

PANEL ASSESSMENT BRIEFING REPORT
HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-115 – DA2021/01754
PROPOSAL	<p><i>Health Services Facility</i> – Involves 5 levels with:</p> <ul style="list-style-type: none"> • 1st and 2nd level including car parking, • 3rd & 4th levels includes health consulting rooms & administration • 5th level Operating Theatre (Out patients only – day treatments)
ADDRESS	Lot 11 DP 1221375 43 Date Street Adamstown
APPLICANT	Andrew Brook
OWNER	GPV Adamstown Pty Ltd atf GPV Adamstown Trust
DA LODGEMENT DATE	10 January 2022
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 5, Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021: <i>Private infrastructure and community facilities over \$5 million (health service facilities)</i>
CIV	\$12,564,003.00 (excluding GST)
CLAUSE 4.6 REQUESTS	No clause 4.6 variations proposed
LIST OF ALL RELEVANT PLANNING CONTROLS (S4.15(1)(A) OF EP&A ACT)	<p>Environmental planning instruments: s4.15(1)(a)(i)</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land (previously under SEPP No. 55 – Remediation of Land); • State Environmental Planning Policy (Planning Systems) 2021 (previously under SEPP (State and Regional Development) 2011); • State Environmental Planning Policy (Transport and Infrastructure) 2021 (previously under SEPP (Infrastructure) 2007); • State Environmental Planning Policy (Biodiversity and Conservation) 2021 (previously under SEPP (Vegetation in Non-Rural Areas) 2017; • Draft Remediation of Land SEPP; • Newcastle Local Environmental Plan 2012

	Development Control Plan: 4.15 (1)(a)(iii) <ul style="list-style-type: none"> Newcastle Development Control Plan 2012 (NDCP 2012) City of Newcastle's Community Participation Plan 2019
TOTAL & UNIQUE SUBMISSIONS ISSUES KEY IN SUBMISSIONS	Five (5)
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> Access Report – Lindsay Perry Access Acoustic Report – Reverb Acoustics Engineering Plans – Northrop Geotechnical and Site Investigation – Douglas Partners Plans – Archadia Projects Statement of Environmental Effects – Wilson Planning Traffic & Parking Assessment – Intersect Traffic Waste Management Plan – Archadia Projects
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	No Special Infrastructure Contributions areas apply to the City of Newcastle.
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	6 July 2022
PREPARED BY	Damian Jaeger Principal Development Officer (Planning)
DATE OF REPORT	20 June 2022

EXECUTIVE SUMMARY

- The proposed development is for the erection of a five storey *health service facility* consisting of a day operating theatre (day patients only) *health consulting rooms & administration*.
- The proposal is permitted with consent within the R4 High Density Residential zone as a *health service facility*.
- The site is 1683 m² in area located on the corner of Date and Victoria Streets, Adamstown.
- Key issues arising from the assessment of the proposal:
 - Parking
 - Traffic Generation, Traffic Safety & Accidents
 - Carpark Design/Layout
 - On-site deliveries, Servicing & Waste Management
 - Vehicular/Site Access
 - Flooding
 - Stormwater Management
 - Urban Design, Character, Streetscape, Bulk, Scale and Setbacks
 - Landscaping

- x. Overshadowing
 - xi. Easements/Traffic Conflict
 - xii. Crime Prevention Through Environmental Design (CPTED).
- Pre-conditions/jurisdictional prerequisites satisfied prior to determination:
 - i. Section 4.6 of SEPP (Resilience & Hazards) – Satisfied
 - ii. Clause 6.1 of NLEP – Acid Sulphate Soils – Satisfied (proposal not affected).
 - iii. Section 2.19(1) of Chapter 2: State and Regional Development – Satisfied (HCCRPP consent authority)
- The proposal is considered to be contrary to the Public interest based on the combination matters summarised within the key issues.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA 2021/01754 is recommended for refusal subject to the reasons contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The subject site constitutes a single allotment and is located on corner of Victoria and Date Street, Adamstown as shown within **Figures 1** and **2** below.

The site is rectangular shaped site with frontages of 46.79 metres to Victoria Street and 31.04 metres to Date Street. There is an existing splay on the corner of Date and Victoria Street. The site has an area of 1683 m².

The subject site is predominately hardstand, with very little vegetation, and consists of a historic car park, now unused, that was previously associated with a Returned and Services Club (RSL) which operated on a larger site including the land to the south. The adjoining site to the south (282 Brunker Road) operates as a medical centre (previously a RSL Club).

The subject site slopes downhill from the east to the west with a fall of approximately 3.75 metres. The adjoining streets are relatively narrow with Date Street approximately 6.0 metres kerb to kerb and Victoria Street 8.6 metres.

The site is zoned R4 High Density Residential under the provisions of the Newcastle Local Environmental Plan 2012. The site does not contain any heritage items. Furthermore, the site is not within a Heritage Conservation Area but there are heritage items located nearby at

- 268 Brunker Road (Nags Head Hotel - Local Item I4)
- 278 Brunker Road (Adamstown RSL Memorial Hall - Local Item I6)
- 269 Brunker Road (Kitchener Hall - Local Item I5)

The nearby land is a mixture of zonings:

- To the east, along Brunker Road, the land is zoned B2 Local Centre
- To the west and further south, the land is zoned R3 Medium Density Residential
- To the north, the land is zoned B4 Mixed Use

The subject site is affected by flooding (only partially towards western side) and Class 5 Acid sulfate soils. It is not affected by mines subsidence, bushfire prone lands or contaminated land.

Figure 1 – Subject site highlighted in blue



Source – CN OneMap (April 2021)

Figure 2 – Subject site highlighted in blue



Source – CN OneMap (April 2021)

1.2 The Locality

East of the site is the commercial shopping strip along Bruncker Road consisting of one-two storey retail and some other businesses.

North and west of the site is a mixture of low scale single dwellings and larger multi-unit housing. There is also a City of Newcastle carpark (to the north).

South of the site is the existing health service facility (medical centre – previously RSL Club), several single dwellings and then the larger apartment development (known as the Foundry). The Foundry approval was the result of a Land and Environment Court appeal.

Glebe and Bruncker Road are well serviced by public bus routes while Adamstown train station is located approximately 430 metres to the west.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for *Health Services Facility* – Involves 5 levels with:

- 1st and 2nd level including car parking,
- 3rd & 4th levels includes health consulting rooms & administration
- 5th level Operating Theatre

The proposal forms a 'Stage 2' to the existing medical centre fronting Bruncker Road which was re-adapted from the old RSL Club at 282 Bruncker Road. It is noted that Stage 1 and 2 are separate proposals and do not rely on each other as submitted.

The proposal has approximately 2971 m² gross floor area, a height of 19.275 metres, a floor space ratio (FSR) of 1.76:1 and 76 parking spaces.

The proposal involves demolition of all existing features and limited vegetation on the subject site.

The key development data is provided in **Table 1**.

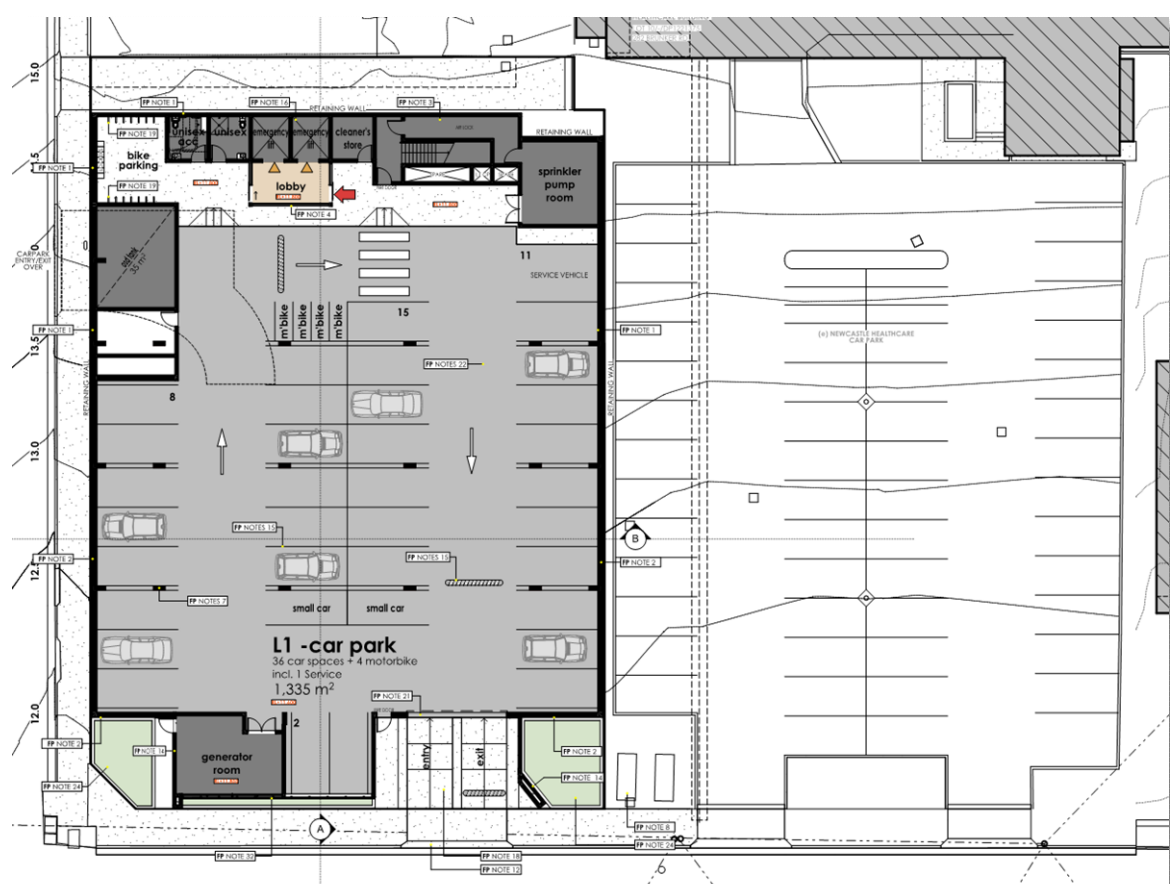
Table 1: Key Development Data

Control	Proposal
Site area	1683 m ²
GFA	2971 m ² (applicants' calculation)
FSR	1.76:1 (applicants' calculation); 2.0:1 allowable
Clause 4.6 Requests	None

Max Height	19.275 m (applicants' calculation), 20 m allowable
Landscaped area	77 m ²
Car Parking spaces	76
Setbacks	Levels 1-2 – predominately zero setbacks Levels 3-5 variable.

