

06 November 2025

Vivacity Property Pty Ltd  
Po Box H72  
Australia Square NSW 1215

Reply by Email: [tom@vivacityproperty.com.au](mailto:tom@vivacityproperty.com.au)

Dear Tom

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<b>Pre-Development Application No:</b>	PR2025/00103
<b>Land:</b>	Lot 103 DP 786055
<b>Property Address:</b>	47 Darby Street Cooks Hill
<b>Proposed Development:</b>	SSD for Housing Delivery Authority project:  Proposed mixed-use development comprising residential flat building & retail premises (113 Dwellings)  (up to maximum height 45m and FSR 3.48:1)  Concurrent rezoning to amend Newcastle LEP 2012 building height & FSR controls.

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## A. Introduction

I refer to the Pre-Development Application meeting held on 5 November 2025 with City of Newcastle ('CN') officers in respect of the above development.

The following preliminary planning advice and information is provided to assist in the preparation of a development application for a State Significant Development (DA-SSD) under the Housing Development Authority (HAD). The advice consists of:

- Responses to the key issues nominated on the application form, as well as other matters that are considered to warrant further detail, consideration, or amendments prior to the submission of a DA, and
- Statutory matters that will be considered during the assessment of a DA, including the category of development according to the *Environmental Planning and Assessment Act 1979*, ('EP&A Act 1979') options for integrated development, applicable planning controls, submission requirements and methods of determination that apply to the proposal.

The comments and views expressed in this letter are based on the plans and information submitted for preliminary assessment and any information gathered at the above meeting.

The views expressed may vary once detailed plans and information are submitted and formally assessed in the DA process, or because of issues contained in submissions by interested parties.

It is advised that the submitted documentation, *having* regard to the nature of the proposal, has provided less information than would typically be provided for Pre-DA advice application (e.g. shadow diagrams) and, as a result, the advice being provided is limited in areas. It is further noted that the plans presented at the online Pre-DA meeting were further developed and included further details than those submitted as part of the Pre-DA application.

## **B. Key Issues**

In response to the key issues stated on the application form and discussed at the meeting, the following advice is provided:

### **PRE-LODGEMENT CONCERNS FOR SSD**

#### **Character/Urban Design**

The proposed height, bulk and scale of the development is not consistent with the strategic planning intent and desired future character set out by the provisions of the NLEP. The proposal's location is considered to be a prominent gateway site at the northern end of the Darby Street precinct, which extends to the south, is directly adjacent the recently completed Newcastle Regional Art Gallery and the Civic Park. The combination of the relatively low scale nearby development and the open nature of Civic Park results in this proposal towering above surrounding development and being inconsistent with the intended character, streetscape and intended urban design outcomes for the area.

It is further advised that the proposal is concern in terms of character considering that the site is located within the Newcastle Heritage Conservation Area and directly north of the Cooks Hill Heritage Conservation Area. Additionally in terms of character, the areas to the east/south-east of site are zoned R3 residential and are only permitted a height of 10 metres and 0.9:1 FSR, making the proposals relatively scale inconsistent with these areas, the transition in scale being too stark and further exacerbating the character concerns. While it is recognised that the proposed Tyrell Street tower is shorter in height than the proposed Darby Street tower, it is still significantly taller than the neighbouring development and the does not provide a reasonable transition of urban form.

Finally, it is noted, notwithstanding the proposed height of the Tyrell Street tower, the planning proposal intends 45 metres across the whole site. This means that into the future a taller tower would be permissible in the Tyrell Street position on the site. CN preference would be that the planning proposal, where supported, provides clear restrictions on the allowable heights along the eastern and southern boundaries (e.g. the eastern half of the Lot be restricted to a much lower height).

#### **Height/ Floor Space Ratio (FSR) (c14.3/c14.4 NLEP 2012)**

It is noted that the applicants for the SSD application are concurrently pursuing a planning proposal to exceed the height and FSR under the NLEP 2012. CN raises concern regarding the extent of proposed increases over the existing development standards within the Newcastle LEP 2012. The development proposes a height of 45 metres where currently 14 metres is permitted (i.e. an exceedance of 31 metres, 221.4%) and a FSR of 3.48:1 where currently 2.5:1 is permitted (i.e. an exceedance of approximately 3,495 m<sup>2</sup>, 39.2%).

The proposed height and FSR is considered to be excessive within this location, will result in significant amenity impacts (e.g. overshadowing) on neighbouring sites and is inconsistent with the objectives of the MU1-Mixed Use zone under the NLEP 2012 and the intended future desired character. The proposal's impacts are not consistent with the third zone objective, extracted below, considering the sites location directly adjacent the R3 residential zone which only allows a 10 metre height and 0.9:1 FSR and the proposal impacts. In this respect the proposals height, bulk, scale and density, relative to the adjoining sites, is too significant difference and results in unreasonable impacts.

