

COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	2019HCC012 / DA2019/00061
PROPOSAL	<p>Residential accommodation, strata subdivision, earthworks, and demolition –</p> <p>Residential accommodation comprising three residential flat buildings (161 units) and multi-dwelling housing (11 two-storey dwellings), strata subdivision (172 lots), car parking, tree removal, landscaping, access and pathways, associated site works and services, earthworks, mine grouting works (including associated temporary plant and equipment), and staged demolition of existing structures.</p>
ADDRESS	11-17 Mosbri Crescent, The Hill NSW
APPLICANT	Crescent Newcastle Pty. Ltd.
OWNER	Crescent Newcastle Pty. Ltd.
ADJOINING LANDOWNERS CONSENT	<ul style="list-style-type: none"> - AACo mine voids: Landowner consent received from AACo. - Mosbri Crescent Park: Landowner consent received from City of Newcastle Arcadia Park: - Arcadia Park: Landowner consent received from Minister for Water, Property & Housing (NSW Government – Department of Planning, Industry & Environment)
DA LODGEMENT DATE	18 January 2019
APPLICATION TYPE - NOMINATED INTEGRATED DEVELOPMENT	<p>The proposal is classed as 'nominated integrated development'. This means that the proposal requires approval from the below listed government agency:</p> <ul style="list-style-type: none"> • Heritage NSW (requires approval under Section 58, <i>Heritage Act 1977</i>). <p>The proposal is also classed as 'integrated development' and requires approval from the below listed government agencies:</p> <ul style="list-style-type: none"> • Subsidence Advisory NSW (requires approval under Section 22, <i>Coal Mine Subsidence Compensation Act 2017</i>). • NSW Rural Fire Service (requires approval under Section 100(b), <i>Rural Fires Act 1997</i>).

REGIONALLY SIGNIFICANT CRITERIA	<p>The application is referred to the Hunter and Central Coast Regional Planning Panel ('the Panel') as the development is '<i>regionally significant development</i>', pursuant to Section 2.19(1) and Clause (3) of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> as the proposal is general development that has a capital investment value of more than \$30 million.</p> <p>The application submitted to Council nominates the capital investment value of the project as \$67.3 million.</p>
CIV	\$67,300,000
CLAUSE 4.6 REQUESTS	Newcastle Local Environmental Plan 2012 – Clause 4.3 Height of Buildings
KEY SEPP/LEP	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Rural Fires Act 1997 • Coal Mine Subsidence Compensation Act 2017 • Roads Act 1993 • Heritage Act 1997 • National Parks and Wildlife Act 1974 • Biodiversity Conservation Act 2016 • State Environmental Planning Policy – Building Sustainability Index: BASIX 2004 • State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • Newcastle Local Environmental Plan 2012
TOTAL SUBMISSIONS	<ul style="list-style-type: none"> • Notification 1st round (24 January – 13 February 2019) – 186 submissions received • Notification 2nd round (31 August – 15 September 2020) – 139 submissions received • Notification 3rd round (27 August – 24 September 2021) – 140 submissions • Notification 4th round (25 February – 30 March 2022) – 90 submissions
DOCUMENTS SUBMITTED FOR CONSIDERATION	<p><u>Assessment report and associated documents</u></p> <ul style="list-style-type: none"> • Attachment A – Draft Schedule of Conditions • Attachment B – Plans/Documents submitted with the application for assessment

- **Attachment C** – General Terms of Approval – Heritage NSW
- **Attachment D** – General Terms of Approval – NSW Rural Fire Service
- **Attachment E** – General Terms of Approval – Subsidence Advisory NSW
- **Attachment F** – Agency Advice – Ausgrid & Heritage NSW

Documentation submitted:

- **Appendix A** – Architectural Drawings
- **Appendix B** – SEPP 65 Assessment
- **Appendix C** – DCP Compliance Table
- **Appendix D** – Civil Plans and Report
- **Appendix E** – Landscape Plans
- **Appendix F** – Clause 4.6 Variation
- **Appendix G** – Waste Management Plan
- **Appendix H** – BASIX Certificate
- **Appendix I** – View Impact Assessment
- **Appendix J** - Response to Submissions
- **Appendix K** - Crime Risk Assessment
- **Appendix L** – Detail Survey
- **Appendix M** - Plan Showing Levels of Various Landmarks
- **Appendix N** – Building Outline Comparison Plans
- **Appendix O** - Geotechnical Assessment
- **Appendix P** - Contamination Report
- **Appendix Q** – Phase 2 Contamination Assessment
- **Appendix R** – Mine Subsidence Grouting Remediation Strategy
- **Appendix S** - Slope Stability Assessment
- **Appendix T** – Flora and Fauna Assessment
- **Appendix U** -Assessment of Triggers for Biodiversity Offset Scheme
- **Appendix V** - Traffic and Parking Assessment
- **Appendix W** – Addendum Traffic Report
- **Appendix X** – Arborist Report
- **Appendix Y** - Arborist Advice – Compensatory Planting
- **Appendix Z** –Aboriginal Due Diligence Assessment
- **Appendix AA** - Aboriginal Cultural Heritage Assessment

	<ul style="list-style-type: none"> • Appendix BB – Updated Bushfire Assessment • Appendix CC - Statement of Heritage Impact • Appendix DD – Addendum to the Statement of Heritage Impact • Appendix EE – Mine Subsidence Report • Appendix FF – Groundwater Assessment • Appendix GG – Acoustic Assessment (operational stage) • Appendix HH – Acoustic and Vibration Assessment (construction) • Appendix II – Air Quality Assessment • Appendix JJ – Discussion Gaseous Emissions from Drilling • Appendix KK – Construction Management Plan • Appendix LL – Owner's consent • Appendix MM – UDCG Meeting Minutes • Appendix NN – Ausgrid Approval • Appendix OO - BCA Access Report • Appendix PP - Disability Access Report • Appendix QQ - Strata Plan • Appendix RR - Hunter Water Stamped Plans • Appendix SS - Subsidence Advisory NSW Letters
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Not Applicable
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	The draft conditions will be sent to the applicant after the report has been submitted to the Panel.
SCHEDULED MEETING DATE	22 June 2022
PLAN VERSION	Plans dated 16 May 2022
PREPARED BY	William Toose, Principal Development Officer (Planning)
DATE OF REPORT	14 June 2022

EXECUTIVE SUMMARY

This report details the City of Newcastle's ('CN') assessment of a development application (DA2019/00061) which seeks consent for the staged demolition of existing buildings and structures, the construction of three residential flat buildings (161 units) and multi-dwelling housing (11 two-storey dwellings), strata subdivision (172 lots), car parking, tree removal, landscaping, access and pathways, associated site works and services, earthworks, and mine grouting works (including associated temporary plant and equipment).

The subject site is known as Lot 1 in DP204077, 11-17 Mosbri Crescent, The Hill. The site is currently occupied by the former NBN television studio and administration offices. The site is irregular in shape, with an area of 12,235m². The land is situated on the western edge of a hill, the summit of which is the Obelisk in King Edward Park. The topography of the site drops sharply from the east and north and includes retaining walls, with the remaining area fronting Mosbri Crescent, being relatively flat and containing the existing building and hardstand. Existing trees and landscaped areas are primarily located along the site's property boundaries.

The amended application was submitted as 'nominated 'integrated development' pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'), requiring approval from:

- Heritage NSW (*Section 58, Heritage Act 1977*).

Approval under the *Heritage Act 1977* is required for the proposed mine grouting works below Arcadia Park which is located within the State Heritage Register (SHR) curtilage of Newcastle Recreation Reserve (*SHR no. 02000*).

The proposal is also classified as 'integrated development' and requires approval from the below listed government agencies:

- NSW Rural Fire Service (*Section 100(b) of Rural Fires Act 1997*)
- Subsidence Advisory NSW (*Section 22 of Coal Mine Subsidence Compensation Act 2017*).

All integrated agencies issued their General Terms of Approval approvals (GTAs) with conditions. Refer to **Attachments C, D and E** of this report.

Several external government agencies were consulted for their advice and are listed below.

- The application was referred to Ausgrid in accordance with cl 45 of SEPP (Infrastructure) 2007 (now repealed and replaced with SEPP (Transport and Infrastructure) 2021). Ausgrid issued their advice, and no further assessment was required. Refer to **Attachment F** of this report for agency advice.
- The Local Aboriginal Land Council (LALC) was notified of the proposed development when the application was initially lodged. The LALC was subsequently re-notified when amended plans were submitted in August 2021 and February 2022. To date a formal referral response has not been received.

It is further noted that an Aboriginal Cultural Heritage Assessment (ACHA) has been undertaken to support the proposal. Consultation with local Aboriginal parties has been

undertaken in accordance with the relevant consultation requirements as part of this process.

- The NSW Office of Environment & Heritage was notified of the proposed development when the application was initially submitted in January 2019, due to Arcadia Park (which adjoins the subject site) forming part of a 'nominated' State Heritage Item.

Heritage NSW (formerly The NSW Office of Environment & Heritage) was subsequently re-notified when amended plans were submitted in August 2021.

Heritage NSW issued their referral advice under Clause 5.10 of NLEP 2012 on 11 November 2021. Refer to **Attachment F** of this report for agency advice. It is noted that this advice is based on a non-statutory referral under NLEP 2012 and not the Heritage Act 1977

It is further noted that the subject site is not listed on the State Heritage Register (SHR). The proposed development is outside of the State Heritage Register (SHR) curtilage of Newcastle Recreation Reserve (*SHR no. 02000*) and does not require approval from Heritage NSW under the *Heritage Act 1977*.

The application is referred to the Hunter and Central Coast Regional Planning Panel ('the Panel') as the development is '*regionally significant development*', pursuant to Section 2.19(1) and Clause (3) of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is general development that has a capital investment value of more than \$30 million. The application submitted to CN nominates the capital investment value of the project as \$67.3 million.

A briefing was held on 11 October 2021 between the Panel and CN staff. A public briefing was held on 13 April 2022 between the Panel, CN staff and residents. This briefing provided the opportunity for members of the public to raise their concerns with the proposal to the Panel.

A site inspection and briefing were held on 6 May 2022 between the Panel and CN staff. This briefing also provided the opportunity for the Panel and CN staff to visit several key public vantage point and private residences. A further briefing between the Panel and CN staff was held on 8 June 2022.

The amended application (dated January 2022) was advertised and placed on public exhibition from 25 February to 30 March 2022, with 90 submissions being received. These submissions generally raised issues relating to zoning objectives, overdevelopment, building height, bulk and scale, density, visual impact, heritage, streetscape, views, impacts to Arcadia Park, tree removal, flora and fauna, traffic and parking.

The key issues arising from Council's assessment of the proposal include:

1. Non-compliance with site specific Development Control Plan (Section 6.14 '11 Mosbri Crescent, The Hill'), including alternative site layout and built form, reduced setbacks in some locations, and alternative location for pedestrian connection.
2. Proposed clause 4.6 variation to cl.4.3 NLEP 2012 – maximum height of buildings development standard.
3. Heritage - the development site directly adjoins 'The Newcastle Recreation Reserve' which was listed on the State Heritage Register on 21 May 2021 and includes Arcadia Park.

4. Visual impact and views from The Obelisk and surrounding Heritage Conservation Areas (HCAs).
5. Traffic and parking.

These issues are considered further in this report and are considered to have been satisfactorily addressed as part of the assessment process with conditions proposed where relevant in **Attachment A - Draft Schedule of Conditions**.

The principal planning controls relevant to the proposal include:

- *State Environmental Planning Policy (Planning Systems) 2021*;
- *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development*;
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*;
- *State Environmental Planning Policy (Resilience and Hazards) 2021*;
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*;
- *State Environmental Planning Policy – Building Sustainability Index: BASIX 2004*;
- The Newcastle Local Environmental Plan 2012 ('NLEP 2012') and
- the Newcastle Development Control Plan 2012 ('NDCP 2012').

The proposal is generally consistent with the various provisions of the planning instruments and controls as discussed within this report.

Several jurisdictional prerequisites are required to be satisfied prior to the granting of consent. The following controls are considered to have been satisfactorily addressed in the assessment of the application and by the documentation submitted, as summarised below:

Environmental Planning and Assessment Act 1979

Section 4.47(2): As the proposed development is integrated development, General Terms of Approval have been obtained from:

- (i) RFS under s100B of the *Rural Fires Act 1997* (NSW)
- (ii) Subsidence Advisory NSW under s22 of the *Coal Mine Subsidence Compensation Act 2017* (NSW)
- (iii) Heritage NSW under s58 of the *Heritage Act 1977* (NSW)

Environmental Planning and Assessment Regulation 2021

Schedule 3 of the *Environmental Planning and Assessment Regulation 2021* lists the classes of designated development. Concrete (mine grouting) works are proposed to be carried out for the purpose of providing material to the proposed development. It is further noted that the concrete works will operate on the site for a period of less than 12 months. The proposal is not considered to be designated development (refer to Schedule 3, Clause 17(3) of the EP&A Regulation 2021).

Environmental Planning and Assessment Regulation 2000

The application was submitted when the *Environmental Planning and Assessment Regulation 2000* was in place, so consideration has also been made to the provisions that applied at the time of lodgement of the application.

Clause 4 and Schedule 3 of the *Environmental Planning and Assessment Regulation 2021* lists the classes of designated development. Concrete (mine grouting) works are proposed to be carried out on the development site for the purpose of solely providing material to the proposed development. It is further noted that the concrete works will operate on the site for less than 12 months. The proposal is not designated development (see Schedule 3, Clause 14(2) of the *EP&A Regulation 2000*. Environmental Planning Instruments – Pre-conditions to the grant of consent

State Environmental Planning Policy (Biodiversity & Conservation) 2021	<p>Chapter 2: Vegetation in non-rural areas</p> <ul style="list-style-type: none">• Section 2.6 - Vegetation in non-rural area clearing of vegetation in non-rural areas.• Section 2.9 – Council permits for clearing of vegetation in non-rural areas.• Section 2.14 - does not apply in this instance as consent is being sought for removal of vegetation.
State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building	<p>Part 4</p> <p>Section 28(1) - Development application required to be referred to relevant design review panel for advice concerning the design quality of the development.</p> <p>Section 28(2) - consent authorities to take into consideration; (a) the advice obtained from the design review panel; and (b) the design quality of the development when evaluated in accordance with the design quality principles; (c) the <i>Apartment Design Guide</i> ('ADG'), when determining a development application.</p>
State Environmental Planning Policy (Resilience & Hazards) 2021	<p>Chapter 2: Coastal Management</p> <ul style="list-style-type: none">• Section 2.10(1) & (2) - Development on land within the coastal environment area.• Section 2.11(1) - Development on land within the coastal use area.• Section 2.12 - Development in coastal zone generally — development not to increase risk of coastal hazards.• Section 2.13 – Development in coastal zone generally - coastal management programs to be considered. <p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none">• Section 4.6 – consideration of contaminated land

	planning guidelines.
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure</p> <ul style="list-style-type: none"> • Section 2.48(2) (Determination of development applications—other development) – electricity transmission
Newcastle Local Environmental Plan 2012 (NLEP2012)	<ul style="list-style-type: none"> • Clause 2.3 – Zone objectives and Land Use Table • Clause 2.6 – Subdivision - consent requirements • Clause 2.7 – Demolition requires development consent • Clause 4.1 - Minimum subdivision lot size • Clause 4.3 – Height of buildings • Clause 4.4 – Floor space ratio • Clause 4.5 – Calculation of floor space ratio and site area • Clause 4.6 – Exceptions to development standards • Clause 5.10 – Heritage conservation • Clause 5.21 – Consideration of flood impacts • Clause 6.1 – Consideration of Acid Sulfate Soils • Clause 6.2 – Consideration of earthworks

State Environmental Planning Policy (Planning Systems) 2021

The development is '*regionally significant development*', pursuant to Section 2.19(1) and Clause (3) of Schedule 6 of *State Environmental Planning Policy 2021* as the proposal is general development that has a capital investment value of more than \$30 million. The application submitted to CN nominates the capital investment value of the project as \$67.3 million.

State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building

Section 28(1) of SEPP 65 requires the consent authority to refer a development application to which this policy applies to the relevant design review panel for advice concerning the design quality of the development prior to determining the application.

Furthermore, Section 28(2) of SEPP 65 requires consent authorities to take into consideration: (a) the advice obtained from the design review panel; and (b) the design quality of the development when evaluated in accordance with the design quality principles; and (c) the *Apartment Design Guide* ('ADG'), when determining a development application for consent to which SEPP 65 applies.

The development application has been reviewed by CN's Urban Design Review Panel (formerly known as Urban Design Consultative Group), who operate under a charter stating

that they undertake the functions of a design review panel for the purposes of SEPP 65. The development application has been referred to the UDRP on five occasions including twice prior to lodgment of the subject development application.

The requirements and provisions of State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building are considered to have been satisfactorily addressed by the documentation submitted and in the assessment of the application.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Section 2.48(2) of SEPP (Transport and Infrastructure) 2021 requires the consent authority to give written notice to the electricity supply authority seeking concurrence and comments about potential safety risks. The application was referred to Ausgrid in accordance with cl 45 of SEPP (Infrastructure) 2007 (now repealed and replaced with SEPP (Transport and Infrastructure) 2021). Ausgrid issued their advice, and no further assessment was required.

The requirements and provisions of State Environmental Planning Policy (Transport and Infrastructure) 2021 are considered to have been satisfactorily addressed by the documentation submitted and in the assessment of the application.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 -Vegetation in non-rural areas

Consent is required for the removal of a tree or other vegetation that is identified as declared vegetation on private land, or within 5m of a development site in accordance with Section 5.03 - Vegetation Management of the NDCP 2012. An Arborist report and a tree retention assessment value has been prepared in accordance with NDCP 2012 and The Urban Forest Technical Manual.

The development proposes the clearing of native vegetation on the development site. No trees are proposed to be removed within Arcadia Park or on adjoining private residential properties.

Additionally, a flora and fauna assessment has been provided with the application to address any threatened species, critical habitat protected flora or fauna, or vulnerable species, that may be impacted by the proposal. The native vegetation proposed to be cleared from within the subject land does not exceed 0.25ha and the Biodiversity Offset Scheme has not been triggered. The development site is not mapped on the Biodiversity Values Map.

Section 2.14 does not apply in this instance as consent is being sought for removal of vegetation.

The requirements and provisions of State Environmental Planning Policy (Biodiversity and Conservation) 2021 are considered to have been satisfactorily addressed by the documentation submitted and in the assessment of the application.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 - Coastal Management

Section 2.11 - requires that development consent must not be granted to development on land within the coastal use area unless the consent authority is satisfied that the proposed development is likely to cause an adverse impact on the matters specified in clause 2.11(1)(a). It has been satisfactorily demonstrated that the proposed development has been designed, sited, and will be managed to avoid, minimise or mitigate any adverse impacts on the those matters.

Section 2.11(1)(c) – requires the consent authority to consider the surrounding coastal and built environment. The bulk, scale and size of the proposed development has been considered in the assessment of the application.

Section 2.12 - requires the consent authority to be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. It has been satisfactorily demonstrated by the documentation submitted that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Section 2.13 - requires the consent authority to take into consideration the relevant provisions of any coastal management program that applies to the land. Parts of the site are identified on the Coastal Cliff/ Slope Instability Hazard Map in the Newcastle Coastal Zone Management Plan 2018 (CZMP). The provisions of Newcastle Coastal Zone Management Plan 2018 CZMP have been taken into consideration.

Chapter 4 – Remediation of land

Clause 4.6 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

A Preliminary and Detailed Site Investigation concluded that there was little evidence of contamination, and the site is suitable for the proposed residential land use.

The requirements and provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 are considered to have been satisfactorily addressed by the documentation submitted and in the assessment of the application.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX certificate accompanies the development application and the provisions and objectives of the SEPP have been met.

Newcastle Local Environmental Plan 2012

Clause 2.3: 'Zone objectives and Land Use Table' - The proposed development is permissible with development consent within the R3 Medium Density Residential zone and is defined as *'residential accommodation'*.

Clause 2.6: Subdivision– The proposed development includes strata subdivision which is permissible with development consent.

Clause 2.7: Demolition requires development consent– The proposed development includes demolition which is permissible with development consent.

Clause 4.1(3): Minimum subdivision lot size – As the proposed development involves a strata subdivision, it is not subject to a minimum lot size requirement.

Clause 4.3(2): Height of buildings – The proposed development seeks variations to the maximum building height development standard of 12m (above existing ground level), RL47.5(AHD) RL52.3(AHD) and RL56.8(AHD). The development application is accompanied by a written clause 4.6 variation request.

Clause 4.4(2): Floor space ratio - The proposed development complies with the maximum floor space ratio (FSR) development standard of 1.5:1. The development application proposes a FSR of 1.5:1.

Clause 4.6: Exceptions to development standards – As the proposed development seeks to vary the building height standard in cl 4.3(2), a written variation request has been made by the Applicant which seeks to justify the contravention of the development standard by addressing the matters required by cl 4.6.

Clause 5.10: Heritage conservation – The site is not identified as a heritage item or located within a heritage conservation area. The site is in proximity to several heritage items and adjoins 'The Hill' Heritage Conservation Area. Further, the development site directly adjoins 'The Newcastle Recreation Reserve' which was listed on the State Heritage Register on 21 May 2021.

The listing includes Lot 7003 (unmade road) and Lot 7004 (Arcadia Park). Potential impacts and views from conservation areas and heritage items have been assessed as part of the development application, as has the potential for overshadowing of Arcadia Park.

Two surface Aboriginal objects were identified and recorded on the site. An Aboriginal Cultural Heritage Assessment Report (ACHA) has been undertaken and it is identified that the proposal is acceptable.

Clause 5.21: Flood planning – The site is not flood prone.

Clause 6.1: Acid sulfate soils – A preliminary assessment of the proposed development has indicated that there is no known occurrence of Acid Sulfate Soils on the site. Accordingly, an Acid Sulfate Soils Management Plan is not required for the works.

Clause 6.2: Earthworks – The application is supported by technical reports, which satisfactorily demonstrate that the proposal will not result in detrimental environmental impacts as a result of proposed earthworks, mine grouting, construction and demolition. Consideration has been given to the matters prescribed under cl.6.3(3) and the proposed earthworks are considered acceptable.

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State Environmental Planning Policies, the provisions of the Newcastle Local Environmental, the proposal is in the public interest and is supported.

Accordingly, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA2019/00061 is recommended for approval subject to the reasons contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The subject site is known as Lot 1 in DP204077, 11-17 Mosbri Crescent, The Hill. The site is currently occupied by a three-storey television studio, broadcast infrastructure, administration offices, car parking, retaining walls, vegetation, and landscaped areas.

The site is irregular in shape, with a total site area of 12,235m² and street frontages to both Mosbri Crescent and Kitchener Parade. The topography of the site slopes westerly towards Mosbri Crescent. The existing ground levels range between RL 29.75 AHD and RL 40.00 AHD.

1.2 The Locality

The land is situated on the western edge of a hill, the summit of which is the Obelisk in King Edward Park.

The land is adjoined to the east by Arcadia Park. To the north of the site is Newcastle East Public School, located across Kitchener Parade. The remaining properties to the west of the site are occupied by small scale residential buildings ranging from two to three-storeys. The land is adjoined to the south by residential dwellings.

Moving west of the land, the topography continues to slope down towards Darby Street.

The site is in proximity to several heritage items and adjoins 'The Hill' Heritage Conservation Area. Further, the development site directly adjoins 'The Newcastle Recreation Reserve' which was listed on the State Heritage Register on 21 May 2021. The listing includes Lot 7003 (unmade road) and Lot 7004 (Arcadia Park).

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks development consent for 'Residential accommodation, strata subdivision, earthworks, and demolition, comprising three residential flat buildings (161 units in total) and multi-dwelling housing (11 two-storey dwellings), strata subdivision (172 lots), car parking, tree removal, landscaping, access and pathways, associated site works and services, earthworks, mine grouting works (including associated temporary plant and equipment), and staged demolition of existing structures'.

More specifically, the proposed development comprises:

- Three Residential Flat Buildings located above an interconnected car parking area containing 196 resident spaces and 5 visitor spaces, including:
 - Building A: A residential building comprising of a nine-storey east wing and six-storey west wing, containing a total of 68 units.
 - Building B: A seven-storey residential building comprising a total of 59 units and a rooftop communal open space.
 - Building C: A five-storey residential building comprising a total of 34 units.
- Eleven, two-storey dwellings fronting Mosbri Crescent, located above a basement car park containing 22 visitor spaces (which service the entire development).

- Pedestrian pathway providing connection from Mosbri Crescent to Kitchener Parade.
- Associated landscaping, communal open space, services and site infrastructure.
- Strata subdivision (172 lots).
- Mine void grouting works below the surface across the project area.
- Demolition of all existing structures to be completed in three stages:
 Stage 1 - Site clearance and demolition of the main building (except for Studio 1)
 Stage 2 - Demolition of Studio and tree removal
 Stage 3 - Removal of Retaining Walls and hardstand surfaces

Table 1: Development Data

Control	Proposal
Site area	12,235m ²
Current allowable FSR under cl 4.4 of NLEP 2012 – 1.5:1	Proposed FSR – 1.49:1
Current allowable Gross Floor Area (GFA) under cl 4.4 of NLEP 2012 – 18,353m ²	Proposed GFA (including surplus 35 car parking spaces) – 18,318m ²
Clause 4.6 Requests	Request to vary NLEP 2012 - Clause 4.3 height of buildings
Number of apartments	161 apartments in total: Building A (including a 6-storey east wing and a 9-storey west wing) – 68 apartments Building B (7-storey) – 59 apartments Building C (5-storey) – 34 apartments
No. of townhouses	11 townhouses
Maximum building height under NLEP 2012: • 12 metres	The townhouse component <u>complies</u> with the 12m height limit. Part of Building C (5-storey building) is within the 12-metre height limit and a portion of the upper floor <u>exceeds</u> the 12m height control by 0.73m.

<ul style="list-style-type: none"> • RL40.8 	<p>The townhouse component is within this height limit and <u>complies</u> with the RL 40.8 height control.</p>
<ul style="list-style-type: none"> • RL 47.5 	<p>The main roof level of Building A (6-storey west wing) is RL47.4 and <u>complies</u> with the RL 47.5 height control.</p> <p>A 100mm perimeter drainage hob above Building A (6-storey west wing) roof level will remain <u>compliant</u> with the RL47.5 height control.</p> <p>The lift overrun and plant screen is RL49.0 and <u>exceeds</u> the height control by 1.5m.</p>
<ul style="list-style-type: none"> • RL56.8 	<p>The main roof level of Building A (9-storey east wing) is RL56.8 and <u>complies</u> with the RL56.8 height control.</p> <p>A 100mm perimeter drainage hob above Building A (9-storey east wing) roof level is proposed at RL56.90 which <u>exceeds</u> the height control.</p> <p>The lift overrun of Building A (6-storey west wing) is RL58.3 and <u>exceeds</u> the height control by 1.5m.</p> <p>The plant screen of Building A (6-storey west wing) is RL58.4 and <u>exceeds</u> the height control by 1.6m.</p> <p>Part of Building B (7-storeys) is within this height limit. The main roof level is RL50.70 and <u>complies</u> with the RL56.8 height control.</p> <p>The lift overrun of Building B is RL55.28 and <u>complies</u> with the RL56.8 height control.</p>
<ul style="list-style-type: none"> • RL52.3 	<p>Part of Building B (7-storeys) is within this height limit. The main roof level is RL50.70 and <u>complies</u> with the RL52.3 height control.</p> <p>The pool deck is RL52.05 and <u>complies</u> with this height limit.</p> <p>The pergola of Building B (7-storeys) is RL52.9 and <u>exceeds</u> the height control by 0.6m.</p>

<ul style="list-style-type: none"> • RL46.1 	<p>The stair roof line of Building B (7-storeys) is RL53.80 and <u>exceeds</u> the height control height control by 1.5m.</p> <p>The lift overrun of Building B (7-storeys) is RL55.28 and <u>exceeds</u> the height control height control by 2.98m. The main roof level of Building C (5-storey) is RL44.5 and <u>complies</u> with the RL46.1 height control.</p> <p>The lift overrun is RL46.0 and <u>complies</u> with this height limit.</p> <p>The plant screen is RL46.1 and <u>complies</u> with this height limit.</p>
<p><u>NDCP 2012</u></p> <p>Minimum landscaped area (25% of site area)</p> <p>Minimum deep-soil zone (12% of site area)</p>	<p>4,100m² (33.5% of site area)</p> <p>1,380m² of deep soil (11% of site area)</p>
<p><u>SEPP 65 – ADG</u></p> <p>Minimum communal open space (25% of site area)</p> <p>Minimum deep-soil zone (7% of site area)</p>	<p>3,100m² (25.3% of site area)</p> <p>1,380m² of deep soil (11% of site area)</p>
<p>NDCP 2012 Car Parking rates</p> <ul style="list-style-type: none"> • Residential - 172 car spaces required • Visitor – 34.4 car spaces required • Motorcycle – 10.4 spaces required • Bicycle – 172 spaces and 17.2 visitor spaces 	<p>207 car spaces and additional 35 surplus car spaces (including 25 surplus spaces at ground level and 10 surplus spaces at Level 1).</p> <p>35 visitor spaces</p> <p>12 motorcycle spaces</p> <p>172 bicycle spaces and 18 visitor spaces</p>

2.2 Background

Planning Proposal

The site was the subject of a Planning Proposal, that enabled medium density housing by rezoning the land from Zone R2 Low Density Residential to Zone R3 Medium Density Residential, and by amending the height of buildings (HOB) map to a range of specific reduced levels (RL) up to RL56.8 and the Floor space ratio (FSR) map to a maximum FSR of 1.5:1.

An urban design study informed the preparation of the Planning Proposal, resulting in a master plan for the site, which was included as a new Section in the Newcastle Development Control Plan 2012, Section 6.14 - 11 Mosbri Crescent, The Hill and was adopted by Council on 24 October 2017. The master plan includes detailed massing and view analysis which identified that built form would be just visible from vantage points to the east, including Obelisk lookout.

Pre-Lodgement

Two pre-lodgement meetings were held with CN's Urban Design Consultative Group (UDCG) on 15 August 2018 and 19 September 2018 seeking advice relating to several alternative site planning and design-based options.

Several different massing studies were modelled and discussed with the UDCG. An analysis was undertaken in relation to bulk and scale to adjoining properties, the relationship with the public realm and Arcadia Park, overshadowing and privacy impacts to adjoining properties.

Submission of original Development Application – January 2019

The original development application (DA) was submitted to CN on 18 January 2019 and was publicly notified between 24 January – 13 February 2019.

Class 1 Application (Deemed Refusal) – September 2019

A Class 1 Application was filed by the applicant with the NSW Land and Environment Court (LEC) on 18 September 2019 in respect to the deemed refusal of the DA.

Amended Application - August 2020

An amended application was submitted in the Court proceedings and was publicly notified by CN between 31 August – 15 September 2020.

The 2020 Amendment provided for several changes to the proposal including a decrease to the building heights, increased boundary setbacks, changes to internal layouts and relocation of the proposed basement in addition to an updated Stormwater Management Plan which clarified that there was no requirement for any stormwater or environmental protection works in Arcadia Park.

L&E Court proceedings – February 2021

A community group, Friends of Kind Edward Park (FOKEP), joined the Class 1 proceedings. During the hearing, the Barrister for FOKEP raised the issue that there was insufficient information provided with the application to facilitate the assessment of the environmental impacts of the mine grouting works which are required to facilitate the development, during the 'construction / works' phase.

A second issue was raised by the Barrister for FOKEP in respect of the legal characterisation of the mine grouting works and suggested that landowner's consent was required in respect to mine grouting works occurring below adjoining land.

The appeal was discontinued on 18 February 2021 and accordingly there was no judgement made with respect to the issue of landowner's consent and mine grouting works. Further, the DA remained undetermined.

Amended Development Application – August 2021

In August 2021, an amended application (pursuant to clause 55) was submitted to CN, which incorporated the amendments proposed under the 2020 amendment (submitted during LEC proceedings). This amended application was notified and advertised between 27 August – 24 September 2021.

The 2021 amendment added mine grouting to the description of the proposal for which consent is sought, and additional documentation relating to this component of the proposal was provided. Consequently, the amended application was categorised as 'nominated integrated development' due to mine grouting works occurring beneath 'The Newcastle Recreation Reserve', which was listed on the State Heritage Register on 21 May 2021 and includes Arcadia Park.

Several other changes were made to the proposal including a decrease to building heights, changes to balconies of apartments, landscaping, retaining wall details and a modified stormwater easement design.

Amended Development Application – January 2022

In January 2022, a subsequent amended application (pursuant to clause 55) was submitted to CN, which incorporates the amendments proposed under the 2021 Amendment and further changes to the proposal including the submission of Aboriginal Cultural Heritage Assessment (ACHA), a decrease to building heights, changes to the pedestrian path to be wider and straighter, provision of a loading area and parcel locker for future residents and an updated Stormwater Management Plan and easement design.

Since the original lodgement of the application, a number of changes to the proposal have been made, in response to recommendations by CN staff, CN's Urban Design Review Panel and issues raised in the public submissions. These amendments included:

- Overall reduction in building height:
 - Main roof line for Building A (west) reduced from RL47.7 to RL47.4 (lift overrun/plant reduced from RL51 to RL 49). This represents a reduction of 0.3m and 2m respectively.
 - Main roof line for Building A (east) reduced from RL57.5 to RL56.8 (lift overrun/plant reduced from RL59.25 to RL 58.3). This represents a reduction of 0.7m and 0.95m respectively.
 - Main roof line for Building B reduced from 51.5 to RL50.7 (pool deck reduced from RL52.85 to RL52.05 and lift overrun/plant reduced from RL55.45 to RL55.28). This represents a reduction of 0.8m, 0.8m and 0.17m respectively.
 - Main roof line from Building C reduced from RL46.1 to RL44.5 (lift overrun/plant reduced from RL48.3 to RL46. This represents a reduction of 1.6m and 2.3m respectively.

- Deletion of ground level pool to remove any potential visual and acoustic privacy impacts to adjoining properties.
- Shift of the building away from the boundaries (North and East) at Ground and Level 1, to reduce extend of excavation near boundaries. This amendment also further reduced any potential impacts to trees on adjoining lands.
- Amendments to stormwater and easement design to ensure no stormwater works are required within Arcadia Park.
- Acoustic assessment of proposed mechanical plant, to confirm no significant impacts to adjoining properties.
- Further advice and confirmation provided to demonstrate that the required asset protection zone was fully accommodated on the site and did not propose or rely on clearing in Arcadia Park.
- Loading area for future occupants to accommodate removalist and other vehicles.
- Inclusion of parcel locker room adjacent to entrance of Mosbri townhouse carpark.
- Changes to pedestrian path design, to be wider and straighter enabling better sight lines and passing ability.
- Pedestrian crossing proposed to Kitchener Parade, adjacent to the pathway through the development site.
- Additional landscaped area adjacent to pedestrian pathway.
- Nomination of reinstated street parking along Mosbri frontage (approximately 12 parking spaces).
- Mine grouting added to the description of the proposal for which consent is sought, and additional assessment documentation relating to this component of the proposal.
- A Construction Management Plan which incorporates the recommendations of the various technical studies prepared, to ensure that impacts from the demolition, mine grouting and construction stages are appropriately managed.
- Staged demolition with mine grouting equipment and stockpiles contained within the existing studios building, to reduce impacts of the proposal to surrounding properties.
- Aboriginal Cultural Heritage Assessment has been provided.
- Landowners consent provided:
 - AACo mine voids: Landowner consent received from AACo. with the purchase of mine voids also being registered with Land Registry Services.
 - Mosbri Crescent Park: Landowner consent received from CN.
 - Arcadia Park: Landowner consent received from Ministerfor Water, Property & Housing (NSW Government – Department of Planning, Industry & Environment)

The Current Amended Development Application – May 2022

The current set of plans relied upon for this assessment was submitted on 20 May 2022. This set of plans was submitted to address a number of drafting inconsistencies within the architectural drawing set and Stormwater Management Plan that were identified during the detailed assessment.

In addition to the corrections made to the plans, the storage areas were relocated from the Level 1 communal car parking area to the basement level beneath the townhouses fronting Mosbri Crescent.