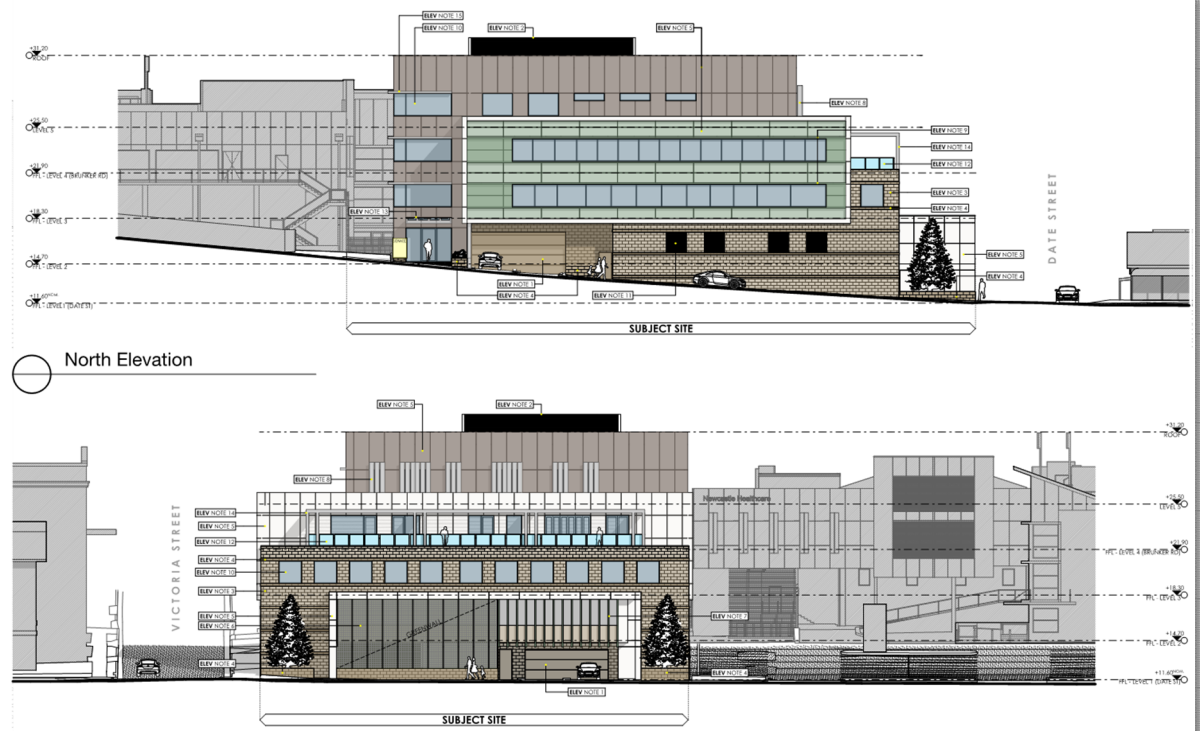
The further figures below (**Figures 3- 9**) provide a general outline of the proposed development.

Figure 3 – Level One Layout



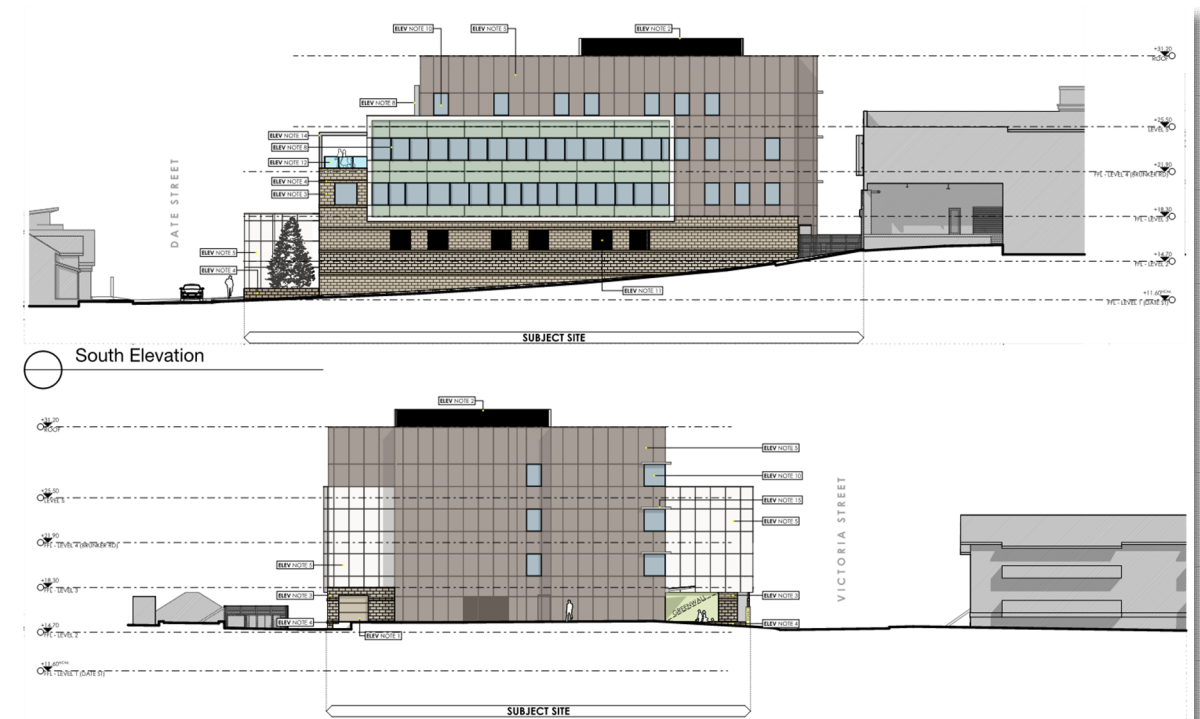
Source Archadia Plans December 2021

Figure 4 – North & West Elevations



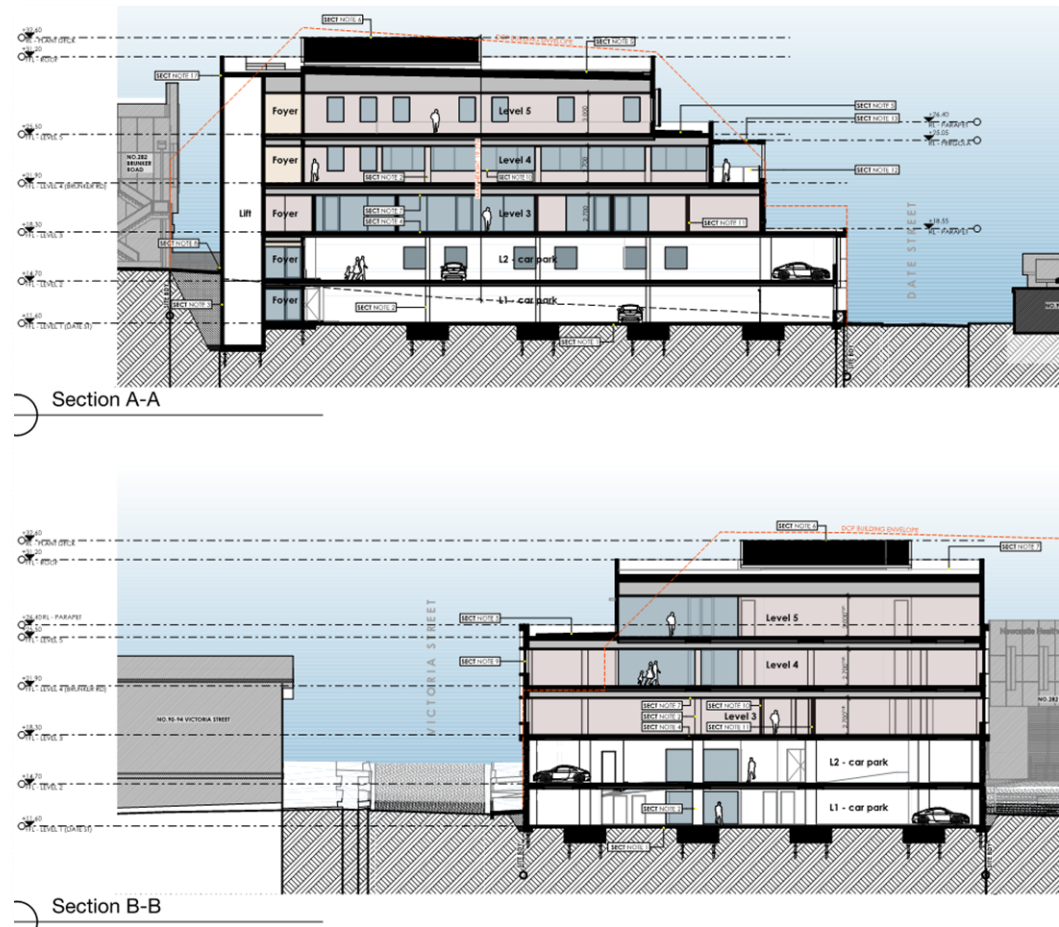
Source Archadia Plans December 2021

Figure 5 – South & East Elevations



Source Archadia Plans December 2021

Figure 6 – Sections



Source Archadia Plans December 2021

Figure 7 – Montage Victoria Street



Source Archadia Plans December 2021

Figure 8 – Montage Corner Date & Victoria Street



Source Archadia Plans December 2021

Figure 9 – Montage Date Street (looking to the north east)



Source Archadia Plans December 2021

2.2 Background

No pre-lodgement meeting was held prior to the lodgement for the current application. Similarly, no pre-lodgement advice from CN's Urban Design Review Panel (UDRP) was sought.

The development application was lodged on **5 January 2022**. A chronology of the development application since lodgement is outlined in **Table 2** including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
20 January 2022	Exhibition of the application until 4 February 2022
17 January 2022	DA referred to internal & external agencies
16 February 2022	Kick Off Briefing
17 March 2022	Request to withdraw from Council to applicant
11 April 2022	Further request to withdraw from Council to applicant
12 April 2022	Class 1 Land and Environmental Court Appeal filed.
20 April 2022	Panel Assessment Briefing

2.3 Site History

- The current proposal was not the subject of any Pre-DA advice or pre-lodgement advice from CN's Urban Design Review Panel (UDRP).
- A previous Pre-DA (PR2018/00028) advice was sought for a larger proposal over this site and the adjoining site to the south. While this was a larger proposal, it raised similar issues to the current proposal.
- An earlier application (DA2011/1391) for erection of a six level, 93 unit residential development with associated parking facilities was refused by the then Joint Regional Planning Panel.

3. STATUTORY CONSIDERATIONS

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.

