potential indirect impacts to the SEPP 14 Wetland (such as changes to vegetation communities as a result of changes to water levels) have been undertaken.

The only proposed mitigation measure is installation of sediment fencing, which would not address any changes to water levels within the SEPP 14 Wetland as a result of the development.

Council's Ecologist has recommended that an addendum be provided to the EMP for monitoring potential impacts to the adjacent SEPP 14 - Coastal Wetland. The addendum shall be submitted to and approved by Council's Ecologist prior to issue of the first Construction Certificate. The addendum is to include monitoring of water levels / water quality during the construction phase of the development.

This condition is consistent with Clause 7(2) of SEPP 14 Coastal Wetlands factor (b) whether adequate safeguards and rehabilitation measures have been, or will be, made to protect the environment and (g) any wetlands surrounding the land to which the development application relates and appropriateness of imposing conditions requiring the carrying out of works to preserve or enhance the value of those surrounding wetlands.

### **State Environmental Planning Policy No. 55 – Remediation of Land**

The provisions of SEPP 55 require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. In particular, this Policy aims to promote the remediation of contaminated land for the purposes of reducing the risk of harm to human health or any other aspect of the environment. The subject site is not known to be contaminated and given previous residential uses, is considered suited to its intended purpose as a mixed use development.

### **State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development**

The NSW Government promotes better apartment design across NSW through the *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* (SEPP 65).

This policy aims to deliver a better living environment for the residents now choosing this form of housing, and enhance our streetscapes and our neighbourhoods across the State.

It does this by establishing a consistent approach to the design and assessment of apartments and the way they are assessed by Councils.

The Apartment Design Guide explains how to apply SEPP 65's design principles to the design of new apartments.

A concept meeting with the DRP was undertaken on 8 February 2017 followed by a further concept meeting on 10 May 2017.

Following lodgement of the development application, the DRP considered the proposal on 13 June 2018 (refer to Attachment E – Design Review Panel Endorsed Recommendations). Comments are included and discussed below:

#### **Panel comments**

*“This is the third iteration of this scheme reviewed by the Panel. The Panel is generally satisfied with the manner in which many of the issues raised previously by the Panel have been resolved.*

*However, there remain or have now arisen, certain aspects that the Panel considers require further attention before it is able to fully support the development.*

*Some of these issues have been brought to the Panel's attention by Council as a result of internal and external referrals of the DA. Key issues that may impact upon the overall layout and design of the scheme are whether Arnott Avenue requires widening and whether Hunter Water requirements will impact on parts of the development site.*

*The Panel has previously commented upon Arnott Avenue in terms of design issues, but we now understand that widening may also be required for traffic management reasons.*

*The Panel has no role to play in the resolution of either the traffic or the Hunter Water issues, and simply notes that the outcome of those issues could potentially have significant flow on effects to the overall design of the development, including separation distances between the buildings.*

*In relation to the current layout, the Panel is not satisfied that the relationship of the development to the adjoining McDonald's site to the north has been adequately justified.*

*It cannot be assumed that the current use of that site will remain in perpetuity. It is a large site with the same zoning and development controls (fronting Cary St) as applying to the subject site and must be considered as having potential to develop in accordance with those controls. Indeed, if the subject site is developed to a greater height than those controls specify, it can be expected that the McDonald's site would seek to use this as a precedent for development that may be appropriate for its own site.*

*The currently proposed buildings are set back approximately 3 metres from the northern boundary, with balconies encroaching to within 1.8 metres. This is significantly less than specified in the ADG.*

*On such a large site, the Panel sees no site-specific reason for setbacks not being consistent with the ADG.*

*It would be appropriate for the applicant to provide analysis to demonstrate how the McDonalds site may be developed in the form of at least a complying development under the current LEP controls, but also contemplating development applying similar principles to those proposed on the subject site. In particular, this should show how the ADG principles of building separation and privacy between future buildings on the two sites can be achieved. This will also demonstrate the appropriateness or otherwise of the proposed height of the western building within a potential future context.*

*Not only do the current setbacks potentially adversely affect the future development potential of the McDonalds site, they also impact on the internal design and amenity of the buildings on the subject site.*

*Whilst recognising the future redevelopment of the McDonald's site, further separation from the existing operational drive-through on that site is also likely to benefit the amenity of unit occupants on the subject site.*

*The Panel notes that internal corridors are very long (up to 50 metres in the eastern building), provide access to several more units than specified in the ADG and have insufficient access to natural light and ventilation relative to their length.*

*The Panel also notes that several units are marginally below the minimum areas specified in the ADG.*

*Again, for such a large and relatively unconstrained site, the Panel sees no reason why the development cannot achieve these guidelines and considers that increasing the setbacks from the northern boundary may benefit the design by reducing the overall length of the building. This may inevitably have some marginal impact on unit yields, but this will be offset by improved internal and external amenity.*

*It was unclear to the Panel whether deep soil areas on the site achieve ADG sizes and dimensions (relevant to a site significantly greater than 1,500m<sup>2</sup> as specified in the ADG) and this should be confirmed by the applicant. Given the context of this site, the Panel considers that a greater landscape setting is appropriate, rather than achieving bare minimums.*

*In conclusion, the Panel considers that it will be important in the first instance to confirm if the site will be affected by any widening of Arnott Avenue or Hunter Water requirements and assess the implications for the layout and design of the*

*development. Once this is established, the Panel would wish to review the outcome of the resulting design review (if any is necessary) and the design responses to the Panel's comments above".*

Comment: The applicant provided a detailed response to the Panels comments on 20 August 2018, which included a potential concept of the adjoining McDonalds site at 12 Bay Street, should it ever be redeveloped as a mixed-use development. The Chair of the DRP reviewed this response on 28 October 2018 as satisfactory noting:

*"In the light of the additional information, it is my opinion that the proposal does not unreasonably impact the future development potential of the adjacent site to the north.*

*Furthermore, the subject development will not be adversely impacted to a significant extent, by a reasonably compliant development on the adjacent site. The fact that bedroom windows are the only openings orientated in the northerly direction, and that these are screened, in my view justifies a reduction in the recommended ADG separations.*

*In respect to the corridor length and the number of apartments accessed from each corridor, I note that two lifts and two sets of stairs serve each corridor. While it would probably be possible to separate the corridors to achieve the ADG maximum recommended number of apartments, this would not provide any significant benefit to residents - but it would mean that residents would be dependent solely upon one lift, and may be inconvenienced if the lift were out of service. As the architect states, the corridors though long, do have access to light and ventilation, and are articulated with some small casual sitting areas near the windows that would be a positive inclusion. The relatively generous 1.6m width of corridors is also a positive, which partially offsets the length of the corridors".*

### **Apartment Design Guide (ADG)**

The ADG (Department of Planning and Environment 2015) provides tools for improving the design of residential apartment development. In summary and of relevance to this application are:

#### *Part 1 – Identifying the Context*

##### *1A – Apartment Building Types*

The development proposes shop top apartments with the ground floor occupied by commercial premises and residential above. This type of apartment is consistent with the zone objectives and intent of a B2 Local Centre providing for a mixed use development.

##### *1B - Local Character and context*

The issue of local character, context and desired future character has been fully explored under Clause 4.6 (Exceptions to development standards) in the LEP section of the report. Subject to the deletion of Level 6 from the Cary Street block, the development is considered contextually appropriate and supports the desired future character of Toronto.

##### *1C – Individual Sites*

The amalgamation of the nine sites that are contained within the B2 land zoning does not isolate land. The site is consistent with the provisions of the ADG in this regard.

#### *Part 2 – Developing the Controls*

As detailed under Clause 4.3 (Height of Buildings) and Clause 4.6 (Exceptions to development standards), the building's height is not consistent with the Height of Building



Map under LMLEP 2014, however subject to the deletion of Level 6 from the Cary Street block, it has been assessed as appropriate through a written submission.

No floor space ratio controls apply to Lake Macquarie City Council.

In regard to building separation, the ADG's require:

Up to four storeys (approx 12m):

- 12m between habitable rooms/balconies
- 9m between habitable and non-habitable rooms
- 6m between non-habitable rooms

Five to eight storeys (approx. 25m)

- 18m between habitable rooms/balconies
- 12m between habitable and non-habitable rooms
- 9m between non-habitable rooms

The podium level (Level 2), provides a minimum of 15.7m between balconies, which complies with the above control. This is increased to a minimum of 16m to 17.9m at Level 3. A minimum setback of 15.7m from balcony to balcony is provided between the Cary Street block and Arnott Avenue at Level 4 and 5. Level 5 therefore fails to comply with the above minimum separation control of 18m between balconies. However, compliance is achieved with the separation between habitable rooms and the DRP have raised no concerns.

Separation to McDonalds has been discussed above and is supported by the DRP.

It is important to note that Arnott Avenue is not wide enough to cater for a development of this size and scale. It is therefore the recommendation of this report by way of deferred commencement that the applicant submit a road widening plan to align with the adjoining McDonalds site to the north. The road widening will result in a reduced setback to Arnott Avenue (2m). Whilst an increased setback to Arnott Avenue is preferred, this would have in turn resulted in reduced separation between the Cary Street block and Arnott Avenue block, which is not supported. The reliance of trees on private land to achieve visual fragmentation was also not supported by Council's Landscape Architect. However, the road widening has enabled the provision of street trees along Arnott Avenue to help with visual mitigation. This is considered to outweigh the need for an increased setback to Arnott Avenue.

### *Part 3 – Siting the Development*

The applicant has submitted detailed site analysis and urban design analysis work.

A communal open terrace space is proposed on level 2 (1000m<sup>2</sup>) and a roof top garden with indoor / outdoor areas (300m<sup>2</sup>). This equates to 22% of the site area, which exceeds the 20% control.

In regard to deep soil zones, the design criteria requires a minimum dimension of 6m and 7% of the site as deep soil zone. The amended development scheme satisfies the minimum control of 7%. However, the recommendation for road widening will result in a reduction of deep soil to 5.3%. Given the necessity for road widening, which includes the provision of street trees and a public shared cycleway, this non-compliance is considered acceptable given the circumstances. Furthermore, the site benefits from the adjoining landscaped operational land and railway corridor, which provides a buffer to the site and contributes to the landscaped setting surrounding the site.

Orientation, public domain interface, vehicle and pedestrian access, and car and bicycle parking are all sited and designed in accordance with the ADG and are supported.

#### *Part 4 – Designing the Building*

Greater than 60% of apartments are naturally cross-ventilated and 70% of units will receive a minimum of three hours solar access during mid winter.

The DRP have supported apartment size and layouts.

The development achieves a high level of compliance with the amenity, configuration, and performance criteria of the ADG and is supported.

#### *Part 5 – Design review panels*

The development is supported by the DRP and is consistent with Part 5 of the ADG. A condition is recommended for imposition to ensure a design verification statement is submitted prior to the issue of the first construction certificate, confirming that the plans and specifications achieve or improve the design quality of the development in accordance with Schedule 1 of the SEPP 65.

### **State Environmental Planning Policy No.71 (Coastal Protection)**

As previously discussed, the development application was lodged on 15 March 2018 prior to the commencement of SEPP (Coastal Management) 2018 on 3 April 2018. Former planning provisions include SEPP 71 (Coastal Protection) considered below:

*“This Policy aims:*

- (a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and*
- (b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
- (c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
- (d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and*
- (e) to ensure that the visual amenity of the coast is protected, and*
- (f) to protect and preserve beach environments and beach amenity, and*
- (g) to protect and preserve native coastal vegetation, and*
- (h) to protect and preserve the marine environment of New South Wales, and*
- (i) to protect and preserve rock platforms, and*
- (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991 ), and*
- (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*
- (l) to encourage a strategic approach to coastal management.*

This application has been assessed having regard to the aims of the SEPP. In regard to (k) above, which aims to ensure the bulk and scale and height is appropriate to its location and protects the scenic quality of the surrounding area, subject to the imposition of conditions including the deletion of Level 6 from the Cary Street block and the inclusion of street trees within the Arnott Avenue road reserve to help mitigate the visual impact, the proposed development is considered to satisfy this objective and achieve the overall aims of the SEPP.

In addition, the application has been considered under the matters for consideration in Clause 8 of the SEPP and found to generally comply.

Furthermore, as the site is located within 100m of Lake Macquarie, the application was referred to the Department of Planning and Environment for comment under SEPP 71. The Department of Planning and Environment advised Council in writing, dated 27 March 2018, that the Department has no additional matters for Council to consider under Clause 8 of SEPP 71.

## **Lake Macquarie Local Environmental Plan (LMLEP) 2014**

### Clause 1.9A Suspension of covenants, agreements or instruments

The site is burdened by a Hunter Water pipeline easement across 2 Bath Street, which traverses the southern and eastern boundary of the site. This issue is discussed in detail under Clause 7.21 (Essential services) of the LEP.

### Clause 2.3 Zone objectives and Land Use Table

The development for the purposes of a mixed use development with commercial premises and a residential flat building is permissible within the B2 Local Centre zone subject to development consent.

The objectives of the B2 Local Centre zone are to:

*To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment: The proposed development is located within the Toronto Town Centre with good access to services including retail/commercial, health, community, and recreational. The proposed mixed use development provides for commercial and residential components that will serve the needs of people living, working and visiting the area.

*To encourage employment opportunities in accessible locations.*

Comment: Based on the estimated cost provided in the application, it is estimated that construction of the proposal will generate approximately \$81.1 million for the local, and regional economy. The construction activity will also generate 186 jobs. Furthermore, it is estimated the ongoing operation of the commercial floor space will employ approximately 80 persons, and generate a further \$37.2 million and 60 jobs for the economy on an annual basis. This will assist in reaching the City's employment containment targets.

