

COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-251 – DA2023/00886 - PAN-371287
PROPOSAL	Proposed demolition of existing buildings and erection of a mixed-use development comprising a pub, tourist and visitor accommodation-16 hotel rooms, retail premises and forty eight dwellings and associated works.
ADDRESS	Lot 2101 & Lot 2101 DP 755247 1-3 Brunner Rd Broadmeadow
APPLICANT	George Thomas Hotels (Premier) Pty Ltd
OWNER	George Thomas Hotels (Premier) Pty Ltd
DA LODGEMENT DATE	18 September 2023
APPLICATION TYPE	Development application
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 declares the proposal to be regionally significant development as the: <i>'Development that has a capital investment value of more than \$30 million'.</i>
CIV	\$31,557,409 (excluding GST)
CLAUSE 4.6 REQUESTS	CI4.6 - Height Variation (CI4.3) - 184.6% CI4.6 - Floor space ratio (FSR) Variation (CI4.4) - 46.39%
KEY SEPP/LEP	<ul style="list-style-type: none"> • 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 (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • Newcastle Local Environmental Plan (NLEP) 2012; • Newcastle Development Control plan 2012.
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Eleven submissions of objection received during the Public Notification period from 25 September to 9 October 2023.

DOCUMENTS SUBMITTED FOR CONSIDERATION	<u>Assessment report and associated documents:</u> <ul style="list-style-type: none"> • Attachment A: Draft Reasons for refusal • Attachment B: Applicants plans and associated reports <u>Documentation Submitted:</u> <ul style="list-style-type: none"> • Acoustic Report • Basix certificate • CI4.6 Variation Request - Height • CI4.6 Variation Request - Floor Space Ratio (FSR) • Contamination Report • Cost Estimate Report • Crime Prevention Through Environmental Design (CPTED) • Plan of Management • SEPP 65 - Design response report • Social Impact Assessment • Statement of Environmental Effects • Survey plan • Traffic Impact Assessment/Traffic Management Plan • Urban Design Statement • Waste Management Plan
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	30 January 2024
PREPARED BY	Damian Jaeger, Principal Development Officer (Planning)
DATE OF REPORT	12 January 2024

EXECUTIVE SUMMARY

This report details the City of Newcastle's ('CN') assessment of a development application (DA2023/00886) which seeks consent for the demolition of existing buildings and erection of a mixed-use development comprising a pub, tourist and visitor accommodation-16 hotel rooms, retail premises and forty eight dwellings and associated works.

The site does not contain any vegetation and is currently occupied by several buildings. The site has been predominately used for a pub and retail premises. The overall site is relatively flat and generally triangular in shape.

The proposed use is permitted with consent within the MU1 Mixed Use zone under the NLEP 2012 and is characterised as a combination of '*retail premises*', including a '*pub*', '*hotel or motel accommodation*' and '*shop top housing*'.

The development exceeds the 11.0 metre height standard with a proposed height of 31.1 metres (i.e. 20.3 metre exceedance, 184.6% variation) and exceeds the 2.0:1 floor space ratio (FSR) standard with a proposed FSR of 2.93:1 (i.e. 2185.8m² exceedance, 46.39% variation). The proposal has submitted cl4.6 variation requests for the building height and FSR standards.

The proposal was publicly notified and eleven unique submissions raised issues in relation to:

- Height exceedances/Overdevelopment/Character
- Parking/Traffic impacts
- Vehicular & Pedestrian access
- Acoustic/Amenity impacts
- Privacy/Amenity impacts
- Overshadowing
- CPTED/Anti-social behaviour/Hours of operation
- Waste impacts
- Landscaping
- Construction impacts
- Lack of amenities

Recommendation

Following consideration of the matters for consideration under Section 4.15(1) of the *Environmental Planning and Assessment (EP&A) Act 1979*, the provisions of the relevant State Environmental Planning Policies, the provisions of the Newcastle Local Environmental Plan 2012, the proposal is not in the public interest and is not recommended for approval.

Accordingly, pursuant to Section 4.16(1)(b) of the EP&A Act, DA2022/01316 is recommended for refusal based on the reasons contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

- The site is known as 1-3 Brunner Road Broadmeadow (Lot 2101 & Lot 2101 DP 755247) (See **Figures 1 & 2** below). It has a total area of 2,356 m² and street frontages to Brunner Road (65.06 metres) and Chatham Street (85.395 metres).
- The site is relatively level and generally triangular in shape.
- The site does not contain any vegetation and is occupied by several buildings including a pub located on the corner of Brunner Road and Chatham Street. The recent usage of the site has been predominately for retail premises at 3 Brunner Road and the existing pub at 1 Brunner Road.
- The site is affected by acid sulphate soils, mine subsidence and flooding.
- The site is also located towards the southern edge the Broadmeadow Place Strategy Area. The Place Strategy is in the preliminary stages and will involve developing a 30-year vision for the area, which will help guide future land use and infrastructure investment in the area.

Figure 1 – Location Map – 1-3 Brunker Road, Broadmeadow. Source: NSW ePlanning Spatial Viewer

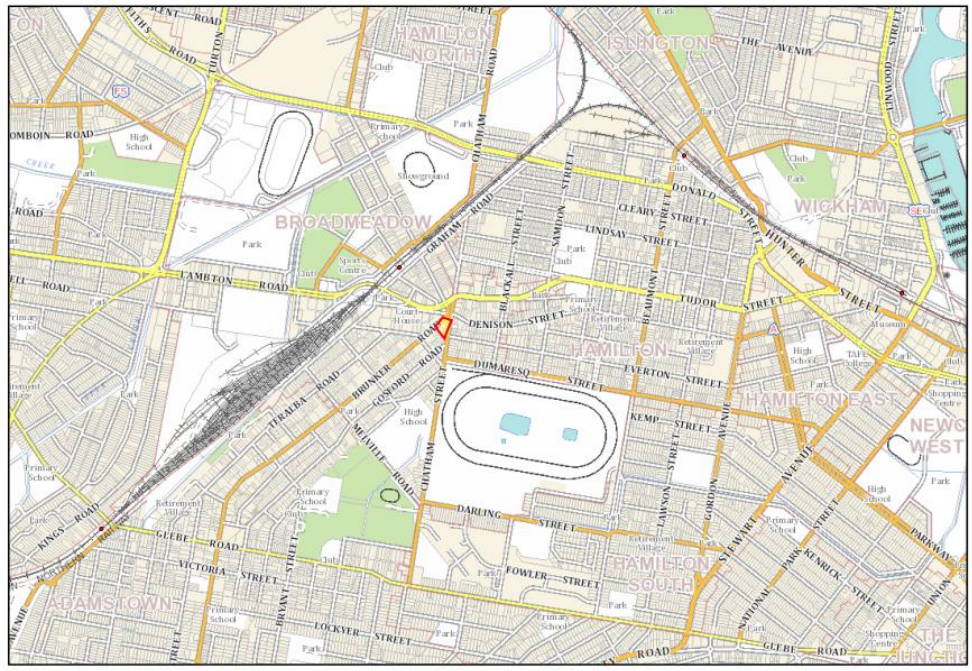
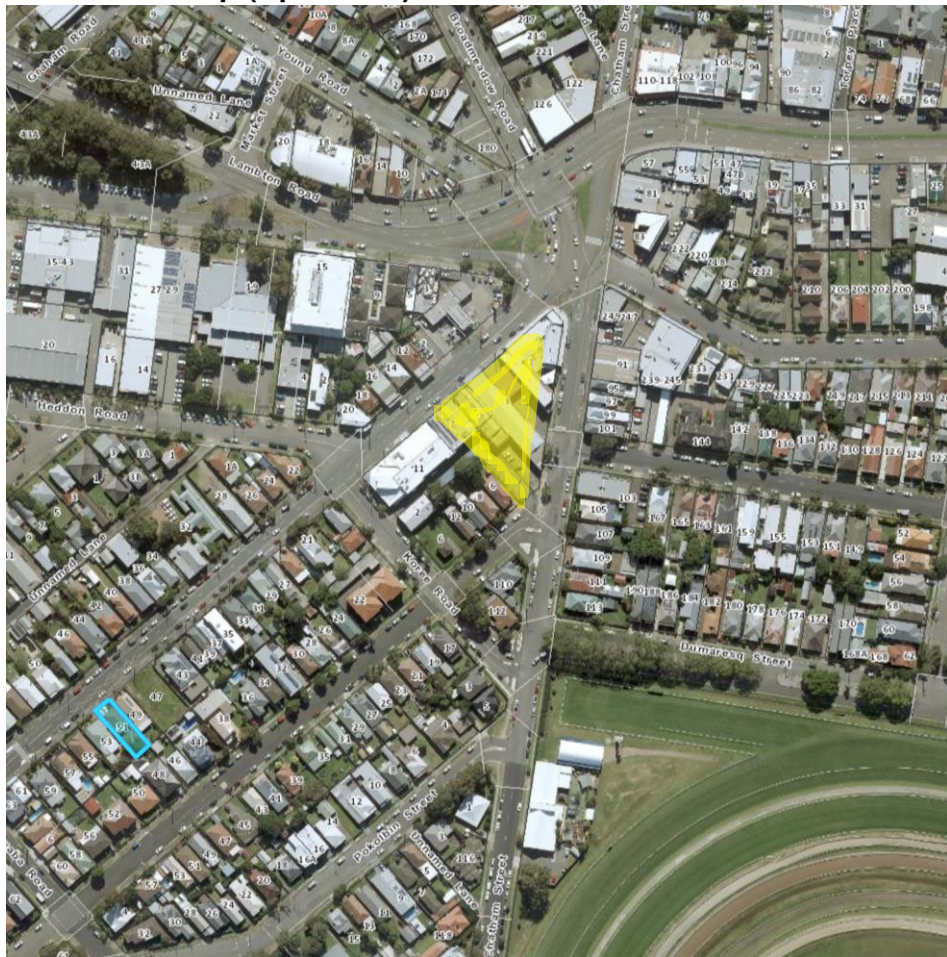


Figure 2 – Location Aerial – 1-3 Brunker Road, Broadmeadow. Source: City of Newcastle One Map (April 2021)



1.2 The Locality

The land uses in the surrounding area are quite varied. The northern end of Brunner Road joins the area historically known as 'Nine Ways' and consists of historic strip commercial development running east-west along Belford Street/Lambton Road. Similarly, there is a mixture of office, retail and other services south along Brunner Rd and parts of the associated side streets.

The areas beyond these roads are predominately residential in nature being a mixture of predominately single storey or two storey dwellings. Along Brunner Road to the south there are several medium density mixed use developments located in the Adamstown Renewal corridor of the NLEP 2012 (see **Figure 3-5**) which allows higher building heights and FSRs, but this is on a variable basis. The closest of these developments is under construction at the corner of Brunner and Koree Roads (see **Figure 3 & 4**).

The development on the site is relatively low scale and consistent with its neighbouring development along Brunner Road (see **Figure 5**). Similarly, **Figure 6** shows the scale of the development in the nearby Belford Street.

Both Brunner Road and Lambton Road/Belford Street are serviced by regular bus routes. Additionally, approximately 300 metres to the northwest is Broadmeadow Station.

Figure 3 - Photo of emerging larger developments along Brunner Road. Source: City of Newcastle (21/9/23)



Figure 4 - Photo of new development corner of Brunker/Koree Roads. Source: City of Newcastle (21/9/23)



Figure 5 - Photo of current scale of existing development in context of surrounds. . Source: City of Newcastle (21/9/23)



Figure 6 - Photo of current scale of existing development along Belford St. . Source: City of Newcastle (21/9/23)



2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The applicant describes the proposal within the submitted Statement of Environmental Effects as follows:

"The proposal is a mixed-use development involving demolition of existing structures and redevelopment of the Premier Hotel (land use characterisation of pub) and expansion of the existing hotel accommodation to 16 rooms (a type of tourist and visitor accommodation). In addition, one retail unit and one café (both a type of commercial premise) and 48 residential apartments (shop top housing) are also proposed. A landscaped courtyard is located at the ground floor interface with Chatham Street and landscaped communal open spaces are located at Levels 1 and 7. Parking will be provided across two basement levels via the new driveway on Chatham Street. Loading and servicing areas are internal to the site, also accessed from Chatham Street."