The revised documents were not required to be re-notified, as no significant changes are proposed, however any further submissions received have been considered in CN's final assessment.

A chronology of the Amended Development Application since August 2021 is outlined in **Table 2** below:

Table 2: Chronology of the Amended DA (August 2021)

Date	Event
25 August 2021	Amended Development Application submitted
27 August – 27 September 2022	Public exhibition period
11 October 2021	HCCRPP Briefing
11 November 2021	Response received from Heritage NSW (not in relation to Nominated Integrated Development Application).
12 November 2021	Subsidence Advisory NSW – General Terms of Approval issued (Amended Application dated August 2021).
22 November 2021	CN Request for Additional Information
02 December 2021	NSW Rural Fire Service - General Terms of Approval issued (Amended Application dated August 2021)
27 January 2022	Amended Development Application submitted in Portal
28 January 2022	Heritage NSW - General Terms of Approval issued (Amended Application dated August 2021).
23 February 2022	Amended Development Application reviewed by CN's Urban Design Review Panel (formerly Urban Design Consultancy Group).
25 February – 30 March 2022	Public exhibition period

10 March 2022	Subsidence Advisory NSW – General Terms of Approval re-issued (Amended Application dated January 2022).
13 April 2022	HCCRPP Public Briefing
14 April 2022	Request sent to applicant requesting further clarification in response to issues raised by CN officers and HCCRPP during the Public Briefing.
22 April 2022	Response provided by applicant including updated Architectural Plans, Civil Engineering Plans, further Arborist advice in relation trees located on neighbouring properties in Hillview Crescent and a Heavy Rigid Vehicle turning diagram.
06 May 2022	A site inspection and briefing were held on 6 May 2022 between the Panel and CN staff.
11 May 2022	Heritage NSW - General Terms of Approval re-issued (Amended Application dated January 2022)
20 May 2022	A new set of Architectural Plans, Stormwater Management Plan and SEPP 65 Design Verification Statement was submitted on 20 May 2022 to correct a number of drafting inconsistencies identified within the architectural drawing set.
25 May 2022	Submitters notified of new set of Architectural Plans and associated documentation.
26 May 2022	Relevant referral bodies including Heritage NSW SANSW and NSW RFS notified of a new set of Architectural Plans have been submitted.
1 June 2022	NSW Rural Fire Service - General Terms of Approval re-issued (Amended Application dated January 2022).

2.3 Site History

Planning Proposal to amend NLEP 2012

The site was the subject of a Planning Proposal that enabled the land to be developed from its former use as a television studio to medium density housing. Amendment 28 to Newcastle LEP 2012 was made and published within the NSW Government gazette on Tuesday 17 April 2018.

The Height of buildings (HOB) map was amended from a maximum building height of 8.5m to a range of heights across the site, including heights above ground of 12m and also a number of specific reduced levels (RL) up to RL56.8 AHD. In addition, the Floor Space Ratio (FSR) map was amended to reflect a change from a FSR of 0.75:1 to a maximum FSR of 1.5:1.

Importantly, the Planning Proposal noted the following in support of the rezoning and amendment to the LEP development standards:

"The planning proposal will facilitate medium density housing on an in-fill site, providing housing diversity, within an existing urban area to maximise use of infrastructure and services.

The land is considered to satisfy the criteria for a 'Substantial Growth Precinct', being a ten-minute walk of a major commercial centre, being Darby Street. The land is also within the walking catchment to the City Centre.

Additionally, the relatively large area and 'bowl like' topography of the land containing the existing NBN television studios (11 to 17 Mosbri Crescent) lends itself to being able to physically accommodate additional development beyond the standard R3 Medium Density Residential development controls. The additional development is justified on these unique site attributes and is sympathetic to existing surrounding context, as required under the visions and objectives for the neighbourhood."

The Planning Proposal resulted in a master plan for the site, which was included as a new section in the Newcastle Development Control Plan 2012, Section 6.14 - 11 Mosbri Crescent, The Hill and was adopted by CN on 24 October 2017.

The master plan included detailed massing and view analysis which identified that future built form would be just visible from vantage points to the east, including Obelisk lookout.

3. STATUTORY CONSIDERATIONS

National Park and Wildlife Act 1974 (NP&W Act)

The *National Park and Wildlife Act 1974 (NP&W Act)* provides for the conservation of objects, places or features of cultural value within the landscape. Part 6 of the NP&W Act relates to Aboriginal objects and Aboriginal places. An Aboriginal Cultural Heritage Assessment Report (ACHA) has been undertaken to support the proposal.

Two surface Aboriginal objects (two tuff flakes) were identified and recorded as the site NBN-AS-1. The remainder of the project area has been identified as being subject to significant disturbance through the construction of the existing NBN building and ancillary structures. Avoidance of these identified Aboriginal objects is not possible within the scope

of the proposed development, and an ACHA has been prepared in support of an Aboriginal Heritage Impact Permit (AHIP) for proposed impacts to Aboriginal site NBN-AS-1.

The applicant has chosen not to pursue an integrated development approval (in accordance with the NPW Act and cl 4.46 of EPA Act) as part of the proposed development application. Accordingly necessary approvals under the NPW Act will need to be obtained separately by the applicant prior to any works commencing.

The proposed development has been assessed having regard to the NP&W Act and is considered satisfactory, subject to the recommended conditions of consent contained in **Attachment A**.

Biodiversity Conservation Act 2016

The Biodiversity Conservation Act 2016 (BC Act) provides for the conservation and protection of threatened species, populations, ecological communities of animals and plants and areas of outstanding biodiversity value through specific objectives relating to the conservation of biodiversity and promoting ecologically sustainable development.

The application is supported by a Flora and Fauna assessment (prepared by Cumberland Ecology dated 22 April 2021) where flora and fauna surveys were undertaken at the development site. An additional inspection of Arcadia Park (which does not form part of the development site, but considerations were given to this adjoining land) was also conducted for the preparation of the assessment.

Section 7.2 of the BC Act states that an application requires further assessment through the preparation of a Biodiversity Development Assessment Report (BDAR) if it is determined to be likely to significantly affect threatened species. A project is likely to significantly affect threatened species if:

- The impact on threatened species or ecological communities is deemed significant.
- The amount of native vegetation being cleared exceeds a threshold area, or
- The area being cleared is mapped on the Biodiversity Values map published by the Minister for the Environment.

The submitted report assessed the likelihood that the development may significantly affect threatened species or their habitats with considerations given to the Powerful Owl which had been recorded within Arcadia Park in recent years (2016 and 2018). However, Cumberland Ecology concluded that due to the infrequent nature of records, it is considered unlikely that a local population frequently utilises the park.

Vegetation at the development site has been identified as a small area of degraded foraging habitat for Powerful Owls. Cumberland Ecology has also considered the vegetation present in Arcadia Park and determined that while some foraging habitats may be present any nesting or roosting habitat utilised by a Powerful Owl are absent given the young age of the trees not supporting large hollows which are required.

The key threatening process of '*loss of roosting and foraging sites*' could potentially impact habitat for this species, however, the vegetation within Arcadia Park is not considered to constitute significant habitat for the Powerful Owl. No works are proposed to occur in the park as a result of the development, therefore any potential habitat will remain in Arcadia Park. Cumberland Ecology has considered the potential for indirect impacts likely to affect the species habitat due to any edge-effects as a result of light-spill, increased noise or overshadowing from the development and determined that such impacts are not likely to occur. As such, the proposal is not considered to significantly affect the life cycle of the Powerful Owl such that a viable local population is placed at risk of extinction.

The submitted report assessed the potential to significantly affect ecological communities when considerations were given to the presence of Littoral Rainforest within Arcadia Park. For the purposes of the Test of Significance, Cumberland Ecology assumed that the patches of rainforest species within Arcadia Park are a form of Littoral Rainforest, though many of the species that would typically occur in such vegetation are not present. Cumberland Ecology have determined there will be no threat to the long-term survival of Littoral Rainforest in the locality as no vegetation will be cleared, removed, modified, fragmented, or isolated from the park as the proposed development does not form any part of this area.

Section 1.3.3 of the report addresses clearing of native vegetation, *"The minimum lot size for the property is 0.4 ha, allowing native vegetation clearance of less than 0.25 ha without triggering the Biodiversity Offset Scheme (BOS). The native vegetation proposed to be cleared from within the subject land does not exceed 0.25 ha and therefore the BOS will not be triggered by this mechanism"*.

Further information was sought confirming the vegetation clearance at the site was less than the 0.25 ha threshold and clarification of the minimum lot size as Cumberland Ecology stated it was 0.4 ha where Council records show the minimum lot size is 0.04 ha. The amended Statement of Environmental Effects prepared by SLR dated January 2022 in section 7.7 states:

"The subject land is currently zoned R3 Medium Density Residential under the Newcastle LEP and has a minimum lot size of 400m² (0.04 hectares (ha)). According to the entry requirements for the BOS, for land that has a minimum lot size of less than 1 ha (i.e., the subject land), the minimum amount of native vegetation clearing that triggers entry to the BOS is 0.25 ha. The area of native vegetation with the subject land was identified in the vegetation mapping for the Flora and Fauna Assessment as 0.235226 ha and clearing of this vegetation would not trigger entry into the BOS or the requirement for a BDAR."

The Biodiversity Values Map details which sites are considered to have significant environmental values where a Biodiversity Development Assessment Report (BDAR) may be required. The development site is not mapped on the Biodiversity Values Map and therefore the Biodiversity Offset Scheme will not be triggered by this mechanism.

Edge impacts have been considered, noting the potential for weed invasion from disturbed soils along the eastern boundary adjoining Arcadia Park. The proposal is unlikely to significantly affect threatened species directly as a belt of vegetation on the eastern boundary of the development site will be cleared as part of the proposal. Such vegetation has been identified as low diversity and will in part be replaced by landscape plantings of native plant species. The plantings are likely to help buffer Arcadia Park vegetation against indirect impacts in the longer term and will seek to address any impacts via a management plan that will include, amongst other measures, weed management. The local occurrence of Littoral Rainforest in Arcadia Park is not likely to be at risk of extinction because of either the construction or occupation of the proposed development.

The submitted report prepared by Cumberland Ecology has determined that there is no significant impact on threatened species or ecological communities and has satisfied the requirements of the BC Act. The proposed development has been assessed having regard to the BC Act 2016 and is considered satisfactory, subject to the recommended conditions of consent contained in **Attachment A**.

Section 4.5 – Regional Planning Panels

Section 4.5 of the EP&A Act 1979, Part 4 and Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 requires the Regional Planning Panel (RPP) to determine applications for general development over \$30 million. The capital investment value of the application is \$67,300,000.

Section 4.46 – Integrated Development

The proposal is integrated development pursuant to Section 4.46 of the EP&A Act as approval is required from:

- Rural Fire Service under s100B of the *Rural Fires Act 1997* (NSW), for subdivision works on bushfire prone land.

The Rural Fire Service (RFS) granted General Terms of Approval on 1 June 2022 which included several conditions (refer to **Attachment D**). The General Terms of Approval have been incorporated into the recommended conditions of consent (refer to **Attachment A**).

- Heritage NSW under s58 of the *Heritage Act 1977* (NSW), for the proposed mine grouting works below Arcadia Park which is located within the State Heritage Register (SHR) curtilage of Newcastle Recreation Reserve (*SHR no. 02000*).

Heritage NSW granted General Terms of Approval on 11 May 2022 which included several conditions (refer to **Attachment C**). The General Terms of Approval have been incorporated into the recommended conditions of consent (refer to **Attachment A**).

- Subsidence Advisory NSW under s.22 *Coal Mine Subsidence Compensation Act 2017*, to erect improvements within a mine subsidence district.

Subsidence Advisory NSW granted General Terms of Approval on 10 March 2022 which included several conditions (refer to **Attachment E**). The General Terms of Approval have been incorporated into the recommended conditions of consent (refer to **Attachment A**).

The Applicant has proposed owners' consent for submission of a development application, including grouting works on neighbouring land. It is noted that the need for owners' consent for grouting works has not been resolved by case law, however, the question was briefly considered by *Crescent Newcastle Pty Ltd v Newcastle City Council* [2020] NSWLEC 88, where Moore CJ noted the potential issue but made no decision. Since the proceedings did not proceed to a final determination the question has never been answered nor has it been considered in any other legal case.

Whilst adjoining landowners' consent has been provided for the development application, it is current practice within NSW, that owner's consent from the owner of the mine void is not required in order to undertake grouting works below the surface of the land, where no work is required to be undertaken on or from the associated private properties in order to complete the grouting works. An assessment of the

environmental impacts associated with the proposed mine grouting works is included in this report.

Section 4.5 – Regional Planning Panels

Section 4.5 of the *EP&A Act 1979*, Part 4 and Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 requires the Regional Planning Panel (RPP) to determine applications for general development over \$30 million. The capital investment value of the application exceeds \$30 million CIV and the Hunter and Central Coast Regional Planning Panel (the Panel) is the consent authority.

Section 4.15(1) Evaluation

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

On 1 March 2022, 11 new State Environmental Planning Policies (SEPPs) commenced, which re-organised and repealed 45 former SEPPs. With no savings and transitional provisions, these new SEPPs apply to the assessment and determination of pending development applications. It is noted that documentation submitted as part of the application refer to the former State Environmental Planning Policies (**SEPPs**) and provisions.

Section 30A of the *Interpretation Act 1987* which applies to the transfer of provisions states that the transfer “does not affect the operation (if any) or meaning of the provision, and accordingly the provision is to be construed as if it had not been so transferred”. This section applies subject to any amendments made to the provision in the new instrument. Accordingly, the operation and meaning of the transferred provisions has not changed, unless modified (none have been identified during this assessment) in the new SEPPs. The following instruments are now applicable to this application.

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *Newcastle Local Environmental Plan 2012*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	<p>Chapter 2 -Vegetation in non-rural areas</p> <ul style="list-style-type: none">• <u>Part 2.2 – Clearing of vegetation in non-rural areas</u> <p>The development proposes the clearing of native vegetation. A flora and fauna assessment has been provided with the application to address any threatened species, critical habitat protected flora or fauna, or vulnerable species, that may be impacted by the proposal. The native vegetation proposed to be cleared from within the subject land does not exceed 0.25ha and the Biodiversity Offset Scheme will not be triggered. The development site is not mapped on the Biodiversity Values Map.</p>	Y

	<ul style="list-style-type: none"> • <u>Part 2.3 – Council permits for clearing of vegetation in non-rural areas</u> <p>Consent is required for the removal of a tree or other vegetation that is identified as declared vegetation on private land, or within 5m of a development site in accordance with Section 5.03 - Vegetation Management of the NDCP 2012.</p> <p>An Arborist report and a tree retention assessment value has been prepared in accordance with NDCP 2012 and The <u>Urban Forest Technical Manual</u>. A total of 43 trees are proposed to be removed on site, including 16 trees of high retention value. No trees on adjoining properties are proposed to be removed and are capable of being protected and retained.</p> <p>The proposal will involve extensive landscaping, common open space areas and public domain works all of which propose appropriate compensatory planting of trees and other landscape elements.</p> <p>Refer to Attachment A - Draft Schedule of Conditions. The proposal is acceptable in relation to this policy.</p>	
(Building and Sustainability Index: BASIX) 2004 SEPP	<p>A BASIX Certificate has been issued for the development and lodged with the application demonstrating that the proposal achieves relevant requirements.</p> <p>Refer to Attachment A - Draft Schedule of Conditions. The proposal is acceptable in relation to this policy.</p>	Y
(Design Quality of Residential Apartment Buildings) SEPP 65	<ul style="list-style-type: none"> • <u>Clause 28 - Determination of development applications</u> <p>The proposal has been referred to the CN's Urban Design Review Panel (UDRP) prior to lodgement of the application and on several occasions during the development assessment process. Final advice received from the UDRP March 2022 was in support of the proposal and that the development was considered to have achieved the requirements of the SEPP and ADG.</p> <ul style="list-style-type: none"> • <u>Clause 30(2) – Standards that cannot be used as grounds to refuse development</u> 	Y

	<p><u>consent or modification of development consent.</u></p> <p>The proposal is consistent with the design quality principles and the proposal is consistent with all relevant ADG requirements</p> <p>Refer to SEPP 65 design principles discussion within the report and ADG compliance table.</p>	
State Environmental Planning Policy (Planning Systems) 2021	<p>Chapter 2: State and Regional Development</p> <ul style="list-style-type: none"> • <u>Section 2.19(1) declares the proposal regionally significant development pursuant to Clause (3) of Schedule 6 of State Environmental Planning Policy 2021 as the proposal is general development that has a capital investment value of more than \$30 million.</u> <p>The application submitted to Council nominates the capital investment value of the project as \$67.3 million.</p>	Y
SEPP (Resilience & Hazards)	<p>Chapter 2: Coastal Management</p> <ul style="list-style-type: none"> • <u>Section 2.11(1) - Development on land within the coastal use area</u> <p>Section 2.11 requires that development consent must not be granted to development on land within the coastal use area unless the consent authority is satisfied that the proposed development is likely to cause an adverse impact on the matters specified in clause 2.11(1)(a). It has been satisfactorily demonstrated that that the proposed development has been designed, sited, and will be managed to avoid, minimise or mitigate any adverse impact on the those matters.</p> <p>Section 2.11(1)(c) requires the consent authority to consider the surrounding coastal and built environment. The bulk, scale and size of the proposed development has been considered in the assessment of the application.</p> <ul style="list-style-type: none"> • <u>Section 2.12 - Development in coastal zone generally —development not to increase risk of coastal hazards.</u> 	Y

	<p>Section 2.12 requires the consent authority to be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. It has been satisfactorily demonstrated by the documentation submitted that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.</p> <ul style="list-style-type: none"> • <u>Section 2.13 - Development in coastal zone generally - coastal management programs to be considered.</u> <p>Section 2.13 requires the consent authority to take into consideration the relevant provisions of any coastal management program that applies to the land. Parts of the site are identified on the Coastal Cliff/ Slope Instability Hazard Map in the Newcastle Coastal Zone Management Plan 2018 (CZMP). The provisions of Newcastle Coastal Zone Management Plan 2018 CZMP have been taken into consideration and the proposal is satisfactory.</p> <p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> • <u>Section 4.6 - Contamination and remediation to be considered</u> <p>A Preliminary and Detailed Site Investigation concluded that there was little evidence of chemical contamination, and the site is suitable for the proposed residential land use.</p> <p>The proposal is satisfactory subject to conditions.</p>	
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure</p> <ul style="list-style-type: none"> • <u>Section 2.48(2) (Determination of development applications—other development) – electricity transmission</u> <p>Due to the location of the existing substation on site, the application was referred to the electricity supply authority (Ausgrid) seeking concurrence and comments about potential safety risks. A response from the electricity supply authority has confirmed that the application is acceptable in relation to electricity (in relation electricity distribution infrastructure).</p> <ul style="list-style-type: none"> • <u>Section 2.121 - Traffic generating development</u> 	Y

	The proposed development, having less than 300 dwellings, is not identified as being 'traffic generating development'.	
Newcastle Local Environmental Plan 2012	<ul style="list-style-type: none"> • Clause 2.3 'Zone objectives and Land Use Table' of Newcastle Local Environmental Plan 2012 (NLEP 2012). The proposed development is permissible with development consent within the R3 Medium Density Residential zone as '<i>residential accommodation</i>'. • Clause 2.6 – The proposed development includes strata subdivision which is permissible with development consent. • Clause 2.7 – The proposed development includes demolition which is permissible with development consent. • Clause 4.1(3) – As the proposed development involves a strata subdivision, it is not subject to a minimum lot size requirement. • Clause 4.3(2) – The proposed development seeks a variation to the maximum building height development standard and the development application is accompanied by a written clause 4.6 variation request. • Clause 4.4(2) – The proposed development complies with the maximum floor space ratio development standard. • Clause 4.6 – As the proposed development seeks to vary the building height standard in cl 4.3(2), a written variation request has been made by the Applicant which seeks to justify the contravention of the development standard by addressing the matters required by cl 4.6. • Clause 5.10 – The site is not an identified as a heritage item or located within a heritage conservation area. However, the site is in proximity to several heritage items and adjoins 'The Hill' heritage conservation area. Further, the development site directly adjoins 'The Newcastle Recreation Reserve' which was listed on the State Heritage Register on 21 May 2021. The 	Y

	<p>listing includes Lot 7003 (unmade road) and Lot 7004 (Arcadia Park).</p> <p>Views from Conservation Areas and heritage items have been assessed as part of the development application, as has the potential for overshadowing of Arcadia Park.</p> <ul style="list-style-type: none"> • Clause 5.21 – The site is not flood prone • Clause 6.1 – The proposed development has been assessed to have negligible impact on the groundwater level and the risk of impact on Acid Sulfate Soils Accordingly, an Acid Sulfate Soils Management Plan is not required for the works. • Clause 6.2 – The proposed development is supported by technical reports, which demonstrate that the proposed earthworks will not result in impacts to those matters prescribed under cl.6.2(3). 	
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A detailed assessment of the proposal against the relevant SEPPs is provided below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The aims of the policy are to protect biodiversity values of trees and other vegetation in non-rural areas and preserve the amenity of non-rural areas through the preservation of trees and other vegetation.

Clearing that is ancillary to a development will be assessed as part of the development assessment process and may in some circumstances require further assessment and approval under the *Biodiversity Conservation Act 2016*.

The development site is not mapped on the Biodiversity Values Map.

The subject land is currently zoned R3 Medium Density Residential under the NLEP 2012 and has a minimum lot size of 400m² (0.04 hectares (ha)). According to the entry requirements for the BOS, for land that has a minimum lot size of less than 1 ha (i.e., the subject land), the minimum amount of native vegetation clearing that triggers entry to the BOS is 0.25 ha. The area of native vegetation with the subject land was identified in the vegetation mapping for the Flora and Fauna Assessment as 0.235226 ha and clearing of this vegetation would not trigger entry into the BOS or the requirement for a BDAR.

A Biodiversity Offset Scheme (BOS) Entry Assessment concludes that the amended DA has been adequately assessed under the BC Act and the proposed development does not exceed any of the BOS entry thresholds.

Consent is required to carry out any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation that is a prescribed (declared) tree in Section 5.03 -Vegetation Management of the NDCP, 2012. An Arborist report and a tree retention assessment value has been prepared in accordance with NDCP 2012 and the Urban Forest Technical Manual.

The proposed development involves the clearing of native vegetation. A flora and fauna assessment is required to be provided with the application to enable an assessment of the application under Chapter 2 of the policy. The assessment must address any threatened species, critical habitat, protected flora or fauna or vulnerable species, that may be impacted by the proposal.

A Flora and Fauna assessment is provided. The assessment concludes that no threatened flora species listed under the BC Act or EPBC Act were recorded from within the study area. Given that the study area is highly modified, it is considered unlikely that any of the threatened species known from the locality area may occur there and no significant impact is considered likely to occur to any threatened flora species.

The potential for flora and fauna impacts have been addressed and the development is considered acceptable subject to recommended conditions of consent.

In accordance with the SEPP, an assessment of the tree removal and clearing of vegetation has been undertaken and considered to be consistent with the provisions of the SEPP.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy – Building Sustainability Index BASIX– 2004 ('BASIX SEPP') applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by a BASIX Certificate committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development ('SEPP 65') aims to improve the quality of residential apartment development by establishing a consistent approach to the design and assessment of new apartment development across the State. SEPP 65 establishes nine design quality principles to be applied in the design and assessment of residential apartment development.

Section 4 – Application of Policy

Section 4(1) of SEPP 65 sets out development for which this policy applies. The development application comprises development for the purposes of a residential flat building (161 apartments within proposed 'Building A', 'Building B' and Building C') which consists of the erection of a new building at least three or more storeys and containing at least four or more dwellings. As such, the provisions of SEPP 65 are applicable in accordance with Section 4(1) of the policy.

Section 4(2) clarifies that if a particular development comprises development which Section 4(1) identifies and other development, SEPP 65 applies only to the part of the development identified under Section 4(1) and does not apply to the other part. As such, the multi-dwelling housing (11 two-storey dwellings) component of the development application is not subject to the provisions of SEPP 65 in accordance with Section 4(2).

Section 28 – Determination of development applications

Section 28(1) of SEPP 65 requires the consent authority to refer a development application to which this policy applies to the relevant design review panel for advice concerning the design quality of the development prior to determining the application.

Furthermore, Section 28(2) of SEPP 65 requires consent authorities to take into consideration; (a) the advice obtained from the design review panel; and (b) the design quality of the development when evaluated in accordance with the design quality principles; (c) the *Apartment Design Guide* ('ADG'), when determining a development application for consent to which SEPP 65 applies.

The development application has been reviewed by CN's Urban Design Review Panel ('UDRP'), who operate under a charter stating that they undertake the functions of a design review panel for the purposes of SEPP 65. The development application has been referred to the UDRP, previously known as the Urban Design Consultative Group ('UDCG'), on five occasions including twice prior to lodgement of the subject development application at meetings held 15 August 2018 and 19 September 2018.

After receipt of the development application the proposal was referred for the third time, at the meeting of the UDCG held 21 February 2019. In response to matters raised during the assessment process, several amendments to the application were made during the assessment process and the development application was referred to the UDRP for a fourth meeting held on 30 June 2021.

In response to assessment matters raised by CN, including the advice from the UDRP meeting held 30 June 2021, an amended development application was submitted 23 January 2022.

The UDRP reviewed the development proposal for the fifth time at the meeting held 23 February 2022 when the amended application was referred for final advice. Conditions of consent were recommended by the UDRP to resolve the minor matters identified during the meeting, to address; (1) lift access; (2) provision of additional screening or solid balustrading to north facade of 'Building A', and (3) preparation of a lighting strategy, design and management ('lighting plan') by qualified lighting designer with input from CPTED and landscape consultants. The final advice of the UDRP is supportive of the proposal and further concluded; *'With the expected addressing of the identified minor matters, the development can be considered to exhibit a high level of design quality, and the completed proposal can be expected to make a positive contribution to the area.'*

The current amended proposal was subsequently submitted on 20 May 2022 to address drafting inconsistencies within the architectural drawing set.

An assessment of the current amended proposal has been undertaken having regard to the UDRP 23 February 2022 advice in relation to the design quality principles, as detailed in **Table 4** below.

CN is satisfied the current amended proposal has incorporated the recommendations of the UDRP through the assessment process and suitable conditions of consent has been included in the recommended conditions (refer to **Attachment A** – Draft Schedule of Conditions) to resolve the minor concerns raised by the UDRP. As such, the development application has now satisfied the UDRP advice and is considered an appropriate design response.

Table 4: Consideration of the UDRP advice in relation to the design quality principles under SEPP 65

Design Quality Principles
<p>Principle 1. Context and Neighbourhood Character</p> <p><i>“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.</i></p> <p><i>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.</i></p> <p><i>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.”</i></p> <p><u>UDRP Comment - 23 February 2022:</u></p> <p><i>The Panel commended the additional visual analysis documentation - reiterating the usefulness of this type of documentation for demonstrating how the proposal will sit within the site context.</i></p> <p><i>The perspective of the northern elevation to Block A highlights the need for further measures to achieve a more varied facade and give a greater practicality for future residence [See 6 Amenity and 9 Aesthetics]</i></p> <p><u>Officer Comment:</u></p> <p>The irregular shaped site is located at the head of a short west sloping valley. To the east and set above the site is the heavily wooded Arcadia Park with The Obelisk crowning the top of the hill to the east of Arcadia Park. Below the site, the curved alignment of Mosbri Crescent incorporates an open park directly opposite the site sloping to the western outlook over the City. Lower areas of the valley and the flanking slopes accommodate freestanding residences and small apartment buildings, most of two-storey height.</p> <p>The submitted design documentation has demonstrated detail consideration of local context. The residential apartment component of the development has been sited and planned in order to maximise the number of dwellings with north, west and east aspect to maximise daylight access.</p>
<p>Principle 2. Built Form and Scale</p> <p><i>“Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</i></p> <p><i>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.”</i></p> <p><u>UDRP Comment – 30 June 2021:</u></p> <p><i>The Applicant has made several amendments to the design to overcome site issues and as a result of continued design development.</i></p>

These include:

- *Increased building setbacks from the boundaries to the north and east at Ground level and Level 1.*
- *Overall reduction in building heights on buildings A, B and C varying from a 0.35m reduction to a 1.6m height reduction.*
- *Slight amendments to floor plans.*
- *Pergolas added to level 2 west facing apartment decks.*
- *Additional balconies have been added.*
- *Other balconies have been deleted.*
- *Amendments to communal open space and landscaped areas.*
- *Reductions to boundary retaining walls and fence heights.*
- *Other minor amendments which do not impact on the bulk and scale of the development.*

Generally, the Panel was supportive of the changes. The Panel noted that the roof of Building A was marginally above the height control, which was considered potentially acceptable, given the very limited exceedance of the roof itself above the height plane. However, the lift over-runs and any plant located on the roof, particularly for the higher, eastern section of Building A, should be carefully considered and kept to a minimum. To that end, a reduction in the footprint of the roof top plant areas appears to be possible and would reduce the visual bulk of the roof top. The view of the development from the Obelisk is particularly important, and therefore minimising the size of the roof top plant area is essential to protect this view to the west.

While the form of the front townhouses was considered an attractive contemporary design, the bright white colour of the stair element which is very close to the Mosbri Crescent frontage as illustrated in the photo montage, is too dominant in the streetscape. This finish should be toned down and will be assisted by the proposed street trees along the footpath, which are omitted from the photomontage.

UDRP Comment - 23 February 2022:

Response to previous recommendations has included;

- *Reduction in building heights*
- *Toning down of white painted surfaces to town houses employing Dulux 'Limed White' in lieu of 'Vivid White'.*

Officer Comment:

The development proposal combines three multi-storey apartment buildings against the upper boundary of the site, with terraced rows of curved, two-storey town houses to the lower level of the site separated from the larger structures by a landscaped corridor. A public access way through the site has been located to the western end of the proposed development.

The three larger buildings set against the eastern and northern slope incorporate 'town house' type form to sleeve the interconnect two-storey car parking area behind. The curved terraces fronting Mosbri Crescent are provided with basement car parking and dedicated direct stair and /or lift access to each town house. Carparks to the larger buildings and the townhouses are accessed from a common entry/exit portal at the western end of the site.

The UDRP were satisfied with the design development undertaken in response to their comments during the assessment process, and as such the development is considered to achieve an appropriate built form for the site and for the building's purposes in terms of building alignments, proportions, building type, and articulation of building elements. The proposal will result in a built form

that defines the public domain, contributes to the streetscape and provides a high level of internal amenity and outlook.

Principle 3. Density

“Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area’s existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.”

UDRP Comment – 30 June 2021:

The amendments have resulted in a very minor increase in FSR and GFA but still within the allowed limits. The changes are due to improving the amenity for the residents in common areas. The floor area of apartments and numbers have not changed.

UDRP Comment - 23 February 2022:

No additional comments to the Panels previous comments which are reiterated below:

The amendments have resulted in a very minor increase in FSR and GFA but still within the allowed limits. The changes are due to improving the amenity for the residents in common areas. The floor area of apartments and numbers have not changed.

Officer Comment:

The design is expected to achieve a high level of amenity for residents and each apartment, resulting in a density that is considered appropriate to the site and its context.

The proposed development will result in the provision of additional housing within an established inner city local suburb with access to public transport, essential community infrastructure and services.

Principle 4. Sustainability

“Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.”

UDRP Comment – 30 June 2021:

The additional pergolas on the west facing balconies will reduce the impact of the afternoon sun on these apartments.

UDRP Comment - 23 February 2022:

The current architectural documentation has been amended to include additional solar and daylight access analysis (Drawings DA5.31 to DA5.36) which demonstrates the development proposal satisfies the provisions of the ADG in this regard.

Officer Comment:

Noted.

Principle 5. Landscape

“Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain. Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character. Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours' amenity, and provide for practical establishment and long term management.”

UDRP Comment – 30 June 2021:

No change to landscape context and neighbourhood character.

The Panel was supportive of the relocation of buildings and retaining walls away from Arcadia Park, which is essential to ensure the trees in the park can be maintained in the long term. It was recommended that a condition be included in any Development Consent requiring an arborist to monitor the works and any potential impacts upon the root systems of trees in the park.

The Panel suggested that the three retaining walls between the eastern boundary and the proposed easement could be visually softened if made somewhat more curvilinear rather than three long, closely-spaced parallel walls, as proposed.

The high retaining wall adjacent to the stormwater easement at the southern boundary is proposed as a rock-filled gabion structure. The Panel questioned the durability and longevity of the wire cages if galvanized mesh were to be used. The site is salt exposed, and it was suggested that a more durable structure was warranted than zinc-coated mild steel – given the height of the wall and the obvious expense and difficulty that would be involved in the wall's replacement. Stainless steel mesh may be one option to address this. Safe access for landscape maintenance is essential to all areas, including the section of land within the site at the top of the gabion wall.

UDRP Comment - 23 February 2022:

Amendments to the eastern boundary retaining walls including use of stencilled panels and overspill planting are considered a positive response to previous recommendations.

The overall increase in landscaping to the southern side of the development is supported.

Officer Comment:

Comprehensive landscape design documentation has been prepared in support of the development application.

The landscape design documentation demonstrates comprehensive site planning with regard to landscaping treatment. The landscape design is considered to be appropriate in scale and context

with the proposed residential development having considered useability, privacy and opportunities for social interaction.

Conditions have been included in the recommended Draft Schedule of Conditions (**refer to Attachment A**) to require the preparation of a Landscape Practical Completion Report and Landscape Establishment Report after practical completion.

Principle 6. Amenity

“Good design provides amenity through the physical, spatial and environmental quality of a development. Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.”

UDRP Comment – 30 June 2021:

One of the apartment buildings does not have natural light and ventilation to the corridor. A minor amendment to the layout could achieve this.

The Panel recommended that the glare off the townhouse rooves should be minimised in the material colour and selection, with a mid-tone matt finish suggested. A planted ‘green roof’ would be a very desirable option.

Where possible skylights to internal bathrooms on the top level should be included in all buildings.

The Panel recommended swapping the toilet and the store in the Ground level communal pavilion so that the door to the toilet could be accessible from the outside.

The Panel reiterated the request for each apartment block to have a communal open area on the roof. The Applicant advised that privacy concerns overlooking Newcastle East Public School to the north and heritage concerns resulted in just the one larger communal area on the roof of Building B. The Panel considers that any privacy issues in relation to the school could potentially be resolved by orientation and screening of the communal spaces and reiterates its recommendation that each block should be provided with such facilities.

The views from the two units in Block A looking south to Block B needs to be improved as well as the view back from the end of the corridor in Block B which would potentially cause privacy issues for the units in Block A. The north wall of Block B needs more articulation and perhaps greening in order to improve the view for the 12 units looking at it. The window in the end of the corridor in Block B should be modified to not look straight back to the units in Block A. The adjacent bedroom to the east could be modified to allow this to happen.

Balcony balustrades should provide privacy for residents, especially at lower levels. These should primarily be solid (opaque) possibly including some areas of frosted glass balustrading.

Design of the balconies should ensure that balustrades or screens provide protection from strong winds as well as adequate privacy.

UDRP Comment - 23 February 2022:

The following amendments to the development outlined in the submitted documentation are noted and supported:

- Improvements to the through site link.*

- Improved surveillance of the link.
- Provision of an additional link to landscaped areas.
- Provision of a loading area on plan.
- Reinstatement of on-street parking.
- Provision of a parcel locker room.
- Provision of ramped access to the pool deck
- Roof colour to lower, overlooked areas has been amended to Dulux 'Monument' to reduce glare.
- Provision of external access to the toilet in the communal pavilion.

Further amendments considered necessary:

- The Panel recommended incorporating screened or solid balustrading to 40% of the total balustrading area within the north facade of 'Building A' (facing Kitchener Parade), when measured in elevation, to achieve a more varied façade and give a greater practicality for future residence. The Panel recommended this be achieved by including a Condition on the development consent. The Panel encouraged the use of brickwork for the solid areas of balustrade.

Officer Comment:

Noted. The applicant agrees to the recommendations of the UDRP. Accordingly, conditions of consent have been imposed requiring the development to be amended to include the following:

- a) Screened or solid (opaque, non-glass) balustrading to no less than 40% of the total area of balustrading (measured in elevation) within the north facade of 'Building A'.