*To maximise public transport patronage and encourage walking and cycling.*

Comment: The site is well located to optimise on existing facilities and public transport services, and thus supports less car dependency. The site links to an existing cycleway link to Fassifern, which is serviced by train.

*To create spaces that are accessible and are a central focus for the community.*

Comment: The development will create a highly accessible development within a central location for the community.

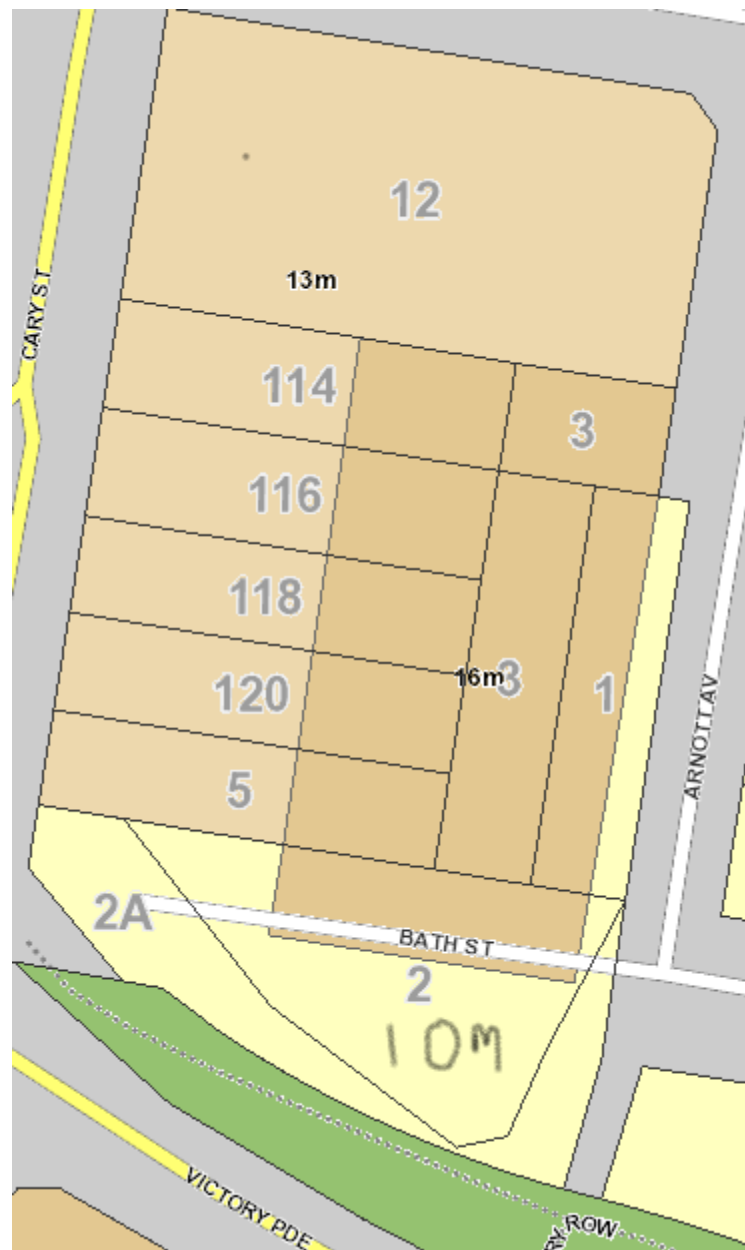
*To provide for housing as part of mixed use developments.*

Comment: The proposal offers a variety of unit types – likely to encourage and appeal to a wide range of demographic groups – and a range of housing needs, supporting an increase in housing choice as part of a mixed use development.

Clause 4.3 Height of buildings

The height of buildings maps (refer to Figure 6) identifies the following building heights for the site:

- 10m (to reserve);
- 13m (Cary Street); and
- 16m (Arnott Street).



**Figure 6 – Height of buildings map**

The development breaches the maximum building height controls (refer to Figure 7 below) as follows:

LMLEP 2014 height control	Proposed height	Percentage variation
10 metre to Council reserve	10.5m	5%
13 metres to Cary Street	20.6m to top of Level 6 23.6m to top of Level 7 (roof top terrace)	58.4% 81.5%
16 metres to Arnott Street	16.1m to Arnott Street 17.2m to rear of Arnott Street block	0.6% 7.5%

**Figure 7 – Proposed building height**

A clause 4.6 (Exceptions to development standards) has been submitted which is considered below.

#### Clause 4.6 Exceptions to development standards

Clause 4.6 (Exceptions to development standards) of LMLEP 2014 enables variations to development standards.

The objectives of Clause 4.6 of LMLEP 2014 are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6(2) of LMLEP 2014 enables development consent to be granted for development even though the development would contravene a development standard imposed by the LEP.

Clause 4.6(3) of LMLEP 2014 stipulates that 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:

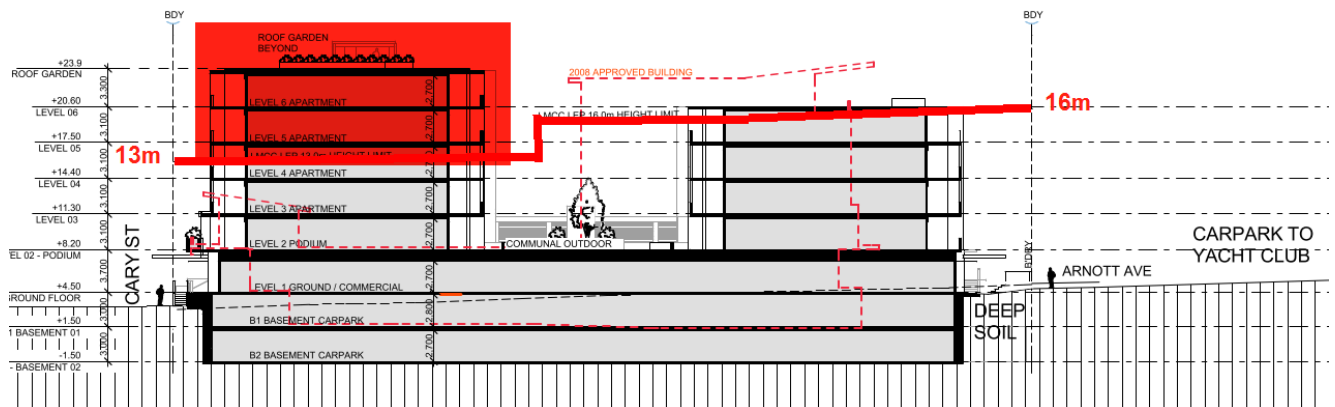
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

In regard to Clause 4.6(3) of LMLEP 2014, the applicant has submitted a revised Clause 4.6 variation (refer to Attachment F) seeking to vary the numerical height control shown in Figure 7 above.

Having regard to the Cary Street building block, the areas in breach are shown in red hatching of Section A (refer to Figure 8). As can be seen in Figure 8, the breach equates to 2.5 storeys to the top of Level 6 and 3.5 storeys to the top of the rooftop terrace.

The breach to the Arnott Avenue, as depicted by the red line in Figure 8 below, is considered minor and of little consequence.





**Figure 8 – Section A (West – East section)**

## NSW Land and Environment Court: Case Law (Tests)

Several key Land and Environment Court (NSW LEC) planning principles and judgements have refined the manner in which variations to development standards are required to be approached. The key findings and directions of each of these matters are outlined below.

The following section addresses the local provisions of Clause 4.6 of LMLEP 2014 together with principles of *Winten v North Sydney Council* as expanded by the five part test established by *Wehbe V Pittwater [2007] NSW LEC 827* and further refined by the judgement of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*. Most recently in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Al Maha Pty Ltd v Huajun Investments Pty Ltd (2018) NSWCA 245* and *SNL Building Construction Pty Ltd v Lake Macquarie City Council [2019] NSWLEC 1147* are considered.

### Winten V North Sydney Council

The decision of Justice Lloyd in *Winten v North Sydney Council* (referred to hereafter as Winten), originally established the basis on which the former Department of Planning and Infrastructure's Guidelines for varying development standards was formulated.

These principles for assessment and determination of applications to vary development standards are relevant and include:

- Is the planning control in question a development standard?

Comment: Yes the planning control in question is Clause 4.3 of LMLEP 2014. Clause 4.3 nominates a maximum height of buildings of 13m for the Cary Street frontage, 16m for the Arnott Avenue frontage and 10m for the Victory Parade frontage. The planning control specifies requirements or fixes standards in respect of the development and falls within the definition of a "development standard" such that it is capable of being varied under Clause 4.6 of LMLEP 2014.

- What is the underlying object or purpose of the standard;

Comment: The objectives of Clause 4.3 of LMLEP 2014 are:

- to ensure the height of buildings are appropriate for their location,*
- to permit building heights that encourage high quality urban form.*

In regard to (a) above and whether the proposed height is appropriate to its location, it is important to understand the site context and character of Toronto.

The site and locality has previously been detailed on page 7-8 of this report. The immediate existing character is complex with a number of built form and landscape elements combining to create the context (refer to Figure 9 below). Briefly, the context can be described as:

- immediately adjacent to the west is Cary Street – a busy arterial 4 lane road;
- beyond Cary Street to the west is retained bushland zoned E2 Environmental Conservation;
- immediately to the south are remnants of an old heritage listed railway corridor known as the Fassifern to Toronto Branch Railway Line. This forms part of the existing Greenway cycle link to Fassifern;
- to the south is Victory Parade (beyond a small parcel of publicly owned land, the former rail link land and pathway connection to the Greenway) a busy local road connecting with the Toronto Town Centre;
- immediately to the east is Arnott Avenue - a small residential street that provides access to the Toronto Royal Motor Yacht Club and public boat ramp. Arnott Avenue is characterised by rear detached garages with a mix of setbacks;
- the corner of Arnott Avenue and Bath Street forms an open car park servicing the Yacht Club;
- beyond Arnott Avenue to the east is the Yacht Club itself with direct waterfront access. Parts of the Yacht Club are heritage listed;
- immediately adjacent to the north is a McDonalds Restaurant on the corner of Cary, Bay and Arnott Avenue;
- immediately north of McDonalds across from Bay Street is Toronto Public School; and
- small grain and large grain blocks co-mingle with commercial, educational, recreational and heritage elements. The differing block sizes and zonings have allowed the past development of a visually complex landscape of differing built styles, height, bulk, scale, uses and landscape settings that have limited visual consistency.



Figure 9 - Comparative roof heights in the Toronto Town Centre

Still having regard to objective (a) and whether the proposed height is appropriate to its location, it is important to understand the planning controls underpinning Toronto.

Toronto is a major commercial centre on the western side of Lake Macquarie. Located on the Lake foreshore approximately 30 kilometres south of Newcastle, Toronto has evolved from an essentially tourism based past into a key local centre servicing adjoining residential areas.

Part 10 of The Toronto Town Centre Area Plan in DCP 2014 describes the existing character as:

*“The character of the town centre is defined by its close connection to Lake Macquarie, ready public access to the lake foreshore, generally low scale development and a treed backdrop.*

*The Town Centre is bounded by a significant ridgeline to the south, Cary Street (a busy collector road) to the west, by the lake to east and a residential heritage precinct to the north”.*

Built form character is described as:

*“The town centre contains a mixture of building styles dating from the 1890s to the present, ranging in height between one and three storeys.*

*Lots and building footprints on The Boulevard generally reflect the historic pattern of subdivision in the former Excelsior’s Estate, although there are few instances of significant lot consolidation. Buildings on The Boulevard address the street, are built to the street boundary, and have established street planting.*

*Cary Street features commercial and vehicle related uses that have various setbacks and little active frontage to the street boundary. Retail uses include McDonalds, car yards and service stations, RTA offices, a telephone exchange and the Toronto District Court House.*

*Prominent built forms within the Town Centre include the Toronto Hotel, Coles and Woolworths supermarkets, Council Library, the Court House, the Uniting Church and Anglican Churches. These buildings, due either to their recent construction or heritage value, are unlikely to change in the medium to long term”.*

The desired future character for Toronto is described as:

*“an active pedestrian-friendly centre that supports the economic and cultural activities of the local population, visitors and tourists. The Town Centre would be made more vital and pedestrian-friendly by the introduction of increased residential population and strategically located mixed-use development. Victory Parade would be further developed as a restaurant, café and tourist area with tourist and visitor accommodation”.*

Comment: The proposed mixed use development is considered to support the desired future character for Toronto.

The desired built form character is described as:

*“Development should be of appropriate height and scale to avoid undesirable impacts on the scenic quality of the township, especially as it is viewed from the lake. Future development should establish a high quality built form, especially along the waterfront.*

*Development within the B2 Zone core of the town centre should generally be of a low scale (two to three stories) perimeter block form built to the street boundary and side boundaries, to provide a continuous pedestrian strip.*

*Where it is possible without having an adverse impact on the visual or physical access to the lake, additional height on Victory Parade and the north side of The Boulevard should provide quality retail and office space, with residential and visitor accommodation on upper levels”.*

Comment: The proposed six story development to Cary Street with roof top terrace (effectively seven stores) is not consistent with the desired built form character described above at two to three stories in the B2 zone.