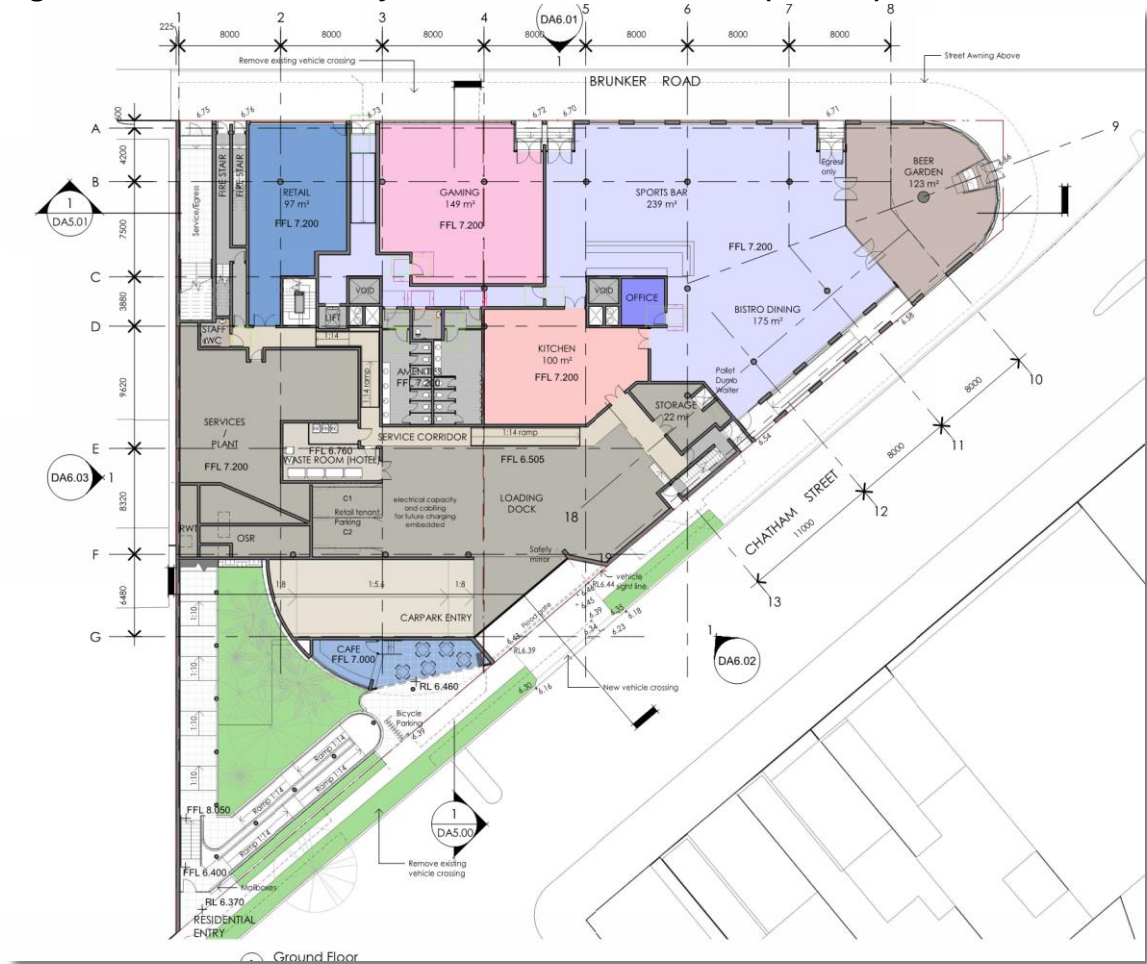
Table 1: Development Data

Control	Proposal
Site area	2356 m ²
GFA	Allowed GFA - 4712 m ² , Proposed 6897.8 m ²
FSR	Allowed 2.0:1, Proposed 2.93:1 - 46.39% variation)
Clause 4.6 Requests	<ul style="list-style-type: none"> • CI4.3 – Height of Buildings NLEP 2012 • CI4.4 – Floor Space Ratio NLEP 2012

No of apartments	<ul style="list-style-type: none"> • 16 Hotel rooms • 48 residential apartments (shop top housing)
Max Height	Allowed 11 m, Proposed 31.1 m (20.3m 184.6%)
Landscaped area	590 m ² approximately (over 25%).
Car Parking spaces	126 spaces required; 105 spaces provide (21 space variation)
Setbacks	Variable.

The figures below (**Figures 7-10**) provide a general outline of the proposed development.

Figure 7 - Ground Floor layout. Source: JSA Studio (16/8/23)



An architectural rendering of the Premier Hotel, a modern multi-story building with a curved facade. The building features balconies with horizontal slats and a section with green walls. The ground floor has large glass windows and is labeled "PREMIER HOTEL". The scene includes a street with cars, a pedestrian, and a clear blue sky with clouds.

Figure 10 - Ground floor view looking north along Chatham Street. Source: JSA Studio (13/6/23)



2.2 Background

The development application was lodged on 18 September 2022. A chronology of the processing of the development application since lodgement is outlined in **Table 2**.

The applicant did not undertake any pre-lodgement consultation with the CN (i.e. Pre-DA Advice or pre-lodgement advice with CN's Urban Design Review Panel).

Table 2: Chronology of the DA

Date	Event
18 September 2023	DA lodged
20 September 2023	DA referred to external agencies
25 September 2023	Exhibition of the application
27 September 2023	Assessment by CN's Urban Design Review Panel (UDRP)
9 October 2023	Request to withdraw application from Council to applicant
14 November 2023	Initial Panel briefing
22 November 2023	Class 1 Appeal (Deemed Refusal) lodged with the Land & Environment Court
23 November 2023	Further request to withdraw application from Council to applicant

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),*
- (b) *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.

The proposal is considered to be Integrated Development, as defined (s4.46) which is assessed further within this report.

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 (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 (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*

- *Newcastle Local Environmental Plan 2012*;
- *Newcastle Development Control plan 2012*.

A summary of the key matters for consideration arising from these 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)
BASIX SEPP	No compliance issues identified subject to imposition of conditions on any consent granted.	Yes
SEPP 65	<ul style="list-style-type: none"> • Clause 30(2) - Design Quality Principles - The proposal is contrary to the design quality principles and the proposal is contrary to the ADG requirements. 	No
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises development that has a capital investment value of more than \$30 million. 	Yes
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land <ul style="list-style-type: none"> • Section 4.6 - Contamination and remediation have been considered in the Contamination Report and the proposal is satisfactory subject to conditions. 	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> • Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. • Section 2.121(4) - Traffic-generating development 	Yes - Ausgrid have provided comments regarding investigation and design for likely network upgrades. Yes - TfNSW have provided their advice for CN's consideration.
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 5.10 – consideration of Aboriginal and non-aboriginal heritage • Clause 5.21 – consideration of flood impacts • Clause 6.1 – consideration of Acid Sulfate Soils • Clause 6.2 – consideration of earthworks 	No (Issues in terms of Cl4.6 variations to height & FSR, the design in terms of flooding and acid sulphate soils).

DCP	<ul style="list-style-type: none"> • Section 3.10 – Commercial Development • Section 4.01 – Flood Management • Section 4.03 – Mine Subsidence • 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 5.04 – Aboriginal Heritage • Section 5.05 – Heritage Items • Section 5.06 – Archaeological Management • Section 6.04 – Renewal Corridors • Section 7.02 – Landscape, Open Space and Visual Amenity • Section 7.03 – Traffic, Parking and Access • Section 7.06 – Stormwater • Section 7.07 – Water Efficiency • Section 7.08 – Waste Management • Section 7.10 – Street Awnings and Balconies 	No

Consideration of the relevant SEPPs is outlined below:

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

This policy 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 BASIX Certificate No. 13995952M prepared by Gradwell Consulting dated 9 June 2023 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 at **Attachment A**.

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

Section 4 – Application of Policy

Section 4(1) of the policy sets out the types of development to which this policy applies. As the proposal has three or more storeys and contains at least four or more dwellings the provisions of the policy are applicable in accordance with Section 4(1) .

Section 4(2) clarifies that if a particular development comprises development which Section 4(1) identifies and other development, the policy applies only to the part of the development identified under S 4(1) and does not apply to the other part. As such, the commercial

component (*retail premises*) of the development is not subject to the provisions of SEPP 65 in accordance with S 4(2).

It is advised that the SEPP 65 provisions were effectively 'transferred' into SEPP (Housing) on 14 December 2023 but the saving provisions under the SEPP provide that development lodged, but not determined, prior to the changed provisions, are to be assessed under the provisions which applied at the time of lodgement. In this respect the current application has continued to be assessed under the SEPP 65 provisions.

Section 28 – Determination of development applications

Section 28(1) of the policy requires the consent authority to refer a development application (DA) 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, S 28(2) of policy requires the consent authority when determining a DA to which the policy applies to take into consideration the following;

- (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'), The DA has undergone the following assessment:
 - The proposal was reviewed by the 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 both SEPP 65 and Clause 7.5(6) of the NLEP 2012. The development application was considered by the UDRP at its meeting of 27 September 2023.

An assessment of the proposal has been undertaken in relation to the Design Quality Principles, as detailed in **Table 4** below. CN is not satisfied that the current design is acceptable based on the matters raised by the UDRP.

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

Design Quality Principles
Principle 1. Context and Neighbourhood Character
<p><u>'General'</u></p> <p>- The UDRP noted that no consultation had occurred with it or CN Officers in respect to the proposal prior to its lodgment as a formal Development Application. Given the considerable departures from the pertaining controls, this was considered to have been an opportunity for introducing the proposal and the context in which it is intended. The proposal has been lodged as a stand-alone DA and proposes significant departures from the public policies, including variations to 185% height, 46% FSR, 21 space deficit for car-parking.</p>

- The proposal relies on broad statements of strategic plans and dismisses the existing controls and policies as unsound or unnecessary (e.g. NLEP 2012/NDCP 2012). If this contention has merit, a full holistic urban testing is required of the broader area by Council.
- UDRP considers such a proposal better suited to consideration as a planning proposal as working with Council on the needed strategic input is fundamental in determining appropriate development form of such an urban intensification project.
- As proposed, the proposition is difficult to justify on merit, and this has not been demonstrated.

a) Response to Country

- i. Urban Statement prepared by Blakely Global and the SJA architectural documents:
 - SEPP 65 Design Response – single cursory paragraph with a single graphic and a predetermined outcome limited to a particular part of the site is inconsistent with meaningful engagement, or as an appropriate design response.
 - Meaningful engagement needs to be sought early in the concept design stage and guiding through to the final built outcome. The application has not indicated engagement with Awabakal cultural representatives has occurred. The Panel noted the engagement presented was in context of a predetermined development. That is, decisions already made including a location for a predetermined type of cultural response without cultural engagement being sought to guide whether that is either desirable or appropriate. The Panel encourages the applicants to engage with cultural advisors at the concept stage so that the design approach and opportunities are meaningfully integrated.
 - The Panel notes mandatory the annual Continuing Professional Development (CPD) for registered architects anticipates the profession will translate awareness into practice.

b) Site and Place Analysis

i. Architectural Analysis

The wider place and connectivity needs to graphically describe:

- water systems
- canopy
- opportunities for repair of natural systems
- Movement and connectivity beyond the broad strategic documents.
- Actual LEP and DCP character currently intended and tested
- Public domain/spaces, street hierarchy and character analysis.
- Mine Subsidence considerations and implications are not outlined in site information.
- See previous comments Response to Country

The SEPP 65 Design Statement is generally helpful as a summary of strategic context but does not provide the design strategy justifying the proposed site response nor fundamental appreciation of the place. EG: The proponent confirmed the DA was developed with no flood information resulting in floor levels being raised late in the design. This results in flow-on implications for the streetscape interface conditions.

c) Site Strategy

- The premise of the proposed development is based on a site arrangement locating the hotel in its current location at the corner apex of the intersection, book-ended by a new retail space in each of Brunker Road and Chatham Road, with hotel entry in Brunker Road, residential entry at the southern end of the site, with servicing from Chatham Road.
- Broadly this arrangement has merit to be tested.
- The proponent confirmed mining tunnels need to be grout-filled adding \$3M+ to construction costs therefore the development strategy is based on 'feasible' development.

However:

- i. The proposed departures from the FSR and height, urban form and site arrangement are not tested against a complying development in an urban setting.
 - There is no strategy derived from the public domain spatial quality of the large Nine-Ways intersection space that could be a high quality light rail transport hub with exemplar public space and pedestrian amenity.
 - No testing of the public domain strategy or outcome was presented. Rather the proposal is private domain focused and limited in scope to a single site

- *No design exploration of street hierarchy and testing decisions for locating residential in the street with the highest amenity was presented – consider noise protection, street tree opportunities, late-night safety being above a hotel etc.*
- *Being located on a prominent corner appears is the focus of the spatial dialogue. As a result, no spatial sense of this development speaking to a wider urban context was presented noting that envelopes within the SEPP 65 Design Statement presented were generalized and absent of wider strategic and spatial context.*
- *No testing of alternative responses and arrangement of massing was presented. The applicant confirmed the design position is relying on broad strategic objectives – Metro Plan, Hunter Regional Plan, and Renewal Corridor Plans through the lens of the site owner's interpretation. The Panel notes the design intent has dismissed the current public controls as inadequate or inappropriate. The new Growth Corridors DCP is not used to inform the argument for the height and density proposed.*
- *While there may potentially be value in urban testing for uplift, the Panel considers this must be part of a coordinated, broader urban testing project for the wider Broadmeadow area, not as a stand-alone single site application.*
- *The intent of creating a 'social hub' is not translating into the design response partly due to the development as a stand-alone proposal, and partly due to the functional arrangement on the site. The supposition that the proposed development will act as a major catalyst for the area is not interrogated, nor is it evident that the activation component proposed is materially different to that of the existing Premier Hotel.'*

Officer Comment

The context and neighbourhood character aspects are not acceptable in this instance as detailed by the UDRP assessment. The UDRP considered that the *Designing for Country and Connecting with Country* elements has not been adequately addressed. The building height and FSR variations have not been justified in context of the design outcomes in UDRP's consideration.