Principle 7. Safety

“Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.”

UDRP Comment – 30 June 2021:

Currently the lifts open up directly into the carpark. The Panel suggests that a small, glazed foyer should be created to provide safety for young children running out from the lift.

UDRP Comment - 23 February 2022:

Lifts

- The applicant confirmed it is their intention to provide 'double-access' lifts on the car parking levels of Building A, Building B, and Building C to ensure future residents do not need to re-enter the carparking area from the apartment lobby areas (or visa-versa) to access the lift.
- The Panel is supportive of this and recommended it be confirmed by including a Condition on the development consent.

Lighting strategy

- The Panel recommended the preparation of a lighting strategy, design and management plan ('lighting plan') in conjunction with the landscape documentation prepared for submission with the Construction Certification application to ensure that spaces of shadow and concealment are not created by building and the landscaping.

Landscape Documentation

- *Landscape Documentation prepared for submission with the Construction Certification application to incorporate Crime Prevention Through Environmental Design principles into the design.*

Officer Comment:

Noted. The applicant agrees to the recommendations of the UDRP. Accordingly, conditions of consent have been imposed requiring the development to be amended to include the following:

a)'Double-sided' lifts at 'Ground Level' and 'Level 1' for Building A, Building B, and Building C to provide direct access from the lift to both the car parking area and the apartment lobbies.

b) A lighting strategy, design and management plan ('lighting plan') is to be prepared by a qualified lighting designer. The lighting plan must be designed in conjunction with the landscape plan (required by conditions of this consent) to ensure that spaces of shadow and concealment are not created by the building and the landscaping – particularly in the carpark, loading areas and points of ingress and egress. Lighting is to ensure that the external elevations have appropriate lighting. The lighting plan must be reviewed and informed by the applicants CPTED and landscape consultants. The lighting plan, and confirmation of input from the applicants CPTED and landscape consultants into the lighting plan shall be provided to Council prior to the issue of the Construction Certificate.

Principle 8. Housing Diversity and Social Interaction

“Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.”

UDRP Comment – 30 June 2021:

A good range of different units is achieved across the site.

UDRP Comment - 23 February 2022:

No additional comments to the Panels previous comments which are reiterated below:

A good range of different units is achieved across the site. See comments under ‘Amenity’ in relation to communal space.

Officer Comment:

Noted.

Principle 9. Aesthetics

“Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.”

UDRP Comment – 30 June 2021:

The stark white of the townhouse stairwells should be modified in tone to be less dominant in the streetscape. Otherwise, satisfactory.

UDRP Comment - 23 February 2022:

The Panel acknowledges the amended treatment of blank end walls together with the amended tone of white paint to the townhouses.

Subject to the above recommended minor amendments by way of Conditions, the changes to hard and soft landscaping, and acceptance of increased solid/opaque balustrading to the northern elevation of Building A, the Panel supports the aesthetic resolution of the development.

Officer Comment:

Noted.

A SEPP 65 Design Verification Statement (dated 13 May 2022, prepared by Marchese Partners) was submitted in support of the current amended proposal pursuant to Clause 50(1A) of the *Environmental Planning and Assessment Regulation 2021* ('EP&A Reg2021'). This statement confirms that a qualified designer, which means a person registered as an architect in accordance with the Architects Act 1921 as defined by Clause 3 of the EP&A Reg2021, directed the design of the architectural drawings and provides an explanation that verifies how the related development documentation achieves design quality principals and objectives of the ADG.

The ADG provides greater detail on how residential development proposals can meet the design quality principles set out in SEPP 65 through good design and planning practice. Each topic area within the ADG is structured to provide; (1) **objectives** that describe the desired design outcomes; (2) **design criteria** that provide the measurable requirements for how an objective can be achieved; and (3) **design guidance** that provides advice on how the objectives and design criteria can be achieved through appropriate design responses, or in cases where design criteria cannot be met.

Whilst the ADG document is a guide which under Section 28(2) the consent authority must take into consideration when determining a development application for consent to which SEPP 65 applies, the provisions of Clause 6A under SEPP 65 establish that the objectives, design criteria and design guidance set out in Parts 3 and 4 of the ADG will prevail over any inconsistent DCP control for the following topic area;

- a) visual privacy
- b) solar and daylight access
- c) common circulation and spaces
- d) apartment size and layout
- e) ceiling heights
- f) private open space and balconies
- g) natural ventilation
- h) storage.

Assessment of the current amended proposal has been undertaken having consideration for the ADG. The residential apartment component of the development application is considered to demonstrate good design and planning practice.

Table 2 below, addresses compliance with the objective and design criteria of the relative topic areas in accordance with Clause 6A of SEPP 65. Where a topic area is not specified a design criteria, or where it is not possible for the development to satisfy the design criteria, the compliance comments in the following table will have regard to the design guidance relevant to that topic area.

Table 5: Compliance with required topic areas of ADG

3D Communal and public open space		
Objective 3D-1 An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		
Design Criteria:	Comment:	Compliance:
1. Communal open space has a minimum area equal to 25% of the site.	25% of the total site area equals 3058.75sqm. The current amended proposal includes five areas of communal open space; <ul style="list-style-type: none"> • Recreation areas at Ground = 1,580sqm • Landscaped pedestrian link & seating area at Level 2 podium (above carpark ramp) = 460sqm • Recreation area between Building A and Building B Level 2 podium = 210sqm • Recreation area between Building B and Building C Level 2 podium = 160sqm • Building B rooftop terrace = 690sqm The total communal open space provided is 3,100 sqm, or 25% of the total site area.	Complies
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).	The principle useable part of the communal open space (recreation areas at Ground) is orientated north and achieves a minimum of 2hrs sunlight between 9am and 3pm in mid-winter to over 50% of the area. (see 'SOLAR ACCESS DIAGRAMS/ VIEWS FROM THE SUN @ WINTER SOLSTICE' drawings DA5.33 to DA5.36, revision B, dated 16 May 2022, prepared by Marchese Partners)	Complies
Objective 3D-2 Communal open space is design to allow for a range of activities, respond to site conditions and be attractive and inviting		
Comment:		Compliance:
The current amended proposal includes six areas of communal open space; all of these spaces are internal to the site. Facilities are provided within communal open spaces and common spaces for a range of age groups. Details of the facilities incorporated into each of the five areas of communal open space are summaries below. <u>Recreation areas at Ground</u>		Complies

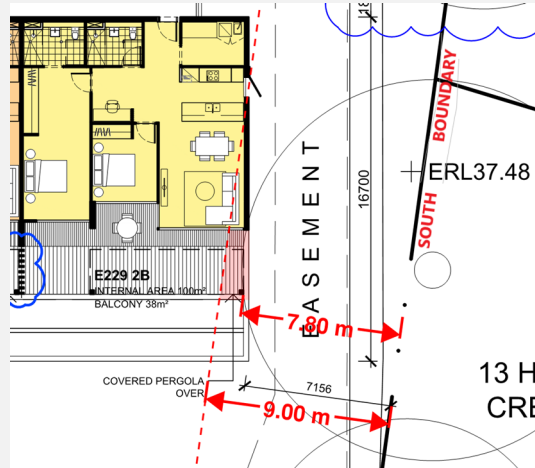
<p>Seating for individuals or groups; bocce court; outdoor gym; passive open turf area; pavilion with outdoor kitchen and dining facilities; and toilet facilities. (see 'LANDSCAPE GROUND FLOOR – DETAIL PLAN' drawings 12, 13 and 14, revision G, dated January 2022, prepared by Arcadia Landscape Architecture)</p> <p><u>Landscaped pedestrian link & seating area at Level 2 podium (above carpark ramp)</u></p> <p>Seating for individuals or groups. (see 'LANDSCAPE LEVEL 02' drawings 16, revision G, dated January 2022, prepared by Arcadia Landscape Architecture)</p> <p><u>Recreation area between Building A and Building B Level 2 podium</u></p> <p>Seating for individuals or groups; and passive turf areas. (see 'LANDSCAPE LEVEL 02 – SECTIONS' drawings 17, revision G, dated January 2022, prepared by Arcadia Landscape Architecture)</p> <p><u>Recreation area between Building B and Building C Level 2 podium</u></p> <p>Seating for individuals or groups. (see 'LANDSCAPE LEVEL 02' drawings 16, revision G, dated January 2022, prepared by Arcadia Landscape Architecture)</p> <p><u>Building B rooftop terrace</u></p> <p>Seating for individuals or groups; swimming pool; sun decks; outdoor equipment; and lounge pavilions. (see 'LANDSCAPE LEVEL 07' drawings 23, revision G, dated January 2022, prepared by Arcadia Landscape Architecture)</p> <p>The communal areas and the garden have been designed to provide large outdoor spaces, overlooked by the development, that can be enjoyed throughout the year by the residents and their visiting family and friends.</p>			
Objective 3D-3			
Communal open space is design to maximise safety			
Comment:		Compliance:	
Communal open space and public domain is readily visible from habitable rooms and private open space areas within the development while maintaining visual privacy.		Complies	
Objective 3D-4			
Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood			
Comment:		Compliance:	
Public open space is not provided.		N/A	
3E Deep soil zones			
Objective 3E-1			
Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.			
Design Criteria:		Comment:	Compliance:
1. Deep soil zones are to meet the following minimum requirements:		7% of the total site area equals 856.45sqm The current amended proposal includes a deep soil zone measuring 1,380sqm or 11% of the total site area, located within the open recreation area at ground level.	Complies
Site area	Minimum dimensions		
	Deep soil zone (%)		

		of site area)	The deep soil zone is consolidated and co-located within the principle useable part of the communal open space.	
greater than 1500sqm	6m	7%		
3F Visual privacy				
Objective 3F-1 Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.				
Design Criteria:		Comment:		Compliance:
1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:		The site is irregular in shape, with six identifiable boundaries; <ul style="list-style-type: none"> • North boundary addressing Kitchener Parade • East boundary shared with Arcadia Park • South boundary shared with Hillview Crescent residences • Southwest boundary shared with 19 Mosbri Crescent • West boundary addressing Mosbri Crescent • Northwest boundary shared with 41 Kitchener Parade and 9 Mosbri Crescent As such, the site has four 'side or rear boundaries' – east boundary, south boundary, southwest, and northwest – for which the minimum separation distances described in this part of the ADG are applicable. Details of which are provided below.		See below
Building height	Habitable rooms & balconies	Non-habitable rooms		
up to 12m (4 storeys)	6m	3m		
up to 25m (5-8 storeys)	9m	4.5m		
over 25m (9+ storeys)	12m	6m		
Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2). Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.		Separation distances to east boundary (shared with Arcadia Park) <u>Building A</u> <u>Up to 12m (Level 02, Level 03, Level 04, Level 05)</u> Ground Floor and Level 01 are located below finished surface level for the extent of Building A directly adjacent to the east boundary. As such, the minimum separation distances for Building A to the east boundary start at Level 02. At Level 02, Building A is setback 6m from the east boundary. At Level 03 to Level 05, Building A is setback a minimum 8.3m from the east boundary. This complies with the minimum separation distance for buildings from side and rear boundaries at this height (6m for habitable rooms).		Complies
		<u>Building A</u> <u>Up to 25m (Level 06, Level 07, Level 08, and Roof)</u>		Complies

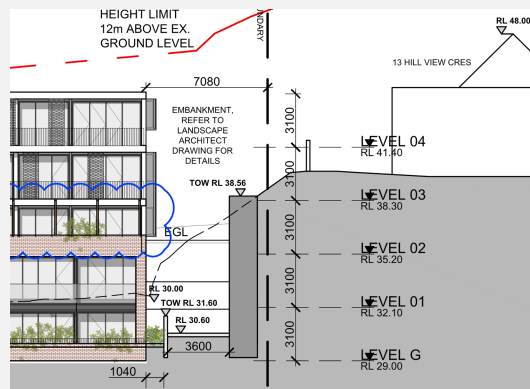
	At Level 06 and above, Building A is setback a minimum 8.3m from the east boundary. This complies with the minimum separation distance for buildings from side and rear boundaries at this height (9m for habitable rooms).	
	<u>Building B and Building C</u> <u>Up to 12m (Ground Level, Level 01, Level 02, and Level 03)</u> No apartments are proposed on Ground Floor and Level 01 of Building B and Building C directly adjacent to the east boundary. As such, the minimum separation distances for Building B and Building C to the east boundary start at Level 02. At Level 02, Building B and Building C are setback 7.575m from the east boundary. At Level 03, Building B and Building C are setback 9m from the eastern boundary. This complies with the minimum separation distance for buildings from side and rear boundaries at this height (6m for habitable rooms).	Complies
	<u>Building B and Building C</u> <u>Up to 25m (Level 04, Level 05, Level 06, and Level 07/ Rooftop)</u> At Level 04 and above, Building B and Building Care setback 9m from the east boundary. This complies with the minimum separation distance for buildings from side and rear boundaries at this height (9m for habitable rooms).	Complies
	Separation distances to south boundary (shared with Hillview Crescent residences) Note: To resolve amenity impacts, the design guidance for this objective requires apartment buildings to increase the building separation distance described in Design Criteria 1 by 3m when adjacent to a different zone that permits lower density residential development. This is applicable to the south boundary as the neighbouring land is zoned to permit lower density development.	

	<p>Building C <u>Up to 12m (Ground Level, Level 01, Level 02, Level 03, and Level 04)</u></p> <p>At Ground Level and Level 01, Building C has a blank wall facing the south boundary. No separation is required to blank walls, and as such the Ground Level and Level 01 of Building C complies with the minimum separation distances for buildings to the side and rear boundaries described in this part of the ADG.</p> <p>Note: Elevation E showing Building C south Elevation on '<i>SITE SECTIONS AND ELEVATIONS 02</i>' (drawings DA3.02, revision I, dated 16 May 2022, prepared by Marchese Partners) incorrectly shows a south facing window to Level 02 which is inconsistent with the '<i>LEVEL 02 FLOOR PLAN</i>' (drawings DA3.02, revision I, dated 16 May 2022, prepared by Marchese Partners). This can be addressed by imposing a suitably worded condition of consent clarifying development consent is not granted for the south facing window of apartment E118 (in south facade of Building C) and marking the plans accordingly.</p> <p>At Level 02, Building C is setback an average of 9.45m (maximum of 11.4m and minimum of 7.5m)</p> <p>At Level 03 and Level 04, Building C is setback an average of 9.5m (maximum of 11.2m and minimum of 7.8m)</p> <p>Generally, the separation distances proposed between Building C and the south boundary achieve the minimum required separation distances for habitable and non-habitable areas at this height (6m + 3m for habitable rooms). Details of the technical non-compliances are listed below;</p> <p>Apartment E229</p> <p>A small portion of southwest corner of apartment E229 at Level 02 encroaches into the minimum 9m separation distances for buildings to the side and rear boundaries at this height due to the irregular alignment of the south boundary (see area marked red in extract of Level 02 floor plan below.)</p> <p>The earthworks proposed within the setback between Building C and the south boundary for the stormwater easement, means the finished floor level of Level 02 will be a storey below the natural ground level of the neighbouring land at this location (see extract of Section D below).</p>	<p>Satisfactory (Merit based assessment)</p>
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Given the substantial level changes at this interface, and the provision of a covered pergola which limits overlooking of lower apartments or private open space, assessment has found that suitable visual privacy is achieved and as such the separation provided is considered acceptable.



Extract of Level 02 Floor Plan

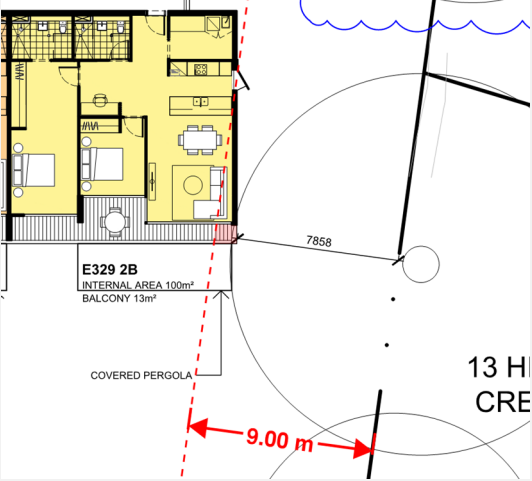


Extract of Section D

Apartment E329 and E429

A small portion of the southwest corner of apartments E329 and E439 at Level 03 and Level 04 respectively, encroach into the minimum 9m separation distances for buildings to the side and rear boundaries at this height due to the irregular alignment of the south boundary (see area marked red in extract of Level 03 floor plan below.)

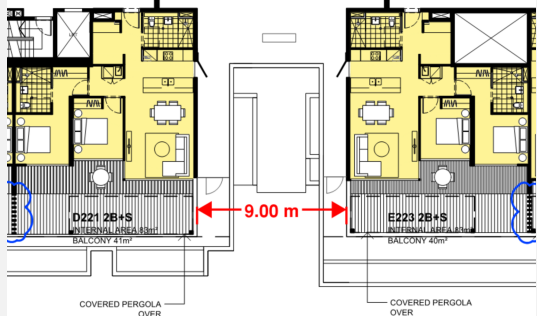
The technical non-compliance is minor (an area of approximately 1sqm per apartment) and relates a 'secondary' portion of the apartment balcony with a depth of approximately 900mm (where the primary balcony area is the portion which achieves the minimum balcony depth requirements of Objective 4E-1).

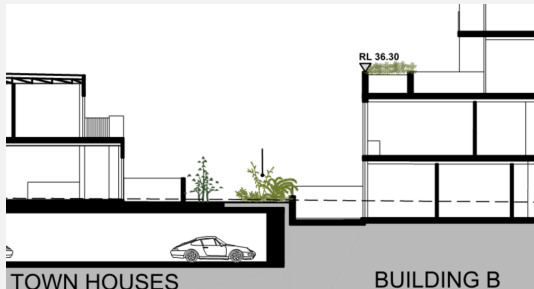
	<p>Furthermore, it is noted that the development proposal was referred to CN's UDRP during the assessment process. The UDRP did not take issue with the building separation distances proposed and have supported the proposal.</p> <p>The non-compliance is able to be accepted on a balanced view having regard for both visual privacy, access to light and air, and building bulk and scale.</p>  <p>Extract of Level 03 Floor Plan (typical for Level 04)</p>	
	<p>Separation distances to southwest boundary (shared with 19 Mosbri Crescent)</p> <p>Note: To resolve amenity impacts, the design guidance for this objective requires apartment buildings to increase the building separation distance described in Design Criteria 1 by 3m when adjacent to a different zone that permits lower density residential development. This is applicable to the southwest boundary as the neighbouring land is zoned to permit lower density development.</p> <p><u>Building C</u> <u>Up to 12m (Ground Level, Level 01, Level 02, Level 03, and Level 04)</u></p> <p>At Ground Level and above, Building C is setback over 35m from the southwest boundary shared with 19 Mosbri Crescent and as such all levels of Building C comply with the minimum separation distances for buildings to the side and rear boundaries described in this part of the ADG (6m + 3m for habitable rooms and balconies).</p>	Complies
	<p>Separation distances to northwest boundary (shared with 9 Mosbri Crescent and 41 Kitchener Parade)</p>	

	<p>Generally, habitable rooms and balconies to apartments in Building A are orientated to either the north or south to maximise visual privacy between the proposal and neighbouring development to the west. To ensure apartments on different levels have appropriate visual separation distances relative to the sloping site, assessment of the separation distance between Building A and the northwest boundary has been divided into 'north facing' and 'south facing'.</p> <p><u>Building A 'south facing'</u></p> <p><u>Up to 12m (Ground Floor, Level 01, Level 02, Level 03)</u></p> <p>At Ground Level and Level 01, Building A has a blank wall facing the northwest boundary. No separation is required to blank walls, and as such the proposed blank wall at Ground Level and Level 01 for Building A complies with the minimum separation distances for buildings to the side and rear boundaries described in this part of the ADG.</p> <p>At Level 02 and Level 03, Building A 'south' is setback 12m from the northwest boundary. This complies with the minimum separation distance for buildings from side and rear boundaries at this height (6m for habitable rooms and balconies).</p>	Complies
	<p><u>Building A 'south facing'</u></p> <p><u>Up to 25m (Level 04, Level 05, Level 06, and Level 08)</u></p> <p>At Level 04 and Level 05, Building A (south facing apartments) is setback 12m from the northwest boundary. At Level 06 and above, Building A (south facing apartments) is setback over 33m.</p> <p>As such, Levels 04 and above comply with the minimum separation distance for buildings from side and rear boundaries at this height (9m for habitable rooms and balconies).</p>	Complies
	<p><u>Building A 'north facing'</u></p> <p><u>Up to 12m (Level 02, Level 03, Level 04, and Level 05)</u></p> <p>Ground Floor and Level 01 are located below finished surface level for the extent of Building A 'north' located adjacent the northwest boundary. As such, the minimum separation distances for Building A 'north' to the northwest boundary start at Level 02.</p> <p>At Level 02 to Level 05, Building A 'north' is setback 10m from the northwest boundary. This complies with the minimum separation distance for buildings from side and rear</p>	Complies

	boundaries at this height (6m for habitable rooms and balconies).	
	<p><u>Building A 'north facing'</u></p> <p><u>Up to 25m (Level 06, Level 07, and Level 08)</u></p> <p>At Level 06 and above, Building A 'north facing' is setback over 33m from the northwest boundary. This complies with the minimum separation distance for buildings from side and rear boundaries at this height (9m for habitable rooms and balconies).</p>	Complies
	<p><u>Separation distances between buildings onsite</u></p> <p><u>Building A and Building B</u></p> <p><u>Up to 12m (Level 02, Level 03, Level 04, and Level 05)</u></p> <p>At Level 02, a 9m separation distance is provided between the non-habitable windows located in the south facade of Building A and the habitable windows located in the north facade Building B. This complies with the minimum separation distance of 9m required for building on the same site at this height (6m for habitable rooms + 3m for non-habitable rooms).</p> <p>Also at Level 02, a 7.65m separation distance is provided between the south facing apartment balconies of Building A (apartments B207 and B209) and non-habitable windows located in the north facade Building B (apartment C213). Whilst the above does not comply with the 9m minimum distance required for buildings on the same site at this height (6m for habitable rooms + 3m for non-habitable rooms), fixed external screening has been provided to the north facing non-habitable window located in the north facade Building B (apartment C213) which redirects the view/ outlook from this window away from the south facing apartment balconies of Building A (apartments B207 and B209). The non-compliance is able to be accepted on a balanced view having regard for both visual privacy, access to light and air, and building bulk and scale.</p> <p>At Level 03 to Level 05, a 9m separation distance is provided between the south facade of Building A and the north facade of Building C apartment balconies of Building A and non-habitable windows located in the north facade Building B. This complies with the minimum separation distance of 9m required for building on the same site at this height (6m for habitable rooms + 3m for non-habitable rooms).</p>	Satisfactory (Merit based assessment)

	<p><u>Building A and Building B</u> <u>Up to 25m (Level 06, Level 07, and Level 08)</u></p> <p>At Level 06, a 9m separation distance is provided between the south facing non-habitable window of Building A (apartment B606) and the habitable room windows located in the north facade of Building B (apartment C607). Whilst the above does not comply with the 13.5m minimum separation distances required for buildings on the same site at this height (4.5m for non-habitable rooms + 9m for habitable rooms), frosted glazing has been specified for the south facing non-habitable window of Building A (apartment B606) and fixed external screening has been provided to the north facing habitable windows of Building B (apartment C607) which redirects the view/ outlook from this window away from the adjacent building. The building layout and design features have been used to contribute to increased privacy between apartments. The non-compliance can be accepted on a balanced view.</p> <p>At Level 07, a 11m separation distance is provided between the non-habitable windows located in the south facade of Building A and the communal open space located on the rooftop of Building B (9m separation between the buildings + 2m setback from north edge of Building B). This complies with the minimum separation distance of 9m required for building on the same site at this height (9m for habitable rooms + 0m for blank wall).</p>	<p>Satisfactory (Merit based assessment)</p>
	<p><u>Building B and Building C</u> <u>Up to 12m (Level 02, Level 03, Level 04, and Level 05)</u></p> <p>At Level 02 to Level 05, a 9m separation distance is provided between non-habitable windows located in the south facade of Building B and the non-habitable windows located in the north facade Building C. This complies with the minimum separation distance of 6m is required for building on the same site at this height (3m for non-habitable rooms + 3m for non-habitable rooms).</p> <p>At Level 02, a 9m separation distances is provided between the primary balcony area for apartment D221 (south-west corner of Building B) and the primary balcony area for apartment E223 (north-west corner of Building C). This does not comply with the 12m minimum separation distance required</p>	<p>Satisfactory (Merit based assessment)</p>

	<p>for building on the same site at this height (6m for balconies + 6m for balconies). There is potential for direct lines of sight across balcony corners between primary balcony areas (the portion of the balcony which achieves the minimum depth requirements of Object 4E-1) of apartments D221 and E223 (see extract of Level 02 Floor Plan below). Potential visual privacy impacts between these two apartments can be addressed by imposing a suitably worded condition of consent requiring the provision of 1.8m high fixed privacy screening along the south edge of apartment D221 balcony.</p>  <p>Extract of Level 02 Floor Plan</p> <p>For clarity purposes it is noted that the above issue of direct line of sight across balcony corners between primary balcony areas is not a concern in this location on Levels 03 to Level 05 as the primary balcony area is not located at the corner of the buildings.</p>	
	<p><u>Residential Flat Building component and multi dwelling component</u></p> <p>At Ground Level, generally a minimum 12m separation is provided between the residential flat building component of the development (Building A, Building B and Building C), and the multi-dwelling housing component (Mosbri Crescent Townhouses) which complies with the minimum separation distance of 12m required for building on the same site at this height (6m for habitable rooms + 6m for habitable rooms).</p> <p>Th exception being towards the centre of the site at Ground Level, between the west facing apartment balconies of Building B and the east facing private open space of the multi-dwelling housing (Mosbri Crescent townhouses). A combination of landscape (screening vegetation) and design features (level changes) have been</p>	<p>Satisfactory (Merit based assessment)</p>

	<p>used to suitably manage potential privacy impacts (see extract of Section BB below).</p>  <p>TOWN HOUSES BUILDING B</p> <p>Extract of Section BB</p> <p>At Level 1, a minimum 12m separation distance is provided between the residential flat building component of the development (Building A, Building B and Building C), and the multi-dwelling housing component (Townhouses). This complies with the minimum separation distance of 12m required for building on the same site at this height (6m for habitable rooms + 6m for habitable rooms).</p>	
Objective 3F-2		
Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.		
Comment:		Compliance:
Generally, communal open space, common areas and access paths are separated from private open space and windows to apartments.		Complies
A combination of substantial landscape planting, vertical fencing, and changes in level between private open space and common access paths, have been utilised at Ground Level to separate the private open space and windows of apartments from adjacent communal open space and common areas.		
A4 Solar and daylight access		
Objective 4A-1		
To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space		
Design Criteria:	Comment:	Compliance:
1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.	<p>The submitted architectural documentation, prepared by Marchese Partners, states 116 out of the 161 total apartments proposed, or 72%, will achieve a minimum of 2hrs sunlight during 9am and 3pm at mid-winter. (see 'SOLAR ACCESS DIAGRAMS 01' drawing DA5.31, revision G, dated 16 May 2022, prepared by Marchese Partners; and 'SOLAR ACCESS DIAGRAMS 02' drawing DA5.32, revision G, dated 16 May 2022, prepared by Marchese Partners)</p> <p>Analysis of the submitted 'SOLAR ACCESS DIAGRAMS/ VIEWS FROM THE SUN @ WINTER SOLSTICE' (drawings DA5.33 to DA5.36, revision B, dated 16</p>	Complies

	May 2022, prepared by Marchese Partners) confirmed 116 out of 161 total apartments proposed, or 72%, will achieve a minimum of 2hrs sunlight during 9am and 3pm at mid-winter.	
Design Criteria:	Comment	Compliance:
2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter.	N/A	N/A
Design Criteria:	Comment:	Compliance:
3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	<p>The submitted <i>SEPP 65 Verification Statement</i> (dated 13 May 2022, prepared by Marchese Partners) states 14.9% of the 161 total apartments proposed will receive no direct sunlight between 9am and 3pm.</p> <p>No further details are provided demonstrating which apartments have been included in this calculation.</p> <p>Analysis of the submitted 'SOLAR ACCESS DIAGRAMS/ VIEWS FROM THE SUN @ WINTER SOLSTICE' (drawings DA5.33 to DA5.36, revision B, dated 16 May 2022, prepared by Marchese Partners) found 24 out of 161 total apartments proposed, or 14.9% will receive no direct sunlight during 9am and 3pm at mid-winter (due to being south facing, single aspect apartments). Details are provided below.</p> <ul style="list-style-type: none"> • Ground Level = 5 apartments (AG01, AG02, BG03, BG04, and CG05) • Level 01 = 4 apartments (A101, A102, B103, and B104) • Level 02 = 3 apartments (A203, B207, and B209) • Level 03 = 3 apartments (A303, B307, and B309) • Level 04 = 3 apartments (A403, B407, and B409) • Level 05 = 2 apartments (B507, and B509) • Level 06 = 2 apartments (B603, and B605) • Level 07 = 2 apartments (B703, and B705) 	Complies
Objective 4A-2 Daylight access is maximised where sunlight is limited.		
Comment		Compliance:

Skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms. Internal courtyards are not used.		Complies
Full height glazing for the maximum practical extent of apartment frontages has been provided to maximise daylight access.		
All apartments within the development will have access to all areas of communal open space, maximising daylight access for future residents by providing multiple options to access northern sun no matter the time of day.		
Objective 4A-3		
Design incorporates shading and glare control, particularly for warmer months.		
Comment		Compliance:
The design incorporates shading devices such as eaves, external screening, and recessed balconies, to shade summer sun but allow winter sun to penetrate living areas.		Complies
4B Natural ventilation		
Objective 4B-1		
All habitable rooms are naturally ventilated		
Comment		Compliance:
All habitable rooms are naturally ventilated via adjustable windows, located in external walls, with suitable effective operable areas.		Complies
Objective 4B-2		
The layout and design of single aspect apartments maximises natural ventilation.		
Comment		Compliance:
For the single aspect apartments, apartment depths have been minimised and frontages maximised to increase ventilation and airflow.		Complies
Natural ventilation is further enhanced by providing generous window and door openings (full height glazing for maximum practical extent of apartment frontages has been provided).		
Objective 4B-3		
The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.		
Design Criteria:	Comment:	Compliance:
1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	The current amended architectural documentation, prepared by Marchese Partners, states 103 out of the 161 total apartments proposed, or 63.9%, will achieve natural cross ventilation. (see 'CROSS VENTILATION DIAGRAMS 01', drawing DA5.21, revision G, dated 16 May 2022, prepared by Marchese Partners; and 'CROSS VENTILATION DIAGRAMS 01', drawing DA5.22, revision G, dated 16 May 2022, prepared by Marchese Partners) The above calculation includes 9 apartments which rely on a solar chimney combined with a wind induced ventilator (labelled 'vent shafts' on the current amended architectural documentation) to	Satisfactory (Merit based assessment)

	<p>achieve compliance with the natural cross ventilation requirements set out in this section of the ADG. Details of these apartments are provided below;</p> <ul style="list-style-type: none"> • Ground Level = 1 apartment (EG14) • Level 01 = 1 apartments (E114) • Level 02 = 3 apartments (A204, E224, and E226) • Level 03 = 3 apartments (A304, E3224, E326) • Level 04 = 1 apartments (A404) <p>A 'Statement of Intended Compliance' (dated 13 May 2022, prepared by North Consulting Engineers Pty Ltd) has been submitted in support of the development application. The 'Statement of Intended Compliance' states;</p> <p><i>An assessment of the operation of a solar chimney combined with a wind induced ventilator will be carried out via Computational Fluid Dynamic (CFD) simulations. This CFD study will incorporate the inclusion of Inductex induced static ventilator devices, which in my experience, has proved to provide better induction performance than the typical hurricane rotating devices.</i></p> <p><i>The primary objective of this CFD study will be to investigate the effectiveness of operation of the proposed induced natural ventilation system.</i></p> <p><i>I am an appropriately qualified and competent individual in this area and as such, can state that in my opinion, the design intent of the natural ventilation system will be able to satisfy the provision of the Apartment Design Guide (SEPP 65), subject to a computational fluid dynamic (CFD) simulation and analysis, which will be carried out in the weeks to follow.</i></p> <p>No further details have been provided by the applicant in this regard.</p> <p>As such, analysis of the current amended floor plans (drawings DA2.02 to DA2.10, prepared by Marchese Partners) found 94 out of 161 total apartments proposed, or 58.3%, will achieve cross ventilation without relying on solar chimney combined with a wind induced ventilator.</p> <p>This non-compliance is minimal (a minimum of 96.6 apartments out of 161 total apartments proposed would equate to 60%) and a number of strategies to bring</p>	
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	<p>sufficient volumes of fresh air through the apartments to create a comfortable indoor environment (apartment depths have been minimised; full height glazing for maximum practical extent of apartment frontages with large effect openable areas; apartments designed to minimise the number of corners, doors and rooms that might obstruct airflow; appropriate ceiling heights).</p> <p>Furthermore, it is noted that the development proposal was referred to CN's UDRP during the assessment process. The UDRP did not raise concern with the design of the apartments in regard to natural ventilation and have supported the proposal.</p> <p>The non-compliance can be accepted on a balanced view.</p>		
Design Criteria:	Comment:	Compliance:	
2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	18 out of the 161 total apartments proposed are cross-through apartments. The overall depth of a cross-through apartment is 16.5m measures glass line to glass line	Complies	
4C Ceiling heights			
Objective 4C-1			
Ceiling height achieves sufficient natural ventilation and daylight access.			
Design Criteria:	Comment:	Compliance:	
1. measured from finished floor level to finished ceiling level, minimum ceiling heights are:	All storey (Ground Floor to Level 08) have a floor-to-floor height of 3.1m. As such, a minimum ceiling height from finished floor level to finished ceiling level of 2.7m to habitable rooms and 2.4m to non-habitable rooms can be achieved for all apartments (including the two storey apartments). No attic spaces are proposed. The development proposal is on land in Zone R3 Medium Density Residential. As such the minimum ceiling heights described in this part is not applicable.	Complies	
Minimum ceiling height for apartment and mixed-use buildings			
Habitable rooms			2.7m
Non-habitable			2.4m
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area		

Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope		
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use		
These minimums do not preclude higher ceilings if desired.			
Objective 4C-2 Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.			
Comment:			Compliance:
Ceiling heights that increase the sense of space within the apartment and provide well-proportioned rooms can be achieved within the proposed floor-to-floor heights.			Complies
Objective 4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building.			
Comment:			Compliance:
The development proposal is located in an established residential area, on land zoned for medium density residential, and not located within a 'centre'. As such Objective 4C-3 , and the design guidance provided, which encourages greater than minimum ceiling heights for lower-level apartments in centres for the purpose of allowing flexibility and conversion to non-residential uses, is not applicable.			N/A
4D Apartment size and layout			
Objective 4D-1 The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.			
Design Criteria:		Comment:	Compliance:
1. Apartments are required to have the following minimum internal areas:		The architectural drawings include typical apartment 'type' layouts (drawings DA4.15 – DA4.53, prepared by Marchese Partners). Analysis of the typical apartment 'type' layouts (drawings DA4.15 – DA4.53, prepared by Marchese Partners) and the current amended floor plans (drawings DA2.02 to DA2.10, prepared by Marchese Partners) found 159 out of 161 total apartments proposed, achieve the minimum internal areas required. Details of	Satisfactory (Merit based assessment)
Apartment type	Minimum internal area		
Studio	35m ²		
1 bedroom	50m ²		
2 bedroom	70m ²		
3 bedroom	90m ²		