It is noted that the proposal is **not** considered to be (which are considered further in this report):

- Integrated Development (s4.46)
- Designated Development (s4.10)
- Requiring concurrence/referral (s4.13)
- Crown DA (s4.33) - written agreement from the Crown to the proposed conditions of consent must be provided

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

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land (previously under SEPP No. 55 – Remediation of Land);*
- *State Environmental Planning Policy (Planning Systems) 2021 (previously under SEPP (State and Regional Development) 2011);*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021 (previously under SEPP (Infrastructure) 2007);*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021 (previously under SEPP (Vegetation in Non-Rural Areas) 2017;*
- *Draft Remediation of Land SEPP;*
- *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 (Brief summary)	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas Consent is sought to the removal of limited vegetation and would be satisfactory subject to conditions.	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development • Section 2.19(1) declares the proposal as regionally significant development pursuant to Clause 5 of Schedule 6 as it comprises a <i>health services facility</i> falling within ' <i>Private infrastructure and community facilities over \$5 million</i> '.	Y
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land • Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure • Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. Ausgrid have raised issues with the tree species selected adjacent power lines within the current design. • Section 2.121(4) - Traffic-generating development – the proposal constitutes traffic generating development	N
Proposed Instruments	No compliance issues identified.	Yes
LEP	Newcastle Local Environmental Plan 2012 <ul style="list-style-type: none">• Clause 2.3 – Zone Objectives and Land Use Table• Clause 4.3 – Height of buildings• Clause 4.4 – Floor space ratio• Clause 4.6 - Exceptions to development standards• Clause 5.1/5.1A – Land acquisition• Clause 5.10 – consideration of Aboriginal and non-aboriginal heritage• Clause 5.21 – consideration of flood impacts – there are issue arising in terms of the design relative to the flood environment• Clause 6.1 – consideration of Acid Sulfate Soils• Clause 6.2 – consideration of earthworks• Clause 6.4 - Land in Zone R4 High Density Residential	Majority yes (see any issues below)

DCP	Newcastle development Control Plan 2012 <ul style="list-style-type: none"> • Section 3.11 – Community Services • Section 4.01 – Flood Management • Section 4.04 – Safety and Security • Section 4.05 – Social Impact • Section 5.01 – Soil Management • Section 5.02 – Land Contamination • Section 5.03 – Vegetation Management • Section 5.05 – Heritage Items • Section 5.06 – Archaeological Management • Section 6.08 – Adamstown Renewal Corridor • Section 7.02 – Landscape, Open Space and Visual Amenities • Section 7.03 – Traffic, Parking and Access • Section 7.06 – Stormwater • Section 7.07 – Water Efficiency • Section 7.08 – Waste Management • Section 7.09 – Advertising and Signage • Section 7.10 – Street Awnings and Balconies 	N
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Consideration of the relevant SEPPs is outlined below:

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The proposal includes the removal of a small amount of vegetation from the northern side of the site consisting of shrubs and three Casuarina trees (all planted in 2008 approximately). It is considered that the removal of this vegetation is acceptable in this instance having regard to Part 2.3 of the SEPP.

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.

In order to consider this, a Preliminary Site Investigation ('PSI') and Detailed Site Investigation ('DSI') has been prepared for the site (Report on Geotechnical and Preliminary Waste Classification Investigation. September 2021. Prepared by Douglas Partners Pty Ltd.). This assessment included landuse history and sampling of soil on the land. The landuse history suggests the site was formerly used for residential use in the period of before 1944 to approximately the 1980's when buildings were demolished and the existing carpark constructed. Soil sampling results indicated that some filling and building rubble was observed on site however contaminants identified did not exceed the proposed commercial landuse criteria.

The proposed landuse is commercial in nature and potential exposure to site soil from future site occupiers is extremely minimal.

It is considered that there are no strong grounds to consider that the land may be significantly contaminated and it can be reasonably considered that the land is suitable for the proposed landuse in accordance with section 4.6 of the SEPP.

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 5 of Schedule 6 of the Planning Systems SEPP as the proposal comprises a *health services facility* falling within '*Private infrastructure and community facilities over \$5 million*'. Accordingly, the Hunter Central Coast Regional Planning Panel (HCCRPP) is the consent authority. The proposal assessment is consistent with this Policy.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Ausgrid

The proposal triggered consultation with Ausgrid due to overhead powerlines being within 5 metres of the development in accordance with cl2.48 of the SEPP.

Ausgrid's response (24/1/22) raised various issues regarding typical construction requirements adjacent powerlines but also concerns regarding the landscaping species selection as follows:

Landscaping

The proposed conifer tree located at the south western corner may not be appropriate depending on the final electrical arrangement at the premises. They will likely also compromise the fire segregation requirements to the adjacent kiosk substation and present a combustible path to spread a fire throughout the building.

The size and positioning of the landscaping in this regard is not considered to be acceptable and needs to be redesigned.

Transport for NSW

The proposed has been assessed in accordance with cl2.121 of the SEPP - *Traffic-generating development* and the development constitutes traffic generating development in terms of Schedule 3 due to having '*50 or more motor vehicles per hour*' within 90 metres of a classified road (i.e. Brunker Road).

The TfNSW has assessed the application and raised no objections to the proposal and advise "*...it is considered there will be no significant impact on the nearby classified (State) road network.*"

The following further advice to CN was provided by TfNSW:

- *The submitted Traffic Impact Assessment has identified Brunker Rd and Glebe Rd as classified State roads under the care and control of TfNSW. These roads are in fact Regional roads under the care and control of the City of Newcastle.*
- *Council should ensure that appropriate traffic measures are in place during the construction phase of the project to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity.*

- Council should have consideration for appropriate sight line distances in accordance with Section 3 of the Austroads Guide to Road Design Part 4A (Unsignalised and Signalised Intersections) and the relevant Australian Standards (i.e. AS2890:1:2004) and should be satisfied that the location of the proposed driveway promotes safe vehicle movements.
- All matters relating to internal arrangements on-site such as traffic / pedestrian management, parking, manoeuvring of service vehicles and provision for people with disabilities are matters for Council to consider.
- Active & Public Transport considerations to be given to the proposal.

The TfNSW advice has been considered by CN as part of its overall assessment.

Newcastle Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the *Newcastle Local Environmental Plan 2012* (NLEP). The aims of the NLEP under Clause 1.2(2) include: -

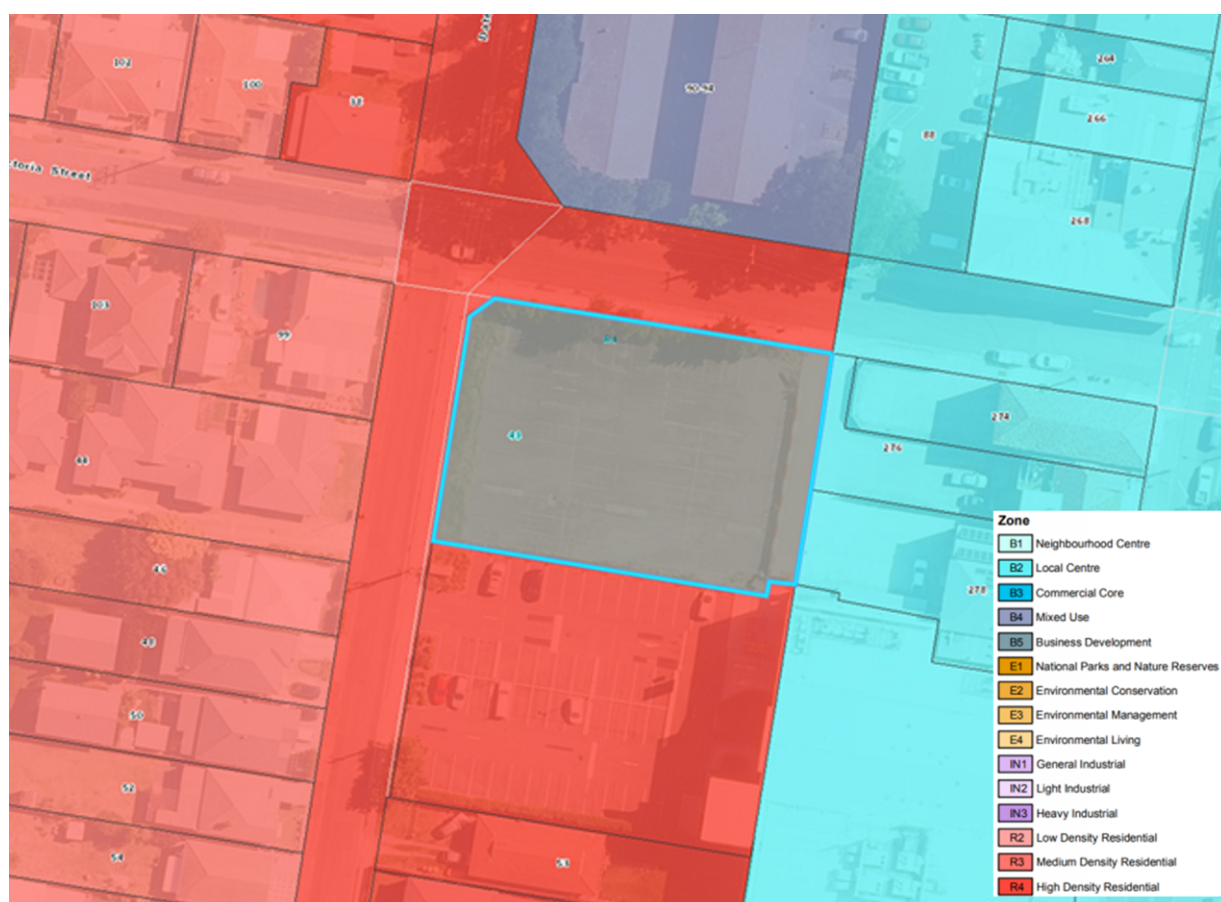
- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
- (a) to respect, protect and complement the natural and cultural heritage, the identity and image, and the sense of place of the City of Newcastle,
- (b) to conserve 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 considered to be inconsistent with these aims having particular regard to c), d) and f) due to the issues arising from the assessment of the proposed application.

Zoning and Permissibility (Part 2)

The site is located within the R4 High Density Residential Zone pursuant to Clause 2.2 of the LEP as shown within **Figure 10** below:

Figure 10 – Zoning map



Source – CN OneMap (April 2021)

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of a *health services facility* (as extracted below) which is a permissible use with consent in the Land Use Table in Clause 2.3. It is advised that the application does not seek consent for a *hospital* (as extracted below) and the proposal, as submitted, does not constitute a *hospital* as it does not involve any 'in-patients'.

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

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

"hospital means a building or place used for the purpose of providing professional health care services (such as preventative or convalescent care, diagnosis, medical or surgical treatment, psychiatric care or care for people with disabilities, or counselling services provided by health care professionals) to people admitted as in-patients (whether or not out-

patients are also cared for or treated there), and includes ancillary facilities for (or that consist of) any of the following—

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

Note—

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

It is further advised that a health services facilities is also permitted with consent within the R4 zone under cl 2.60 of State Environmental Planning Policy (Transport & Infrastructure) 2021.

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 high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To promote a denser urban form along transport corridors while respecting the residential character of adjoining streets.*
- *To maximise redevelopment and infill opportunities for high density housing within walking distance of centres.*
- *To provide for commercial development that contributes to the vitality of the street where provided within a mixed use development.*
- *To promote a balance of residential accommodation within a mixed use development."*

The majority of the zone objectives are residentially orientated and are not relevant to the proposal. It is considered that only the 3rd and 4th objectives are relevant to the proposal.

It is considered questionable that the proposal is of a scale and nature to clearly meet the 3rd objective in regard to '*...provide facilities or services to meet the day to day needs of residents*'. The proposal would be operating as specialist consulting rooms and 'day surgery' and, in this context, it is considered that this is beyond the '*day to day needs of residents*' and represents a more unique and specialised land use.

Similarly, concern is raised that the urban design and amenity impacts of the development on the residential character of the adjoining streets is such, that it is considered that the proposal does not meet the 4th objective.

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 4** below.