Principle 2. Built Form and Scale

a) Urban Strategy

- *It is unclear why 10-storeys are suitable here when that is not the intended future character under the current public policies.*
- *The SEPP 65 Design Statement testing is provided to support the stand-alone DA, however, there is no supporting masterplan strategy which appears is needed for such a proposal.*
- *Currently, the site appears is some distance removed from the intended higher density areas, therefore such a development proposal requires significant strategic urban testing.*
- *No information was presented regarding further amalgamation or interface with remaining lots within the zone given the site is close to the lower zone transition.*
- *There are no meaningful alternative design responses to justify why this design is superior to a complying development – either in scale and site arrangement, testing of envelopes, or capacity for activation.*
- *As proposed, the development results in excessive bulk in scale within the current policy context and likely future development at this point in time.*

b) Urban Form

- *It is unclear why there is no massing along Chatham defining the road - single storey proposed then broken by the ramped residential entry and landscape to Level one with the street definition limited to an extension of the podium edge that provides cover for the ramp.*

- No real spatial interrogation of the current permitted maximum building heights. This goes back to the lack of a public domain/space strategy driving the sought change. What are the public benefits and public space implications for LEP variations needed for 10-storeys for all or most Nine-Ways intersection corner sites, compared to LEP compliant urban form, or minor variations for uniform 11m for corner elements?
- This stand-alone DA significantly changes the urban form of the Nine-Ways intersection character in isolation.
- Proposed arrangement of massing loses the street definition intended – Chatham Street appears as Ground Floor massing that becomes a ribbon extension of the podium although it is unclear how the podium relates spatially to the development program and then in the street.
- The Panel notes that the massing tests submitted tend to demonstrate why the proposed is not appropriate. EG: Fig 29 of the SEPP 65 Design Statement demonstrates the subject site benefits more than other sites despite their similar spatial context within the intersection and in the absence of a developed public domain and urban plan strategy to base it on.
- While north-aspect residential is positive in principle, loading this onto Brunner Road results in a loss of built definition for Chatham Street.

c) Massing and program

- The program strategy and its resolution is unclear.
- Ground floor internal program & podium arrangements appear disordered, landscape and internal/external relationships then become disparate and disjointed, the entry sequencing presents significant CPTED concerns, These require reconsideration.
- The ground floor arrangement, movement and interrelationship between hotel and residential spaces also requires reconsideration. The differing security and access needs of the hotel, gaming, hotel accommodation, retail spaces and their interfaces with residential considerations should inform overall site planning and access points. Carparking and access to it, also needs to be considered in this regard.
 - o Eg: Why is the gaming area along any street front instead of located internally? The proponent confirmed this space would be open screening for smokers. This is not considered acceptable – an outdoor smoking area can be provided separately particularly in context of recent regulation prohibiting lights, sounds and any public 'advertising' of gaming in the streets.
 - o Plant, loading, egresses, extensive residential ramps and the gaming room present a poor interface resolution.
 - o How does waste get from the basement to collection? Note that Residential waste collection must be in conformity with CN policies – irrespective of whether it is intended to be privately contracted. How do the swept paths work for the waste pickup?
 - o Note a substation also likely needed.
- The pedestrian movement strategy is unclear.
- What is the street presence and character of the hotel entry and separately for the residential – neither are communicating a clear address or street presence – noting the residential massing is located along Brunner Road, while the residential entry is dislocated at the far southern corner of the site. This is indicative the site strategy requiring further consideration.
- As proposed, hotel guests access the hotel lift via a long dog-legged corridor also shared by the only entry to the gaming room. This is not supported.
- It is unclear how the gaming room is surveilled within the pub program with access separate from the main hotel area.
- The residential entry proposes a series of constructed 1:14 ramps across the Chatham Road boundary that has the effect of creating a barrier to the intended ramped landscape interface beyond. It is further disengaged from the street by the podium structure limiting the view into the site. These cross-ramps then continue via the internal path rising in a series of uncomfortable 1:10 ramps. It is unclear how this is a superior public domain interface outcome compared to a visible street entry to a lift lobby for the residential in Chatham Road, noting that deep soil landscape can be incorporated with alternative responses and more directly engage with the street?

- *The podium strategy is unclear. Somewhat dislocated from the residential users being associated with the hotel level. The purpose of the skylights to the driveway and loading dock below is unclear.*

The underlying site strategy has not demonstrated why decisions have loaded the residential massing along Brunker Road while the more residential character of Chatham Road is largely ignored without interrogating whether the single storey with 'ribbon' extension of the podium is an appropriate adequate form. '

Officer Comment

The UDRP has raised numerous issues with the overall design of the development, and it is not considered acceptable in terms of building height, built form, scale, massing, context and overall layout.

Principle 3. Density

UDRP Comment

- *The proposed GFA is not justified on merit of the development as proposed.*
- *Being a corner site and a 'desire' for the quantum of development does not justify the sought variations particularly where the new DCP has not proposed this corner be of the height and scale as other parts of the Broadmeadow urban renewal.*
- *Further urban testing and coordination with NSW housing strategies is required by Council for the wider Broadmeadow area before the proposed density and its urban form could be supported on merit.*

Officer Comment

The UDRP has confirmed that there is not a sufficient basis to support the extent of FSR variation proposed by the submitted development. The Panel also noted that the development is inconsistent with the recently adopted revisions of the Newcastle DCP 2012 and associated Section 6.04 - Renewal Corridors which applies to the subject site.

Principle 4. Sustainability

Carbon Footprint

All new developments need to be considering and addressing their carbon footprints. It is no longer acceptable to be continuing a business-as-usual approach given the rapidly changing conditions and known direction of policy changes – including tightening energy performance requirements.

- *New requirements and support for EV charging:
State Environmental Planning Policy (Transport and Infrastructure) 2021 see Subdivision 3 of Division 17*
- *To be addressed:*
 - a) Decarbonise energy supply
 - *No gas connections – stranded assets for redundant pipework have long term impacts of whole life-cycle resource wastage, which will be an issue for all new development.*
 - *Heat pumps for units or alternative electric means for hot water*
 - *Induction cooktops (if provided in staff/communal areas of commercial tenancies)*
 - *Consider hot water storage as a type of 'battery' when heated by solar/PVs.*
 - b) Accommodate on-site power generation and storage
 - *Rooftop PVs and battery storage (need for back-up storage as whole energy supply transitions)*

- Green roofs can help cool roofs for improved PV performance
- Potential for feed in

c) EV charging capacity

- Ensure charge capacity for all residential car spaces, as well as shared rapid charge spaces. (Refer to requirements of NDCP 2012).
- New requirements and support for EV charging: see State Environmental Planning Policy (Transport and Infrastructure) 2021 see Subdivision 3 of Division 17

d) Passive design and thermal performance of the building fabric.

- Note new BASIX performance - <https://pp.planningportal.nsw.gov.au/BASIX-standards>
- Higher BASIX thermal performance standards will require 7 stars based on NatHERS rating system plus flags other changes.

Visible Light Transmittance through glazing should not be excessively dark, for internal amenity and external appearance reasons. Transmittance through glazing should not be reduced by more than 30% by tinting, (i.e. 0.7 VLT) and external shading should be provided in preference to any tinting.

Officer Comment

The proposal, if it was to be supported, would need to resolve addressing the issues raised by the UDRP above.

Principle 5. Landscape

UDRP Comment

'The Panel makes the following comments on the proposed landscape strategy:

- No coordinated landscape strategy was submitted. Landscape comprised a hand-drawn single sheet at concept stage with the DA. This is inadequate detail for a development of the scale proposed.
- The podium strategy appears disconnected. It is presented as an element but not well integrated.
- The residential entry point and indirect ramping from Chatham Road to a podium space that is ill-defined and unconvincing.
- It is not evident why there is there a very large skylight that appears to be situated over the loading dock and basement entry.
- Planting on structure should include sufficient soil volumes for long term landscape viability, with minimum volumes to conform with ADG recommendations. Structure should be checked at DA stage by engineers to ensure capacity for loads of soil and impacts of necessary penetrations for drainage. All landscape that contributes to the appearance of the development must be capable of safe, workable access for maintenance on a regular basis – without the need to traverse apartment interiors.

Green facades and screening that contribute to the external appearance of the building must be purpose-designed by experts in the field, who should also prepare detailed maintenance and renewal programs for the longer term viability of the installation. Green facades should not be reliant upon access to private apartments for their maintenance.'

Officer Comment

The landscape design and details are considered to be insufficient and needs to be further developed to address the above issues.

Principle 6. Amenity

a) SEPP 65

i. Residential

- SEPP 65 solar and cross ventilation is achievable.
- Multiple residential lift cores is positive. Both have natural daylight and potential for natural ventilation.
- Unit layouts are generally efficient.
- Residential entry sequence and large lobby area require reconsideration including street interface, distance to lifts, scale of the lobby and relationship to the podium communal open space as previously noted.

ii. Pub and Hotel accommodation

- Hotel lobbies have no natural daylight or ventilation. There is no evident hierarchy of the multiple entry spaces to the hotel, and no entry is generous or inviting.
- Ground floor entry to hotel accommodation is indirect and has poor visual connection separated by the gaming room.
- Gaming room location is therefore in conflict with the accommodation and streetscape activation requirements – people must pass the gaming room plus travel via furtive spaces created with dog-legged configuration and lift location also not visible from the street.

b) FL-FL heights

- 3m has not been supported for SEPP 65 development for many years. This is further considered in context of waterproofing issues as a significant contributor to the Design and Building Practitioners Act being established.
- FL-FL of 3m is inconsistent with the ADG as accepted by NSWLEC at 3.1m noting it is now increasingly accepted industry practice to provide FL-FL clearances of 3.2m for DBP Act compliance post any DA approval. Note: LEC Commissioners are increasingly requiring the additional height in s34 agreements where FL-FL height is raised as a contention.

Note: The Panel is aware of hob details with step over thresholds and unequal internal and external FLs between living room and balconies. This is not supported as good design outcome by the CN UDRP due to issues for: general residential amenity, potential as a trip hazard, and for equitable DDA where that may be a requirement. The Panel strongly recommends a minimum floor-to-floor of 3.2m for residential.'

Officer Comment

The proposal is not considered to be an acceptable design outcome and there are various design issues which would need to be resolved.

Principle 7. Safety

UDRP Comment

- 'Given the potential for CPTED issues arising from different uses on site, their different needs, and the intended late trading hours of the hotel, it is essential that the physical design of the complex provides management with operational ease, and capacity to reasonably adapt over time, to ensure the ongoing optimal safety of residents, guests, staff and patrons. The physical layout and access to different areas, including car parks and back of house, need to be such that they are inherently safe, with layers of security restricting permeability into more sensitive areas. As presented, there is no evident site strategy to ensure this will occur. Such a strategy cannot be optimally applied as a retrospective action – it needs to inform site planning.

- *As documented, the Ground level arrangements are introducing poor CPTED outcomes in many respects. E.g. – gaming and retail straddle what appears to be the main hotel entry. It is not clear which entry is intended for use Hotel accommodation guests.*
- *Many furtive areas for the loading dock and car park. There appears to be a fundamental vulnerability of back-of-house areas from the shared entry with the car parks.*
- *Interaction of the pub parking and resident access is unclear.'*

Officer Comment

The design of the proposal results in various CPTED issues which is not acceptable as detailed within the above assessment .

Principle 8. Housing Diversity and Social Interaction

- *The Panel notes a general mix of units is proposed.*
- *No accessible / Platinum Level type units are proposed. While currently not required in CN's policies, the Panel notes this should be considered for consistency with equitable offering of housing types for DDA.'*

Officer Comment

The UDRP comments are noted. If the proposal was being supported, provision of accessible/platinum level dwellings would be pursued.

Principle 9. Aesthetics

UDRP Comment

- *'The Panel agrees that this is a prominent site with an important cultural history. There is potential for a high quality development on this site.*
- *Architectural rigor is needed for materials with high quality edge detailing to achieve architectural quality and character intended and to demonstrate a high-quality public contribution.*
- *Use of high-quality durable materials is critical. Over-reliance on applied finishes and/or low-quality façade finishes requiring frequent maintenance would not be supported.'*

Officer Comment

The UDRP comments are noted and would be pursued in any development if the proposal was to be supported.

Recommendation

UDRP Comment

'The UDRP was not convinced on the basis of the submitted proposal that it has demonstrated capacity to act as a catalyst to the immediate area for creating a vibrant locality that supports a range of quality residential and entertainment functions. The UDRP does not support the proposal in its current form. The UDRP advises that there are significant issues with the proposal. '

Officer Comment

The overall assessment by the UDRP confirms that support for the proposal is not given and that there are significant issues which need to be resolved.

A SEPP 65 Design Verification Statement (dated 16 August 2023, prepared by JSA Studio Architects) was submitted in support of the proposal pursuant to Clause 29(1) of the *Environmental Planning and Assessment Regulation 2021* ('EP&A Reg 2021'). This statement is required to confirm that a qualified designer, which means a person registered as an architect in accordance with the *Architects Act 2003* as defined by Schedule 7 Dictionary of the EP&A Reg 2021, directed the design of the architectural drawings and provides an explanation that verifies how the design achieves the design quality principals and objectives of the ADG. While the Verification Statement has been provided the addressing of the design quality principals and objectives of the ADG are incomplete.