<p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	<p>the non-complying apartments are listed below;</p> <p><u>TOWNHOUSE TYPE J, drawing DA.26, revision C, dated 16 May 2022</u></p> <p>Apartments BG04, and B104 have an internal area of 74sqm (refer to drawing DA4.26). A minimum internal area of 75sqm is required for 2-bedroom + 2 bathroom apartments. The non-compliance is minimal (approximately 1.2sqm).</p> <p>The design guidance provided for this objective acknowledges that a merit-based assessment is appropriate in circumstances where minimum areas or room dimensions are not met.</p> <p>The design drawings have suitably demonstrated the apartments are well designed by showing the useability and functionality of the space with realistically scaled furniture layouts and circulation spaces, despite the minor non-compliance.</p> <p>As such, the proposal complies with the design guidance for this objective.</p>	
Design Criteria:	Comment:	Compliance:
<p>2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	<p>All habitable rooms are provided a suitably sized window in an external wall.</p>	<p>Complies</p>
<p>Objective 4D-2 Environmental performance of the apartment is maximised.</p>		
Design Criteria:	Comment:	Compliance:
<p>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	<p>For a ceiling height of 2.7m, the maximum depth for habitable rooms other than combined living/ dining/ kitchen rooms is 6.75m.</p> <p>Other than combined living/ dining and kitchen rooms, all habitable room depths have been limited to a less than 6.75m.</p>	<p>Complies</p>
Design Criteria:	Comment:	Compliance:
<p>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p>All apartments have a maximum habitable room depth of less than 8m from a window for open plan living, dining and kitchen area, measured from glass line to furthest kitchen bench.</p>	<p>Complies</p>
<p>Objective 4D-3</p>		

Apartment layouts are designed to accommodate a variety of household activities and needs.		
Design Criteria:	Comment:	Compliance:
1. Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	All master bedrooms have a minimum area of 10m ² and all other bedrooms have a minimum area of 9m ² (excluding wardrobe space).	Complies
Design Criteria:	Comment:	Compliance:
2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	<p>The submitted <i>SEPP 65 Verification Statement</i> (dated 13 May 2022, prepared by Marchese Partners) states the proposal is 'compliant' with respect to bedrooms having a minimum dimension of 3m (excluding minimum wardrobe space).</p> <p>The architectural drawings include typical apartment 'type' layouts (drawings DA4.15 – DA4.53, prepared by Marchese Partners) which demonstrate all bedrooms have a minimum internal dimension of 3m (excluding wardrobe space).</p>	Complies
Design Criteria:	Comment:	Compliance:
<p>3. Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1-bedroom apartments. • 4m for 2 and 3-bedroom apartments. 	<p>The submitted <i>SEPP 65 Verification Statement</i> (dated 13 May 2022, prepared by Marchese Partners) states the proposal is 'compliant' with respect to minimum widths of living rooms and combined living/ dining rooms.</p> <p>However, analysis of the typical apartment 'type' layouts (drawings DA4.15 – DA4.53, prepared by Marchese Partners) and the current amended floor plans (drawings DA2.02 to DA2.10, prepared by Marchese Partners) found 144 out of 161 apartments have either living rooms, or combined living/ dining rooms which achieve the minimum dimensions required for the number of bedrooms provided. Details of the non-complying apartments are listed below;</p> <p><u>UNIT TYPE G, drawing DA.36, revision C, dated 16 May 2022</u></p> <p>Apartments C212, C312, C412, C512, and C607 have a combined living/dining room with a minimum dimension of 3.95m, which is less than the minimum 4m dimensions required for a combined living/ dining room within a 3-bedroom apartment.</p> <p><u>UNIT TYPE M, drawing DA.42, revision C, dated 16 May 2022</u></p> <p>Apartments B211, B311, B411, and B511 have a combined living/dining area with a minimum dimension of 3.555m, which is less than the minimum 4m dimensions</p>	Satisfactory (Merit based assessment)

	<p>required for a combined living/ dining room within a 2-bedroom apartment.</p> <p><u>UNIT TYPE P, drawing DA.43, revision B, dated 21 April 2022</u></p> <p>Apartments B207, B307, B407, B507, B603, and B703 have a combined living/dining area with a minimum dimension of 3.14m, which is less than the minimum 3.6m dimension required for a combined living/ dining room within a 1-bedroom apartment</p> <p><u>UNIT TYPE V, drawing DA.49, revision B, dated 21 April 2022</u></p> <p>Apartments B606, and B706 have a combined living/ dining area with a minimum dimension of 3.555m, which is less than the minimum 4m dimensions required for a combined living/ dining room within a 3-bedroom apartment.</p> <p>The design guidance for this objective acknowledges that a merit-based assessment in circumstances where minimum areas or room dimensions are not met.</p> <p>The design drawings have suitably demonstrated the apartments are well designed by showing the useability and functionality of the space with realistically scaled furniture layouts and circulation spaces, despite the minor non-compliance.</p> <p>As such, the proposal complies with the design guidance for this objective.</p>													
Design Criteria:	Comment:	Compliance:												
4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	18 out of the 161 total apartments proposed are cross-through apartments. All cross-through apartments are greater than 4m in width.	Complies												
4E Private open space and balconies														
Objective 4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity.														
Design Criteria:	Comment:	Compliance:												
1. All apartments are required to have primary balconies as follows: <table border="1"> <thead> <tr> <th>Type</th><th>Min-area</th><th>Min-depth</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>4m²</td><td>-</td></tr> <tr> <td>1 bed</td><td>8m²</td><td>2m</td></tr> <tr> <td>2 bed</td><td>10m²</td><td>2m</td></tr> </tbody> </table>	Type	Min-area	Min-depth	Studio	4m ²	-	1 bed	8m ²	2m	2 bed	10m ²	2m	<p>The submitted <i>SEPP 65 Verification Statement</i> (dated 13 May 2022, prepared by Marchese Partners) states all apartment balconies are 'compliant' with respect to minimum area and depths.</p> <p>However, analysis of the typical apartment 'type' layouts (drawings DA4.15 – DA4.53, prepared by Marchese Partners) and the current amended floor plans (drawings</p>	Satisfactory (Merit based assessment)
Type	Min-area	Min-depth												
Studio	4m ²	-												
1 bed	8m ²	2m												
2 bed	10m ²	2m												

3+ bed	12m ²	2.4m	<p>DA2.02 to DA2.10, prepared by Marchese Partners) found 147 out of 161 apartments proposed have primary balconies that achieve the minimum area and depths required. Details of the non-complying apartments are listed below;</p> <p><u>'UNIT TYPE F', drawing DA4.35, revision C, dated 16 May 2022</u></p> <p>Apartments C313, C413, C513, and C608 are 2-bedroom apartments with a single west facing balcony having a total area of 20sqm (excluding areas with a depth of less than 1m), which complies with the minimum area required for 2-bedroom apartments (10sqm).</p> <p>However, the balcony has a minimum depth of 1.98m, which does not achieve the minimum depth of 2m required for 2-bedroom apartments.</p> <p><u>UNIT TYPE G, drawing DA.36, revision C, dated 16 May 2022</u></p> <p>Apartments C312, C412, C512, and C607 are 3-bedroom apartments with a single east facing balcony having a total area of 16sqm which complies with the minimum area required for 3-bedroom apartments (12sqm).</p> <p>However, the balcony has a minimum depth of 2.22m, which does not achieve the minimum depth of 2.4m required for 3-bedroom apartments.</p> <p><u>'UNIT TYPE L', drawing DA4.41, revision C, dated 16 May 2022</u></p> <p>Apartments B310, B410, and B510 are 3-bedroom apartments with a single north facing balcony having a total area of 22sqm which complies with the minimum area required for 3-bedroom apartments (12sqm).</p> <p>However, the balcony has a minimum depth of 2.275m, which does not achieve the minimum depth of 2.4m required for 3-bedroom apartments.</p> <p><u>'UNIT TYPE R', drawing DA4.45, revision B, dated 21 April 2022</u></p> <p>Apartments A302, A402, and A502 are 3-bedroom apartments with a single north facing balcony having a total area of 18sqm which complies with the minimum area required for 3-bedroom apartments (12sqm).</p> <p>However, the balcony has a minimum depth of 2.325m, which does not achieve the minimum depth of 2.4m required for 3-bedroom apartments.</p>
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	<p>The non-compliances proposed are minimal (ranging from 20mm to 180mm) and can be accepted on a balance view regarding both minimum balcony depths and areas.</p> <p>Furthermore, the design drawings have suitably demonstrated the apartment balconies are well designed by showing the useability and functionality of the space with realistically scaled furniture layouts and circulation spaces, despite the minor non-compliance.</p>	
Design Criteria:	Comment:	Compliance:
2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	All 56 of the proposed apartments located on a podium level or similar structure (Ground Floor, Level 1, and Level 2) have private open space with a minimum area of 15m ² and minimum depth of 3m.	Complies
Objective 4E-2 Primary private open space and balconies are appropriately located to enhance liveability for residents.		
Comments:		Compliance:
All private open space and balconies have been orientated with the longer side facing outwards to optimise daylight access into adjacent rooms. Private open spaces and balconies predominantly face north, east or west. Private open space and balconies have been designed as an extension of the main living area by being located adjacent to the living area, dining room or kitchen.		Complies
Objective 4E-3 Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.		
Comments:		Compliance:
Solid, partially solid or transparent fences and balustrades have been selected to respond to the location. They have been designed to allow views and passive surveillance of the street while maintaining visual privacy and allowing for a range of uses on the balcony. Full width full height glass balustrades have generally been avoided. Projecting balconies have been integrated into the building design and the design of soffits. Vertical batten screens, perforated metal solar screens, hoods and pergolas are integrated into the design to control sunlight and wind. Clothes drying, storage and air conditioning units are not located on balconies.		Complies
Objective 4E-4 Private open space and balcony design maximises safety.		
Comments:		Compliance:

The design and detailing of private open space and balconies has avoided opportunities for climbing and falls. Horizontal screening has not been proposed.		Complies	
4F Common circulation and spaces			
Objective 4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments.			
Design Criteria:	Comment:	Compliance:	
1. The maximum number of apartments off a circulation core on a single level is eight.	<u>Building A</u> Building A has two lift cores which provide access at each level. As such, the maximum number of apartments off a single circulation core on a single level is six apartments.	Complies	
	<u>Building B</u> Building B has two lift cores which provide access at each level. As such, the maximum number of apartments off a single circulation core on a single level is five apartments.	Complies	
	<u>Building C</u> Building C has a single lift core which provide access at each level. The maximum number of apartments off the circulation core on a single level is eight apartments.	Complies	
Design Criteria:	Comment:	Compliance:	
2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A	N/A	
Objective 4F-2 Common circulation spaces promote safety and provide for social interaction between residents.			
Comments:		Compliance:	
Internal corridors have been designed to provide clear and well-defined circulation paths. Direct and legible access has been provided between the vertical circulation points (lifts) and apartment entries by minimising corridor or gallery length to give short, straight, clear sight lines.		Complies	
4G Storage			
Objective 4G-1 Adequate, well-designed storage is provided in each apartment.			
Design Criteria:	Comment:	Compliance:	
1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	<u>Storage located within the apartment</u> The submitted <i>SEPP 65 Verification Statement</i> (dated 13 May 2022, prepared by Marchese Partners) states 'all apartment apartments comply in terms of storage areas' and 'at most 50% of the storage in certain apartments is currently not located within the apartment but adequate storage	Satisfactory (Merit based assessment)	
<table><tr><td>Dwelling type</td><td>Storage size volume</td></tr></table>	Dwelling type		Storage size volume
Dwelling type	Storage size volume		

Studio	4m ³
1 bedroom	6m ³
2 bedroom	8m ³
3+ bedroom	10m ³

At least 50% of the required storage is to be located within the apartment.

is provided in each carparking level/ storage area.'

However, analysis of the typical apartment 'type' layouts (drawings DA4.15 – DA4.53, prepared by Marchese Partners) and the current amended floor plans (drawings DA2.02 to DA2.10, prepared by Marchese Partners) found 158 out of 161 apartments proposed are provided at least 50% of the minimum storage volumes required located within the apartment. Details of the non-complying apartments are listed below;

UNIT TYPE A2, drawing DA.28, revision C, dated 16 May 2022

Apartments E225, E325, and E425 have 2.8m³ of storage located within the apartment. A total of 8m³ is required for 2-bedroom apartments, with at least 4m³ (50%) required to be located within the apartment.

Additional external storage (6.5m³ per apartment) is proposed to supplement the storage located within these apartments. As such, a total of 8m³ is provided for each apartment which satisfies the total storage required for a 2-bedroom apartment.

The non-compliance can be accepted on a balance view regarding storage provided both internal and external to the apartments.

Storage located external to the apartments

In addition to the storage volume located within apartments, storage volume for individual apartments accessed from common areas (individual storage cages located in car parking areas) is proposed to achieve the total storage volume required

Analysis of the typical apartment 'type' layouts (drawings DA4.15 – DA4.53, prepared by Marchese Partners) and the current amended floor plans (drawings DA2.02 to DA2.10, prepared by Marchese Partners) found 39 apartments achieve the total storage volume required without the need for additional storage space located and accessed external to the apartment.

Meaning, the remaining 122 apartments require the allocation of a 'storage cage' to satisfy the minimum storage volume requirements set out in this part of the ADG.

Analysis of the current amended floor plans (drawings DA2.01 to DA2.03, dated 22 April 2022) found a total of 131 storage cages are provided;

Complies

	<ul style="list-style-type: none"> • 'LOWER GROUND FLOOR PLAN' – 123 storage cages • 'GROUND FLOOR PLAN' – 4 storage cages • 'LEVEL 1 FLOOR PLAN' – 4 storage cages <p>Whilst there is enough storage cages shown on the floor plans for the number of apartments requiring the provision of additional storage external to the apartment, limited information is provided to confirm that apartments which do not have 100% of the storage volume required located within the apartment are allocated a 'storage cage' of adequate size to meet the total minimum storage volume required.</p>	
Objective 4G-2 Additional storage is conveniently located, accessible and nominated for individual apartments.		
Comments: <p>In addition to the storage volume located within apartments, storage volume for individual apartments accessed from common areas (individual storage cages located in car parking areas) is proposed to achieve the total storage volume required.</p> <p>The individual storage cages, capable of storing larger and less frequently access items, are located in the car parking areas are secure and capable of being clearly allocated to specific apartments.</p>		Compliance: Complies

State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')

Chapter 2: State and Regional Development

The proposal is '*regionally significant development*' pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal is development for general development that has a capital investment value of more than \$30 million. Accordingly, the Panel is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2: Coastal Management

Chapter 2 of State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) aims to protect and manage the New South Wales coast and foreshores and requires the consideration of specific criteria based on the type of coastal area affected.

Clause 2.9 – Coastal vulnerability area:

The proposal does not affect any *Coastal Vulnerability Area*

Clause 2.10 - Development on land within the coastal environment area

The site is not within the coastal environment area.

Clause 2.11 - Development on land within the coastal use area

Clause 2.11 specifies that development consent must not be granted to development on land within the coastal use area unless the consent authority has considered whether the proposal is likely to have an adverse impact on existing, safe access to foreshore, beach, headland or rock platform by the public (including those with a disability); overshadowing, wind funnelling, loss of views, visual amenity and scenic quality of the coast, aboriginal cultural heritage and cultural/built heritage; and that the consent authority is satisfied the proposal is designed such to avoid these adverse impacts or is otherwise managed to minimise the impacts.

The proposal does not unreasonably impact on existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability.

It is considered that the proposal would have acceptable impacts in terms of overshadowing, wind funnelling, loss of views, visual amenity and scenic quality of the coast, aboriginal cultural heritage and cultural/built heritage.

Clause 2.12 - Development in coastal zone generally – development not to increase risk of coastal hazards

Clause 2.12 specifies that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposal has been assessed and will not increase risk of coastal hazards.

Clause 2.13 - Development in coastal zone generally – coastal management programs to be considered:

Clause 2.13 prescribes that development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Parts of the site are identified on the Coastal Cliff/ Slope Instability Hazard Map in the Newcastle Coastal Zone Management Plan 2018 (CZMP) A Preliminary Geotechnical Assessment has been provided making recommendations in relation to construction methodologies and slope stability risk.

The proposed development has been assessed having regard to the guiding principles, objectives and recommended strategies of the CZMP, which are noted as being generally consistent with the Resilience and Hazards SEPP. Overall, the impacts from the proposal are acceptable.

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* ('the Resilience and Hazards SEPP') have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be

suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The subject site has been occupied by the NBN Television facility since the 1960s and during that time the land use has not changed. The proposal involves the change of use from commercial to residential use and as such, a Preliminary Site Investigation ('PSI') and Detailed Site Investigation, have been prepared for the site in accordance with SEPP 55 (now repealed and replaced with SEPP (Resilience and Hazards) 2021)).

The Preliminary Site Investigation ('PSI') was undertaken to identify potential contaminating activities that may have occurred on site and access any areas of environmental concern. Sampling was conducted around the existing buildings as internal access was limited, as a result four boreholes were advanced with a total of nine samples taken.

The PSI identified fill material had been used at the subject site, however the sampling showed little evidence of contamination. As a result, the consultant recommended a Detailed Site Investigation be carried out targeting the area identified with fill material. Therefore, in accordance with the consultant's recommendations a Detailed Site Investigation was requested.

Subsequently to the PSI, the applicant lodged a Detailed Site Investigation (DSI). The DSI advanced a further seven boreholes across the site, targeting the area where the fill material was identified. Uncontrolled fill was identified on site (which included but was not limited to building rubble, bricks and steel). A total of 11 locations were sampled with the fill showing no evidence of gross contamination. Based on the finding of the assessment the consultant concluded the site is considered suitable for the proposed land use being residential with minimal access to soil.

The requirements and provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 are considered to have been satisfactorily addressed by the documentation submitted and in the assessment of the application.

The proposed development has been assessed having regard to the objectives and pre-conditions contained within the Resilience and Hazards SEPP and is considered satisfactory subject to recommended conditions of consent contained at **Attachment A**.

Newcastle Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the *Newcastle Local Environmental Plan* ('the LEP').

Zoning and Permissibility (Part 2)

Clause 1.2 aims of the NLEP include:

Clause 1.2(2) The particular aims of this Plan are as follows:

(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,

(a) to respect, protect and complement the natural and cultural heritage, the identity and image, and the sense of place of the City of Newcastle,

- (b) *to conserve and manage the natural and built resources of the City of Newcastle for present and future generations, and to apply the principles of ecologically sustainable development in the City of Newcastle,*
- (c) *to contribute to the economic well being of the community in a socially and environmentally responsible manner and to strengthen the regional position of the Newcastle city centre as a multi-functional and innovative centre that encourages employment and economic growth,*
- (d) *to facilitate a diverse and compatible mix of land uses in and adjacent to the urban centres of the City of Newcastle, to support increased patronage of public transport and help reduce travel demand and private motor vehicle dependency,*
- (e) *to encourage a diversity of housing types in locations that improve access to employment opportunities, public transport, community facilities and services, retail and commercial services,*
- (f) *to facilitate the development of building design excellence appropriate to a regional city.*

The proposal is consistent with these aims as the proposal is providing for a diversity of housing types in an optimal location, with access to employment opportunities, public transport, community amenities, retail and commercial services.

The design of the development is considered to have achieved design excellence under the provisions of SEPP 65 and the ADG. City of Newcastle's Urban Design Review Panel (UDRP) considers the design outcome for the site to be appropriate in the context of the natural environment, taking advantage of the natural landform and topography and established tree canopy to assist with minimising visual impact on site and when viewed from surrounding properties and particular vantage points. The proposal has also demonstrated it can deliver an ecologically sustainable development outcome.

The site is located within the Medium Density Residential Zone pursuant to Clause 2.2 of the LEP.

The proposal is permissible with consent in the zone as "*residential accommodation*", comprising "*multi dwelling housing*" and "*residential flat building*".

Definition extracted from NLEP 2012:

"multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

Note: Multi dwelling housing is a type of residential accommodation—see the definition of that term in this Dictionary

residential flat building means a building containing 3 or more dwellings but does not include an attached dwelling or multi dwelling housing.

Note: Residential flat buildings are a type of residential accommodation—see the definition of that term in this Dictionary."

Demolition, earthworks, and strata subdivision are also permissible with consent under the LEP

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

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

The proposal is consistent with these zone objectives for the following reasons:

- The proposal will provide increased housing supply and includes a variety of apartment types that will contribute to increased housing diversity in the area.
- The proposal maximises the sites redevelopment potential for medium density housing, which is strategically desirable given the site is within walking distance of Newcastle City Centre Darby Street precinct.
- The proposal is an infill development and has been designed to respond to the site's location, unique characteristics, and adjoining development.
- The proposed development will support the viability of the city centre through increased housing and employment opportunities within the area

Further it is noted that the Planning Proposal supported the changes to zoning and height for the site and was considered to satisfy the criteria for a 'Substantial Growth Precinct' under the Local Planning Strategy that was in place at the time being a ten-minute walk of a major commercial centre, being Darby Street. The land is also within the walking catchment to the City Centre.

That report also considered that the relatively large area and 'bowl like' topography of the land containing the existing NBN television studios (11 to 17 Mosbri Crescent) lends itself to being able to physically accommodate additional development beyond the standard R3 Medium Density Residential development controls.

The Planning Proposal report concluded that the additional development for the site is justified on the unique site attributes. Due to the large elevation drop from Kitchener Parade, the building heights can maintain a three to four-storey 'human scaled' street edge and overall heights sit comfortably below ridge lines.

The development site is not located within the urban renewal areas or catalyst areas identified in the Community Strategic Plan. However, the site is located in an existing area close to services and was supported by a Planning Proposal as an appropriate site to deliver additional housing choice to the community.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 5** below.

The proposal does not comply with the development standard contained in Clause 4.3 and accordingly, a Clause 4.6 request has been provided with the application for the exceedances of the maximum height of buildings development standard.

Table 5: Consideration of the LEP Controls

Control	Proposal	Complies
Zone Objectives & Land Use Tables (Cl.2.3)	<p>The site is zoned R3 Medium Density Residential. The proposed development is permissible with development consent in the R3 Medium Density Residential zone as <i>'residential accommodation'</i>.</p> <p>Demolition, earthworks and subdivision are also permissible with consent under the LEP.</p> <p>Refer to detailed discussion below</p>	Yes
Subdivision – consent requirements (Cl.2.6)	The proposed development includes strata subdivision which is permissible with development consent.	Yes
Demolition requires development consent (Cl.2.7)	<p>The proposed development includes demolition which is permissible with development consent.</p> <p>All buildings and structures are proposed to be demolished as part of the proposed development.</p> <p>The demolition works will be completed in three stages to provide site stability, structured working platforms and on-site storage and batching facility during the mine grouting works. Refer to detailed discussion below.</p>	Yes
Minimum subdivision Lot size (Cl 4.1)	The proposed development involves a strata subdivision, which is not subject to a minimum lot size requirement.	N/A

<p>Height of buildings (Cl 4.3(2))</p>	<p>The proposed development seeks a variation to the maximum building height development standard.</p> <p>The maximum building heights across the site range from 12m to 56.8RL, see Figure 1 below</p> <p>Since the original lodgement in January 2019, the height of the buildings has been reduced as detailed below:</p> <ul style="list-style-type: none"> • Main roof line for Building A (east) reduced from RL57.5 to RL56.8 (plant reduced from RL59.25 to RL 58.3) • Main roof line for Building A (west) reduced from RL47.7 to RL47.4 (plant reduced from RL51 to RL 49) • Main roof line for Building B reduced from RL51.45 to RL50.7 (pool deck reduced from RL52.85 to 52.05 and lift overrun reduced from RL55.45 to RL55.28) • Main roof line from Building C reduced from RL46.1 to RL44.5 (plant reduced from RL48.3 to RL46) <p>The amended application results in breaches to the cl.4.3 LEP Height of Buildings map across the site, ranging from 0.1m to 2.98m. The largest variation being to the lift overrun of Building B (55.28 (RL) or 2.98m).</p> <p>In accordance with the requirements of clause 4.6, the applicant has submitted a written request to vary the development standard imposed by clause 4.3 of the NLEP 2012. Refer to discussion under Clause 4.6 Exceptions to Development Standards below.</p> <p>Based on the submitted information received during the assessment process, sufficient justification has been provided to support the height variation and this issue is satisfactorily resolved.</p> <p>Refer to detailed discussion below.</p>	<p>No</p>
<p>FSR (Cl 4.4(2))</p>	<p>The maximum floor space ratio (FSR) allowable for the subject site is 1.5:1.</p> <p>Based on a site area of 12,235m², the maximum gross floor area for the site is 18,353m².</p> <p>A FSR schedule and FSR calculations has been provided by the Applicant which identifies that the proposed development provides 18,318m² of GFA. This figure includes surplus parking spaces above the DCP</p>	<p>Yes</p>

	<p>minimum requirement and waste rooms on the ground floor.</p> <p>An analysis of the FSR schedule and calculations, In total this equates to a FSR of 1.49:1, which complies with the development standard.</p>	
Heritage (Cl 5.10)	<p>The site is not an identified nor within a heritage conservation area. However, the site is in proximity to several heritage items and adjoins 'The Hill' heritage conservation area. Further the development site adjoins 'The Newcastle Recreation Reserve' which was listed on the State Heritage Register on 21 May 2021. The listing includes Lot 7003 (unmade road) and Lot 7004 (Arcadia Park).</p> <p>Views from Conservation Areas and heritage items have been assessed as part of the development application, as has the potential for overshadowing of Arcadia Park.</p> <p>Refer to detailed discussion below.</p>	Yes
Acid sulphate soils (Cl 6.1)	<p>The development site is identified as containing Class 5 Acid Sulfate Soils (ASS) and is within 500m of adjacent Class 1,2,3 or 4 land that is below 5m AHD.</p> <p>The proposed excavation is assessed to have negligible impact on the groundwater level and risk of impact to ASS</p> <p>Refer to detailed discussion below.</p>	Yes
Earthworks (Cl. 6.2)	<p>The proposed development is supported by technical reports, which demonstrate that the proposal will not result in any detrimental impacts on existing drainage patterns and soil stability in the locality of the proposed development.</p> <p>Consideration has been given to the matters prescribed under cl.6.2(3) and the proposed earthworks are acceptable.</p> <p>Refer to detailed discussion below.</p>	

Clause 4.6 Request

The proposed development seeks a variation to the maximum building height development standard and the development application is accompanied by a written clause 4.6 variation request.

The provisions of Clause 4.6 relevant to the assessment of the applicant's variation request are as follows:

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

- (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.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

(5) *In deciding whether to grant concurrence, the Secretary must consider:*

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

An assessment of the Applicant's Clause 4.6 Variation Request to the maximum building height development standard is provided below.

Clause 4.6(2) – is the provision to be varied a development standard? And is the development standard excluded from the operation of the Clause?

The development application does not seek to vary any of the development standards excluded from the operation of clause 4.6 of the NLEP 2012. Accordingly, pursuant to clause 4.6 it is open to the Applicant to make a written request seeking to justify the contravention of the building height development standard by demonstrating that compliance with the standard is unreasonable or unnecessary.

What is the name of the environmental planning instrument that applies to the land?

Newcastle Local Environmental Plan 2012.

What is the zoning of the land?

NLEP 2012 identifies that the site is within the R3 Medium Density Residential zone.

The objectives of the R3 Medium Density Residential zone are as follows:

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

What is the development standard being varied?

The Height of buildings development standard contained in Clause 4.3 of the NLEP 2012.

Is the standard to be varied a development standard?

The maximum Height of buildings development standard in NLEP 2012 is a development standard consistent with the definition of development standards under section 1.4 of the *Environmental Planning & Assessment Act, 1979* ('EPA Act') and not a prohibition.

What are the objectives of the development standard?

The objectives of Clause 4.3 – Height of buildings are as follows:

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

What is the numeric value of the development standard in the environmental planning instrument?

The site has a variable maximum building height control, as demonstrated on the Height of Buildings Map – **see figure 1 below:**

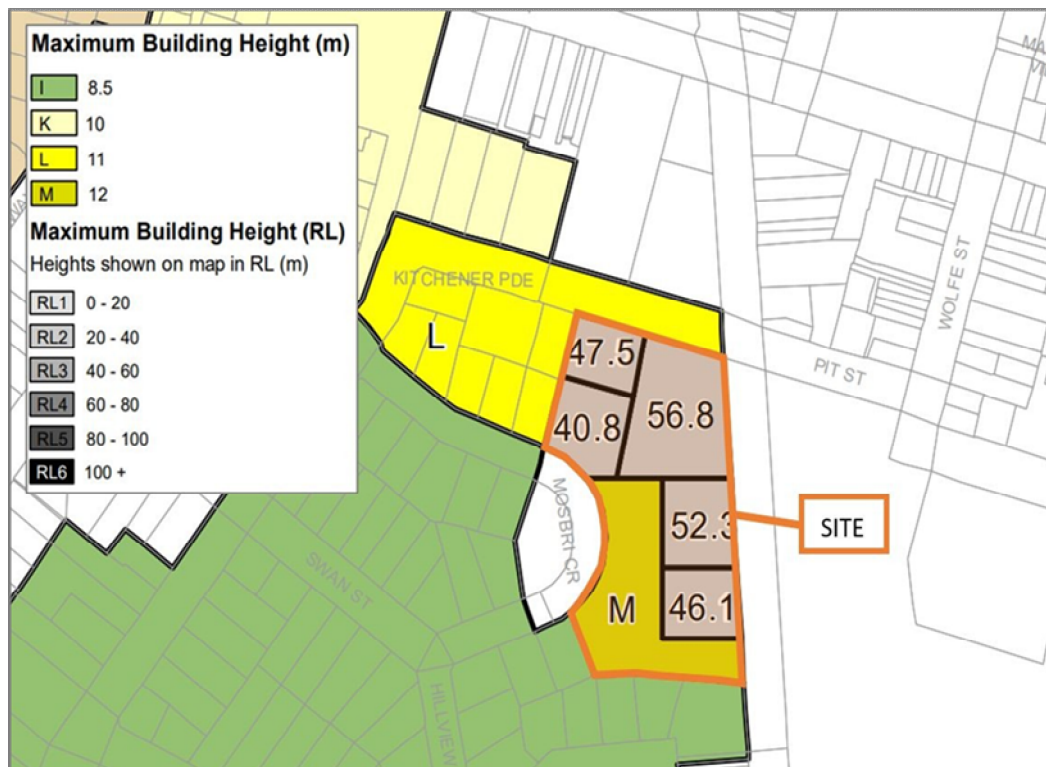


Figure 1

What is the proposed numeric value of the variations proposed to the development standard?

The numerical value of the proposed height variations is detailed in the below table:

Maximum building height control under NLEP 2012 per precinct of site	Maximum proposed building height
<ul style="list-style-type: none">12 metres	Part of Building C (5-storey) is within this height limit and <u>exceeds</u> the 12m height control by 0.73m

<ul style="list-style-type: none"> • RL 47.5 	<p>The lift overrun and plant screen of Building A (6-storey west wing) is RL49.0 and <u>exceeds</u> the height control by 1.5m.</p>
<ul style="list-style-type: none"> • RL56.8 	<p>A 100mm perimeter drainage hob above Building A (9-storey east wing) roof level is proposed at RL56.90 which <u>exceeds</u> the height control.</p> <p>The lift overrun of Building A (6-storey west wing) is RL58.3 and <u>exceeds</u> the height control by 1.5m.</p> <p>The plant screen of Building A (6-storey west wing) is RL58.4 and <u>exceeds</u> the height control by 1.6m.</p>
<ul style="list-style-type: none"> • RL52.3 	<p>The pergola of Building B (7-storeys) is RL52.9 and <u>exceeds</u> the height control by 0.6m.</p> <p>The stair roof line of Building B (7-storeys) is RL53.80 and <u>exceeds</u> the height control height control by 1.5m.</p> <p>The lift overrun of Building B (7-storeys) is RL55.28 and <u>exceeds</u> the height control height control by 2.98m.</p>

Newcastle LEP 2012 defines building height as the following:

building height (or **height of building**) means:

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

The main roof lines of Building A and B comply with the relevant height limit across the site. A small portion of Building C exceeds the 12m height control due to the topography of the land in this location.

Having regard to numerical compliance regarding height the greatest extent of the non-compliance relates to the lift overruns, plant screening which comprise a very small proportion of the roof area and site.

The location and extent of the lift overruns can be supported having regard to visual bulk and scale, overshadowing or view loss. This is consistent with the approach taken in the Planning Proposal documents, which facilitated the current height controls, which confirmed that the 'Top roof RL does not assume inclusion of lift overrun'.

Clause 4.6 (3)(a) – has the applicant submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

In the Land and Environment Court Judgement of *Wehbe vs Pittwater Council* [2007] NSW LEC 827, (‘the *Wehbe* judgement’) Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with them may be considered unreasonable or unnecessary. At paragraph 43 of this judgement, Preston CJ noted:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

In this judgment, Preston CJ established five circumstances in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary. These are as follows:

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

The submitted clause 4.6 variation request to vary the height of building development standard seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable or unnecessary, stating that that the objectives of the development standard are achieved notwithstanding non-compliance. The objectives of the height of building development standard are:

Objectives of cl.4.3 ‘height of buildings’

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

To ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy.

In relation to the first of these objectives, the applicant submits that:

"the established centres hierarchy does not relate to this site except to the extent to which the height controls for this site relate to the controls for the established centres nearby which include Newcastle City, the regional centre. The objective has already been fulfilled by the making of the LEP and the setting of a height standard that ensures that the development does not compete with the regional centre and respects the topography of The Hill. Given that the development will sit primarily below the vegetative screen of Arcadia Park, it will not compete with the height of the regional centre".

It is agreed that the objective has already been satisfied by the making of the LEP and the setting of a height standard that ensures that the development does not compete with the regional centre and respects the topography of The Hill.

The proposed development strategically responds to the height precincts specified in the LEP, ensuring that the height of the proposal is varied through the site, transitioning to Mosbri Crescent. The extent of the building that is proposed above the height control has minimal impact to the overall visual catchment from the Obelisk. These portions of the building are not considered to be significant when viewed from the Obelisk and would not have any significant visual impacts from this vantage point.

Similarly, there is no overbearing impact to Arcadia Park. The extent of the non-compliances with the height controls will not be noticeable from within Arcadia Park. It is also noted that the proposed development is setback more than the minimum setback requirements to this boundary adjacent to Arcadia Park.

The applicant submits that the proposed development makes a positive contribution towards the desired built form as follows:

- *"During the detailed design stage, it was considered more appropriate to locate a rooftop communal area on Building B rather on Building A adjacent to Kitchener Parade. This location has enabled the rooftop area to be substantially setback from residential buildings on adjoining land, to mitigate visual and acoustic privacy impacts including to Newcastle East Public School (NEPS).*
- *In part, the height exceedance is attributed to the provision of a rooftop communal area, which ensures that the future occupants are afforded high quality facilities and amenity without impacting in an unreasonable manner on the amenity of surrounding development. The DCP identifies a number of small rooftop communal open spaces, however the approach in the subject application has been to focus on creating one communal space that provides exceptional amenity for residents. The proposed roof top area is located to minimise impacts on neighbouring properties, and is fully integrated with the rooftop features, rather than being two passive spaces that were less attractive to future residents and would have additional impacts such as potential overlooking and acoustic impacts to NEPS, 41 Kitchener Parade and 9 Mosbri Crescent. The design also facilitates disability access to the rooftop area via a lift access, which is considered to result in a justifiable height exceedance.*
- *The approach has enabled increased landscaping design elements on the ground. The proposed rooftop area has also been located to address the recommendations*

of John Carr Heritage Design, which recommended removing non-essential roof top structures and gardens/recreational areas from Building A (both east and west blocks).

- The area fronting Mosbri Crescent and the southern boundary has a maximum height of 12m (measured above ground level), which the Planning Proposal noted could accommodate up to four-storeys. The current scheme proposes townhouse style development in this area, to provide a more human scaled built form to this frontage. The townhouse concept to Mosbri Crescent proposes a two-storey terraced presentation, rather than a four-storey residential flat building, which is a more sensitive built form to this street frontage. The proposal provides a more intimate streetscape presentation, which given the road alignment, is a superior outcome for the site.*
- The indicative building layout in the DCP identified a large terrace style building to the southern boundary, which adjoins residential properties that front Hillview Crescent. This outcome would have resulted in a longer building form facing these residents, together with windows and private open space areas facing the common boundary. The proposal has achieved solar access and private open space areas that do not face the adjoining dwellings on Hillview Crescent.*
- The DCP layout also permitted longer built forms along the boundaries of 41 Kitchener Parade, 9 Mosbri Crescent and the Hillview Crescent properties. The design of Building A allows the majority of the built form of the proposed development to be located away from residential properties. It is considered to be a superior outcome, due to the separation of the road to NEPS and the existing building form of the existing structures within the NEPS. The proposal has facilitated an increased setback to the adjoining properties at 41 Kitchener Parade and 9 Mosbri Crescent than was envisaged in the DCP.*
- The proposed development has enabled one driveway access point, which will have traffic benefits to Mosbri Crescent. Further, this has reduced the amount of internal circulation required, facilitating a more generous landscaping outcome.*
- It is noted that the proposed development is compliant with the FSR, and that should the bulk and scale be flattened across the site, this impact on the design of the human scaled element of the proposal framing Mosbri Crescent, as well as resulting in less landscaping".*

In respect to the last reason provided, it is not agreed that the loss of landscaping is necessarily an unavoidable consequence of redistributing bulk and scale across the site. Notwithstanding this matter, the following reasons are considered adequate justification as to why the development makes a positive contribution towards the desired built form.