Table 4: Consideration of the LEP Controls

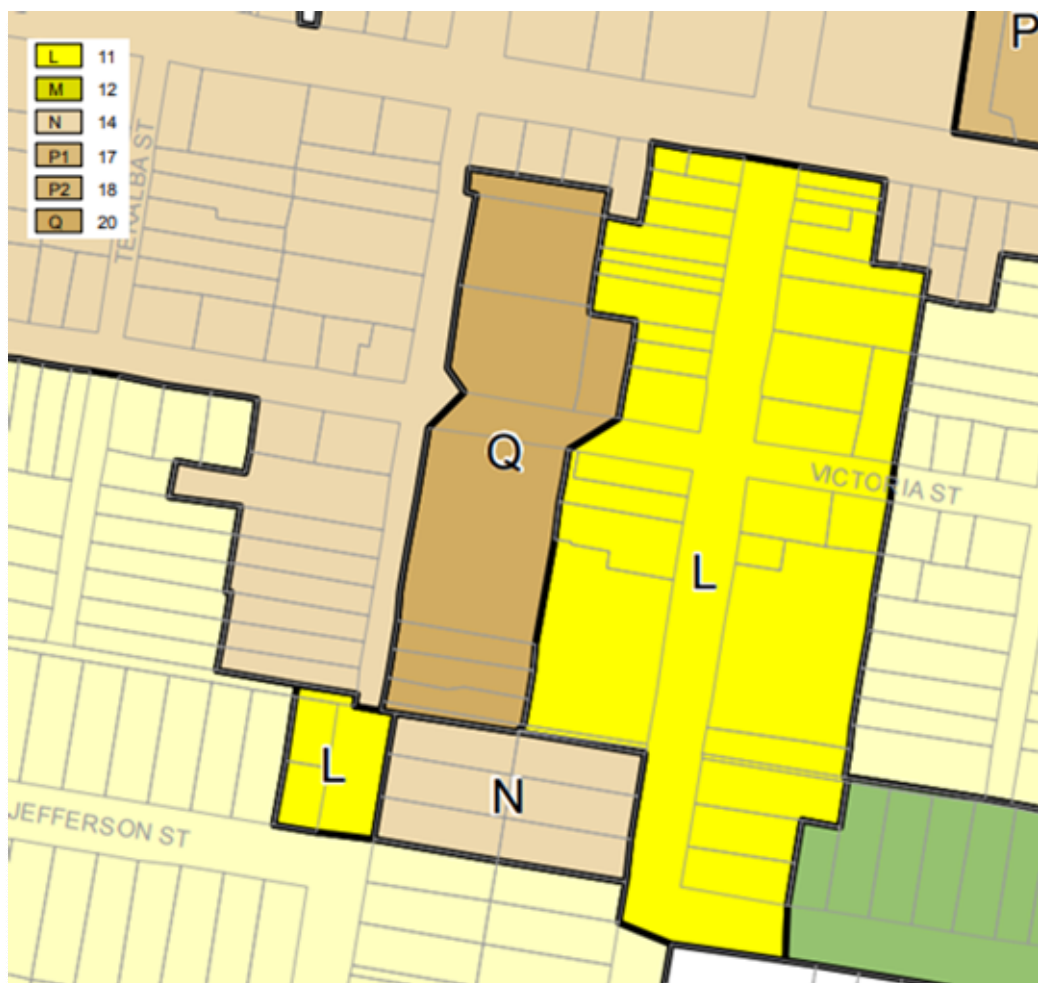
Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	20 metres (See Figure 11 below)	19.275 metres	Yes
FSR (CI 4.4(2))	2:1 (3,366 m ²) (See Figure 12 below)	1.76:1	Yes
Land acquisition (CI 5.1/5.1A)	Development consent must not be granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that Table.	The proposal does not involve any land reserved for acquisition	Yes
Heritage (CI 5.10)	The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.	<p>No items of State or Local heritage significance are located on the site.</p> <p>The site is in the vicinity of the following heritage items:</p> <ul style="list-style-type: none"> • 'Adamstown RSL Memorial Hall', 278 Brunner Road Adamstown, NLEP Item 6 • 'Nag's Head Hotel', 268 Brunner Road Adamstown, NLEP Item 4 <p>The proposed building will not be visible from the footpath in front of the RSL Memorial Hall and will therefore not impact on the front façade, interpretation, or social significance of the Hall. The setting of the front of the building will not be impacted.</p> <p>The proposed development will be visible when looking west along Victoria Street and may be visible in conjunction with the Nag's Head Hotel in some aspects. However the street provides a significant separation between the buildings and the prominent elevated corner</p>	Yes

		<p>location of the Hotel building reinforces its dominance within the Brunner Road streetscape.</p> <p>Currently the RSL Memorial Hall is visible from Victoria Street and Date Street, from the west of the heritage item. However it is noted that these are not primary views to the heritage item and are not considered to be significant view lines, and the heritage item is viewable from these vantage points because the subject site has previously been cleared. The development will obscure these viewpoints however this is not considered to adversely impact on the significance of the RSL Memorial Hall. Primary views to the heritage item from Brunner Road will be unaffected.</p> <p>Significant views to the nearby Nag's Head Hotel are achieved from Brunner Road, and the corner of Brunner Road and Victoria Street. The primary elevation of the Hotel faces Brunner Road. The prominent corner location is also an important aspect of its setting. Views to the corner will not be impacted by the development.</p> <p>There is no significant landscaping associated with nearby heritage items.</p> <p>The assessment of the proposal has shown that the development will not have an impact on these items within the vicinity of the subject site.</p>	
Flood Planning (CI5.21)	Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied with development in regards to the flood environment.	<p>An assessment of the proposal considered that it is not acceptable in terms of:</p> <ul style="list-style-type: none"> The proposed finished level (ground floor level – L1) is unreasonably impacted flooding (i.e. both the 1% Annual Exceedance 	No

		Probability (AEP) & Probable Maximum Flood (PMF).	
Acid sulphate soils (CI 6.1)	Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.	The site is within an area of no known occurrence of acid sulfate soils.	Yes
Earthworks (CI 6.2)	<p>Before granting development consent for earthworks, the consent authority must consider the following matters—</p> <ul style="list-style-type: none"> (a) <i>the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,</i> (b) <i>the effect of the proposed development on the likely future use or redevelopment of the land,</i> (c) <i>the quality of the fill or the soil to be excavated, or both,</i> (d) <i>the effect of the development on the existing and likely amenity of adjoining properties,</i> (e) <i>the source of any fill material and the destination of any excavated material,</i> (f) <i>the likelihood of disturbing relics,</i> (g) <i>the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</i> (h) <i>any appropriate measures proposed to</i> 	The extent of proposed earthworks is commensurate with that required to construct the proposed health service facility having regard to the slope of the land and is not expected to be contrary to the matters that must be considered. The quality of any fill material to be imported to the site would be controlled by appropriate conditions of consent if the proposal was to be approved.	Yes

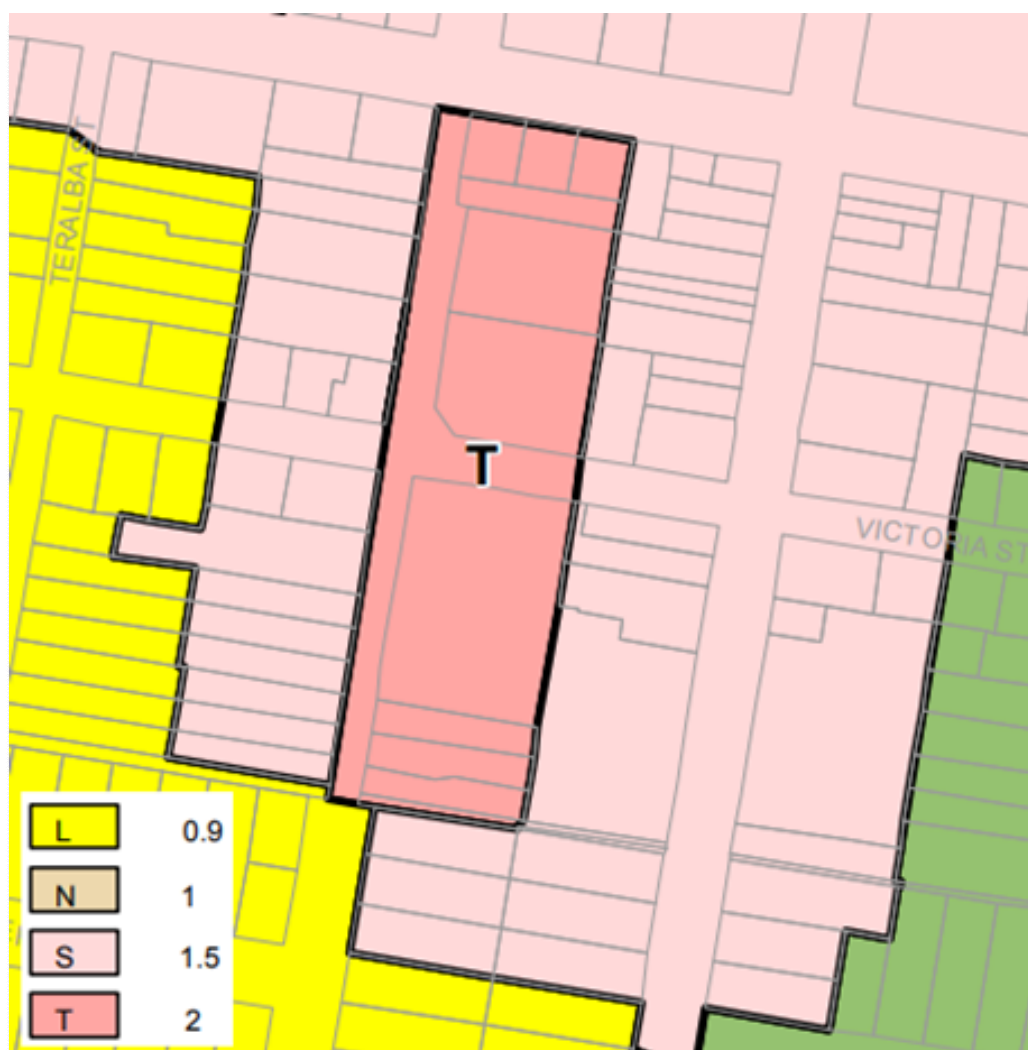
	<i>avoid, minimise or mitigate the impacts of the development.</i>		
Land in Zone R4 High Density Residential (CI 6.4)	Land in Zone R4 High Density Residential that is development for the purposes of business premises, food and drink premises or office premises the consent authority must not grant development consent for development to which this clause applies unless it is satisfied that the development includes residential accommodation, and the residential accommodation comprises at least 75% of the gross floor area of the building.	The clause does not apply in this instance as the proposal does not include the prerequisite land uses.	Yes

Figure 11 – NLEP 2012 Heights



Source – NLEP 2012

Figure 12 – NLEP 2012 - FSR



Source – NLEP 2012

The proposal is considered to be generally consistent with the LEP except for the issue of flooding and concerns regarding the zone objectives.

(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:

- *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 considered to be acceptable subject to conditions of consent having been assessed in detail against the current provisions of SEPP (Resilience and Hazards) 2021.

(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 2021* ('the DCP')

Section 3.11 – Community Services

The proposal is considered to be largely acceptable in regard to this section except for the vehicular access issues.

Section 4.01 Flood Management

The proposal has been assessed by CN's Development Engineer. The proposal, as submitted, is not supported due to the issues outlined below.