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 S28(2) the consent authority must take into consideration when determining a DA for consent to which SEPP 65 applies, the provisions of C 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 areas;

- 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 proposal has been undertaken having consideration for the ADG and the provisions of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development ('SEPP 65') and has found the following matters would need to be addressed:

1. 3D Communal and public open space

a. Objective 3D-1 - design criteria 1

Insufficient information is submitted to undertake a full, appropriate assessment of the application in regard to the communal open space objectives described in this part of the ADG (an area equating to a minimum 25% of the site).

The submitted '*Sepp 65 Design Report Appendix A - ADG Compliance Table*' ('the Table') indicates 826.1sqm of communal open space is provided, equating to 37% of the site area.

The area of residential communal open spaces, measured in square meters, has not been demonstrated on the submitted architectural drawings.

Whilst initial assessment indicates the communal open space provided at Level 1 has an area greater than 25% of the site, the area of each communal open space needs to be labelled on the floor plans and hatching shown to graphically demonstrate the floor space included in the measurement, to enable assessment to be undertaken to confirm compliance.

b. Objective 3D-1 - design criteria 2

The submitted Table indicates the proposal complies with the requirement for a minimum of 50% direct sunlight to the principal useable part of the communal open space for a minimum of 2hrs between 9am and 3pm at mid-winter. Reference is made to the submitted '*Sepp 65 Design Report Appendix B - 3D Communal & Public Open Space Views from the Sun*', but no further explanation is provided.

This Report shows that the only communal open space which receives at least 2hrs solar access between 9am and 3pm at mid-winter is the additional landscape area and circulation space on the Level 1 podium in the south most corner of the subject site. In the absence of sufficient written explanation, it is assumed that the applicant seeks to rely on this additional landscape area and circulation space as the '*principal useable part of the communal open space*' to satisfy the provisions described in this part of the ADG.

This is not accepted. The above-mentioned area is not of a suitable size, design, or location (relative to the residential component it is meant to be serving) to be considered the principal useable part of the communal open space as intended by the ADG.

The remainder of the residential communal open space on the Level 1 podium located towards the centre of the site is more consistent with the intent of the '*principal useable part*'. However, due to self-shadowing from the proposed building, over 50% of this area is in shadow from 10am onwards at mid-winter and as such does not comply with the requirements described in this part of the ADG.

Design amendments are required to address this non-compliance.

c. Objective 3D-2

The residential communal open space has not been designed to facilitate a range of activities. No facilities are provided within the residential communal open spaces beyond passive turfed areas.

2. 3E Deep soil zones

Insufficient information is submitted to undertake a full, appropriate assessment of the application in regard to the deep soil objectives described in this part of the ADG - as detailed below.

a. Objective 3E-1 - design criteria 1

A variation to the deep soil requirements described in this part of the ADG (a minimum of 7% of the site with a minimum dimension of 6m) is proposed.

The total site area equals 2356sqm of which 7% equals 164.92sqm.

The submitted Table indicates 143sqm of deep soil zone is provided, equating to 6% of the site area. The written justification provided for the proposed variation explains:

'The landscaped area has been maximised to compensate for the shortfall. 27% has been provided in excess of the 20% required under the DCP'

The area of the deep soil zone, measured in square meters, has not been demonstrated on the submitted architectural drawings.

It is acknowledged that achieving the deep soil provisions may not be possible due to the extensive site coverage with non-residential development at ground level. However, for any variation to the deep soil requirements to be supported having a balanced view, the application needs to demonstrate that meaningful attempts have been made to meet the minimum requirements (and thus reduce the extent of non-compliance) have been made.

The area of each deep soil zone needs to be labelled on the floor plans, and hatching shown to graphically demonstrate the floor space included in the measurement, to accurately inform a merit-based assessment of any variation to the minimum requirements described in this part of the ADG. Noting that a minimum dimension of 6m needs to also be demonstrated for the deep soil zone to contribute towards the minimum deep soil area requirements of the ADG.

3. 4B Natural ventilation

Insufficient information is submitted to undertake a full, appropriate assessment of the application in regard to the natural ventilation objectives described in this part of the ADG - as detailed below.

a. Objective 4B-3 - design criteria 2

Of the 48 apartments proposed, 15 are cross-through apartments. (i.e. These are apartments R2.01, R-2.04, R-2.05, R3.01, R-3.04, R-3.05, R4.01, R-4.04, R-4.05, R5.01, R-5.04, R-5.05, R-6.01, R-6.04, and R-6.05).

The submitted Table states cross-through apartments are 14.3m deep.

The overall depth of all cross-through apartments have not been dimensioned on any of the submitted architectural drawings.

Whilst initial assessment has found that the overall depth of the cross-through apartments generally complies, such depth is measured glass line to glass line needs

to be dimensioned on the relevant floor plans to enable assessment to confirm compliance.

4. 4C Ceiling heights

Amendments are required to address the non-compliances detailed below.

a. Objective 4C-1 - design criteria 1

The submitted Table indicates the proposed development complies with the regards to the minimum ceiling heights described in this part of the ADG.

A floor-to-floor height of 3m has been shown for all levels containing apartments (Level 2 to Level 8). This is insufficient to achieve the minimum required ceiling height from finished floor level to finished ceiling level of 2.7m to habitable rooms, and potentially even 2.4m to non-habitable rooms where structure, services, set downs, and finishes need to also be accommodated.

Furthermore, the site is located within the MU1 Mix Use zone as such the increased ceiling heights for ground and first floor described in this part of the ADG are also applicable (i.e. a minimum ceiling height of 3.3m measured from finished floor level to finished ceiling level).

The submitted Table does not acknowledge or address the increased ceiling heights required for the ground and first floors. Instead, the submitted statement appears to only consider the ceiling height requirements for apartments and incorrectly indicates the proposal complies with the minimum ceiling heights described in this part of the ADG.

The ceiling heights, measured from finished floor level to finished ceiling level, for the ground and first floor of all buildings have not been dimensioned on any of the submitted elevations or sections.

CN's assessment of the submitted elevations and sections found the ground floor has an increased floor-to-floor height of 4.8m which should be capable of facilitating the increased minimum ceiling height of 3.3m described in this part of the ADG. However, a floor-to-floor height of 3m is provided for the first floor (Level 1) which will not be able to facilitate an increased ceiling of 3.3m as required.

As the submitted table does not acknowledge these non-compliances, no justification is provided.

b. Objective 4C-3

The design guidance for Objective 4C-3 encourages greater than minimum ceiling heights required by the design criteria for lower level apartments in centres for the purpose of allowing flexibility and conversion to non-residential uses, and also refers to Figure 4C.1.

Figure 4C.1 depicts a mixed-use development with increased ceiling height of 3.3m to the ground and first floor (which is consistent with the Objective 4C-1 Design Criteria 1).

Figure 4C.1 depicts a mixed-use development reflective of the proposed development, being ground and first floor commercial with apartments above. However, where Figure 4C.1 differs from the proposed development is that Figure 4C.1 demonstrates that a mix use development should provide an increase ceiling

height of 3.3m to the first floor (which is consistent with the Objective 4C-1 Design Criteria 1).

As the submitted Table does not acknowledge these non-compliances, no justification is provided.

5. 4D Apartment size and layout

Insufficient information is submitted to undertake a full, appropriate assessment of the application in regard to the apartment size and layout objectives described in this part of the ADG - as detailed below.

a. Objective 4D-3 - design criteria 2

The submitted *table* Table indicates open plan layouts (where the living/ dining/ kitchen area are combined) have a maximum habitable room depth of less than 8m from a window.

The maximum internal depth for combined living/ dining/ kitchen areas, measured from glass line to furthest point in the habitable room, have not been demonstrated on any of the submitted architectural drawings.

Whilst initial assessment has found that the overall depth of habitable rooms generally complies, the maximum internal depth for combined living/ dining/ kitchen areas, measured from glass line to furthest point in the habitable room, needs to be dimensioned on the relevant floor plans to enable assessment to confirm compliance.

b. Objective 4D-3 - design criteria 1

The submitted Table indicates all master bedrooms have a minimum area of 10sqm and all other bedrooms have a minimum area of 9sqm (excluding wardrobe space).

The minimum area of apartment bedrooms has not been demonstrated on any of the submitted architectural drawings.

Whilst an initial assessment has found that the area of apartment bedrooms generally complies, the internal area of each bedroom (excluding wardrobe space) needs to be labelled on the floor plans, and hatching shown to graphically demonstrate the floor space included in the measurement, to enable assessment to be undertaken to confirm compliance.

c. Objective 4D-3 - design criteria 2

The submitted Table indicates all bedrooms having a minimum dimension of 3m (excluding minimum wardrobe space).

The minimum dimension of the apartment bedrooms has not been indicated on any of the submitted architectural drawings.

Whilst initial assessment has found that the minimum dimension of apartment bedrooms (excluding wardrobe space) generally comply, dimensions should be shown on the floor plans to demonstrate the minimum room widths and enable assessment to be undertaken to confirm compliance.

d. Objective 4D-3 - design criteria 3

The submitted Table indicates all apartments are provided with living rooms (or combined living/ dining rooms) with the minimum width required for the number of bedrooms.

The minimum width of the apartment living rooms (or combined living/ dining rooms) has not been indicated on any of the submitted architectural drawings.

Whilst initial assessment has found that the minimum width of apartment living rooms or combined living/ dining rooms generally comply, dimensions should be shown on the floor plans to demonstrate the minimum room widths and enable assessment to be undertaken to confirm compliance.

e. Objective 4D-3 - design criteria 4

The submitted Table indicates all cross-through apartments have an internal width of at least 4m.

The minimum internal width of cross-through apartments has not been indicated on any of the submitted floor plans.

Whilst initial assessment has found that the minimum internal width of cross-through apartments generally complies, dimensions need to be shown on all relevant floor plans in order to demonstrate the minimum apartment widths and thus enable assessment to confirm compliance.

6. 4E Private open space and balconies

Insufficient information is submitted to undertake a full, appropriate assessment of the application in regard to the apartment size and layout objectives described in this part of the ADG - as detailed below.

a. Objective 4E-1 - design criteria 1

The submitted Table indicates all apartment balconies achieve the minimum depth and area required for the number of bedrooms.

The minimum area and depths of the primary balcony have not been demonstrated on any of the submitted architectural drawings.

Whilst initial assessment has found that depth and area of primary balconies generally comply, dimensions need to be shown on all relevant floor plans to demonstrate the minimum balcony depths and hatching shown to graphically demonstrate the floor space included in the balcony area measurement. This will enable assessment to be undertaken to confirm compliance.

In this regard, it is highlighted that the minimum balcony depth to be counted as contributing to the balcony area is a metre. Furthermore, attention is drawn to Figure 4E.3 of the ADG which demonstrates the intention of the minimum balcony depth and area requirements is to describe the useable area of the apartment's primary balcony. For clarity, this means that the thickness of balustrade walls and/or the area of on-structure planting beds are not included in the balcony depth dimension or balcony area calculations for the purposes of considering compliance with this part of the ADG.

7. 4G Storage

Insufficient information is submitted to undertake a full, appropriate assessment of the application in regard to the storage objectives described in this part of the ADG.

a. Objective 4G-1 - design criteria 1

The submitted 'SEPP 65 Design Report Appendix A - ADG Compliance Table' states:-

"A minimum 50% of required storage is provided in each apartment with the remaining required storage provided in a basement storage area."

However, no details are provided on the submitted architectural floor plans to demonstrate the minimum storage volumes are provided for each apartment.

Storage located within each apartment (in addition to storage in kitchen, bathrooms and bedrooms) needs to be identified on all relevant floor plans, noting that a minimum of 50% of the required storage is to be located within the apartment. The area size needs to be labelled on the floor plans, and hatching shown to graphically demonstrate the floor space included in the measurement.

Where storage accessed from a common area (i.e. - a secure storage cage located within the basement car parking) is to be relied upon to achieve the minimum storage volumes required, this needs to be clearly nominated/ allocated to the apartment on the floor plans. Noting that sufficient annotations need to be provided to demonstrate that apartments which do not have 100% of the required storage volume located within the apartment are allocated a storage cage of adequate size to meet the total minimum storage volume required.

This will enable assessment to be undertaken to confirm compliance.

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

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to S2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal comprises a *General development over \$30 million*. Accordingly, the Hunter Central Coast Regional Planning Panel (HCCRPP) is the consent authority. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4: Remediation of Land

The provisions of Chapter 4 of the Policy have been considered in the assessment of the development application. Section 4.6 requires the consent authority 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') has been prepared for the site by Hunter Environmental Consulting dated 21 February 2023. The PSI found that there was limited evidence of land contamination and no Detailed Site Investigation was warranted.