- The UDRP have considered the proposed development and, in principle, support the amended proposal stating, "the development can be considered to exhibit a high level of design quality, and the completed proposal can be expected to make a positive contribution to the area."*
- The non-compliant portions of the development relate to rooftop structures. These elements are difficult to detect in the context of the overall development across the site.*
- The shadow diagrams submitted with the application demonstrate that the overshadowing impact of the development on adjoining development and the public domain would not be greatly increased because of the additional height.*

- The submitted visual impact analysis demonstrates that the proposal is screened by the existing vegetation in Arcadia Park and topography and would not result in any significant visual impacts.
- In relation to the Obelisk, the extent of the building that is proposed above the height control has been demonstrated to be of minimal impact to the overall visual catchment when looking westward from the Obelisk.

The development is consistent with the objectives of cl.4.3 'height of buildings' as the scale of the development makes a positive contribution to towards the desired built form, consistent with the established centres hierarchy, as demonstrated by the design review process that the application has been through.

It is agreed that the development allows reasonable daylight access to all developments and the public domain. An overshadowing analysis has been provided that adequately demonstrates that the proposal will not cause unreasonable overshadowing to surrounding properties and that reasonable daylight access will be provided to all surrounding developments, the public domain and Arcadia Park. Further it is considered that the extent of additional overshadowing created from the variation to the height control results in a negligible increase in overshadowing.

The Applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) and the first *Wehbe* consideration in demonstrating that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, as the objectives of the development standard are achieved notwithstanding non-compliance.

Clause 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the development standard.

The Applicant's written request has demonstrated that the proposed height variation sought does not result in significant adverse environmental impacts and that there are sufficient environmental planning grounds to justify a contravention to the height control.

The applicant submits the following environmental planning grounds justify contravening the development standard:

- *"During the detailed design stage, it was considered more appropriate to locate a rooftop communal area on Building B rather on Building A adjacent to Kitchener Parade. This location has enabled the rooftop area to be substantially setback from residential buildings on adjoining land, to mitigate visual and acoustic privacy impacts including to NEPS.*
- *The DCP identifies a number of small rooftop communal open spaces, however the approach adopted has been to focus on creating one communal space that provides exceptional amenity for residents. The proposed roof top area is located to minimise impacts on neighbouring properties, and is fully integrated with the rooftop features, rather than being two passive spaces that were less attractive to future residents and would have additional impacts such as potential overlooking and acoustic impacts to NEPS, 41 Kitchener Parade and 9 Mosbri Crescent. The design also facilitates disability access to the rooftop area via a lift access, which is considered to result in a justifiable height exceedance.*
- *The proposed rooftop area has also been located to address the recommendations of John Carr Heritage Design, which recommended removing non-essential roof top structures and gardens/recreational areas from Building A (both east and west blocks).*
- *The area fronting Mosbri Crescent and the southern boundary has a maximum height*

of 12m (measured above ground level), which the Planning Proposal noted could accommodate up to four-storeys. The current scheme proposes townhouse style development in this area, to provide a more human scaled built form to this frontage. The townhouse concept to Mosbri Crescent proposes a two-storey terraced presentation, rather than a four-storey residential flat building, which is a more sensitive built form to this street frontage. The proposed development provides a more intimate streetscape presentation, which given the road alignment, is a superior outcome for the site.

- The indicative building layout in the DCP identified a large terrace style building to the southern boundary, which adjoins residential properties that front Hillview Crescent. This outcome would have resulted in a longer building form facing these residents, together with windows and private open space areas facing the common boundary. The proposed development has achieved solar access and private open space areas that do not face the adjoining dwellings on Hillview Crescent.
- The DCP layout also permitted longer built forms along the boundaries of 41 Kitchener Parade, 9 Mosbri Crescent and the Hillview Crescent properties. The design of Building A allows the majority of the built form of the development to be located away from residential properties. It is considered to be a superior outcome, due to the separation of the road to NEPS and the existing building form of the existing structures within the NEPS. The proposed development has facilitated an increased setback to the adjoining properties at 41 Kitchener Parade and 9 Mosbri Crescent than was envisaged in the DCP.
- The proposed development has enabled one driveway access point, which will have traffic benefits to Mosbri Crescent. Further, this has reduced the amount of internal circulation required, facilitating a more generous landscaping outcome".

In addition to the circumstances specifically cited above, the following reasons are also considered to be sufficient environmental planning grounds to justify contravening the development standard.

- The utmost extent of the non-compliances relates to the lift overruns, which comprise a very small proportion of the site.
- The location of the lift overruns ensures that these aspects of the buildings will not have any significant impacts in relation to visual bulk and scale, overshadowing or view loss.
- The submitted VIA has demonstrated that the rooftop exceedances to the height control do not result in any significant visual bulk and scale impacts compared to a fully compliant building envelope.

The Applicant's written request outlines a number of environmental planning grounds which adequately justify the contravention.

Clause 4.6(4)(a)(i) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

It is concluded that the applicant's cl.4.6 variation request has satisfied the relevant tests under this clause.

Clause 4.6(4)(a)(ii) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.

The Applicant's response to the satisfaction of the objectives of the height of building standard was considered under the cl.4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, 'the proposed development will be in the public interest because it is consistent', with the relevant objectives.

The objectives of the height standard and the objectives of the R3 Medium Density Residential Zone. The intent of the R3 Medium Density Residential zone is to facilitate higher residential dwelling density in central accessible locations.

The proposed development is consistent with the zone objectives as it will:

- Provide for the housing needs of the community within a medium density residential environment;
- Provide a variety of housing types within a medium density residential environment;
- Allow for diversity of densities of a scale and height which is compatible with the character of the locality;
- Result in no significant adverse impact on the amenity of any existing nearby development; and
- Encourage increased population levels that will support the commercial viability of nearby commercial centres.

As such, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of cl.4.6(4)(a)(ii) of the NLEP 2012 is satisfied.

Clause 4.6(4)(b) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained.

The Secretary's concurrence to the exception to the height of buildings development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 of 5 May 2020).

The proposed exceptions to the height of buildings development standard of NLEP 2012 is an acceptable planning outcome and, in this instance, requiring strict compliance would be unreasonable and unnecessary. The proposed variations to the development standard do not cause any undue adverse environmental impacts, including impacts on neighbouring properties, in terms of overshadowing and visual privacy.

Given the above, it is concluded that the applicant has sufficiently demonstrated that requiring strict numerical compliance with the maximum building height development standard would be unreasonable and unnecessary as the proposal already achieves the underlying objectives notwithstanding the numerical non-compliance.

Officer's conclusion

As demonstrated within the applicant's written request by the assessment above, compliance with the development standard is considered unreasonable and unnecessary in the circumstances. There are sufficient environmental planning grounds to justify the contravention; and the proposed development will be in the public interest because it is consistent with the objectives of the zone and the building height development standard.

If made to strictly comply with Clause 4.3, there would be no additional benefit to the streetscape or public domain. Strict compliance with Clause 4.3 of the NLEP2012 is therefore considered unreasonable and unnecessary

Whilst some elements of the development, namely the lift overruns, do not strictly adhere to the building height standards established in NLEP 2012 for the site the proposed development consists of a high quality, architecturally designed building that makes a positive contribution to the locality.

Clause 5.10 – Heritage conservation

<p>1) Objectives</p>	<p>The objectives of this clause are to conserve the environmental heritage of the City of Newcastle (including heritage items, heritage conservation areas, archaeological sites, and Aboriginal places of heritage significance), and associated fabric, setting and views.</p> <p>The site is not a listed heritage item or located in a heritage conservation area (HCA).</p> <p>The site is located adjacent to the Newcastle Recreation Reserve, which is listed on the NSW State Heritage Register (SHR 02000) and encompasses several individual items listed on Schedule 5 of the NLEP (King Edward Park Group and the Obelisk).</p> <p>Other heritage items in proximity of the site include:</p> <ul style="list-style-type: none"> • I557 - Newcastle East Public School – Local Item - 48 Brown Street, The Hill (Lots 1–3, DP 794850) • I558 - Newcastle Reservoir Site – State Item - 51 Brown Street, The Hill (Lots 346 and 347, DP 758769; Lots 1– 5, DP 1141417) • I607 – Beacon Tower (landmark) – Local Item – Corner Brown and Tyrrell Street <p>CN's Heritage Officer has undertaken an assessment of the proposal and has raised concerns that the westward view from the Obelisk will be impacted by the height and bulk of Buildings A and B, noting <i>"The dramatic topography is a significant feature of this view and of the setting of the Obelisk. Although there are numerous high-rise buildings visible in the distance in the overall cityscape, the visible upper levels of the proposed development would disrupt the legibility of the topography due to the close proximity of the development to Obelisk Hill."</i></p>
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	<p><i>Although the site is not located in a HCA, it is surrounded on three sides by The Hill HCA and the Cooks Hill HCA. Concern was raised that the bulk and scale of the proposed development will appear intrusive when viewed from parts of these adjoining HCAs"</i></p> <p>However, CN's Development Officer (Heritage) acknowledges that <i>"A site-specific rezoning and amended maximum building heights across the site were considered and set as part of a planning proposal, the assessment of which included heritage amongst other planning matters, and the development generally complies with these maximum heights with minor exceedances"</i>.</p> <p>The overall height of the development has been progressively reduced since lodgement of the original application in January 2019.</p> <p>The impacts on the heritage values of the Newcastle Recreation Reserve, King Edward Park, The Hill and Cooks Hill Conservation Area (HCA) and the Obelisk are considered acceptable based on the information provided (including a HIS and VIA) having regard to the views including from Arcadia Park, Wolfe Street and the Obelisk, as well as an assessment of the impact of the proposed development on Arcadia Park.</p>
2) Requirement for consent	Clause 5.10(2) is satisfied as the application is seeking consent for the development.
3) When consent not required	Consent is required and is being sought by the application.
4) Effect of proposed development on heritage significance	The effect of the proposed development on the heritage significance of heritage items in the vicinity has been considered and is noted above.
5) Heritage assessment	The application is supported by two Statement of Heritage Impacts (SOHI) and an Aboriginal Cultural Heritage Assessment Report
6) Heritage conservation management plans	A conservation management plan (CMP) is not required for this application as the site is not a listed heritage item.
7) Archaeological sites	The site is not a listed or indicative archaeological site. Notwithstanding, Heritage NSW were notified of the proposed development. Heritage NSW have recommended several conditions to address requirements of the <i>Heritage Act 1977</i> pertaining to archaeological relics which are included in Attachment A should the development be approved.
7) Aboriginal heritage	<p>The site does not contain an Aboriginal Place.</p> <p>During the assessment of the application, it was identified that the site contains an Aboriginal site, referred to as NBN_AS1 (AHIMS #38-4-1205), in the northern portion of the site. An Aboriginal Cultural Heritage Assessment (ACHA) report has been provided.</p>

	<p>It is further noted that during preparation of the ACHA, representatives of the local Aboriginal parties were consulted as part of that process.</p> <p>The ACHA notes that the site is located in an environment which would have previously allowed Aboriginal people to readily access a variety of resources. The proximity to multiple culturally significant areas, including Yi-ran-na-li amongst others, would have further attracted Aboriginal people to the general location of the project area for social and cultural purposes.</p> <p>The project area has been subject to extensive contemporary modification, disturbance and vegetation clearance. Preliminary ground investigations have confirmed the site is overlaid by fill material. The disturbance is likely to have displaced archaeological material in the upper layers of the soil.</p> <p>The ACHA notes that the project area predominately rates as demonstrating low archaeological potential. The presence of two Aboriginal objects in a highly eroded and disturbed context is such that no further archaeological potential remains.</p> <p>The proposed development will result in 100% removal of the remnant landform identified within the project area, resulting in 100% harm to the recorded Aboriginal site NBN_AS1.</p> <p>An Aboriginal Heritage Impact Permit (AHIP) must be obtained from Heritage NSW in accordance with the <i>National Parks and Wildlife Act 1974</i>, prior to the commencement of any ground disturbance works.</p> <p>As outlined elsewhere within this report, the Applicant has not lodged the development application as Integrated Development, and therefore separate consent will need to be obtained outside the development assessment process. The recommendations set out in the ACHA are incorporated as recommended conditions of consent in Attachment A.</p>
9) Demolition of nominated State heritage items	The subject site is not a nominated State heritage item.
10) Conservation incentives	The application does not seek to utilise this clause.

Clause 6.1 – Acid Sulfate Soils

Clause 6.1 seeks to ensure that development does not disturb, expose, or drain Acid Sulfate Soils (ASS) and cause environmental damage. The development site is identified as containing Class 5 Acid Sulfate Soils (ASS) and is within 500m of adjacent Class 4 land that is below 5m AHD.

A preliminary assessment was undertaken which confirmed there is no known occurrence of ASS on the site and the preparation of an ASS Management Plan is not required. The application is also supported by technical reports demonstrating the proposed development will also have negligible impact on groundwater levels. Based on these findings, the proposed development is also unlikely to affect groundwater by more than 1m in the adjacent 4 land more than 300m from the site

The consent authority will provide written notice to the Applicant by way of its recommendations, by way of the notice of determination, to the effect that the findings of the preliminary assessment are confirmed and that an ASS Management Plan is not required.

Furthermore, a condition of consent is recommended that requires further assessment of ASS potential to be undertaken during excavation. If ASS is found to be present, soils will be treated in accordance with the NSW Acid Sulfate Soils Advisory Committee's Manual.

The proposal is considered acceptable having regard to this clause.

6.2 Earthworks

Clause 6.2 aims to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. Specifically, cl.6.2(2) specifies that consent is required for earthworks unless the works are exempt development, or ancillary to other development for which development consent has been granted.

The proposed development involves bulk earthworks and excavation on the site to depths between 2m - 10m. The bulk of the excavation will occur along the eastern boundary of the site, due to the existing sloping topography. The design of the basement levels has been amended to reduce the extent of excavation. The setback of the basement levels has increased from 6m to 9m with a reduction in retaining walls and fence height along the eastern boundary.

Matter	Officer Comment
(a) Disruption/detrimental effect on drainage patterns and soil stability in the locality of the development.	Detailed engineering and stormwater management plans have been provided with the development application. It has been satisfactorily demonstrated by the documentation submitted that the proposed development is not likely to cause detrimental impacts on existing drainage patterns and soil stability in the locality
(b) Effect on future use or redevelopment of the land.	The proposed earthworks do not adversely impact the future use or redevelopment of the land and will facilitate the development proposed under the subject application.
(c) The quality of fill and/or soil to be excavated.	Any soil to be excavated will be compliant with the relevant requirements, in relation to source and destination. Any excavated material to be removed from the site is to be assessed and classified in accordance with the NSW Environment Protection Authority's 'Waste Classification Guidelines Part 1: Classifying Waste' and be transported and disposed of in accordance with the provisions of the <i>Protection of the Environment Operations Act 1997</i> and the <i>Protection of the Environment (Waste) Regulation 2014</i> .

	<p>Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Order that is permitted to be used as a fill material under the conditions of the associated Resource Recovery Exemption, in accordance with the provisions of the <i>Protection of the Environment Operations Act 1997</i> and the <i>Protection of the Environment (Waste) Regulation 2014</i>.</p> <p>Subject to conditions of consent the soil to be excavated from the site can be appropriately managed. Conditions of consent in respect to use of fill material are also recommended.</p>
(d) The effect of the development on the existing and likely amenity of adjoining properties.	<p>There are unlikely to be any significant impacts to the existing and likely amenity of adjoining properties following the completion of the proposed mine grouting.</p> <p>During the construction stage, the mine grouting would be undertaken during standard construction hours, to mitigate any potential impacts. Work that generates noise that is audible at residential premises is to be restricted to the following times:</p> <ul style="list-style-type: none"> Monday to Friday, 7:00 am to 6:00 pm and Saturday, 8:00 am to 1:00 pm. No noise from construction/demolition work is to be generated on Sundays or public holidays. <p>There is no requirement for any works to occur on the surface of Arcadia Park. No storage of materials or equipment will occur in Arcadia Park.</p> <p>Detailed assessment of the effect of the development on existing and likely amenity of adjoining properties has been provided elsewhere in this report. The proposed development does not result in unreasonable impacts to the amenity of adjoining properties.</p>
(e) The source and any fill material and destination of any excavated material	<p>The source and quality of fill material and destination of excavated material will be addressed by conditions of consent.</p>
(f) The likelihood of disturbing relics.	<p>The recommendations of the ACHA are to be implemented prior to the commencement of any mine grouting works.</p> <p>Conditions of consent are recommended relating to any unexpected finds discovered during construction and demolition.</p>

(g) Impact to any watercourse, drinking water catchment or environmentally sensitive area.	The site and adjoining land are not within an identified drinking water catchment. The development will not adversely impact any watercourse, drinking water catchment or environmentally sensitive area.
(h) Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	<p>A Construction Management Plan has been provided that demonstrates that potential impacts from construction, demolition and grouting works are able to be appropriately managed and mitigated. Further, the CMP has been prepared in accordance with the recommendations of a number of supporting technical reports and assessments.</p> <p>Conditions of consent in accordance with the recommendations of the submitted reports have been recommended to avoid, minimise or mitigate the impacts of the development.</p>

The application is supported by technical reports and assessments, which satisfactorily demonstrate that the proposed development will not result in detrimental environmental impacts because of proposed earthworks, mine grouting, construction and demolition.

Consideration has been given to the matters prescribed under cl.6.2(3) and the earthworks required to facilitate the development is considered acceptable having regard to this clause.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are several proposed instruments which have been the subject of public consultation under the EP&A Act, and are relevant to the proposal, including the following:

These proposed instruments are considered below:

Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines that amendments to Clause 4.6 will include new criteria for consideration.

The proposed change would require applicants to demonstrate that a variation to a development standard *“is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.”* For the purposes of CN's assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome.

The proposed development includes a Clause 4.6 variation request. As discussed above in **Section 3** of this report, the proposal achieves the objectives of the R3 Medium Density Residential zone and the objectives of cl.4.3 notwithstanding noncompliance.

There is also a second test proposed for development for when *“the contravention is minor and relates to a small portion of the site, and therefore the environmental impacts of the contravention are minimal or negligible.”* This test would require a less rigorous assessment when the impact of the contravention is demonstrated to be minor. It is unclear if this second test would be applicable to the subject application, as there is insufficient detail in the EIE to confirm what a ‘minor’ contravention is.

Considering the aims of the EIE and the above considerations, the proposed development and Clause 4.6 Variation Request is not considered to be inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and NLEP 2012.

Draft Remediation of Land SEPP

A proposed Remediation of Land State Environmental Planning Policy ('Remediation of Land SEPP'), which was exhibited from 31 January to 13 April 2018, is currently under consideration. The proposed Remediation of Land SEPP is intended to repeal and replace the provisions of SEPP 55 (now Chapter 4 of SEPP (Resilience and Hazards) 2021) and *Contaminated Land Planning Guidelines*, and seeks to provide a state-wide planning framework to guide the remediation of land, including; outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly list remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

The Remediation of Land SEPP is aimed at improving the assessment and management of land contamination and its associated remediation practices. The modified proposal is consistent with the draft provisions and is acceptable subject to conditions of consent having been assessed in detail against the current provisions of SEPP (Resilience and Hazards) 2021.

The proposal is generally consistent with these proposed instruments.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Residential Development - Section 3.03

The objective of this section is to improve the quality of residential development. This can be achieved with a design that has a positive impact on the streetscape through its built form, maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form.

The following comments are made concerning the proposed development and the relevant provisions of Section 3.03:

Principal controls (3.03.01)

A. Frontage widths

The minimum site frontage for multi dwelling housing and residential flat buildings within the R3 zone is 15m. The subject site has a street frontage in excess of 15m, which complies.

B. Front setbacks and C. Side and rear setbacks

The setback controls specify compliance with the relevant locality specific controls under Section 6 of the NDCP 2012 as an acceptable solution. The proposal satisfies the relevant locality specific building setbacks as discussed under 'Section 6.14' of the NDCP 2012 assessment below.

Further, the relevant components of the Apartment Design Guide under SEPP 65 prevail over the setback controls of the NDCP 2012. The development application satisfies the provisions of the Apartment Design Guide as detailed under the 'State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development' assessment in **Section 3.1** of this report above.

D. Landscaped Area

Development in the R3 zone is required to provide a minimum landscaped area of 25% and a minimum deep soil zone of 12% of the site area. The total landscaped area provided is 33.5% with 14.7% of the site area as deep soil zone, which complies.

Siting the development (3.03.02)

A. Local character and context

A detailed site analysis was submitted with the development application. The proposed development reflects the desired future character of the area and will not unreasonably impact on the amenity or privacy of adjoining dwellings.

Further, the proposal satisfies the relevant provisions for the Mosbri Crescent chapter, as discussed under 'Section 6.14' of the NDCP 2012 assessment below. The proposed development is acceptable having regard to local character and context.

B. Public domain Interface

The proposed development has been sited and designed to directly address both the Kitchener Parade and Mosbri Crescent frontages. The proposal includes windows and balconies to both street frontages overlooking the public domain. Direct visibility is achieved along the proposed pathways and driveways from the public domain.

Private open space is located behind the front building line with windows and balconies overlooking the streets. Street access and the building entries from Mosbri Crescent are clearly defined. The development provides an appropriate interface with the public domain and allows for clear delineation between the private and public space.

Further, the interface proposed by the development is consistent with the relevant locally specific provisions, as discussed 'Section 6.14 of the NDCP 2012 assessment below.

C. Pedestrian and vehicle access

All internal vehicle paths are compliant with the relevant Australian Standards. Conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment A**) to ensure the provision of suitable lighting to carpark areas and pedestrian pathways.

D. Orientation and siting

Building types and layouts have been designed to respond to the streetscape and site constraints while optimising solar access within the development and maximising street surveillance and connectivity.

Further, the relevant components of the Apartment Design Guide under SEPP 65 prevail over solar access controls of the NDCP 2012. The development application satisfies the provisions of the Apartment Design Guide as detailed under the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment in **Section 3.1** of this report above.

Adequate solar access is maintained to the private open spaces and living room windows of adjoining properties, as detailed below:

- Overshadowing to Arcadia Park does not occur until 2pm, on the 21 June.
- Mosbri Crescent Park is not affected by overshadowing from 10:00am on the 21 June.
- 9 Hillview Crescent is not affected by overshadowing from 9:00am on the 21 June.
- 11 Hillview Crescent is not affected by overshadowing from 10:00am on the 21 June.
- 13 Hillview Crescent is partly affected by overshadowing until 11:00am. Beyond 11am, a very small area of the rear yard remains impacted until 3:00pm. Further, it is noted that all existing vegetation in the rear yard of this property will be retained.
- 17 Hillview Crescent is partly impacted by overshadowing from 1:00pm on the 21 June.
- 9 Mosbri Crescent is not affected by overshadowing from 10:00am on the 21 June.
- 12 Mosbri Crescent is not affected by overshadowing from 10:00am on the 21 June.
- 18 Mosbri Crescent is not affected by overshadowing from 9:00am on the 21 June.
- 19 Mosbri Crescent is not affected by overshadowing from 12:00 midday on the 21 June.
- 14 Kitchener Parade is not affected by overshadowing from 10:00am on the 21 June.

It is further noted that overshadowing impacts as a result of the height exceedances do not unacceptable impacts for the site or adjoining properties.

E. Building Separation

Adequate separation is provided between buildings to allow for quality landscaping, daylight access, and to reduce visual bulk and scale. The side and rear setbacks for the development meet the performance criteria of the NDCP by providing sufficient separation to minimise any potential amenity impacts, including privacy, daylight access, acoustic amenity and natural ventilation.

Further, the relevant components of the Apartment Design Guide under SEPP 65 prevail over the building separation controls of the NDCP 2012. The development application satisfies the provisions of the Apartment Design Guide as detailed under the '*State Environmental Planning*

Policy No 65—Design Quality of Residential Apartment Development' assessment in **Section 3.1** of this report above.

Amenity (3.03.03)

Many of the controls in 3.03.03 specify compliance with the relevant components of the Apartment Design Guide under SEPP 65 as an acceptable solution. The development application satisfies the provisions of the Apartment Design Guide, as detailed under the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment in **Section 3.1** of this report above. Accordingly, only the relevant additional controls contained within 3.03.03 have been discussed below.

A. Solar and daylight access

The proposal is required to address solar access as identified in SEPP 65 – ADG, and NDCP 2012. Sufficient solar access is available to habitable rooms and private open space areas within the development to generally satisfy the relevant NDCP objectives and is considered adequate with respect to the orientation of the site.

B. Natural ventilation

The ADG recommends that at least 60% of apartments in the first nine storeys of buildings be naturally cross ventilated. A total of 94 out of 161 total apartments, or 58.3%, will achieve natural cross ventilation. This non-compliance is considered acceptable as a number of design strategies have been adopted to bring sufficient volumes of fresh air through the apartments to create a comfortable indoor environment. The development application satisfies the provisions of the Apartment Design Guide, as detailed under the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment in **Section 3.1** of this report above.

C. Ceiling height

The proposal complies with relevant provisions of SEPP 65 – ADG relating to minimum apartment ceiling heights.

D. Dwelling size and layout

The proposal complies with relevant provisions of SEPP 65 – ADG relating to minimum apartment size and layout.

E. Private open space

The proposal complies with relevant provisions of SEPP 65 – ADG relating to private open space.

F. Storage

Adequate storage has been provided within each apartment as well as within the basement adjacent to each car space in accordance with SEPP 65 – ADG.

G. Car and bicycle parking

The car and bicycle parking controls specify compliance with Section 7.03 Traffic, Parking and Access of the NDCP 2012 as acceptable solution. The development application satisfies the relevant car and bicycle parking controls, as discussed under '*Traffic, Parking and Access – Section 7.03*' of the NDCP 2012 assessment below.

H. Visual privacy

The proposal has considered visual privacy of neighbours through appropriate site planning and building location within the site. The building design has achieved design excellence principles and compliance with the SEPP 65 Apartment Design Guide. The proposal complies with relevant provisions of SEPP 65 – ADG relating to visual privacy and building separation.

I. Acoustic privacy

An Acoustic Assessment has been submitted with the application and is considered to have appropriately addressed potential acoustic privacy impacts.

J. Noise and pollution

The proposed development is appropriately located and designed to ameliorate potential outside traffic noise within the subject site.

Configuration (3.03.04)

A. Universal design

A Disability Access Report has been submitted with the development application. The Disability Access Report provides the review and recommendations arising from an access assessment of the proposed development against the relevant access legislation, including the *Liveable Housing Design Guide*, and concludes that the fundamental aims of accessibility legislation are achievable.

The spatial planning and general arrangements of development suitably maximises accessibility to offer inclusion for all building users, and as such is considered to promote flexible housing for community members.

B. Communal area and open space Communal area and open space

Approximately 25% of the site area is dedicated to communal open space, which has been provided in various locations throughout the site. The communal open space is considered to achieve adequate solar access be of a suitably size to enhance the amenity of future residents. Common circulation spaces achieve good amenity and promote safety and social interaction between residents.

C. Architectural design and roof form

The overall architectural design and roof form has achieved the design excellence principles and compliance with the relevant provisions of SEPP 65 Apartment Design Guide.

D. Visual appearance and articulation

The overall building form and facade design has achieved the design excellence principles and compliance with the relevant provisions of SEPP 65 Apartment Design Guide. At the UDRP meeting held in February 2022 it was recommended that additional screening, or solid

balustrading should be provided to the northern facade of Building A (facing Kitchener Parade).

A condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment A**) to ensure balustrades achieve a more balanced composition of solid and void elements.

Environment (3.03.05)

A. Energy efficiency

The density of the proposed development limits the ability to provide dedicated outdoor clothes drying areas. However, each apartment has access to private balconies/terrace to utilise if required. Given the nature of the proposal this is considered acceptable.

B. Water management and conservation

The water management and conservation controls specify compliance with the relevant stormwater treatment and disposal requirements of Section 7.06 Stormwater under NDCP 2012 as an acceptable solution. The proposed development satisfies the relevant stormwater treatment and disposal controls as discussed under 'Section 7.06 Stormwater' of the NDCP 2012 assessment below.

C. Waste management

Waste storage and collection facilities are integrated into the development and have minimal impact on the amenity of adjoining residents, building entry and the streetscape.

Furthermore, the proposal can be serviced by CN's Waste Collection Services without disruption to traffic, on street parking and without requiring waste bins to be placed on the street, as discussed under 'Waste Management – Section 7.08' of the NDCP 2012 assessment below.

Flood Management - Section 4.01

The subject site is not identified as flood prone land.

Mine Subsidence - Section 4.03

Separate approval is required from Subsidence Advisory NSW under s.22 *Coal Mine Subsidence Compensation Act* 2017, due to the development site being located within a proclaimed mine subsidence district. As detailed in **Section 3** of this report above, Subsidence Advisory NSW granted General Terms of Approval on 10 March 2022, which have been included in the recommended Draft Schedule of Conditions (refer to **Attachment A**).

Section 4.02 Bush Fire Protection

The site is located within a bushfire prone area. A Bushfire Assessment Report was provided with the application.

The Bushfire Assessment Report notes that the 9m separation between the proposed buildings and Arcadia Park will minimise the bushfire risk to the future buildings during a bushfire to an acceptable level. The required Asset Protection Zone is fully accommodated on the site and does not propose or rely on clearing of vegetation in Arcadia Park.

The proposal includes a strata subdivision of the land therefore requiring a Bushfire Safety Authority under Section 100B of the *Rural Fires Act 1997*. General Terms of Approval in the form of a Bushfire Safety Authority has been issued by the RFS under s100B of the Rural Fires Act 1997 NSW (refer to **Attachment D**).

Safety and Security - Section 4.04

This section applies to the proposal given the nature and scale of development, with components of common space (driveway, car parking, entry foyers, lift and stair wells and communal opens space areas and roof top areas).

A Crime Risk Assessment has been provided which demonstrates that the proposal incorporates appropriate crime prevention features to reduce the likelihood of criminal activity and provide a safe environment for future residents.

The development is acceptable in relation to aspects of safety and security providing for good natural surveillance from active frontages with balconies and maintains clear sightlines between private and public spaces. Lighting external areas and limiting places to hide are provided within the design. Access to the building and car parks is controlled and is safe for residents 24 hours per day.

A condition of consent is recommended requiring a lighting strategy, design and management plan ('lighting plan') to be prepared by a qualified lighting designer prior to construction. The lighting plan must be designed in conjunction with the landscape plan (required by conditions of this consent) to ensure that spaces of shadow and concealment are not created by the building and the landscaping – particularly in the carpark, loading areas and points of ingress and egress. Lighting is to ensure that the external elevations have appropriate lighting.

The lighting plan must be reviewed and informed by the applicants CPTED and landscape consultants. The lighting plan, and confirmation of input from the applicants CPTED and landscape consultants into the lighting plan, is to be submitted with the Construction Certificate documentation.

Accordingly, the proposal is acceptable in relation to safety and security.

Social Impact - Section 4.05

It is identified that the proposed development will result in the provision of additional housing within an established inner-city suburb with access to public transport, employment opportunities, community infrastructure, education and services.

The proposal includes a mix of residential apartment types through housing diversity which means greater housing choice for a range of households, which can also create more affordable housing options. The development will increase the population in an ideal location and lead to the activation of an existing underutilised site. The associated public domain improvements also contribute positively to the existing locality.

The development does not involve a potential loss of opportunity or resources for future generations. It is considered unlikely that a development of the nature proposed would result in increased anti-social behaviour.

Redevelopment of this under-utilised site is a positive outcome socially. The proposal will provide additional housing choice and employment opportunities in the locality (during

construction). As such, the proposed development is acceptable in terms of the above Section of the NDCP 2012.

Soil Management - Section 5.01

The proposed development involves bulk earthworks, in particular excavation and mine grouting works. The proposed earthworks have been informed by supporting technical reports and assessments, including a Construction Management Plan and Geotechnical investigations.

Temporary measures to minimise soil erosion and appropriate mitigation measures will be implemented prior to any earthworks commencing on the site, in line with the recommendations of the submitted technical reports and erosion and sedimentation plans submitted with the application.

Appropriate consideration of earthworks, contaminated land, acid sulfate soil, slope stability construction / demolition impacts is addressed in detail throughout this report.

Accordingly, the proposal is acceptable subject to conditions included in the recommended Draft Schedule of Conditions (refer to **Attachment A**) to address soil management and ensure adequate sediment and erosion control measures are in place for the construction period.

The proposed development is acceptable in terms of the above Section of the NDCP 2012.

Land Contamination - Section 5.02

Land contamination has been investigated and is considered suitable as detailed under SEPP (Resilience and Hazards) 2021 within the report above, which found the site to be acceptable for the proposed development and consistent with the provisions of SEPP (*Resilience and Hazards*) and CN's requirements subject to the inclusion of CN's standard conditions of consent addressing classified waste removal/ disposal.

As such, the proposed development is satisfactory in regard to contamination and relevant conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment A**) to address classified waste removal and disposal.

The proposed development is acceptable in terms of the above Section of the NDCP 2012.

Vegetation management - 5.03

Consent is required for the removal of a tree or other vegetation that is identified as declared vegetation on private land, or within 5m of a development site. An Arborist Report and a tree retention assessment value in accordance with the Urban Forest Technical Manual (UFTM) has been submitted. A total of 43 trees on the site are proposed to be removed on site, including 16 tree species of high retention value.

The proposal will involve extensive landscaping, common open space areas and public domain works, all of which propose appropriate compensatory planting of trees and other landscape elements. A total of 72 trees are proposed as compensatory planting, utilising species that will provide good canopy coverage and long-term sustainability. A Landscape Concept Plan is provided that identifies suitable locations and species for compensatory planting.

Further, it is noted that the submitted Arborist report concludes that the proposed landscaping scheme is considered to deliver an over-compensation in terms of the quality and quantity for the trees to be removed.

No trees on the adjoining residential properties, or in Arcadia Park are proposed to be removed. It has been demonstrated that these trees are able to be protected and retained through the implementation of specific tree protection measures in accordance with the requirements of AS 4970—2009 - Protection of trees on development sites.

Vegetation on private residential properties -13 Hillview Crescent

Following the Public Briefing in April 2022, further clarification from the applicant was sought in relation to two existing trees within the adjoining site of 13 Hillview Crescent. These are shown in the below photograph:



Image 1: Images of trees on 13 Hillview Crescent.

It has been confirmed that these two trees on the adjoining site are retainable. Tree Protection Measures (TPM) will be undertaken in accordance with the requirements of AS 4970—2009 - Protection of trees on development sites. Prior to the commencement of any works, a detailed tree protection plan will be prepared in consultation with the project arborist. The following activities will be restricted within the Tree Protection Zone (TPZ) of retained trees:

- a) Machine excavation including trenching
- b) Excavation for site fencing
- c) Cultivation
- d) Storage
- e) Preparation of chemicals, including preparation of cement products
- f) Parking of vehicles or plant
- g) Refuelling
- h) Dumping of waste
- i) Wash down and cleaning of equipment
- j) Placement of fill

- k) Lighting of fires
- l) Soil level changes by mechanical excavation
- m) Installation of signage
- n) Physical damage to trees

In addition to these measures, there is to be no mechanical excavation to the tree Structural Root Zone (SRZ). All excavation around the SRZ is to be manual. This area is to be marked out with line marking paint to facilitate the excavation and visualise the distance to those conducting the manual excavation. These trees are also to have a mulch layer added behind the shoring wall within the site. This will offer them additional nutrients as the mulch layer decomposes, avoid drying of the soil surface and reduced undesirable weed growth.