Part 10 of The Toronto Town Centre Area Plan in DCP 2014 provides several design cues for building height including:

- Scenic Quality Character: The Toronto Hotel and its Canary Island Date Palms are located on the bluff, which rises about 16 metres above the lake at Victory Parade. The hotel and bluff form the central landmark of the town.
- The spire of the Anglican Church at the corner of Cary Street and Brighton Avenue is also a distinctive landmark on higher ground to the southwest of the town core.
- The scale, height and form of future development should not detract from these scenic qualities or interrupt the identified vistas.
- 3.1 Scenic Quality objective (c) “to maintain and enhance the visual prominence of the Toronto Hotel and the bluff, as viewed from the lake foreshore and from the water”.
- 3.1 Scenic Quality control 2 “the height, scale and setback of development in the area bounded by Victory Parade, Cary Street and Brighton Avenue must be designed to protect the visual prominence of the Toronto Hotel and the spire of the Anglican Church”.
- 3.3 Town Centre Heritage Area objective (b) to maintain the visual prominence of the Toronto Hotel and the bluff, as viewed from the lake and the lake foreshore.
- 3.3 Town Centre Heritage Area control 2 “a development proposal on a site within the Town Heritage Area must maintain the visual prominence of the Toronto Hotel and the bluff as viewed from the lake and the lake foreshore”.
- 6.2 Building Height objective (a) to minimise the visual bulk of buildings in the town centre and maintain the visual prominence of the Toronto Hotel.
- 6.2 Building Height control 1 states the maximum number of storeys must comply with the Block Controls (refer to Figure 5 and 6 in DCP compliance table) which is 2 storeys to Cary Street with a 4.5m setback for the 3<sup>rd</sup> storey.

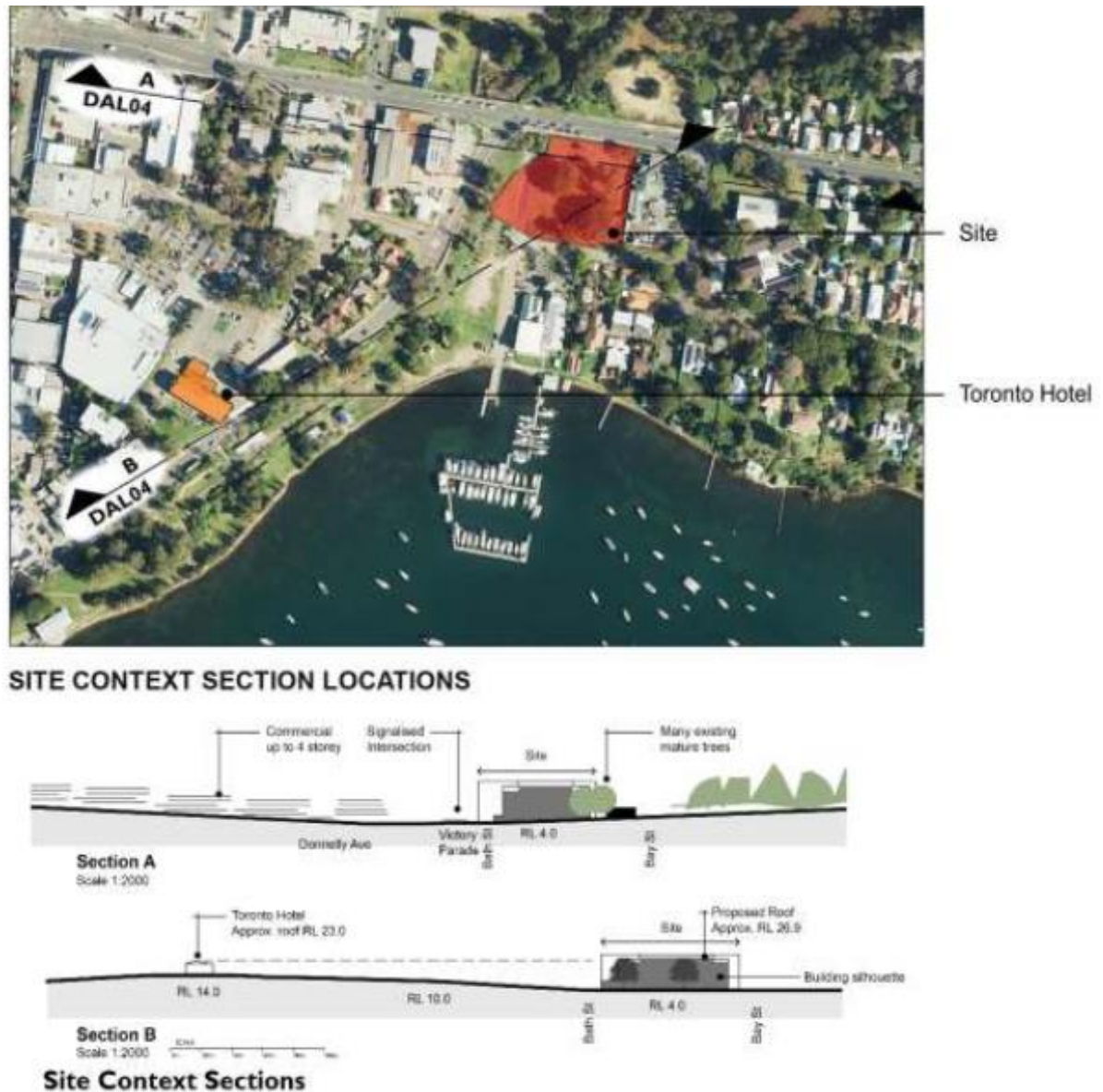
Comment: Having regard to the above Toronto Area Plan controls, the submitted VIA, prepared by Mansfield and dated 15 August 2018, indicates the proposal exceeds the height of the Toronto Hotel (refer to Figure 10 below), a benchmark control reiterated throughout the Toronto Area Plan.

It is considered the two buildings will be viewed comparatively within the broader Toronto townscape context, particularly lake based views. This breach ignores the stated outcomes of the Toronto Area Plan and necessitates a landscape response of tree planting along the south-eastern corner to visually mitigate comparative views and dominance of the proposal within the township context. The viability of the landscape



response given the location of overhead services and minimum deep soil zones is questionable.

The view from the Lake is only softened and minimised by the proposed landscaping, as shown in the elevation plans (refer to Figure 2-4). Council's Heritage Planner is concerned that should this landscaping fail, then the visual prominence of the Toronto Hotel could be compromised.



**Figure 10 – Site context location and sections**

Still having regard to objective (a) of the building height control and whether the proposed height is appropriate to its location, it is important to consider SEPP 65.

Schedule 1 of SEPP 65 provides a series of design principles to guide development of residential flat buildings, of which the following are of particular relevance:

**Principle 1: Context and neighbourhood character**

*Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.*

*Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.*

*Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.*

#### *Principle 2: Built form and scale*

*Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.*

*Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.*

*Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*

It is important to highlight that having regard to the above principles, at its meeting on 10 May 2017 (refer to Attachment E) the DRP stated:

*"The maximum height of the proposal, the western block fronting Cary Street, is of 7 storeys with a communal roof garden above. This contrasts quite markedly with the Town Centre Plan, which has the Cary Street-facing section of the site some 3 to 4 storeys lower in scale. This relationship, coupled with further consideration of the nearby heritage items, is considered to be potentially the most significant aspects of the proposal warranting further urban design attention.*

*The Panel was of the view that the consultants' arguments in support of a building of greater height facing Cary Street had merit, and potentially offered a better urban outcome than the previously approved low-scale development proposal, which was considered to be a rather understated response, and at a scale that did not fulfil the aim stated of the Town Centre Plan for the site to be a northern gateway site to the Toronto business area. Further, the suggestion that this site could readily "bookend" the recently completed Anglican Care seniors-living development located just under the ridge to the southern end of the township, was considered sound.*

*It was also agreed that it was preferable that the two residential blocks not be equal in height, and that a differentiation of one to two storeys was desirable, with the eastern, Arnott Street section of the site preferably being the lower.*

*While the eastern block's height is around one floor above that of the previous DA approval and was considered to be of a height potentially acceptable, the overall height of the western block was significantly higher than the controls. The building as proposed was considered to be moderately taller than the likely future context of the Toronto central area. From a first principles consideration of the site, the Panel formed the view that a building of five or possibly six levels above ground would be the maximum appropriate for the western part of the site. A roof garden above this level was considered to potentially be a positive provision that, if well detailed, need not further increase the apparent height of the building. This consideration of the Cary Street block's appropriate overall height was informed by a number of contextual considerations, one of the more significant of which was the canopy height of trees on the hill to the north of the site around Renwick Street, which was noted in the provided Site Sections. Other considerations informing this consideration included the topography of the area, the heritage Hotel above the waterfront to the site's south, other nearby heritage items, and the "gateway" Aged Care building on the southern entry to the business area.*

*The opening of the southern end of the development has successfully reduced the earlier visual bulk of the scheme, which now offers a more sympathetic background to the heritage area accommodating the former rail line, to the site's south.*

*The Panel noted that its consistent practice in respect to proposals that fall well outside some of the pertinent controls for a site, was to suggest the Applicant's seeking a change in the controls, or to otherwise broach the departure preemptively with Council. **The extent of the suggested departure from the height controls, though gaining qualified support from the Panel, was considered to be too extensive to permit a simple recommendation of any forthcoming DA, in spite of the proposal's merits**.*

*In summary, "The Panel noted the departure of the proposal from the controls, in particular, in regard to extent of non-compliance of the height of the western, Cary Street block. While it was agreed that a better urban design outcome could be achieved with a taller building on the Cary Street frontage than the controls permit, the illustrated building was one to two floors higher than the Panel considered desirable for the context. That said, the Panel also expressed concern as to the process by which Council might consider this (lesser) departure, and noted that the most straight forward approach might be for an amendment to the height control to be undertaken for the site. The Panel would support an amendment as described if this were determined the most appropriate way to proceed".*

Comment: In summary and based on advice from the DRP a planning proposal would seem the most appropriate mechanism to change the building height control not Clause 4.6.

Still considering whether the height is appropriate to its location, the submitted Clause 4.6 states the proposed development encapsulates the Anglican Care building, located at 18 Warhurst Avenue, Toronto at the southern end of the CBD which the proposal responds to, completing the town centre bookends" (refer to Figure 11-12 and photo 1 below). This argument is considered to have merit but having reviewed the approved development (DA/1058/2012) it has a maximum height of 18.5m (four storeys) at the north-west corner (refer to Figure 11 below). The proposed development therefore exceeds the Anglicare building by 5.1m and two storeys (excluding roof top terrace).



**Figure 11 – Street view of proposed development and Anglicare as viewed from 100m north of the development site**





**Figure 12 – Anglicare - Brighton Avenue streetscape elevation**



**Photo 1 - Anglicare as viewed from the northern corner of Brighton Avenue**

For the reasons discussed above, the proposed Cary Street block is not considered appropriate to its location. The significant numerical breach is questionable as the proposed building height is considered to overwhelm the public street and is not compatible with the scale of surrounding developments. Council has requested deletion of Level 6 from the development scheme however this level is maintained in the current proposal.

Following a detailed analysis of building height, Council considers a five storey development with roof top terrace on Cary Street a more contextually appropriate response to the site. Accordingly, it is the recommendation of this report by way of deferred commencement that Level 6 be deleted from the Cary Street block. This would result in the following height:

LMLEP control	2014 height	Recommended height	Percentage variation
13 metres to Cary Street		17.3m to top of Level 5 20.3m to top of Level 6 (roof top terrace)	33% 56%

**Figure 13 – Potential height subject to deletion of Level 6 from Cary Street**

Having regard to objective (b) of the building height standard to permit building heights that encourage high quality urban form, architecturally the development is considered to be of a high quality urban form.

In summary, subject to the deletion of Level 6 from the Cary Street block, the proposed development is considered to support the objectives of the building height development standard contained in Clause 4.3 of LMLEP 2014.

Winten test continued:

Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in Section 1.3 Objects of Act (previously s5) of the Environmental Planning and Assessment Act (the Act), 1979?

Comment: The objects in question set down in Section 1.3 of the Act are as follows:

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*
- (d) *to promote the delivery and maintenance of affordable housing,*
- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) *to promote good design and amenity of the built environment,*
- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) *to provide increased opportunity for community participation in environmental planning and assessment.*

As previously addressed in this report, subject to the deletion of Level 6 from the Cary Street block it is considered the proposed development achieves the objectives of the building height standard and the objects in question set down in Section 1.3 of the Act.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Comment: Subject to the deletion of Level 6 from the Cary Street block, compliance with the development standard is considered unreasonable and unnecessary for the reasons detailed above.

Is the objection well founded?

Comment: Subject to the deletion of Level 6 from the Cary Street block, the submitted Clause 4.6 Variation is considered well founded for the reasons discussed above.

### Wehbe V Pittwater [2007] NSW LEC 827

In assessing whether compliance with the standard is unreasonable or unnecessary, it is appropriate to apply the approach adopted by Preston CJ in *Wehbe v Pittwater Council [2007] NSWLEC 827*; (2007) 156 LGERA 446 (referred to hereafter as *Wehbe*) in which His Honour identified the five most frequently used pathways applied to establish whether compliance is unreasonable or unnecessary as follows:

Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives;

Comment: In summary, the development is considered to support the objectives of the B2 zone, which are broad based objectives (refer to Clause 2.3 (Zone objectives) in the LEP section of the report).

Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?

Comment: The underlying objective or purpose of the building height standard is relevant to the development. Therefore, this provision is not applicable.

Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;

Comment: No, the underlying objectives of the building height control would not be defeated or thwarted were compliance required.

Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that departs from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or

Comment: Council has not abandoned or destroyed the applicable building height development standard.

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.

Comment: The B2 Local Centre zoning of the site is considered contextually appropriate and this threshold is therefore not considered applicable.

### Four2Five Pty Ltd V Ashfield Council [2015] NSW LEC

In the matter of Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC, (referred to hereafter as Four2Five), initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under clause 4.6 to vary a development standard must go beyond the five part test of *Wehbe* and demonstrate the following:

Compliance with the particular requirements of clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of clause 4.6 the LEP as follows:

*(3) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment: This issue has been adequately discussed in Winten.