*To minimise conflict between land uses within this zone and land uses within adjoining zones.*

## **Setbacks**

Firstly, the setbacks to the adjoining development to the east is a concern in terms of the interaction of the developments, the likely amenity impacts in terms of overshadowing, visual appearance and potentially amenity impacts. It is recommended that further design development is needed to address these concerns and investigate ways to mitigate unreasonable impacts. Furthermore, the proposal would need to demonstrate its impacts are acceptable by submission of plans/reports including shadow diagrams.

Secondly, the proposal only provides a limited transitional setback above the nominal street wall height chosen to match the height of the Newcastle Regional Art Gallery. The design should be setback at least six metres from the street wall height, this lack of setback increasing the concerns with the overall height, bulk, scale, visual appearance and character impacts of the proposal.

## **Shadowing**

The proposed scale of the two towers is such that, notwithstanding no shadow diagrams have been submitted for review, it is considered likely that the proposal would have shadowing impacts on the neighbouring development adjoining the east/south-east. Concern is raised that the probable shadowing impacts would be significant for many of these adjoining dwellings and that this development results in additional impacts arising solely due to the proposed height/FSR exceedances of the development.

## **Landscaping**

The tower fronting Darby Street does not appear to have sufficient communal open space and limited landscaping (as required by the Apartment Design Guidelines). The proposed roof top area is predominately paved, and a significant portion is roofed and enclosed (noting this enclosure area is likely gross floor area).

## **Heritage (cl5.10 NLEP 2012)**

### Built and landscape heritage

The site is located in the Newcastle City Centre Heritage Conservation Area (HCA). The site adjoins The Hill HCA to the north-west and is across the street from local heritage item, 'Newcastle Synagogue' (NLEP #608).

The proposed development includes:

- Demolition of existing structures
- Construction of a 13 storey mixed use development plus two levels of basement carparking.

The Heritage Technical Manual (HTM) identifies the site as Contributory 2. It contains a single storey masonry warehouse building in the eastern portion of the site facing Tyrrell Street, and a three-storey commercial building in the western portion facing Darby Street. The masonry warehouse building appears to date from the Key Period of Significance of the HCA (c1801 – 1940).

CN does not support demolition of contributory buildings except in situations where irrefutable evidence is provided that the contribution of the building to the significance of the HCA has been destroyed or lost; or where there is demonstrated overwhelming structural instability that cannot be rectified.

Demolition of a contributory building will have a detrimental impact on the heritage significance of the heritage conservation area and is generally considered to be a last resort. The objective of heritage conservation areas is to protect original buildings and the special qualities of the streetscape that contribute to the significance of the local area.

It is recommended that all avenues are explored to retain the contributory building and incorporate it into the redevelopment of the site.

The SOHI is to include an assessment of heritage significance of the site, prepared in accordance with the guideline document 'Assessing Heritage Significance' (2023). Initial desktop research indicates that the masonry warehouse building may be associated with the former Electric Light Station on Tyrrell Street (formerly Sydney Street). The potential heritage significance of the building must be thoroughly assessed prior to further design development.

This assessment is to include both buildings on the site, noting that Newcastle's brutalist architecture is identified in the draft Newcastle City-wide Thematic History (2025). Following this assessment, any amendments recommended by the project heritage consultant should be incorporated into the design.

The proposed development is significantly out of scale with the surrounding context and is not considered to be an appropriate response to the heritage conservation area. The Civic Precinct is characterised by a two- to four storey scale, with prominent landmark features including St Andrews Church spire, the Newcastle City Hall clock tower, and the former City Administration Centre (Kingsley Hotel). Tyrrell Street is predominantly characterised by two to three-storey residential buildings. Infill development in HCAs is required to use the height of contributory buildings in the vicinity should be used as a reference point for the height of the proposal. It is recommended that the height is significantly reduced to be more consistent with and complementary to the massing, scale and building height of neighbouring heritage items and contributory buildings that predominate in the street. It is not appropriate to use the height or massing of non-contributory buildings in the vicinity as the basis for a new proposal.

Further design development is to be informed by advice from the project heritage consultant regarding the massing and rhythm of the proposed podium and façade. The applicant is to

demonstrate that the application of the proposed contemporary forms and detailing is an appropriate response to the surrounding heritage properties through a streetscape analysis.

Materials and finishes chosen are to reference the typical materials seen in the context, and should avoid being overly dominant.

A views analysis demonstrating how the proposed development will impact the surrounding area and any significant views to nearby heritage items and contributory buildings is to be provided. Importantly, the assessment is to include an analysis of the setting of Civic Park and the significant central axis framed by the War Memorial Cultural Centre and Newcastle City Hall.