Vegetation on public land

- Mosbri Crescent Reserve

The amended stormwater and easement design has reduced the impact to the trees of Mosbri Crescent Reserve. One tree (Bottlebrush) will be required to be removed due to an unavoidable incursion into the Structural Root Zone (SRZ).

CN's City Greening Services have recommended that one park tree to be planted as compensation for the removal of the existing tree. All works including tree removal would be at the developer's expense. All tree species and locations will be determined by City Greening Services and payment will be required prior to the issuing of the Construction Certificate.

- Kitchener Parade Road Reserve

Following the Panel's site meeting and subsequent briefing in May 2022, further clarification from the applicant was sought in relation to the possible and practicable retention of several street trees in the Kitchener Parade Road Reserve.

The condition of the subject trees and overall health were found to be impacted due to a number of complications, including previous storm damage. In addition, several non-destructive excavation options, construction methods and alternative designs were also explored and considered by the applicant.

It was concluded that risks associated with retaining these trees could not be mitigated and would result in a low long-term outcome. It has been satisfactorily demonstrated that there are no other viable alternatives, and the subject trees are recommended for removal. Furthermore, 6.14.03 of NDCP 2012 acknowledged that existing street trees along Kitchener parade may need to be removed to enable new infrastructure.

CN's City Greening Services have recommended that 10 x 75-150 litre trees to be planted as compensation for the removal of the existing street trees, with all works including tree removal would be at the developer's expense. All tree species and locations will be determined by City Greening Services and payment will be required prior to the issuing of the Construction Certificate.

The proposed development is acceptable in terms of the above Section of the NDCP 2012 and the Urban Forest Technical Manual (UFTM). Relevant conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment A**).

Aboriginal Heritage - Section 5.04

The site contains an Aboriginal site, referred to as NBN_AS1 (AHIMS #38-4-1205). An Aboriginal Cultural Heritage Assessment (ACHA) report has been provided.

The project area has been subject to extensive contemporary modification, disturbance, and vegetation clearance. Preliminary ground investigations have confirmed the site is overlaid by fill material. The disturbance is likely to have displaced archaeological material in the upper layers of the soil.

The ACHA notes that the project area predominately rates as demonstrating low archaeological potential. The presence of two Aboriginal objects in a highly eroded and disturbed context is such that no further archaeological potential remains.

The proposed development will result in 100% removal of the remnant landform identified within the project area, resulting in 100% harm to the recorded Aboriginal site NBN_AS1.

As the development was not lodged as integrated development for the purposes of the NPW Act, An Aboriginal Heritage Impact Permit (AHIP) must be obtained from Heritage NSW in accordance with the *National Parks and Wildlife Act 1974*, prior to the commencement of any ground disturbance works.

The recommendations of ACHA have been incorporated as conditions of consent. As such, the proposed development is acceptable in terms of the above Section of the NDCP 2012, and relevant conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment A**).

Heritage Items - Section 5.05

The site is not a listed heritage item or located in a heritage conservation area (HCA). The site is located adjacent to the Newcastle Recreation Reserve, which is listed on the NSW State Heritage Register (SHR 02000) and encompasses several individual items listed on Schedule 5 of the NLEP (King Edward Park Group and the Obelisk). The site is located in proximity to a number of other heritage items.

The impacts on the heritage values of the Newcastle Recreation Reserve, King Edward Park, The Hill and Cooks Hill Conservation Area (HCA) and the Obelisk have been assessed elsewhere in this report and was found to be acceptable having regard to the views including from Arcadia Park, Wolfe Street and the Obelisk, as well as an assessment of the impact of the proposed development on Arcadia Park.

As such, the proposed development is acceptable in terms of the above Section of the NDCP 2012 and relevant conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment A**).

Archaeological Management - Section 5.06

The site is not a listed or indicative archaeological site. Notwithstanding, Heritage NSW were notified of the proposed development. Heritage NSW have recommended conditions to address requirements of the *Heritage Act 1977* relating to archaeological relics which are included below as conditions of consent should the development be approved.

As such, the proposed development is acceptable in terms of the above Section of the NDCP 2012, and relevant conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment A**).

11 Mosbri Crescent, The Hill – Section 6.14

The strategic overview of this section of the DCP is provided below:

"The site is situated on the western edge of a hill, the summit of which is the heritage listed Obelisk in King Edward Park. The topography across the site drops sharply from Arcadia Park and Kitchener Parade on the eastern and northern boundaries into a relatively flat basin in the central and eastern sections of the site where the current NBN studio buildings are located fronting Mosbri Crescent. Moving west of the site, topography continues to slope down towards Darby Street.

Future development on the site should provide for a range of housing typologies which is consistent with Council's Local Planning Strategy. The residential flat buildings are to be located on the northern and central section of the site and orientated on a north-south axis to maximise their sunlight, whilst also minimising overshadowing and impacts on the existing and proposed residential amenity. Residential terraces are to be located along the southern boundary of the site.

Future development on the site should be designed taking into account the significant changes in topography on the site to enable buildings to fit in with, and respect, the surrounding topography (including ridgelines), streetscapes, built form and heritage context."

The aims of this section of the DCP include the following:

1. *To provide responsive and sustainable redevelopment of the site.*

The proposed apartment buildings and townhouse have been sited and planned to maximise the number of dwellings with a Northern, Western and Eastern orientation (maximising views and Northern sunlight). Several design measures and strategies, as detailed in the BASIX certificate and engineering concept have been incorporated to facilitate sustainability outcomes.

2. *To ensure new development incorporates best practice principles and achieves a quality urban renewal outcome.*

The development application has been reviewed by CN's Urban Design Review Panel (formerly known as Urban Design Consultative Group), on five occasions including twice prior to lodgment of the subject development application. It was concluded that *'the development can be considered to exhibit a high level of design quality, and the completed proposal can be expected to make a positive contribution to the area.'*

The building design has achieved design excellence principles and compliance with the SEPP 65 Apartment Design Guide. It is considered that a high-quality urban renewal outcome in this strategic location is achieved.

3. *To ensure building orientation and footprints are designed to maximise solar access and allow for natural ventilation.*

The building design has achieved design excellence principles and compliance with the SEPP 65 Apartment Design Guide.

Further, it has been demonstrated that acceptable solar access is maintained to adjoining properties with a similar level of overshadowing when compared to the preferred site layout plan.

4. To allow for a sensitive transition of building height which responds to the surrounding built form, heritage and topography, including protection of ridgelines.

The proposed development responds to the various height precincts specified in the LEP, ensuring that the height of the proposal is varied through the site, transitioning to Mosbri Crescent. The extent of the building that is proposed above the height control has minimal impact in relation to visual bulk and scale, overshadowing or view loss.

The impacts on the heritage values of the Newcastle Recreation Reserve, King Edward Park, Cooks Hill Conservation Area (HCA), and the Obelisk are considered acceptable based on the supporting information provided (including a HIS and VIA) having regard to the views including from Arcadia Park, Wolfe Street, and the Obelisk, as well as an assessment of the impact of the proposed development on Arcadia Park.

5. To provide a variety of housing typologies to provide interest to the site and to respond to topography.

The proposed development includes residential flat buildings and townhouse style dwellings and provide a diversity of housing types and apartment sizes.

At ground level, dwellings facing communal open areas have been designed to present as a lower scale form to common areas. Dwellings are provided with garden courtyards, where possible, in response to the change in topography across the site.

6. To strengthen and reinforce the streetscapes of Mosbri Crescent and Kitchener Parade through human scaled streetscapes and well-defined landscape.

The proposal includes townhouse style development facing Mosbri Crescent, in place of a four-storey flat building, which results in an improved human scaled streetscape.

Whilst the proposed scheme does not comply with the DCP provisions relating to setbacks and building location, particularly the Kitchener Parade Street frontage, the proposal generally meets the broader aims and objectives of the DCP in achieving a medium density residential development on the site that responds to the steep topography of the site and adjacent road reserve. Further assessment comments considering the proposed development against the DCP provisions is provided below (refer 6.14.02 - Building Form).

7. To increase the opportunity for pedestrian connections to local amenity beyond the site boundary including Arcadia Park, Mosbri Crescent Park and connections to services and transport.

The proposal includes a public pathway connection through the site, which provides further pedestrian movement opportunities, not only for the future residents of the site but also those within the surrounding catchment. The path will facilitate connections to Arcadia Park, Mosbri Crescent Park, as well as to services and public transport options in the vicinity. A further assessment of the proposed pathway

It is acknowledged that the DCP identified a wider, zigzag pedestrian path through the middle of the site. The design of the pedestrian path has been amended during the assessment process, including changes to pedestrian path design, to be wider and straightened enabling better sight lines and passing ability. Lighting and landscaping are provided in accordance with CPTED principles. The public accessible pathway / landscaped

area is free of any barriers or gates to allow unimpeded movement for the public and residents of the development between Mosbri Crescent and Kitchener Parade.

The proposed location and design of the public pedestrian pathway varies significantly to the preferred concept of the DCP. Notwithstanding, the proposed pathway is acceptable given the constraints of the site, such as topography, and having regard to the fact public access is maintained through a private development site

8. To protect important views through building design and location.

The subject site is within the identified 'cityscape' view catchment. The base of the Obelisk is identified as being RL69.00. The roofline of Building A is noted as being RL56.8, with lift overrun/plant area at RL58.3. These building elements remain significantly lower than the base of the Obelisk and given the tree line of existing vegetation within Arcadia Park, means that there are no significant view impacts from the Obelisk.

Further, the submitted Visual Impact Assessment has satisfactorily demonstrated that the proposal will not significantly impact on the views from the Obelisk and no important views will be lost. A detailed view assessment is provided elsewhere within this report.

9. To provide amenity and social inclusion through the provision of shared communal open space.

The proposal provides several communal open space areas between buildings and in suitable locations throughout the site, in addition to a separate communal open space located on the rooftop of Building B.

10. To incorporate the existing landscape to act as a buffer between the site and neighbouring sites.

The proposal includes landscaped setbacks between the proposed built form on the site and neighbouring sites.

11. To provide high amenity private open space in the form of balconies for apartments and rear gardens, courtyard spaces and upper-level balconies for terrace houses

The proposed apartments and dwellings are provided with upper-level balconies and garden courtyard private open space options.

The proposed development, whilst varying from the preferred site layout (see Figure 2 below), is considered to achieve the aims of this section of the DCP.

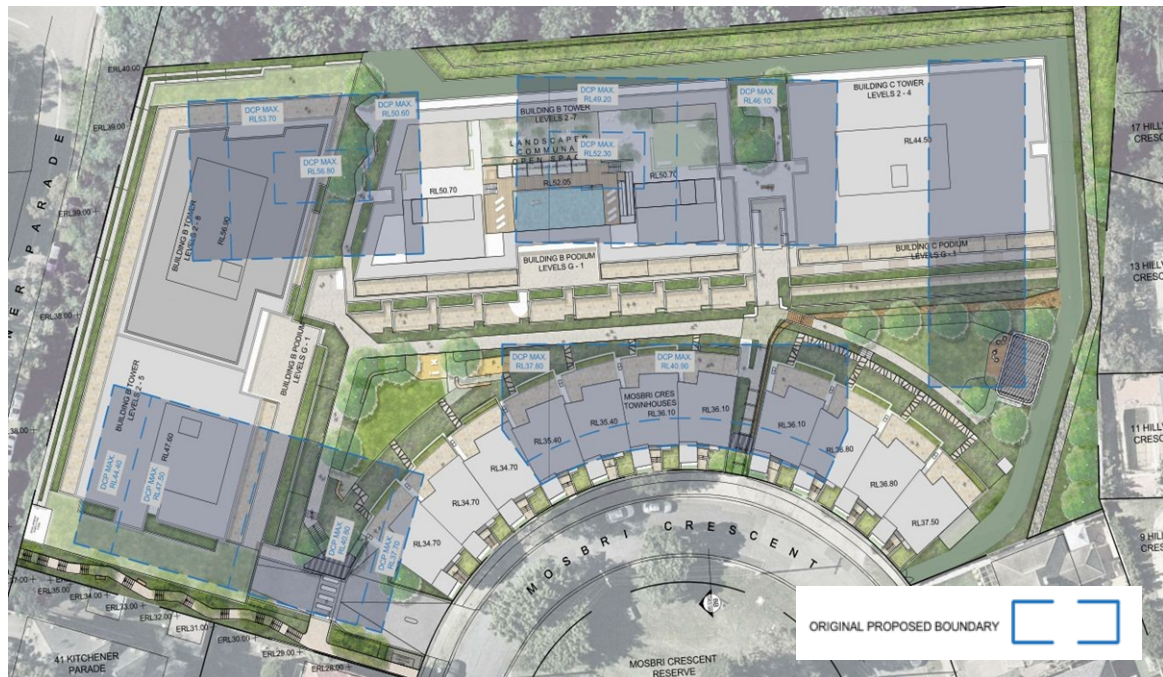


Figure 2 Proposed site layout and DCP overlay.

6.14.02 - Building Form

A. Floor Space Ratios

The floor space ratio complies with the maximum floor space ratio for the site.

B. Height

The proposed development exceeds the maximum building height control under NLEP 2012 in some parts of the site. The greatest extent of the non-compliance relates to the lift overruns, plant screening, which comprise a very small proportion of the roof area and site. The location and extent of the lift overruns is considered acceptable having regard to visual bulk and scale, overshadowing and view loss. This is consistent with the Planning Proposal documentation, which facilitated the current height controls, which confirmed that the '*Top roof RL does not assume inclusion of lift overrun*'. A clause 4.6 variation has been submitted in support of the proposed height variation and is assessed in **section 3** of this report. The building height variation and submitted Clause 4.6 request is considered to meet the relevant criteria and is acceptable.

The area fronting Mosbri Crescent and the southern boundary has a maximum building height of 12m, which the Planning Proposal noted could accommodate a residential flat building potentially up to four storeys. The current scheme proposes townhouse style dwellings in this area, to provide a more human scaled built form to this frontage.

C. Building Setbacks

An analysis of the DCP setback requirements identifies there is a number of variations to the boundary setbacks, in some cases a reduced setback is proposed and in other a more substantial setback than suggested in the DCP.

Building A results in several variations to the minimum required setbacks and increased height levels to Kitchener Parade (along the northern boundary), refer to Figure 3 and Table 6. Building B results in increased setbacks and reduced heights levels to Arcadia Park (along the eastern boundary), more than the minimum requirements, Figure 5 and Table 8.

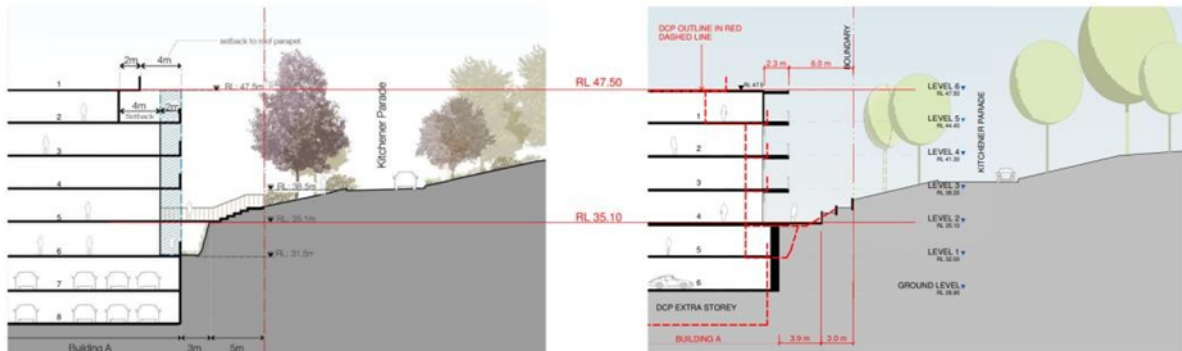


Figure 3 (of DCP) - Kitchen Parade lower (shown left) and proposed cross section (shown right)

Table 6: Setback Building A

Building A (6-storey west wing)	DCP setback	Proposed setback
Basement	8m (RL26)	6.9m (RL28.9)
Ground Floor balcony	8m (RL35.1)	3m (35.1)
Upper Floor balcony	8m (RL44.4)	6m (RL44.4)
Rooftop landscape setback	12m (RL47.5)	6m (RL47.5)

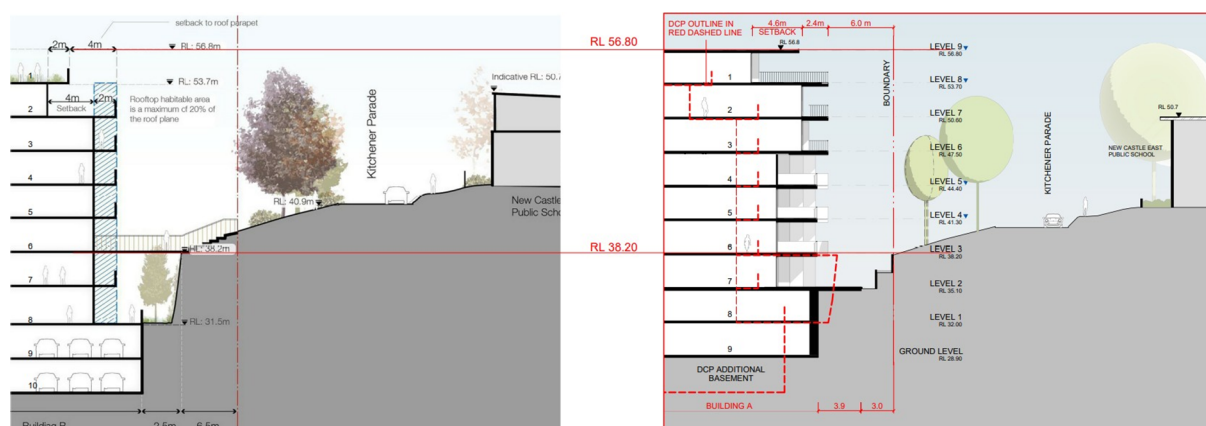


Figure 4 (of DCP) - Kitchen Parade upper (shown left) and proposed cross section (shown right)

Table 7: Setback Building A

Building A (9-storey west wing)	DCP setback	Proposed setback
Basement	9m (RL26)	6.9m (RL28.9)
Ground Floor balcony	9m (RL31.5)	3m (35.1)
Upper Floor balcony	10m (RL50.6)	6m (RL47.6)
Rooftop landscape setback	14m (RL53.7)	8.4m (RL56.8)

The proposal does not comply with the minimum setbacks to Kitchener Parade. However, the bulk and scale is considered acceptable on the site given the intent of Planning Proposal (which envisaged taller buildings along this street frontage) in conjunction with the amended building heights set by the LEP. Further, the development application satisfies the relevant provisions of the Apartment Design Guide to allow for ventilation, daylight access, view sharing and privacy in neighbouring development and the public domain, as detailed under the *'State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development'*

While the proposed setbacks to Kitchener Parade are considerably reduced, the proposed development requires significantly less excavation and retaining and provides for improved amenity to Ground Level and Level 1 apartments.

It is noted the proposed Building A in the above cross section (as shown at Figure 4) appears much taller than shown in the DCP, however the roof line remains compliant with the RL56.8 height standard in this location. The DCP also acknowledges that the RL56.8 height limit is intended for habitable rooftop access, and should this not be provided, then the roof level should revert to RL53.7. However, a roof top communal area in this location would potentially result in overlooking and acoustic impacts on neighbouring properties and Newcastle East Public School. As discussed above, the roof level of the proposed additional storey is compliant with the LEP height standard in and is largely reflective of the intended density and building typology in this location

Due to the large drop in topography from Kitchener Parade, the proposed building maintains an appropriate street edge. The rooftop exceedances in this location will not be significant in terms of impact on prominent views, as demonstrated in the Visual Impact Assessment (VIA) and does not cause an unreasonable amount of additional shadowing.

The images within the VIA images relating to Kitchener Parade demonstrate that the extent of setback and height exceedances do not result in any significant visual bulk and scale impacts compared to a fully compliant building envelope. Further, it is noted that the proposed 6m setback to the upper floor balconies of Building A, in addition to the road reserve separating the site from Newcastle East Public School, a separation of approximately 26m is achieved.

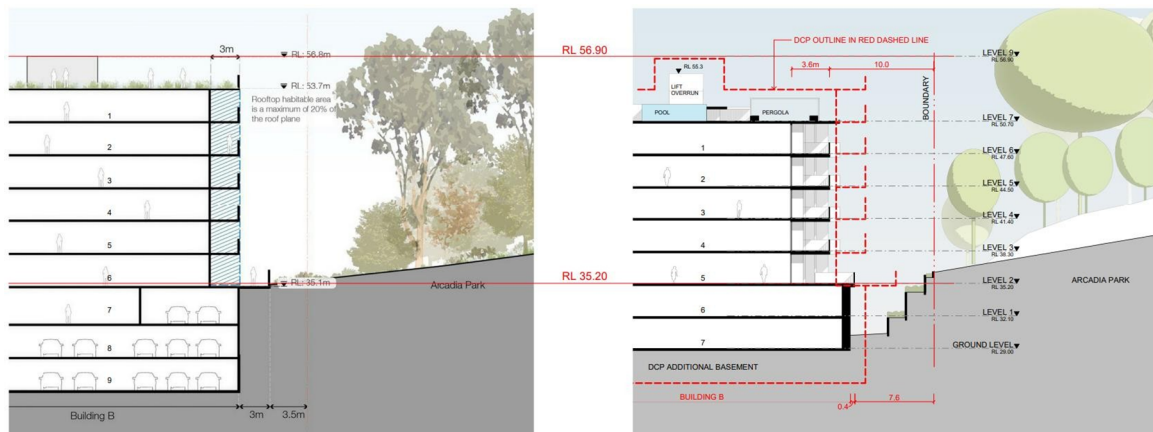


Figure 5 (of DCP) - Building B eastern boundary with Arcadia Park (shown left) and proposed cross section (shown right)

Table 8: Setback Building B

Building B	DCP setback	Proposed setback
Basement	6.5m (RL26)	8m (RL29)
Ground Floor balcony	3.5m (RL35.1)	7.6m (35.2)
Upper Floor balcony	6.5m (RL50.1)	9m (RL47.6)
Rooftop landscape setback	6.5 (RL53.7)	11m (RL50.7)

As shown above, Building B provides increased rear setbacks, including basement excavation more than the minimum setback requirements to the eastern boundary. It is noted that the tiered retaining wall design and level of excavation shown in the proposed cross is required to facilitate a CN stormwater easement through the site. Further, it is noted that the Building B proposes a reduction in overall building height (approximately one-storey) and does not require the extent of bulk earthworks when compared to the DCP. The alternative built, setback, and excavation of Building B results in a positive outcome in terms of its impact and relationship to Arcadia Park.

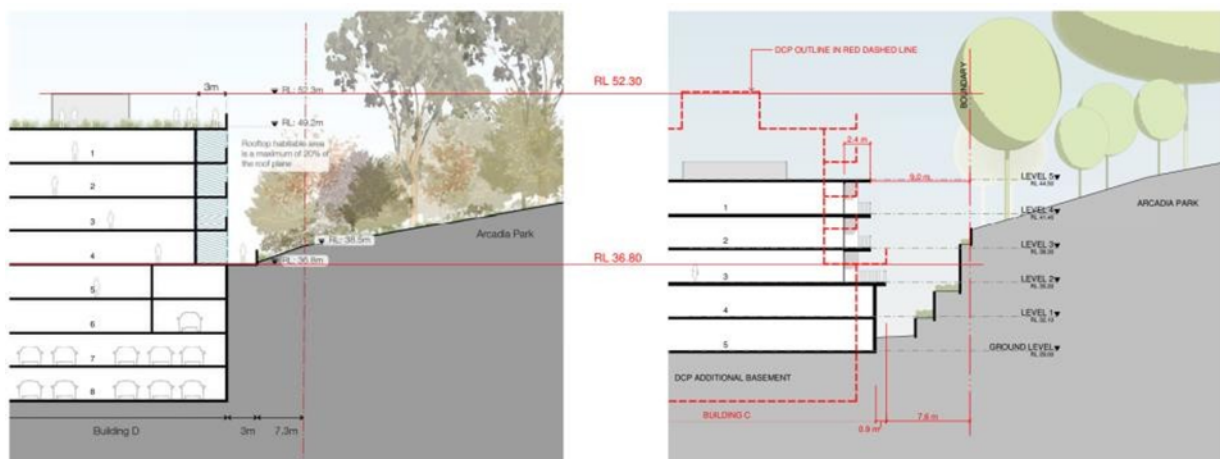


Figure 6 of DCP - Building C eastern boundary with Arcadia Park (shown left) and proposed cross section (shown right)

Table 9: Setback Building C

Building C	DCP setback	Proposed setback
Basement	10.3m (RL26)	8.5m (RL29)
Ground Floor balcony	10.3m (RL36.8)	7.6m (RL35.2)
Upper Floor balcony	10.3m (NA)	9m (RL38.3)
Rooftop landscape setback	10.3m (RL49.2)	9m (RL44.5)

Note: Summary table provided by the Architect on drawing DA5.68 identified incorrect RLs for the proposal

The DCP identified a row of terrace style buildings along the southern boundary, which adjoins residential properties in Hillview Crescent. This would have resulted in a longer built form opposite these residential properties and potentially allowing for windows and private open spaces adjacent to the common boundary. The proposed development does not include any windows, or private open space areas that directly face the adjacent dwellings on Hillview Crescent.

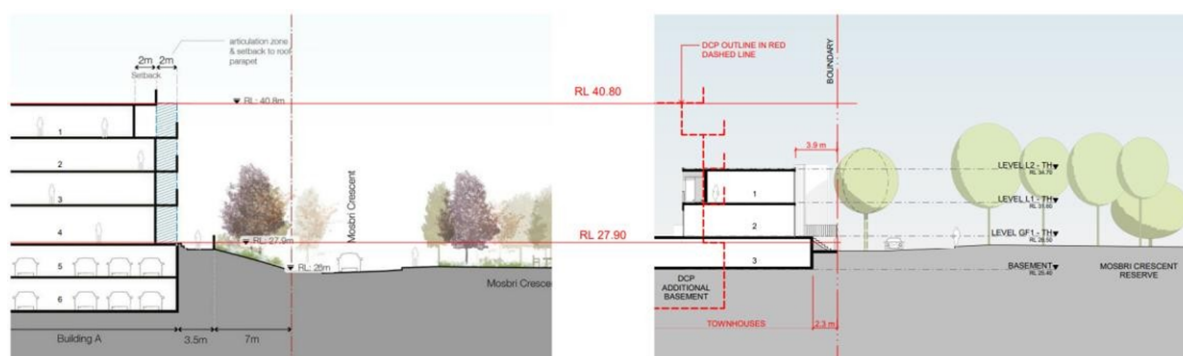


Figure 7 of DCP - Building A Mosbri Crescent (shown left) and proposed cross section (shown right) Figure 5 of DCP - Building A Mosbri Crescent (shown left) and proposed cross section (shown right)

Table 10: Setback Buildings

Mosbri Crescent Building	DCP setback	Proposed setback
Basement	10.5m (RL26)	2.3m (RL28.9)
Ground Floor balcony	7m (RL27.9)	2.3 (RL28.5)
Upper Floor balcony	10.5m (NA)	3.9m (RL31.6)
Rooftop landscape setback	12.5m (RL40.8)	3.9m (RL34.7)

The DCP identified that a residential flat building potentially up to four storeys could be located along the Mosbri Crescent street frontage. The proposal includes townhouse style dwellings facing Mosbri Crescent, in place of a four-storey flat building, which results in an improved human scaled streetscape.

While the proposed setbacks do not fully accord with the preferred setbacks of the DCP, the development has been assessed as achieving the broader design aims of the DCP. Further, the proposed development has achieved the design excellence principles under the provisions of SEPP 65 and the ADG in relation to building separation, solar access, landscaping, and open space. CN's Urban Design Review Panel (UDRP) considers the design outcome for the site to be appropriate in the context of the natural environment, taking advantage of the natural landform and topography and established tree canopy to assist with minimising visual impact on site and when viewed from surrounding properties and viewpoints.

D. Building Design Elements

Several design elements have been incorporated in each building's design. The proposed development has achieved the design excellence principles and compliance with the relevant provisions of SEPP 65 Apartment Design Guide.

A communal rooftop amenity area is provided at the roof level of Building B. The building design, colour scheme and material choices throughout the development are considered to complement the character of the area.

6.14.03 - Public Domain

A. Traffic and Transport

The proposed development provides only one vehicular access point, which will benefit Mosbri Crescent in terms of traffic movements, and has reduced the amount of internal space required for vehicle circulation.

Proposed parking numbers comply with Section 7.03 of the DCP. Carparking is provided within the understorey levels and is integrated within the building design. Pedestrian footpaths are provided along the street frontages and the proposed landscaping includes compensatory street tree planting along the street frontages.

B. Open Space and Landscaping

Landscaping treatments and deep soil areas are located throughout the site and integrated into the overall site plan.

A north / south pedestrian link is provided along the western boundary connecting Mosbri Crescent to Kitchener Parade. It is noted that the proposed location and design of the public pedestrian pathway varies significantly to the preferred concept in the DCP. Notwithstanding, the proposed pathway is acceptable given the constraints of the site, such as topography, and having regard to the fact public access is maintained through a private development site

Since lodgement, the proposed walkway has been widened to a minimum of 2.4 metres wide, ensuring adequate sight lines and associated public safety. Lighting and landscaping are provided in accordance with CPTED principles. The public accessible pathway / landscaped area is free of any barriers or gates to allow unimpeded movement for the public and residents of the development between Mosbri Crescent and Kitchener Parade.



Figure 8 – Extract of pedestrian pathway

The DCP identified several small rooftop communal open spaces, however the proposed development provides only one communal space. The proposed roof top communal area is located on Building B (instead of Building A) to minimise potential overlooking and acoustic impacts on neighbouring properties including Newcastle East Public School, 14 Kitchener Parade and 9 Mosbri Crescent.

The proposed development does not comply with all the preferred site planning aspects outlined in the section of the DCP, particularly in relation to setbacks, building locations and the design of communal rooftop areas. Notwithstanding, the proposed development has been reviewed by CN's Urban Design Review Panel who supported the alternative site layout appropriate design outcome, including the repositioning of the public pedestrian pathway, and the proportionate changes to bulk, scale and massing of buildings across the site.

The proposal is considered acceptable on balance in terms of the above Section of the NDCP 2012.

Landscape Open Space & Visual Amenity - Section 7.02

The proposal will involve extensive landscaping, common open space areas and public domain works all of which propose appropriate compensatory planting of trees and other landscape elements. A Landscape Concept Plan is provided that identifies suitable locations and species for compensatory planting. Proposed tree species along the southern side boundary, adjacent to the residential properties on Hillview Crescent, will reach a mature height generally consistent with the proposed roof level of Building C. All proposed trees are expected to reach suitable height and be sustainable into the long term, thereby improving the contribution the site makes to the local amenity and character of the area.

The proposed development is acceptable in terms of the above Section of the NDCP 2012.

Traffic, Parking & Access – Section 7.03

Traffic studies & plans (7.03.01)

A. Traffic impact study

A Traffic Impact Assessment has been provided to address traffic impacts of the proposed development on the operation of local road network.

The Traffic Impact Assessment and CN's detailed assessment confirms that: (1) the proposed development will not adversely impact on the local and state road network; (2) the proposed access arrangements provide safe and suitable site access to all components of the development and would comply with relevant CN and AS2890.1 requirements; (3) the internal circulation arrangement is appropriate and can comply AS2890.1 requirements; and (4) the on-site parking provisions proposed will be adequate and can comply with rates set out in this section of the NDCP 2012.

B. Construction traffic management plan

The submitted Construction Management Plan provides recommendations to ensure acceptable impacts from the demolition, mine grouting works and construction of buildings, including measures to mitigate any potential impacts. Furthermore, the provision of Traffic Management Plan during the demolition and construction phase (including mine grouting works) to minimise potential impacts on traffic movement, pedestrians, and/or parking is addressed by the provision of suitable conditions of consent.

Parking provision (7.03.02)

The proposed development provides a total of 242 off-street car parking spaces split between communal parking areas associated with the apartment buildings and the town houses.

In accordance with the applicable rates in the NDCP 2012, the proposed development generates a car parking demand of 207 car spaces (consisting of 172 resident spaces and 34.4 visitor spaces). The proposed development provides 231 car spaces (comprising 196 resident spaces and 35 visitor spaces).

Accordingly, the proposal satisfies the required car parking rate. Further an additional 35 surplus car spaces (including 25 surplus spaces at ground level and 10 surplus spaces at Level 1) have been provided. Suitable areas have been allocated for bicycle motorcycle parking which comply with the required rates respectively.

Design & layout of parking & access (7.03.04)

The proposed car park layout and vehicular access arrangements comply with the requirements of the NDCP2012 as well as AS2890 AS2890.1:2004 – '*Parking facilities – Off Street Car Parking*' and AS2890.6 – '*Parking Facilities – Off Street Parking for People with a Disability*'. In particular, the internal car park will enable vehicles to enter and exit the site in a forward direction. In addition, the proposed vehicular access point is suitably located, providing adequate sight lines.

The amended application includes a 14 m x 3 m Heavy Rigid Vehicle (HRV) parking bay within the easement for drainage at the southern end of the site. It is understood that this parking bay will only be used for infrequent, short-term parking associated with removalist vehicles or deliveries of large bulky items such as fridges, lounges, or the like.

CN does not object to parking within the easement for use by HRV's (removalist trucks etc either reversing onto or off the hardstand area) on an infrequent basis as no other alternative for this size of vehicle is being made available within the remaining footprint of the development. The likelihood of the parking bay being used in times of significant overland flow or surcharging stormwater is low and can be reasonably managed by relevant strata by-laws and/or building management statements.

However, the use of this parking bay by smaller courier or delivery vehicles is not supported as the number and frequency of such vehicles reversing to or from Mosbri Crescent would have an adverse impact on public safety and is inconsistent with DCP2012-7.03 (Traffic, Parking and Access). Accordingly, delivery vehicle drivers will need to find other appropriate and lawful parking locations when attending this site.

Appropriate conditions of consent are proposed that will allow infrequent, short stay use of the parking bay by larger removalist/delivery vehicles only and prohibit its use by smaller, frequent delivery or courier vehicles.

The proposed development has been assessed against the relevant DCP controls, and is acceptable, subject to draft conditions included in **Attachment A**.

Parking demand

The Traffic and Parking Assessment correctly determines the minimum number of required car, motorcycle and bicycle parking spaces required to satisfy NDCP 2012. An additional 35 residential car parking spaces are proposed over and above the minimum number required by the DCP. An additional four to five on-street kerbside parking spaces will also be gained through the removal of existing driveways made redundant by the development.

Mosbri Crescent has a number of adjoining older style residential flat buildings that have generated a significant on-street car parking demand due to overflows arising from insufficient on-site parking. It is noted that the proposed development has 40 dwellings with three bedrooms. Should these dwellings generate parking demand greater than one space per dwelling, as per the DCP rate, it is likely to intensify the existing parking shortage along Mosbri Crescent. Therefore, it is accepted that there is significant advantage in providing some additional surplus on-site car parking in this large development as a means of ensuring that the impact of overflow parking onto Mosbri Crescent is minimised.

The majority of the off-site parking impacts on the locality are anticipated to arise during the construction phase which has an estimated duration of two years. In this regard the updated TPA refers to the Construction Management Plan which states that: *'construction workers will not be permitted to park in the surrounding residential streets but will be required, as part of the site induction process, to rely on a range of measures based on remote parking and walking or designated shuttle services to/from the site'*. It is noted that the referenced 'Park and Ride' service from McDonald Jones Stadium in Broadmeadow has now ceased to operate. It is therefore considered appropriate that a condition of consent be imposed requiring the refinement of the proposed remote car parking option by the successful tenderer, and approval by Council of the proposed measures, prior to demolition and commencement of construction works.

Traffic Generation

The Traffic and Parking Assessment (TPA) has considered the proposed development against the RTA's Guide to Traffic Generating Development with further consideration given to the RMS Technical Direction TDT2013/04 (May 2013) that provided updated traffic generation rates for certain development types including residential flat buildings.