*(4) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment: In summary, the application has put forward the following environmental grounds to justify contravening the building height control of 13 metres:

The proposed development satisfies the zone objectives.

Comment: Council has established this in the Wehbe test.

At its meeting on 23 April 2018, Council resolved to progress concept development of a six storey development on adjoining land at 4 Bath Street and 1B Victory Row, Toronto. Council has confirmed sufficient environmental planning grounds.

Comment: The elected Council had previously resolved to develop a six storey mixed use development (Commercial, Tourist and Residential) at 4 Bath Street and 1B Victory Row, Toronto.

The sites are zoned B2 Local Centre and SP3 Tourist with respective building heights of 10 metres for 4 Bath Street and 6m for 1B Victory Parade.

With the proposed height exceeding the statutory height control, a planning proposal was been explored. However, Council recently adopted the following at its meeting on 23 September 2019:

- A. *Defers any further work on:*
  - i. *a planning proposal for land outlined in Attachment 1, and*
  - ii. *preparation for a mixed-use development on the Council-owned land at 4 Bath Street and 1B Victory Row, Toronto until a comprehensive review of Council's property portfolio is undertaken.*
- B. *Commences the process to reclassify the land identified in Attachment 2 from Operational to Community Land;*
- C. *Commences the process of investigating the reclassification of all or part of the Bath Street and Victory Row site to community land and consult with the community on future planning for that site.*
- D. *Extends the boundary of the Toronto Foreshore Master Plan to include land at 4 Bath Street and 1B Victory Row, Toronto;*
- E. *Continues to develop the Toronto Foreshore Master Plan (noting extended footprint), including further community engagement, conceptual design and detailed design for master planned work on Council's land at Toronto Foreshore;*
- F. *As part of the Foreshore Master Planning process with current consultant, or as required, undertake assessment of the best future use and design elements for land at 4 Bath Street and 1B Victory Row, in accordance with Lake Macquarie City Council's Sustainability Policy.*

The site is a gateway site to Toronto and increased height and density is justified.

Comment: There is planning merit to justify additional height on Cary Street. However, the amount of extra height is questionable as the proposed building height is considered to overwhelm the public street and is not compatible with the scale of surrounding developments. However, a five storey development with roof top terrace is considered more contextually appropriate and has planning merit. It is therefore the recommendation of this report that Level 6 be deleted from the Cary Street block.

The development is compatible with existing buildings including heritage.

Comment: The issue of compatibility has previously been discussed under Winten in the height of buildings objectives (a).

The height creates amenity on the site without an adverse impact on surrounding sites.



Comment: It is acknowledged that solar access, views and privacy are generally maintained.

Lastly, Four2Five requires consideration of the public interest as follows:

Is the Variation in the Public interest?

Comment: Under clause 4.6(5)(b) there must be consideration of the public benefit associated with maintaining the development standard. The application argues the development will be in the public's interest because it is consistent with zone objectives and building height objectives.

This has previously been addressed in the first of the applications reasons in relation to whether the development achieves the objectives of the building height standard (refer to Winten), and which it was concluded that subject to the deletion of Level 6 from the Cary Street block, it did satisfy both objectives.

Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118

The approach to determining a Clause 4.6 has been the subject of a recent judgment by Preston CJ in the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, (referred to hereafter as '*Initial Action*'), in which His Honour expanded on what he had previously described in *Randwick City Council v Micaul Holdings Ltd* (2016) 225 LGERA 94; [2016] NSWLEC 7 as the correct approach to assessing whether a Clause 4.6 is well founded.

His Honour said in *Initial Action* [at 13] that Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power in Clause 4.6(2) to grant development consent for development that contravenes a development standard.

He further stated [at 14] that:

*The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii).....*

*The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard.*

Finally, the Chief Justice said [at 15] that:

*The first opinion of satisfaction in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3).*

In addition, under Clause 4.6(4)(a)(ii) of LMLEP 2014, the consent authority must also be satisfied that:

*the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and with the objectives for the development within the zone in which the development is proposed to be carried out.*

Under Clause 4.6(3) of LMLEP, a consent authority must not grant consent unless the consent authority has considered a written request from the applicant seeking to justify the contravention of the development standard by demonstrating:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment: In assessing whether compliance with the standard is unreasonable or unnecessary, this has been established under *Winten* and *Wehbe* above.

- That there are sufficient environmental planning grounds to justify contravening the standard.

Comment: This specific issue has been discussed in Four2Five above.

#### Al Maha Pty Ltd v Huajun Investments Pty Ltd (2018) NSWCA 245

The New South Wales Court of Appeal recently clarified NSW LEC Commissioners' obligations in disposing of proceedings in accordance with the terms of a conciliated agreement between the parties.

Huajun Investments Pty Ltd commenced proceedings in Class 1 of the NSW LEC jurisdiction appealing against the City of Canada Bay Council's deemed refusal of a development application seeking consent for a residential flat building.

The NSW LEC disposed of the proceedings in accordance with this agreement pursuant to its power in Section 34(3) of the *Land and Environment Court Act 1979*.

Al Maha Pty Ltd, an adjoining land owner, commenced judicial review proceedings appealing against the decision of the Commissioner to make orders in accordance with the parties' agreement. Two important grounds of appeal related to the failure to satisfy certain judicial prerequisites to the exercise of the function of determining a development application in accordance with Section 34(3) of the Court Act, including:

1. The absence of consent of Al Maha to Huajun's development application to carry out part of the development on Al Maha's land;
2. The failure of the Commissioner to form the requisite opinions of satisfaction pursuant to Clause 4.6 of the LEP justifying the contravention of a development standard.

In regard to (2) above, the development application contravened the height of buildings development standard in Clause 4.3 of the LEP and a written request was made pursuant to Clause 4.6 of the LEP seeking the justify the contravention of the development standard.

The Commissioner's decision did not disclose any consideration of her satisfaction of the factors in Clause 4.6(4) of the LEP. The Court held that this supported an inference that the Commissioner had not formed the requisite opinions of satisfaction. This ground of review was therefore established and the Commissioner fell into jurisdictional error.

#### SNL Building Construction Pty Ltd v Lake Macquarie City Council [2019] NSWLEC 1147

In the most recent decision of SNL Building Construction Pty Ltd v Lake Macquarie City Council [2019] NSWLEC 1147, Commissioner Chilcott dismissed the appeal, refusing the development application for alterations and additions to an approved mixed use, shop top housing development (the approved development) through the provision of a fourth storey that would contain one single bedroom apartment and one three bedroom apartment (the proposed development).

The Commissioner held the Clause 4.6 request was deficient in demonstrating both that compliance with the development standard was unreasonable and unnecessary, and there not being sufficient environmental planning grounds to justify the contravention of the development standard.

#### **Clause 4.6 Threshold Test Summary**

In regard to clause 4.6(3)(a) of LMLEP 2014, it is considered that subject to the deletion of Level 6 from the Cary Street block, the application demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In regard to clause 4.6(3)(b) of LMLEP 2014, it is considered that subject to the deletion of Level 6 from the Cary Street block, the application reasonably argued there are sufficient environmental planning grounds to justify contravening the development standard.

The RPP can therefore use clause 4.6 of LMLEP 2014 as a mechanism to vary the development standard, as strict compliance with the control is considered unreasonable and unnecessary given the circumstances of the case.

In regard to clause 4.6(4) of LMLEP 2014, 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*

Comment: Council staff are satisfied the applicant's written request to vary the development standard has adequately addressed the matters required to be demonstrated by subclause (3). Refer to previous discussion above.

*(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*

Comment: The development generally satisfies the broad based zone objectives and subject to the deletion of Level 6 from the Cary Street block, generally satisfies the building height control objectives. Council staff are satisfied that subject to the deletion of Level 6 from the Cary Street block, the development will be in the public interest as the objectives of the building height control will be satisfied.

*(b) the concurrence of the Director-General has been obtained.*

Comment: Planning Circular PS 18-003, issued 21 February 2018, by the Department of Planning and Environment, states that Council may assume the Director-General's concurrence for certain exceptions to development standards. However, given the estimated cost of works exceeds \$30 million, the RPP are the determining authority.

In regards to Clause 4.6(7) of LMLEP 2014 and subject to a favourable determination by the RPP, Council will keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

#### **Clause 5.10 Heritage Conservation**

The objectives of this clause are as follows:

- To conserve the environmental heritage of Lake Macquarie City.
- To conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.
- To conserve archaeological sites.
- To conserve Aboriginal objects and Aboriginal places of heritage significance.

The site is not listed as a heritage item or located within a Heritage Conservation Area.

The site is adjacent to the Toronto Heritage Precinct.

The site is located within the vicinity of several heritage items listed under LMLEP 2014 (refer to Figure 14 below). These include:

- Heritage item 21 – Fassifern to Toronto Branch Railway Line;
- Heritage item 171 – Boatman's Cottage Lakefront; Boathouse and Winches Lakefront; and House;
- Heritage item 172 – Building Restaurant; and
- Heritage item 173 – Royal Motor Yacht Club Annexe.



**Figure 14 – Subject site shaded yellow and adjoining heritage items in ochre**

The submitted Heritage Impact Statement (HIS) by John Carr, dated 1 March 2018, concludes and recommends the following:

*“From a heritage aspect, the scheme has been assessed as having minimal effect on both the Heritage Precinct and the nearby individually listed heritage items based on the overall design, the modelling of the facades, the setback off the former railway corridor, the partial screening from existing and proposed landscaping. Additionally, the nearby items back onto the subject site and most have some form of building works providing a screen between the sites. These earlier buildings were specifically designed to address the waterfront with the western side as a service access and area for later garaging.*

*Due to the topography of the site, the proposed development sits low when viewed from the lake and blends in with the overall development on the waterfront, forming an effective backdrop. The former railway corridor will be largely preserved in its current visual format when either travelling east or west between Cary Street and the former railway station and platform.*

*The site has been referred to in previous DCP's as a "Gateway Site" to Toronto. The development of this site could also be considered in a similar manner as a gateway between the Toronto town centre and the Toronto heritage precinct. It provides a clear delineation on Cary Street between the commercial area and the residential area of the town.*

### **Recommendations**

*The inclusion of further colours, particularly at the lower levels would benefit the surrounding area. Reason - presently the overall scheme is a combination of white and grey to delineate recessed walls, whereas the surrounding area has a number of colours both in the building stock and the landscaping. Additional subtle colouring would help the structure blend further with its immediate surrounds. The proposed landscaping will also assist as it matures".*

Council's Heritage Planner has reviewed the development as acceptable subject to the preparation of an interpretation plan for the former railway. This will be included as a condition of consent. This also ensures consistency with previous recommendations under DA/1495/2005.

The proposed colour scheme has been amended to the satisfaction of Council's Heritage Planner.

#### **Clause 7.1 Acid sulfate soils**

The development site has been identified as "Class 5" within the Acid Sulphate Soils (ASS) Map, where although no ASS are expected within the site, works may have an effect on any ASS within the adjacent lots. Accordingly, Council's Senior Development Engineer has recommended prior to the issue of the first Construction Certificate or commencement of any works on site, an Acid Sulphate Management Plan shall be prepared and approved by the Certifying Authority for implementation for the proposed construction site.

#### **Clause 7.2 Earthworks**

The development includes significant earthworks in the order of 6m to facilitate two levels of basement car parking. The following has been considered as part of the assessment:

- (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

Drainage and soil stability has been considered as acceptable (refer to DCP section of the report).

- (b) *the effect of the development on the likely future use or redevelopment of the land,*

The excavation is to create a development expected to have a lifespan of at least 50 years. Any future development is likely to be an intensification of the existing, which may require further excavation.

- (c) *the quality of the fill or the soil to be excavated, or both,*

Geotechnical testing has been undertaken. Council's Erosion and Sediment Control Officer has recommended the imposition of appropriate conditions of consent, which will be included on any development consent issued.

- (d) *the effect of the development on the existing and likely amenity of adjoining properties,*

The amenity impacts on adjoining properties has been assessed as acceptable (Refer to assessment in the DCP 2014 section of the report). Given the amount of

excavation, a condition will be imposed to ensure the applicant is required to prepare a Dilapidation Report prior to excavation and post construction.

- (e) *the source of any fill material and the destination of any excavated material,*

Refer to (c) above.

- (f) *the likelihood of disturbing relics,*

The site is not known to have any likelihood of relics from European occupation. The land is not mapped as being part of the sensitive Aboriginal cultural landscape.

However, appropriate conditions are recommended for imposition to ensure should any Aboriginal relics or non-indigenous relics be discovered then all excavations or disturbance to the area shall cease immediately and the NSW Office of Environment and Heritage, shall be informed.

- (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

Water NSW has determined that the proposed excavation will encounter groundwater during the excavation process and is subject to a Water Supply Work Approval for dewatering during the construction phase and any ongoing extraction will require a Water Access Licence. Water NSW issued GTA's under Section 90(2) of the *Water Management Act 2000* on 16 November 2018. These conditions will be included on any development consent issued for the proposal.

- (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Conditions are recommended to address potential impacts from the proposed earthworks.

#### Clause 7.10 Residential development in certain business zones

The objectives of this clause are as follows:

- (a) *to ensure the commercial viability of centres is maintained and enhanced by discouraging stand alone residential development in certain business zones,*
- (b) *to provide for appropriate residential and tourist and visitor accommodation opportunities in a commercial environment,*
- (c) *to ensure that development is compatible with any townscape and urban design principles adopted in a development control plan.*

The development is for a mixed use development within the B2 Local Centre zone. This clause applies to land in the Zone B2 Local Centre zone (refer to sub-clause 7.10(2)).