#### Historical archaeology

The site is not identified as a potential archaeological site in the Newcastle Archaeological Management Plan (NAMP) 1997. It is however identified in the NAMP Review 2013 as a site with archaeological potential. An Archaeological Assessment should be submitted with the application.

#### Aboriginal cultural heritage

Any future application will need to demonstrate that the due diligence process has been followed with regard to Aboriginal cultural heritage. Please refer to the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*.

#### Documentation required

The following documentation will be required with any future DA submitted:

- A Statement of Heritage Impact (SOHI), prepared by an independent and suitably qualified heritage consultant. The report is to be prepared in accordance with the document [‘Guidelines for preparing a statement of heritage impact’](#) (2023), published by the NSW Department of Planning and Environment.
- The SOHI is to include an assessment of heritage significance of the existing building, prepared in accordance with the guideline document ‘Assessing Heritage Significance’ (2023).
- The SOHI is to include an assessment of the proposal with reference to the provisions of Section E1 Built and landscape heritage of the NDCP 2023.
- An Archaeological Assessment Report.
- Demonstrate that the due diligence process has been followed with regard to Aboriginal cultural heritage. Refer to the [Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales](#).

#### **Newcastle City Centre – Design Excellence**

The subject site is located within the Newcastle City Centre as detailed within cl7.2 of the NLEP and the provisions of Part 7 apply to the proposal.

Clause 7.1 - Any development on the site would need to demonstrate that it meets the objectives under cl7.1.

Clause 7.5 – All development within the Newcastle City Centre must demonstrate that it achieves design excellence in accordance with the provisions of cl7.5(2) & (3). It is noted that the proposal is under 48 metres in height otherwise a design competition would be required (cl7.5(4)).

## Streetscape/Active Street frontage

Concern is raised, notwithstanding the retail element proposed on the ground floor, the extent of non-active street frontage proposed by the development and the location of these elements. It appears that more than 60-70% of the street frontages are taken up by access and service elements which is disappointing on this prominent corner site. It is recommended that the design needs to be amended to improve the active frontage such as the retail element(s). It is recommended that this increase active frontage be orientated to Darby Street as much as possible as opposed to Tyrell Street.

## C. Other Issues

In addition to the key issues discussed above, the following matters are considered to warrant further detail, consideration, or amendment prior to the submission of a development application (DA):

### Waste Management

The following advice is provided in regard to waste management for the proposal: -

There are two towers proposed for this development assessed as having the following waste generation: -

#### **Tower 1 Residential: (11 x 1 bedroom, 46 x 2 bedroom, 24 x 3 bedroom)**

- a. General Waste: 8,360 litres generated per week. Consider 4 x 1,100 litre bins, collected twice-weekly.
- b. Comingled Recycling: 8,360 litres generated per week. Consider 8 x 1,100 litre bins, collected weekly.
- c. Garden Organics (GO): TBC - site needs to advise on management strategies for garden organics (e.g. contract gardeners, etc). Several 240 litre bins can be provided and collected from the kerbside fortnightly.
- d. FOGO (future implementation, including / replacing the above GO): Options to be considered. Link: [NSW guide to food-waste recovery in multi-unit dwellings](#)

#### **Tower 2 Residential: (20 x 2 bedroom, 13 x 3 bedroom)**

- a. General Waste: 3,560 litres generated per week. Consider 1 x 1,100 litre bin and 1 x 660 litre bin, collected twice-weekly.
- b. Comingled Recycling: 3,560 litres generated per week. Consider 3 x 1,100 litre bins, collected weekly.
- c. Garden Organics (GO): TBC - site needs to advise on management strategies for garden organics (e.g. contract gardeners, etc). Several 240 litre bins can be provided and collected from the kerbside fortnightly.
- d. FOGO (future implementation, including / replacing the above GO): Options to be considered. Link: [NSW guide to food-waste recovery in multi-unit dwellings](#)

#### **Commercial / Retail (461 m<sup>2</sup> - for the purposes of the calculation, assume a restaurant opening 6 days a week, 400 lts general waste / day and 280 litres of recycling / day)**

- a. General Waste: 11,064 litres generated per week. Consider 5 x 1,100 litre bins, collected twice-weekly.
- b. Comingled Recycling: 7,745 litres generated per week. Consider 7 x 1,100 litre bins, collected weekly.
- c. Food Organics (FO): Options to be considered. Link: [Bin Trim](#)

Importantly, and as noted above, there needs to be a future-proofing allowance for FOGO implementation. FOGO collection at residential properties is mandated to be introduced by 2030 (and is likely to be implemented by CN within the next 12 - 24 months) which may likely require all bins to be collected every week.