The extent and nature of flooding at the subject allotment was previously documented in flood information certificate FL2021/00306.

According to information provided in the Newcastle City-wide Floodplain Risk Management Study and Plan (BMT WBM June 2012), the site is affected by local catchment (flash) flooding during both the 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) events.

Local Catchment Flood

Is the allotment in a floodway?	No
Is the allotment in a flood storage area?	Yes (only Date St road frontage affected)
1% AEP Level / Velocity / Property Risk	11.8 m AHD / 0.25 ms ⁻¹ / P1
PMF Level / Velocity / Risk to Life	12.6 m AHD / 0.75 ms ⁻¹ / L4 (H3)

In summary the following requirements apply to any development of the subject allotment:

- a) The floor level of any new occupiable rooms shall be set no lower than the flood planning level of 12.3 m AHD.

The development site is located less than 40 m from the perimeter of the PMF extent and is therefore not required to provide on-site refuge in accordance with Control 3 of cl. 4.01.04 of Section 4.01 of the Newcastle Development Control Plan (NDCP).

The predominant classification of flooding through the subject site is Fringe Flooding, with only a very minor part of the development at the Date Street frontage being designated as flood storage. The minor extent of flood storage in the site does not warrant the imposition of flood storage requirements contained in Section 4.01 of the NDCP. Nevertheless, the proposed L1 semi-basement car park is not expected to impact local flood storage capacity.

2.1 Proposed Floor Levels

Cut is proposed to form a semi-basement car park at the ground floor level (L1) that will be accessed via an at-grade vehicular crossing from Date Street. The car parking area is proposed at 11.60 m AHD with utility facilities on the same level – such as the generator room, lift lobby, footway, and other plant rooms – set at 11.80 m AHD.

Local catchment (flash) flooding adjacent to the site is identified to reach a level of 11.80 m AHD during the 1% AEP event, and 12.60 m AHD during the PMF. The extent of flooding over the subject allotment is bounded by existing surface levels, which rise from 11.60 m AHD at the Date Street frontage to 15.10 m AHD at the east boundary.

The proposed cut to form the ground floor level (L1) at 11.60 m AHD will allow 1% AEP flood to enter the development via the semi-basement level and increase the extent of flooding over the subject allotment. The increase of flooding extents over a new development cannot be supported.

To manage the ingress of flood waters into the development, the semi-basement car park shall be designed to meet the following requirements for basement car parks as set out in Section 4.01 of the NDCP:

- a) Excepting vehicular entry points, all potential water entry points into the semi-basement car park shall be set at or above the Probable Maximum Flood level of 12.60 m AHD.
- b) Vehicular entry points to the semi-basement car park shall be set to the Flood Planning Level (12.30 m AHD).

The Applicant is requested to confirm the proposed Emergency Lifts, being below the FPL, can be restored to a functional state without full replacement should it become inundated by flood waters.

Floors L2 (FFL 14.7 m AHD) and above are proposed well above the flood planning level of 12.3 m AHD.

2.2 Proposed Generator Room

There is concern the ground floor (L1) generator room, being proposed 500 mm below the flood planning level, will be vulnerable to inundation during the 1% AEP event when amplifying factors such as wave action, model confidence, and climate change are considered. If the generator will be critical to life-saving functions in the event of power outage, this risk of inundation and failure of the generator during the 1% AEP flood is unacceptable.

The Applicant may consider relocating the generator room to floor L2 (if servicing can be accommodated) to ensure the generator will be resilient to major flood events.

It is confirmed that, to date, the abovementioned issues have not been resolved by the proposed design.

Section 4.04 Safety & Security

An assessment of the application has raised a number of issues and it has not been sufficiently demonstrated that the proposed design is acceptable with respect to Crime Prevention Through Environmental Design (CPTED) and the development is considered to be inconsistent with Section 4.04 – Safety & Security NDCP

The following matters have not been resolved by the proposed design:

- a) Design amendments and management measures required to address any identified crime risk and safety issues must be provided. Several specific areas of concern have been identified including:
 - i. Areas of concealment within the car park, requirements for monitored CCTV, on site security/management, and a comprehensive lighting strategy.
 - ii. Extent of surveillance within the site and car park considering the proposed unattended lobby areas.
 - iii. The security of the 'end of trip' facilities.
 - iv. The bicycle parking area requires further security controls considering the layout of the car park.

Section 4.05 Social Impact

The proposal, notwithstanding that it is not recommended for approval, does have social and economic benefits. The development, as a landuse, would provide for a new health service facility, including updated day surgery facilities, which broadly is considered a positive in both social and economic terms to the wider community of the Newcastle Local Government Area (and probably beyond the Newcastle LGA). It is expected that the proposal during construction, and in operation, would also provide positive economic inputs to the broader Newcastle area and beyond.

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

Section 5.01 Soil Management

The extent of proposed earthworks is commensurate with that required to construct the proposed health service facility having regard to the slope of the land and is not expected to be contrary to the matters that must be considered. The quality of any fill material to be imported to the site would be controlled by appropriate conditions of consent if the proposal was to be approved.

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

Section 5.02 Land Contamination

Land contamination has been investigated and is considered suitable as detailed under SEPP (Resilience and Hazards) 2021 within the report above.

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

Section 5.03 Vegetation Management

The proposal includes the removal of a small amount of vegetation from the northern side of the site consisting of shrubs and three Casuarina trees (all planted in 2008 approximately). It is considered that the removal of this vegetation is acceptable in this instance having regard to the above Section of the NDCP 2012.

Section 5.04 Aboriginal Heritage, Section 5.05 Heritage Items & Section 5.06 Archaeological Management

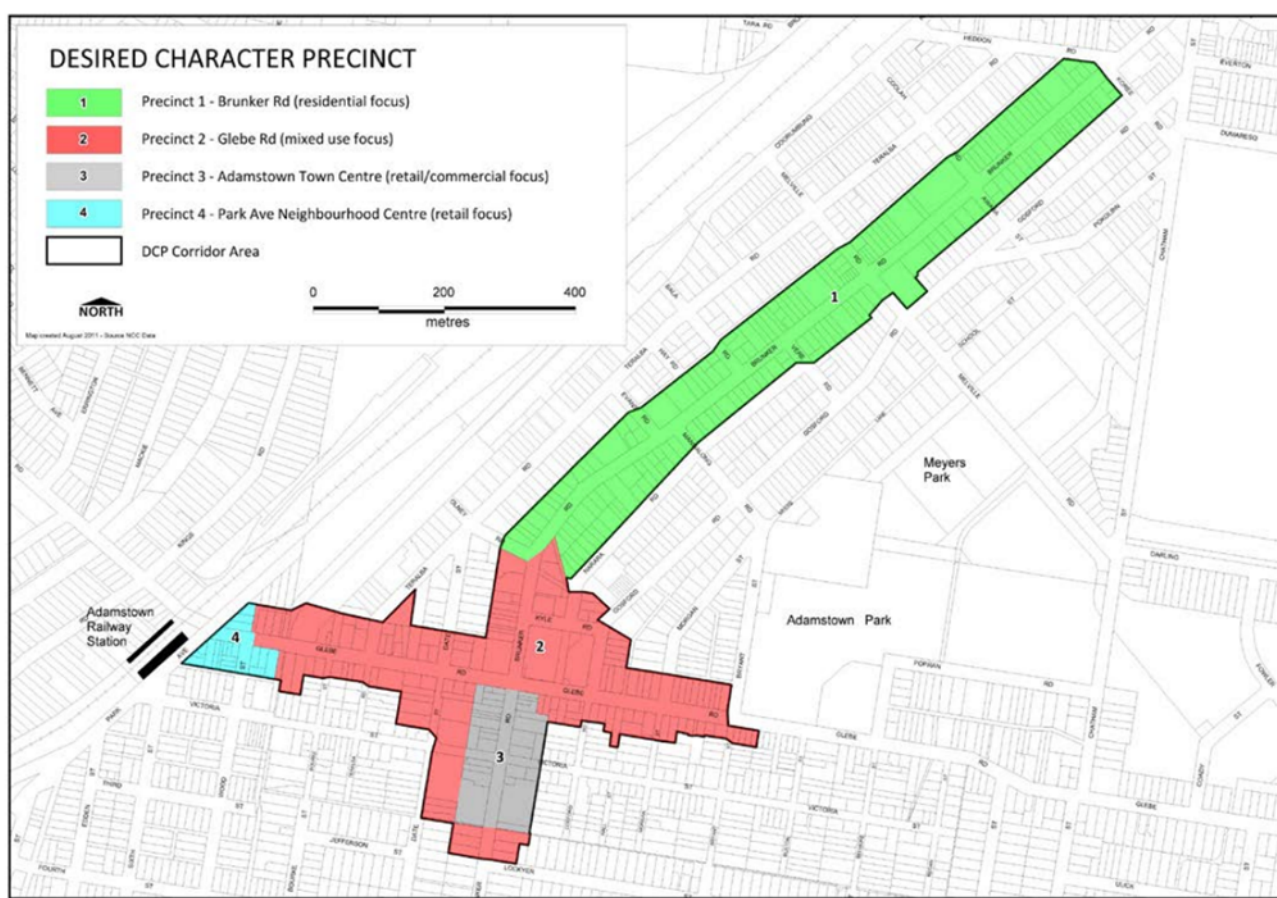
These matters were addressed under Clause 5.10 of the NLEP 2012 above.

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

Section 6.08 - Adamstown Renewal Corridor

The subject site is located within Precinct 2 (Mixed Use Focus) under Section 6.08 which aims to provide support for mixed use and commercial developments and has a target 300 additional dwellings within the overall precinct (See **Figure 13** below).

Figure 13 – Desired Character Precinct



Source NDCP 2012.

6.08.02 Building form

C. Building setbacks

Under Map 2, a zero setback to Date and Victoria Streets is allowed but this is subject to further controls within the DCP (i.e. control 14) as discussed below.