The proposal has been assessed by a CN Senior Environment Protection Officer and is considered to be acceptable in this instance. It is advised that the provisions of cl4.6 of the Policy has been met and the site is suitable for the development in its current state.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2: Infrastructure

The proposal was referred to Ausgrid and Transport for NSW and also assessed by a CN Senior Development Engineer. The submitted development falls under several sections of SEPP (T&I) as detailed below:

Section 2.48(2) Ausgrid – electricity transmission

Ausgrid have provided standard comments regarding investigation and design for likely network upgrades which has been provided to the applicants. The provisions of cl2.48 have been satisfied in this respect.

Section 2.121(4) - Traffic-generating development

The proposal has been referred to TfNSW as traffic generating development under Schedule 3, s2.121(2).

TfNSW provided its advice raising no objections to the proposal.

The proposal, as submitted, is not considered to be acceptable and is recommended for refusal including issues regarding traffic, parking, vehicular access and driveway design issues.

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 not considered to be consistent with these aims and not in the public interest considering the issues raised within this report regarding the extent of variations to development standards (i.e. height and FSR), urban design matters, engineering and environmental issues.

Zoning and Permissibility (Part 2)

The site is located within the MU1 Mixed use zone pursuant to Clause 2.2 of the Newcastle Local Environmental Plan 2012. The proposal is permitted with consent within the MU1 Mixed Use zone under Clause 2.3 being characterised as combination of *retail premises*, including a *pub*, *hotel or motel accommodation* and *shop top housing*.

hotel or motel accommodation means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that—

- (a) comprises rooms or self-contained suites, and
- (b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles, but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

Note—

Hotel or motel accommodation is a type of **tourist and visitor accommodation**—see the definition of that term in this Dictionary.

pub means licensed premises under the Liquor Act 2007 the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

Note—

Pubs are a type of **food and drink premises**—see the definition of that term in this Dictionary.

shop top housing means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

Note—

Shop top housing is a type of **residential accommodation**—see the definition of that term in this Dictionary.

The MU1 zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

An assessment of the proposal in terms of the zone objectives is detailed below:

- The development satisfies the first objective.

- The development satisfies the second zone objective except for the beer garden/gaming room elements.
- The development does not satisfy the third zone objective as it results in conflict between land uses within this zone and land uses within adjoining zones having regard to the issues detailed within this report
- The development meets the fourth zone objective providing a range of business, retail, community and other non-residential land uses on the ground floor of the buildings.
- The development is acceptable in terms of the fifth zone 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 5** below.

Table 5: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Demolition requires development consent (CI2.7)	CI2.7 requires that demolition impacts be considered as part of the planning assessment.	The proposal involves the demolition of all structures which would be acceptable, subject to conditions, if the proposal was to be supported.	Yes
Height of buildings (CI 4.3(2))	11.0 metres	31.1 m (20.3m, 184.6% variation) (CI4.6 request lodged – see the detailed assessment below)	No
FSR (CI 4.4(2))	2.0:1 (4712 m ²)	2.93:1 (6897.8 m ² , 46.39% variation) (CI4.6 request lodged – see the detailed assessment below)	No
Exceptions to development standards (CI4.6)	The applicant must submit a written cl4.6 request to seek variations to development standards.	The proposed development includes variations to the following development standards and the applicants have submitted cl4.6 requests to variation these standards– see the detailed assessment below): <ul style="list-style-type: none"> • CI4.3 – Height of buildings NLEP 2012 • CI4.4 – Floor Space Ratio NLEP 2012 	Variation requests are assessed in detail below.
Land acquisition (CI 5.1/5.1A)	Development on land intended to be acquired for public purposes	The subject site is not affected by any land acquisition requirements under the NLEP 2012	Yes

Heritage (CI 5.10)	<p>The proposal does not trigger any specific provisions under this clause</p> <p>The subject property:</p> <ul style="list-style-type: none"> • is not listed as a heritage item under the LEP, • is not located within the vicinity of a heritage item, • is not located within a Heritage Conservation Area, • is very unlikely to be affected by any items of Aboriginal heritage or archaeological items due to the disturbed nature of the site. <p>under the Local Environmental Plan or any draft Local Environmental Plan.</p>	N/A	Yes
Flood Planning (CI5.21) & Special flood considerations (CI5.22)	<p>The flood risks for any development are to be minimised so to protect life and property. Development is to be assessed having regard to cumulative flood impacts, flood evacuation and the effects of climate change.</p>	<p>The proposal has been assessed by a CN Senior Development Engineer and is not acceptable in terms of flooding. A detailed flood assessment has been undertaken under Section 4.01 NDGP 2012 detailed below.</p>	No
Acid sulphate soils (CI 6.1)	<p>Class 4 –</p> <p>Works more than 2 metres below the natural ground surface.</p> <p>Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.</p> <p>The submission of an acid sulphate soils management plan is a precondition for</p>	<p>The applicant's Statement of Environmental Effects (SEE) indicates - <i>As basement construction is proposed involving excavation to a depth of greater than 2m, there is a risk of encountering Acid Sulfate Soils. An Acid Sulfate Soils Management Plan will be prepared and submitted along with an application for construction certificate.</i></p>	No

	determination of an application under the provisions of Cl6.1(3) which has not been provided in this instance (and it has not otherwise been demonstrated by detailed site investigations that acid sulphate soils are not present).		
Earthworks (Cl 6.2)	<p>Before granting development consent for earthworks, the consent authority must consider the following matters—</p> <p>(a) <i>the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,</i></p> <p>(b) <i>the effect of the proposed development on the likely future use or redevelopment of the land,</i></p> <p>(c) <i>the quality of the fill or the soil to be excavated, or both,</i></p> <p>(d) <i>the effect of the development on the existing and likely amenity of adjoining properties,</i></p> <p>(e) <i>the source of any fill material and the destination of any excavated material,</i></p> <p>(f) <i>the likelihood of disturbing relics,</i></p> <p>(g) <i>the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</i></p> <p>(h) <i>any appropriate measures proposed to</i></p>	The extent of proposed earthworks is commensurate with that required to construct the proposed mixed use development. It is considered that the proposal is acceptable in terms of its earthworks impacts.	Yes

	<i>avoid, minimise or mitigate the impacts of the development.</i>		
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The proposal is considered to be generally inconsistent with the LEP.

The Development Standard to be varied and extent of the variation

The proposal involves two cl4.6 variation requests: -

- Cl4.3 – Height of buildings NLEP 2012
- Cl4.4 – Floor Space Ratio NLEP 2012

The cl4.6 assessment below should be read in conjunction with the detailed Cl4.6 variation requests made by deWitt Consulting at **Attachment E**

Preconditions to be satisfied

Clause 4.6(4) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions.

The two preconditions include:

1. Tests to be satisfied pursuant to Cl 4.6(4)(a) – this includes matters under Cl 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest (Cl 4.6(a)(ii)); and
2. Tests to be satisfied pursuant to Cl 4.6(4)(b) – concurrence of the Planning Secretary.

These matters are considered below for the proposed development having regard to the applicant's Cl 4.6 request.

It is advised that the proposed cl4.6 variation requests have been assessed in accordance with the cl4.6 provisions as they applied at the date of lodgment of the application, in accordance with the savings provisions under cl1.8A, notwithstanding the subsequent changes to the cl4.6 legislation.

Cl4.3 – Height of buildings

The building height allowable for the subject site under the NLEP 2012 is 11.0 metres. The proposed development has a height of 31.1 m, which is an exceedance of 20.3 metres (184.6% variation).

Cl 4.6(2) -is the provision to be varied a development standard? And is the development standard excluded from the operation of the clause?

Cl4.3 is a provision which constitutes a development standard under the NLEP 2012 and it is not excluded from being varied under the provisions of cl4.6

Cl4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The applicant's variation request is made on four points, submitting that compliance with the standard is unreasonable or unnecessary, as it satisfied the following criteria in accordance with the judgements in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 11* and *Samadi v Council of the City of Sydney [2014] NSWLEC 1199* : -

- Consistency with zone objectives.
- Consistency with the objectives of the standard
- Compliance with the development standard is unreasonable or unnecessary.
- Sufficient environmental planning grounds.

Consistency with zone objectives.

The MU1 zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.'*

Zone Objective (see above)	Applicant's Submission	CN Assessment
1 st Objective	The applicant submit that the proposal meets the objective	As per the detailed assessment above, it is agreed that the proposal meets the first objective.
2 nd Objective	The applicant submit that the proposal meets the objective providing a combination of uses and architectural design which achieves a diverse and active street frontages.	The development in terms of the second zone objective is adequate, except for the beer garden/gaming room elements.
3 rd Objective	The applicant submits that the design, placing the greatest proposed height of the development towards the north and Brunner Road frontages, it minimises the developments amenity impacts especially in terms of overshadowing.	The proposal is not considered to be acceptable in terms of the third zone objective and results in conflict between land uses within this zone and land uses within adjoining zones having regard to the issues detailed within this report

4 th Objective	The applicant submit that the proposal meets the objective	As per the detailed assessment above, it is agreed that the proposal meets the fourth objective.
5 th Objective	The applicant submit that the proposal meets the objective	The proposal is considered to be acceptable in terms of the fifth zone objective in terms of supporting nearby or adjacent commercial centres without adversely impacting on the viability of those centres.

While it is agreed that the proposal meets several of the MU1 zone objectives, it is not considered to be acceptable in terms of third objective and only partially acceptable in terms of the second objective.

Consistency with the objectives of the standard

The height of buildings objectives under cl4.3(1) are as follows:

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

The applicant in addressing objective (a) above submits that the proposal is consistent with the objective based on the strategic framework detailed by the Hunter Regional Plan 2041, the Greater Newcastle Metropolitan Plan 2036 and the Newcastle Local Strategic Planning Statement.

While this submission identifies that Broadmeadow is of strategic importance, it pays no heed to the actually adopted hierarchy within the NLEP 2012 and is considered to be fundamentally flawed. The NLEP 2012 has an existing hierarchy of zones, heights and FSRs which the submitted clause 4.6 does not satisfactorily address. The height proposed is not consistent with the adopted hierarchy and considerably beyond surrounding allowable heights and even the greater allowable heights within the renewal corridors along Brunker Road and Belford/Tudor Streets which range between 11-21 metres. The proposed height of 31.1 metres, is closer to the allowable heights of the Newcastle City Centre) and, as such, is inconsistent with the established centres hierarchy.

The cl4.6 request secondly submits that the development is consistent with objective (a) due to the nature of the uses proposed being types of uses encouraged within a strategic centre and catalyst area. This is not a relevant consideration to objective (a) or (b) which deal with scale, built form and shadowing.

The cl4.6 request submits that objective (b) has been met as 90% of the proposed apartments comply with the solar access requirements of the Apartment Design Guidelines (ADG). It is questionable that that objective (b) "*..to allow reasonable daylight access to all developments.*" extends to the proposed actual development itself which is otherwise generating the impacts in terms of daylight access. Notwithstanding this, even if compliance with the solar access requirements under the ADG is a consideration in terms of objective (b), it should be given little weight in this respect to the proposed variation.

The cl4.6 request further submits that due to the design placing the greatest proposed height of the development towards the north and Brunker Road frontages, it minimises the developments amenity impacts especially in terms of overshadowing/solar access. While it is

agreed that the developments design and orientation aims to minimize the overshadowing/solar access impacts to the extent possible, this is not the criteria under objective (b) as follows "**..to allow reasonable daylight access to all developments and the public domain**" (emphasis added). While the cl4.6 request submits that the provided shadow diagrams demonstrate that the shadowing has been minimized, the comparison provided between the shadowing of a compliant 11 metre massing and the proposed development at 31.1 metres, shows significant greater shadowing and impacts on the solar access of neighbouring sites. It is considered that the additional shadowing impacts are not reasonable in this instance and it is not accepted that objective (b) has been met.

Compliance with the development standard is unreasonable or unnecessary.

The applicants cl4.6 submits that the compliance with the development standard is unreasonable or unnecessary based on the five limbs set out by Chief Justice Preston within *Wehbe v Pittwater Council (2007) NSWLEC 827*

i) *First limb of Wehbe*

First limb of *Wehbe* establishes that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The cl4.6 request submits that the allowable 11.0 metre height standard for the site is vastly out of alignment with the established centres hierarchy and suggests that the site should have heights consistent with Kotara and Newcastle CBD. This argument is not accepted and the allowable height for the site are consistent with the areas position within the centres hierarchy as a lower order local centre. The site is not a major level centre aligned with the Newcastle CBD or regional centre such as Kotara. It is further noted that Kotara, even as a regional centre, only has an allowable height of 14 metres, notwithstanding development on the site has achieved a variation to 24 metres.

The cl4.6 further suggest that the proposal, because it's various attributes and design qualities, is of a "*..scale of the development will make a positive contribution towards the desired built form..*" but notably the reference excludes the remaining of objective cl4.3(1)(a) "*... consistent with the established centres hierarchy*" which is fundamental element and has not been accepted as detailed within the assessment above.