Under new laws, from 1 July 2026 businesses or institutions that sell or handle food, like supermarkets, cafes, schools and hotels, must separate food waste from general waste. The mandates requiring separation of food waste from general waste will happen in stages from 1 July 2026, based on weekly rubbish bin volumes:

- a. 1 July 2026: source separation required if weekly general waste bin capacity is  $\geq 3,840L$
- b. 1 July 2028: source separation required if weekly general waste bin capacity is  $\geq 1,920L$
- c. 1 July 2030: source separation required if weekly general waste bin capacity is  $\geq 660L$
- d. Find out if and when your business needs to source separate using the EPA calculator. Link: [Bin Trim](#)

Any retail spaces must have their waste generation calculated separately to the above, using separate waste bins to the Residential contingent of bins. Retail and Residential waste is to be kept separate to ensure correct utilisation.

Depending on the final rating structure of the development, any commercial (above rateable-entitlement) collection services may be provided by a third-party provider, at the expense of the development. Notwithstanding, the waste services must be demonstrated to comply with the CN waste collection service.

It should be noted that by virtue of the Local Government Act 1993 Section 501 and / or Section 496, all councils must make and levy an annual charge for the provision of business and / or domestic waste management services, in respect of all rateable land within their area for which the business and / or domestic waste management service is available. This is applicable irrespective of whether the service is utilised or not. Please note that the Business Waste Management Service Charge (BWMS) and the Domestic Waste Management Service Charge (DWMS) covers aspects of waste handling not necessarily related to the kerbside collection of waste. Issues such as waste education and state government levies are also funded in the charge.

It is advised waste management should be based on all waste being collected on site by a Heavy Rigid Vehicle (HRV) achieving forward entry and exit in accordance with the NDCP 2023. Any alternative, such as the collection and return option proposed by the development reliant on a future dedicated on-street loading/services zone would need to demonstrate and justify why on site collection is not proposed. It is additionally confirmed that presentation of bins to the street for collection is allowed/supported.

A comprehensive Waste Management Plan is required to be prepared. It is recommended that this be submitted to CN for review by David Thomas (Manager Service Delivery – Waste. Ph 4974 6046). This is essential considering that the development is relying on a collection and return option via a dedicated on street loading/services zone.

It is strongly recommended reviewing Section C6 Waste Management of the NDCP 2023, to ensure the correct information is referenced and the most-current version of the WMP is used.

## **Flooding**

The subject site is affected by flooding, and a flood information certificate (FL2025/0005) has been obtained.

Part of the southern and southeastern areas of the subject site are flood affected at both 1% Annual Exceedance Probability (AEP) and the Probable Maximum Flood (PMF) flash flood events. These areas are notably currently used as at grade car parking areas. The site is not a flood storage or a floodway.

At Darby St frontage, 1% AEP level is noted as 7.9m AHD. At PMF events, Darby St road reserve is noted as a floodway.

Based the proposed design, southwest portion of the site will have (Darby St end) PMF level of 8.3m AHD, a FPL of 8.3m AHD for Darby St is required for the site.

Driveway areas and any access to basement must be designed to mitigate flood impacts and must be demonstrated.

The proposal would be required to provide a flood refuge.

## **Stormwater Easement**

The development proposes to divert major CN drainage infrastructure. This will trigger a full analysis (flood modelling) of any localised flood impacts, including on-road impacts.

Adjoining properties must not be impacted as a result of these changes.

Further review of the available flood data has included the Royal Haskoning DHV report (2015) of assessing the Cooks Hill catchment and its assessment of the local drainage network (See Image 2 below).

The culvert system is bigger than what was initially discussed with the applicant's consulting engineer (Indesco).

Image 2 - Drainage Data from Royal HaskoningDHV report



Based on the architectural plans and proposed stormwater concept, the following comments are offered:

- i. Concern is raised that the stormwater infrastructure will be heavily compromised by the design as currently proposed.
- ii. Further investigation must be undertaken to determine the location and dimensions of the existing drainage infrastructure.
- iii. Concern is raised that the proposal does not have adequate easement widths.

Noting that for large culvert structures, easements are generally established 1.5m either side of the culvert.

Based on the 1.8m width of the culvert, a 4.8m width of easement is required.

- iv. It is concerning that the proposed easements seem to be located under parts of the proposed buildings. This is not supported.

Generally, building structures must be designed to not impede or influence on the drainage structures and easements are clear of any buildings and structures.

- v. Concern is raised that the proposed will directly impact on the adjoining sites and such must be considered at early planning stage.

CN notes that the adjoining site at 59 Darby St has an approved DA which is retaining the existing drainage system at the northeast corner. The proposed realignment under the current SSD application would likely impact on the future development at 59 Darby St.

- vi. Concern is raised that no information has been provided on how the applicants plan to manage the impacts on Tyrell St.
- vii. Stormwater easements designs must consider how CN will access the site and manage maintenance process.

Generally, easements must not have undue building structures over it.