D. Upper building setbacks

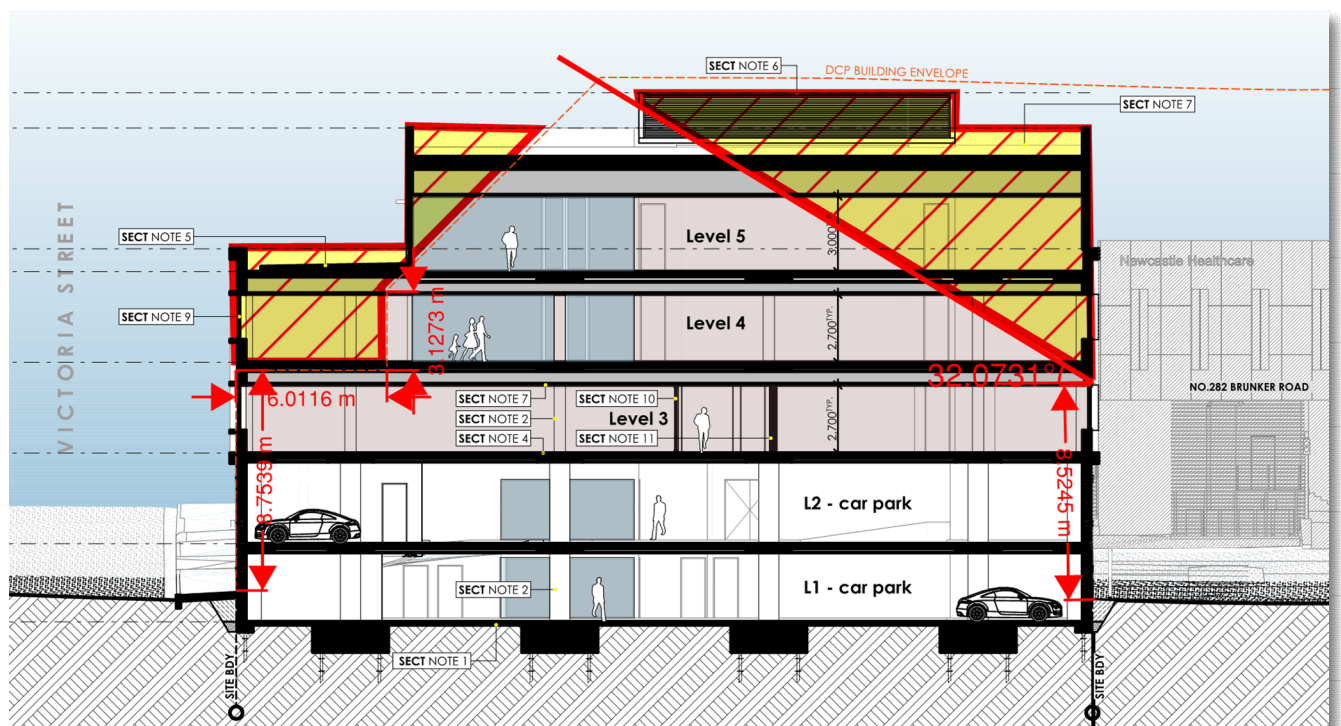
The proposal does not comply with the upper setbacks to the southern boundary, Date or Victoria Streets. The upper setback exceedances (plus the Date Street setback discussed below) all combine to highlight the urban design, character, streetscape, bulk scale and visual appearance impacts are too great in terms of the proposal and adopted requirements of the DCP. It is further considered that the proposals exceedances of the upper setbacks will likely contribute to additional overshadowing. It is considered that potentially a variation to a single frontage (e.g. Victoria Street as discussed by CN's UDRP) could be acceptable but not to all the setbacks in combination. It is considered that the allowable height and FSR, in conjunction with the DCP controls, is already generous and variations should be limited especially considering the existing character and notably lower heights and FSR's on surrounding sites to the west of the proposal.

It is further noted that the applicants indicate the intention to consolidate this site with the adjoining property to the south (i.e. 282 Brunker Road) so that the southern upper setback

would not be applicable. Notwithstanding this, the impacts of the from the development as submitted would still exist in practice in terms of urban design, character, streetscape, bulk scale and visual appearance impacts with only Building Code of Australia fire source setback requirements being resolved by the consolidation.

Figure 14 below shows the annotated upper setback envelopes for Victoria Street and southern boundary from Section 6.08 on the proposed elevations with the variations highlight in yellow and hatched. The adopted southern boundary upper setback envelope under the DCP intentionally has a lesser 32 degree angle to minimise overshadowing impacts on neighbouring properties.

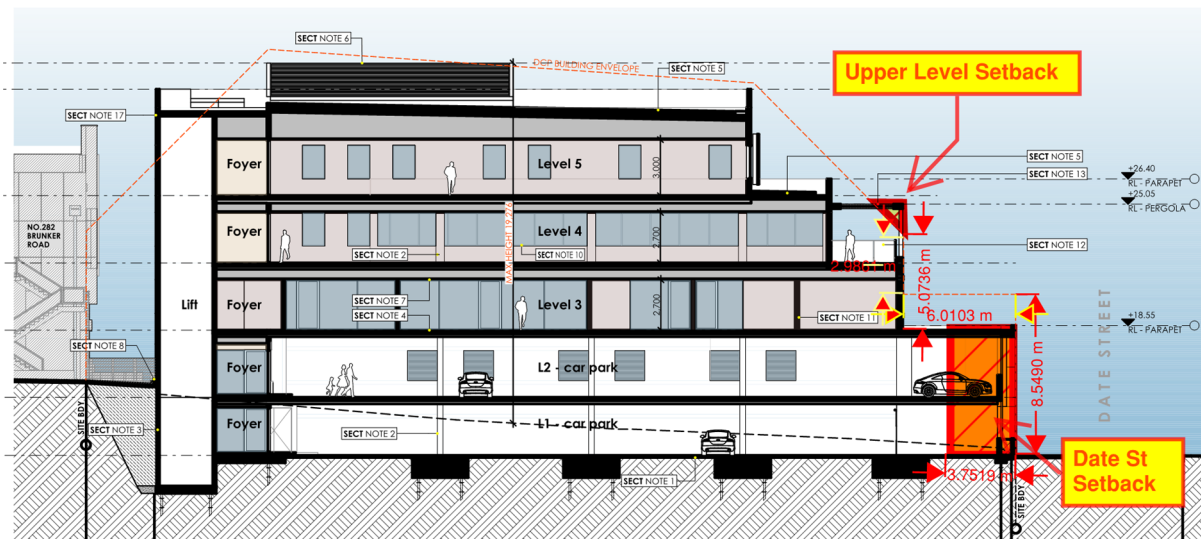
Figure 14 – Victoria St & Southern Upper Setback Envelopes (exceedances hatched yellow)



Source Archadia Plans December 2021 & NDCP 2012

Figure 15 further below shows the Date Street upper setback envelope exceedance which may small be contributes to the overall impacts. Additionally it shows the exceedance of the street front setback to Date Street discussed further below. These variations are highlighted in yellow and orange (southern in yellow and Date Street in orange).

Figure 15 – Date St Upper Setback Envelope & Street setback (exceedances noted & Date St setback hatched in orange)



E. Building design elements

The proposal does not present an active streetscape or street edge. Conversely, the majority of the street elevations to both Date and Victoria Streets reads as 1-2 storey blank walls with a limited pedestrian entry at the north eastern corner of the site. The proposal has very little interaction between the indoor activities and the street, along both Victoria and Date Streets, combined with a zero setback and large relatively unbroken walls, which results in unacceptable streetscape and visual appearance outcomes. The extent of landscaping is not considered to be sufficient to mitigate the appearance and design issues associated with the proposal.

6.08.03 Public domain

A. Traffic and transport

The proposed development introduces a new additional vehicle access within Victoria Street and does not comply with control 1 which precludes any new additional accesses.

The proposal does not meet the control 6 which requires:

"At-grade (ground level) car parking is only provided where:

- (a) it is set back behind other uses that provide activation to the street edge*
- (b) it is under cover and integrated into the built form and covered by upper levels of development or upper level open space/landscaping provision*
- (c) ceiling heights and floor levels allow for future adaption to other uses*
- (d) it is not within building setbacks*
- (e) it is not impeding an ability to meet minimum on site landscape requirements."*

The street activation aspects and landscaping elements of the proposal are not acceptable.

C. Open space and landscaping

The proposal does not meet control 14 in terms of 4.5 metre setback. In an assessment of the current application it has been recommended to provide at least 3.75 metre landscaped setback to Date Street to assist the streetscape and visual appearance interface of the development in context of the surrounding development, especially the western side of Date Street. It is advised that the 3.75 metre was required as a minimum as the site had previously dedicated land as road widening (0.75 metres) along the Date Street frontage (DP1221375 – 11/8/2016) when the neighbouring site to the south was developed (i.e. Stage 1 medical centre). The variation to this setback control (i.e. 3.75 metre) is shown in **Figure 15** above.

"14. Development along Date Street is setback a minimum of 4.5m for non residential uses to enable embellishment of the footpath and provision of street trees."

It is noted that the 6.08.02 *Building Form C - Building setbacks* allows for a general setback of zero metres for non-residential development (i.e. 'control 2'). It is considered that control 14 is, in effect, a specific or 'special provision' that applies in addition and over the top of the other general provisions and, would prevail in any conflict as is the case in this instance. It is argued that control 14 must operate in this manner, regardless of the control 2 - Map 2 provisions, as the alternative would be that control 14 had no effect, which would be undermining a clear outcome of the adopted DCP.

It is noted that Pre-DA (PR2018-00028) provided similar advice in relation to setbacks and envelopes including the 4.5 metres to Date Street (control 14) for a similar proposal on 2 May 2018 where that development also did not meet these requirements.

The overall effect is a significant departure from the NDCP's intended urban design outcomes and unreasonable impacts in terms of the planning outcomes in the area.

Section 7.02 Landscape, Open Space and Visual Amenity

The proposal is considered to constitute a *category 3* development under this section due to being over two million dollars in value. The documentation provided is considered to be adequate in terms of *category 3* but the landscape design outcomes for the proposed development are not considered to be acceptable.

The size of the large tree plantings, relying on planter box approach, are considered to be too large for their intended locations and not appropriate (which has also been raised by Ausgrid and CN's UDRP). Additionally, the north-western proposed tree is in conflict with the proposed stormwater design.

The proposed landscaping/setback combination proposed by the development is not considered to be sufficient to mitigate the streetscape appearance, bulk, size and scale of the proposal. The proposal will need to be redesigned to better integrate into the streetscape, providing increased setbacks to Date Street and improved outcomes along Victoria Street in terms landscaping, urban design, scale and setbacks.

Overall, it is considered that the landscape outcomes for the proposed development are not acceptable.

Section 7.03 Traffic, Parking and Access

The proposal has been assessed by CN's Senior Development Engineer. The proposal, as submitted, is not supported due to the issues outlined below.

1. Traffic Generation

The traffic report submitted with the proposal does not satisfactorily demonstrate that the traffic impacts of the development are acceptable.

- a) The report utilises traffic counts from 2014 and 2018 to estimate the traffic impacts of this development. It is also noted that a significant increase in traffic occurred in Date Street during the AM peak between counts taken in 2014 and 2018. In order to accurately assess the performance of the local road network pre and post development it is recommended that new traffic counts be undertaken.
- b) A revised traffic report is required justifying the traffic and parking impacts of the proposal and addressing the following:
 - The average traffic generation rates for a medical centre outlined under the TfNSW's Guide to Traffic Generating Development's be utilised for this development.
 - No allowance has been made for right turning vehicles in Date Street at Glebe Road in the development traffic distribution analysis – refer Figure 4 & 5 within the submitted traffic report. Two modelling options should be undertaken one with the right turn out of Date Street at Glebe Road and the other with the right turn being prohibited. In this regard the traffic report needs to address the flow on impacts for other intersections associated with the removal of the right turn movement.

2. Traffic Accident Data Analysis

The traffic report submitted with the proposal does not satisfactorily demonstrate that the development is acceptable in relation to accidents and traffic safety. The traffic report needs to investigate, analyse and address traffic accident data for the local road network and potential adverse impacts that may result from the increase in traffic associated with this development.