From the TDT2013/04, the TPA adopts the Regional Average trip generation rates of 0.21 vehicle trips per hour (vtp/h) per bedroom in the AM peak, 0.15 vtp/h per bedroom in the PM peak and adopts 1.93 vehicle trips per day (vtp/d) per bedroom for total daily traffic.

Accordingly, it is determined that the proposed development will generate approximately;

- Daily Traffic = 676 vtp/d
- AM Peak Hour = 74 vtp/h
- PM Peak Hour = 53 vtp/h

The TPA has made reasonable assumptions to determine the existing traffic generated by the former NBN television studios. This has been done by subtracting the typical trips generated by the existing residential developments along Mosbri Crescent from the manual traffic counts undertaken in September 2018.

Section 10 of the TPA also makes reasonable assumptions for the distribution of trips generated by the development as they move to and from the site in the AM and PM peak hours via Mosbri Cr, Swan St, Kitchener Pde, Queen St and Darby St (a Classified Regional Road). In summary, the TPA assumes approximately 70% of generated traffic will utilise Swan St to access the existing traffic signal controlled (TCS) intersection at Darby St / Queen St with a further 20% Kitchener Pde (leading to Brown St) to the north of the site and 10% utilising Kitchener Pde to the south of Swan St.

Manual traffic counts were also undertaken of the TCS intersection at Darby St / Queen St to aid the SIDRA intersection modelling analysis of the performance of this intersection post development. The SIDRA analysis confirms the TCS will continue to operate with a good Level of Service (LOS) A through to at least 2028 and after the development is operational. A satisfactory LOS is Level C or better.

The TPA also includes SIDRA analysis of the current 4-way 'Stop Sign' controlled intersection at Swan St / Kitchener Pde and found that it too will continue to operate with a LOS A post development through to at least 2028.

Other local intersections in the vicinity of the development site were also assessed having regard to '*Austroads Guide to Traffic Management Part 6 – Intersections, Interchanges and Crossings*' and it was found that the additional operational trips generated by the development do not trigger the need for any upgrades of these intersections.

Further, the TP has made assessments of the mid-block capacity of the surrounding local and the results are contained within Table 1 of the TPA. This assessment has confirmed that the mid-block threshold limits of Darby St, Queen St, Swan St, Kitchener Pde and Mosbri Cr are not exceeded as a result of the additional traffic distribution.

Based on the above, no additional road or intersection upgrades are considered necessary to support the proposed development.

Public submissions raised concern that inadequate assessment had been done of the potential impacts on traffic generated by the development on Brown St as it passes the existing primary school located on the intersection of Kitchener Pde and Brown St. As mentioned above, the TPA has made reasonable assumptions regarding the number of trips generated by the development that will access the development site via Kitchener Pde (north of Mosbri Cr) and determines that 12 vtp/h (or 1 car every 5 minutes on average) will be added to this section of Kitchener Pde in the AM peak hour and 8 vtp/h in the PM peak. Other than Pit St, which is a 'no through road', which only services 1 or 2 existing dwellings and provides vehicular access to Arcadia Park, the traffic on Kitchener Pde is directed onto Brown St and past the primary school. It is considered that this very minor increase to traffic on Kitchener Pde will not have any noticeable adverse impact on the function or safety of this part of the local road network.

The TPA also undertakes an assessment of the potential traffic generation resulting from the proposed mine grouting operations (on-site batching) and during building construction. The proposal to utilise on-site batching of grouting materials for mine subsidence rehabilitation works estimates that 11 heavy vehicle (assume semi-trailer) trips per day will be required during grouting operations as opposed to 27 to 36 concrete trucks per day if materials were to be batched off-site.

It should be noted that while Queen Street, Swan Street Kitchener Pde and Mosbri Crescent are, for the most part, local residential streets, they are considered capable of being safely used for the removal of demolition waste and delivery of construction materials by semi-trailer (as would have been the case for the construction of the former NBN television studios).

The TPA also estimates that traffic generated during site preparation and construction works will be not more than 10% of the traffic generated by the development when occupied. While it must be anticipated that due to the nature of vehicles required to access the site during construction, some additional disruption and minor delay might occur during the estimated two-year construction timeframe. This temporary disruption is unavoidable if redevelopment of the site is to occur under this or any other development application. As considered in the Parking Demand assessment of this report, a draft Construction Management Plan has been prepared that does make some incorrect/outdated assumptions on available parking for construction personnel and appropriate conditions of consent are proposed to address this.

- Public Domain

Public domain works are required in Mosbri Crescent and Kitchener Parade as a result of the proposed development and such works will assist in regulating parking, controlling stormwater runoff, road and pedestrian safety and add amenity to the immediate surrounds.

Appropriate conditions of consent have been proposed that detail the works required and their association with s138 of the Roads Act, 1993.

Stormwater Management - Section 7.06 and Water Efficiency 7.07

The proposed concept stormwater management plan (CSMP) is provided in accordance with the relevant aims and objectives of the DCP.

The proposed development is acceptable, subject to draft conditions included in **Attachment A**.

Easement design

The CSMP has been amended to address CN's requirements regarding the minimum easement width of 3.5m and positioning of pipes clear of the balcony overhangs from Buildings B and C. However, it is identified that Architectural Plan DA4.01(C) shows the roof of the proposed Community Pavilion partly overhanging the proposed easement. There is sufficient open space available to the north of the pavilion to enable it to be relocated so as to not overhang and encroach into the easement. A condition of consent has been recommended requiring the pavilion to be wholly sited outside of the easement.

Further, the current architectural plans show that the previously proposed splay across the inside corner of the easement in the vicinity of the southeast corner of the site has been deleted. It is appropriate for this splay to be reinstated as overland flows within the easement will extend out to the wall of the building and the splay is also required to enable CN maintenance and service vehicles to negotiate the turns at this location. A condition of consent has been recommended requiring the provision of the splay to the easement.

Shape and surface finish of the overland flow path

The CSMP confirms that the easement will predominantly be surfaced with using the 'TrueGrid' (or equivalent) cellular reinforcement system infilled with gravel or topsoil and grass seeded (or sods) with only the section of the easement intended to be used for on-site loading/unloading of Heavy Rigid Vehicles (HRV) being concreted.

The CSMP provides a recommendation that the easement is designed to cater for a depth of 800mm to contain the maximum anticipated overland flow and appropriate freeboard to the bounds of the easement. In this regard, it appears additional masonry or concrete walling will be required against the northern and southern boundary of the easement in the vicinity of Mosbri Townhouse MC11. A condition of consent has been proposed requiring the detailed design drawings to demonstrate that the overland flows are wholly contained within the bounds of the proposed easement.

Architectural drawing DA2.02 also shows an intention to provide "sandstone block steps/seating climbing from RL 30.5 to 31.5 and back down to 30.5 to allow access & engagement with flow path". It is unclear how this is intended to work to achieve the minimum freeboard recommended in the CSMP and contain overland flows to the easement as these sandstone blocks will need to form a minimum 800mm vertical drop at the northern edge of the easement. If physical access to the easement is not envisaged at this and other locations, territorial reinforcement (EG. fencing/and/or dense landscaping) will be needed to prevent persons from falling off the sandstone blocks. A condition of consent has been proposed requiring full details to be provided with the construction documentation.

Depth and Velocity of overland flows in easement

Arcadia Park, located above the development site to the east, generally falls toward the west and directs stormwater runoff onto the development site. In consultation with CN staff, the application has included appropriate stormwater control measures to collect and divert these flows around the development site.

Hydrological calculations have been undertaken based on an assumed 100% blockage (due to the high percentage of vegetation litter) of the stormwater inlet pits within Arcadia Park and the resulting overland flows through the proposed easement have been modelled and assessed.

Section 3.2 of the CSMP provides revised calculations of the velocity (V) and depth (D) of anticipated overland flows up to and including the 1% AEP storm event, based on the updated proposed surface finishes, and makes an assessment of these flows against CN's DCP2012- Stormwater Technical Manual and the Australian Rainfall and Runoff (AR&R) – 'Appropriate Safety Criteria for people – Stage 1 Report April 2010'. The CSMP confirms that the peak V x D product in the 1% AEP event through the easement will meet or fall below the desired maximum values set by the abovementioned guidelines.

Off-site stormwater impacts and works.

- Pit and pipe network design

The proposed pit and pipe network is considered acceptable to support the proposed development. The design adequacy caters for the capture and flow of stormwater from Arcadia Park, located above the development site, as well as on-site collection and discharge. The design also calculates that piped stormwater flows through the downstream Mosbri Crescent Park will be slightly lower than the existing scenario.

However, it is noted that the current design levels for the pipes would result in pipe gradients that are not satisfactory to CN (ie. less than 1% fall) and it is considered that satisfactory gradient can be achieved for most, if not all, pipe reaches without change to the proposed surface levels. It is not expected that compliance with CN's minimum standards would adversely alter the current design outcome. Accordingly, conditions of consent are proposed that will require full hydrological and hydraulic detailed designs for these networks and specify CN's minimum requirements, including assessment and approval requirements, for all pits and pipelines for which CN would ultimately be the responsible asset owner.

- Stormwater surcharge

CN had previously requested additional information regarding the design storm events in which surcharging from the proposed pit and pipe network could be expected and the impacts any such surcharge water may have on the surface flows within Mosbri Crescent or any downstream properties. The Updated Drains Modelling results and additional information confirm that surcharging can be expected to occur in all modelled storm events between 10% AEP and 1% AEP. The majority of any surcharging will occur in Mosbri Crescent at the proposed new kerb inlet pit adjacent to the proposed easement.

The submitted modelling confirms that, as a result of the proposed detention structures on the development site, the volume of surcharged water in these events are expected to be slightly lower than existing conditions. The modelling also confirms that surcharged water in the modelled storm events is able to be generally contained within the existing Mosbri Cr carriageway, but any minor overtopping of kerbs, should it eventuate, will still be contained to the road reserve and not impact on any downstream properties.

Onsite Stormwater Management

The CSMP provides for detention and storage of a total of 354kL of stormwater runoff from roof structures in rainwater tanks (for townhouses) and two proposed underground tanks (Buildings A, B and C).

A total of 179kL of the 354kL is identified as storage and reuse associated with laundries and toilets within the 11 townhouses (each has a 4kL tank) and Ground Level and Level 1 dwellings within Buildings A, B and C.

The remaining 175kL is used for detention to ensure post development discharge flows are no greater than existing 'pre-development' flows for all modelled rainfall events.

Proposed stormwater quality controls include vegetated swales and proprietary filtration cartridges installed to the underground tanks and the CSMP confirms that stormwater pollution reduction targets are achieved that meet or exceed the requirements of CN's DCP.

Accordingly, onsite stormwater quality and quantity management is generally consistent with the DCP and is supported. Appropriate conditions have been recommended (refer to **Attachment A – Draft Schedule of Conditions**) to ensure that the development meets the specified standards.

Waste Management - Section 7.08

The proposed development provides communal waste storage areas located within the carpark for the residential apartments and townhouses. Adequate space has been provided to accommodate the required number of bins, with sufficient space to safely manoeuvre.

Waste collection is proposed to be serviced by a private contractor; however, it has also been demonstrated that the development could be serviced by CN's Waste Service. CN's waste collection vehicles are able to stand on Mosbri Crescent and have bins wheeled to/from the truck from the on-site bin presentation area along the internal driveway, as indicated in the Waste Management Plan.

Details of management of construction waste materials and operational waste are included in the Plan and are able to be addressed by way of conditions of consent.

Accordingly, the submitted Waste Management Plan satisfies CN's requirements and has satisfactorily demonstrated that the development site is able to be serviced should the future occupants request CN waste services.

S7.11 Development Contributions Plan 2021

CN's S7.11 Development Contributions Plan to the development and a condition has been included in the recommended draft consent conditions requiring contributions to be paid prior to the issue of the Construction Certificate.

Non-Statutory Planning Framework

Hunter Regional Plan 2036 (2016)

The Hunter Regional Plan 2036, released in November 2016 is a 20-year strategy guiding the future development of the Hunter area, including the Greater Newcastle area. The plan provides an overarching framework to guide the future development of the Hunter as a leading regional economy, with a focus on maintaining and enriching biodiversity, enhancing communities and providing a greater choice of housing and jobs.

The Hunter Regional Plan (HRP) focuses on concentrating development in existing areas with good access to public transport, established services and infrastructure to increase the appeal of these places for new residents and enhance a sense of community. In addition, the HRP promotes a well-planned, functional and compact settlement that does not encroach on sensitive land uses. Expecting growth to occur in strategic centres, local centres and urban renewal corridors to support economic and population growth, as well as a mix of uses over the next 20 years. The nominated areas for the delivery of housing and

employment include Newcastle City Centre; Wickham–Hamilton– Broadmeadow (Tudor Road Corridor); Broadmeadow–Adamstown (Bunker Road Corridor); and Wickham–Islington– Mayfield (Maitland Road Corridor).

This position is supported by the relevant planning directions:

- Direction 20: Revitalise existing communities
- Direction 21: Create a compact settlement
- Direction 23: Grow centres and renewal corridors

It is noted that the proposed development is not within the nominated areas for the delivery of housing, but it is located in an existing area close to services and facilities and was enabled by a site-specific rezoning and planning proposal as an appropriate site to deliver additional housing choice to the community.

Greater Newcastle Metropolitan Plan 2036 (2018)

The Greater Newcastle Metropolitan Plan 2036 (GNMP) was launched on 17 September 2018 and comprises the first Metropolitan Plan for a non-capital city in Australia. The Plan outlines strategies for the delivery of services, infrastructure and development across the Greater Newcastle area. It prioritises the provision of additional housing in infill areas, aligned with the provision of infrastructure. The prioritised areas reflect those in the HRP, being strategic centres and urban renewal corridors. The GNMP sets a target for 60% of new dwellings in Greater Newcastle Councils being in infill areas. This is reinforced through Strategy 16: Prioritise the delivery of infill housing opportunities within existing urban areas and the action (16.1) to “focus new housing in existing urban areas, particularly within strategic centres and along urban renewal corridors”.

The development site is not located within the urban renewal areas or strategic centres identified in the Community Strategic Plan. However, the site is located in an existing area close to services and was enabled by a site-specific rezoning process and planning proposal as an appropriate site to deliver additional housing choice to the community.

Newcastle 2030 Community Strategic Plan (2018)

The Plan identifies that over the next 20 years there is a need to facilitate – new homes, jobs and services for an additional 38,000 people, while maintaining the aim of Newcastle Urbanism to retain our liveability, valued heritage, natural environment and diverse local character.

Key elements of the Plan include mixed use urban villages supported by integrated transport networks. Areas of change include:

- Housing Release areas
- Urban renewal corridors – five identified corridors
- Catalyst Areas – seven areas including – Newcastle City Centre, Beresfield / Black Hill, Broadmeadow, Callaghan, John Hunter Health and Innovation Precinct, Kotara and Newcastle Port

The development site is not located within the urban renewal areas or catalyst areas identified in the Community Strategic Plan. However, the site is located in an existing area close to services and was enabled by a site-specific rezoning process and planning proposal as an appropriate site to deliver additional housing choice to the community.

Local Strategic Planning Statement (LSPS)

The LSPS is our 20-year land use vision and identifies how we will sustainably manage the growth and change of the city. It gives effect to the Hunter Regional Plan 2036 and Greater Newcastle Metropolitan Plan 2036, implements priorities from our Community Strategic Plan, Newcastle 2030 and brings together land use planning actions in other adopted strategies.

The LSPS will inform changes to the Newcastle Local Environmental Plan 2012, Newcastle Development Control Plan 2012 and other land use strategies. It is accompanied by an Implementation Plan that identifies a program for the delivery of each of the planning priorities and actions.

The LSPS identifies the five renewal corridors (Islington, Mayfield, Hamilton, Broadmeadow and Adamstown) as having opportunities for housing and economic growth. These existing corridors align with the Stage 1 Urban Renewal Corridors identified in the Greater Newcastle Metropolitan Plan 2036.

The proposal does not seek to concentrate housing within any of these areas. However, the development will provide housing in close proximity to services and provides an important housing type for the community in a distinct setting.

Newcastle Local Housing Strategy (June 2021)

The Newcastle Local Housing Strategy (LHS) is a local response to the housing actions within the HRP, GNMP and the LSPS. The proposed development will assist in meeting with some of the housing needs and will allow for a diversity of housing types to be provided in the inner-city location.

(d) Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

The provisions of the *EP&A Regulation 2020 and 2021* have been considered and are addressed in the recommended draft conditions (where necessary).

3.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts upon the natural and built environment have been discussed in this report in the context of relevant policies, including relevant SEPPs, NLEP 2012 and NDCP 2012 considerations. In addition, the following impacts are considered relevant:

Discussion of Views and Visual Impact Assessment

This assessment has been based upon the viewpoints demonstrated in the Marchese Visual Impact Assessment (VIA). The VIA identified and discussed a total of 18 viewpoints. However, for the purposes of inclusion within this report, only several prominent viewpoints are provided for discussion purposes. It is noted all viewpoints were considered and analysed during the assessment process.

Below is an analysis carried out against CN's Development Control Plan (DCP) objectives for view sharing and the established planning principles outlined within *Tenacity Consulting v Warringah* [2004] NSWLEC 140. The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g., of the Opera House, the Harbour Bridge) are valued more highly than views without icons. Whole views are valued more highly than partial views.

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it impacts an iconic view. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe, or devastating.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with relevant planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.

The submitted Visual Impact Analysis has been prepared in accordance with the Court Photo Montage Policy and based on the survey levels and photographs taken by a registered surveyor.

The view and visual impact assessment of the prominent viewpoints is outlined below.

Viewpoint 1 - Arcadia Park



Image 2 – Viewpoint – Arcadia Park

The viewpoint is taken from within Arcadia Park along the main pedestrian thoroughfare, facing west towards the development site.

Comment:

Step 1 – The applicant submits that *'the viewpoint is not considered to be a water view or iconic view. This viewpoint is of park seating and a pedestrian area within Arcadia Park, which has three park benches for users, however the view is not considered to be highly significant'*.

It is agreed that the viewpoint is not considered to be a water view or iconic view. This viewpoint is of a pedestrian area and thoroughfare within Arcadia Park. The view is not considered to be highly significant.

Step 2 – Any views would be experienced as a person on foot, or while seated at a park bench.

Step 3 – The applicant submits that *'the proposal is partially visible; however, the existing vegetation screen effectively mitigates the visibility of the proposal from this viewpoint'*.

It is agreed that the proposed development will be visible, however, any view will be filtered by the existing vegetation provides which minimises the visual prominence of the development from this viewpoint.

Step 4 – The applicant submits that there is "no significant visual impact to this viewpoint from the proposal and any impacts would be filtered through the vegetation. As discussed above, it is agreed that the existing vegetation provides effective screening and minimises the visual prominence of the development from this viewpoint.

Furthermore, it is agreed that the extent of any non-compliance to the height control would not be discernible from this viewpoint. Further, it is also noted that the proposed setback to the Arcadia Park was amended during the assessment process to provide an increased setback of 9m, which is excess of the recommended setback requirements to Arcadia Park.

Accordingly, the visual impact of the proposed development upon Arcadia Park is considered reasonable.

Viewpoint 2: Brown Street



Image 3: Brown Street looking towards Kitchener Parade (existing view)



Image 4: Brown Street looking towards Kitchener Parade (proposed view)

This view includes the recently constructed NEPS building, which has a top of roof height of RL57.18. The lift overrun area of Building A is proposed at RL58.3, however the main roof line of this building is proposed at RL56.8.

Step 1 – The viewpoint is not considered to be a water view or iconic view.

This viewpoint is taken from a footpath in proximity to NEPS and a number of heritage items. It is agreed that this view is not considered to be highly significant.

Step 2 – Any views would be generally observed by persons on foot, or motorists

Step 3 – As depicted in the VIA, the proposal is highly visible from this viewpoint

Step 4 – It is agreed that there is a significant visual impact to this viewpoint from the proposed development, however it is considered the visual impacts are similar to the impacts that were tested as part of the Planning Proposal process, together with the relevant height controls, that is reasonably expected for this part of the site.

Furthermore, the part of the building that exceeds the height standard under Clause 4.3 of NLEP 2012 is not considered to significantly detract or block out any views from this point and would not result in significant impacts further to that which would be caused by a height compliant development. Accordingly, it is agreed that visual impact from this location is considered reasonable.

Viewpoint 3: The Obelisk

This viewpoint is taken from the Obelisk, with the site viewed generally to the west.



Image 5: Obelisk



Image 6: Survey Ballons - Obelisk

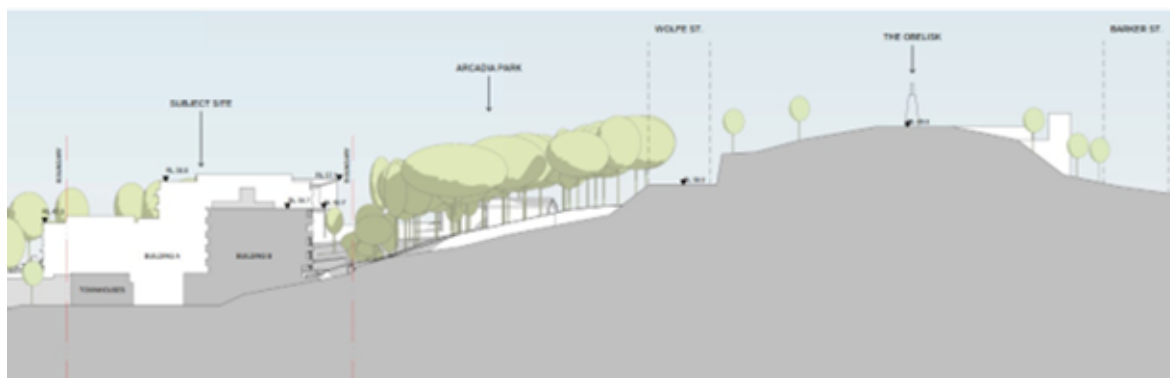


Figure 9: Section of proposed development in surrounding context

Step 1 – The applicant submits that *'this viewpoint is not considered to be a water view or iconic view, notwithstanding that it is a whole view'*

This viewpoint is not considered to be a water view or iconic view. The views from the Obelisk across the site is identified as a cityscape view in the DCP, where there is a diverse range of built forms and scales. Furthermore, it is considered that the cityscape view will progressively change over time due to the inevitable emergence of new developments.

Iconic water and harbour views are maintained from the Obelisk and will not be impacted by the proposed development. Furthermore, the VIA demonstrates that distant views of the horizon and mountain ranges are not impacted.

In addition, the imagery provided within the applicants VIA were analysed through an assessment of height against survey balloons during the Panels site inspection in May 2022, refer **Figure 9** above. The Panel had the benefit of viewing the survey balloons from numerous vantage points on site and the surrounding locality during the site inspection.

Step 2 – Views are observed in both a standing and seated position. It is noted that a standing position is depicted in the VIA.

Step 3 – The applicant submits that *'the proposal is partially visible; however the existing vegetation screen effectively mitigates the visibility of the proposal from this view point.'*

Part of the proposed development is visible from this viewpoint, with the upper floors and rooftop structures of Building A and Building observable. As demonstrated in the VIA, the existing tree line and vegetation within Arcadia Park provides screening and reduces the visibility of the proposal from this viewpoint

The applicant further submits that *'the Obelisk offers 360-degree views, with the most significant views being towards King Edward Park, the ocean and harbour. The site forms a small part of the visual catchment of a city scape view'.*

The Obelisk provides panoramic 360-degree views. The most significant of which are the views towards King Edward Park, the ocean and harbour. The site is considered to make up only a small part of the overall visual catchment of the city scape view (**see Figure 10**). The iconic views from the Obelisk remain unaffected by the proposed development.



Figure 10: Obelisk –Cityscape views vs Harbour and Iconic View (NDCP 2012)

Step 4 — In relation the parts of the building that exceed the height control, the applicant submits that *'these portions of the building are not considered to be significant when viewed from the Obelisk and would not have a significant visual impact. Accordingly, the visual impact from the proposal is considered reasonable'.*

The VIA clearly identifies the extent of the building elements that are proposed higher than the height control within the NLEP, as indicated by the dashed blue line. These parts of the buildings exceeding the height control are shown as being shaded in a dark grey colour.

It is agreed that these parts of the buildings that do not comply with the height control are not considered to be significant when viewed from the Obelisk and would not result in a significant additional visual impact. Accordingly, the visual impact from the proposed development is considered reasonable from this viewpoint.

Viewpoint 4: Civic Park and No. 6 Sports Ground

Due to the topography of the general area, there is no visibility of the proposal or the Obelisk from these public areas and therefore no further consideration of the planning principle is required.

The VIA include views from surrounding road/footpath areas, a pedestrian track through Arcadia Park and from Civic Park and No.6 Sportsground.

These locations are not considered to meet the criteria of a view in the context of *Rose Bay Marina*. Accordingly, the consideration of this principle pertains only to the views from The Obelisk.

Conclusion

Given the location of the subject site and the planning controls that have been applied to the site as a result of Planning Proposal, it is to be reasonably expected that the proposed development will result in a level of impact on the views from surrounding prominent areas and existing residential properties surrounding the subject site.

The above assessment of the four steps established under *Tenacity Consulting v Warringah* [2004] NSWLEC 140, CN DCP objectives, as well as having regard to the submitted VIA prepared by Marchese satisfactorily demonstrates that the overall proposed development will have acceptable impacts having regard to views and visual impact.

The visual impacts of the proposed development and impacts on views is similar to the planning proposal, in conjunction with the amended NLEP 2012 height controls, in terms of outlook, building height, massing, bulk and scale. The conclusions drawn from the Visual Impact Assessment is that when assessed from multiple viewpoints in proximity of the site, the perceived impacts are reasonable. This due to existing vegetation / established trees, and the topography of the site relative to surrounding land.

In *Tenacity Consulting v Warringah* [2004] NSWLEC 140; (2004) 134 LGERA 23 (*Tenacity*), the planning principle is set out for considering the acceptability of the impact of a proposed development on the views enjoyed from private property in the vicinity of the development.

In *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [[2013] NSWLEC 1046 at 39 - 49 (*Rose Bay Marina*), an additional planning principle is set out for assessing the acceptability of the impact of a proposed development on views from outlooks from public places.

However, *Rose Bay Marina* notes that the framework for a planning principle concerning impacts on views enjoyed from the public domain is broadly consistent with (but not identical to) the matters raised for consideration in *Tenacity*. The process must account for reasonable development expectations as well as the enjoyment of members of the public of outlooks from public places.

In considering the applicability of *Rose Bay Marina* in relation to the proposed development, it must be taken into account as to what is considered to be a view enjoyed from the public domain.

The submitted VIA includes several views from road/footpath areas, Arcadia Park, Civic Park, and No.6 Sportsground. The applicant submits that these locations are not considered to strictly meet the criteria of a view in the context of *Rose Bay Marina*. This is agreed to, and the following assessment relates only to the views from The Obelisk.

Rose Bay Marina notes the steps for determining the acceptability of the impact on views

from the public domain are in two stages - the first is to identify the nature and scope of the existing views from the public domain, followed by an analysis of the impacts.

The planning principle is outlined below:

Identification stage:

Rose Bay Marina planning principle	Response
<p><i>44 - The first step of this stage is To Identify the nature and scope of the existing views from the public domain. This identification should encompass (but is not limited to):</i></p> <ul style="list-style-type: none"> <i>the nature and extent of any existing obstruction of the view;</i> <i>relevant compositional elements of the view (such as is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);</i> <i>what might not be in the view - such as the absence of human structures in the outlook across a natural area</i> <i>is the change permanent or temporary; or</i> <i>what might be the curtilages of important elements within the view.</i> 	<p>It is acknowledged that The Obelisk offers panoramic 360-degree views. The most significant views are the views towards King Edward Park, the ocean and harbour.</p> <p>The iconic views from the Obelisk towards King Edward Park, the ocean and harbour remain unaffected by the proposed development.</p> <p>The development site forms a small part of the overall visual catchment of the cityscape view.</p> <p>The cityscape view includes diverse range of built forms and scales.</p> <p>It is considered that the cityscape view will progressively change over time due to the inevitable emergence of new developments.</p> <p>The VIA demonstrates that distant views of the horizon and mountain ranges are not impacted.</p> <p>The change will be permanent.</p>
<p><i>45 - The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed.</i></p>	<p>The location from which the potentially uninterrupted view is enjoyed is the land surrounding the base of the Obelisk.</p>
<p><i>46 - The third step is to identify the extent of the obstruction at each relevant location.</i></p>	<p>Views are observed in both a standing and seated position from this viewpoint. It is noted that a standing position is depicted in the VIA.</p> <p>The applicant submits that '<i>unlike the case in Rose Bay Marina, The Obelisk is not a promenade, but rather a high point</i>'. This point of difference is agreed with.</p>
<p><i>47 - The fourth step is to identify the intensity of public use of those locations where that enjoyment will be obscured, in whole or in part, by the proposed private development.</i></p>	<p>The Obelisk is acknowledged and commonly regarded as being a key lookout from which to experience high quality views.</p>
<p><i>48 - The final step to be identified is whether or not there is any document that identifies the importance of the view to be assessed.</i></p>	<p>The Obelisk Heritage Statement of Significance outlines its historical significance as a navigational device and also being the location of the first windmill in Newcastle. It is noted 'As</p>

	<p><i>the highest point in the vicinity, the obelisk has served as a good observation point to watch events in the port of Newcastle'.</i></p> <p>Newcastle DCP 2012 - Section 6.1 makes reference to the importance of this view:</p> <p><i>Aim</i> 8. To protect important views through building design and location.</p> <p><i>Control</i> Taller buildings are located and designed to maintain views from the Obelisk in King Edward Park.</p>
49 - However, the absence of such provisions does not exclude a broad public interest consideration of impacts on public domain views	Noted.

Analysis of impacts

50 - First, we observe that the analytic stage we propose does not mandate derivation of any formal assessment matrix. Consistency of evaluation of the acceptability of impacts on a public domain view is not a process of mathematical precision requiring an inevitable conclusion based on some fit in a matrix. However, some may find their preparation of a graduated matrix of assistance to them in undertaking an impact analysis.	Noted.
51 - The analysis required of a particular development proposal's public domain view impact is both quantitative as well as qualitative.	Noted.
52 - If there is a planning document with an objective/aim for the maintenance, protection and/or enhancement of public domain views, such an objective/aim would appear to create a presumption against the approval of a development with an adverse impact on a public domain view. However, merely adopting and applying such a presumption would be entirely inappropriate.	<p>Newcastle DCP 2012 - Section 6.1 makes reference to the importance of this view:</p> <p><i>Aim</i> 8. To protect important views through building design and location.</p> <p><i>Control</i> Taller buildings are located and designed to maintain views from the Obelisk in King Edward Park.</p>
53 - The relevant weight to be given to such an objective/aim will depend on the status of the document containing it and the terms in which it is expressed. An objective/aim proposing "preservation" of views may be accorded a differing weight to one that	The DCP controls were prepared in conjunction with the amended building heights in NLEP 2012. The main roof lines of Buildings A and B comply with the relevant height of buildings development standard. The parts of the buildings that do not comply with the height control (lift overruns and plant equipment) are

<i>proposes "minimisation of impacts" on such a view.</i>	not considered to be significant when viewed from the Obelisk and would not result in a significant additional visual impact.
<i>54 - A quantitative evaluation of a view requires an assessment of the extent of the present view, the compositional elements within it and the extent to which the view will be obstructed by or have new elements inserted into it by the proposed development.</i>	The upper floors and rooftop structures of Building A and Building B are observable from this viewpoint however are not considered to be significant when viewed in the context of the entire view from the Obelisk.
<i>55 - In the absence of any planning document objective/aim, the fundamental quantitative question is whether the view that will remain after the development (if permitted) is still sufficient to understand and appreciate the nature of and attractive or significant elements within the presently unobstructed or partially obstructed view. If the view remaining (if the development were to be approved) will be sufficient to understand and appreciate the nature of the existing view, the fundamental quantitative question is likely to be satisfied. The greater the existing obstruction to a view, the more valuable that which remains may be (the desirability of preserving a partially obstructed view, however, will emerge from the qualitative evaluation process discussed below - it may be that preservation of a significantly obstructed view would be mere tokenism).</i>	The extent of the obstruction created by the proposed development equates to a small proportion of the overall view. The proposed development is not visible from the majority of the 360-degree view, including to the iconic views of King Edward Park, the ocean and harbour.
<i>56 - On the other hand, the qualitative aspect of a public domain view assessment is much more nuanced. Such a qualitative evaluation requires an assessment of the aesthetic and other elements of the view. The outcome of a qualitative assessment will necessarily be subjective. However, although beauty is inevitably in the eye of the beholder, the framework for how an assessment is undertaken must be clearly articulated. Any qualitative assessment must set out the factors taken into account and the weight attached to them. Whilst minds may differ on outcomes of such an assessment, there should not be issues arising concerning the rigour of the process.</i>	<p>The applicant submits "The view of the cityscape is constantly evolving as new developments are constructed. It is noted that in recent times taller buildings in the western CBD have been constructed and are visible features in the cityscape".</p> <p>This assertion is agreed with, particularly the recent emergence of much taller buildings in within this cityscape view. the background. However, it is acknowledged that the development site is located in the immediate foreground does not benefit from the distance of those buildings recently constructed in Newcastle West.</p>
<i>57 - As with Tenacity, a high value is to be placed on what may be regarded as iconic views (major landmarks such as the Opera House or the Three Sisters, for example, or physical features such as land/water interfaces). However, a view that is entirely unobstructed is also valuable.</i>	<p>The applicant submits "<i>The western cityscape view is not considered to be iconic view compared to the views towards the ocean and harbour. The proposed development has no impact to the uninterrupted views in all other directions, which enable viewing of Nobbys Headland, the Harbour, King Edward Park and the Pacific Ocean</i>". This is agreed.</p> <p>The cityscape view comprises a myriad of buildings, which is made up of diverse range of</p>

	built forms and scales.
<p>58 - Other factors to be considered in undertaking a qualitative assessment of a public domain view impact include (but are not limited to):</p> <ul style="list-style-type: none"> • Is any significance attached to the view likely to be altered? • If so, who or what organisation has attributed that significance and why have they done so? • Is the present view regarded as desirable and would the change make it less so (and why)? • Should any change to whether the view is a static or dynamic one be regarded as positive or negative and why? • If the present view attracts the public to specific locations, why and how will that attraction be impacted? • Is any present obstruction of the view so extensive as to render preservation of the existing view merely tokenistic? • However, on the other hand, if the present obstruction of the view is extensive, does that which remains nonetheless warrant preservation (it may retain all or part of an iconic feature, for example)? • If the change to the view is its alteration by the insertion of some new element(s), how does that alter the nature of the present view? 	<p>The ongoing evolution of the cityscape through the construction of future developments will result in continuous modification to the western cityscape view from the Obelisk.</p> <p>It is acknowledged that the proposed development will be visible within the cityscape view, however the impacts are not considered significant in the context of the entire view. The western cityscape view will not be significantly altered or impacted by the proposed development.</p>
<p>59 - A sufficiently adverse conclusion on the impact on views from the public domain may be determinative of an application. However, it may also be merely one of a number of factors in the broader assessment process for the proposal.</p>	Noted.

Environmental Management

Air quality

An Air Quality Assessment has been carried to assess air quality impacts associated with the construction of the proposal. The purpose of the assessment is to identify and examine whether the potential impacts from construction activities on site (including demolition and grouting of mine voids) may adversely affect local air quality and to identify mitigation measures to manage any risks to nearby sensitive receivers.

A risk-based approach has been used in place of modelling dust from construction activities as the consultant states it is generally not considered appropriate as there is a lack of reliable emission factors from construction activities upon which to make predictive

assessments. The consultant adapted a methodology presented in *the IAQM Guidance on the Assessment of Dust from Demolition and Construction* developed in the United Kingdom by the Institute of Air Quality Management. It is understood that this approach is widely used across Australia and in NSW when assessing the potential impacts associated with construction proposals.

Generally, during the construction phase uncontrolled or 'fugitive' emissions and are typically experienced by neighbours as amenity impacts, such as dust deposition and visible dust plumes. Localised engine-exhaust emissions from construction machinery and vehicles may also be experienced but given the proposed works, fugitive dust emissions would have the greatest potential to give rise to downwind air quality impacts.