Clause 7.10(4) stipulates that development consent must not be granted to development for the purposes of a residential flat building on land in Zone B2 Local Centre, unless it is part of a mixed use development in which most of the ground floor of the building facing the primary street has an active street frontage and the consent authority is satisfied that it is to be used for the purposes of commercial premises or a health services facility.

Active street frontage is defined as “a street frontage that enables direct visual and physical contact between the street and the interior of the building. Note: Clearly defined entrances, windows and shop fronts are elements of a building facade that contribute to an active street frontage”.

The development is considered to achieve an acceptable level of activation to Cary Street, Victory Parade and Arnott Avenue. The objectives of the Clause are satisfied.

#### Clause 7.21 Essential services

Clause 7.21 of the LMLEP 2014 stipulates that consent must not be granted for development unless the consent authority is satisfied adequate arrangements have been made for the provision of essential services.

In this regard, Hunter Water Corporation (HWC) stamped the plans on 8 February 2018 stating water and sewer connection is available. However, the HWC Notice of Formal Requirements, dated 1 March 2018, states the development is not supported in its current layout as it contains permanent structures located directly over a Hunter Water easement for pipeline, which traverses the southern and eastern boundary of the site.

Furthermore, all buildings, structures, landscaping and improvements to the land, which are located adjacent to these mains must not impose any loading nor interfere with or obstruct the mains in conveying flows.

Accordingly, the applicant was requested to either:

- reconfigure the development such that the building footprint is located clear of the above-mentioned easements; or
- relocate the mains clear of the building footprint in an approved location as detailed in Conditions 4 and 5 of the Notice of Formal Requirements.

Should the latter occur, HWC have identified that mains relocation be undertaken across land including 2a Bath St (Council Operational Land). This will require owners consent from Council, which to date, has not been provided.

The application advises that deWitt Consulting have been liaising with HWC and Council to resolve design issues. As this issue remains outstanding, it is the recommendation of this report by way of deferred commencement that the applicant shall gain approval to relocate the Hunter Water easement for pipeline clear of the building footprint in an approved location to the satisfaction of Hunter Water. This location shall not impede upon Council's operational land at 2A Bath Street, Toronto.

Electricity supply is available to the development. Furthermore, the application was referred to Ausgrid, who raised no objection to the development.

An amended Stormwater Plan has been submitted to the satisfaction of Council's Senior Development Engineer (refer to Section 2.7 (Stormwater Management) in the DCP section of the report). However, Council, as land owner, objected to the proposed location across Council's adjoining operational land at 2A Bath Street. Accordingly, it is the recommendation of this report by way of deferred commencement that a revised Stormwater Management Plan be submitted that either:

- relocates infrastructure from impeding upon Council's Operational Land at 2A Bath Street; or alternatively
- the placement of the proposed infrastructure on 2A Bath Street, will need to be formalised by an easement subject to agreement being reached as to the location/positioning of the infrastructure on Council land.

In regard to suitable vehicular access, ingress and egress is proposed via Arnott Avenue with servicing truck egress only onto Cary Street. The RMS have provided their support. However, Council's Traffic Engineer and Development Engineer have strongly maintained since pre-lodgement discussions that Arnott Avenue is not wide enough to cater for a development of this size and scale. It is therefore the recommendation of this report by way

of deferred commencement that a road widening plan to align with the adjoining McDonalds site to the north be submitted. In this regard the road reserve width shall be 16m wide with a carriage way width of 8m and road verge of 4.5m on the side fronting the development and 3.5m on the eastern side.

In summary, subject to the imposition of deferred commencement conditions dealing with the HWC issue, stormwater and road widening of Arnott Avenue, Council staff are satisfied adequate arrangements can be made for essential infrastructure.

#### **Section 4.15 (1) (a) (ii) the provisions of any draft EPI**

The following draft environmental planning instruments are also relevant to this development:

##### **Draft SEPP Coastal Management**

As discussed under SEPP 14 and SEPP 71, the application was lodged prior to gazettal of SEPP (Coastal Management) 2018 on 3 April 2018. The Draft Coastal Management SEPP therefore applies to the subject site and is considered below:

The development site is mapped as a Coastal Environment Area, Coastal Use Area and Coastal Wetland buffer under the Draft Coastal Management SEPP.

Division 1 of the Draft Coastal Management SEPP outlines factors to be considered for development on land within coastal wetlands, whilst Division 3 outlines factors to be considered for development on land in the coastal environment area and Division 4 relates to coastal uses area.

As previously discussed under SEPP 14 – Coastal Wetland, Council's Ecologist has recommended a monitoring system be established within the adjacent wetland for water levels during the construction phase of the development.

Subject to the above, Council are satisfied the draft requirements of SEPP Coastal Management are met.

##### **Draft SEPP Environment**

The draft SEPP Environment was exhibited from 31 October 2017 to 31 January 2018. The proposed new SEPP relates to the protection and management of the natural environment, with a particular focus on water catchments, urban bushland and Waterways.

With regard to water catchments, Lake Macquarie City Council is not included in Sydney Water Drinking Catchment and therefore the draft provisions do not apply.

The development site is mapped as part of the 'Urban Bushland Land Application Map' under the draft SEPP (note, Lake Macquarie City Council is currently an area to which SEPP 19 applies). The site does not meet the provisions for 'land zoned or reserved for public open space' under SEPP 19 nor does it meet the new 'public bushland' term under the draft SEPP.

For Waterways, the provisions of the draft SEPP mainly apply to Sydney Harbour and Canal Estates. These provisions have no implications for the proposal based on what it is or do not apply to the Lake Macquarie City Council area.

##### **Draft SEPP Remediation of Land**

The draft SEPP Remediation of Land was exhibited from 31 January 2018 to 13 April 2018. The proposed new land remediation SEPP will provide a state-wide planning framework for the remediation of land, maintain the objectives and reinforce those aspects of the existing framework, require planning authorities to consider potential for land to be contaminated when determining development applications, clearly list the remediation works that require



development consent and introduce certification and operational requirements for remediation works that can be undertaken without development consent.

A draft instrument is not available for review and therefore the development cannot be assessed against its provisions.

#### **Section 4.15 (1) (a) (iii) DCP's**

#### **Lake Macquarie Development Control Plan (DCP) 2014**

##### Part 4 – Development in Business Zones

##### 1.3 Aims for Development in Business Zones

The aims of DCP 2014 for development in business zones are:

- “1. To support the business centres hierarchy contained in the Lifestyle 2030 Strategy.*
- 2. To support retail, business, entertainment and community uses that contribute to safe and vibrant places for people who live in, work in and visit the centre.*
- 3. To provide for appropriate employment opportunities in accessible locations, and for housing within mixed use developments.*
- 4. To maximise public transport patronage and encourage walking and cycling.*
- 5. To make efficient use of land through the amalgamation of existing lots to facilitate higher yields and good built form, and to avoid unnecessary isolation of lots.*
- 6. To encourage Ecologically Sustainable Design principles to reduce energy and water consumption”.*

Comment: The development is considered to generally support the aims of the business zone (refer to zone objectives discussion in the LEP section of the report).

##### 1.5 B2 Local Centres

The B2 Local Centre Zone is intended to provide a range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local community.

Preferred land uses are retail premises, business premises, and food and drink premises with office premises at street level, tourist accommodation or apartments above.

The development satisfies the preferred land use.

As the future users of the ground floor commercial tenancies are unknown (i.e. first use, internal fitout, signage, hours of operation etc) a condition of consent is recommended for imposition requiring a separate approval.

##### 2.1 Site Analysis

Development should demonstrate an understanding of the site and context and provide good site planning, built form and landscaping outcomes. A site analysis plan is required to be submitted to inform the design of the proposed development.

The submitted Site Analysis Plan is considered acceptable for DA purposes.

## 2.2 Scenic Values

The site is located within the Scenic Management Zone 5. Figure 15 summaries the existing and desired character of the Toronto area and the scenic management guidelines.

Applies to Landscape Settings: Belmont Bay, Warners Bay, Toronto	
Existing character	Scenic management guidelines
<p>High level of urban development present, including commercial uses.</p> <p>Located along lake foreshore with viewpoints across lake, with lake shoreline mostly built upon or in formalised public reserves.</p> <p>Limited vegetation, with the built form dominant.</p> <p>The character displays signs of an emerging increase in development densities in some locations.</p> <p><b>Desired future character</b></p> <p>The intent for these areas is to encourage development appropriate for town centres. This includes compact, higher density development with a mix of retail, business and residential uses.</p> <p>These centres should have active street frontages, a pleasant atmosphere for pedestrians and attractive streets.</p> <p>The character of buildings and the surrounding landscape should reflect the lakeside location and the popularity of these areas as social and recreational destinations.</p> <p>Physical and visual connections to the lake are important and should be preserved and enhanced.</p>	<p>Any development within these areas is to satisfy the following guidelines:</p> <ul style="list-style-type: none"> <li>• view corridors to the lake and western ranges along streets, within public reserves and from town centres are retained and enhanced where possible;</li> <li>• new and increased recreational activities within public reserves may be suitable, yet should aim to preserve and improve important natural features and public access;</li> <li>• car parks should be sited and designed to not dominate views from public areas, the lake or from within public reserves;</li> <li>• opportunities to increase public access to the lake are identified and implemented;</li> <li>• opportunities to improve the aesthetics of popular lakeside drives, cycleways and pedestrian pathways should be identified and implemented;</li> <li>• any proposed commercial/industrial development along main roads and near lake edge, in particular, should be treated with non-garish (i.e. overly bright) colours, limit overwhelming signage and increase amenity through appropriate landscaping;</li> <li>• buildings are of a scale that does not dominate views from the lake nor breach the tree-line of surrounding ridgelines;</li> <li>• any buildings of three storeys or more to be partially screened (approximately 30 - 50%) when viewed from the lake, within 5 years;</li> <li>• for commercial and industrial buildings provide for trees in the front setback and/or footpath area. Where the area is covered by an adopted Town Centre Area Plan and/or Streetscape Master Plan street trees and trees in front set-backs should be provide in accordance with that plan; and</li> <li>• create attractive pedestrian and vehicular thoroughfares and entry points to the town centre.</li> </ul>

**Figure 15 – Scenic Management Zone 5 (Lake Surround – High Settlement)**

Following a preliminary assessment, a VIA was requested in accordance with Council's Scenic Management Guidelines.

Council's Landscape Architect initially reviewed the submitted VIA by Mansfield, dated 15 August 2018, raising visual impact concerns.

Accordingly, additional information was submitted on 18 July 2019 addressing concerns. Council's Landscape Architect has reviewed this response and recommended the following:

- Condition underground overhead electricity wires along Arnott Avenue.

Comment: This is recommended for imposition to ensure the success of street trees is not compromised in Arnott Avenue.

- Tree planting in the southern corner of the site is supported. Tree planting within private land along the Arnott Street frontage is supported however the reliance on trees on private land to achieve visual fragmentation is not considered an adequate response to visual impact issues. Provision of street trees along Arnott Avenue is also recommended as per the Toronto Streetscape Master Plan. Recommendation: condition tree planting along Arnott Avenue.

Comment: As discussed under Clause 7.21 (Essential services) of LMLEP 2014, Arnott Avenue is not wide enough to cater for a development of this size and scale. It is therefore the recommendation of this report that a road widening plan be submitted to align with the McDonalds site. In this regard the road reserve width shall be 16m wide with a carriage way width of 8m and road verge of 4.5m on the side fronting the development and 3.5m on the other side. This will enable the opportunity for street trees to be planted with a minimum of six x 100 litre *Banksia integrifolia* planted within the Arnott Avenue road reserve. There shall be a minimum of three 75 litre *Flindersia australis* planted within the Cary Street road reserve. This will help to achieve visual fragmentation of the building and break up the bulk and scale.

- The commentary by the heritage consultant regarding colour palette appears to focus on proximity to heritage items and this is supported, however the issue of use of bright colours in relation to visual impact remains unaddressed. Recommendation: condition the use of bright light colours.

Comment: A condition is recommended for imposition to address this concern. Furthermore, to ensure excessive glare or reflectivity nuisance from glazing and roofing materials does not occur as a result of the development, an appropriate condition is recommended for imposition.

### 2.3 Geotechnical

The site is zoned T5 on Council's geotechnical maps.

A geotechnical assessment, prepared by JK Geotechnics Report, dated 13 October 2016, has been submitted and reviewed by Council's Senior Development Engineer as acceptable.

A condition of consent is recommended to ensure the recommendations of the report are implemented.

### 2.4 Cut and Fill

The development includes significant cut to facilitate two levels of basement car parking (refer to Clause 7.2 (Earthworks) in the LEP section of the report).

## 2.5 Mine Subsidence

The site is located within a mine subsidence district.

Accordingly, the applicant sought and obtained the approval of Subsidence Advisory NSW (SA NSW) prior to lodgement of the application. SA NSW provided their General Terms of Approval on 4 May 2018, which will be included on any consent issued.

## 2.8 Stormwater Management

Council's Senior Development Engineer has reviewed the submitted Stormwater Management Plan by Northrop Consulting Engineers, which incorporates detention, water harvesting, water quality facilities and site discharge index requirements as adequate for DA purposes.

However, Council, as the land owner of 2A Bath Street, objected to the proposed location across Council's adjoining operational land at 2A Bath Street. Accordingly, it is the recommendation of this report by way of deferred commencement that a revised Stormwater Management Plan be submitted that either:

- a. Relocates infrastructure from impeding upon Council's Operational Land at 2A Bath Street; or
- b. The placement of the proposed infrastructure on 2A Bath Street be formalised by an easement subject to agreement being reached as to the location/positioning of the infrastructure on Council land.

## 2.11 Natural Water Systems

The development is located within the vicinity of Lake Macquarie and adjacent to wetlands, which are considered a natural water body. This issue has been adequately discussed under SEPP 14 (Coastal Wetlands), SEPP 71 – Coastal Protection and Draft SEPP (Coastal Management) 2018.