Overall, the drainage diversion/amendment of the stormwater easement, as currently proposed, is not supported and needs to be further amended.

It is noted that the design presented at the Pre-DA meeting has developed further and some of the above issues may have been resolved. It is recommended that applicant continue to discuss and resolve the impacts on CN's infrastructure and ultimately will need CN's owners consent to alter the associated easement.

### Previous Consultation

It is noted consulting engineer from Indesco has contacted CN, with concept proposal. The submission has been reviewed with CN's Drainage Assets team and this advice has been provided to Indesco.

CN's has advised that the diversion should be consistent with the layout as indicated in Image 3 below.

The concept relies on the use of the existing driveway of 1 Queen St and directing the drainage via Queen St and Darby St.

CN have also undertaken detailed design for planned drainage works on Darby St as part of the Cooks Hill catchment. These planned drainage upgrades are nearing construction. This information has been previously provided to Indesco.

Further to this, consultation should be undertaken with adjoining property owners and it will be critical that CN's Drainage Asset team is involved in the design process.

Image 3 - CN Preferred Drainage Diversion Option



### Drainage Diversion Process

The proposed drainage diversion involves critical infrastructure, and it will be necessary that the design and constructed of the this diverted stormwater pipeline be completed prior to any other engineering or building works as associated with the SDD proposal.

All necessary consultation and approval from CN's Drainage Asset team will be necessary.

### **Stormwater/Drainage**

The stormwater/flooding design is required to meet the provisions of the NLEP 2012 and NDCP 2023.

All development is to be designed in accordance with *Section C4 'Stormwater' of NDCP2023*.

## General Stormwater Design

The development application is to be supported with a Stormwater Management Plan and report having regard to DCP and the following stormwater principles:

- Consider schemes that maximise potential stormwater harvesting and re-use to reduce the demand on potable water.
- Large scale hardstand areas are indicated to accommodate the proposed car parking and turning areas. Stormwater run-off controls and treatment must be provided for these areas.
- Stormwater controls to be provided to demonstrate that the proposal is sustainable. Detention/retention to mitigate run-off impacts on the downstream catchment areas.
- Water Sensitive Urban Design (WSUD) principles are to be addressed, and it is encouraged that landscaped areas be designed with WSUD structures which can provide for stormwater treatment
- Stormwater flow paths (including overland flows) are not impeded.

Any future Development Application is to include, but not be limited to, documentation which addresses the following:

- Newcastle City Council's Development Control Plan & Technical Manuals
- A comprehensive Stormwater Management Plan in accordance with *Newcastle City's Development Control Plan* and the *Stormwater and Water Efficiency for Development Technical Manual*
- Water cycle management plan
- Soil and water management plan
- Broad scale development assessment checklist for water sensitive urban design
- For large scale development hydrological and hydraulic modelling assessment is required in accordance with CN DCP and the Stormwater and Water Efficiency for Development Technical Manual. Modelling shall be in accordance with Newcastle MUSIC link.

## **Traffic & Parking**

### General

The application may require referral to TfNSW pursuant to SEPP Transport and Infrastructure 2021 Clause 2.121 – Schedule 3 - Traffic Generating Development

- A Traffic and Parking Impact Assessment Report will be required in support of any future application such being prepared by a suitably qualified traffic consultant and addressing the relevant heads of consideration under the TfNSW's '*Guide to Traffic Generating Developments*'
- Green travel plan is required to be submitted in support of application – refer Council's DCP 2023 Section C1– Traffic Parking and Access
- The Newcastle City Traffic Committee(NCTC) approval will be required for any proposed alterations to kerbside parking generated by this proposal It is difficult to provide estimates for gaining in principle support and final approval on matters to the NCTC. This is dependent on the nature of the proposal changes being proposed, the level of detail provided and the localised issues arising. It is further advised that NCTC meets monthly except for the Christmas period.

### Development Footprint

- Consultation required with beneficiaries of existing easements for underground electricity, water pipeline and stormwater drainage to determine and finalise requirements for the proposed development

- Concern is raised in relation to potential vehicle conflicts associated with opposing vehicle movements about the 90 degree bend in access driveway. Driver sight lines to be maintained about this bend and vehicle turning paths to be provided demonstrating clearance between opposing vehicle movements.
- A similarly concern raised in relation to the close proximity of the ground level car spaces to the basement vehicle access ramp and the potential for vehicle conflict. In this regard it is recommended that a greater separation be provided to the access ramp with improved driver sight lines.