The consultant's assessment identified several sensitive receptor locations near to the site, with the closest being approximately two metres from the site boundary. The submitted report assessed air quality data from the Newcastle Department of Planning, Industry and Environment Air Quality Monitoring Station to determine a background air quality environment.

The report adopted the highest of the last five-years of measured air quality data to provide a conservative assessment/ background. The consultant also reviewed the meteorology of the area which indicates that in general, winds would act to disperse any generated particulate matter away from residential locations to the west and north of the site towards the public recreation areas to the east and south-east of the site.

Grouting Works have been identified as having the potential to adversely affect neighbouring receivers, as such the assessment has stated *"it is anticipated that stockpiles of fly ash and spoil material will be located inside the existing NBN television studio building for the duration of mine grouting works. The enclosure of stockpiles and implementation of other management measures will significantly reduce the potential for wind generated dust to impact land uses surrounding the Proposal site."*

The assessment demonstrates that with the recommended mitigation measures being applied to control emissions associated with earthworks, demolition, construction activities and construction traffic, the residual impacts associated with fugitive dust emissions from the proposal would be anticipated to be negligible.

A condition of consent is recommended that requires all measures outlined in Section 5.5 (Identified Mitigation) of the report are to be addressed in the preparation of a Dust Management Plan which will then be required to be incorporated and implemented in the Construction Environmental Management Plan.

Acoustic impacts

A theoretical acoustic assessment has been carried out to assess the potential impacts of mechanical plant upon neighbouring receivers. The acoustic assessment noted that the mechanical plant associated with the development has not been selected, however comparable plant has been assessed to provide theoretical external noise emissions upon sensitive receivers as part of this assessment.

The acoustic consultant has satisfactorily demonstrated that the comparable plant did not exceed the noise goals for the subject site, however a condition of consent is recommended requiring the acoustic consultant carry out a detailed assessment once the plant has been selected so that any potential acoustic treatments can be incorporated into the design of the building to ensure compliance with the internal noise levels (of 35dB in sleeping areas and 40dB in living areas) will comply with AS/NZS2107-2000, the Office of Environment and Heritage (OEH), Department of Planning & Infrastructure (DoPI), and Newcastle City Council (NCC) guidelines.

Vibration

Vibration as a result of demolition and construction activities, which if excessive can cause damage to nearby buildings and structures and cause discomfort to nearby residents. In addition to the guidelines and regulations, the Demolition Contractor shall comply with Australian Standard AS 2670.2 – Evaluation of Human Exposure to Whole Body Vibration (1990).

Further, several procedures and protocols are proposed to be implemented during demolition and construction works to mitigate potential impacts, including prior warnings to potentially affected premises where vibration levels are expected to be in excess of the nominated levels, including how long the activity is expected to last. Where relevant and feasible, preference will be given to the use of low vibration emitting plant and construction methods.

Mines Grouting works

The site is located within the Newcastle Mine Subsidence District, and abandoned mine workings currently exist beneath the site. Due to the existence of abandoned mine workings, it is proposed to inject grout into the abandoned mine voids beneath the site. The Grouting works will be undertaken in accordance with the Mine Subsidence Grouting Remediation Strategy and associated Geotechnical Reports.

The proposed mines grouting works are to be coordinated with the staged demolition of the existing NBN building. The drilling and grouting methodology includes the use of the existing Studio 1 Building to provide a safe and weatherproof storage for the fly ash and cement material as it is required during the grouting of the abandoned mines. The Studio 1 Building is to be removed as part of the Stage 2 demolition works.

All cement and fly ash will be delivered and unloaded within the existing studio building. No fly ash or cement will be stored or mixed outside the existing Studio 1 Building. A number of protocols relating to site establishment, surveying, safety, environmental controls and traffic management are required to be implemented during the grouting works, in conjunction with relevant conditions of consent.

Any spoil encountered from the boreholes will be stockpiled and removed from site throughout the duration of the mine grouting works. The material will be removed by trucks (approximately two per week) and disposed of in accordance with the waste removal requirements of the submitted Construction Management Plan (CMP). Wherever possible the mines grouting contractor will mix the spoil with the grout and pump it back into the abandoned mine workings.

Mine grouting works are acceptable subject to the recommended conditions of consent, and owners' consent whilst not required has been provided and as detailed in the EP&A Regs the associated concrete batching works do not constitute designated development.

3.3 Section 4.15(1)(c) - Suitability of the site

Whilst the site, from a strategic planning perspective, is outside of the identified growth and renewal corridors, it was considered suitable for this type of development through the Planning Proposal and rezoning process. The site remains within reasonable distance to the commercial centres to ensure residents will have good levels of amenity and proximity to services and facilities. The site is located within the inner city and is accessible to key services and amenities. The land is suitably zoned for the development which is

permissible.

The constraints of the site have been considered in the design of proposal which includes mine subsidence, bushfire, contamination, topography, and heritage. Further, the site is not affected by significant environmental constraints that would preclude development of the site. The site is therefore suitable for the development, as outlined within the detailed assessment contained within this report, subject to the conditions of consent recommended in **Attachment A**.

3.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in **Section 4.3** of this report.

This report has addressed the various concerns raised in the submissions received in response to the public notification and relevant referral procedures. The proposed development does not raise any other significant public interest issues beyond matters already addressed in this report.

3.5 Section 4.15(1)(e) - Public interest

A comprehensive and detailed assessment of the matters for consideration under Section 4.15(1) of the *EP&A Act*, the provisions of the relevant State Environmental Planning Policies, the provisions of the Newcastle Local Environmental 2012 and Newcastle Development Control Plan 2012 has been made.

A significant number of public submissions have been submitted to CN since the initial lodgement of the development application. The submissions have raised a wide variety of issues, all of which have been genuinely considered and evaluated. In response to these concerns and those of CN, many amendments were made to the proposal by the Applicant to respond to the matters raised within the submissions, to reduce the impacts of the proposal, and to provide additional information.

After a detailed consideration of the statutory requirements and the public submissions, including those matters raised during the Public Briefing, it has been determined that despite the volume of objections received during the assessment process, the application is in the public interest.

The comprehensive assessment has illustrated that there will be no significant adverse ecological impacts, heritage impacts or traffic impacts. It is considered that the development does not cause any significant overshadowing, privacy impacts or unreasonable view loss for surrounding properties.

The proposal is consistent with CN's urban consolidation objectives, making efficient use of the established public infrastructure and services. The proposed development provides for the orderly economic development of the site for purposes for which it is zoned and will not have any significant adverse social or economic impacts.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the *EP&A Act* and outlined below in Table 11.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 11: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Integrated Development (S 4.46 of the EP&A Act)			
NSW Rural Fire Service	NSW Rural Fire Service -The proposed development requires approval under Section 100(b), <i>Rural Fires Act 1997</i>).	NSW RFS - General Terms of Approval issued on 02 December 2021 in relation to the amended application dated August 2021 Confirmation received on 01 June 2022 from NSW RFS that previous GTAs remain acceptable in terms of the amended application.	Yes
Subsidence Advisory NSW	Subsidence Advisory NSW The proposed development requires approval under Section 22, <i>Coal Mine Subsidence Compensation Act 2017</i>).	Subsidence Advisory NSW – General Terms of Approval issued on 12 November 2021 in relation to the amended application dated August 2021. Subsidence Advisory reissued General Terms of Approval on 09 March 2022 in relation to the amended application.	Yes
Heritage NSW	The development proposes mine grouting works below Arcadia Park which forms part of a State Heritage Item known	Heritage NSW - General Terms of Approval issued on 28 January 2022 in relation to the	Yes

	<p>as Newcastle Recreation Reserve (SHR no. 02000) and (requires approval under Section 58, <i>Heritage Act 1977</i>.</p> <p>The remainder of the proposed development is outside of the State Heritage Register curtilage and does not require approval from Heritage NSW under the <i>Heritage Act 1977</i>.</p>	<p>amended application dated August 2021.</p> <p>Heritage NSW reissued General Terms of Approval on 11 May 2022 in relation to the amended application.</p>	
Ausgrid	<p>The application was referred to Ausgrid in accordance with cl 45(2) of SEPP (Infrastructure) 2007 (now repealed and replaced with SEPP (Transport and Infrastructure) 2021).</p>	<p>Ausgrid issued their advice on 31 January 2019, and no further assessment was required.</p> <p>The substation design and location was approved by Ausgrid in 2021</p>	Yes
Hunter Water Corporation	<p>The application was referred to Hunter water Corporation (HWC) in accordance with cl 51 of the Hunter Water Act 1991.</p>	<p>HWC issued their response stating that development site is not within a HW drinking catchment and have no further comment</p> <p>Plans have been stamped by HWC confirming that there is no impact on HW assets.</p>	Yes

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 12**.

Table 12: Consideration of Council Referrals

Referral	Comments
Regulatory Services Unit (Ecology, Biodiversity, Contamination, Noise and Air quality)	<p>The amended application has been referred to CNs Regulatory Services Unit for assessment in respect to contamination, noise, ecology, biodiversity and air quality impacts.</p> <p>Subject to conditions of consent, the proposal is satisfactory in relation to contamination, noise, ecology, biodiversity and air quality impacts.</p>
Stormwater / Flooding / Car Parking / Access Engineer	<p>The amended application has been referred to CN's Engineer (in consultation with CN's Infrastructure & Property) for assessment in respect of stormwater, flooding, traffic generation, car parking, waste collection and access requirements.</p> <p>Subject to conditions of consent, the proposal is satisfactory in relation to stormwater, flooding, traffic generation, car parking, waste collection and access requirements.</p>
Heritage Conservation	<p>The amended application has been referred to CN's Development Officer (Heritage) for assessment in respect of heritage conservation.</p> <p>CN's Development Officer (Heritage) raised concerns in relation to the proposed development's bulk, scale and height. In particular, the potential impact on the westward cityscape view from the Obelisk. It was acknowledged however, that heritage conservation amongst other planning matters were considered as part of the planning proposal process and the development and the proposal generally complies with these maximum heights with only minor exceedances.</p> <p>Heritage conservation, visual impacts and view loss has been discussed elsewhere in this report, whereby the impacts were considered reasonable on balance.</p> <p>Should the application be approved, CN's Development Officer (Heritage) has recommended conditions of consent.</p>
City Greening	<p>The amended application has been referred to CN's Tree Inspection Officer for assessment in respect of potential damage and removal of public trees within Council owned land and Road Reserves.</p> <p>Subject to conditions of consent requiring compensatory tree plantings, the proposal is satisfactory.</p>
Waste Services	<p>The amended application has been referred to CN's Waste Services Officer in respect of CN's waste collection service.</p> <p>It is confirmed that CN can provide waste collection services if required and the site has been designed to allow for the safe collection and storage of waste.</p>
Building Assessment	<p>The amended application has been referred to CN's Building Surveyor.</p> <p>It is confirmed that the submitted slope instability risk rating of 'low' is accepted.</p> <p>A condition of consent is recommended requiring all mine grouting works are to be approved, completed and accepted by Subsidence Advisory NSW prior to issue of any other Construction Certificate for the proposed development.</p>

4.3 Community Consultation

The proposal was notified and advertised in accordance with CN's Community Participation Plan. The amended application (submitted in January 2022) was advertised and placed on public exhibition from 25 February – 30 March 2022, with 80 submissions being received during the exhibition period and 10 submissions received after close of exhibition.

A revised set of architectural plans were received on 20 May 2022 and made 'publicly viewable' on Council's website (DA Tracker). The revised architectural plans were not required to be re-notified, as no significant changes were proposed, however any submissions received have been considered in CN's assessment and determination by the Hunter Central Coast Regional Planning Panel (HCCRPP).

A summary of the relevant issues and concerns raised in the submissions is provided in **Table 13** below. Detailed comments on the issues raised have been provided elsewhere in the report and have not been repeated below.

Table 13: Community Submissions

Issue raised	Response
Statutory requirements - The application does not meet the statutory requirements under Section 4.15 of the <i>EP&A Act</i>	<p>The application is supported by a Statement of Environmental Effects and associated supporting documents and technical reports. The proposal meets the statutory requirements of Section 4.15 of the <i>EP&A Act</i>.</p> <p>The detailed assessment contained within this report demonstrates that the amended development application was adequate on lodgement, further that all statutory considerations have been satisfied, subject to the recommended conditions of consent.</p>
Variation to development standards (clause 4.6) - The applicant's written request has not adequately addressed the matters required to be demonstrated by subclause (3) of Cl4.6	<p>The applicant has submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.</p> <p>The applicant's written request has demonstrated that the proposed height variation sought does not result in significant adverse environmental impacts and that there are sufficient environmental planning grounds to justify a contravention to the height control.</p> <p>A comprehensive assessment against the requirements of cl.4.6 has been undertaken and is detailed in the above report</p>
Integrated referrals - There is no valid consent provided by the relevant integrated approval bodies	<p>Section 4.47 of the EP&A Act states:</p> <p><i>(2) Before granting development consent to an application for consent to carry out the development, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the <u>development</u>.</i></p>

	<p><i>(3) A consent granted by the <u>consent authority</u> must be consistent with the general terms of any approval proposed to be granted by the approval body in relation to the <u>development</u> and of which the <u>consent authority</u> is informed. For the purposes of this Part, the <u>consent authority</u> is taken to have power under this Act to impose any condition that the approval body could impose as a condition of its approval.</i></p> <p>General Terms of Approval have been obtained by all relevant approval bodies, namely Subsidence Advisory NSW, NSW Rural Fire Service and Heritage NSW.</p>
<p>Floor space ratio (FSR) calculation - Garbage rooms and storage areas (above ground level) have not been included as GFA. These areas are not excluded from GFA as per the LEP definition as they are not in a 'basement' as defined by NLEP 2012.</p>	<p>The plans have been amended to demonstrate that FSR compliance is clearly achieved. Surplus car parking and waste storage areas have been included as GFA within the interconnected Ground Level carparking area.</p> <p>The amended application resulted in the relocation of storage cages from the interconnected Ground Level carparking area to the basement level below the townhouses. The detailed assessment of FSR is contained in the above report.</p>
<p>Overdevelopment – The proposal results in an overdevelopment of the site.</p>	<p>The proposal achieves the objectives of the Planning Proposal for the site which supported the changes to zoning, building height and density provisions.</p> <p>The proposed development is permissible in the zone and with the exception with a minor variation to the building height development standard, complies with the relevant development standards applicable to the site.</p> <p>Further, as outlined within Section 3.1 the application is compliant with the design requirements contained within <i>SEPP 65</i> and the ADG, and CNs UDCG have assessed the proposal as achieving design excellence notwithstanding the variations to the site specific DCP.</p> <p>The proposed development complies with ADG requirements in terms of built form, building separation, landscaping and open space and complies with NLEP 2012 FSR requirements.</p>
<p>Character – The proposed development is not consistent with the existing or desired future character of the locality.</p>	<p>The proposal provides diversity to the existing character of the locality, as envisaged by the strategic planning process that introduced the R3 zoning to the site.</p> <p>As detailed within this assessment report, the development proposal is suitable for the site and locality. Further, the development results in the provision of high-quality housing consistent with the desired future character of the locality as reflected by the R3 zoning of the land.</p>
<p>Number of dwellings – Excessive number of dwellings proposed for the development site</p>	<p>The planning proposal indicatively predicted some 189 dwellings. The application proposes 172 dwellings comprising a variety of apartments sizes and townhouse style dwellings.</p>

<p>Medium Density zoning objectives - The proposed development is not consistent with the zoning objectives for the R3 Medium Density Residential zone</p>	<p>The development is consistent with the objectives of the zone. The proposed scale of development is consistent with the character envisaged by the R3 zone, and will facilitate the urban renewal of a large, consolidated site close to the Newcastle City Centre, thereby achieving the objectives of the R3 zone.</p>
<p>Impacts to Arcadia Park - Loss of visual and acoustic privacy for park users. Visual impacts from the non-complying elements of the rooftop elements.</p>	<p>The application has been amended during the assessment by redesigning the stormwater easement and increasing building setbacks to the boundary shared with Arcadia Park. This amendment also resulted in an increased setback for basement excavation and minimised the extent of bulk earthworks required.</p> <p>The extent of the non-compliant elements with the height control will not be noticeable from within Arcadia Park. A visual impact assessment is included as Section 3.2.</p> <p>All private open space areas are at least 6 metres from the boundary to Arcadia Park. The rooftop communal area is at least 10 metres from the boundary, ensuring appropriate acoustic separation to the park.</p>
<p>Impacts to State Heritage Item: King Edward Park - the proposal has the potential for significant adverse impacts on State listed heritage items including King Edward Park and adjacent open space.</p>	<p>Due to the topography of the site and surrounding landforms, no impacts are expected to King Edward Park.</p> <p>Based on the information submitted, including an analysis of the view impacts to the Obelisk, the development is considered acceptable in respect of potential impacts on the views of surrounding heritage items and the Obelisk and ridgeline of Wolfe Street and Kitchener Parade. This was further demonstrated using survey balloons to indicate the true height of proposed building elements to inform the HCCRPP site inspection.</p> <p>A visual impact assessment is included as Section 3.2.</p>
<p>Visual Impact – The proposed development results in an unacceptable visual impact, including concerns raised in respect to the preservation of ridge lines, public and private views.</p> <p>Submissions also raised concerns that the applicant's documentation resulted in the misrepresentation of visual impacts</p>	<p>The applicant has submitted a detailed visual and view analysis which satisfactorily demonstrate that the proposal is acceptable in respect to height, bulk and scale and views. The applicant's analysis has been assessed in detail and is satisfactory and the findings of the VIA are accepted.</p> <p>In May 2022, members of the Panel and CN staff had the opportunity to personally observe the potential visual impacts of the proposed development from several surrounding viewpoints.</p> <p>The visual impact assessment was assisted by use of survey balloons which reflected true RL height of the proposed development.</p> <p>Site inspections of several residential properties were also undertaken, which included no's 13 and 15 Hillview Crescent and no. 16 Anzac Parade. It is acknowledged that the impact on the outlook enjoyed from these properties will be impacted due to the size and scale of the proposed development, however it is considered that no significant views (including those to NEPS and the Reservoir) will be lost.</p>

	A detailed visual impact assessment is included as Section 3.2.
Overshadowing – overshadowing of Arcadia Park and adjoining residential properties	The development will result in acceptable overshadowing impacts to neighbouring properties. Reasonable daylight access is maintained to all surrounding developments, the public domain and Arcadia Park. The development will not unreasonably overshadow private properties. Refer to detailed assessment in the above report.
Social impacts - due to increase in population and high-density housing	<p>Consideration of social impacts was undertaken at the planning proposal stage. The rezoning increased the development opportunity of the site, in acknowledgement of the increasing need for housing stock in the locality and the advantages of inner-city sites, rather than relying on urban sprawl.</p> <p>Further, the proposed development responds to the demand generated by the significant increase in population growth being experienced within the Newcastle Local Government Area. The provision of additional housing supply in this location is considered a positive social outcome. The development is not anticipated to result in adverse social impacts.</p>
Setbacks - submissions raised concerns that the proposed development does not comply with the setbacks contained within the site specific DCP.	<p>It is acknowledged there are variations proposed to the setbacks, in some cases a reduced setback and in more generous setback than suggested in the DCP.</p> <p>The applicant's approach to setbacks has been to minimise impacts to adjoining residences. However, on balance it is considered that the proposal results in an acceptable outcome to that which could have been achieved by a strictly compliant design.</p> <p>A detailed analysis of the proposal against the provisions of the site specific DCP, including setback controls, is provided in the above report.</p>
Housing diversity – submissions raised concerns in relation to the lack of housing diversity within the proposed development	<p>The proposed development includes a mix of apartment sizes and provides housing choice for different demographics and living needs.</p> <p>All apartments in Buildings A, B and C can meet the Silver Level, Livable Housing Designs requirements.</p>
Human scale – submissions raised concerns that the bulk and scale of the proposed development does not maintain a human scale.	<p>The townhouse style development facing Mosbri Crescent provides a human scaled development to this frontage, which respects existing development in the street.</p> <p>The proposed buildings presenting to Kitchener Parade and Arcadia Park are generally consistent with the aims of the DCP, by achieving a higher density residential development on the site with adequate setbacks and height responding to topography.</p>
Pedestrian Pathway – numerous submissions have raised concerns regarding the alternative location	It is understood that the design outlined in the DCP was a concept and subject to further detailed design at DA stage. The applicant advised during the assessment process that

<p>and design of the public pedestrian link between Mosbri Crescent and Kitchener Parade</p>	<p>an analysis of the pathway as noted in the DCP was undertaken, and an accessible pathway for persons with a disability could not be facilitated by the DCP layout. In this respect, the applicant demonstrated that an accessible path of travel as depicted in the DCP image was not achievable, due to reasons such as the levels from Mosbri Crescent to the central green area has a level change of approximately 4 metres.</p> <p>The applicant proposes a north / south pedestrian link along the western boundary connecting Mosbri Crescent to Kitchener Parade. The design of the proposal has been amended during the assessment process, including changes to pedestrian path design, to be wider and straightened enabling better sight lines and passing ability. Lighting and landscaping are provided in accordance with CPTED principles. The public accessible pathway / landscaped area is free of any barriers or gates to allow unimpeded movement for the public and residents of the development between Mosbri Crescent and Kitchener Parade.</p> <p>The proposed location and design of the public pedestrian pathway varies significantly to the preferred concept of the DCP. Notwithstanding, the proposed pathway is acceptable given the constraints of the site, such as topography, and having regard to the fact public access is maintained through a private development site, refer to Section 3.1 for further detail.</p>
<p>Substation – Submissions raised concerns with the location of the proposed substation adjacent Mosbri Crescent.</p>	<p>The current chamber substation on the development site services the development site and community around the site.</p> <p>The proposed substation adjacent to Mosbri Crescent does not relate to the development site and will be a community substation servicing areas to the south of the site.</p> <p>The location of the substation as proposed meets the requirements of the energy provider, while avoiding any obstruction of the public footpath on Mosbri Crescent.</p>
<p>Traffic and Parking – The submissions received raised a number of concerns with respect to traffic and parking, including increased traffic, adequacy of the Traffic Impact Assessment, access for waste collection, safety impacts on school children, noise and light from vehicles, access for Fire Emergency Services, parking for Heavy Rigid vehicles, and visitor parking requirements.</p>	<p>Detailed consideration of the parking and traffic impacts has been provided at Section 3.1 where it has been demonstrated that the proposed development is acceptable having regards to traffic and parking requirements.</p> <p>The traffic generated from the development can be adequately catered for on the local road network and will not result in safety impacts to school children, nor unreasonable impact as a result of noise and light from vehicles. Further, the proposed location and design of the driveway access ensures adequate sightlines for vehicles. The submitted TIA has been reviewed and is acceptable.</p> <p>Whilst the applicant has elected for the development to be serviced by a private contractor, it has been demonstrated that the site can be serviced by CN in the future if required.</p> <p>Safe operational access and egress for emergency</p>

	<p>personnel and residents is provided for. All roads (including internal access) allow for safe and direct access for fire fighting vehicles to all lots</p> <p>The amended application includes a proposed 14m x 3m Heavy Rigid Vehicle (HRV) parking bay within the easement at the southern end of the site. this parking bay will only be used for infrequent, short-term parking associated with removalist vehicles or deliveries of large bulky items such as fridges, lounges or the like.</p>
<p>Newcastle East Public School Privacy impacts and overlooking of school</p>	<p>Newcastle East Public School (NEPS) is located on the opposite side of Kitchener Parade. The interface of the school to the development site is separated by a public road.</p> <p>It is noted that the height of the new 'Homebase' is approved at RL57.05, and that the highest part of the overall development (Building A) is proposed to have a main roof line of 57.5, with plant at 59.25. Accordingly, the proposed bulk and scale will be generally in context with the school.</p> <p>The application proposes a rooftop communal area on Building B, rather on Building A (adjacent to Kitchener Parade) which has significantly reduced the potential visual and acoustic privacy impacts to NEPS</p> <p>Furthermore, a separation of approximately 26m is achieved from the upper floor balconies of Building A to NEPS.</p>
<p>Solar access - The sun view solar access diagrams indicate that the minimum 2-hour requirement for the living areas and private open space of dwellings is not achieved where other documentation indicates that a total of 75% of apartments achieve this requirement</p>	<p>A total of 116 out of 161 total apartments proposed, or 72%, will achieve a minimum of 2hrs sunlight during 9am and 3pm at mid-winter. The development achieves acceptable solar access in accordance with the ADG, as further detailed within Section 3.1 of this report.</p>
<p>Cross ventilation - The requirements for a minimum of 60% of all apartments to achieve cross ventilation requirement is not reached.</p>	<p>The current amended architectural documentation states 103 out of the 161 total apartments proposed, or 63.9%, will achieve natural cross ventilation. However, it is noted that this figure includes 9 apartments which rely on a solar chimney combined with a wind induced ventilator (labelled 'vent shafts' on the current amended architectural plans to achieve compliance with the natural cross ventilation requirements.</p> <p>As such, analysis of the current amended floor plans (drawings DA2.02 to DA2.10, prepared by Marchese Partners) found 94 out of 161 total apartments proposed, or 58.3%, will achieve cross ventilation without relying on solar chimney combined with a wind induced ventilator.</p> <p>This non-compliance is considered minimal (a minimum of 96.6 apartments out of 161 total apartments proposed would equate to 60%) as a number of design strategies have been utilised to bring sufficient volumes of fresh air through the apartments to create a comfortable indoor environment.</p>

<p>Soft landscaped areas: Submissions raised concerns that the proposed layout provides significantly less planted area and deep soil than the DCP scheme. Based on the DCP plans, the future buildings were to occupy around 4598sqm or 37% of the site area.</p>	<p>It is acknowledged that the preferred site layout indicated more site area dedicated to landscaped areas than currently proposed. The site specific DCP did not identify a minimum amount of landscaping to be provided.</p> <p>The proposal will involve extensive landscaping, common open space areas and public domain works all of which propose appropriate compensatory planting of trees and other landscape elements.</p> <p>Approximately 33.5% of the site area is provided as landscaping, which is consistent with the aims of the DCP and complaint with section 3.03 of the DCP.</p>
<p>Light spill –submissions raised concerns regarding the effects of light spill on Arcadia Park and its impact on animals.</p>	<p>The development will not result in an unacceptable level of light spill and is acceptable. In addition, conditions of consent have been recommended to ensure the development will comply with the relevant Australian Standards with respect to lighting in public areas.</p> <p>All proposed lighting of the development is to be designed, positioned, installed and operated to minimise light spill into the environmentally sensitive public owned land at Lot 7004 DP 1077043 (3 Ordnance Street, The Hill). Light design will include appropriate shielding and orientation of fixtures so that maximum light values do not exceed curfew values for Zone A3 after 9pm, in accordance with Table 3.2 of the Australian/New Zealand Standard AS/NZS 4282: 2019 Control of the obtrusive effects of outdoor lighting. The Calculation Plane is to be the property boundary with Arcadia Park. Full details to be included in the documentation for a Construction Certificate.</p>
<p>Approval from Heritage NSW</p>	<p>General Terms of Approval have been issued by Heritage NSW on 11 May 2022 for the proposed mine grouting works below Arcadia Park which is located within the State Heritage Register (SHR) curtilage of Newcastle Recreation Reserve (SHR no. 02000).</p> <p>Heritage NSW also issued general advice under Clause 5.10 of NLEP 2012 on 11 November 2021 which raised concerns regarding the proposed development's height, bulk and potential impact on view from the Obelisk. These concerns have been addressed as part of the overall detailed assessment of the application, in consultation with CN's Development Officer (Heritage)</p> <p>It is noted that Heritage NSW's comments are provided in response to a non-statutory referral under NLEP 2012 (not the Heritage Act 1977) and are provided as advice to Council</p>
<p>Biodiversity – numerous submissions raised concerns regarding the potential impacts to biodiversity</p>	<p>The development site is not mapped on the Biodiversity Values Map and the Biodiversity Offset Scheme will not be triggered.</p>

	<p>The submitted ecological reports has determined that the proposal presents no significant impact on threatened species or ecological communities.</p> <p>It has been demonstrated that the proposal will be no threat to the long-term survival of Littoral Rainforest in the locality as no vegetation will be cleared, removed, modified, fragmented, or isolated from the park as the proposed development does not form any part of this area.</p> <p>The likelihood that the development will significantly affect threatened species or their habitats, particularly the Powerful Owl has been assessed, and the proposal is considered acceptable. Refer to Section 3 for further detail.</p>
<p>Tree removal: on site – numerous submissions raised concerns regarding the extent of vegetation removal</p>	<p>No vegetation or tree removal or ground works are proposed or required to take place in Arcadia Park. All bushfire works relating to the Asset Protection Zone are contained on site and do not rely upon any clearing of vegetation within Arcadia Park.</p> <p>All existing trees within the adjoining site of 13 Hillview Crescent will be retained. Tree Protection Measures (TPM) will be undertaken in accordance with the requirements of AS 4970—2009 - Protection of trees on development sites. Prior to the commencement of any works, a detailed tree protection plan will be prepared in consultation with the project arborist.</p> <p>All trees on site are required to be removed due to scope of the proposed development. Compensatory tree planting is proposed and has been determined to result in an over-compensation in terms of quality and quantity of planting. Refer to Section 3.1 for further detail.</p>
<p>Tree removal: off site – submissions raised concerns in relation to removal of street trees, particularly along Kitchener Parade.</p>	<p>The condition and overall health of the street trees located in the Kitchener Parade road reserve were found to be impacted due to a number of complications, including previous storm damage. In addition, a number of non-destructive excavation options, construction methods and alternative designs were also explored and considered by the applicant.</p> <p>It was concluded that risks associated with retaining these trees could not be mitigated and would result in a low long-term outcome. It has been satisfactorily demonstrated that there are no other viable alternatives, and the subject trees are recommended for removal.</p> <p>CN's City Greening Services have recommended that 10 x 75-150 Litre trees to be planted as compensation for the removal of the existing street trees, with all works including tree removal would be at the developer's expense. All tree species and locations will be determined by City Greening Services and payment will be required prior to the issuing of the Construction Certificate.</p> <p>To mitigate the visual impact of the required tree removal, it is recommended that mature plantings (200L pot size) are</p>

	planted. Refer to Section 3.1 for a detailed assessment of the proposal.
Impact on local infrastructure and amenities: Submissions raised concerns that the proposal will result in adverse impacts to local infrastructure including Newcastle East Public School	<p>The management and allocation of educational facilities is controlled by the Department of Education.</p> <p>The site is adequately serviced by all relevant utilities including stormwater, sewer, electricity and access roads.</p>
Impacts during construction: Submissions raised concerns regarding the impacts to adjoining properties and residents during construction, including noise, health impacts due to dust and fumes, construction management, asbestos, air quality relating to fly ash, and vibration.	<p>A Construction Management Plan (CMP) has been provided that satisfactorily demonstrate that potential impacts associated with construction, demolition and grouting works are able to be appropriately managed and mitigated. The CMP has adopted the recommendations of a number of supporting technical reports and will also be managed through the imposition of relevant conditions of consent which are included in the consent documentation.</p> <p>Several management and mitigation measures are outlined in the submitted Air Quality assessment, to ensure that fly ash is appropriately managed during the construction phase. Further detail is provided in this report.</p> <p>Potential construction noise and vibration impacts are assessed in the construction noise and vibration impact and addressed as part of the Construction Management Plan. The potential impacts are considered acceptable subject to compliance with the recommendations and conditions of consent.</p>
Subsidence and Geotechnical impact – Issues raised relating to potential subsidence and geotechnical impacts to adjoining properties arising during construction.	<p>The application is accompanied by Mine Subsidence Remediation Strategy and a Mines Subsidence Assessment which has been assessed by the relevant approval body, Subsidence Advisory NSW. Subsidence Advisory issued their General Terms of Approval for the application on 09 March 2022</p> <p>The proposed application is supported by a geotechnical study which provides recommendations in relation to construction methodologies and an assessment of the risk of slope stability. The risk of slope stability was found to be in the low category.</p>
Bushfire – Objectors raised concerns with the bushfire mitigation measures proposed, including the width of the proposed APZ.	<p>All recommended bushfire mitigation measures are contained wholly within the site.</p> <p>The NSW Rural Fire Service (RFS) previously issued a Bush Fire Safety Authority (BFSA) on 25 June 2019 and 2 December 2021 for the proposed assessment, subject to a series of conditions.</p> <p>NSW RFS has confirmed that the proposed development has been assessed for compliance with the provisions of <i>Planning for Bush Fire Protection</i>, including the required APZ, which remain valid subject to the date of the development application and any modifications.</p>

	<p>The NSW Rural Fire Service has issued a Bush Fire Safety Authority with recommended conditions on 2 December 2021 based on performance-based solutions proposed by the applicant and are commensurate with the bush fire risk.</p> <p>Confirmation received on 01 June 2022 from NSW RFS that previous GTAs remain acceptable in terms of the amended application dated January 2022.</p>
Groundwater – Concerns raised that the development will adversely impact groundwater.	<p>The proposed level of excavation adjacent to Arcadia Park is shallower than existing groundwater in the locality and will not impact upon groundwater.</p> <p>Accordingly, there is a low likelihood of impacts on groundwater conditions, a detailed assessment of Groundwater is contained at Section 3.1.</p>
Public interest – Submissions raised concern that the development is not in the public interest.	<p>The comprehensive assessment has illustrated that there will be no significant adverse ecological impacts, heritage impacts or traffic impacts. It is considered that the development does not cause any significant overshadowing, privacy impacts or unreasonable view loss for surrounding properties.</p> <p>The proposal is consistent with CN's urban consolidation objectives, making efficient use of the established public infrastructure and services. The proposed development provides for the orderly economic development of the site for purposes for which it is zoned and will not have any significant adverse social or economic impacts.</p> <p>The proposal is in the public interest.</p>
Dilapidation report – request from adjoining property owners for dilapidation reports to be prepared for adjoining private properties and public land	<p>A condition of consent is recommended requiring that a suitably qualified engineer must prepare a dilapidation report detailing the structural condition of adjoining buildings, structures or works, and public land, to the satisfaction of the certifier, prior to issue of a construction certificate,</p> <p>If the engineer is denied access to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the certifier's satisfaction that all reasonable steps were taken to obtain access to the adjoining properties.</p>

The issues and concerns raised in the submissions have all been addressed and do not warrant any further amendments to the proposal. The proposed development does not raise any other significant public interest issues beyond matters already addressed in this report.

The current amended proposal is considered an acceptable form of development for the site as discussed within this report subject to the conditions included in the recommended Draft Schedule of Conditions (**refer to Attachment A**).

5. CONCLUSION

This development application has been considered in accordance with the requirements of the *EP&A Act* and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported. On

balance the proposed development is suitable for the site and adequately responds to environmental, social and economic impacts from the development and therefore, is within the public interest.

Given the high-quality design outcome for the site and its positive contribution to the locality, the consistency with Newcastle LEP 2012, Local Strategies (including the NDCP2012) and applicable State Planning Policies, and the absence of any significant adverse environmental impacts, the proposal is appropriate in the context of the site and the locality.

The proposal is acceptable having been assessed against the relevant heads of consideration under Section 4.15(1) of the *EP&A Act*, subject to the recommended conditions contained at **Attachment A**, and should be approved.

6. RECOMMENDATION

- A. That the Hunter and Central Coast Regional Planning Panel, as the consent authority, grant consent to Development Application DA2019/00061 for residential accommodation comprising three residential flat buildings (161 units) and multi-dwelling housing (11 two-storey dwellings), strata subdivision (172 lots), car parking, tree removal, landscaping, access and pathways, associated site works and services, earthworks, mine grouting works (including associated temporary plant and equipment), and staged demolition of existing structures at 11-17 Mosbri Crescent, The Hill pursuant to Section 4.16(1)(a) of the *EP&A Act* and subject to the draft conditions of consent attached to this report at **Attachment A**.
- B. That the Hunter and Central Coast Regional Planning Panel, as the consent authority, note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.3 Building Height, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within R3 zone in which the development is proposed to be carried out, and
- C. That the Hunter and Central Coast Regional Planning Panel, as the consent authority, note that the Preliminary Contamination Assessment (prepared by Coffey Services Australia dated 14/12/2018) submitted with the application, which indicates that the area is in an area of no known occurrence of ASS, is confirmed in accordance with cl.6.1(4)(b) NLEP2012.