
TO: Hunter & Central Coast Regional Planning Panel (HCCRPP)- Chair

FROM: W. Toose, Principal Development Officer (Planning) – City of Newcastle

DATE: 24 June 2026

SUBJECT: PPSHCC-386 – 711 Hunter Street, Newcastle West – DA2025/01348

CN referred the development application to the Hunter & Central Coast Regional Planning Panel (HCCRPP) for determination on 2 June 2026 with a recommendation for approval, subject to conditions. The Panel requested additional information to assist with their findings and determination of the application, including advice in response to the legal opinion provided by the applicant.

A further meeting was held on Tuesday 16 June 2026, where further advice was requested the ability of the HCCRPP to impose conditions of consent requiring the dedication of in-kind contributions. The purpose of this memo is to provide the Panel with the advice requested.

Ability for the Panel to impose a works-in-kind condition

The legal advice confirms that the Affordable Housing Contributions Scheme expresses a preference for contributions to be delivered through the dedication of dwellings rather than monetary contributions. However, it clarifies that this preference is not mandatory and does not override the need for a proper merits assessment.

The statutory framework requires the consent authority to make an evaluative judgment under the *Environmental Planning and Assessment Act 1979* (EP&A Act) and clause 6.10 of the *Newcastle Local Environmental Plan 2012* (NLEP) as to the most reasonable and appropriate form of contribution in the circumstances, rather than defaulting to dedication

The preference for dedication only arises after consideration of whether dedication is possible and achievable. In this context, “dedication” is not limited to transfer of title but can also include transfer of control or rights in respect of a dwelling. However, the advice makes clear that these broader forms of dedication introduce important practical considerations, including complexity, management arrangements, access, and cost, all of which must be weighed when determining whether dedication is preferable in each case.

The legal advice stipulates that in making its decision, the consent authority, in this case the HCCRPP must first determine that an affordable housing contribution can lawfully be imposed. It must then assess whether dedication of a dwelling is possible in the development and, if so, whether it can be reasonably and practically achieved in preference to a monetary contribution. This requires a comparison of both methods on their merits, including feasibility, efficiency, and operational implications, rather than reliance on the stated preference in the Scheme.

With respect to the subject development, the advice concludes that dedication is not reasonably achievable. Dedication by way of strata subdivision is not possible because strata subdivision is not proposed as part of the DA and cannot be required without fundamentally altering the nature of the approved development.

Alternative mechanisms for dedication, such as creating stratum lots or transferring control or rights through long-term leasing, are technically conceivable but would give rise to significant practical and legal complications. These include the need for complex easements, access arrangements and ongoing management and maintenance frameworks to ensure the dwellings are functional and usable. The advice indicates that these approaches would be impractical, complex and costly when compared to a monetary contribution, which is straightforward and efficient to administer.

In this regard, CN considers there are sound strategic reasons to support a preference for monetary contributions. A monetary approach reduces delivery risk by avoiding reliance on third party timing and outcomes. In contrast, in kind delivery is dependent on developer sequencing, design decisions and construction performance, which introduces uncertainty in relation to quality, dwelling mix and completion timeframes. Monetary contributions provide greater certainty and support a more predictable and coordinated delivery program.

Monetary contributions also enable the responsible authority to determine procurement pathways and select delivery partners. This strengthens governance, consistency and oversight, and allows delivery to be aligned with adopted standards and strategic priorities. They further support the aggregation of funding over time. While an individual in kind contribution may appear comparable on a one for one basis, pooled funds enable larger and more efficient projects, reducing per dwelling delivery and ongoing management costs and improving long term financial sustainability.

Importantly, a monetary approach provides greater capacity to achieve intended social outcomes. It allows contributions to be targeted toward very low- and low-income households through tailored delivery models and partnerships. By contrast, in kind delivery within private developments, particularly in higher value markets, tends to favour moderate income households due to feasibility constraints. Overall, a monetary contributions approach supports a more consistent, scalable and targeted delivery model that better aligns with strategic planning objectives and long-term community outcomes.

The advice also confirms that the HCCRPP does not have the power to impose a condition requiring a future development application for strata subdivision to facilitate dedication. Such a condition would not sufficiently relate to the development as proposed and would fail the established legal tests for valid conditions of consent, including the requirement that conditions be reasonable and related to the development.

On this basis, it cannot be reasonably concluded that dedication is preferable in this instance. Imposing a condition requiring dedication would be vulnerable to challenge in the Land and Environment Court, and there is a strong likelihood that such a condition would not be upheld on appeal or judicial review.

Importantly, the advice highlights a material risk for the Panel. If an invalid affordable housing condition were imposed, it is likely that the condition could be severed from the consent if challenged, while the remainder of the development consent would remain in force. This would result in an approved development proceeding without any affordable housing contribution being secured.

Recommendation

CN recommends the Panel impose a condition requiring the applicant to pay a monetary AH Contribution calculated in accordance with the Newcastle Affordable Housing Contributions Scheme (AHCS), as provided in the draft conditions of consent. However, it is recommended that the condition be amended to clarify the following:

- a) the applicable discount rate under the AHCS is 50%, being the rate that applies during the initial period (from the date of gazettal by the NSW Government to June 2026); and
- b) the discount rate is fixed at the time development consent is granted and will not vary depending on when the Monetary Condition is ultimately satisfied.

Amendments to the draft condition are shown in red below

Affordable housing contributions – 7.32 ~~Dedication of Dwellings for Affordable Housing~~ Monetary Contribution

In accordance with Newcastle Affordable Housing Contributions Scheme (the scheme), prior to the issue of the first Construction Certificate for the development (i.e., whether for part or whole of a building), a monetary contribution of ~~\$930,423.69~~ **\$1,860,847.38** shall be paid to Newcastle City

Council for the purpose of affordable housing. In calculating the monetary contribution, the following formula was applied:

Contribution = suburb rate per sqm x (proposed dwellings - existing dwellings / (proposed dwellings) x discount rate

Where:

- i. the contribution rate is \$91.98/m²
- ii. the total residential GFA of the development is 20,231m²
- iii. the number of existing dwellings is nil
- iv. the total number of proposed dwellings is 191
- v. the discount rate is 50%

If the contribution is not paid within the quarter that this consent is granted, the contribution payable will be adjusted in accordance with the provisions of the scheme and the amount payable will be calculated on the basis of the contribution rates applicable at the time of payment. ~~This includes any changes to the discount rate.~~

Conclusion

The above supplementary memo, in combination with the revisions to the draft conditions by CN, comprehensively addresses the concerns and issues arising from the determination meeting.

It is recommended that the application be supported on the combined basis of the 'Council Assessment Report' and this Supplementary Memo, subject to the revised draft conditions of consent.

Should you require any further information on this matter please contact William Toose, Principal Development Officer on wtoose@ncc.nsw.gov.au or (02) 4974 2731.

W. Toose
Principal Development Officer (Planning)

Attachments:

Attachment A – Confidential – Legal Advice – Lindsay Taylor Lawyers – DA2025/01348 – Contributions under the Newcastle Affordable Housing Scheme

Attachment B – Amended Draft Schedule of Conditions