### Access

The proposed vehicle access is required to conform with AS 2890.1 – Off Street Parking with particular attention given to the following:

- Width of the access
- Provision of a relatively level landing for a minimum 5.0m inside property.
- Driver sight lines for an exiting vehicle being maintained in accordance with Figure 3.2 Sight Requirements at Access Driveways
- Driver sight lines to a pedestrian being maintained for vehicles exiting the site in accordance with Figure 3.3.
- In accordance with Council's DCP 2023 Section D3 Residential Development entry/exit security gates to car park areas are to be being offset a minimum 5.5m from the property frontage to adequately cater for vehicles accessing the site without obstructing the pedestrian footway.

### Parking:

- Parking is required to be provided in accordance with Council's DCP 2023 Table C1.01 and /or Table C1.03 as applicable with any proposed parking variations to be supported by a comprehensive parking analysis justifying the departure. The site is located within the Newcastle City Centre and therefore particular attention is given to Section C1 Clause 16 - Parking Provision. It is confirmed that the DCP provides for a maximum level of parking which cannot be exceeded.
- Motorcycle and bicycle parking are required to be provided in accordance with Council's DCP 2023 Table C1.01.
- Adequate provision for electric vehicle charging is required in accordance with Council's DCP 2023 Section C1 Clause 11.0 - Electric Car Parking
- Car parking located on the ground floor requires a minimum 4.0m floor to ceiling height and minimum 3.5m clearance to infrastructure.
- Car park dimensions ( parking bays, aisle widths, floor to ceiling height) to comply with AS 2890.1 , 2 and 6 respectively.

### Public Domain

The footways are required to be upgrade across the frontages of the site comprising of the following:

The footways across the frontages of the site will require full width reconstruction in accordance with Council's City Centre Public Domain Technical Manual.

- New street tree plantings are required (3 in Darby Street and 1 in Tyrell Street), such being planted in tree vaults and incorporating tree guards and grates.
- A minimum 4.0m set back will be required to the existing London plane street tree in Darby Street.
- Road widening will be required in the form of a 3.0m x 3.0m splay at the intersection of Darby and Tyrell Street's to maintain an adequate footway width and improve sight lines at this corner.
- In accordance with the draft '*Civic Precinct Public Domain Plan*' a marked pedestrian crossing incorporating kerb blisters and a central island in Darby Street and raised marked pedestrian crossing in Tyrell Street should be provided to cater for the increase in pedestrian activity generated by this development and the anticipated desire lines being Civic park and the Newcastle City CBD.
- It is confirmed that all works in the road reserve would be subject a s138 Roads Act approval by CN.

### Servicing

- Adequate servicing facilities should be provided on-site in accordance with Council's DCP 2023 and the NSW Government's 'Freight and Servicing Last Mile Tool Kit'. In this regard details are required of all proposed servicing activities comprising the nature, size and frequency of service vehicles and designated locations for this activity. Provision for a dedicated service / building maintenance bay should be incorporated into the design of the onsite car park
- A Waste Management Plan should be submitted in support of any future application such being prepared in consultation with Council's Waste and Commercial Collection Manager David Thomas 4974 6046. Garbage bins will be required to be collected from within the site, emptied and returned to the proposed on-site bin enclosure. No bins are to be presented to the street for kerbside collection. Should the applicant propose a kerbside loading zone in Darby Street to accommodate waste collection 'in principle' support should be obtained from the Newcastle City Traffic Committee prior to lodgement of any future development application.

### **Ausgrid**

It is understood during the meeting that consultation with Ausgrid is well advanced which is supported.

Two issues which are important to address early in the design of the proposal include:

- Safe separation of proposal from existing adjoining substations.
- The proposals need for substations to support the development (an upgrade often arises due to the scale of a proposal and/or extra demand to facilitate EV charging).

Addressing these issues late in the design process or at the Construction Certificate stage can result in very poor outcomes for the development and unreasonable impacts on surrounding properties.

### **Contributions 7.11**

CN's [Section 7.11 Development Contributions Plan](#) applies to the development. The proposal results in additional demands for transport and social infrastructure. The contribution rate for the residential component of the proposal is based on the per person rate as specified in **Table E1** of the Plan. The s7.11 development contribution rates are published quarterly on CN's [Contributions Plans](#) webpage.

## Affordable Housing Contributions

Section 1.10 of the City of Newcastle Affordable Housing Contributions Scheme applies to Planning Proposals that enable residential development and result in a significant value uplift. The proposed increase in height and FSR is likely to generate substantial uplift in land value. Under Section 1.10, the Planning Proposal must:

- a) Include a proposal to amend the Scheme and Newcastle LEP to specify an affordable housing contribution rate supported by feasibility testing; **or**
- b) Be supported by a Planning Agreement that includes affordable housing provisions consistent with the Scheme.

City of Newcastle reserves the right to obtain an independent feasibility assessment of any proposed contribution.

### Establishing Contribution Rate

City of Newcastle will work with the proponent to determine an appropriate affordable housing contribution rate. The methodology used is based on the Residual Land Value (RLV) method, consistent with the NSW Government's *Guideline for Developing an Affordable Housing Contribution Scheme*.