## 2.12 Bushfire

A small section of the site is mapped as bushfire prone land – Vegetation buffer (refer to Figure 16 below), due to the forested wetland to the west (33m).

The development is not captured under special fire protection purpose and does not include a subdivision. However, as the development includes an alternate solution, the application was referred to the NSW Rural Fire Service (RFS) for comment.



### 2.13 Flora and Fauna

This issue has been adequately discussed under SEPP 14 (Coastal Wetland).

### 2.14 Preservation of Trees and Vegetation

Council's Tree Officer has reviewed the development including tree removal and advised most trees internal to site are not suitable for retention as singular specimens. Other smaller scale trees are located centrally to site where retention will pose significant restrictions on development. No objection is raised to proposed tree removal.

### 2.15 European Heritage and 2.16 Aboriginal Heritage

These issues have been adequately discussed under Clause 5.10 (Heritage Conservation) in the LEP section of the report.

### 2.18 Social Impact

A Social Impact Assessment has been submitted within the submitted Statement of Environmental Effects (SOEE). Council's Social Planner has reviewed this information as acceptable noting the proposal is located within a town centre, with good access to services including retail/commercial, health, community, and recreational. The proposal also includes a good mix of unit types to encourage and appeal to a wide range of demographic groups. The proposal provides adequate open/communal space to cater for the residents, including space at the podium level, as well as a roof-top terrace/garden.

### 2.19 Economic Impact

An Economic Impact Assessment (EIA) has been submitted. Council's Integrated Planning Department have reviewed the EIA and support the development. The proposal is consistent with the economic objectives with Lifestyle 2030, and the community's Vision and Values.

Based on the estimated cost provided in the application, it is estimated that construction of the proposal will generate approximately \$81.1 million for the local, and regional economy. The construction activity will also generate 186 jobs (refer to below figures).

<b>Impact Summary</b>	<b>Direct Effect</b>	<b>Supply-Chain Effect</b>	<b>Consumption Effect</b>	<b>Total Effect</b>
Output (\$M)	\$36.531	\$34.569	\$10.036	\$81.136
Employment (Jobs)	59	90	37	186
Wages and Salaries (\$M)	\$4.220	\$7.297	\$2.425	\$13.943
Value-added (\$M)	\$9.068	\$12.512	\$5.734	\$27.314

#### **Figure 18 – Economic projections**

Furthermore, it is estimated that the ongoing operation of the commercial floor space will employ approximately 80 persons, and generate a further \$37.2 million and 60 jobs for the economy on an annual basis. This will assist in reaching the City's employment containment targets.

### 2.20 Lot Amalgamation

The development does not result in an isolated allotment of land. The adjoining McDonalds site to the north at 12 Bay Street is of sufficient size to be redeveloped as a stand-alone mixed use development in the future (refer to SEPP 65 discussion).

The nine lots making up the parcel of land will be required to be amalgamated as a condition of consent.

### 2.21 Utility Infrastructure

Refer to Clause 7.21 (Essential services) in the LEP section of the report.

With the exception of lift over run, the submitted roof plan does not show any plant or equipment. A suitable condition is therefore recommended for imposition to ensure no plant and equipment is located on the roof.

A condition is also recommended for imposition to ensure screening shall be provided to any services (such as air conditioning, hot water system, etc) required to be installed on balconies. Screening shall be provided to ensure the services are not visible to the street.

### 2.22 Sites Where A Concept Plan Is Required

This section requires that where a development is proposed on a site that exceeds 4000m<sup>2</sup>, a comprehensive urban design analysis is required to be prepared.

A detailed urban design analysis of the site and its urban context, which was considered on two occasions by the DRP prior to formal lodgement of the development application thus satisfying this control.

## 3.4 Streetscape Improvements

This section aims to provide high quality infrastructure, enhance the amenity of the street for pedestrians, develop the character of each town centre character and provide opportunities for public art.

The Streetscape Master Plan - Street Type D requires that a footpath greater than 2m wide is required. Given the close proximity to Toronto Public School and the Toronto Town Centre, the development will attract a significant pedestrian and cyclist traffic and connect to an existing shared pathway. Accordingly, it is the recommendation of this report that a 2.5m – 3m shared pathway be provided along Arnott Avenue.

Council's Landscape Architect has recommended the inclusion of street trees within Cary Street, Arnott Avenue and the adjoining reserve, which will enhance the amenity of the street.

## 3.5 Non-Discriminatory Access

An Access Report has been submitted with the application. The report identifies all requirements of the applicable Australian Standards are achievable with the development and specific details can be resolved at Construction Certificate stage.

Council's Ageing and Disability Services Officer has reviewed the report as acceptable and supports the recommendations. Accordingly, a condition is recommended for imposition to ensure the recommendations shall be incorporated into the design and construction of the development.

### 3.6 Lighting

Subject to approval, a condition will be imposed to ensure any lighting shall be installed to ensure minimal glare and light spill onto adjoining properties or roadworks and compliance with relevant Australian Standards.

### 4.2 Ground Floor Levels

The primary intent of the control is to achieve an active street frontage. This issue has been adequately discussed under Clause 7.10 (Residential development in certain business zones) of LMLEP 2014.

One of the primary objectives is to provide non-discriminatory access between the footpath and ground floor level. Whilst the design of the ground floor level is elevated above Cary Street, disabled access has been achieved through the provision of ramps. This has been softened with landscaping. The applicants design rationale was to elevate the commercial tenancies from the hostile, arterial road environment on Cary Street, whilst still providing an active street frontage. The design still achieves a line of sight between the footpath and ground floor space and no major concern is raised.

### 4.3 Ground Floor Entries

The intent of the control is to ensure that entries are located on the street frontage and are clearly recognisable and easily accessible for all users.

With frontage to Cary Street, Arnott Avenue and Victory Parade, the design has facilitated clearly recognisable access and activation. The ground floor apartment foyers provide a sense of address.

Signage does not form part of the application. Accordingly, a condition will be imposed to ensure development consent shall be obtained from Council prior to the erection of any advertising structures or signs on the site.

### 4.4 Ground Floor Glazing

The development achieves visual connection between Cary Street, Arnott Avenue and Victory Parade with clear glazed windows below awning level. This equates for greater than 50% of the façade area on the primary street frontages.

### 4.5 Street Awnings

The intent of the control is to provide shelter and shade for pedestrians and footpath activity in pedestrian priority areas and to create a consistent pedestrian scale and space.

Whilst the development does not provide a continuous awning for the full extent of the building frontage, the design has provided awnings over the main entrances into the building and over the potential outdoor dining area on Victory Parade. This is considered an acceptable design response.

### 5.1 Traffic and Vehicle Access

Refer to RMS comments under SEPP Infrastructure.

The applicant has submitted a Traffic Impact Statement (TIS).

The traffic generation of the site has been estimated at some 147 trips in the AM and 227 trips in the PM peak hours respectively. This level of traffic generation has been assessed to have no noticeable impact on the surrounding road network.



Council has reviewed the trip generation rates used in the TIS and concur they are appropriate for the development.

Control 2 stipulates that vehicle access to on-site car parking or service areas must not be located on the primary street frontage if access can be gained from a secondary street. Ingress and egress is proposed via Arnott Avenue, with commercial servicing egress onto Cary Street, which the RMS have supported.

Council's Traffic Engineer and Development Engineer have strongly maintained since preliminary discussions that Arnott Avenue is not wide enough to cater for a development of this size and scale. Arnott Avenue is narrow and was designed for a low traffic volume environment. It is therefore the recommendation of this report by way of deferred commencement that a road widening plan be submitted to align with the adjoining McDonalds site to the north. In this regard the road reserve width shall be 16m wide with a carriage way width of 8m and road verge of 4.5m on the side fronting the development and 3.5m on the other side.

Existing redundant laybacks will require removal with kerb and guttering replacement to Council's standards.

Pedestrian and cyclist infrastructure will be required for both street frontages as defined in the Toronto streetscape master plan. The road widening plan will be required to cater for a 2.5m – 3m wide shared pathway.

The site is approximately 100m walking distance from two bus stops which provide access to existing bus routes 274, 269, and 270 provided by Hunter Valley Buses. Route 274 runs in loop service from a stop on Bay Street through to Coal Point. Routes 268 and 270 run along Cary Street and provide access through Charlestown and the University of Newcastle respectively. The nearest train station is in Fassifern approximately 4.9 km from the subject site and can be reached on the 271 bus service.

## 5.2 Design of Parking and Service Areas

Council's Senior Development Engineer has reviewed the revised car parking plan as acceptable.

In regard to servicing and as detailed in the SEPP (Infrastructure) section of the report, the use of the service lane onto Cary Street has been supported by RMS. However, it is recommended a Servicing and Loading Management Plan be prepared to co-ordinate the arrival and departure time of service vehicles be prepared. The Plan shall include the following:

- no loading and servicing operations shall occur during school zone times;
- details on how access will be restricted to service vehicles only;
- heavy Rigid Vehicles (HRV) shall be restricted from using this site;
- all vehicles will be limited to a maximum size of Medium Rigid (MR); and
- no waste collection or servicing including deliveries, loading or unloading shall occur between the hours of 8pm and 7am, Monday to Saturday, and 8pm and 8am, Sunday and Public Holidays.

Council's Senior Development Engineer supports the above condition.

To ensure the storage area located within Basement Level 2 does not impede upon the road widening area, a condition is recommended.

### 5.3 Bike Parking and Facilities

The intent of the control is to provide convenient and safe bike access, movement and parking and encourage active forms of transport with convenient and secure end of trip facilities. The amount of bike storage (17 in total) basement level 1 and end of trip facilities is considered adequate. A condition will be imposed to ensure the installation and dimensions of the bicycle parking/storage shall be in accordance with the Austroads *Cycling Aspects of Austroads Guides* and *Australian Standard AS2890.3:1993*.

### 5.4 Motor Bike Parking

Development must provide one motorbike parking space for each 20 car parking spaces. A total of 15 motor bike spaces has been provided which is compliant.

### 5.5 Car Parking Rates

Based on the development scheme, the vehicle parking provision is detailed below (refer to Figure 19):

Note:

- basement level 1 is designated to commercial / visitor spaces;
- basement level 2 is designated to residential;
- the TIA details proposed dual use sharing of visitor spaces and commercial spaces on basement level 1;
- as the future uses of the commercial tenancies are unknown, the parking requirement for shops / restaurants has been utilised at the higher rate; and
- 'amenities' and 'storage space' are not included when calculating GFA for car parking purposes. However, given that the end users are not known at this stage, these areas have not been shown on the plans. The below table estimates the worst case scenario.

<b>Development type</b>	<b>Number of units</b>	<b>DCP 2014 rate</b>	<b>Spaces required</b>	<b>Spaces provided</b>	<b>Compliance</b>
1 bedroom	25 units	0.5	12.5	25	Yes
2 bedroom	78 units	0.75	58.5	78	Yes
3 bedroom	21 units	1	21	42	Yes
Residential visitor spaces	124 units in total  If Level 6 deleted 112 units	0.25 per unit	31  28	24 (dual use)	No
<b>Residential total</b>			123	143 spaces on basement level 2	Yes
Shops / restaurants	2865m <sup>2</sup> GFA	1 space per 25m <sup>2</sup>	115	101  125 if you include dual	No

Business office		1 space per 40m <sup>2</sup>		use visitor)	Yes
Disability parking rate		1 space per 50 spaces	6	4 commercial 13 residential	Yes

**Figure 19 – Car parking calculations**

Council's Traffic Engineer has reviewed the proposed dual use visitor / commercial car parking and advised the following

- Based on the TIA outputs, 24 of the 123 (19%) would be dual use.
- It is difficult to quantify the off set of peaks between the commercial / retail demand versus the visitor parking as visitor demand may coincide with peak demand at the café / restaurant, however for office uses some offset could be expected.
- Referring back to the DCP car parking rates, the higher rate of 1 space 25m<sup>2</sup> has been utilised in the TIA as the end users are unknown. However, the development may result in a supply that exceeds demand.
- Appropriate conditions should be imposed requiring the submission of a traffic/parking management plan for the approval of Council to be enforced for the life of the development. This plan will need to demonstrate the most efficient use of the shared commercial/visitor parking spaces can be achieved, i.e. introduce time limited parking to ensure turnover, encourage use by patrons and deter use by employees, not allocate parking to any particular tenancies.
- Council's Traffic Engineer supports the proposed dual use commercial / visitor spaces, particularly as they are separated from the residential parking and a significant amount of bays are being provided.

As discussed under building height, it is the recommendation of this report that Level 6 be deleted from the Cary Street development scheme. As proposed, Level 6 occupies 12 units in total with 14 allocated car spaces.

Based on the above recommendation, the development would result in a total of 112 units generating the need for 28 visitor spaces (currently 24 dual use commercial / visitor spaces proposed).

It is therefore the recommendation of this report that the excess residential car parking spaces (14 in total) resulting from the deletion of Level 6 units be re-allocated as visitor car parking. This results in a reduction of dual use spaces to 14 on basement level 1 and 14 visitor spaces on basement level 2.

## **6.2 Front Setbacks**

Although not the main street of Toronto, the intent is to maximise building mass and floor space at the street boundary and define the spatial character of the street with amenity provided to upper residential levels. The development is considered to achieve the intent of the control (refer to greater discussion in the Toronto Town Centre Area Plan).

#### 6.4 Façade Articulation

The scale of the building has been addressed by articulating the form into a series of “separate” buildings defined by deep recesses along the eastern and western facades. The building form fronting the Reserve is treated as another “separate” building that steps back at the upper levels. It is intended that overall the project appears as a single development comprised of several composed buildings. Colour will be used to further define the individual masses. The façade design is consistent with the objectives of this section and will provide interest and activation at a pedestrian level.