3. Parking

The traffic consultant has chosen to reduce the parking provision for this development based upon a 70% occupancy model. The proposal is unacceptable in this instance having regard to the following aspects:

- a) The proposal and associated traffic report has proposed to reduce the parking provision for this development based upon a 70% occupancy rate which does not comply with the parking rates under Councils DCP and the TfNSW's "Guide to Traffic Generating Developments.
- b) The proposed variation parking rates under Councils DCP and the TfNSW's "Guide to Traffic Generating Developments" would result in additional on street parking impacts where any future user does not operate on a 70% occupancy rate basis proposed. It is noted no development consent would be required for any new operator utilising the facility as a health care facility use but with a different (i.e. higher) occupancy rate business model.
- c) Any parking shortfall would result in an increase of the amount of on-street parking in surrounding streets adversely impacting on residential amenity.

- d) The traffic report's proposed parking reduction of 30% cannot be supported and full compliance with the parking rates outlined under Councils DCP and the TfNSW's 'Guide to Traffic Generating Developments' is required for this development.

4. *Car park layout*

The design of the car park is not acceptable having regard to Australian Standard 2890.1 – Parking Facilities and associated traffic and parking impacts.

The proposal is unacceptable in this instance having regard to the following aspects:

- a) The carpark design needs to be amended to demonstrate compliance with AS 2890.1 – Parking Facilities including that the car park layout be fully dimensioned (e.g. bays , aisles, entry/exit driveways)
- b) The second level of car parking does not permit circulation within the carpark and results in vehicles unable to find a carpark going back to the street causing additional traffic congestion.
- c) Provision should be made on-site for an adequate pickup /set down ('kiss & ride') facility.
- d) Provision should be made on-site for an adequate parking for ambulance/ patient transport.
- e) A designated pedestrian pathway should be provided through the car park to the building entry/exit.

5. *On-site deliveries, Servicing & Waste Management*

The proposal does not satisfactorily demonstrate that the development has adequate facilities for on-site deliveries, servicing and waste management and correspondingly, that the associated impacts are acceptable.

- a) Further details are required in relation to servicing. The submitted Statement of Environmental Effects indicates the bin enclosure area will be serviced from the Right of Way (ROW) and other bins being presented to Brunner Road for collection, while the traffic report states the ROW will not be utilised by this development.
- b) Adequate provision is to be made on-site for loading service, waste collection and maintenance activity in accordance with recent publication TfNSW's Freight and Servicing Last Mile Toolkit and Council's DCP 7.03 - Traffic , Parking & Access.
- c) Council's advice is all waste collection should be undertaken on-site and bins not presented to the street for kerbside collection.
- d) The Applicant is to confirm the largest service vehicle and accessibility to the site and demonstrate that it has satisfactory vehicular access via vehicle turning paths.
- e) All vehicles are required to enter and exit the site in a forward direction. In this regard it has not been demonstrated that adequate provision has been made for vehicles servicing the bin enclosure area from the existing ROW.
- f) The proposed health facility has not sufficiently demonstrated that design of the development is adequate to address servicing and delivery of aspects such as linen, food, medical supplies which would all need to be delivered to and from the site.

6. Vehicular/Site Access

The design and layout of the proposed car park access is not acceptable due to the operation of the proposed security gate and driver sight lines.

Particulars

- a) Car park entry exist gates are to be recessed 6.0m inside property to ensure vehicles entering the site do not obstruct vehicles/ pedestrians in the street.
- b) Driver sight lines are to be maintained to pedestrians at all vehicle car park exits and the existing ROW in accordance with AS 2890.1 - Parking Facilities 2004. The plans of the proposed design are required to be amended to demonstrate compliance.

Section 7.06 Stormwater & Section 7.07 – Water Efficiency

The proposal has been assessed by CN's Development Engineer. The proposal, as submitted, is not supported due to the issues outlined below.

The development proposes the construction of a 5-storey health services facility covering approximately 97% of the allotment with impervious surface. A 37 kL capacity on-site detention (OSD) tank is proposed in the semi-basement (L1) car park to receive runoff from a minimum catchment area of 1489 m² including roof, plant deck, and suspended forecourt areas.

Tank discharge is conveyed to an on-site pits and pipes system for treatment in a Spel Ecoceptor (or equivalent) pollutant trap before being disposed to an existing kerb inlet pit on Date Street.

3.1 Proposed Reuse

The Statement of Environmental Effects indicates water captured to the onsite detention (OSD) tank will be reused in the proposed building for toilet flushing. Notwithstanding this, the submitted Stormwater Management Plan does not contain any mention of reuse and proposes to connect the OSD tank to areas (i.e. plant deck and forecourts) that may not necessarily be suitable for reuse.

The proposal needs to address stormwater reuse on site and whether the proposed OSD tank will provide reuse and verify that the catchment areas connecting to the OSD tank will provide contaminant-free runoff that will be suitable for reuse.

3.2 Existing On-Site Stormwater System

The submitted Stormwater Management Plan proposes the removal of pits and pipes associated with the existing stormwater network at the development site. The proposal needs to demonstrate and identify via survey the full extent of the existing stormwater system to

demonstrate that the proposed removal of pits and pipes will not affect drainage of adjacent allotments.

3.3 Existing Date St Stormwater System

The Stormwater Management Plan proposes the connection of development stormwater to an existing kerb inlet pit in Date Street. Council's GIS system contains no information of this existing kerb inlet pit or the stormwater system that it connects to.

Section 7.08 Waste Management

The proposal has been assessed having regard to Section 7.08 and is not considered to be acceptable due to the following matters not being adequately resolved:

- a) Adequate provision is to be made on-site for loading service, waste collection and maintenance activity in accordance with recent publication TfNSW's Freight and Servicing Last Mile Toolkit and Council's DCP 7.03 - Traffic , Parking & Access.
- b) Council's advice is all waste collection should be undertaken on-site and bins not presented to the street for kerbside collection.

Section 7.09 – Advertising and Signage

The proposal only includes a single sign adjacent the pedestrian entry within Victoria Street. It is considered that the proposal is acceptable in terms of this section.

Section 7.10 – Street Awnings and Balconies

This section of the NDCP encourages the provision of awnings in commercial and pedestrian orientated areas, especially over public footpath. The proposal does not include any awnings over public footways although has a small awning setback from the street to the entry lobby.

The proposal does not meet the intention of this section of the NDCP. The overall design of the development remains a concern including the streetscape outcomes of which awnings could form component.

Contribution Plans

The following Local Infrastructure Contributions Plans are relevant pursuant to Section 7.18 of the EP&A Act noting that the proposal is not recommended for approval (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Section 7.12 Newcastle Local Infrastructure Contribution Plan 2019 (Update December 2020) (NLICP)*

It is further noted that the proposal is not entitled to any exemptions or reductions under section 1.6 of the Plan.

(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 development.

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

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- If demolition of a building proposed - provisions of AS 2601;

These provisions of the 2021 EP&A Regulation have been considered and would normally be addressed by conditions of consent where the proposal was recommended for approval.

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

The likely impacts of that 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 related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – As discussed under the NDCP and UDRP assessments, the proposal is not considered to be acceptable in terms of its urban design, character, streetscape, bulk, scale and visual appearance impacts.
- Access and traffic – The proposal, as discussed above under the NDCP assessment, the proposal is not considered to be satisfactory in terms of traffic, parking and access.
- Public Domain – The proposal, as discussed above under the NDCP assessment, is not considered to be satisfactory in terms of the public domain especially in regard to streetscape, urban design and character outcomes.
- Utilities – Adequate utilities exist in terms of street lighting. The proposal would be reliant on a new substation intended at the south western corner of the site.
- Heritage – Heritage was assessment under cl5.10 of the NLEP above.
- Water/air/soil impacts – Land Contamination and earthworks were addressed under SEPP (Hazards & Resilience) and cl6.2 of the NLEP respectively above. Any air or water quality issues stemming from construction would normally be addressed via conditions of consent where the proposal was recommended for approval.
- Flora and fauna impacts – It is considered that the proposal does not have flora or fauna impacts.
- Natural environment – Earthworks were addressed under and cl6.2 of the NLEP above.

- Noise and vibration – The proposal was assessed by CN's Senior Environmental Protection Officer.

An acoustic report has been submitted to support the application (Noise Impact Assessment Prepared by Reverb Acoustics Pty Ltd, October 2021. Report No. 21-2670-R1)

The report assessed:

- Impacts of existing road noise upon the development
- Site noise including mechanical plant and car park upon existing receivers.

The report indicated acoustic attenuation was required to attenuate noise impacts upon the development as well as to protect neighbours.

Attenuation measures include specific glazing requirements and roof/ceiling/wall construction.

Specific recommendations are included in section 7 of the report.

It is considered that the acoustic impacts associated with the development can be reasonably managed via implementation of the recommended attenuation measures.

- Natural hazards – The subject site is not affected by bushfire prone lands or mine subsidence. The flooding risk have been considered under the NDCP assessment above.
- Safety, security and crime prevention – The CPTED Principles have been considered under the NDCP assessment above.
- Social & Economic impacts – The social and economic impacts have been considered under the NDCP assessment above.
- Construction – It is considered that impacts resulting for construction could be addressed by conditions of consent if the proposal was to be supported.
- Cumulative impacts – Overall it is considered that the cumulative impacts of the proposal are not acceptable and the proposal is recommended for refusal.

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

- As discussed under the NDCP and UDRP assessments, the proposal is not considered to be acceptable in terms of its urban design, character, streetscape, bulk, scale and visual appearance impacts.

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

These submissions are considered in Section 5 of this report.

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

The proposal is considered, on balance, to not be in the public interest and inconsistent with the planning controls (both NLEP and NDCP) as discussed within the report having regard to:

- Parking
- Traffic Generation, Traffic Safety & Accidents
- Carpark Design/Layout
- On-site deliveries, Servicing & Waste Management
- Vehicular/Site Access
- Flooding
- Stormwater Management
- Urban Design, Character, Streetscape, Bulk, Scale and Setbacks
- Landscaping
- Overshadowing
- Easements/Traffic Conflict
- Crime Prevention Through Environmental Design (CPTED).

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 5.

Table 5: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act) – the proposal did not trigger any legislation having concurrence requirements.			
Referral/Consultation Agencies			
Electricity supply authority (Ausgrid)	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Ausgrid have raised issues with the tree species selected adjacent power lines within the current design.	No
Transport for NSW	Section 2.121 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.	TfNSW has assessed the proposal and raises no objections. TfNSW noted that Brunner and Glebe Roads are only classified regional roads, not state roads. See Attachment C	Yes

Integrated Development (S 4.46 of the EP&A Act) – no application was made for integrated development

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	The proposal has been assessed by CN's Development Engineer. The proposal, as submitted, is not supported due to flooding and stormwater issues.	No
Traffic	The proposal has been assessed by CN's Senior Development Engineer. The proposal, as submitted, is not supported due to parking, traffic generation, traffic safety, carpark design and layout, vehicular and site access, on-site deliveries, servicing & waste management issues.	No
Environmental	The proposal has been assessed by CN's Senior Environment Protection Officer and the proposal is considered to be satisfactory subject to conditions.	Yes
Waste	The proposal has been assessed by CN's Waste & Commercial Collection Manager. The proposal has not adequately resolved waste collection issues.	No
Urban Design Review Panel	The proposal has been assessed by CN's Urban Design Review Panel and is not considered to have resolved its urban design impacts	No
Heritage	The proposal has been assessed by CN's Heritage Officer and is considered to be acceptable as detailed within the report above at cl5.10 of the NLEP.	Yes

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 20 January 2022 until 4 February 2022. A total of five unique submissions raising concerns with the proposal were received. The issues raised in these submissions are considered in the table below.