### Residual Land Value Method – Summary

The RLV method calculates the maximum price a developer can pay for land after accounting for:

- **Gross Development Value (GDV):** Total projected revenue from the completed development.
- **Development Costs:** Construction, professional fees, finance, statutory contributions, and affordable housing obligations.
- **Developer's Profit:** A benchmark margin (typically 15–20% of GDV).  
The remaining amount is the **Residual Land Value**. Planning changes that increase development potential (e.g., height and FSR) typically increase GDV, creating value uplift. Affordable housing contributions are set to capture part of this uplift without rendering the project unviable.

### Referral Advice

- The Planning Proposal triggers Section 1.10 requirements of the Affordable Housing Contributions Scheme.
- The proponent should engage early with City of Newcastle to agree on feasibility testing parameters and contribution rate.
- A Planning Agreement or amendment to the Scheme will be required prior to finalisation of the Planning Proposal.
- Should you opt to enter into a Voluntary Planning Agreement (VPA) for the contributions, please reach out to Samantha Cross (Strategic Planning Section Manager) to commence discussions.

### Design Review Panel

It is recommended that the development be reviewed by a Design Review Panel (e.g. State Urban Review Panel) in the same way as if it was lodged with CN or the Hunter Central Coast Regional Planning Panel, to ensure it addresses the design requirements under 7.5(3) of the NLEP and it achieves the Apartment Design Principles (ADG).

## D. Integrated Development

The following approvals available under the integrated development system are applicable to the development:

## **Coal Mine Subsidence Compensation Act 2017 - s 22:**

Approval is required to alter or erect improvements, or to subdivide land in a Mine Subsidence District.

The site is located within a Mine Subsidence District ('MSD'). Sites located in MSD are required to gain an approval from the Subsidence Advisory NSW for the proposed development. Before lodging a DA, you are advised to liaise with the Subsidence Advisory NSW by phone on (02) 4908 4300.

The Subsidence Advisory NSW development guidelines can be accessed at [www.subsidenceadvisory.nsw.gov.au/development-guidelines](http://www.subsidenceadvisory.nsw.gov.au/development-guidelines).

## **Water Management Act 2000 - s 89, 90, 91:**

An approval from the NSW Office of Water of the Department of Planning and Environment may be required, where the development involves the following work:

- a water use approval,
- a water management work approval (water supply work approvals, drainage work approvals and flood work approvals.)
- or an activity approval and aquifer interference approval.

Typically, a question arises as to whether removal and discharge of ground waters needs to be consent. It is recommended that you consult early in this respect.

If you wish to apply for an integrated approval, the relevant section of the development application should be completed. Except for the Subsidence Advisory NSW, a processing fee is payable, plus an additional fee per approval body must be included with the fees for the development application.

The required approvals can be obtained after the assessment of the development application; however, it may be more efficient to address any requirements of the permit in your development.

## **E. State Environmental Planning Policies**

The following State environmental planning policies (SEPP) apply to the development:

### **State Environmental Planning Policy (Resilience and Hazards) 2021**

#### **Chapter 4 – Remediation of land.**

This policy applies to the proposed development and contains planning controls for the remediation of contaminated land.

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

Clause 4.6 (2) of the policy and Section 5.2 of the Newcastle Development Control Plan 2012 require a preliminary site investigation to be carried out in accordance with the NSW EPA 'Consultants reporting on contaminated land' guidelines. Contamination investigation reports must

be drafted by persons with relevant qualifications and experience to a level appropriate to the contamination issues under investigation

Section 5.02 outlines the site investigation process. Depending on the results of the Preliminary Site Investigation, it may be necessary to carry out a Detailed Site Investigation and if that investigation concludes that the site is not suitable for the proposed use in its present state and remediation is required, then a Remedial Action Plan (RAP) will likely be required to be prepared and submitted for consideration prior to the determination. Where contaminated materials is proposed to be retained on site as part of a RAP, the proposal will need to obtain an interim site audit certificate from an NSW EPA certified site auditor.

## **State Environmental Planning Policy (Transport and Infrastructure) 2021**

### **Chapter 2– Infrastructure**

This policy facilitates the effective delivery of infrastructure across the State. The development is subject to the following requirements of the policy:

#### Impact of road noise or vibration on non-road development

While Clause 2.120 may not strictly apply to the site as the annual average daily traffic volume would not exceed 20,000 vehicles (based on the traffic volume data published on the website of the former RMS) it is recommended that the proposal achieve acoustic mitigation to the same levels to ensure the amenity of future residents as detailed below: -

Development for the purpose of residential accommodation must have appropriate measures incorporated to ensure the following noise levels are not exceeded:

- (a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
- (b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

An acoustic report will be required to be submitted with any development application to demonstrate compliance with these requirements.