Overall, as detailed in the assessment above, it is not accepted that the proposal meets the development standard objectives or sufficiently meets the zone objectives to be supportable under the first limb of *Wehbe*.

ii) *Second limb of Wehbe*

The cl4.6 request does not argue the second limb of *Wehbe*.

iii) *Third limb of Wehbe*

Third limb of *Wehbe* establishes that compliance with the development standards is unreasonable or unnecessary if the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

The cl 4.6 request contents that "*..a three-storey built form would not make a positive contribution and would not be consistent with the centres hierarchy, and therefore would defeat or thwart the object of the standard.*"

The cl4.6 request submits the following in terms of character:-

*"Council has not adopted specific character objectives for each category of the centres hierarchy, instead relying on development controls and guidelines such as the LEP, DCP and Apartment Design Guide to encourage a particular built form. However, Preston CJ in Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 (Paragraph 54) where the desired future character is not defined, the desired future character is subjective and can include the existing, recently approved and proposed buildings within the neighbourhood. Despite the proposed height variation, the proposed development is consistent in scale to developments in other strategic centres, and **that which ought to be encouraged** within Broadmeadow." (emphasis added).*

This argument is not accepted and is dependent on the underlying argument that the allowable height of 11.0 metres for the site is not reflective of the site's position within the established centres hierarchy. The cl4.6 request relies on pursuing a height which it argues "*..ought to be encouraged..*" by comparison to other strategic centres. The only other strategic centre which has a comparable height to that proposed is the Newcastle City Centre and the current proposal is not consistent with the adopted centres hierarchy within the NLEP.

Notwithstanding the applicant's argument regarding character, the revised Section 6.04 - Renewal Corridors (26 March 2023), which the current development is subject to, sets out clear character statements. Section 6.04 confirms that the NLEP 2012 is the principal planning document which sets out the appropriate building heights, FSR and desired character as follows:

"The Newcastle Local Environment Plan (LEP) 2012 is Council's principal planning document. It provides objectives, zones and development standards such as lot sizes, floor space ratios and building heights.

Good design is important to achieve a scale, bulk and height appropriate to the desired character of the street and surrounding buildings. It achieves an appropriate built form that defines the public domain, provides internal amenity and considers neighbours' amenity."

The site is within the 'AR1-Active-Residential' Character Typology within the Broadmeadow precinct of Section 6.04.

The 'AR1-Active-Residential' Character Typology sets out: -

- *"Active-Residential areas cater for a variety of uses with active frontages and non-residential ground floor uses."*
- Has a minimal setbacks heights of 4-5 storeys
- Active non-residential ground floor uses.

The proposed cl4.6 variation is not considered to be consistent with the future desired character for the site.

The cl4.6 request further submits that the Premier Hotel historically had a greater height (i.e. 19 metres) and form than its surrounding development. s. This is not considered applicable in the current circumstances considering:

i) the bulk of the height of the historic hotel was closer to 11.0 metres (the remainder of the height consisting of an architectural column and flagpole),

ii) the hotel was significantly rebuilt/repared post the 1989 earthquake at its current lower height and

iii) two further LEP's have been gazetted since the rebuilding (i.e. 2003 and 2012) with the NLEP 2012 adopting the current 11.0 metre height standard.

iv) *Fourth limb of Wehbe*

Fourth limb of *Wehbe* establishes that where the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

The cl4.6 request argues that because other developments have been approved with variations to standards, the current development should also enjoy the same flexibility. That the current development can be approved without abandoning the standard.

It is not accepted that the fourth limb of *Wehbe* applies. The cl4.6 request does not correctly apply the test under the fourth limb which would require that the extent and number of previous variations given by the consent authority are so great in an area that the standard had "*.. been virtually abandoned or destroyed..*". Inherently the fourth limb of *Wehbe* requires significant evidence to demonstrate these circumstances have been reached. The cl4.6 request provides no evidence of variations which would reach the bar set by the fourth limb of *Wehbe*. Accordingly, it has not been demonstrated that the height standard has "*.. been virtually abandoned or destroyed..*".

v) *Fifth limb of Wehbe*

The cl4.6 request does not argue the fifth limb of *Wehbe*.

Cl4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The cl4.6 request argues that are sufficient environmental and planning grounds to justify contravening the development standard and are summarised as follows:

- *"The proposed development meets the zone objectives and the height control objectives.*
- *The proposed development is compatible with existing and future built form within the surrounding locality.*
- *The proposed development will provide a high level of internal and external environmental amenity for future residents of the building. The proposed development does not result in unfavourable or negative visual impact resulting from density, height or scale, and the works are expected to significantly improve the visual perception of the site. The development both maintains and enhances the neighbourhood character, landscape character, streetscape and amenity of the locality. The site will be returned to its historical function as a community hub and a placemaker.*
- *The additional height will have a negligible effect on solar access (Section 8.1.1). The shadows created by the development are considered to be satisfactory in regard to impacts to adjoining sites, the public domain and also within the development site.*
- *The additional height will not impact privacy of adjoining residents considering the height exceedance.*
- *The additional height will not impact on view sharing.*
- *Substantial components of the development are compliant with the maximum*

building height."

The request also states as follows:

"The proposal will not result in any unreasonable amenity or environmental impacts as detailed in the supporting documentation and this request. Notwithstanding the variation, the proposed works represent a well-considered development that addresses the unique character of the site, streetscape appearance and public domain interface, solar access, privacy, and relevant objectives of both the development standards and the MUI Mixed Use zone. Given the nature of the variation, the proposal will continue to maintain high levels of amenity within the development and to the surrounding context. The proposal continues to make a positive contribution to the desired built form of the locality and has been skillfully designed in consideration of its surrounding context and land uses.

As outlined above, it is considered that the proposal will provide for a better planning outcome than a strictly compliant development. In this case, we submit that there are sufficient environmental planning grounds to justify contravening the development standard."

It is not accepted that there are sufficient environmental planning grounds to justify contravening the development standard having regard to the extent of the height variations, the zone objectives, the objectives of the height standard, overshadowing, urban design and visual appearance impacts.

Cl4.6(4)(a)(i) the consent authority is satisfied that— (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

Following an assessment of the cl4.6 request detailed above, CN is not satisfied the cl4.6 request adequately addresses the required matters. Based on this assessment, support for the cl4.6 variation request is not recommended.

Cl4.6(4)(a)(ii) the consent authority is satisfied that (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.

The public interest element has two components under the subclause being:

- i) Objectives of the development standard (i.e.. cl4.3); and
- ii) Objectives of the particular zone (i.e.. MU1 Mixed Use).

The consent authority must be satisfied when assessing a clause 4.6 variation, that the proposed development, and its associated clause 4.6 variation are in the public interest by being consistent with the objectives of the development standard (Height of buildings).

The applicant's clause 4.6 variation request, as detailed in the assessment above, has not demonstrated that the proposal meets the objectives of the MU1 Mixed Use zone and the objectives of cl4.3- Height of buildings. It is considered that supporting the proposed variation would not be in the public interest.

Overall, the provisions of cl4.6(4) have not been satisfied and it is recommended that the cl4.6 variation not be supported.

Cl4.6 (4)(b) the consent authority is satisfied that the concurrence of the Planning has been obtained.

The proposal requires approval of the HCCRPP as the extent of the proposed height variations exceeds the 10% trigger criteria given by the Planning Secretary's planning system circular PS2020-002. It is confirmed that under this circular the HCCRPP has assumed concurrence to determine the variation.

Cl4.4 – Floor Space Ratio NLEP 2012

The allowable floor space ratio (FSR) for the site is 2.0:1 (4712 m²) under the NLEP 2012. The development has a proposed FSR of 2.93:1 (6897.8 m², 46.39% variation). It is noted that the submitted clause 4.6 request submits that the variation is a 45%, based on the 6897.8 m² GFA, but this is considered to be in error.

Cl 4.6(2) -is the provision to be varied a development standard? And is the development standard excluded from the operation of the clause?

Cl4.4 is a provision which constitutes a development standard under the NLEP 2012 and it is not excluded from being varied under the provisions of cl4.6

Cl4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The applicant's variation request is made on four points, submitting that compliance with the standard is unreasonable or unnecessary, as it satisfied the following criteria in accordance with the judgements in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 11* and *Samadi v Council of the City of Sydney [2014] NSWLEC 1199* : -

- Consistency with zone objectives.
- Consistency with the objectives of the standard
- Compliance with the development standard is unreasonable or unnecessary.
- Sufficient environmental planning grounds.

The cl4.6 request submitted for the cl4.4 FSR variation follows a similar format to the cl4.3 height variation assessed above and, as such, the comparable aspects are not repeated in full within the assessment below.

Consistency with zone objectives.

The zone objectives arguments submitted in support of the FSR variation cl4.6 are the same as the cl4.3 request above, and as such, CN's assessment in this respect is the same. While the proposal meets several of the MU1 zone objectives, it is not acceptable in terms of third objective and only partially acceptable in terms of the second objective.

Consistency with the objectives of the standard

The floor space ratio objectives under cl4.4(1) are as follows:

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

The applicant in addressing objective (a) above submits that the proposal is consistent with the objective based the strategic framework detailed by the Hunter Regional Plan 2041, the Greater Newcastle Metropolitan Plan 2036 and the Newcastle Local Strategic Planning Statement (LSPS).

While this submission identifies that Broadmeadow is of strategic importance it pays no heed to the actually adopted hierarchy within the NLEP 2012 and is considered to be fundamentally flawed. The NLEP 2012 has an existing hierarchy of zones, heights and FSRs which the submitted clause 4.6 request does not satisfactorily address.

The FSR proposed is not consistent with the adopted hierarchy and the FSR variation proposed represents a significant amount of additional floor space 2185.8 m² (i.e. close to 2279 m² proposed by levels 5-8 and a significant portion of the height exceedance being 12.8 metres). The allowable FSR for the site is consistence with the greater allowable heights within the renewal corridors along Bruncker Road and Belford/Tudor Streets which is also 2.0:1

The cl4.6 request submits the following:

"Objective (a) calls for an appropriate density of development commensurate with a strategic centre. The LSPS identifies a strategic centre as an area of high density residential and commercial use. It is considered that the proposed development is a high density development incorporating residential and commercial use (it is our contention that the term 'commercial' is intended to encompass a range of employment generating activities including those proposed as part of the DA)."

The cl4.6 request misstates objective (a) replacing "*.. consistent with the established centres hierarchy*" with "*..commensurate with a strategic centre.*" This is significant as it misrepresents the adopted objective and the criteria against which the variation is to be considered. The cl4.6 request then proceeds to make an argument based on 'strategic centres' under the LSPS which highlights this misrepresentation and is fundamentally flawed. The reliance on strategic planning reports does not reflect the provisions of the adopted Newcastle LEP 2012. Furthermore, reliance on potential future changes to planning instruments is not a sufficient basis to support a cl4.6 variation and it is considered that the development lodged on this basis is premature.

Accordingly, it is not accepted that the cl4.6 variation is consistent with objective cl4.4(1)(a).

The cl4.6 request takes a similar approach to objective cl4.4(1)(b) relying on the LSPS as a basis to claim that the variation is acceptable based on potential future changes to planning instruments. The cl4.6 request on this basis is not acceptable and does not demonstrate that the variation is acceptable in context of the adopted objective and the existing "*established centres hierarchy*".

The cl4.6 request makes a similar reference to the size and scale of the historic pub building prior to its repair/rebuilding post the 1989 earthquake. As discussed in the assessment above, this argument is not accepted in this instance.

Compliance with the development standard is unreasonable or unnecessary.

The request cl4.6 submits that the compliance with the development standard is unreasonable or unnecessary based on the five limbs set out by Chief Justice Preston within *Wehbe v Pittwater Council (2007) NSWLEC 827* similar to the approach taken by for the variation of cl4.3 above.

v) *First limb of Wehbe*

The variation request for cl4.4 make similar argument to those presented for the cl4.3 request and it is not accepted that the proposal meets the development standard objectives or sufficiently meets the zone objectives to be supportable under the first limb of Wehbe.

vi) *Second limb of Wehbe*

The cl4.6 request does not argue the second limb of Wehbe.

vii) *Third limb of Wehbe*

The third limb of *Wehbe* establishes that compliance with the development standard is unreasonable or unnecessary if the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

The cl 4.6 contents that:

"Compliance with the development standard would be overly restrictive and could result in outcomes that are both unsuitable to the locality and of lesser or poor quality. On balance, the proposed development provides a better means to achieve the object of the standard, when compared with a compliant built form. "

"A compliant built form would be constricted to three storeys. It is our contention that a three-storey built form would not make a positive contribution and would in fact be inconsistent with the centres hierarchy, therefore defeating or thwarting the object of the standard."

The cl4.6 request further submits that the Premier Hotel historically had a greater height and scale of its surrounding development.

It is not accepted that the proposed cl4.6 request meets the terms of the third limb and that compliance with the standard would thwart the underlying objectives of the standard. Furthermore, as detailed under the assessment of the height variation above, the proposal is not consistent with the intended future desired character.

viii) *Fourth limb of Wehbe*

The same issues raised in the assessment of the cl4.3 variation above, apply to the variation of cl4.4 and, as such, are similarly not supported.

v) *Fifth limb of Wehbe*

The cl4.6 request does not argue the fifth limb of Wehbe.

Cl4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The cl4.6 request argues that are sufficient environmental and planning grounds to justify contravening the development standard and are summarised as follows:

- *"The proposed development meets the zone objectives and the floor space objectives.*
- *The proposed development is compatible with existing and future built form within the surrounding locality. The building bulk has been directed to the north and north*

west with a reduced scale to the east and south where the site adjoins lower density development."