#### 6.5 Building Exteriors

The building’s exteriors including balconies, glazed shop fronts, articulated and varied material selections combine to provide an attractive and contemporary building exteriors that is supported by the DRP and is consistent with the provisions of the DCP (refer to Toronto Town Centre Area Plan).

The development will contribute positively to the streetscape and public domain by means of high quality architecture, material selections and finishes.

As previously discussed under scenic values, a condition is recommended for imposition to control reflectivity and ensure bright colours are not utilised.

#### 6.6 Building Separation

As discussed under SEPP 65 (Design Quality of Residential Flat Building), building separations have been deemed acceptable and will ensure an appropriate level of amenity for building occupants including solar access, ventilation, outlook, views and privacy.

#### 6.7 Side and Rear Setbacks

Due to the site’s orientation and location with multiple street frontages, rear setbacks are not applicable.

The proposed side setbacks to the northern (side) boundary of 12 Bay Street (McDonalds) are varied from 1.9m to 12.01m noting that a ground level a solid wall and grill is provided on the boundary.

The proposed setbacks have been deemed as acceptable by the DRP (refer to SEPP 65 (Design Quality of Residential Flat Building) discussion).

#### 6.8 Minimum Landscaped Area

The development complies with the minimum landscaped area of 20% required by the DCP.

#### 6.9 Building Depth

The building depth allows for adequate for natural light and ventilation to residential floor space efficient floor plans for retail and office space.

#### 6.10 Maximum Occupied Area

The scale of the building has been addressed by articulating the form into a series of “separate” buildings defined by deep recesses along the eastern and western facades. The building form fronting the Reserve is treated as another “separate” building that steps back at the upper levels. It is intended that overall the project appears as a single development comprised of several composed buildings.

Subject to the deletion of Level 6 from the Cary Street block, the occupied area when considered as a bulk and scale issue is acceptable (refer to Toronto Town Centre Area Plan block control discussion).

### 6.11 Setbacks from Residential Zoned Land

Properties on the eastern side of Arnott Avenue (No.2 and 4) are zoned R2 Low Density Residential whilst 6 Arnott Avenue (Toronto Yacht Club) is zoned SP3. Arnott Avenue provides adequate separation from the low density residential zone. Furthermore, it is important to highlight that these dwelling houses are orientated towards the lake with detached garages on the Arnott Avenue frontage providing adequate separation.

### 6.12 Building Height

This issue has been discussed under Clause 4.3 (Height of buildings) and Clause 4.6 (Exceptions to development standards) in the LEP section of the report.

### 6.13 Building Height at the Street

The intent of the control is to maximise building mass and floor space and define and reinforce the spatial character of the street.

The control requires in the B2 zone, development must provide at least two storeys in height along the primary street boundary for at least 50% of the frontage. The development is compliant with this control on Cary Street, Arnott Avenue and Victory Parade.

### 6.13 Floor to Ceiling Heights

Floor to ceiling heights of 3.3m for the ground floor commercial tenancies and 2.7m for the residential units has been achieved.

### 6.15 Roofs

The roof design is considered acceptable. A condition is recommended for imposition to ensure plant and equipment is adequately screened.

The design incorporates a roof top communal space, which given the size and location, will not contribute to bulk and scale issues.

### 6.16 Views

The western side of Cary Street is characterised by bushland, a coastal wetland and cycleway link to Fassifern. The proposed development will therefore not result in the loss of views to Lake Macquarie.

### 6.17 Balconies and Communal open space

The proposed residential balconies are consistent with the DCP objectives of recessing balconies into building volume and ensuring that balconies are functional and responsive to the environment thereby promoting the enjoyment of outdoor living; and provide suitable privacy and amenity for users of balconies close to the street.

The development provides a communal open space on the roof top and podium level that is designed to be useable and attractive.

### 6.18 Planting on Structures

The development includes a communal rooftop garden on the Cary Street block and a residential landscaped area at podium level.

Council's Landscape Architect would have preferred more soft landscaping at the podium level, however this has not been provided. The failure to increase soft landscaping at the podium level does not warrant refusal as the intent of the control is generally satisfied.

#### 6.19 Solar Access and Orientation

Shadow diagrams for mid-winter and the equinoxes between 9am and 3pm have been provided, which indicates no overshadowing to adjoining properties. No concern is raised.

An acceptable percentage of units receive required solar access (refer to SEPP 65 (Design Quality of Residential Flat Building) discussion).

#### 6.20 Energy Efficiency and Generation

Compliance achieved with SEPP (BASIX).

#### 6.21 Visual Privacy

With the exception of McDonalds to the north, the site does not directly adjoin any other buildings.

Cary Street, Victory Parade and Arnott Avenue provide adequate separation from adjoining properties.

Visual privacy internally and externally to the development is considered acceptable (refer to SEPP 65 (*Design Quality of Residential Flat Building*) discussion).

#### 6.22 Acoustic Privacy

Council's Environmental Health Officer has reviewed the development and submitted acoustic report, prepared by Spectrum Acoustics, dated November 2017, and subject to the imposition of conditions, no issues are raised. This includes the design of the development achieving Internal acoustic comfort levels in accordance with AS 2107-1987 Acoustics - Recommended design sound levels and reverberation times for building interiors.

#### 6.23 Front Fences and 6.24 Side and Rear Fences

No fencing proposed.

#### 6.25 Safety and Security

Development should contribute to the liveability and safety of users and be designed to limit opportunities for crime. A Crime Prevention Through Environmental Design (CPTED) report is required to be submitted for a mixed use development comprising more than 20 units.

Accordingly, the applicant has submitted a CPTED report, prepared by DeWitt Consulting, dated March 2018, which identifies and addresses areas of crime risk associated with the development. The report identifies a number of strategies to mitigate risk and to ensure that the development is designed / constructed in accordance with CPTED principles.

Council's Community Planner for Youth and Safer Communities has reviewed the report and supports the recommendations contained within the report regarding surveillance, access control, territorial reinforcement, activity and space management, building design, lighting, access, car parking, fencing and landscaping. Furthermore, it is recommended that technical surveillance equipment be provided for a development of this size and scale. Accordingly, a condition is recommended for imposition to ensure the recommendations of the report are implemented and technical surveillance is included.

The application was also referred to the NSW Police for comment. No comment was received during the assessment of the application, and as per Council's memorandum of understanding with the NSW Police, absence of comment during the allotted timeframe reflects no objection to the proposed development.

### 7.1 Landscape Design, 7.2 Street Trees and Streetscape Improvements and 7.3 Landscape and Tree Planting in Front Setback Areas

Landscape documentation has been submitted in accordance with DCP 2014 requirements.

The landscaping treatment of the public domain interface has been the subject of a number of detailed reviews in order to achieve a balanced outcome between the needs of the development and the urban design outcomes and importance of the development regarding its relationship with the Lake and Toronto.

Council's Landscape Architect has reviewed the revised landscape plans and in summary advised:

The area of deep soil as shown on plans equates to 7.1% of the site which meets the minimum requirements of the ADG's.

Comment: Road widening will result in a reduction of deep soil to 5.3%. This issue is discussed under SEPP 65.

No street trees are proposed along Arnott Avenue due to insufficient space.

Comment: Road widening has enabled the provision of street trees on Arnott Avenue, which is supported by Council's Landscape Architect.

As per previous referral the proposed planting on Cary Street and footpath is supported. Recommendation: condition banded 1500mm width footpath to replace the existing footpath with four street trees positioned within proposed planted areas adjacent to boundary.

No third *Phoenix canariensis* along the Cary Street is shown on landscape plans. Recommendation: condition planting of third *Phoenix canariensis* and undergrounding of e-wires.

Comment: This has been conditioned.

### 5.1 Demolition and Construction Waste Management

The application proposes construction works and building waste will be generated.

Following a preliminary assessment, the applicant was requested to provide a revised Waste Management Plan as it provided insufficient information.

The applicant has advised that waste arrangements will be affected by the future tenants of the commercial tenancies and without knowing the future users, it is difficult to estimate waste generation. The design has catered for future adaptability with the ground floor plan showing an additional flexible sized garbage room if required.

As detailed elsewhere in this report, as the future users of the proposed ground floor commercial tenancies are unknown, a condition of consent is recommended for imposition requiring separate approval. This will ensure waste generation is also captured at the first use stage.

Council's Waste Officer has reviewed the applicant's response as acceptable subject to the imposition of appropriate conditions of consent including the preparation of a detailed Waste Management Plan prior to issue of the first Construction Certificate.

### 5.2 Waste Management

Concern was initially raised regarding proposed kerbside waste collection (not adequate size) and insufficient waste storage areas for 124 units.

The applicant has amended the scheme to provide all waste collection on site and reconfigured the waste storage rooms to accommodate the required number of bins.



Council's Waste Officer has reviewed the revised scheme as acceptable subject to appropriate conditions of consent including documentation confirming arrangements/agreements have been made with either a private contractor or Lake Macquarie City Council for the collection of general waste, green waste and recycling materials shall be submitted to the Certifying Authority prior to the issue of the first Construction Certificate. This documentation shall demonstrate the waste contractor can service the development for all waste streams, and within designated loading dock and waste storage areas.

As detailed elsewhere in this report, Heavy Rigid Vehicles (HRV) are restricted from using the site. All vehicles will be limited to a maximum size of Medium Rigid (MR) to comply with RMS requirements.

#### 8.5 Erosion and Sediment Control

Development should prevent erosion and sediment laden run off during site preparation, construction and ongoing use of land. Appropriate erosion and sediment control plans are required to be submitted with development applications. Measures to mitigate impacts must be incorporated into development.

A revised Erosion and sediment control plan has been submitted with the application, which Council's Erosion and Sediment Control Officer has reviewed as acceptable subject to the imposition of appropriate conditions of consent.

#### 8.6 Air Quality

The air quality of the locality will not be significantly impacted by the ongoing use and operation of the building as a residential flat building and commercial premises.

#### 8.7 Noise and Vibration

Development should minimise generation of noise and/or vibration impacts. Construction of development should comply with relevant environmental noise standards.

To ensure the construction of the development occurs within relevant environmental standards, suitable conditions of consent will be imposed.

A Construction Management Plan is required to ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community.

### Part 9 (Specific Land Uses) – Section 13 (Residential Flat Building)

Note: Where there is an inconsistency between these controls and SEPP 65, SEPP 65 overrides DCP 2014

#### Section 13.1 Site Requirements

The site exceeds the minimum area of 800m<sup>2</sup> by providing a total site area of 5957.5m<sup>2</sup>.

The site has direct frontage to a public road including Cary Street and Arnott Avenue.

The site exceeds the minimum width of 20m at the road frontage by providing a frontage to Cary Street of 64m and a frontage to Arnott Avenue of 64m.

### Section 13.2 Housing Mix

The proposal includes 124 units with the following unit mix:

- 25 x one bedroom (20%);
- 78 x two bedrooms (63%);
- 21 x three bedrooms (17%).

Whilst the unit mix does not strictly comply with the controls contained in Section 13.2, the mix is considered acceptable and allows for an appropriate level of social diversity and interaction within the development, and is consistent with the objective of this section of the DCP, which is to provide a housing mix that supports diversity and promotes choice in housing types.

### Section 13.1 Street Setback

The development successfully defines the street edge along Cary Street and Arnott Avenue and provides definition between public and private space including the adjoining Operational land and heritage listed rail corridor. The objectives of this section are generally satisfied.

### Section 13.4 Side Setback

This has previously been discussed under Section 6.6 (Building Separation) and Section 6.7 (Side and Rear Setbacks) above.

### Section 13.5 Site Coverage

This control relates to residential flat buildings only and is not applicable to a mixed use development.

### Section 13.6 Landscaped Area, Section 13.7 Planting on Structures, Section 13.8 Landscape and Tree Planting in Front Setback Areas and Section 13.9 Street Trees

This has previously been discussed under Section 7.1 (Landscape Design), 7.2 (Street Trees and Streetscape Improvements) and 7.3 (Landscape and Tree Planting in Front Setback Areas) as acceptable subject to conditions.

### Section 13.10 Principle Private Open Space

The development provides sufficient outdoor areas for future residents including private balconies that comply with a minimum area of 8m<sup>2</sup> and 2m wide, a rooftop communal garden on the Cary Street block and a residential communal landscape area at podium level.

### Section 13.11 Services

For developments with over 50 units, a car wash facility is required to be provided. The development has catered for a car wash bay. Appropriate conditions will be imposed to ensure it is bunded and graded to a floor sump in accordance with HWC requirements.

The development includes an electrical kiosk on Cary Street and fire booster assembly on Arnott Avenue. The fire booster is integrated into the design of the building. The electrical kiosk has been relocated due to conflict with the servicing vehicles and street trees on the western boundary. Landscaping has been incorporated to reduce its impact on the street.

### Section 13.12 Driveways and Parking Areas

Driveways and parking areas are considered acceptable (refer to Section 5.2 Design of Paving and Service Areas).

### Section 13.13 Accessible Dwellings

The DCP requires one in ten dwellings to be adaptable.

Although not shown on the plans, the SOEE nominates 13 units or 10% of 124 units for adaptable housing.

Given the recommendation of the report to delete Level 6 from the Cary Street Block thus resulting in a total of 112 units, a condition of consent will be imposed to include 11 adaptable units.

The submitted plans have identified 13 disabled car spaces.

### Section 13.4 Waste Management

This have previously been discussed under Section 8.1 (Demolition and Construction Waste Management) and Section 8.2 (Waste Management).