#### Development impacted by an electricity tower, electricity easement, substation, power line

Clause 2.48 of the policy requires the consent authority to give written notice to the electricity supply authority and invite comments about potential safety risks when applications for the following development are received:

- (a) *'the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower*
- (b) *development carried out:*
  - i) *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
  - ii) *immediately adjacent to an electricity substation, or*
  - iii) *within 5m of an exposed overhead electricity power line,*
- (c) *installation of a swimming pool any part of which is:*
  - i) *within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or*

ii) *within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,*

(d) *development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.'*

It is recommended that you liaise with Ausgrid regarding any requirements your application may be subject to.

## **F. Newcastle Local Environmental Plan 2012**

The site is located on land in Zone MU1 Mixed Use and the proposed development is characterised as a mixed use development consisting of *residential flat building* and *retail premises* and is permitted with consent under the Newcastle Local Environmental Plan 2012 (NLEP 2012).

### **Clause 6.1 – Acid Sulfate soils**

The proposed development is affected by acid sulfate soils and will be subject to an assessment against clause 6.1 of the LEP. CN's records indicate that the land contains Class 4. The following table summarises when an Acid Sulphate Soils Management Plan is required to be submitted with the DA.

<b>Class of soil</b>	<b>Works to which this clause applies</b>
4	Works more than 2 metres below the natural ground surface OR Works by which the water table is likely to be lowered more than 2 metres below natural ground surface.

Development consent is not required under this clause to carry out any works if:

- (a) the works involve the disturbance of less than 1 tonne of soil, such as occurs in carrying out agriculture, the construction or maintenance of drains, extractive industries, dredging, the construction of artificial water bodies (including canals, dams, and detention basins), foundations or flood mitigation works, or
- (b) the works are not likely to lower the water table.

## **G. Newcastle Development Control Plan 2012 and Technical Manuals**

The proposal must consider all relevant sections of NDCP 2012, and the technical manuals as listed below:

### **Section 1.00 - Introduction**

### **Section 2.00 - How to use this DCP**

### **Section 3.00 - Landuse Specific Provisions**

Section 3.10 Commercial Uses

### **Section 4.00 - Risk Minimisation Provisions**

Section 4.01 Flood Management

Section 4.03 Mine Subsidence

Section 4.04 Safety and Security

Section 4.05 Social Impact

### **Section 5.00- Environmental Protection Provisions**

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 6.00 - Locality Specific Provisions**

Section 6.01 Newcastle City Centre

### **Section 7.00 - Development Provisions**

Section 7.02 Landscaping Open Space and Visual Amenity

Section 7.03 Traffic, Parking and Access

Section 7.05 Energy Efficiency

Section 7.06 Stormwater

Section 7.07 Water Efficiency

Section 7.08 Waste Management

Section 7.09 Outdoor Advertising

### **Section- 9.00 Glossary**

### **Technical Manuals and Additional Information**

City Centre Public Domain Technical Manual

Commercial Technical Manual

Contaminated Land Management Technical Manual

Urban Forest Technical Manual

Heritage Technical Manual

Landscape Technical Manual

Stormwater and Water Efficiency Development Technical Manual

Waste Management Technical Manual

## **Advisory Matters**

### **Hunter Water Act 1991**

Plans will be required to be stamped by Hunter Water prior to submission to CN. It will be necessary to complete a Building Plan Assessment Application and pay the associated fee. Hunter Water can be contacted on 1300 657657. For more information regarding this process and to download an application form go the Building and Development portal of the Hunter Water website at [www.hunterwater.com.au](http://www.hunterwater.com.au) .

### **Coal Mine Subsidence Compensation Act 2017**

Plans will be required to be stamped by Subsidence Advisory NSW prior to submission to CN.

## **H. Conclusion**

A preliminary assessment of your proposal has identified several departures from CN's planning controls. The proposed development is not supported in its present form. The issues raised in this report would need to be appropriately addressed prior to the submission of a development application.

All efforts are made to identify issues of relevance and likely concern with the preliminary proposal. However, the comments and views in this letter are based on the plans and information submitted for preliminary assessment and discussion with the pre-development application.

You are advised that:

- the views expressed may vary once detailed plans and information are submitted and assessed in the development application process, or because of issues contained in submissions by interested parties.
- amending one aspect of the proposal can result in changes which can create, different set of impacts from the original plans: and
- the comments do not bind CN Officers, the elected Council members, or other bodies beyond CN, in any way whatsoever.

For further enquiries please contact me on 4974 2768 or by email at [djaeger@ncc.nsw.gov.au](mailto:djaeger@ncc.nsw.gov.au)

Yours faithfully

**Damian Jaeger**  
**PRINCIPAL DEVELOPMENT OFFICER (PLANNING)**