- The proposed development will provide a high level of internal and external environmental amenity for future residents of the building. The proposed development does not result in unfavourable or negative visual impact resulting from density, height or scale, and the works are expected to significantly improve the visual perception of the site. The development both maintains and enhances the neighbourhood character, landscape character, streetscape and amenity of the locality. The site will be returned to its historical function as a community hub and a placemaker.*
- The additional bulk, scale and density will have a negligible effect on solar access. The shadows created by the development are considered to be satisfactory in regard to impacts to adjoining sites, the public domain and also within the development site. The minimal impact on surrounding development and public domain is demonstrated in the shadow diagrams which show that no surrounding property is overshadowed for more than 3 hours during the winter solstice.."*
- The additional floor space will not impact privacy of adjoining residents due to the careful and considered approach to massing and orientation.*
- The additional floor space will not impact on view sharing.*
- The additional floor space will not detrimentally impact traffic or parking conditions as demonstrated in the traffic and parking assessment prepared for the proposed development."*

It is not accepted that there are sufficient environmental planning grounds to justify contravening the development standard having regard to the extent of the height variations, the size and scale of development and its associated exceedance of the allowable FSR, the zone objectives, the objectives of the height standard, overshadowing, urban design and visual appearance impacts.

Cl4.6(4)(a)(i) (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)

Following an assessment of the cl4.6 request detailed above, it is concluded that the cl4.6 request does not adequately address the required matters. Based on this assessment, support for the cl4.6 variation request is not recommended.

Cl4.6(4)(a)(i) (a) the consent authority is satisfied that (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.

The public interest element has two components under the subclause being:

- iii) Objectives of the development standard (i.e.. cl4.4); and
- iv) Objectives of the particular zone (i.e.. MU1 Mixed Use).

The consent authority must be satisfied when assessing a clause 4.6 variation request, that the proposed development, and its associated clause 4.6 variation are in the public interest by being consistent with the objectives of the development standard (Floor Space Ratio).

The applicant's clause 4.6 variation request, as detailed in the assessment above, has not demonstrated that the proposal meets the objectives of the MU1 Mixed Use

zone and the objectives of cl4.4 floor space ratio. It is considered that supporting the proposed variation would not be in the public interest.

Overall, the provisions of cl4.6(4) have not been satisfied and it is recommended that the cl4.6 variation not be supported.

Planning Secretary Concurrence - Clause 4.6(4)(b)

The proposal requires approval of the HCCRPP as the extent of the proposed FSR variations exceeds the 10% trigger criteria given by the Planning Secretary's planning system circular PS2020-002. It is confirmed that under this circular the HCCRPP has assumed concurrence to determine the variation.

(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 State Environmental Planning Policy

The draft Remediation of Land State Environmental Planning Policy, which was exhibited from 31 January to 13 April 2018, is currently under consideration. The proposed policy is intended to repeal and replace the provisions 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.

An aim of the draft policy is to improve the assessment and management of land contamination and its associated remediation practices. The 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 3.10 – Commercial Development

The proposal has been assessed in regard to Section 3.10 and is consistent with these requirements. It is noted that the combination of the Apartment Design Guide (SEPP 65) and Section 6.04 below generally provide for greater controls in any respect.

3.10.01 Height of building & 3.10.02 Density - floor space ratio

The proposal does not comply with the NLEP 2012 in terms of height and FSR and the proposed variations are not supported.

3.10.05 Street activation

While the design generally satisfactory in terms of street activation , the 'beer garden/gaming room' components at the northern corner and Brunner Road frontage are not acceptable in terms of urban design and street activation aspects.

Section 4.01 – Flood Management

The proposal has been assessed by a CN's Senior Development Engineer and is not considered to be acceptable as provided within the detailed assessed below.

Based on the Newcastle City-wide Floodplain Risk Management Study and Plan (BMT WBM June 2012) and provided in flood certificate FL2023/00091, the subject allotment is affected by local catchment flooding during both the 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) events. The pertinent characteristics of this flooding are as follows:

Local Catchment Flooding

Is any part of the site affected by a floodway?	No
Is any part of the site affected by a flood storage area?	No
Estimated 1% Annual Exceedance Probability event level: (equivalent to the "Defined Flood Level" in the Building Code of Australia)	6.7m AHD
Estimated Maximum Flow Velocity of floodwaters (in the "Defined Flood Event" as per the Building Code of Australia)	0.55 m/s
Highest Property Hazard Category	P1
Estimated Probable Maximum Flood Level	7.25m AHD (0.8 m/s)
Highest Life Hazard Category	L3 (H2)

In accordance with Section 4.01 'Flood Management' of the DCP , development on this allotment is subject to the following requirements:

- a) Floor levels of any occupiable rooms in a development on this site shall not be lower than the flood planning level of 7.2m Australian Height Datum (AHD). The submitted architectural plans confirm this to be complied within the ground floor, except for the café which is at 7.0m AHD and requires slight raising.
- b) An on-site flood refuge is not required.
- c) An underground basement is proposed, requiring all entry points to be above the probable maximum flood level of 7.25mAHD and the vehicular access level to be above the Flood Planning Level (FPL) (7.2m AHD). The development proposes a basement entry level of 6.76m AHD with a flood gate which is not supported as the risk of basement flooding is

too high and flood gates are not considered reliable enough to manage this risk. Flood gates are more suitable in location where floor levels are slightly below the FPL, rather than situations like this development where the basement has the potential of becoming a deep pool during a flood event. Therefore, the basement entry point is required to be raised to a minimum level of 7.2m AHD.

Based on the above assessment, the proposal could be supported and would need redesign in regard to the flood levels associated with the basement design.

Section 4.03 – Mine Subsidence

The proposal has been assessed by Subsidence Advisory NSW and they have issued their General Terms of Approval (GTA's).

Section 4.04 – Safety and Security & Section 4.05 – Social Impact

The application is supported by a Crime Prevention Through Environmental Design (CPTED) report by deWitt Consulting (23 August 2023) and Social Impact Assessment (SIA) report by deWitt Consulting (22 August 2023)

As detailed within the UDRP assessment above, the CPTED aspects of the proposal are not considered to be acceptable especially due to the interaction of multiple different users without sufficient separation and control.

The proposal is not acceptable in terms of its social impacts as detailed in the assessment below. There are also concerns with the acoustic impacts of the proposal, particularly in terms of the hours of operation.

The submitted CPTED and SIA reports are in conflict. The CPTED report states that proposed hours of operation of Monday to Saturday (7am - 3am) and Sunday (8am - 12am) are the same as current operating hours. However, the SIA states that the current operating hours are Monday to Thursday (10am to 12am), Friday - Saturday (10am - 2am) and Sunday (10am - 10pm). These current hours as stated in the SIA are the same hours currently listed on the Premier Hotel website (<https://hotelpremier.com.au/>).

The CPTED report does not reflect this extension of trading hours and possible impacts on safety and security, as well as address mitigation measures in the Plan of Management (PoM).

CPTED report states that 15 additional staff will be employed as part of the pub. SIA states that no additional staff proposed for the proposal.

The submitted PoM does not adequately address approach to manage possible negative impacts of proposed extension of trading hours.

In reference to patron movement, the PoM states *"Monitor patron behaviour in, and in the vicinity of, the Hotel until all patrons have left, taking all practical steps to ensure the quiet and orderly departure of patrons"*. The potential for antisocial behaviour to occur, and be managed, during departure of patrons is not addressed in the PoM beyond this statement of "taking all practical steps". The development has not addressed the potential for negative impacts on the amenity of nearby residents and businesses (i.e., evidence of businesses needing to clean vomit, urine and broken bottles from footpaths, carparks and landscaped areas in immediate vicinity), and augment mitigation measures in the POM accordingly.

The proposal is not considered to be acceptable in terms of CPTED principles and social impacts. It is further advised that there are also remaining acoustic issues as details in the report below.

Section 5.01 – Soil Management

It is considered that the proposal is adequate in regard to the extent of earthworks proposed and its associated impacts.

The proposed development is considered to be acceptable in terms of this section of the DCP.

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 this section of the DCP.

Section 5.03 – Vegetation Management

The existing subject site does not contain any vegetation. The proposal does not impact any existing street trees.

The proposed development is considered to be acceptable in terms of this section of the NDCP 2012.

Section 5.04 Aboriginal Heritage, Section 5.05 Heritage Items, Section 5.06 Archaeological Management & Section 6.02 – Heritage Conservation Areas

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

The proposed development is considered to be acceptable in terms of this section of the DCP.

Section 6.04: Renewal Corridors

The site is in the 'Active-Residential' character typology of the Broadmeadow renewal corridor.

The submitted proposal is consistent with the required front setback and awning design criteria. It does not result in any additional crossings to Chatham Street in accordance with the DCP.

The proposal does not comply with the rear setbacks 3.0 and 6.0 metres for development over 4.5 and 8.5 metres in height, respectively. Also, it is not consistent with the future desired character intended under Section 6.04 and the NLEP 2012 .

While the proposal meets many aspects of this section, as discussed with the UDRP assessment, there are various aspects of the design which would need to be amended for the overall development to be acceptable.

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 inadequate in this respect and a more comprehensive landscape plan and associated report needs to be developed.

Section 7.03 – Traffic, Parking and Access

The proposal has been assessed by a CN Senior Development Engineer and is not considered to be acceptable as provided within the detailed assessed below.

Vehicular Access, Driveway Design and Crossing Location

The development is to be designed in accordance with Section 7.03 Traffic, Parking and Access of the DCP and Australian Standard AS/NZS2890.1:2004 Off Street Car Parking.

The traffic impact assessment submitted with the application does not appropriately consider the driveway access constraints presented for the site. An existing concrete median is located on the Chatham Street site frontage which restricts all vehicles from travelling north on the end section of Chatham Street. As the driveway is located north of this concrete island, all access from the south is restricted. Vehicle access to the site is therefore limited to southbound travel on Chatham Street which required all vehicles to come through the "Nine-ways" intersection or loop around the block using Denison Street. These limited access options will be problematic when vehicles are approaching the site from the south and it will encourage illegal manoeuvres around the concrete island on Chatham Street from the south. The driveway is not suitable in its current location with the constraints of the existing road network and further consideration of the road network constraints is to be considered to determine a more suitable driveway location.

Two car parking spaces (small car space no.1 and space V7) are adjacent a 'blind' aisle without the required 1m clearance for access and egress. These spaces do not comply with AS2890.1.

Parking Demand

On site parking for the development is required to be provided in accordance with the following parking rates.

Use	NDCP Parking Rate	Relevant Quantity	Parking Requirement	Parking Provided
Residential	1-2 bedroom apartments - maximum average 1 per apartment.	35 one-to-two-bedroom apartments	Maximum spaces 61	33 residents plus 10 visitor spaces

	3 or more bedroom apartment - maximum average 1 per apartment. Plus visitor parking (no max or min rate in DCP)	13 three bedroom apartments		
Hotel	1 space per 2 staff plus minimum 0.5 spaces per unit	21 staff between hotel and bar employed, with 6 being onsite at any one time. Say 6 hotel staff onsite as estimate. 16 hotel rooms	3 for staff plus 8 for hotel guests	Shared amongst pub spaces below.
Retail	1 space per 40m2 GFA	97m2	2.5 spaces	2 spaces
Pub	1 space per 2 staff plus 1 space per 15m2 of licensed floor area (bar, lounge) for visitors	21 staff between hotel and bar employed, with 6 being onsite at any one time. Say 10 pub staff onsite as estimate. 686m2 GFA	5 staff spaces 46 pub spaces	53 spaces 6 staff
Total Requirement:			125.5	105 incl 1 shared vehicle space

The provision of hotel, retail and pub spaces is acceptable, however the 18 spaces deficiency in the parking for the residential component of the development has not been justified by the applicant and is not considered to be acceptable in this instance.

Vehicle Servicing

A loading dock has been provided within the site and turn paths have been provided showing that the dock caters for a 10.2m long waste vehicle. However, the development will need to accommodate a larger vehicle being a 12.5m Heavy Rigid Vehicle as it is necessary to demonstrate that CN's waste services can collect from the proposed development. Therefore further design effort is required to address this issue and the proposal is not considered to be acceptable.

Section 7.06 – Stormwater & Section 7.07 – Water Efficiency

The proposed development has been assessed by CN's Senior Development Engineer and is considered to be acceptable.

Section 7.08 – Waste Management

The proposal has been assessed by CN's Waste and Commercial Collection Manager and the current proposal is not acceptable based on the following issues.

While the submitted Waste Management Plan (WMP) is acceptable in terms of the estimate waste generation rates, the following criteria would need to be addressed to be acceptable in terms of CN's collect and return waste service:

- The bin storage area is to be located within approx. 10 metres of the property boundary access point and not require a key for access; PIN or similar is acceptable
- The bin carting route needs to allow for safe and adequate movement of the larger bins, with no obstructions and no requirement for bins to be carried over any steps, landscape edging or gutters / kerbs, etc
- Adequate provision is to be provided for a heavy rigid collection vehicle to safely and legally park on the property, in close proximity to the bin presentation / collection point, allowing for larger bins to be wheeled safely to the rear of the collection vehicle
- Where CN collectors (or our contractor's) are required to enter a site for the purpose of waste collection services, an Agreement will be required to be entered into with CN. This Agreement is to be entered into with CN giving power and authority to CN to enter the site and for the purpose of waste services. CN is also to be provided with indemnity against any future claims for damage and loss (we have a standard document for this Agreement).