## Part 10 – Toronto Town Centre Area Plan

### 1.3 Environmental Constraints and Section 3.2 Sensitive Aboriginal Cultural Landscape

The site is not mapped as Sensitive Aboriginal Cultural Landscape.

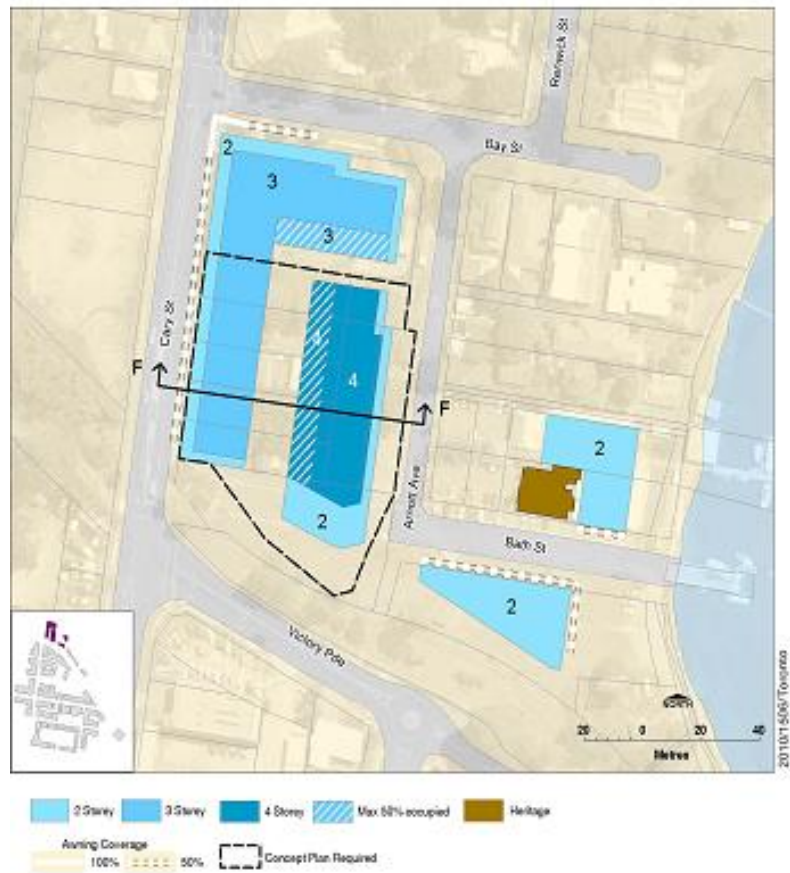
### 1.4 Desired Future Character

The Toronto Town Centre Area Plan outlines that the desired future character for Toronto is an active pedestrian-friendly centre that supports the economic and cultural activities of the local population, visitors and tourists. The Town Centre would be made more vital and pedestrian-friendly by the introduction of increased residential population and strategically located mixed-use development. This desired future character has been considered in detail under Clause 4.6 (Exceptions to development standards) in the LEP section of the report.

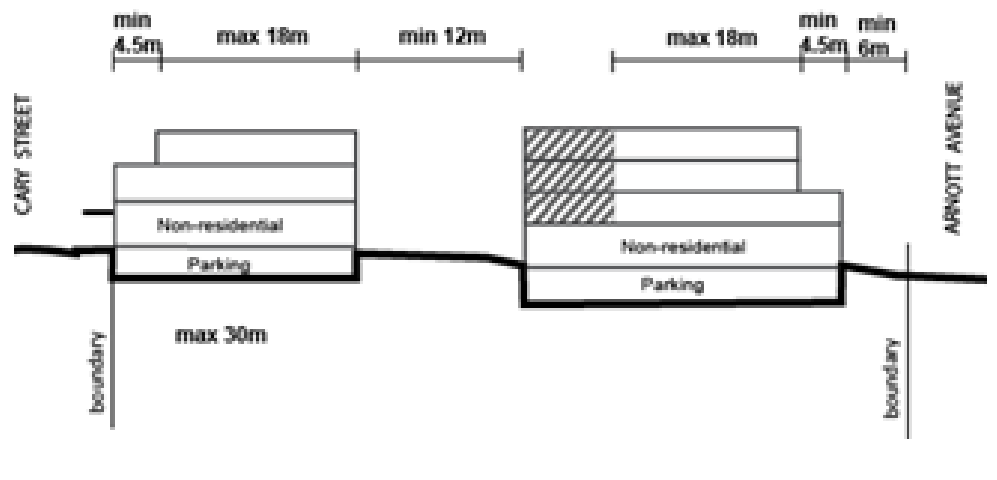
### 2.1 Block Controls

The block controls (refer to Figure 20-21) require the following:

- Cary Street: two storeys to the street with a 4.5m setback for the third storey;
- Victory Parade: two storeys;
- Arnott Avenue: two storeys to the street with a 6m setback with an additional 4.5m setback for the third and fourth storey.



**Figure 20 – Block F control plan**



**Figure 21 – Section FF**

The development is contrary to the block control as follows:

Cary Street:

6 storeys with a roof top garden (level 7 setback 9m from Cary St).

Ground floor: 3m

Level 2: 1.2m to planter

Level 3: 3.3 to 3.5m to balcony

Level 4 to 6: 3.2m to balcony

#### Victory Parade:

Three storeys with varied setbacks (7.85m to 13.07m) given the alignment of the lots

#### Arnott Avenue

Five storeys with a setback ranging from 2.1m to 6m

This non-compliance with the block controls has been detailed extensively under Clause 4.6 in the LEP section of the report and subject to the deletion of Level 6 from the Cary Street block is supported.

#### 3.1 Scenic Quality

This issue has been adequately discussed under Clause 4.6 (Exceptions to development standards) of LMLEP 2014 and Section 2.2 (Scenic Values) of DCP 2014.

#### 3.3 Town Centre Heritage Area

The site falls within the Town Centre Heritage Area.

Council's Heritage Planner has considered the requirements of the Toronto Town Centre Area Plan and potential impacts upon the adjoining Fassifern-Toronto rail line and the Toronto Hotel as acceptable subject to the preparation of an interpretation strategy, which will be conditioned (refer to Clause 5.10 Heritage Conservation discussion in the LEP section of the report).

#### 4.1 Pedestrian Lanes, 4.2 The Boulevarde, 4.3 Town Square Extension, 5.1 Vehicle Access – North Side of the Boulevarde

Not applicable to this site.

#### 5.2 Site Access – Cary Street

The intent is to minimise impacts on traffic flow in Cary Street.

The development provides for ingress / egress via Arnott Avenue with service delivery egress via Cary Street. The RMS have supported this access.

#### 6.1 Building to the Street Boundary

Although not strictly in accordance with the control to build at least two storeys on the front setback line for 75% of the lot frontage, the intent of the control is achieved with activation and spatial definition at the street level. The reasons for deviating from the control have been detailed under Section 4.2 (Ground Floor Levels) and is supported.

#### 6.2 Building Height

Refer to Clause 4.3 (Height of buildings) and Clause 4.6 (Exceptions to development standards) in the LEP section of the report.

#### 6.3 Maximum Occupied Area

The occupied area when considered as a bulk and scale issue is acceptable.

#### 6.4 Building Exteriors

The building's exteriors including balconies, glazed shop fronts, articulated and varied material selections combine to provide an attractive and contemporary building exteriors that is supported by the DRP and Council staff.

#### 7.1 Trees on Private Land

Subject to conditions of consent this is considered acceptable (refer to Sections 7.1 Landscape Design, 7.2 Street Trees and Streetscape Improvements and 7.3 Landscape and Tree Planting in Front Setback Areas in the DCP section).

#### **Section 4.15 (1) (a) (iv) any matters prescribed by the regulations**

Nil applicable to the proposed development and/or site.

#### **Section 4.15 (1) (b) the likely impacts of the development**

The likely impacts of the development contained in this part of the Act have been detailed throughout the assessment report.

#### **Section 4.15 (1) (c) the suitability of the site for development**

##### **Does the proposal fit the locality?**

It is considered the development fits the locality.

##### **Are the site attributes conducive to development?**

As demonstrated in this report, the site is conducive to the development proposed.

#### **Section 4.15 (1) (d) any submissions made in accordance with this Act or the Regulations?**

##### **Public submissions:**

The application was notified in accordance with Council's Policy from 23 March to 20 April 2018.

Due to an administrative error, notification was extended to 2 May 2018.

Council received 20 submissions in total with 19 against and one in support.

The matters raised have been considered and addressed through the detailed assessment report. Attachment G provides planning comment as a response to the issues raised.

##### **External referrals:**

A copy of the below responses received is attached as Attachment H.

#### Ausgrid

The application was referred to Ausgrid for comment. The authority raised no objection to the proposed development.

#### Department of Planning – SEPP 71

The Department of Planning and Environment advised Council in writing, dated 27 March 2018, that the Department has no additional matters for Council to consider under Clause 8 of SEPP 71.

#### Hunter Water Corporation

Hunter Water Corporation's (HWC) Notice of Formal Requirements, dated 1 March 2018, stipulates that the proposed development is not supported in its current layout as it contains permanent structures located directly over a Hunter Water easement for pipeline, which traverses the southern and eastern boundary of the site.

Accordingly, a deferred commencement condition is recommended requiring the applicant gain approval to relocate the Hunter Water easement for pipeline clear of the building footprint in an approved location to the satisfaction of Hunter Water.

#### NSW Police

The application was referred to the NSW Police for comment. No comment was received during the assessment of the application, and as per Council's memorandum of understanding with the NSW Police, absence of comment during the allotted timeframe reflects no objection to the proposed development.

#### RMS

Refer to SEPP (Infrastructure) discussion in the body of the report.

#### Sydney Trains

The application was referred to Sydney Trains who advised on 16 May 2018 they have no concerns.

### **Integrated Referrals**

#### Water NSW

The application was formally referred to Water NSW who issued their GTA's under Section 90 of the *Water Management Act 2000 for a water supply work* on 16 November 2018. These conditions will be included on any development consent issued for the proposal.

#### Subsidence Advisory NSW

The development application was referred to the Subsidence Advisory NSW for its GTA's, which were issued via a letter dated 4 May 2018. These conditions will be included on any development consent issued for the proposal.

### **Section 4.15 (1) (e) the public interest**

Subject to the satisfaction of deferred commencement conditions, it is considered the proposed development is in the public interest.

### **Section 7.11 Contribution towards provision or improvement of amenities and services**

As detailed in the assessment report, it is the recommendation of this report that Level 6 be deleted from the Cary Block. This results in a reduction of units from 124 to 112 units.

However, should the Panel not support the recommendation to delete Level 6 from the Cary Street block, please refer to Attachment I, which includes the alternate Contributions Schedule for 124 dwellings.

The following fee information is calculated under Council's Development Contributions Plan, (2016) Toronto Catchment and is valid until the next date of indexation.



The fees are calculated using the following criteria:

*112 dwellings as follows:*

- 23 x one bedroom;
- 70 x two bedroom; and
- 19 x three bedroom.

A credit of nine lots has been applied for the existing sites which will be consolidated.

**Note:** the commercial premises/restaurants/shops will not be levied under this application as works fall under 7.12 plan which does not apply to this application as the contribution plan applied refers to residential component only:

## CONTRIBUTION FEE SCHEDULE

DESCRIPTION	FEE AMOUNT
TC-Open Space & Recreation Facilities-Capital-CPI	\$957,079.27
TC-Open Space & Recreation Facilities-Land-LVI	\$357,624.84
TC-Roads-Capital-R001-CPI	\$3,443.52
TC-Public Transport Facilities-CPI	\$2,835.10
TC-Community Facilities-Capital-CPI	\$86,689.26
TC-Plan Preparation & Administration-CPI	\$109,924.79
	<b>TOTAL \$1,517,596.78</b>

### Deferred Commencement

As detailed in the assessment of the report, the applicant is required to satisfy a number of unresolved issues through deferred commencement conditions prior to the consent becoming activated.

This will require the submission of a full suite of revised architectural plans, landscaping plans and engineering plans incorporating the deferred commencement conditions to ensure consistency in the future approved documentation.

4.53(6) of the Environmental Planning and Assessment Act, 1979 states:

*“Despite any other provision of this section, a development consent that is subject to a deferred commencement condition under section 4.16(3) lapses if the applicant fails to satisfy the consent authority as to the matter specified in the condition within 5 years from the grant of the consent or, if a shorter period is specified by the consent authority, within the period so specified”.*

Given the complexity of issues and time and money invested by the developer to date, the applicant has requested five years to satisfy the deferred commencement issues.

Having discussed the complexity of issues and estimated time to resolve these issues with specialist staff within Council, it is recommended that the period within which evidence must be produced be limited to two years from the date of determination.

### **Recommendation**

***It is recommended development application DA/419/2018 being for a mixed use development (commercial and residential flat building) be granted consent subject to deferred commencement conditions as listed in Attachment A.***

#### **Staff Endorsement**

The staff responsible for the preparation of the report, recommendation, or advice to any person with delegated authority to deal with the application has no pecuniary interest to disclose in respect of the application.

The staff responsible authorised to determine the application have no pecuniary interest to disclose in respect of the application. The report is enclosed and the recommendation therein adopted.

Signed:



**Georgie Williams**  
**Senior Development Planner**  
**Development Assessment and Certification**  
**Date: 20 November 2019**

The staff responsible for the preparation of the report, recommendation, or advice to any person with delegated authority to deal with the application has no pecuniary interest to disclose in respect of the application.

The staff responsible authorised to determine the application have no pecuniary interest to disclose in respect of the application. The report is enclosed and the recommendation therein adopted.

Signed:



**Elizabeth Lambert**  
**Chief Development Planner**  
**Development Assessment and Certification**