Table 7: Community Submissions

Issue	Council Comments
<p>Parking</p> <p>Concern is raised regarding the on-going impacts in terms of car parking. The existing health care facility is already resulting in parking impacts and this proposal will exacerbate the situation. The proposal does not provide sufficient parking (i.e. being five spaces short). The existing on street parking and Council car park are already fully by 9:00 am.</p>	<p>The proposal has been CN's Senior Development Engineer and is not considered to be acceptable in terms of parking.</p> <p>Outcome: This issue has not been resolved.</p>
<p>Traffic Safety and Congestion</p> <p>Concern is raised that the proposal will further exacerbate the existing traffic safety problems within Date Street in terms of speeding combined with the level of development (including the new 'Foundry' development nearing completion). Date Street is already a well patronised 'rat run'. The Date/Glebe and Date/Victoria Street intersections are already very dangerous. It is recommended that speed humps be installed as a traffic calming measure. The traffic report is likely to be inaccurate as it was undertaken during Covid when less people were working and doesn't address the 'Foundry' development south along Date Street. Additionally, the traffic counts used were based on 2018 counts.</p> <p>It is suggested that the speed limit within Date and Victoria Street needs to be reduced to 40kmh and that Victoria Street should have no standing on one side.</p>	<p>The proposal has been CN's Senior Development Engineer and is not considered to be acceptable in terms of traffic impacts. This assessment particularly noted that the submitted traffic reports out of date based on 2014 and 2018 data.</p> <p>Outcome: This issue has not been resolved.</p>
<p>Character/Height/Bulk/Scale/Density</p> <p>Concern is raised that the proposal is not appropriate nature, scale or size for the character of the area and should be located in a site like John Hunter Hospital. It is suggested that the site</p>	<p>As detailed in the assessment above, it is considered that the proposal is not acceptable in terms of urban design, character, streetscape, bulk scale and visual appearance impacts.</p> <p>Outcome: This issue has not been resolved.</p>

would be better suited for a child care centre.	
Construction Impacts The proposal will result in unreasonable construction impacts especially in terms of traffic impacts.	As assessed within the report above, it is considered that construction impacts could be readily addressed by conditions of consent if the proposal was to be supported. Outcome: This issue has been resolved.
Driveway Access <i>"The photo of the driveway from Victoria Street is a private driveway for the Adamstown Vet to access their parking. Is this driveway to be used as part of the development?"</i>	The access will be used for waste and servicing but not the proposal parking (which is a separate new access). The proposed access arrangements are considered to pose a traffic conflict as it will not align with the existing easement benefits enjoyed by the Vets (i.e. 278 Brunker Road). Outcome: This issue has not been resolved.
Drainage system Concern is raised that the proposal will place further pressure on the existing local drainage system.	The proposal has been CN's Development Engineer and is not considered to be acceptable in terms of stormwater. Outcome: This issue has not been resolved.
Amenity Impacts Concern that the proposal will have negative amenity and acoustic impacts.	The urban design aspects of the proposal have been considered within the report above (e.g. under NDCP and UDRP) and are not considered to be acceptable. Outcome: This issue has not been resolved. The acoustic impacts have been considered by CN's Senior Environment Protection Officer and are considered to be acceptable (subject to conditions of consent). Outcome: This issue has been resolved.
Disabled Access The proposal needs to be provided with disabled accessible path around the building.	The proposal has been CN's Senior Development Engineer and is not considered to be acceptable in terms of pedestrian and disabled access. Outcome: This issue has not been resolved.
Awnings Under Section 7.10 Development Provisions Street Awnings and Balconies of the Newcastle DCP the proposal needs to provide awnings to Date and Victoria Street especially growing pedestrian volumes in the area.	The overall urban design issues with the proposal remain a concern. Awnings may be appropriate as part of a redesigned proposal. Outcome: This issue has not been resolved.

Crime Risk Concern that the proposal will increase crime rate within the area.	Concern has been raised in regard to specific design aspects as assessed under the NDCP (e.g. CPTED issues). Outcome: This issue has not been resolved.
Disaster Risk Concern is raised that the proposal would be prone to disaster risks such as earthquake.	It is unclear that this proposal would be at any greater risk of earthquake than other structures in the area. Conversely, it is likely that a new construction would be designed to better withstand risks such as earthquake. Outcome: This issue has been resolved.

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

5.1 Urban Design

The proposal was referred to CN's Urban Design Review Panel (UDRP) under the *Urban Design Review Charter 2020*.

The proposal was considered by CN's UDRP on the 23 February 2022. The UDRP advised that it was unable to support the proposal as presented. Significant amendments to the design, as well as provision of additional information, are required for the Panel to potentially support the proposal into the future.

The UDRP detailed that the proposal was not acceptable due to the following issues:

- i. The proposal is not acceptable in terms of 'Context and Neighbourhood Character'. The proposal has not undertaken an appropriate analysis of the site, its existing context or future context.
- ii. Both Date Street and Victoria Street are fairly busy, narrow streets, with existing residential development immediately opposite the subject site in both streets. The site's topography falls from the east to the west, and therefore the natural grade contributes to any visual dominance of a structure on the site, above lower scale residential development in Date Street. The narrowness of both the roadway in Date Street and its footpaths, further create a compressed space at the interface between commercial and residential uses. It is noted that the Applicant has previously agreed to contributing a 750mm wide strip of land to Council for the construction of a moderately wider footpath in Date Street, which has been completed. However, this section of roadway and footpaths remains quite narrow and is a physical and visual "pinch point" in the street.
- iii. The proposal is not acceptable in terms of 'Built Form and Scale'.
- iv. In visual terms, the proposal also presents two levels of parking immediately on the street boundaries of the property, and a hard street corner that is visually dominant and unsympathetic to the residential uses opposite. There is little street activation of the entire street frontages, with a narrow pedestrian entry from Victoria Street being the only point of activity and transparency. The overall dominance of the proposed building, and

its lack of engagement with the streets, particularly on the street corner and on Date Street, is of concern.

- v. The proposal includes two separate vehicle entry points to two levels of parking - one from Date Street and one from Victoria Street. While this is convenient for increasing the internal carpark efficiency, by eliminating the need for a ramp, it comes with the public disadvantage of further complicating the awkwardness for vehicle movements in Date Street, with the entry point also being relatively close to the intersection. It also creates two locations in which potential pedestrian / vehicle conflicts occur – with the Date Street crossing being the less suitable.
- vi. Nearby, more recent larger-scale building forms have been setback from the street boundaries to deal with the narrow streets and narrow footpaths, particularly on Date Street. The proposal is currently protruding beyond this setback.
- vii. A more appropriate, DCP-compliant setback from Date Street is required for consistency with existing development in the street.
- viii. If a 4.5m setback on Date Street (as required under the NDCP2012) was provided and used for landscaping, this could potentially contribute by visually softening this streetscape interface.
- ix. The proposal is not considered to be acceptable in terms of sustainability. The proposal needs to include PV Solar generation on the roof areas and include electric vehicle charging bays in the proposed parking areas.
- x. The proposal is not acceptable in terms of the landscaping outcomes.
- xi. Two Queensland Kauri pine trees are shown in walled planters. In good conditions this species can become a large tree. When planting in deep soil, it is more appropriate to have planting with edging which can allow some movement, rather than walled beds that are prone to damage from root systems. Walled planters for deep soil planting, especially for potentially large trees are not supported.
- xii. Careful planning for landscaping on structure needs to be considered early in the design to ensure adequate soil depths, volumes, drainage, access for maintenance, and integrated watering are accommodated.
- xiii. The structure needs to be designed from an early stage to accommodate loads from landscape areas so as to avoid later compromises to the landscape design.
- xiv. The illustrated landscape in the provided renderings is considered excessively optimistic in respect to the degree of soft-landscape screening able to be achieved to the west. The degree of visual softening that can be achieved by vines growing in planters is unlikely to be achieved in the location, and further consideration should be given to building material selection, setbacks, and detailing.
- xv. The proposal is not acceptable in terms of its massing and presentation.
- xvi. The proposal needs to be redesigned having regard to its massing and presentation so that it is more sympathetic and less dominating of its mixed-use surroundings. The residential nature of the surrounding area will continue with future development, and the subject site is at an important interface with lower density residential development.
- xvii. Material and colour selection needs to be reconsidered to present a less austere face to the streets, especially at ground level. Large expanses of black cladding are not supported for both aesthetic and heat-load considerations.

5.2 Land Contamination

This matter is discussed in more detail above under SEPP (Resilience and Hazards) 2021.

5.3 Overshadowing

The combination of the setbacks and envelopes variations under Section 6.08 of the Newcastle Development Control 2012 (NDCP) contributes to additional shadowing which

would otherwise not occur in this instance and is not acceptable. The proposal will need to be redesigned to address the shadowing impacts.

5.4 Easements/Traffic Conflict

Based on the current design, 278 Brunner Road would need to enjoy rights of access across the full width of the proposed driveway, with access available so that it could achieve forward entry/exit using the same intended driveway lanes as proposed within this development (i.e. to allow the same direction of travel in each proposed driveway lane). The development, as proposed, will result in conflict between this development and the rights under the existing easement.

5.5 Lifts

It has not been demonstrated that the two proposed lifts are sufficient for the proposed scale of the development considering proposed medical theatre component at the top floor (as opposed to a third dedicated lift for theatre). The proposal either needs to be redesigned or demonstrate that the proposed lifts will be adequate to service the development.

5.6 Fire Exits

An assessment of the proposal considered that it has not been demonstrated that essential fire safety aspects have been satisfactorily resolved within the proposed design. The proposed fire exits appear to make use of the accessway/Right-of-way shared with the veterinary surgery and other commercial buildings to the east of the subject site which is not acceptable. The proposal would need to demonstrate adequate fire safety design was achieved in terms of fire egress, its route and its safety, and ensuring that it is not obstructed.

5.7 Flooding Planning & Flooding

This matter is discussed in detail above under NLEP 2012 – Clause 5.21 and NDCP Section 4.01

5.8 Acid Sulfate Soils

This matter is discussed in detail above under NLEP 2012 – Clause 6.1.

5.9 General Assessment

The following matters have been assessed within the report above under NLEP and NDCP:

- Parking
- Traffic Generation, Traffic Safety & Accidents
- Carpark Design/Layout
- On-site deliveries, Servicing & Waste Management
- Vehicular/Site Access
- Stormwater Management
- Urban Design, Character, Streetscape, Bulk, Scale and Setbacks
- Landscaping
- Crime Prevention Through Environmental Design (CPTED).

6. 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 cannot be supported.

7. RECOMMENDATION

That the Development Application 2021/01754 for a *health services facility* at 43 Date Street, Adamstown be REFUSED pursuant to Section 4.16(1) (b) of the *Environmental Planning and Assessment Act 1979* subject to the draft reasons for refusal attached to this report at **Attachment A**.

The following attachments are provided:

- **Attachment A:** Draft reasons for refusal
- **Attachment B:** Applicants plans and associated reports
- **Attachment C:** Agency responses.