The proposal is not considered to meet the above requirements of the NDCP.

Section 7.10 – Street Awnings and Balconies

The proposed street awnings are considered to be acceptable in context of the overall design and this section is considered to be satisfied.

Contribution Plans

The following Local Infrastructure Contributions Plan is relevant pursuant to Section 7.18 of the EP&A Act. (notwithstanding contributions plans are not DCPs they are required to be considered):

- *Section 7.11 Development Contributions Plan (Commenced 1 January 2022)*

The proposal is not entitled to any exemptions or reductions under section 1.6 of the Plan and would be liable for contributions if it was recommended to be approved.

Newcastle Development Control Plan 2023

The recently adopted DCP does not apply to the current application due to the operation of the savings provisions and it only applies to applications lodged after its adoption.

(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

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 NLEP, NDCP and UDRP assessments, the proposal is not acceptable in terms of its urban design, streetscape, height, bulk, scale and visual appearance impacts.
- Access and traffic – The proposal as discussed above under the NDCP assessment, is not considered to be satisfactory in terms of traffic, parking and access.
- Utilities – The proposal is adequate in terms of utilities.
- Water/air/soil impacts – Land Contamination and earthworks were addressed under SEPP (Hazards & Resilience) and cl6.2 of the NLEP respectively above and is considered to be acceptable.
- Flora and fauna impacts – The proposal does not have flora or fauna impacts.
- Natural environment – Earthworks were addressed under and cl6.2 of the NLEP above and is acceptable.
- Noise and vibration – The proposal was assessed by CN's Senior Environmental Protection Officer.

The Acoustic Assessment (AA) prepared by Reverb Acoustics dated June 2023 has been reviewed and it is noted that the report theoretically demonstrates that, with controls in place, the proposed development satisfies the assessment criteria based on the assumptions modelled.

The AA follows the conventional process of determining the criteria for the potentially affected receivers, characterising source noise levels, modelling the propagation of these source levels, determining compliance, and specifying controls as necessary. The report incorporates a series of assumptions in its noise modelling to simulate a likely use scenario.

The AA has assessed the operation of the future licenced area of the premises against the noise criteria from the Independent Liquor and Gaming Authority (ILGA). This allows the L10 noise levels to exceed the external background noise by 5dB across all octave bands (31.5Hz to 8Khz) external to a residence prior to midnight, whilst imposing inaudibility after midnight.

It is noted that Table 7 within Section 2.3.2 where the consultant has set the Noise Planning Levels in accordance with the ILGA criteria but details of how the weightings of each octave band have been distributed across the spectrum have not been provided. The ILGA Condition requires that noise from a licensed premises post-midnight is inaudible at the boundary of any affected residence, and it is noted that the consultant has adopted the overall background noise level as the inaudible criteria. As such, it is necessary for the consultant to justify the reasoning behind this as there are concerns this level will not lead to inaudibility.

It is further noted that Table 17 within Section 3.2 of the report 3 shows a 1dB(A) exceedance for the 250hz octave band, however the predicted noise levels are lower than criteria pre and post-midnight. This discrepancy will need to be addressed.

It is further noted that the 31.5 & 63hz octave bands levels within Table 17 and seeks confirmation these levels are correct as similar types of developments of this nature show these levels to be higher.

Based on the submitted details and the outstanding issues, the proposal is not considered to be acceptable in terms of acoustic impacts.

- Natural hazards – The subject site is not affected by bushfire prone land.

As discussed above, Subsidence Advisory NSW has issued their General Terms of Approval for the development and the proposal is considered to be acceptable.

The subject site is affected by land contamination, flooding, and Class 4 Acid sulfate soils.

As discussed under cl6.1 above, the proposal is not acceptable in terms of acid sulfate soils.

Land contamination has been addressed under SEPP (Resilience and Hazards) and is also considered to be acceptable.

The flooding aspects in relation to the proposal have been assessed in detail under Section 4.01 of the NDCP above and are not considered to be acceptable.

- Safety, security, and crime prevention – The CPTED Principles have been considered under the NDCP assessment above and is not considered to be acceptable.
- Social and Economic Impacts – The social and economic impacts have been considered under the NDCP assessment above and is not considered to be acceptable in this instance.

3.3 Cumulative impacts – Overall it is considered that the cumulative impacts of the proposal are not acceptable so **Section 4.15(1)(c) - Suitability of the site**

Based on the assessment within the report above, it has not been demonstrated that the development is suitable for the site having regard to the remaining issues of acid sulphate soils and flooding.

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

These submissions are considered in Section 4.3 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 having regard to the extent that the proposal is inconsistent with the planning controls (i.e. relevant SEPPs, NLEP and NDCP), as detailed within the report.

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 6**.

Table 6: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Electricity supply authority (Ausgrid)	<ul style="list-style-type: none"> • Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. 	Ausgrid have provided comments regarding investigation and design for likely network upgrades.	Yes

Transport for NSW	Section 2.122 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.	The development was referred to TfNSW for consideration who raised no objections to the proposal detailing their advice for consideration in CN's assessment.	Yes
Design Review Panel	CI 28(2)(a) – SEPP 65 Advice of the Design Review Panel ('DRP')	The advice of the DRP has been considered in the proposal and is further discussed in the SEPP 65 assessment and the proposal is not considered to be acceptable.	No
Integrated Development (S 4.46 of the EP&A Act)			
Subsidence Advisory NSW	Section 22 of the Subsidence Act	The Subsidence Advisory NSW have assessed the proposal and issued their General Terms of Approval (GTA's).	Yes

4.2 Council Officer Referrals

The development application has been referred to various CN officers for technical review as outlined **Table 7**.

Table 7: Consideration of Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted stormwater concept plan and it is considered acceptable. The design of the proposal is not acceptable in terms of flooding impacts	No
Traffic	Council's Traffic Engineering Officer reviewed the proposal and raised concerns in traffic, access and parking.	Yes
Environmental	The proposal has been assessed by CN's Senior Environment Protection Officer and the proposal is not considered to be satisfactory.	No
Waste	The proposal has is considered satisfactory as detailed under section 7.08 of the NDCP assessment above and, as submitted, is not considered to be satisfactory.	No

4.3 Community Consultation

The proposal was notified in accordance with the CN's Community Participation Plan from 25 September to 9 October 2023. In response, a total of eleven unique submissions of objection were received raising concerns with the proposal. The issues raised in these submissions are considered in **Table 8** below.

Table 8: Community Submissions

Issue	Comments
<p>Height Exceedances/Overdevelopment/Character - Concern regarding the extent of the proposed building height variation and its associated impacts. The proposal is too large for the site and surrounds being out of character.</p>	<p>As detailed in the assessment report above, the proposed height and FSR are not supported.</p>
<p>Parking/Traffic Impacts - Concern raised regarding the extent of parking provided, the proposed parking variations and impact on street parking which is already in high demand. The development seeks variations in height and FSR on top of parking variations. Concern also raised regarding the impacts on local traffic considering the existing street layouts, restrictions and design of the 'Nineways' intersection. The site may need a designated safe pick up area within Brunner Rd (esp. for hotel patrons).</p>	<p>As detailed in the assessment report above, the proposal has traffic and parking issues.</p>
<p>Vehicular & Pedestrian Access – It is argued that the current street and pedestrian access needs to be upgraded to facilitate the proposed development. Concerns that heavy vehicular access is sufficient. There are no pedestrian crossings in the area which could service the development such that there are concerns for pedestrian safety (especially the high number of school children in the area).</p>	<p>As detailed in the assessment above, it is agreed that the vehicular access in Chatham Street is an issue and concerns remain for the heavy vehicle access to the site. It is agreed that the pedestrian access to the site could be improved.</p>
<p>Acoustic/Amenity impacts - Concern that the development will have acoustic/amenity impacts from the loading dock/heavy vehicle movements and the proposed trading hours.</p>	<p>As detailed in the assessment above, the acoustic assessment is incomplete and has not demonstrated that the proposal is sufficiently acceptable.</p>
<p>Privacy/Amenity Impacts - Concern that the proposal will have significant privacy impacts on neighbouring residents.</p>	<p>The proposal would not result in unreasonable privacy impacts being sufficiently separated from the existing residential properties in the locality.</p>
<p>Overshadowing - Concerns regarding the extent of shadowing impacts caused by the proposal.</p>	<p>As detailed in the assessment above, it is agreed that the additional shadowing resulting from the proposed height exceedances is unacceptable.</p>
<p>CPTED/Anti-social behaviour/Hours of Operation - Concern is raised that the development will continue to result in CPTED and anti-social behaviours that are</p>	<p>As detailed in the assessment above, the documentation submitted with the application addressing CPTED and social planning issues are inconsistent and incomplete and, as such, the proposal is not considered to be acceptable.</p>

already a result of the existing hotel's operations. This will be further exacerbated by the proposed hours of operation.	
Waste Impacts - Concern that it is not clear how waste is being collected and has the potential to impact on neighbouring properties and future residents within the proposal, especially in terms of acoustics.	The proposal needs to be able to achieve on site collection by CN's waste collection service which has not been satisfactorily addressed and remains an issue.
Landscaping - The proposal lacks landscaping and green spaces.	The proposal has sufficient communal open space but there remain issues with the layout/design.
Construction Impacts - Concern is raised regarding the impacts during construction (e.g. noise, dust, on street parking and traffic impacts). Concern that the proposal will have structural impacts on neighbouring buildings.	It is not agreed that the proposal, if it were to be supported, would result in unacceptable construction impacts. Typically, aspects such as noise and dust would be addressed by conditions of consent including construction traffic management plan.
Lack of Amenities - Concern is raised by the limited number of toilets proposed within the design for the development.	Questions remain regarding the suitability of the design in terms of amenities.

5. KEY ISSUES

There are no further issues which have not otherwise been addressed within the assessment report above.

6. CONCLUSION

The 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 recommended that the application not be supported.

7. RECOMMENDATION

That the Development Application DA2023/00886 - proposed demolition of existing buildings and erection of a mixed use development involving a pub, tourist and visitor accommodation- 16 hotel rooms, commercial premises and forty eight dwellings and associated works at 1-3 Brunker Road, Broadmeadow 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.
- **Attachment D:** UDRP Assessment

ATTACHMENT A

Reasons for Refusal

1. The proposal does not comply with the maximum allowable building height pursuant to cl.4.3 Newcastle Local Environmental Plan 2012. [Section 4.15(1)(a), (b) & (e)].
2. The proposal does not comply with the maximum floor space ratio pursuant to cl.4.4 Newcastle Local Environmental Plan 2012. [Section 4.15(1)(a), (b) & (e)].
3. The overshadowing impacts of the proposed development are not considered to be reasonable [Section 4.15 (b), (c) & (e)].
4. The proposal is inconsistent with the objectives of the MU1 Mixed Use zone objectives [Section 4.15(1)(a), (b) & (e)].
5. The proposal has not addressed the provisions of Clause 6.1 'Acid Sulfate Soils' under the Newcastle Local Environmental Plan 2012 which requires the submission of an Acid Sulfate Soils Management Plan ('ASSMP') [Section 4.15(1)(a), (b), (c) & (e)].
6. The proposed development is not acceptable in terms of urban design issues having regard to the terms *State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development* and the *Apartment Design Guidelines* [Section 4.15(1)(a), (b) & (e)].
7. The proposed development is inconsistent with Section 6.04 - Renewal Corridors of the Newcastle Development Control Plan 2012 [Section 4.15(a), (b) & (e)].
8. The proposed development is not acceptable in terms of flooding risk and the requirements of DCP 2012 Section 4.01 - 'Flood Management'. [Section 4.15 (b), (c) & (e)].
9. The proposed development is not acceptable in respect to traffic and parking impacts having regard to the requirements of DCP 2012 Section 7.03 - Traffic, Parking and Access Impacts [Section 4.15 (b), (c) & (e)].
10. The proposed development is not acceptable in respect to Crime Prevention Through Environmental Design and social impacts. The development is inconsistent with Section 4.04 – Safety & Security NDCP & Section 4.05 - Social Impacts [Section 4.15 (b), (c) & (e)].
11. The proposed development has not demonstrated that the acoustic impacts of the proposal are acceptable [Section 4.15 (b), (c) & (e)].
12. Insufficient details have been provided to demonstrate that the proposed landscaping/landscape design is acceptable [Section 4.15 (b), (c) & (e)].
13. The proposed development is not acceptable in respect to waste management having regard to the requirements of Section 7.08 - Waste Management of the Newcastle Development Control Plan 2012 [Section 4.15 (b), (c) & (e)].
14. The proposed development is contrary to the public interest with respect to the provisions of Newcastle Local Environmental Plan 2012 and Newcastle Development Control Plan 2012 regarding building height, density, acid sulphate soils, urban design elements, landscaping, waste management, traffic, parking, and adverse impacts on residential amenity within this area. [Section 4.15(1)(e)].